

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



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

Audience publique

Public Hearing

Commissaire

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

Commissioner

Tenue à:

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

le jeudi 2 juin 2005

Held at:

Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario

Thursday, June 2, 2005

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Thursday, June 2, 2005 at

3 9:00 a.m. / L'audience débute le jeudi

4 2 juin 2005 à 9 h 00

5 THE REGISTRAR: Veuillez vous

6 asseoir.

7 THE COMMISSIONER: Good morning.

8 MS EDWARDH: Good morning,

9 Mr. Commissioner. Good morning, Mr. Minister.

10 PREVIOUSLY SWORN: WILLIAM C. GRAHAM

11 HON. BILL GRAHAM: Good morning,

12 ma'am.

13 EXAMINATION

14 MS EDWARDH: I would like, if I
15 could, to turn to some general concepts, if I
16 could, Minister Graham, and the first of course is
17 the concept of diplomatic protection which
18 involves, obviously, the provision of consular
19 services through the Department of Foreign
20 Affairs; correct?

21 HON. BILL GRAHAM: Yes.

22 MS EDWARDH: And, indeed, the
23 Department of Foreign Affairs is the only
24 department that has directly as its mandate the
25 provision of consular services?

1 HON. BILL GRAHAM: Yes.

2 MS EDWARDH: Rests in your hands,
3 broadly speaking, and in those of others in the
4 department, like Mr. Pardy?

5 HON. BILL GRAHAM: There is a
6 special department within the department for
7 consular services which include passport services,
8 services for Canadians abroad, and other items of
9 that nature. And within the embassies, for
10 example, you tend to find the consular section is
11 a different section from the political and other
12 sections.

13 MS EDWARDH: But no other
14 government department or agency has any mandate
15 with respect to the provision of those services?

16 HON. BILL GRAHAM: Not to my --
17 no, ma'am, no.

18 MS EDWARDH: Now, I want to just
19 understand who the ambassador is, because it is
20 clear that an Order in Council is passed naming an
21 ambassador, but I want to put some general
22 propositions to you.

23 We have been told, Mr. Minister,
24 that the ambassador wears, in a representative
25 capacity, many hats; in other words, he is

1 entitled to represent many of the interests that
2 the Canadian government may have in respect of a
3 foreign nation.

4 Do you agree with that
5 proposition, sir?

6 HON. BILL GRAHAM: Yes.

7 MS EDWARDH: And, of course, one
8 of the hats he wears is the hat of ensuring that
9 full and proper consular services are provided to
10 Canadian citizens who may be detained in a foreign
11 state?

12 HON. BILL GRAHAM: Within the
13 responsibility of the embassy that is there, yes.
14 He is the representative of Canada, as such, in
15 the foreign country for all purposes -- all
16 purposes.

17 MS EDWARDH: I want to just ask a
18 little bit about the consular services generally,
19 and in Mr. Arar's particular case.

20 Certainly one of the primary
21 things that consular services do is that they try
22 to ensure that a Canadian representative has
23 access to Mr. Arar, someone like Mr. Arar, who is
24 detained; correct?

25 HON. BILL GRAHAM: Correct.

1 MS EDWARDH: They also --

2 HON. BILL GRAHAM: Within the
3 general concepts of diplomatic protection which
4 you mentioned in your first question which, as you
5 know, is governed by the Vienna Convention and is
6 therefore subject to matters as to what is the
7 nationality and other matters of rights guaranteed
8 under the Vienna Convention.

9 Those are the only rights one has.
10 We seek to get as much as we can, but we are
11 circumscribed by the rights which are laid out in
12 international law.

13 MS EDWARDH: Let me just talk
14 generally about the objectives of the Government
15 of Canada, because we do know while the Vienna
16 Convention gives certain rights to individuals and
17 to the government, if both Canada and the country
18 in question are signatories there are also policy
19 issues of what the government seeks to provide?

20 HON. BILL GRAHAM: Yes.

21 MS EDWARDH: First of all, we have
22 agreed that one of the basic things that consular
23 access is designed to do is to ensure that someone
24 from the consular service has spoken to a
25 detainee -- actually had physical access to him?

1 HON. BILL GRAHAM: Absolutely.

2 MS EDWARDH: And one of the other
3 aspects of a consular service is that if a
4 detainee has not been charged, consular service
5 would include encouraging the state authorities to
6 either release the detainee or charge them and
7 have them properly tried.

8 HON. BILL GRAHAM: Right. Give
9 them an opportunity to defend themselves.

10 MS EDWARDH: Right. And that is
11 part of consular services?

12 HON. BILL GRAHAM: Yes.

13 MS EDWARDH: And if, in fact -- I
14 view that, Mr. Minister, as nothing more than an
15 obligation on the part of Canada to try to bring
16 to an end the arbitrary detention of someone who
17 is not facing charge or standing trial. That is
18 one of the purposes of consular services.

19 In other words, what I am saying,
20 very simply, Minister Graham, is that one of the
21 objects of Canada's representations is to bring to
22 an end mere detention of a person and see that
23 they are charged, tried or released.

24 HON. BILL GRAHAM: Yes,
25 recognizing that we do so within the framework of

1 public international law --

2 MS EDWARDH: Yes.

3 HON. BILL GRAHAM: -- and the law
4 of the country where you are operating, because
5 public international law establishes, of course,
6 that country. So the length of detention, the
7 nature of detention, other things, would be very
8 much governed by the law of the place where you
9 are. And in terms of consular efforts, we try and
10 do our best for Canadians wherever we are, but we
11 have less leverage, if you like, in some cases
12 than in others, depending on where the
13 jurisdiction they are held and the nature of the
14 case.

15 MS EDWARDH: But certainly, for
16 example, even if the state of affairs in Syria
17 permitted military intelligence to detain on an
18 unlimited basis, it was the position of the
19 department, pursuant to its mandate to deliver
20 consular service, to ensure that Syria understood
21 that the Government of Canada wanted an end to
22 detention or a charge and trial?

23 HON. BILL GRAHAM: Yes, clearly.

24 MS EDWARDH: Now, if there is
25 going to be no charge and trial and you are

1 seeking an end to detention, it seems obvious that
2 part of the consular services offered are to seek
3 the release and return of a person like Mr. Arar?

4 HON. BILL GRAHAM: Absolutely.
5 That is exactly what we tried to do.

6 MS EDWARDH: In fact, that is one
7 of the core functions in a case like Mr. Arar's of
8 consular services.

9 HON. BILL GRAHAM: Yes.

10 MS EDWARDH: Now, you will agree
11 with me, Minister Graham, that persons held in
12 detention, particularly if they are held
13 incommunicado, or only have consular access, can
14 reasonably be described as extremely vulnerable?

15 HON. BILL GRAHAM: Yes.

16 MS EDWARDH: Do you agree with
17 that?

18 HON. BILL GRAHAM: Absolutely.

19 MS EDWARDH: And I want to talk a
20 little bit about the kind of common information
21 that you would expect consular staff to try and
22 get with respect to a detainee in their
23 discussions with a detainee.

24 First of all, it would be clear
25 that they would want to find out in their

1 discussions with a detainee whether there was any
2 understanding on the part of the detainee of what
3 charge they faced. That would be one thing?

4 HON. BILL GRAHAM: Yes.

5 MS EDWARDH: They would also want
6 to understand if the detainee had been told
7 anything about the basis of the charge?

8 HON. BILL GRAHAM: Yes.

9 MS EDWARDH: Which may indeed
10 require the detainee to discuss information about
11 the offence that is alleged against him and the
12 detainee's response?

13 HON. BILL GRAHAM: I would imagine
14 so, if you are going to be effective, yes. You
15 want to get as much information as you can to be
16 effective.

17 MS EDWARDH: And sometime, indeed,
18 we know that consular services have extended to
19 trying to gather together evidence that might
20 exist in Canada that could assist the detainee in
21 respect of the charges they face or the sentence
22 they face in the foreign jurisdiction?

23 Indeed, that is what --

24 HON. BILL GRAHAM: I personally
25 was never involved at that level in any case where

1 I authorized such. This may well be true, but
2 someone like Mr. Pardy, or someone like that, who
3 did this all the time would be better positioned
4 to illustrate the practice.

5 I would imagine we would do that,
6 but I personally didn't have any occasion to
7 authorize such in any of the cases I was involved.

8 MS EDWARDH: Right. As a matter
9 of principle as opposed to practice?

10 HON. BILL GRAHAM: As a matter of
11 principle, I assume we would try and do every
12 possible thing we could for the security, the
13 wellbeing of the individual in that foreign jail,
14 as I said, within what we could do within the
15 framework of the law of the country and what we
16 were entitled to do in international law.

17 That would extend to everything we
18 possibly could do.

19 MS EDWARDH: And of course that
20 would include the provision of information to
21 defence counsel representing that individual?

22 HON. BILL GRAHAM: If that was
23 appropriate in the case, yes.

24 I think in this case, for example,
25 at one point for Mr. Arar we looked at getting

1 Mr. Lockyer, you will recall, when there was talk
2 about a trial and see if we could get him to help
3 and things like that.

4 Other cases I have been familiar
5 with where we have tried to get counsel in other
6 foreign countries and work with those counsel. I
7 think you and I know of a few cases where we have
8 done that.

9 MS EDWARDH: Yes. Indeed, I am
10 just going to put to you a general proposition.

11 Mr. Pardy testified that if the
12 Syrians were going to charge and try Mr. Arar on
13 the basis of certain admissions he made during
14 interrogation, he fully expected the ambassador,
15 or the embassy, would provide to defence counsel
16 in Syria that information, the actual
17 interrogation, and anything else they could, so
18 they could dispute the voluntariness of those
19 statements.

20 He fully expected that would be
21 done?

22 HON. BILL GRAHAM: Mr. Arar
23 expected?

24 MS EDWARDH: No, Mr. Pardy
25 expected that the embassy --

1 HON. BILL GRAHAM: Right.

2 MS EDWARDH: -- if it had
3 Mr. Arar's statement and knew anything that would
4 assist in challenging that statement --

5 HON. BILL GRAHAM: Right.

6 MS EDWARDH: -- would provide it
7 to defence counsel in Syria so they could
8 effectively represent Mr. Arar?

9 HON. BILL GRAHAM: I would assume
10 so, yes; right.

11 MS EDWARDH: I want, if I could
12 then, to raise an issue with you that I think has
13 troubled some of us as we have heard the evidence,
14 Mr. Minister.

15 You will be well aware -- and I
16 can take you to the documents if you need to --
17 that every Canadian who wants to know about
18 consular services is told through the documents of
19 the department and the website that there is, in
20 general, a promise of confidentiality in respect
21 to the communications?

22 Would you like to see it? We have
23 P-11 --

24 HON. BILL GRAHAM: No. If you say
25 that, Ms Edwardh, I trust your statement. It is

1 certainly logical to me.

2 But if you wish to have a look at
3 it --

4 THE COMMISSIONER: What was the
5 reference?

6 MS EDWARDH: It is P-11. I
7 believe it is tab 14.

8 THE COMMISSIONER: Thank you.

9 MS EDWARDH: It is page 4. These
10 are double-sided pages. And it begins under the
11 heading "Protection, Advice and Assistance".

12 Do you see that, Mr. Minister?

13 HON. BILL GRAHAM: P-11?

14 MS EDWARDH: P-11, tab 14.

15 HON. BILL GRAHAM: This is Office
16 of the High Commissioner of Human Rights --

17 MS EDWARDH: Then we are in the
18 wrong place.

19 HON. BILL GRAHAM: Which would be,
20 presumably, a former judge of the Supreme Court of
21 Canada.

22 MS EDWARDH: No. It should look
23 like this.

24 THE COMMISSIONER: Tab 14?

25 HON. BILL GRAHAM: I am sorry, I

1 went to 11.

2 P-11, tab 14; sorry.

3 MS EDWARDH: This is a fairly
4 arcane exercise, so you will have to bear with us.

5 HON. BILL GRAHAM: No, it is all
6 right. I am starting to learn. It is no more
7 arcane than many things in government. Don't
8 worry.

9 MS EDWARDH: Under the heading
10 "Protection, Advice and Assistance", page 4, in
11 the third paragraph, it says:

12 "If you are detained or
13 arrested in a foreign country
14 and you choose to talk to
15 Canadian consular officials,
16 any information you give them
17 will remain completely
18 confidential and is protected
19 under Canada's Privacy Act.
20 It will not be passed on to
21 anyone other than consular
22 officials concerned with your
23 case, without your
24 permission. You have the
25 right, for example, to

1 determine who will be
2 notified of your situation
3 and who will act as your
4 representative. Your family
5 and friends will not have
6 access to any information
7 without your consent. The
8 Royal Canadian Mounted Police
9 and other police agencies
10 have their own international
11 contacts, however, and may
12 know of your circumstances
13 through these sources."

14 So that is what goes out to the
15 Canadian public, Mr. Graham.

16 HON. BILL GRAHAM: Right, right.

17 MS EDWARDH: And I am going to
18 suggest to you that this is an important promise,
19 because if you are really going to help someone
20 who faces charge, perhaps trial or detention
21 without charge, you need to have as much of an
22 ability to communicate openly and directly with
23 those persons, and that promise of confidentiality
24 facilitates that communication.

25 Would you agree?

1 HON. BILL GRAHAM: Yes.

2 MS EDWARDH: We have learned that,
3 in this particular case, details of consular
4 visits were shared with both the RCMP and CSIS.

5 I am going to ask you to turn up
6 Volume 1 of the DFAIT exhibits, and it is tabs 31
7 and 32 I want to look at.

8 HON. BILL GRAHAM: I am sorry,
9 which tab?

10 MS EDWARDH: Let's start with tab
11 30.

12 This is a note by Ms Girvan in
13 respect of her contact with Mr. Arar while he is
14 detained at the Metropolitan Detention Center in
15 New York.

16 HON. BILL GRAHAM: Ms Girvan is
17 the consular official?

18 MS EDWARDH: Consular official,
19 yes, absolutely, who saw Mr. Arar when he was
20 detained by the U.S. authorities.

21 And she obviously -- as Mr. Pardy
22 has testified, this note indicates to him that she
23 informed Mr. Arar of the nature of the confidence
24 and asked his express permission to communicate
25 with others, and he replies his brother,

1 mother-in-law and wife, anyone who can help him,
2 including his company, Mathworks.

3 So he clearly gives a consent, and
4 I will leave it for the Commissioner to decide the
5 scope of that consent and will not moot it with
6 you.

7 But over to the next tab, tab 31,
8 we begin with further notes of Ms Girvan's
9 consular visit of October 3rd. She does it in a
10 number of stages.

11 I would take you down and if you
12 just scan through this, it is very clear she
13 reviews with Mr. Arar the nature of the
14 allegations, and they are set out there in 1 to 4,
15 explaining that the allegations were served upon
16 Mr. Arar on October 2nd; and further then, she
17 describes the information provided by Mr. Arar.
18 This is close to the bottom, the second-last
19 paragraph.

20 "At one point, two
21 immigration officers spoke to
22 him and told him that they
23 were going to send him to
24 Syria. He said that he asked
25 why, since he had not been to

1 Syria for years and all his
2 family is in Canada."

3 Do you see that, second-last
4 paragraph?

5 HON. BILL GRAHAM: Yes.

6 MS EDWARDH: Then over on at tab
7 32 there is a continuation of the interview.

8 HON. BILL GRAHAM: Sorry, this is
9 a note from consul to whom? Just kind of a note
10 on the file sort of thing?

11 MS EDWARDH: This is, we
12 understand, a method whereby the consular staff
13 can enter into the system their observations and
14 recollections and notes of their consular
15 visits --

16 HON. BILL GRAHAM: So it is sort
17 of an aide-memoire of what has taken place.

18 MS McISAAC: It is actually an
19 electronic file for each consular case.

20 MS EDWARDH: And it can be shared
21 then with anyone who needs access to it to give
22 direction, advice. So this would be viewed by
23 others in Ottawa.

24 Is that a fair statement? You are
25 content with that?

1 MS McISAAC: I believe the
2 evidence was in the consular affairs department in
3 Ottawa.

4 MS EDWARDH: Yes.

5 THE COMMISSIONER: That is the
6 evidence.

7 MS EDWARDH: Yes, absolutely.

8 HON. BILL GRAHAM: Okay.

9 MS EDWARDH: Then we go to the
10 next tab and consistent, I think, with what you
11 just said, Mr. Minister, we see that further to
12 making notes of what happened during the consular
13 visit, there is a description of the interrogation
14 to the extent in the second line it says:

15 "He says that they kept
16 asking about a man called
17 Abdullah, who lives in Ottawa
18 and is also of Syrian origin.
19 He apparently runs an
20 import/export firm. The two
21 families know each other..."

22 And then:

23 "Further, Abdullah's brother
24 had a 'start-up' business..."

25 So there is a discussion of what

1 the focus was of the FBI and other persons'
2 interrogation of Mr. Arar.

3 Do you see that? That is the gist
4 of it?

5 HON. BILL GRAHAM: Mm-hmm.

6 MS EDWARDH: Now, in addition to
7 the information arising from this consular visit,
8 we now know through the testimony and the
9 documents that other consular visits, the content
10 of other consular visits were shared with the RCMP
11 and CSIS.

12 The ones shared with the Mounties,
13 in my review of the documents, would include this
14 one, the first visit in New York, then three other
15 visits.

16 Could I have the Minister be given
17 Exhibits P-93, 94, and 95.

18 HON. BILL GRAHAM: Right.

19 MS EDWARDH: And without going
20 through it in detail, what we know about these
21 documents -- and let me start out with P-93. This
22 is a record from the Head of Mission,
23 Ambassador -- I am sorry, it is a record from
24 Damascus and it is signed or sent by Mr. Martel,
25 approved by Mr. Pillarella, and either is a record

1 of --

2 HON. BILL GRAHAM: I am sorry, I
3 have P-94 and 95 here.

4 I was looking at a letter from
5 Ms Mazigh to Mr. Chrétien, so that is not helpful.

6 MS EDWARDH: It is not at all.

7 HON. BILL GRAHAM: P-93? P-93 has
8 gone missing.

9 MS EDWARDH: Let me just show it
10 to you. It is not fair -- this test doesn't
11 include you having to memorize them all.

12 HON. BILL GRAHAM: It would be
13 hard to memorize them because I haven't seen most
14 of them. That is another problem.

15 Sorry. This is from Damascus
16 to...?

17 MS EDWARDH: It is coming back.

18 HON. BILL GRAHAM: And it is dated
19 October 23rd.

20 MS EDWARDH: Yes. It reports the
21 observations of Mr. Martel. It is signed, I
22 guess, by him and approved by the ambassador. It
23 comes back to Ottawa and is a report of the first
24 consular visit.

25 HON. BILL GRAHAM: Right.

1 MS EDWARDH: And you will see by
2 the fax pages -- and I think I can ask you to just
3 assume -- that it was faxed to the RCMP on
4 November 4th, first of all to, I think,
5 headquarters and then down to the investigative
6 unit that was conducting an investigation into
7 Mr. Arar's activities?

8 HON. BILL GRAHAM: That is up at
9 the top there, November 4th, RCMP. Is that what
10 it is?

11 MS EDWARDH: Yes.

12 HON. BILL GRAHAM: Okay.

13 MS EDWARDH: So it goes down right
14 to the level of the officers, or the division,
15 that is conducting the national security
16 investigation?

17 HON. BILL GRAHAM: Right.

18 MS EDWARDH: Then, in addition to
19 that consular visit, you will see in P-94 the
20 notes of the contact between Marlene Catterall,
21 the Member of Parliament, and Mr. Assadourian.

22 HON. BILL GRAHAM: Right.

23 MS EDWARDH: Their communication
24 with Mr. Arar as well as with members of Syrian
25 Military Intelligence, and that too we know was

1 shared with the RCMP.

2 HON. BILL GRAHAM: Mm-hmm.

3 MS EDWARDH: And then at Exhibit
4 P-95 -- I am sorry. I, too, have --

5 HON. BILL GRAHAM: For me, this is
6 a letter --

7 MS EDWARDH: Yes. If you turn in
8 to the letter, Mr. Minister, several pages, you
9 will see --

10 HON. BILL GRAHAM: Right,
11 Damascus.

12 MS EDWARDH: Page 5, yes.

13 HON. BILL GRAHAM: Okay.

14 MS EDWARDH: This again is a
15 memorandum. It is sent from Damascus describing
16 the August 14th consular visit.

17 HON. BILL GRAHAM: Right.

18 MS EDWARDH: Now, my question,
19 sir, is: We also know -- and the page reference,
20 if anybody wishes it, is 3469 of the transcript of
21 Gar Pardy -- that there was a sharing of similar
22 kinds of information with CSIS. They got the
23 January 7th consular visit and the April 22nd one
24 as well.

25 The question is very general. We

1 will start with this: Did you know that in the
2 Arar case, specifically, information from consular
3 services was being provided to the very same
4 entities who declined to support Mr. Arar's return
5 and at least one of which was conducting an active
6 investigation in respect of him?

7 HON. BILL GRAHAM: Well during the
8 course of this, over the period of time, I would
9 have had to assume that these conversations had
10 taken place because of the information I had. But
11 nobody said, "Look, we are sharing consular
12 information with the RCMP and CSIS."

13 But my understanding, of course,
14 is that the way the system works in the Department
15 of Foreign Affairs with the security officer that
16 we had, Mr. Livermore, and others working under
17 him, that their job was to act as a liaison
18 between the Department of Foreign Affairs and
19 security elements for the purposes of the
20 department getting information which it needed to
21 do its work and presumably also to provide other
22 departments of the Government of Canada
23 information that they needed in order to provide
24 for the security of Canadians or anything else
25 that they were doing.

1 Apart from that, I wouldn't
2 have -- nobody would have said to me, you know, we
3 have consular information here and we are sending
4 this off. Nobody would have brought that to my
5 attention.

6 MS EDWARDH: I hear you,
7 Mr. Minister, as saying the following: While no
8 one would have needed then to bring that to your
9 attention in the manner you have just described,
10 it was your understanding of the very function of
11 the security group in the department that they
12 were in a position to make a decision to share it
13 if it were appropriate?

14 HON. BILL GRAHAM: Absolutely.
15 With the emphasis on "if it is appropriate".

16 MS EDWARDH: And so, whether you
17 knew, I take it you certainly would condone the
18 sharing of this kind of information to the RCMP
19 and CSIS in Mr. Arar's circumstances.

20 Is that what you are saying?

21 HON. BILL GRAHAM: If it was
22 appropriate, as you said. I assume I am entitled
23 to rely on the officials in my department acting
24 within the law and customs of Canada, knowing full
25 well not only what is said in statements such as

1 this, but the rights of individuals under the
2 Charter and the rights of the state itself to have
3 security information on people, which we discussed
4 in Parliament on a regular basis when we discussed
5 Bill C-35 and how we were going to protect
6 ourselves as a society against the new threats of
7 terrorism.

8 So I assumed that we set up in our
9 department communications, ways in which this
10 could be done, but they would be done in a way
11 that was consistent with Canadian law and
12 practice.

13 MS EDWARDH: And we have heard,
14 sir, that the only law that applied in these
15 circumstances were those provisions of the Privacy
16 Act that would govern the sharing of information?

17 HON. BILL GRAHAM: You are
18 advising me that as a matter of law. I can't
19 answer to that. That is for the Commissioner to
20 determine.

21 MS McISAAC: I am not sure that
22 would be fair. That was the only law that was
23 discussed. I don't think anyone said it was the
24 only law that would apply.

25 MS EDWARDH: I am sorry, it is not

1 my recollection of Mr. Livermore's --

2 THE COMMISSIONER: It is certainly
3 the only law that was referred to in evidence. I
4 don't recall if it went the one step further and
5 said no other laws applied.

6 I think that is Ms McIsaac's
7 point.

8 MS EDWARDH: Let me put my
9 understanding.

10 I understand from Mr. Pardy and
11 Mr. Livermore that the basis upon which they
12 shared the information was the Privacy Act and the
13 exceptions thereto.

14 I think that is a fair --

15 THE COMMISSIONER: I think that is
16 fair.

17 MS EDWARDH: And is that your
18 understanding of how the sharing of information
19 arrangement worked within your department?

20 HON. BILL GRAHAM: I never would
21 have had a discussion with anyone concerning the
22 specifics about the grounds under which
23 information was shared or not shared. I was
24 entitled to assume that in my department my
25 officials knew what the nature of the legal

1 constraints were on them and the way in which they
2 would operate, and they operated within the law.

3 I mean, I would have thought
4 anything else was a legal conclusion that somebody
5 would have to argue as to whether or not that was
6 done appropriately in this case or not.

7 MS EDWARDH: I am going to ask
8 you, sir, and I take it then you are really saying
9 that you were above any specific knowledge as to
10 the information-sharing that took place in the
11 case of Mr. Arar but generally assumed that it
12 would go forward, assuming it was appropriate.

13 And that determination of whether
14 it was appropriate, you left to others to make?

15 HON. BILL GRAHAM: I don't know if
16 I would put it I was above it. I would put it
17 that, given the nature of the business of the
18 Minister of Foreign Affairs, who is running 500
19 things at once, I could not delve into the
20 operational details of every single file being
21 conducted in my office.

22 As I pointed out in my
23 introduction here, we were into the Iraq war, we
24 were into hundreds of things.

25 I assumed that the officials were

1 doing their job in accordance with the laws and
2 practices of Canada, and nobody ever brought to my
3 attention any suggestion that they were not.
4 Nobody came to me and said, "Hey, there is a red
5 flag here."

6 And I couldn't, with a department
7 of 7,000 people, be expected to know -- I think I
8 am entitled to assume that people are doing their
9 job in accordance with the laws and practices, and
10 these are very knowledgeable people.

11 MS EDWARDH: One of the things
12 that is troubling, if you look at those documents
13 that I have provided to you, P-93, 94, and 95,
14 Mr. Minister, is that there is nothing on the face
15 of the document that expresses any condition or
16 caveat about its use.

17 Do you see that, if you look at
18 them? Nothing says how the document can be used
19 or how it can be transferred or not transferred to
20 other entities or agencies.

21 MS McISAAC: Mr. Commissioner, I
22 am having some difficulty with this.

23 The evidence before you to date is
24 that Mr. Pardy made the decision with respect to
25 information that could be shared. He gave

1 extensive evidence the other day under questioning
2 from Mr. Cavalluzzo as to whether the sharing was
3 appropriate or not, why he did it, what factors he
4 took into account. I believe Mr. Livermore gave
5 some evidence to that effect as well.

6 This witness was not present for
7 this evidence. He was not involved in the
8 decision-making. And, indeed, one of the
9 difficult matters you will have to address is
10 whether any of this information-sharing was
11 appropriate.

12 I am not certain that given -- I
13 am quite certain that Mr. Graham would have some
14 opinions on it if he were given access to all of
15 the information, explanations, and evidence. But
16 to give him bits and pieces seems to me to be
17 unhelpful and unfair.

18 THE COMMISSIONER: But I think, in
19 fairness, the line of questioning simply to this
20 point is directed at knowing whether or not the
21 Minister was aware that this was going on. And he
22 has indicated that the details weren't within his
23 knowledge and the explanation for that.

24 I think that is a fair line of
25 questioning to determine whether or not he knew

1 and for him to give explanations.

2 Now, the next question that is
3 being asked I think is, as I anticipate it, was
4 going to be along the same line, suggesting there
5 are no caveats on this. And I anticipate the
6 question is: Were you aware that information
7 would be shared without caveat?

8 I am not proposing to tell you to
9 ask.

10 MS EDWARDH: Thank you,
11 Mr. Commissioner, you can ask that question.

12 THE COMMISSIONER: It is a limited
13 line of questioning, but I think it is fair to ask
14 the Minister if he knew; and if he didn't, to ask
15 him the explanation.

16 So along those lines I am content
17 that the line of questioning proceed. If it turns
18 out the Minister didn't know and gives his
19 explanation, then we have it. That is it.

20 Go ahead, Ms Edwardh.

21 MS EDWARDH: Mr. Minister, that is
22 indeed the question I wanted to put to you.

23 HON. BILL GRAHAM: This was just a
24 stratagem to get the Commissioner to figure out
25 the right question.

1 MS EDWARDH: That's right. He
2 always phrases it so much better than I do.

3 THE COMMISSIONER: The frustrated
4 lawyers.

5 MS EDWARDH: So let me pose the
6 question as posed.

7 Were you aware that documents --
8 were you aware of any arrangement in the
9 department that required an understanding about
10 shared information? Were caveats --

11 HON. BILL GRAHAM: No.

12 MS EDWARDH: You weren't aware.

13 HON. BILL GRAHAM: No, I was not.
14 I frankly don't know whether this was subject to
15 caveats or not, whether the practice of the people
16 when they sent these things was to say this is
17 under certain wraps, or anything else.

18 I wouldn't know that and there is
19 no way I could have been engaged in that level of
20 information-sharing within the departments and
21 between other government departments.

22 I certainly agree with you, this
23 says it was shared. I don't see anything on the
24 piece of paper that says it is subject to a
25 caveat, whether there is a caveat somewhere else

1 that I don't know that I can't speak to.

2 MS EDWARDH: Now, being the person
3 who is really responsible for the discharge of
4 consular functions in the Government of Canada as
5 Minister, can we agree, sir, that information, if
6 it is shared from consular visits, should be the
7 subject of some control?

8 HON. BILL GRAHAM: Yes, it is
9 subject to the controls of the Privacy Act, the
10 Charter of Rights and Freedoms, and any other
11 legal provisions which would apply to this subject
12 matter, which I am not, without a great deal of
13 instruction and time, able to go into.

14 I would have thought that the
15 sharing of that information is also governed by
16 the security concerns of this country. And the
17 question is, of course, that the Commission will
18 have to determine as to whether or not there was
19 the right balance in this case between the
20 security concerns, what the legal provisions were
21 at the time, et cetera.

22 But that would be a matter of pure
23 hypothesis on my part. And at this point, without
24 being a lot more familiar with the case, I
25 couldn't really speculate on that.

1 MS EDWARDH: Fair enough. We will
2 leave that difficult task to the Commissioner.

3 But we can agree that it is
4 obvious that the information provided to Canadian
5 citizens who want to dial up the nature of the
6 consular services and confidentiality is such that
7 what is told to them in this manual is
8 inconsistent with the practice of sharing
9 information with police officers and with
10 intelligence forces?

11 HON. BILL GRAHAM: Well, the
12 manual speaks for itself, and that is what it
13 says.

14 MS EDWARDH: Yes, it implies that
15 if the Mounties are going to find out, of course,
16 they will find out through other means, not
17 through consular services. That is the
18 implication.

19 The very last part I read to you,
20 sir, says the that RCMP has other sources.

21 HON. BILL GRAHAM: Right.

22 MS EDWARDH: So any honest
23 Canadian reading that would conclude that their
24 information, both personal and about their charge
25 and about the evidence, would not be given to the

1 RCMP; they have other sources. It wouldn't come
2 from consular services?

3 HON. BILL GRAHAM: Well, I am not
4 trying to be difficult, but I am not in a position
5 to guess what any reasonable Canadian citizen
6 might think on reading this document. Any
7 Canadian citizen on reading the document will
8 think what they think when they read that
9 document. And there are 30 million of them so
10 there might be 30 million different opinions.

11 I am not trying to be tricky here.
12 I don't disagree with the basic thesis of your
13 statement, that the document on its face seems to
14 suggest that there wouldn't be a sharing of
15 information.

16 MS EDWARDH: Thank you.

17 HON. BILL GRAHAM: And I am
18 perfectly -- I quite accept what you are saying.

19 MS EDWARDH: Thank you. My only
20 point.

21 I want to just turn briefly to the
22 conversation or area that you dealt with in
23 describing your meeting, the first meeting, with
24 Alexa McDonough at the Halifax conference.

25 You have said that Ms McDonough

1 asked you a series of questions and you accepted
2 the proposition that you may have advised her to
3 be careful of any representations she made about
4 Mr. Arar because of the information that you had
5 heard, and I think you specifically related to
6 information provided by Mr. Cellucci, who told you
7 they were justified, et cetera.

8 Do you recall that line of
9 questioning?

10 HON. BILL GRAHAM: Yes, ma'am.

11 MS EDWARDH: And I take it from
12 what you are saying, Mr. Minister, is that you
13 certainly had formed no opinion or no belief,
14 based on any information you had, that Mr. Arar
15 was a person -- we use the term "bad guy" or
16 alleged to be involved in activities of a criminal
17 nature or terrorist.

18 You had no information, no belief
19 about it?

20 HON. BILL GRAHAM: No, absolutely
21 not. That is the meeting in early October --

22 MS EDWARDH: Yes.

23 HON. BILL GRAHAM: Yes. I mean at
24 that point all I thought -- when I am dealing with
25 Members of Parliament, if I have information that

1 is relevant for them in the conduct of their
2 business, I give them the information.

3 At that point I just said look,
4 Cellucci has said there is all sorts of stuff
5 around about this, and I want to make sure you
6 know that up front.

7 That is not to say that I in any
8 way said it was right or wrong because, frankly,
9 at that point nobody knew exactly what it was.

10 MS EDWARDH: I just want to
11 confirm with you that at the time of your
12 conversation with the ambassador, all you
13 testified to was that he told you that they were
14 justified and there was evidence he had contact
15 with people. I take it, sir, we can't know what
16 the content of the briefing is, but did the
17 ambassador at that time or thereafter give to you,
18 as Minister, details of the information that he
19 said the American government was in possession of?

20 HON. BILL GRAHAM: He gave me
21 details of how some information had been acquired
22 from certain communications, materials owned by
23 Mr. Arar, but he never gave me a name or anything
24 specific like that. He just said, "Look, our
25 officials know, because we did this and we did

1 that, that this person had contacts with
2 al-Qaeda," which is all in the record, what he
3 said. So that is basically what he said.

4 MS EDWARDH: And this person was
5 the person who Mr. Arar may have had contact with?

6 HON. BILL GRAHAM: Well, yes.

7 MS EDWARDH: Right. And you made
8 that comment when you answered the question to --
9 or answered a question posed by Commission
10 counsel. So there were no names and it was a
11 highly general description --

12 HON. BILL GRAHAM: Yes.

13 MS EDWARDH: -- that Mr. Arar may
14 have had some contact with someone who had
15 contact --

16 HON. BILL GRAHAM: Yes.

17 MS EDWARDH: -- with someone in
18 al-Qaeda?

19 HON. BILL GRAHAM: Yes. Which is
20 what you would expect from an ambassador.

21 MS EDWARDH: Right. But did you
22 ask him to obtain for you whatever information
23 that could be given to you as Minister of Foreign
24 Affairs? Did you ask for the specifics and
25 whether he could provide them to you?

1 MS McISAAC: Mr. Commissioner, I
2 am going to have to object that any details -- I
3 am not going to stop the Minister from answering
4 the question.

5 I simply want to point out that
6 the details of his discussions with Mr. Cellucci
7 and any specific information exchanged is a matter
8 for which the government claims national security
9 in connection with the free flow of information
10 and protection of international relations.

11 Of course, the Minister will be
12 back for an in camera session at some later date
13 and can definitely answer these questions or any
14 other questions at that time.

15 THE COMMISSIONER: This question
16 was general in nature, the one that is being asked
17 now. I didn't myself think that this question was
18 offensive.

19 MS McISAAC: I am not saying the
20 question was offensive, but I just wanted to put
21 that on the record so I wouldn't be interrupting
22 further on, just to warn the Minister on where we
23 stand on the issue -- or remind him, I should say.

24 HON. BILL GRAHAM: This is not
25 helpful because one never knows how far one opens

1 these doors and says you can't go into that room.

2 I totally -- maybe I can help you
3 by answering the question.

4 At that particular time, we are
5 talking about the very beginning, I would not have
6 asked the ambassador, "Look, if you have told me
7 that, give me the details." I would assumed
8 anyway in security matters, he wouldn't give me
9 details. He wouldn't have given me any more than
10 he gave me.

11 As is very clearly from the public
12 record and the earlier evidence that I gave to
13 Commission counsel, the real issue that I pressed
14 the ambassador, Mr. Powell and others on, was the
15 specifics. "Look, you are saying that someone in
16 Canada told you to go ahead and do this. Can you
17 give us the name of the person who told you to do
18 that?"

19 But other details I would not
20 have -- because I was trying to get details from
21 the ambassador about conduct that he said had been
22 taking place in Canada. I didn't press him about
23 details of his own security people and what they
24 did in the United States itself. I think that was
25 a very different thing.

1 MS EDWARDH: Then I will ask
2 another general question, because I don't get to
3 come to these in camera hearings and put my
4 questions.

5 HON. BILL GRAHAM: Oh.

6 MS EDWARDH: My next general
7 question is: Later, and through the course of the
8 year when you were vigorously pursuing the
9 objective of having Mr. Arar returned, when you
10 had asked departments, you know, who said what,
11 give me the answer here --

12 HON. BILL GRAHAM: That is right.

13 MS EDWARDH: -- did you get
14 details from the ambassador?

15 HON. BILL GRAHAM: Well --

16 MS EDWARDH: I don't mean the
17 name. Did you get details of the facts upon which
18 they said they were relying --

19 HON. BILL GRAHAM: Yes.

20 MS EDWARDH: -- from the U.S.?

21 HON. BILL GRAHAM: Yes, I did,
22 from Mr. -- but not details of names of people,
23 just details of what they did, that they had
24 obtained information respecting contacts that
25 Mr. Arar had had.

1 MS EDWARDH: And that was the
2 beginning and end of it?

3 HON. BILL GRAHAM: Well, through
4 the whole course of this, that was the consistent
5 story of Mr. Cellucci's, which was basically, "We
6 had every reason to do what we did," and he gave
7 me, you know, basic arguments underlying his
8 reasons why he did it, without getting into a lot
9 of specifics.

10 And then, as you will recall from
11 the public evidence I gave the other day and
12 everything else, he consistently said to me there
13 was somebody in Canada that was involved. I
14 consistently said, can you help us by telling us
15 who that was, and he never -- and in the end he
16 said that was wrong.

17 MS EDWARDH: Right. Certainly
18 there are two things you are asking. The first
19 issue is -- and we can come to it in detail, if
20 you want. But the first issue is did Canadians
21 give information?

22 HON. BILL GRAHAM: Right.

23 MS EDWARDH: And the initial
24 response, in your Qs and As, was that, to your
25 knowledge, no information had been given by

1 Canada.

2 HON. BILL GRAHAM: No, I couldn't
3 have said that.

4 MS EDWARDH: We can take you to
5 October 17th, the Qs and As, and that is at tab
6 97. Let's take a look at that.

7 HON. BILL GRAHAM: Tab 97?

8 MS EDWARDH: I think it is this
9 one. Perhaps it is more narrow. This is the Qs
10 and As that you were provided and there is a
11 series of exchanges at the very end of these Qs
12 and As, at the last page, page 4 of 4,
13 Mr. Minister.

14 It starts, I guess, on page 3.
15 Let's just read them.

16 "What has Canada done to
17 protest the actions of the
18 United States?"

19 "Answer: The Minister of
20 Foreign Affairs met with the
21 American Ambassador in Ottawa
22 on October 15 and protested
23 the action of the United
24 States in deporting Mr. Arar
25 to the United States."

1 I think that is obviously an
2 error. We know he wasn't deported to the United
3 States.

4 "Earlier representations were
5 made to the American
6 authorities in Washington on
7 October 11 once we learned of
8 the deportation of Mr. Arar
9 to Syria.

10 It is our understanding that
11 the American authorities
12 maintain that Mr. Arar was
13 legally deported from the
14 United States but we have not
15 yet received an official
16 response to our protest.

17 Question: There have been
18 allegations, including those
19 used by the United States in
20 ordering his departure, that
21 Mr. Arar is a member of Al
22 Qaeda. Are these allegations
23 accurate?

24 Answer: The Department of
25 Foreign Affairs is not aware

1 of information to support the
2 allegation that Mr. Arar is a
3 member of Al Qaeda.

4 Question: Have Canadian
5 authorities provided
6 information to the American
7 authorities that alerted them
8 of the travels of Mr. Arar?
9 In so far as the Department
10 of Foreign Affairs is
11 concerned, no."

12 That is the exchange. And it does
13 relate to alerted them to the travels.

14 But certainly at that time, I am
15 going to suggest, you had no information, or did
16 you, that Canadian authorities had provided
17 information to U.S. authorities about Mr. Arar?

18 HON. BILL GRAHAM: What date is
19 this?

20 MS EDWARDH: This is, I think,
21 the -- let me go -- October 17th.

22 MS McISAAC: The information comes
23 over on the 18th, at tab 104.

24 HON. BILL GRAHAM: May I make a
25 general observation?

1 MS EDWARDH: Sure.

2 HON. BILL GRAHAM: To begin with,
3 these questions and answers are questions and
4 answers given to me by the department to aid me to
5 answer questions if I am asked. I might not have
6 said anything that is said here. This doesn't
7 represent any opinion of mine.

8 MS EDWARDH: No, sir --

9 HON. BILL GRAHAM: This is just an
10 aide-memoire. This is like -- I could hand you my
11 book for Question Period and you would see answers
12 in there and you would say: God, you didn't give
13 the same answer in the House of Commons. Quite
14 often I don't give the answer the department gives
15 me at all because I either agree or disagree with
16 it.

17 All this is helpful, but it is not
18 helpful in terms of what I might have said to
19 anybody or what my own opinion was. This was only
20 helpful in the sense that there is a huge
21 bureaucracy down below me grinding up all sorts of
22 things for me to understand. That doesn't mean
23 that is what I say. It doesn't mean in any way --
24 and that is one of the problems I have had in this
25 hearing. I am continually being put documents and

1 said, "Well here's this, what about that?" And I
2 say well I didn't necessarily say that or have
3 anything to do with it. This is one of those
4 things.

5 MS EDWARDH: We can't put to you
6 what you really said in the House, so --

7 HON. BILL GRAHAM: I understand
8 that. That has to be one of the weirdest rules
9 known to man.

10 --- Laughter / Rires

11 HON. BILL GRAHAM: After all, what
12 I said in the House of Commons has been in every
13 newspaper and it is in Hansard. So we can all go
14 and get it if you want to get it.

15 MS EDWARDH: We are not allowed to
16 do that either.

17 HON. BILL GRAHAM: I don't
18 understand that, Mr. Commissioner.

19 THE COMMISSIONER: I just accepted
20 the argument of the House of Commons that you
21 can't.

22 HON. BILL GRAHAM: I will speak to
23 the Speaker about that. That has to be seriously
24 goofy, but anyway. I don't see why a commission
25 of inquiry can't know what went on in the House of

1 Commons. After all, the Canadian public is
2 entitled to every day.

3 So this is a bit nuts, but there
4 you go. That is not my -- obviously you are not
5 here to get my opinion about that.

6 MS EDWARDH: No. That is quite
7 helpful.

8 HON. BILL GRAHAM: That is not the
9 only nutty thing that happens around here.

10 MS EDWARDH: But let me just stop
11 you about this. I know we have no evidence that
12 you spoke these words, Mr. Minister.

13 HON. BILL GRAHAM: Yes.

14 MS EDWARDH: Let me put this
15 proposition to you. A responsible group of civil
16 servants, working to discharge their duties under
17 your direction and management of the department,
18 is going to do its best to, in theory, provide you
19 with the accurate information?

20 HON. BILL GRAHAM: Absolutely.

21 But you started your question with
22 saying, would I have conveyed the idea that no
23 Canadians had spoken to Americans about Mr. Arar?

24 That is not what is said here.

25 "Have Canadian authorities

1 provided information to the
2 American authorities that
3 alerted them to the travels
4 of Mr. Arar?"

5 That is a totally different
6 proposition --

7 MS EDWARDH: Fair enough, fair
8 enough.

9 HON. BILL GRAHAM: -- which has
10 nothing to do with the suggestion that there was
11 information exchanged between the United States
12 and Canadian authorities about security cases,
13 police cases, kidnappings, drug deals, and
14 everything that goes on every day between our two
15 countries.

16 MS EDWARDH: So if there was
17 information -- and we may come to it at a later
18 date -- that suggested that the Canadians had
19 alerted the U.S. that Mr. Arar was travelling to
20 the U.S. --

21 HON. BILL GRAHAM: Right.

22 MS EDWARDH: -- that would be the
23 kind of information that that question clearly
24 relates to.

25 HON. BILL GRAHAM: That answer

1 would be inconsistent with.

2 MS EDWARDH: Yes.

3 HON. BILL GRAHAM: But I believe
4 that when this was prepared -- I don't know who it
5 was prepared by. But I believe it was prepared by
6 somebody who honestly believed the truth of that
7 when they -- I don't believe I got -- I mean, I
8 may not have totally agreed with the way in which
9 my department framed things when they sent them to
10 me, and so I may have chosen a different way of
11 saying them.

12 I think I legitimately believe
13 that they were consistent in trying to give the
14 best advice they could on the basis of the
15 information they had at the time.

16 MS EDWARDH: You have to assume
17 the factual assertions embedded in that are based
18 on the knowledge of the department?

19 HON. BILL GRAHAM: Yes. And,
20 quite frankly, I have never in the history of
21 being the Minister of Foreign Affairs found that
22 anybody in the department has ever tried to
23 mislead me by giving me bad information.

24 I have certainly got some
25 information that I had a lot of trouble believing,

1 but I never would suggest that the people who gave
2 it to me weren't giving it to me in good faith.

3 MS EDWARDH: Yes, of course.

4 Let me just take you to the next
5 tab, tab 105.

6 This would be a communication from
7 Mr. Pardy to Mr. Pillarella, the ambassador in
8 Damascus. It is copied to the intelligence group
9 in DFAIT, of which Mr. Heatherington is one of the
10 senior officials, and it makes the statement that
11 Mr. Arar is not a subject of a police
12 investigation in Canada and can return to Canada
13 at any time.

14 And at this time, October the
15 19th, had you been informed of anything different?

16 HON. BILL GRAHAM: What date is
17 this?

18 MS EDWARDH: October the 19th.
19 Mr. Arar is still not found.

20 HON. BILL GRAHAM: No. On October
21 the 19th, my personal knowledge about Mr. Arar was
22 extremely limited. I knew that a Canadian of
23 Syrian origin had been in New York, had gone
24 missing. We were still trying to trace him. But
25 all this business about whether he was the subject

1 of a police investigation or not, or anything, was
2 the type of information I wouldn't have had at
3 that time, ma'am. I just basically knew this.

4 You know, something like this
5 wouldn't be brought to my attention.

6 MS EDWARDH: Fair enough --

7 MR. CAVALLUZZO: If I could
8 interject at this point in time, to be fair to the
9 witness, in terms of tab 84, there was a briefing
10 that went to Mr. Graham from Mr. Pardy which
11 concerned a meeting which contained information
12 that I think my friend is asking about.

13 Unfortunately it is redacted --

14 MS EDWARDH: Well ...

15 MR. CAVALLUZZO: The information
16 is redacted therein. But in terms of the
17 Minister's knowledge at a particular point in
18 time, this would indicate that there was a
19 briefing relating to what is being asked about.

20 MS McISAAC: I note that the last
21 page indicates that the RCMP is still in the
22 process of promising to provide a response to
23 questions from the department --

24 HON. BILL GRAHAM: Well, you might
25 want to -- you will recall, Commission counsel,

1 that we had a discussion about some of these
2 issues, like briefing note to the Minister is
3 produced in the meeting with the American
4 Ambassador. Again, whether I would actually see
5 the note, or whether I would be briefed on its
6 context by Mr. Fry or others in the office, and
7 say, look, you are going to see the ambassador at
8 lunch today. Here, you had better be aware of
9 this.

10 I don't necessarily have time as I
11 am racing between meetings to read all the
12 documents.

13 I don't know to what extent this
14 would go to the actual intricacies of Mr. Arar's
15 case. But my own recollection is that at this
16 early period of time I basically would have known
17 the facts that Mr. Arar was missing. We were
18 trying to trace him. We believed that he was
19 either in Jordan or Syria and were trying to --
20 and I spoke to the Syrian ambassador when I was
21 down there around this time to say, hey, do you
22 know where he is? Can you help us?

23 And the effort at that time was
24 focused not on what Mr. Arar might or might not
25 have done, but on how do we find out where

1 Mr. Arar is so we can try to help him.

2 MS EDWARDH: If I could just stop
3 you for a moment, Mr. Minister, it puts counsel at
4 an almost unseemly disadvantage when, in fairness
5 to the witness, I am asking a question about some
6 document -- in fact, I am not being fair to the
7 witness because I can't bring it to his attention.

8 I just want you to know,
9 Mr. Minister, that we don't have that reference in
10 the document. The Government of Canada has
11 redacted it, and I am not able to adequately
12 identify any unfairness in the question.

13 I am working in the dark here.

14 HON. BILL GRAHAM: I am not
15 suggesting that. I wouldn't think you were being
16 unfair.

17 THE COMMISSIONER: Let me just
18 comment. I think that is a fair point you make,
19 Ms Edwardh, and I don't take the suggestion from
20 the comment was that you were trying to be unfair.
21 You are working as a cross-examiner under unusual
22 circumstances.

23 MS EDWARDH: Yes.

24 THE COMMISSIONER: I am certainly
25 well aware of that and I appreciate what you are

1 doing and the constraints that you are under.

2 MS EDWARDH: Thank you,
3 Mr. Commissioner.

4 HON. BILL GRAHAM: May we take it
5 that the witnesses are operating under similar
6 unusual circumstances in trying to give answers to
7 these questions?

8 THE COMMISSIONER: How about the
9 Commissioner?

10 MS EDWARDH: Your concern is
11 noted.

12 HON. BILL GRAHAM: We are sort of
13 part redacted and part not.

14 MS EDWARDH: I know it poses
15 problems on trying to answer questions.

16 The concern I have about tab 105,
17 and I just want to see if you --

18 HON. BILL GRAHAM: Yes, ma'am.

19 MS EDWARDH: Is the statement made
20 to the ambassador, as everyone is searching for
21 Mr. Arar and we are getting close to the date when
22 the Syrians finally confirm. The information that
23 the department really had you will see at tab 104.

24 And we know that Mr. Pardy had a
25 meeting with others, and with the RCMP, and posed

1 to them a series of questions, the answers to
2 which are set out in tab 104, and in a less
3 redacted version in the Garvie report at page 30.

4 Could you give the Minister the
5 Garvie report, please.

6 HON. BILL GRAHAM: Sorry, what is
7 this? This is a --

8 MS EDWARDH: This is the
9 investigation conducted internally within the RCMP
10 as a result of a number of complaints, and it is a
11 chronological discussion of what the RCMP did.

12 But you will see, at page 30,
13 there was a meeting on I think the 15th or 16th of
14 October with the RCMP and with Department of
15 Foreign Affairs officials, and a specific set of
16 questions were posed and they were answered prior
17 to the 19th of October. I believe they were
18 answered on the 18th.

19 And the answers, if you just
20 review those, disclose a number of things.

21 One is that there is a free flow
22 of information between the U.S. and Canada in
23 respect of these investigations. Do you see that?

24 HON. BILL GRAHAM: Yes.

25 MS EDWARDH: And, two, that the

1 U.S. authorities learned of Mr. Arar through a
2 sharing of information. Do you see that?

3 And the information was shared by
4 the RCMP to the U.S. authorities?

5 HON. BILL GRAHAM: This is the
6 answer to the second question here?

7 MS EDWARDH: Yes.

8 HON. BILL GRAHAM: Yes.

9 MS EDWARDH: And that Mr. Arar was
10 connected to an ongoing RCMP investigation that
11 involved individuals also of interest to U.S.
12 authorities.

13 Do you see that?

14 HON. BILL GRAHAM: I see about
15 inability to lay charges --

16 MS EDWARDH: No, no, go back. It
17 is still part of the second answer, I am sorry.

18 "U.S. authorities learned of
19 ARAR through a sharing of
20 information between RCMP
21 investigators and U.S.
22 authorities. ARAR was
23 connected to an ongoing RCMP
24 investigation..."

25 HON. BILL GRAHAM: Right.

1 MS EDWARDH: And then what we
2 have -- and I am trying to understand whether
3 there is a liberty taken in the communication with
4 the ambassador at 105, when shortly thereafter the
5 same person who posed the questions to the
6 Mounties, and got those answers, writes 24 hours
7 later that Mr. Arar is not a subject of a police
8 investigation in Canada.

9 It is one thing to say he can
10 return at any time. But does that not appear to
11 be inconsistent with what the RCMP have said?

12 HON. BILL GRAHAM: Sorry, the
13 inconsistency being that, in the first document
14 you showed me, there is a suggestion they shared
15 information because he was a subject of interest
16 to the police in Canada.

17 MS EDWARDH: And then --

18 HON. BILL GRAHAM: And then in a
19 subsequent document they say the RCMP has no
20 information concerning any threat associated by
21 Mr. Arar?

22 MS EDWARDH: No. The second
23 document -- let me read you the lines:

24 "ARAR was connected to an
25 ongoing RCMP investigation

1 that involved individuals
2 also of interest to U.S.
3 authorities."

4 Do you see that line?

5 HON. BILL GRAHAM: Are we looking
6 at --

7 MS EDWARDH: Second answer, second
8 sentence -- oh, you may be looking at the wrong
9 document.

10 Are you looking at the Garvie
11 report, Mr. Minister?

12 HON. BILL GRAHAM: No. Sorry, the
13 Garvie report?

14 MS EDWARDH: Second answer, second
15 sentence:

16 "ARAR was connected to an
17 ongoing RCMP investigation
18 that involved individuals
19 also of interest to U.S.
20 authorities."

21 HON. BILL GRAHAM: Right.

22 MS EDWARDH: And then perhaps in
23 context we should also read the fourth question.
24 About halfway through the fourth question it says:

25 "The U.S. authorities were

1 advised that the RCMP was
2 interested in ARAR from a
3 criminal perspective."

4 Do you see that?

5 HON. BILL GRAHAM: Is this in the
6 Garvie report?

7 MS EDWARDH: Yes, the fourth
8 question and answer, halfway through the fourth
9 answer.

10 "The U.S. authorities were
11 advised that the RCMP was
12 interested in ARAR from a
13 criminal perspective."

14 HON. BILL GRAHAM: The second-last
15 sentence here.

16 MS EDWARDH: Yes. Do you see
17 that?

18 HON. BILL GRAHAM: Right.

19 MS EDWARDH: So we have both the
20 acknowledgment that, according to the RCMP, there
21 is an ongoing RCMP investigation of a criminal
22 nature and it links up with individuals also of
23 interest in the U.S. So that is what the Mounties
24 have said?

25 HON. BILL GRAHAM: Right.

1 MS EDWARDH: And I want to now go
2 to what your ambassador is told.

3 He is told, if you look at tab
4 105, under paragraph (a) --

5 HON. BILL GRAHAM: I was looking
6 at tab 104, sorry.

7 MS EDWARDH: Tab 105, under (a),
8 in the last line:

9 "Mr. Arar is not a subject of
10 a police investigation in
11 Canada and can return to
12 Canada at any time."

13 HON. BILL GRAHAM: Right.

14 MS EDWARDH: Now, that doesn't
15 appear to me, Mr. Minister, to be consistent with
16 what the Mounties have just said.

17 HON. BILL GRAHAM: Well, it
18 clearly isn't on its face, but I have no idea of
19 who wrote what to whom, or why they made up their
20 minds to say what they said. So there could be
21 all sorts of reasons why there is an
22 inconsistency.

23 MS EDWARDH: Well, that is what I
24 wanted to ask you about.

25 HON. BILL GRAHAM: Was there an

1 inconsistency?

2 MS EDWARDH: Obviously.

3 HON. BILL GRAHAM: I mean, anybody
4 who reads the documents can see that, but I can't
5 help you with anything else about it because I am
6 not an RCMP officer, and obviously this is a note
7 from Gar Pardy.

8 MS EDWARDH: Right.

9 HON. BILL GRAHAM: I would have to
10 assume you would have to ask Mr. Pardy what he
11 knew at the time that he wrote this document to
12 know why he said what he did.

13 MS EDWARDH: Or whether there is
14 some other purpose in communicating that.

15 HON. BILL GRAHAM: Well, if there
16 was, it wasn't something that I would know
17 anything about, obviously.

18 On October the 18th, is this?

19 MS EDWARDH: Yes.

20 HON. BILL GRAHAM: I mean, you
21 know, you are asking what went on two years ago.
22 My recollection is I am in Halifax at a diplomatic
23 function talking to a hundred ambassadors,
24 working, doing my job. I am not aware of what
25 Mr. Pardy is doing back in Ottawa.

1 MS EDWARDH: No. But I am
2 concerned about information that appears to not be
3 accurate, and I am wondering whether there is any
4 purpose you can identify for us in giving this
5 information to the ambassador at this time.

6 HON. BILL GRAHAM: No. At this, I
7 really -- no.

8 MS EDWARDH: We will have to
9 ask --

10 HON. BILL GRAHAM: I could not.
11 You will have to ask Mr. Pardy.

12 MS EDWARDH: Okay. Now, let me
13 understand one other feature of the ambassador's
14 role.

15 Is he generally under your
16 direction? In other words, to whom is an
17 ambassador accountable?

18 HON. BILL GRAHAM: Well, of course
19 ultimately to the Prime Minister of Canada,
20 because ambassadors are appointed at the pleasure
21 of the government and on the personal appointment
22 by the Prime Minister of Canada, as
23 representatives of the country.

24 You will recall that in the past
25 the practice was their letters, in fact, were

1 signed by the Queen. They are now signed by the
2 Governor General because they are the official
3 representatives of our country abroad and speak
4 for Canada as a whole.

5 They report to me as the Minister
6 of Foreign Affairs, but in the course of their
7 duties, they might have dealings with -- I
8 personally, as Defence Minister, deal directly
9 with ambassadors, with the approval obviously of
10 the Minister of Foreign Affairs.

11 In the former department,
12 Department of Foreign Affairs and International
13 Trade, the ambassadors were also engaged in
14 international trade matters to which they would
15 report directly to the Minister of International
16 Trade.

17 So all I can say is that probably
18 they would talk to the immigration people in their
19 office who also reported directly to the
20 Immigration Minister, and where there is security
21 people, if there is military liaison people, they
22 theoretically come under the broad chapeau of the
23 ambassador. But you can appreciate there is a
24 whole of government in every embassy, and the
25 ambassador is the official who is at the top of

1 that pyramid, if I could say, but represents,
2 depending on the size of the embassy and its
3 complexity, possibly, you know, a dozen or more
4 government departments.

5 MS EDWARDH: So my question,
6 though, is: If in fact there is any ultimate
7 accountability for the ambassadors' actions, is it
8 to all of those various Ministers --

9 HON. BILL GRAHAM: No.

10 MS EDWARDH: -- or is it
11 ultimately to you, and then the Prime Minister?

12 HON. BILL GRAHAM: In practical
13 matters, it would be me. I would have to answer
14 in the House of Commons; I would be ministerially
15 responsible. I would have to take responsibility
16 for, if you like, actions of ambassadors. Even if
17 they were acting for something else, basically,
18 they come under the authority of the Ministry of
19 International Affairs, yes.

20 MS EDWARDH: Right. And indeed,
21 if we were to remind ourselves of the legislative
22 framework governing the Department of Foreign
23 Affairs, it is obvious that it is the Minister and
24 the department in whom Parliament has reposed the
25 duties and obligations to deal with Canada in its

1 international affairs?

2 HON. BILL GRAHAM: Absolutely.

3 MS EDWARDH: All right. Then let
4 me go --

5 HON. BILL GRAHAM: Unless it is
6 the Finance Minister out doing his thing, or the
7 Prime Minister out doing his thing, or somebody
8 else out doing --

9 MS EDWARDH: But it becomes
10 important because there may be times when an
11 ambassador's functions and duties, in representing
12 so many different interests, may appear to
13 conflict, and we will come to that.

14 HON. BILL GRAHAM: It happens all
15 the time in international affairs. It is one of
16 our great problems in international affairs today,
17 as I said. Sometimes the Finance Minister may be
18 saying something different from the International
19 Affairs Minister, who may say something different
20 from the Trade Minister.

21 We do our best to coordinate
22 everything if we possibly can. But I don't
23 disagree that there are challenges in managing
24 different roles in portfolios which sometimes can
25 have different approaches to these issues. That

1 is certainly a fair way to put it.

2 MS EDWARDH: We will come to this
3 in some detail, but ultimately the building of a
4 consensus about what the message should be to
5 international partners and allies and to foreign
6 governments, it is ultimately the Minister of
7 Foreign Affairs who speaks for Canada in those
8 dealings.

9 Is that correct?

10 HON. BILL GRAHAM: Yes. This came
11 up in Commission counsel's questions earlier, a
12 similar sort of thing. You are charged to speak
13 for Canada. But that is right. And the
14 ambassador and myself would speak for Canada. But
15 that is subject to, of course, coordination
16 through the Privy Council Office and everything
17 that I am speaking for the Government of Canada.
18 I am not off speaking for the Government of Canada
19 on whatever I happen to think I want to speak
20 about. You know what I mean? You are subject to
21 the constraints of actually speaking for the
22 Government of Canada.

23 MS EDWARDH: And so the management
24 of multiple messages -- and I want to talk about
25 some multiple messages, because I am going to

1 suggest, Mr. Graham, that Mr. Arar's case is a
2 study in multiple, and confusing, and conflicting
3 messages sent by entities within the government.
4 That is where I am going.

5 You will agree with me that we
6 have certainly been made alive to the fact -- and
7 I can take you to the exhibits, if you want, but
8 we might be able to do this a little more quickly
9 if you just recall -- that there is evidence of
10 the confusion left in the minds of the Syrian
11 Military Intelligence officials, through a visit
12 of CSIS, where they apparently took the view that
13 Canada did not want Mr. Arar returned?

14 HON. BILL GRAHAM: Yes, ma'am.

15 MS EDWARDH: You are also aware
16 that Mr. Cellucci, in some of his public comments,
17 referred to the fact that Canadian authorities
18 didn't want Mr. Arar returned? You covered that
19 yesterday.

20 HON. BILL GRAHAM: Oh, yes.

21 MS EDWARDH: And certainly it is
22 fair to say that there are clear mixed messages,
23 if that were the case. If in fact the Syrians got
24 the impression, rightfully or wrongfully, in a
25 sense, that Canada didn't want him home and the

1 consular officials were saying "give him to us and
2 let him come home", that would be a mixed message,
3 no question?

4 HON. BILL GRAHAM: Absolutely.

5 MR. DAVID: So I want to talk a
6 little bit about the processes involved in sorting
7 out these mixed messages.

8 I take it that Mr. Pardy spent
9 some time -- we can look at it in more detail, if
10 you want -- building up a deck. We have called it
11 a deck. I thought it was a deck of cards for a
12 long time because of all the redactions, but it
13 was a PowerPoint presentation, talking about how
14 there might be a reconciliation of conflicting
15 interests or messages, and ultimately he said his
16 deck, or suggestion, was not adopted.

17 I would invite you quickly to turn
18 to tab 756.

19 HON. BILL GRAHAM: Okay. This
20 might be a distraction, but we do have a saying
21 amongst the politicians that decks were invented
22 by bureaucrats to ensure that we can't think about
23 things.

24 MS EDWARDH: Well, I am going to
25 make you think about it.

1 HON. BILL GRAHAM: The whole
2 process of decks around this town is a highly
3 controversial matter in terms of whether it
4 further analysis or not, but that is the
5 reflection of someone who is coming to the end of
6 his career, instead of the beginning.

7 --- Laughter / Rires

8 MS EDWARDH: And this is --

9 HON. BILL GRAHAM: Sorry, which
10 number?

11 MS EDWARDH: Tab 756, at page 2 in
12 particular.

13 You are probably as confused about
14 the nature of these documents as I am, but this
15 looks like a meeting held on December 4th, 2003,
16 that involves Assistant Deputy Ministers.

17 HON. BILL GRAHAM: Sorry, 756.

18 MS EDWARDH: 756.

19 MS McISAAC: We should point out
20 that this is likely just a draft.

21 HON. BILL GRAHAM: This is "ADMmtg
22 on deportation & detention 001.wpd" on the top of
23 it?

24 MS EDWARDH: Perhaps my friend
25 would tell me where the final version is, and I

1 will refer the Minister to the correct document.

2 MS McISAAC: I don't actually know
3 if there is a final version of this. I just know
4 that by the setup and the fact that there is no
5 number on it would suggest that it is a draft.

6 And, of course, when the documents
7 were produced for the Commission, documents were
8 retrieved from backup drives and hard drives of
9 computers and such.

10 So I don't actually know -- maybe
11 Ms Verma or Mr. Cavalluzzo can help -- whether
12 there is in fact a final of this.

13 MR. CAVALLUZZO: We are certainly
14 unaware if there is a final version. However,
15 obviously government counsel can ask
16 Mr. Heatherington if there is one. We don't seem
17 to have it.

18 THE COMMISSIONER: Okay. Why
19 don't you go ahead and you ask your questions on
20 this with the forewarning that this may be a
21 draft.

22 MS EDWARDH: Thank you.

23 What I am really searching for is
24 some understanding whether, under your management,
25 the department was able to identify a mechanism to

1 resolve disputes or conflicts between the
2 interests that can come into play.

3 This document suggests,
4 Mr. Minister, that the dispute mechanism that is
5 under discussion in December 2003 -- and this is
6 the one that refers to the audit, the internal
7 audit, that is to take place with respect to
8 current consular policies, practices and
9 procedures, and it goes on:

10 "DFAIT has a legislative
11 requirement to 'conduct all
12 ... consular relations on
13 behalf of Canada'. This we
14 have done and are doing, but
15 it often means that we (DFAIT
16 consular officials) find
17 ourselves in a state of
18 confrontation with Canadian
19 security authorities (CSIS
20 and the RCMP). This is
21 unlikely to change, but there
22 must be more transparency and
23 openness between Departments
24 and agencies to avoid the
25 sort of 'nasty surprise' and

1 'failure to understand' each
2 other's motives that have
3 marked some cases."

4 Whether this is a draft, sir,
5 would you agree, from your experience as the
6 Minister, that this observation about a state of
7 conflict sometimes in some cases is an accurate
8 observation from your knowledge?

9 HON. BILL GRAHAM: Oh, sure, but
10 it is not restricted in government to this.

11 I mean, if you want to get into
12 the Foreign Affairs -- if you want to get into the
13 trade department and talk about the relationship
14 with the agriculture department, you will see what
15 disputes are about because of no trade
16 negotiations.

17 I can take you through a hundred
18 cases I worked through when I was Foreign Affairs
19 Minister where Privy Council Office was going one
20 way, the military want to go another, and we have
21 to coordinate. That is what government is all
22 about. That is what we are trying to do.

23 MS EDWARDH: But I am only
24 interested in this dispute, not all the other
25 ones.

1 HON. BILL GRAHAM: Well, this
2 dispute --

3 MS EDWARDH: And I take it you
4 agree that this is a fair characterization that
5 there is from time to time a situation of conflict
6 and confrontation?

7 HON. BILL GRAHAM: Absolutely.

8 MS EDWARDH: Fair enough.

9 HON. BILL GRAHAM: Well this is
10 the way Mr. Heatherington puts it: conflict and
11 confrontation. There is no question in my mind
12 that the Arar case, and other cases that I was
13 involved in, brought up the issue that the
14 purposes of the security agencies are often not
15 the same as the purposes of our department and, in
16 fact, the responsibilities are not the same
17 responsibilities and that you have to try and
18 accommodate those two with the right balance.

19 Whether or not in terms of
20 confrontation, I did discuss these issues a couple
21 of times with Mr. Easter. How could we coordinate
22 for the interests of Canada and Canadians to be
23 better?

24 But I think you would have to ask
25 someone like Mr. Pardy or Mr. Heatherington about

1 the extent to which there was confrontation in
2 this specific case.

3 MS EDWARDH: Let's leave
4 confrontation to the side. I am much more
5 interested in conflict.

6 HON. BILL GRAHAM: Yes.

7 MS EDWARDH: That in managing the
8 respective mandates, sometimes the actions of one
9 undercut the other. That is what I am interested
10 in.

11 HON. BILL GRAHAM: Yes.

12 MS EDWARDH: Fine.

13 And what is proposed here:

14 "At the earliest possible
15 stage ..."

16 It is down in the next paragraph.

17 "... there must be an
18 inter-departmental 'meeting
19 of minds' to ensure that all
20 parties are able to fulfil
21 their mandates without
22 stumbling over each other."

23 And I am going to say "and
24 undercutting one another", obviously.

25 Do you see that?

1 HON. BILL GRAHAM: Yes.

2 MS EDWARDH: Now, do you know
3 whether while you were Minister of Foreign
4 Affairs -- and I do appreciate this is close --
5 no, it is not close to the election. I think I am
6 a year out.

7 But do you know whether a
8 mechanism was created for an interdepartmental
9 committee of some kind that could make sure that
10 there was coordination in these kinds of cases?

11 HON. BILL GRAHAM: What is the
12 date of this memo?

13 MS EDWARDH: My understanding is
14 it is December the 3rd -- 4th, 2003.

15 So Mr. Arar would have returned --
16 I am sorry, you want to ...

17 HON. BILL GRAHAM: Mr. Arar
18 returned in November, to my recollection.

19 THE COMMISSIONER: October.

20 HON. BILL GRAHAM: In October.

21 MS EDWARDH: This document may --
22 let's just use it for its ideas. It may not have
23 gone anywhere.

24 But my question is: Given the
25 Arar case and other issues in these high-profile

1 cases, do you recall there being a resolution
2 mechanism set up to sort out this conflict?

3 HON. BILL GRAHAM: I would
4 respectfully suggest that the Deputy Minister,
5 Mr. Harder, would be the best person to give
6 evidence on this subject. I don't want to drag
7 somebody else into this hearing --

8 MS EDWARDH: He will appreciate
9 that.

10 --- Laughter / Rires

11 HON. BILL GRAHAM: Yes. I am sure
12 he will kill me.

13 But the fact of the matter is, as
14 a result of all the issues that arose under this
15 case, the Sampson case and other cases with which
16 you are familiar, we certainly felt that in the
17 department we had to review our practices in terms
18 of consular management, how we could be more
19 effective, both in protecting the interests of
20 Canadians abroad and also how we could have a
21 better form of intergovernmental coordination
22 around these issues.

23 So there is always a lesson
24 learned out of every experience.

25 My recollection is that we sought

1 to come up with a memorandum for internal use for
2 the consular affairs department, to know how we
3 could manage better consular relations in
4 countries like Syria, Saudi Arabia and others,
5 where there were really large legal challenges and
6 practices that were incompatible with Canada, and
7 on the other hand how we could have a better
8 coordination.

9 Those coordinations, if they took
10 place, for example, in the way in which the
11 Government of Canada works, would be either at the
12 Deputy Minister level -- and the Deputy Ministers
13 meet on a regular basis to share information and
14 work together.

15 For example, my present Deputy
16 Minister at the Defence Department, we meet with
17 Foreign Affairs regularly because we need to know
18 all sorts of things. They do that and seek to
19 coordinate action.

20 I don't know if specifically there
21 was, below that level, set up an interdepartmental
22 coordination or clearinghouse or discussion place
23 along the lines of Mr. Heatherington's
24 recommendation.

25 But on the surface it would seem

1 certainly an idea very much worth pursuing, given
2 the experience that we had had in these cases.

3 MS EDWARDH: Because, quite
4 frankly, if one stands back from the Arar case and
5 looks at the broad brush strokes of what happened,
6 you have your officials, Mr. Pardy in particular,
7 trying to send one single consistent message to
8 the Syrians, which is "let him return home or try
9 him fairly on charges so that he can defend
10 himself".

11 That is the message?

12 HON. BILL GRAHAM: Which is the
13 message I entirely subscribed to myself and sought
14 to convey.

15 MS EDWARDH: That was indeed,
16 though, only part of the message delivered by
17 Mr. Pillarella, and that is the nub of the
18 problem.

19 Mr. Pillarella, who ultimately is
20 responsible to you -- and I will take you through
21 this now, Mr. Minister -- is continuously -- and I
22 don't mean to be inappropriate -- but somewhat
23 enthusiastically asking for and receiving the
24 products of Mr. Arar's interrogation and the
25 investigation by the Syrian Military Intelligence.

1 If you accept that as true for a
2 minute -- and we will come to the actual facts,
3 and maybe you will want to review them now. But
4 if at one hand Mr. Pillarella and Mr. Martel are
5 saying "please send him home; send him home as
6 quickly as possible" and on the other hand are
7 saying "please give us more information or
8 information", or things like that, then the
9 Syrians are getting two messages, I am going to
10 suggest to you. And they come in this phrase: "do
11 your investigation", which means keep him there.
12 And the other phrase is "send him home." And
13 there is a conflict.

14 And that is really the nub of the
15 problem in Mr. Arar's case.

16 HON. BILL GRAHAM: Again, without
17 going through all the documents and without
18 knowing what Mr. Pillarella was doing in Damascus
19 and we are doing, I hear what you are telling me.
20 My response would be that the ambassador also had
21 a responsibility to get as much information as
22 possible so that the ambassador could act with
23 knowledge and information.

24 And as Foreign Minister, I would
25 be anxious to know everything so that if, for

1 example, I am meeting with the Syrian Foreign
2 Minister, I would want to know the bad stuff as
3 well as the good stuff. Someone has to get the
4 information for me. I cannot be an effective
5 advocate for Mr. Arar or anybody if I go into a
6 meeting with another Foreign Minister and I
7 haven't been given the full goods by my ambassador
8 about the situation in the country.

9 You are sort of suggesting that he
10 was inappropriate in what he did. So we may have
11 to go through all of that. That is going to be a
12 long discussion which the Commissioner is going to
13 have to decide because that is a matter of
14 conclusion, not a fact.

15 Let's get the parameters of what
16 we are talking about here.

17 In matters of intelligence, we
18 depend on SIGNET, we depend on a lot of electronic
19 intelligence, we depend on a great deal of
20 intelligence from different sources. Our
21 ambassadors and our diplomatic corps in a country
22 are one of the best sources we can get for
23 contextual understanding of the nature of that
24 information.

25 One of the reasons that the

1 intelligence services made the mistakes they have
2 made in recent time, which have been very
3 high-profile and which have led us into some very
4 serious problems and have been highly political in
5 certain countries that are close allies to Canada,
6 are precisely, in my view, because technical
7 information was allowed to prevail over the human
8 information obtained by intelligent people in the
9 field.

10 I would not want the Commission to
11 do anything which, in turn, would suggest that we
12 should inhibit what our people are doing in terms
13 of being able to convey information.

14 Then somebody has to analyze that
15 information and decide does this make sense or
16 does it not make sense in the context of which it
17 is? But somebody has to have, you know, the whole
18 picture.

19 As I said, if I go back for me, I
20 would want to have the whole picture, and then I
21 would have to decide -- it is a judgment: Okay,
22 what do I believe here? What don't I believe?

23 But I have to have the whole
24 picture, and so do our ambassadors.

25 So I would put Mr. Pillarella's

1 conduct in the light of that context rather than
2 in the light of saying I am encouraging the Syrian
3 authorities to believe in giving me information.
4 I don't think that is an appropriate conclusion to
5 draw.

6 MS EDWARDH: Because certainly the
7 problem is while there may be a justification, as
8 you framed it -- which is not contextual, though.
9 It is not contextual, because we are not talking
10 about context. We are talking about taking and
11 seeking the proceeds of interrogation and a
12 statement.

13 While there may be a justification
14 from the world of intelligence, you have to agree
15 that, justified or not, there are consequences for
16 seeking intelligence through this means, and one
17 of them is to give the Syrians the clear sense
18 Canada is interested in the intelligence they
19 gather. That is the message.

20 HON. BILL GRAHAM: I think that
21 is -- I think that is a total conclusion that you
22 are drawing in the light of your analysis of the
23 facts, and it is not a conclusion that I
24 personally would draw.

25 I think that is a total, utter

1 supposition. I think that in these circumstances
2 you would have to know fully the circumstances and
3 the questions that were asked.

4 But I would suggest to you that if
5 the ambassador knew that they had information
6 about Mr. Arar and he was seeking to protect
7 Mr. Arar and he didn't try and find out what
8 information they had, he would be derelict in his
9 duty in trying to help Mr. Arar because he would
10 be boxing in a dark room where he wouldn't know
11 what case he had to meet.

12 So maybe if you are right, if he
13 went in and said, "Hey, I want to join in this
14 investigation," that would be inappropriate. But
15 I didn't see any suggestion of that in this case.

16 We are talking about a fine line
17 here. You are trying to take me to make
18 conclusions about what he did. I would
19 respectfully suggest you should address those
20 questions to him and let the Commissioner decide
21 whether or not what he did in the circumstances
22 were appropriate, because anything you and I do is
23 mere second-guessing after the fact on the
24 basis -- in a very complicated case.

25 MS EDWARDH: All right. But we

1 can agree that it is a fine line and it is easy to
2 slip over it if in fact you end up undermining the
3 principal message that Mr. Arar is someone who
4 should be returned home or tried?

5 HON. BILL GRAHAM: Right.

6 MS EDWARDH: That would be wrong?

7 HON. BILL GRAHAM: Absolutely.

8 And in the case of the CSIS visit, in this case,
9 clearly something went wrong there and some
10 information was -- so there you might go there.

11 Whether the ambassador's conduct
12 went that far and slipped over that line is a
13 matter of judgment that I guess the Commission, in
14 the fullness of time, will come to a conclusion
15 about with the full knowledge of the evidence.

16 But I would have to have been
17 there, seen the circumstances, had a feeling of
18 what was going on.

19 I have to tell you, my belief is
20 that whatever he was motivated by, it was a
21 sincere desire to try and get Mr. Arar out of
22 jail.

23 Now, if he went too far in doing
24 that, that is a judgment. But I have to tell you,
25 I believe that to have been his motivation.

1 MS EDWARDH: I want to deal with
2 the hierarchy of duty here.

3 Mr. Pardy said to us that while
4 the ambassador wore all these hats in representing
5 Canada's interests, in the circumstances of the
6 Arar case, his preeminent obligation was to the
7 wellbeing of Mr. Arar and his return or trial.

8 Do you accept that?

9 HON. BILL GRAHAM: That was
10 certainly my view, my role as well. I always took
11 the view that Mr. Arar, of whatever matter, was a
12 Canadian citizen, bearing in mind the Syrian
13 aspect and all of that --

14 MS EDWARDH: Of course.

15 HON. BILL GRAHAM: That he was a
16 Canadian citizen; that he was entitled to our
17 protection. And if there was an offence that had
18 been committed by Mr. Arar or anybody else, that
19 they should be tried and dealt with by our police
20 standards, by our standards in our country, where
21 a fairer opportunity of defending yourself takes
22 place.

23 And that is the primary obligation
24 in these circumstances.

25 MS EDWARDH: You took that as your

1 primary obligation, but that was also the
2 ambassador's primary obligation; correct?

3 HON. BILL GRAHAM: Absolutely.

4 MS EDWARDH: I am told that a
5 number of people could very usefully have a brief
6 break.

7 THE COMMISSIONER: How are we
8 doing time-wise? It is 10:30.

9 MS EDWARDH: I will move through
10 this, and I hope to finish by 11:00, 11:10. I
11 know Ms McIsaac has a few questions, and I know we
12 are finished at 12:00, drop-dead time.

13 THE COMMISSIONER: We will take
14 the morning break for 15 minutes.

15 HON. BILL GRAHAM: I could provide
16 a deck for you if we could cut this all down.

17 --- Laughter / Rires

18 --- Upon recessing at 10:29 a.m. /

19 Suspension à 10 h 29

20 --- Upon resuming at 10:49 a.m. /

21 Reprise à 10 h 49

22 THE REGISTRAR: Please be seated.
23 Veuillez vous asseoir.

24 MS EDWARDH: Thank you,
25 Mr. Commissioner.

1 Mr. Minister, just to move to one
2 of my last two areas, I want to deal specifically
3 with the matter of your knowledge of the risk or
4 probability that Mr. Arar was the subject of
5 torture or detained in conditions of confinement
6 that fell below the standards set out in the
7 Convention Against Torture.

8 Mr. Cavalluzzo asked you some
9 questions about the initial period of time where
10 Mr. Arar really disappeared between his departure
11 from New York on October the 8th, the early
12 morning hours of the 8th, and the confirmation you
13 received on October 21st that he was in Syria, and
14 that confirmation came through the department.

15 HON. BILL GRAHAM: Right.

16 MS EDWARDH: And I want to deal
17 with whether or not, in the period of time shortly
18 after October 21st, you have any position you
19 would like to convey to the Commission as to
20 whether or not your departmental officials, in a
21 verbal briefing or otherwise, conveyed to you that
22 there was a substantial risk, and even a
23 probability, that Mr. Arar had been the subject
24 matter of an interrogation and held in conditions
25 that fell below the standards in CAT during that

1 period.

2 Do you recall ever having a verbal
3 briefing of that kind?

4 HON. BILL GRAHAM: No.

5 MS EDWARDH: You said in answer to
6 Mr. Cavalluzzo's question the following, at page
7 4135 of the transcript -- and it related to the
8 suggestion that Mr. Pardy would have shared his
9 concern with you about the conditions of detention
10 and interrogation.

11 You said this:

12 "Well, I have a lot of
13 respect for Gar Pardy, so he
14 might well have passed it up
15 the chain. As I say, it may
16 have been brought to my
17 attention, it may not. I
18 don't have any specific
19 recollection, because at this
20 time I see the whole
21 continuum of what took place
22 over the case of Mr. Arar."

23 And then you go on and say:

24 "My recollection at this time
25 is we were particularly

1 anxious to make sure that we
2 had consular access, and that
3 we did have consular access
4 and the information in fact
5 came back saying that while
6 Mr. Arar clearly was in
7 detention in a place where he
8 was not being treated the way
9 we would treat people that he
10 had not been tortured.

11 I just want to focus on this
12 initial period of the month of October.

13 HON. BILL GRAHAM: Right.

14 MS EDWARDH: Is it your evidence,
15 sir, that Mr. Pardy may well have made some
16 reference to his concern about the condition of
17 detention and possible means of interrogation of
18 Mr. Arar by Syrian Military Intelligence?

19 HON. BILL GRAHAM: No. Going back
20 to what I was saying the other day and certainly
21 going back to the events, it is certainly clear
22 that we knew that Syria as a jurisdiction was not
23 going to conduct itself the way Canada did. That
24 is clear.

25 Without a specific, in-depth

1 knowledge of the conditions in Syrian jails or
2 their interrogation methods or anything else,
3 there is no doubt that we had concern about the
4 welfare of Mr. Arar. But that concern, to my best
5 recollection, did not extend to the idea that he
6 had been or would be tortured.

7 And certainly in that earlier
8 period, and particularly after the first consular
9 visits, and we started getting consular visits, we
10 were -- I think as I said the other day, given the
11 fact that they had taken the position that he was
12 a Syrian citizen, we were quite surprised at the
13 alacrity with which we got a consular visit. That
14 is partially true because the other two that were
15 being held, we were told, "Sorry, we know that
16 we've got Canadians, but we don't care about
17 that."

18 So we were surprised with the
19 alacrity with which we got consular access. My
20 understanding, from the results of those consular
21 visits, was nobody said we believe there has been
22 torture used at that time.

23 MS EDWARDH: And nobody, I take
24 it -- because I don't want to misunderstand the
25 language of torture.

1 I take it no one also said to you
2 that there may have been force, physical force,
3 used to obtain statements, which in some
4 jurisdictions would be torture and in others it
5 may be less than torture.

6 HON. BILL GRAHAM: Right.

7 MS EDWARDH: But no one said that
8 kind of thing?

9 HON. BILL GRAHAM: No, exactly.

10 Or, for example, as you said, the
11 two dimensions: one would be physical treatment,
12 the other would be the conditions of detainment,
13 which wouldn't measure up to the standards that
14 are set out in the international convention.

15 There, too, one didn't at that
16 time, specifically at that time, know of the
17 conditions of Mr. Arar's detainment. He certainly
18 made that clear subsequently. But at that time,
19 we would not have known about him being held in a
20 dark cell by himself, that treatment.

21 MS EDWARDH: No, but there was
22 certainly nothing that you knew about the
23 conditions of detention that could exclude that
24 they fell below the standards set out in CAT?

25 HON. BILL GRAHAM: That is fair.

1 We didn't know enough to know one way or the
2 other, at least at my level --

3 MS EDWARDH: That was your
4 impression?

5 HON. BILL GRAHAM: Yes, ma'am.

6 MS EDWARDH: So I need then to
7 explore this, because one of the things we do know
8 about Syria -- and while you graciously phrase it
9 that the jurisdiction of Syria does not conduct
10 itself as we do in Canada, we also know that,
11 particularly when the person is detained by
12 military intelligence outside of the usual police
13 and court structures, that there are substantiated
14 claims of torture in the obtaining of confessions
15 within that regime.

16 Would you agree with that
17 proposition?

18 HON. BILL GRAHAM: I certainly
19 would agree with it now. Whether, you know, at
20 that particular time, my degree of knowledge of
21 Syria and its conditions was considerably less.
22 Then obviously we became educated about it.

23 MS EDWARDH: And your degree --

24 HON. BILL GRAHAM: And as you
25 point out, the difference between military

1 detention and other detention, these are things
2 that at that point would have been finer points
3 that I would not have been aware of.

4 MS EDWARDH: Sorry, I didn't mean
5 to cut you off.

6 HON. BILL GRAHAM: No, that is all
7 right.

8 MS EDWARDH: I draw from that that
9 you have no recollection of being provided with
10 information from your consular division to say,
11 "Well, we have good news and bad news: (a) he's
12 there; but (b) he's in detention held by the
13 military intelligence, and our last dealing with
14 them was with Mister..." I think it is El Maati.

15 HON. BILL GRAHAM: Right.

16 MS EDWARDH: "-- and we have been
17 told that Mr. El Maati was tortured."

18 That is the bad news.

19 HON. BILL GRAHAM: The El Maati
20 link was not, at least drawn from me. I believe
21 he is the gentleman that was in an Egyptian jail
22 at this time and who had described his condition
23 when in Syria.

24 MS EDWARDH: Right, in August of
25 2002.

1 HON. BILL GRAHAM: That link
2 eventually came -- you know, certainly -- as the
3 case progressed, we discussed everything more and
4 more. We got more engaged ourselves.

5 So there would have been more and
6 more discussions: what can we do? Is there a
7 danger here?

8 The good news/bad news aspect of
9 it for me really was the suggestion, at some
10 fairly early on point, that they were alleging
11 that he had been a member of the Muslim
12 Brotherhood, which we knew was certainly bad news
13 in Syria. I mean, this was like -- I certainly
14 was aware enough of history of Syria and how they
15 had been treated by the regime to know that this
16 was not good.

17 But then again, we were also given
18 pretty quick assurances, well, look, that is maybe
19 an allegation but it doesn't make sense given
20 Mr. Arar's age. So they may be alleging that, but
21 that is something we can disprove. But it wasn't
22 a comforting thing.

23 MS EDWARDH: I want to come then
24 the very simple question. Mr. Cavalluzzo asked
25 you, and I think you quite fairly said you are not

1 sure whether it made a difference.

2 Had you had a clear indication
3 from your consular staff that there was a
4 reasonable probability that Mr. Arar was subject
5 to conditions that fell below the standards in CAT
6 in these initial periods, you were asked whether
7 you would have done anything differently with
8 Syria or the U.S., and your answer, I think, was:
9 "Well, we certainly would have been energized but
10 you are not sure you could have made any
11 difference."

12 HON. BILL GRAHAM: Right.

13 MS EDWARDH: Now, I want to talk
14 about the difference you would have made if you
15 had been so energized by that information in
16 respect of your dealings with the Solicitor
17 General and the rest of the Government of Canada.

18 I am going to suggest very simply,
19 Mr. Graham, if you had been armed with that
20 information that there was a reasonable prospect
21 that Mr. Arar was being tortured in Syria, that
22 you would have said to your colleagues much more
23 clearly, "We will speak with one voice because
24 this is not acceptable by Canadian standards and
25 we will bring this man home, if we can."

1 Isn't that fair?

2 HON. BILL GRAHAM: In terms of the
3 internal Government of Canada pressures --

4 MS EDWARDH: Yes.

5 HON. BILL GRAHAM: Yes, that is
6 the type of thing -- I mean, I can't remember
7 whether it was this time or not, but at one time I
8 sat beside Wayne Easter in the House of Commons,
9 and so you discuss things. I said, "Wayne, here's
10 a guy being tortured, you know? We have to get
11 moving on this."

12 It would have been a reasonable,
13 absolutely reasonable, approach. One would have
14 gone, maybe even to the Prime Minister, and said,
15 "Look, what are we going to do here?"

16 When I said I am sure not one
17 would have altered the event, I don't want to drag
18 in other cases, but my experience in the case of
19 Mr. Sampson was -- it had somewhat instructed me
20 in these cases because I had been sent by the
21 Prime Minister as his envoy to talk to Prince
22 Abdullah about Mr. Sampson in September of 2001,
23 and it was at that time that we believed we had
24 actual proof of torture by virtue of statements by
25 other inmates that had seen this happen, and I

1 raised this with the Crown Prince.

2 But when I was asked about that,
3 for example, by the press here in Canada, I always
4 said, "I will not comment on those allegations
5 because they might make Mr. Sampson's position
6 more difficult," and I would have done the same
7 for Mr. Arar.

8 Had we known and I had been asked,
9 you know, publicly, "Why don't you make more of a
10 ruckus publicly?", my position would have been,
11 "Mr. Arar is in jail. We will do things that are
12 for his good."

13 So I think the energy thing would
14 have, as you said, been more along the lines of
15 how can we move the process faster to be
16 persuasive?

17 But I do come back to what I have
18 said. Given what I have learned about Syria and
19 how they operated and our ability of the levers we
20 had, and the actual little few levers we had over
21 the Syrian government, I don't know to what extent
22 we would have been able to advance the case any
23 faster.

24 But I do have to say to the family
25 that if in fact it could have been advanced

1 faster, I certainly myself would have tried to do
2 my best to do that.

3 MS EDWARDH: And my point only is,
4 it may well be that one could not have had any
5 impact with your colleagues south of the border.
6 But I am focusing solely on this issue,
7 Mr. Minister: That it is inconceivable to me that
8 had you had the information and that you called a
9 meeting of your colleagues and the senior
10 officials in CSIS and the RCMP and looked
11 Commissioner Zaccardelli in the eye and said,
12 "Listen, this is what I believe is going on and we
13 must speak with one voice because of this
14 issue --"

15 HON. BILL GRAHAM: Mm-hmm.

16 MS EDWARDH: -- that you would
17 have gotten a letter, or the Prime Minister would
18 have written, if the judgment was that such a
19 communication could be effective in assisting in
20 his release.

21 You would have gotten that letter
22 a lot sooner, or gotten cooperation from your
23 colleagues rather than them insisting that they
24 stood aloof?

25 HON. BILL GRAHAM: Well, there is

1 no doubt about it. We had a lot of discussions
2 about the letter, and I understand Mr. Pardy is
3 coming back, and he certainly was instrumental in
4 trying to get interdepartmental consensus around
5 that and worked extraordinarily diligently on it.

6 I think that --

7 MS EDWARDH: And couldn't get it.

8 HON. BILL GRAHAM: No, because --
9 and, again, this is going to be for the Commission
10 to determine and the evidence is going to have to
11 be in respect of the police saying, well, they
12 would say what was consistent with what they had
13 in terms of the facts but they weren't prepared to
14 go further.

15 What we were trying to do and what
16 I was trying to do was find language which, even
17 if it was consistent with there being a police
18 investigation, would say but there is not a crime
19 having been committed here. So there was a
20 constant sort of -- could we find language which
21 could accommodate the fact that there had clearly
22 been an investigation, which they couldn't say
23 there had never been an investigation, that
24 wouldn't have been true.

25 We couldn't have asked them to say

1 something that wasn't true. But on the other
2 hand, with my lawyer's hat on, we are constantly
3 saying: But could we get you to say lots of
4 people are subject to investigations around here
5 and they often don't lead to anything and there is
6 not evidence of culpability here; there is just
7 evidence of conversations and things like that?
8 It could go somewhere; it could go nowhere.

9 MS EDWARDH: That's right.

10 HON. BILL GRAHAM: That could be
11 true of a lot of stuff going on in society.

12 MS EDWARDH: And where I was going
13 with this, I took it from your earlier answer that
14 had the issue of torture been clearly placed on
15 your deck, that that would have been a matter you
16 would have brought to the table in the
17 conversations and would have put the urgency under
18 you that you described earlier?

19 HON. BILL GRAHAM: Well, I think
20 maybe Mr. Pardy probably, knowing him, he would
21 have come to us and said, "Look, I am having a lot
22 of trouble in my discussions, interdepartmental
23 discussions; they are not going as quickly as we
24 like. There is a man who is being tortured in
25 Syria. We have to move faster on this."

1 I am sure he would have done that.

2 MS EDWARDH: And you would have
3 acted.

4 HON. BILL GRAHAM: I would have
5 been responsive to that, yes.

6 MS EDWARDH: And you would have
7 acted with your colleagues and told them what the
8 problem was?

9 HON. BILL GRAHAM: Yes.

10 MS EDWARDH: And, if necessary,
11 brought it to the Prime Minister?

12 HON. BILL GRAHAM: Well, we did,
13 eventually, as you know, bring it to the Prime
14 Minister and he did act.

15 MS EDWARDH: I am troubled by the
16 message you got, as you have described it,
17 Mr. Minister, and I want to take you to a couple
18 of consular notes and ask you whether or not the
19 greyness and ambiguity in these notes should have
20 been brought to your attention.

21 Let me start, sir, with tab 123,
22 because I hear you saying it didn't come to your
23 attention.

24 HON. BILL GRAHAM: What didn't
25 come to my attention?

1 MS EDWARDH: The concerns about
2 the detention and interrogation and techniques,
3 and things like that.

4 And where I am taking you, sir,
5 is, first of all, to the very first meeting that
6 was held by Mr. Pillarella on the 22nd of October
7 with Syrian Military Intelligence.

8 It is part of our record now that
9 he got access to the head of that group, General
10 Khalil. I won't go through mentioning his name
11 again, but he was at the highest levels.

12 HON. BILL GRAHAM: Right.

13 MS EDWARDH: And one of the
14 interesting observations is General Khalil -- and
15 this is October 22nd -- says Mr. Arar really
16 arrived at the border the day before and he has
17 already been interrogated and admitted his
18 connections with terrorist organizations.

19 Do you see that in paragraph 3,
20 the first line?

21 HON. BILL GRAHAM: Yes, but we
22 know that the statement he got there the day
23 before was inaccurate.

24 MS EDWARDH: Yes. It was not the
25 truth. But you would have no reason to doubt, I

1 take it, that at least your consular officials had
2 been told that within a period of 24 hours the
3 Syrians had extracted a confession from Mr. Arar?

4 That is what they are told,
5 anyway.

6 HON. BILL GRAHAM: Right.

7 MS EDWARDH: And you can agree
8 with me that based upon the information you had,
9 that that was a fairly startling admission at that
10 time?

11 HON. BILL GRAHAM: That they could
12 have come to these conclusions in such a brief
13 period of time?

14 MS EDWARDH: Yes, that is what
15 that said.

16 HON. BILL GRAHAM: Mr. Arar sort
17 of arrives at the border and says, "Hi, I am a
18 terrorist"?

19 MS EDWARDH: That is right.
20 Exactly. It has all the hallmarks --

21 HON. BILL GRAHAM: This is not
22 a -- yes.

23 MS EDWARDH: It has all the
24 hallmarks of an interrogation that we know now to
25 be that of a person held incognito and subject to

1 techniques of interrogation that are not
2 acceptable in Canadian society and involves the
3 use of force. It has got all the hallmarks right
4 there.

5 HON. BILL GRAHAM: Well, I
6 honestly don't know that. That is your
7 conclusion.

8 MS EDWARDH: All right. So you
9 don't accept that.

10 HON. BILL GRAHAM: Well, I don't
11 say I don't -- I mean, I just don't know enough of
12 the circumstances of what went on with the
13 ambassador and the consul to know whether they had
14 that suspicion or not. I honestly don't.

15 MS EDWARDH: Well if they didn't,
16 they should have. If in fact they were confronted
17 with the information that in 24 hours there had
18 been this confession, I am going to suggest they
19 should have had suspicions. Their index of
20 suspicion should have risen.

21 Is that fair?

22 HON. BILL GRAHAM: Well, they may
23 have.

24 MS EDWARDH: They may have.

25 HON. BILL GRAHAM: That may or may

1 not be fair. I think that is a conclusion -- that
2 is a conclusion --

3 MS EDWARDH: Would your index of
4 suspicion, Mr. Minister, be raised --

5 HON. BILL GRAHAM: If I had been
6 there?

7 MS EDWARDH: -- if you had got
8 this memorandum, and been told that within 24
9 hours there had been this confession?

10 HON. BILL GRAHAM: With the
11 benefit of the hindsight of what I know now, for
12 sure.

13 MS EDWARDH: All right.

14 HON. BILL GRAHAM: At that
15 particular moment?

16 MS EDWARDH: You are not sure?

17 HON. BILL GRAHAM: I don't know.
18 I mean, I was focused on -- you know, we have the
19 American ambassador, trying to figure out how we
20 could get to him, how do we get consular access.
21 We are relieved at -- I mean, you can't tell
22 you -- I don't say that there was a euphoria, but
23 there was a real sense of relief that we got the
24 consular access.

25 MS EDWARDH: And Mr. Pardy has

1 said that. There is good news. You've got a body
2 and it is alive.

3 HON. BILL GRAHAM: And they have
4 agreed we can talk to him instead of telling us to
5 buzz off.

6 MS McISAAC: Can I ask,
7 Ms Edwardh, in fairness, to take the Minister to
8 the actual report of the first consular visit --

9 MS EDWARDH: I was just about to
10 do that.

11 MS McISAAC: Thank you.

12 MS EDWARDH: That is Volume 2.

13 And you will find the first report
14 of this visit -- just a moment.

15 It is tab 130.

16 There are some interesting
17 observations. This document is sent from
18 Mr. Martel. He is the person who had consular
19 access, and he is the person who then forwarded
20 his observations -- well, also, notably, his
21 observations are approved by the ambassador.

22 HON. BILL GRAHAM: Mm-hmm.

23 MS EDWARDH: And then we get
24 certain information about this visit. And it
25 starts out:

1 "Arrived on site at 1000
2 hours and was greeted by an
3 officer who declined to give
4 his identity. Meeting ...
5 was cordial and took place in
6 one of their offices."

7 And so it is clear from this, and
8 the comment at paragraph 3, that Mr. Arar was
9 brought to the office, the meeting lasted about 30
10 minutes, and it was not possible to see where
11 exactly Arar was being detained.

12 So you will agree with me that
13 what you have there is nothing more than something
14 that is quite empty. It could be the best of
15 conditions of confinement, and it could be the
16 worst.

17 HON. BILL GRAHAM: Absolutely.

18 MS EDWARDH: All right. And then
19 there is this statement:

20 "After shaking hands, Arar
21 was shown a seat at a
22 distance."

23 Do you see that observation?

24 HON. BILL GRAHAM: Mm-hmm.

25 MS EDWARDH: Would that, sir,

1 raise your index of suspicion if you were reading
2 this report, as Minister of Foreign Affairs?
3 Would you expect the reader to be concerned that
4 Mr. Arar was placed at a distance?

5 HON. BILL GRAHAM: I would be more
6 concerned by the next paragraph, paragraph 4,
7 but --

8 MS EDWARDH: And we will come to
9 that.

10 HON. BILL GRAHAM: Clearly the
11 circumstances were not ideal. There is no
12 question about that.

13 MS EDWARDH: And then, in addition
14 to being told that he was placed at a distance,
15 there is the observation that there were questions
16 asked in accordance with instructions received.

17 "... but it was obvious
18 subject was not free to
19 answer all of the questions."

20 So I am going to suggest to you
21 that one of the things we know about this is this
22 is an interview taking place under the nose of one
23 or more Syrian Military Intelligence officials in
24 circumstances where Mr. Arar is clearly not free
25 to say anything in a candid way to the consular

1 officials.

2 That is pretty obvious, right?

3 HON. BILL GRAHAM: Yes.

4 MS EDWARDH: So you don't know
5 what he would say and you can't tell where he is
6 detained. So those are our two observations so
7 far.

8 Thirdly:

9 "Subject appeared to be
10 healthy but this is difficult
11 to assess. He looked
12 resigned and submissive.
13 Numerous eye signals seemed
14 to indicate he was not free
15 to speak out. At least this
16 is the impression we had."

17 So would you agree, Mr. Minister,
18 that the reflection here, that Mr. Arar looked
19 "resigned and submissive" is a matter that would
20 certainly raise your index of suspicion about his
21 treatment?

22 HON. BILL GRAHAM: I think the
23 whole memo was designed to convey to the reader
24 that there were concerns about his condition.
25 There is no question about that. That is why I

1 think the memo was drafted the way it was.

2 It was by somebody saying, look,
3 there are potential problems here. We don't know
4 what they are.

5 MS EDWARDH: You get more than you
6 don't know what they are. You know you don't know
7 how he is being detained and you don't know what
8 he would say to you if he were free to speak. But
9 you do know that from his behaviour he looks cowed
10 by the environment that he is in, "resigned and
11 submissive".

12 HON. BILL GRAHAM: Yes, that is a
13 fair deduction to draw from that wording.

14 MS EDWARDH: And he is being also
15 told what to say through promptings. All right?

16 "When prompted further for
17 answers ..."

18 I am sorry, he was stopped from
19 saying.

20 HON. BILL GRAHAM: Okay.

21 MS EDWARDH: We have him being
22 prompted actually at paragraph 7. You may not
23 have the full paragraph 7. We now know that the
24 answer that he was being provided for well by his
25 Syrian host was in fact dictated to him. We now

1 know that.

2 HON. BILL GRAHAM: Right.

3 MS EDWARDH: So all of that
4 combines to a very troubling situation; fair
5 enough?

6 HON. BILL GRAHAM: Mm-hmm.

7 MS EDWARDH: And it also is
8 information, I am going to suggest to you, that
9 leaves open a myriad number of possibilities, but
10 certainly that the conditions of confinement and
11 interrogation fall below the standards in CAT?
12 Completely open from this.

13 HON. BILL GRAHAM: Well, they fall
14 below standard. I am sorry, I am not an expert
15 enough in CAT to know whether they fall below the
16 standards of CAT. That is a legal conclusion
17 somebody else can draw.

18 But we certainly are not -- we
19 totally agree that the conditions are far from
20 ideal, and that access has been inhibited by the
21 Syrian presence. That is clear. That he was
22 disoriented -- I mean the statement that he makes
23 here on the next page, "I am Syrian and I obey the
24 law of Syria", we know from Mr. Arar that he
25 considered himself a Canadian and that is what we

1 considered him, too.

2 MS EDWARDH: So he is being forced
3 to parrot what is being told to him by military
4 intelligence?

5 HON. BILL GRAHAM: Or possibly
6 saying things which would reflect on the way in
7 which he would be treated, so he would be
8 well-treated. I mean, in these circumstances, you
9 might -- I don't know what would motivate you to
10 say one thing or another.

11 MS EDWARDH: Well, he certainly
12 later said that this is nothing more than an
13 instruction --

14 HON. BILL GRAHAM: Right.

15 MS EDWARDH: -- and it reads that
16 way.

17 Now, Mr. Pardy said to us that
18 upon receipt of this memo, it merely confirmed his
19 reasonable suspicion of improper and abusive
20 interrogation, and nothing that he thought about
21 when he received this memo was inconsistent with
22 Mr. Arar's later public statements of his
23 treatment. And those later public statements of
24 his treatment clearly point to severe physical and
25 emotional abuse, particularly during the first two

1 weeks of confinement.

2 So when he read this, that is what
3 he read into it. And that doesn't surprise you,
4 does it, given the tenor of this memo?

5 HON. BILL GRAHAM: Well, Mr. Pardy
6 said what he said. I don't know whether I would
7 be surprised or not if he had said it to me.

8 But what surprises me is that was
9 not conveyed to me. I was not told that that was
10 a conclusion that had been drawn by anybody. So
11 that would be surprising.

12 MS EDWARDH: That is the concern
13 we are going to come to because there is a
14 briefing memo we are going to look at in a minute.

15 But I would like to take you to --
16 oh, I am sorry.

17 I want you to be aware that what
18 Mr. Pardy said of the conditions that were viewed
19 here was that given the complexity of issues
20 around torture, it would be impossible to assess
21 it one way or the other from what Mr. Martel saw
22 or described in the memo.

23 You accept that?

24 HON. BILL GRAHAM: I would
25 accept -- Mr. Pardy is pretty expert in dealing

1 with these sorts of cases, and of course he is
2 secondhand. He is reading a briefing from
3 Mr. Martel. I don't know whether he has spoken to
4 Mr. Martel or just read the notes or what.

5 MS EDWARDH: Well, he may have
6 done both.

7 HON. BILL GRAHAM: Yes.

8 MS EDWARDH: I want to then turn
9 to tab 129.

10 I understand, sir, that these are
11 briefing notes, and of course I -- I am sorry.
12 These are questions and answers that are prepared
13 by the department for you.

14 Is that correct?

15 HON. BILL GRAHAM: For use in the
16 House of Commons that you are not allowed to look
17 at.

18 MS EDWARDH: I don't even want to
19 hear about Parliament. We will run afoul of some
20 rule.

21 HON. BILL GRAHAM: I seriously do
22 not understand something that is on television
23 every day and in Hansard is ...

24 Anyway, we will come back to that
25 before we are finished.

1 --- Laughter / Rires

2 MS EDWARDH: Let's go to this.

3 HON. BILL GRAHAM: I would assume
4 that these come from, when I always had -- you
5 know, a briefing book normally for use in the
6 House of Commons, but clearly if I am going to a
7 press conference or something else, I might use
8 them as well.

9 MS EDWARDH: We have agreed that
10 embedded within them are factual assertions that
11 you rely upon, even if you might wish to phrase
12 things differently when you actually address the
13 matter.

14 HON. BILL GRAHAM: Yes, the
15 department is giving me the best advice they can;
16 yes.

17 MS EDWARDH: Right. So I now come
18 to the first page of these briefing notes:

19 "Question: What took place
20 today during the first
21 Consular meeting with
22 Mr. Arar?"

23 So this is October 23rd.

24 And the proposed reply put into
25 your hands is, first of all:

1 "Canadian Consular Officials
2 from the Canadian Embassy in
3 Damascus met with Mr. Arar
4 earlier today, in the
5 presence of Syrian
6 authorities.

7 Mr. Arar appeared in good
8 health.

9 He asked about his family..."

10 Well, with the greatest of
11 respect, this seems to me a very optimistic view
12 that is being put into your mouth, Mr. Minister.

13 One might have said while Mr. Arar
14 is alive and we have had an opportunity to see
15 him, we are unclear about the conditions in which
16 he is being detained or why he behaves the way he
17 did.

18 I mean, this is a good news
19 answer, and I am going to suggest to you it is not
20 very compatible with the first consular note sent
21 back by Mr. Martel. It is not consistent with the
22 concerns that cry out of that note, to say simply
23 "he is in good health".

24 HON. BILL GRAHAM: Well, it is
25 certainly putting a pretty positive gloss on it,

1 there is no doubt about that.

2 MS EDWARDH: And had you had the
3 note in front of you and an opportunity to say
4 what you would read into that note and given the
5 concerns of Mr. Pardy and others, I gather, about
6 his condition, you would have been less positive,
7 would you not, in the way you were with
8 Mr. Sampson?

9 HON. BILL GRAHAM: I would have
10 said we are not in a position at this time to
11 comment on his condition. That is what I would
12 have said. But we look forward to future consular
13 access to be able to work on making sure that he
14 is being properly treated, something along those
15 lines, I think would have been more responsive.

16 MS EDWARDH: Right. And then if I
17 flip over to tab 145, it is clear that Mr. Pardy
18 has some concerns because he is sending -- no, I'm
19 sorry.

20 Right. It is the first paragraph
21 there. He is sending this to Mr. Martel at the
22 embassy in Damascus and he is copying again --

23 HON. BILL GRAHAM: May I just go
24 back to the business of the statement?

25 MS EDWARDH: Sure.

1 HON. BILL GRAHAM: You would have
2 to get somebody -- and I don't know whether the
3 Commission wants to get in this type of business
4 too deeply.

5 My legislative assistant would
6 work with me in trying to get the best answers we
7 could for the House of Commons; responsive,
8 correct answers.

9 The problem often with the system
10 is that the people preparing answers for the House
11 of Commons are not -- you would have to find out,
12 going through the paper trail here, to what extent
13 this person who wrote that actually had either
14 seen this memo or talked to Gar Pardy or what.

15 I get fed information through
16 so -- one of the problems in any large
17 organization, I don't care whether it's the
18 Government of Canada or anything, is that these
19 layers of information come to you and it kind of
20 gets interpreted by different people.

21 I don't know who would have
22 prepared this. But I always -- and I am still the
23 same in the present department I am in. I sit
24 down with my legislative assistant and I go
25 through the questions and I say, "Wait a minute.

1 I can't say that. Where is this coming from?"

2 This is kind of -- everything's
3 always phrased in very vague terms because then
4 you can't, quotes, "get into trouble".

5 So, who prepares it and on the
6 basis of what? If it is really important to you,
7 I think you would have to kind of dig a bit
8 deeper. You might just find that it was prepared
9 by somebody who didn't know all the facts. And so
10 that may be the reason I was provided it, as
11 opposed to somebody deliberately trying to
12 mislead.

13 I just don't know. You know, you
14 can't know --

15 MS EDWARDH: No, you can't know
16 that. I appreciate that.

17 HON. BILL GRAHAM: The system is
18 so complicated.

19 But I certainly agree with you in
20 your conclusion that the statement on that piece
21 of paper --

22 MS EDWARDH: Is misleading.

23 HON. BILL GRAHAM: -- is not
24 inconsistent with the documents you showed me.

25 MS EDWARDH: It is inconsistent.

1 HON. BILL GRAHAM: It's not
2 consistent, yes.

3 MS EDWARDH: Now, I want to go to
4 the second consular visit, as I said to you, at
5 tab 145. And there is just a note.

6 Mr. Pardy, who has obviously
7 picked up the signals from the last consular
8 visit, says at the end of the first paragraph:

9 "Also to see whether there is
10 any change in Maher's
11 presentation/demeanour over
12 the past six days."

13 So he is looking for, I suppose, a
14 response to whether he still appears submissive,
15 et cetera. He's got a concern; fair enough?

16 And so when the next consular
17 visit does take place, we get at tab 147 an answer
18 directly to Mr. Pardy's inquiry, at paragraph
19 number 5 at tab 147.

20 HON. BILL GRAHAM: 147?

21 MS EDWARDH: That's correct,
22 paragraph number 5. Mr. Martel answers directly
23 the query about changes in his demeanour and
24 presentation.

25 "Two changes were noticed in

1 Maher's presentation. He did
2 not seem to be disoriented
3 anymore and he seemed to be
4 able to speak freely and
5 without fear. Officials have
6 agreed that reading material
7 such as Canadian magazines
8 can be given to him. Mission
9 will provide."

10 And I put to Mr. Pardy that it was
11 certainly apparent, if you read this correctly,
12 that Mr. Martel observed but did not record in the
13 first consular visit that Mr. Arar was disoriented
14 in that first consular visit.

15 That is the information he took.

16 HON. BILL GRAHAM: That's a
17 conclusion you could draw from this statement,
18 yes.

19 MS EDWARDH: Right. We have --

20 HON. BILL GRAHAM: Sorry. This is
21 to Mr. Pardy, is it, from Mr. Martel?

22 MS EDWARDH: Well, this is
23 instructions -- this is an answer from Mr. Martel
24 and it does go to JPD. Do you see that?

25 And that is Mr. Pardy's

1 designation.

2 HON. BILL GRAHAM: Okay.

3 MS EDWARDH: So he is the first
4 person on the "To" line.

5 The second person, for the record,
6 on the "To" line is ISD, which is Mr. Livermore.

7 HON. BILL GRAHAM: Okay. You know
8 the acronyms better than me.

9 MS EDWARDH: I've been studying
10 them, sir.

11 HON. BILL GRAHAM: Good for you.
12 Lucky you.

13 MS EDWARDH: I do that for
14 recreation.

15 Then they are saying -- we will
16 come to whether there needs to be a better
17 protocol for writing consular materials.

18 I want to bring you to one more
19 tab, tab 640.

20 HON. BILL GRAHAM: Six-four-zero?

21 MS EDWARDH: Yes. And that will
22 be in Volume 7.

23 I'm sorry, I want to compare
24 that -- my apologies, Mr. Registrar -- to tab 276,
25 which is the note of the January 7th consular

1 visit. So you need both.

2 Tab 276, Mr. Commissioner, is in
3 Volume 3.

4 I just have some quick questions
5 here.

6 It's quite clear that on January
7 7th Mr. Martel makes the observation that at the
8 end of the meeting he -- and this is found in
9 paragraph 9.

10 HON. BILL GRAHAM: Paragraph 9 of
11 275?

12 MS EDWARDH: Of 276. That's
13 Volume 3.

14 HON. BILL GRAHAM: Yes, I have it.

15 MS EDWARDH: And paragraph 9
16 describes the conversation that Mr. Martel had at
17 the end of the meeting. He says he spent
18 considerable time discussing detention and he said
19 that the Syrian officials:

20 "... went out of their way to
21 say Arar was receiving
22 special treatment. They said
23 he was being kept in a
24 separate room and not mixed
25 with other detainees, was

1 given decent clothing and was
2 provided with the necessary
3 food and water."

4 One of the troubling things is
5 that language "they went out of their way to say
6 he was receiving special treatment, he was kept in
7 a separate room" is, in fact, nothing more than a
8 huge red flag being sent out; that if someone is
9 being kept separate and apart -- and certainly
10 Mr. Pardy seemed to understand that -- they are in
11 isolation. They are not mixing with the prison
12 population.

13 Do you recall, sir, ever being
14 told that Mr. Arar was being kept in isolation and
15 not being mixed? A bad sign, a bad sign. Months
16 of solitary confinement falls well below what
17 would be experienced in this nation.

18 HON. BILL GRAHAM: No, I don't
19 specifically recall that.

20 MS EDWARDH: You don't recall
21 that.

22 HON. BILL GRAHAM: But it would
23 certainly depend on the nature of the institution
24 you are being held in as to whether you want to be
25 mixed with the common criminals or not.

1 I have heard of situations where
2 people are quite happy not to be mixed with the
3 general population.

4 MS EDWARDH: That's probably --

5 HON. BILL GRAHAM: There have been
6 lots of stories where you would rather not be
7 mixed up with the general population.

8 So I don't know enough about their
9 system, I don't know enough about this case, I
10 don't know enough to draw the conclusion you just
11 drew. But I certainly know enough to say that
12 this says that he was being well looked after and
13 in a separate room, which they are putting in a
14 positive light. You are saying the reverse.

15 I don't know. I just wouldn't
16 know enough about the system as to whether or not
17 you could draw from that an iron-tight conclusion
18 that being in a separate room was a bad rather
19 than perhaps a good thing. I don't know enough
20 about the jails or who was in it.

21 But when you read the stories that
22 you used to with the Gulags, there were times when
23 if have read any of Solzhenitsyn, you will know
24 very well people didn't want to be in a room with
25 a bunch of other people who were going to steal

1 their clothes, beat them up, and generally treat
2 them badly.

3 So I don't know enough about this
4 jail or the conditions in it to know anything
5 about whether this was good or bad.

6 MS EDWARDH: All right. So if I
7 can just go back to the other memorandum which
8 should be open on your desk, tab 640. I ask you
9 to open that.

10 This is sent to Michael Chesson,
11 copied to the ambassador in Damascus and also to
12 Mr. Fry of your office. And this brings us
13 forward to the August 14th information that I want
14 to address to you.

15 HON. BILL GRAHAM: Right.

16 MS EDWARDH: It is my last really
17 important area.

18 It is pretty clear, Mr. Minister,
19 that you went out on a limb when you spoke very
20 shortly after the August 14th consular visit and
21 announced that Mr. Arar independently confirmed
22 that he had not been tortured, because there was
23 nothing -- certainly we have established --
24 nothing independent about it; fair enough?

25 HON. BILL GRAHAM: Well, on the

1 basis of the documents, yes, we now have as
2 opposed to what I was told when I was going
3 downstairs to have my scrum --

4 MS EDWARDH: Okay.

5 MR. LIVERMORE: -- which I am
6 trying to, you know, reconstruct in my mind.

7 I am pretty cautious about the way
8 in which I approach these scrums. And while I
9 have misspoken myself in scrums -- I did in the
10 case of the Chicoutimi, for example, but it was
11 based on information I was given.

12 I normally am pretty careful about
13 given information.

14 Now, I don't know whether somebody
15 told me independently or whether I was just given
16 the overall impression that, look, this was by far
17 the best consular visit, were by far the best sort
18 of conditions, a feeling that Mr. Arar had been
19 able to convey, you know, real truth without being
20 inhibited.

21 That was the sort of sense I had
22 when I gave that scrum, and that's one of the
23 reasons I was really pleased to do it, because of
24 course it had come after the allegations that had
25 been made at the London meeting and which were of

1 great concern to us.

2 MS EDWARDH: Right. So let me
3 just follow through with that a bit.

4 You knew that one of the focuses
5 of this August 14th consular visit -- and I'm not
6 going to put to you the language of rebut. But at
7 least from your perspective, it was to explore the
8 allegation that Mr. Arar may have been recently
9 tortured or tortured at all.

10 That was one of the purposes of
11 that visit?

12 HON. BILL GRAHAM: Yes.

13 MS EDWARDH: All right. And the
14 information you got from your staff --

15 HON. BILL GRAHAM: Yes, because
16 the statement in London obviously raised a lot of
17 alarm bells to say, "Hey, we're going to go back
18 and see him."

19 MS EDWARDH: Of course.

20 HON. BILL GRAHAM: There were two
21 meetings, I think, wasn't there? One with the
22 ambassador and then one with Mr. Martel, that
23 actually saw Mr. Arar.

24 MS EDWARDH: Well, the person who
25 had the consular visit, who met with Mr. Arar and

1 made the observations, was Mr. Martel.

2 HON. BILL GRAHAM: Right.

3 MS EDWARDH: I want to know, sir,
4 do you have any recollection of who briefed you
5 about that visit that left you with the impression
6 or the information that there was this independent
7 confirmation that he was not tortured?

8 HON. BILL GRAHAM: It probably
9 would have been either somebody from my office or
10 my communications director, who would have talked
11 to somebody in my office, who would have talked to
12 somebody who would have received this information.

13 MS EDWARDH: So what is important
14 for our purposes is, I take it then you are saying
15 you have no recollection of speaking directly to
16 Gar Pardy.

17 HON. BILL GRAHAM: No, no. I
18 mean, the way this happened was, as I said, I was
19 going down to do a press scrum on Wellington
20 Street in Toronto about Mr. Sampson --

21 MS EDWARDH: Yes.

22 HON. BILL GRAHAM: And on the way
23 down, my cell phone -- well, not my cell phone,
24 but whoever was with me, their cell phone. They
25 said, "Minister, we do have up-to-date information

1 about Mr. Arar and here's the up-to-date
2 information."

3 So that would have come through my
4 office. It certainly wouldn't -- I wouldn't have
5 had direct contact with Gar Pardy. I was just
6 being briefed by somebody in my office with their
7 best understanding of what had taken place.

8 MS EDWARDH: All right. So we
9 can't trace that to anyone who would have the
10 mandate, within consular affairs, that came up
11 through a system.

12 HON. BILL GRAHAM: No.

13 MS EDWARDH: So let me just ask
14 you this question. One of the concerns that
15 people have had about your statement was that
16 there were other things known about Mr. Arar's
17 confinement. Indeed, on that very same visit, he
18 said he had been mentally destroyed and made other
19 comments about the size of his cell and that he
20 had been kept in complete darkness.

21 You will agree with me -- well,
22 Mr. Minister, were you given that information?

23 HON. BILL GRAHAM: No, no. I
24 would have been just given the information that I
25 gave to the press when I made that statement. I

1 wouldn't have been given -- we are talking about a
2 30-second conversation.

3 MS EDWARDH: Sure.

4 HON. BILL GRAHAM: Not a reading
5 of a briefing note or in-depth information, you
6 know? So that's about all I would have -- I would
7 have been conveyed an impression but not the
8 details.

9 MS EDWARDH: And certainly it's
10 also fair to say if you had been told that he had
11 remained for months alone in a tiny cell that was
12 3-by-6-by-7 and had been kept in darkness during
13 those many months, only to have the privilege of
14 access to either his gaolers or consular
15 officials, you would never have said that this man
16 has not been tortured, would you have, if you had
17 known even those facts?

18 --- Pause

19 HON. BILL GRAHAM: I would have
20 been more cautious in the language I used. I
21 mean, we are getting into what is torture as
22 opposed to detention. But I certainly would have
23 been more cautious, I agree, with the language I
24 used.

25 MS EDWARDH: Well, certainly if

1 the conditions of confinement are such that
2 someone is in fact robbed of their fundamental
3 emotional and mental balance, and our
4 understanding of torture certainly extends to
5 psychological torture --

6 HON. BILL GRAHAM: Right.

7 MS EDWARDH: -- I am going to put
8 it one more time: You would never have put
9 yourself in a position, without a lot of advice,
10 to say anything about whether he was or wasn't?

11 HON. BILL GRAHAM: No. I was
12 informed he had not been tortured, so that's what
13 I said.

14 MS EDWARDH: And if you had known
15 those three facts, you would have said no such
16 thing; fair enough?

17 HON. BILL GRAHAM: I certainly
18 would have been much more cautious about what I
19 said, yes. I believe what we were trying to
20 convey at that particular moment was that Mr. Arar
21 was in good condition at that time.

22 You will recall that the
23 circumstances were that the meeting in London, my
24 recollection was, it was suggested that he was
25 being tortured at that time, and that was the

1 suggestion that came out of the London conference.

2 So then I'm hit. They're saying,
3 "You know, Mr. Arar is being tortured." I am able
4 to say, no, we just saw him yesterday. He's not
5 being tortured. I mean that's the only purpose of
6 what I'm trying to say here.

7 I'm not trying to go through what
8 happened to him four months before, or what
9 happened to him the day before, and who he talked
10 to, and whether his -- I mean, all I'm told is --
11 there was a press conference at which it was said
12 he was being tortured.

13 I was given information, we've
14 seen him, he's not being tortured. We had one of
15 the best meetings we ever had with him. It was
16 one of the most open ones. He's not, actually
17 being tortured. That's my recollection of how --

18 MS EDWARDH: Fair enough.

19 And indeed Mr. Pardy made the
20 point to us, very clearly, that the focus of the
21 consular visit was about whether he was being
22 tortured now. That was his understanding of what
23 was at issue, that was his understanding of the
24 answer, and in a sense I hear you saying that.

25 The problem, Mr. Minister, that I

1 have with this, is it discloses a very interesting
2 understanding of what is torture, because someone
3 can be beaten to extract a confession, or someone
4 can be maintained in conditions that constitute
5 torture without a finger being laid on them --
6 now, we're getting into the definition of torture.

7 HON. BILL GRAHAM: Mm-hmm.

8 MS EDWARDH: But everything that
9 you're saying about your conclusion implies you
10 were confining your consideration to whether
11 someone was beaten or abused in an interrogation
12 process, rather than the whole context that could
13 result in the destruction of someone emotionally?

14 HON. BILL GRAHAM: I was confining
15 my statement to what I was told were the
16 conditions that I was told to say were the
17 conditions. So that's all I was doing.

18 I wasn't doing, in the 20 seconds
19 I had walking down the stairs, I was not doing a
20 three-hour analysis of -- you know, you can
21 appreciate the circumstances.

22 MS EDWARDH: Yes, I can.

23 HON. BILL GRAHAM: So -- I mean, I
24 understand what you're saying to me, and I don't
25 disagree with saying that there's an element to

1 something that would be torture that isn't
2 necessarily just physical mistreatment. So I
3 don't disagree with that.

4 Whether that's appropriate in
5 these circumstances, as I say, my understanding of
6 the circumstances was the allegation had been made
7 he had been tortured and that I was told: "Look,
8 we've had a good meeting with him. He's not being
9 tortured. Go ahead and say that." So that's why
10 I said it.

11 Maybe I went to far by saying
12 "independently." You know, that may have been a
13 bit of a -- that was perhaps something I shouldn't
14 have said. But I do believe it was an honest
15 attempt on my part to convey to the press the best
16 information we had at that time about his
17 condition.

18 MS EDWARDH: Now, the only point I
19 wish to make is, at no time at all during the
20 whole period that Mr. Arar was in detention did
21 your officials ever get a chance to truly
22 understand the conditions of confinement of
23 Mr. Arar.

24 They were never permitted to see
25 where he was, where he stayed, the size of his

1 cell, whether he ever had exercise, or any of
2 those -- those were taken right off the table.

3 HON. BILL GRAHAM: No, the only
4 time, and particularly I personally knew about it,
5 was when I met with Mr. Arar, when he came to my
6 office and he described not only how he had been
7 treated physically but also the conditions of his
8 detainment, and so I do not believe that any of
9 the officials ever would have had an opportunity
10 to do that.

11 MS EDWARDH: To do that. Until he
12 came home?

13 HON. BILL GRAHAM: Yes, ma'am.

14 MS EDWARDH: And I want then to
15 deal with -- I know my time's run out. I have one
16 last question to ask you and then I'll sit down
17 because I understand you have to leave here very
18 soon, Mr. Minister.

19 My issue with you is about the
20 consular agreement that was reached between the
21 United States and Canada. I hesitate to call it
22 an agreement. It's an understanding.

23 HON. BILL GRAHAM: Right.

24 MS EDWARDH: And I just want to
25 make it very clear that despite all of its

1 frailties -- and we can describe them in detail,
2 and I'm sure they're almost self-evident -- it was
3 premised on a bona fide belief on your part that
4 had you had notice, or should you get notice in a
5 future case like that of Mr. Arar, that active
6 representations could be made that would
7 prevent -- likely prevent someone being removed to
8 Guantanamo or Syria or Egypt if they were a
9 Canadian citizen?

10 HON. BILL GRAHAM: Yes, ma'am.

11 MS EDWARDH: And you believe that
12 to be the case?

13 HON. BILL GRAHAM: Yes.

14 MS EDWARDH: With an opportunity
15 to speak directly and make those representations,
16 cases like Mr. Arar will not happen to Canadian
17 citizens?

18 HON. BILL GRAHAM: Yes, that's my
19 belief. Because I think our understanding of this
20 was that a certificate had to be signed by someone
21 in high authority in the United States, and my
22 belief that that certificate would not have been
23 signed if we were able to get to Andy Card or
24 someone in the White House or the National
25 Security Council. We could say, "Look, there's a

1 real problem here." There would be a delay long
2 enough where we could do something about it.

3 One of the biggest problems we had
4 in this case was, before we could do anything, he
5 was already gone, that decision was made, and
6 Mr. Arar was gone.

7 I believe that the notice
8 requirement -- preferably -- we would have
9 preferred, obviously, a requirement that no one
10 would be transferred, but we weren't going to get
11 that from the United States authorities
12 obviously --

13 MS EDWARDH: I understand.

14 HON. BILL GRAHAM: But it is my
15 belief that, as a second best, this gives us the
16 best guarantee of protection we can get.

17 MS EDWARDH: And that leads, I
18 suppose, inexorably to this statement that, had
19 your officials read the situation differently and
20 seen the risk Mr. Arar faced, which would have
21 been "notice", then you, sir, on behalf of the
22 department, would have gone into action at the
23 highest levels to make representations to permit a
24 Canadian citizen to be deported to Canada?

25 HON. BILL GRAHAM: Yes. If I had

1 been informed, of course, yes.

2 MS EDWARDH: And certainly, from
3 our perspective, it's clear that no such
4 information was ever given to you even if it was
5 of a tentative kind, that the Americans are
6 threatening or concerned about it? You got none
7 of that in the first few days of Mr. Arar's
8 detention? We know that.

9 HON. BILL GRAHAM: No, we only
10 knew he had gone, was gone, when -- we still
11 weren't sure where he was until October 21,
12 whenever it was.

13 MS EDWARDH: Before Mr. de Bané
14 travelled to Syria, he had a briefing that, we
15 understand, was given by Mr. Pardy. Did you, sir,
16 attend that briefing?

17 HON. BILL GRAHAM: No.

18 MS EDWARDH: Were you briefed
19 about that briefing?

20 HON. BILL GRAHAM: No.

21 MS EDWARDH: So then you could not
22 add anything at all to what the contents of that
23 briefing was?

24 HON. BILL GRAHAM: No, I could
25 not.

1 MS EDWARDH: Okay. Those are my
2 questions.

3 THE COMMISSIONER: Thank you,
4 Ms Edwardh.

5 Ms McIsaac?

6 EXAMINATION

7 MS McISAAC: Minister Graham, I'd
8 like to start my examination by simply having you
9 review the various actions that Canadian officials
10 took in response to the situation that Mr. Arar
11 found himself in Syria.

12 And if I could preface my question
13 by just reminding you of those actions.

14 The first consular access, and the
15 first visit, was on October 23, 2002.

16 On December 19, you called in the
17 ambassador to Canada from Syria in order to
18 discuss the Arar situation with him.

19 On January 27, you placed a call
20 to the Syrian Foreign Minister, Mr. Shara'a.

21 On April 22, the parliamentarians,
22 Ms Catterall and Mr. Assadourian, travelled to
23 Syria and delivered a letter from you to the
24 Syrians.

25 In the month of June, there was a

1 proposal to have you send directly to the Foreign
2 Minister a letter, which was then overtaken by the
3 Prime Minister's letter to the President in July.

4 And indeed in September, I believe
5 the evidence was, that there was discussions of
6 having Mr. Chrétien actually call the President of
7 Syria to follow up on the letter, but then the
8 announcement was made that Mr. Arar was going to
9 be returned to Canada.

10 Now, what I'd like you to do,
11 looking back on the response of Canadian
12 officials, and, in fact, using the benefit of
13 hindsight, what is your assessment of the approach
14 that was taken, and I guess the question really
15 being: If you had it to do over again, are there
16 other steps you believe you could have taken?

17 --- Pause

18 HON. BILL GRAHAM: Well -- yes,
19 that's pretty difficult, to rewrite history. But
20 it goes back a little bit to the question of
21 Ms Edwardh to me about, well, if you had known the
22 situation of Mr. Arar, you know, would this have
23 been more intense?

24 I think, probably what we did here
25 was, on the best advice of people who had been

1 through this situation before, a persistent
2 continual ratcheting up of measures.

3 You start with the ambassador.
4 What can you get there? Because if you start at
5 the top and you shoot that and it's gone, then
6 you've done everything and, hello, you missed.

7 So you don't start at the Prime
8 Minister, you start at the bottom and you work
9 your way through the -- you work your way through
10 the ambassador.

11 Then we used, as you say, the
12 parliamentary route and contacts and personal
13 contacts, my contacts, meetings that you're at,
14 international meetings.

15 And then ultimately, as I say, the
16 meeting with the Foreign Minister in New York, to
17 raise it again, and ultimately, it's my belief --
18 nobody else seems to agree with me very much
19 because Mr. Arar was shortly released after
20 that -- but I thought that my conversation with
21 Amir Moussa had some effect, because I felt he was
22 a very powerful guy in the Arab world, and I think
23 if he put through a phone call it would have had
24 some effect.

25 So one was constantly looking for

1 wherever you could do that.

2 Now, if we had known the
3 circumstance, I might have picked up the phone
4 with Amir Moussa three months earlier rather than
5 taking advantage of a personal meeting I had?
6 Perhaps.

7 If we had known the conditions, I
8 think my conversations with Mr. Cellucci, the
9 American Ambassador, I would have said, "Look,
10 this is -- you bear some responsibility for this.
11 What are we going to do together about this?"

12 So, yes, we could have done things
13 differently. But in the light of what we knew at
14 the time and the nature of the practices of what
15 we were trying to achieve, I honestly believe we
16 did, you know, the best we could and with the best
17 motives and everyone was trying their best to get
18 Mr. Arar out as quickly as we could.

19 Clearly we would have preferred
20 that he had gotten out earlier, and I'm very sorry
21 that he was not, for obvious reasons.

22 MS McISAAC: All right. Thank
23 you.

24 Moving to a different topic.
25 Mr. Cavalluzzo raised with you, when you testified

1 on Monday, and if I could ask the registrar to
2 give the witness tab 262, please?

3 This is your discussion with the
4 Syrian ambassador in December --

5 HON. BILL GRAHAM: 262.

6 MS McISAAC: -- of 2002. 262,
7 please.

8 That would be your discussion with
9 the Syrian ambassador?

10 HON. BILL GRAHAM: Yes, ma'am.

11 MS McISAAC: And Mr. Cavalluzzo
12 took you to your two messages, as I understand it,
13 to the ambassador wire: (1) release Mr. Arar, we
14 would like to have him come back to Canada or --
15 and I'm reading from the third -- actually fourth
16 paragraph:

17 "...Syria suspects that he is
18 guilty, if they would charge
19 him so that he could defend
20 himself against the
21 accusations. He noted..."

22 -- meaning you --

23 "...that he should not be
24 held in limbo for a long time
25 not knowing what he is

1 accused of doing."

2 And that was the message.

3 Then if I could ask you to look at
4 tab 505?

5 HON. BILL GRAHAM: That's the one
6 book I don't have.

7 MS McISAAC: Tab 505 is a letter
8 dated May 9, 2003 from Mr. Neve, the Secretary
9 General of Amnesty International?

10 HON. BILL GRAHAM: Mm-hmm.

11 MS McISAAC: Do you have that,
12 sir?

13 HON. BILL GRAHAM: Open letter
14 regarding the case of Maher Arar.

15 MS McISAAC: Yes. Just to situate
16 you, this letter comes after the parliamentarians'
17 trip to Syria and the threat at that point that
18 Mr. Arar would be charged.

19 HON. BILL GRAHAM: Mm-hmm.

20 MS McISAAC: And if I could bring
21 you to the second page of that letter -- again,
22 it's the second paragraph:

23 "In light of these
24 reports..."

25 HON. BILL GRAHAM: Mm-hmm.

1 MS McISAAC: Mr. Neve says in his
2 open letter:
3 "In light of these reports,
4 Amnesty International calls
5 upon the Canadian government
6 to make it absolutely clear
7 to Syrian authorities, and to
8 press the U.S. government to
9 similarly make it clear to
10 Syrian authorities, that the
11 following international human
12 rights standards must govern
13 in this case:
14 - Mr. Arar must be released
15 immediately if he is not
16 charged with a recognizably
17 criminal offence.
18 - If such charges are laid
19 and relate to accusations of
20 involvement in the Muslim
21 Brotherhood, there must be
22 specific allegations of his
23 involvement in criminal
24 activity, beyond mere
25 membership. Detention on the

1 basis of mere membership in
2 the Muslim Brotherhood,
3 without further charges of a
4 recognizably criminal
5 offence, would contravene
6 international human rights
7 standards such as those
8 guaranteeing freedom of
9 expression and freedom of
10 association."

11 And next:

12 "- Any trial of recognizably
13 criminal charges, must meet
14 international standards for a
15 fair trial and should not be
16 conducted in secret by a
17 military court or tribunal.
18 Mr. Arar's right to legal
19 counsel and to visits with
20 his family must be
21 scrupulously respected. If
22 Syrian authorities are not
23 prepared to respect
24 Mr. Arar's right to a fair
25 trial, he should be released

1 or returned to stand trial in
2 Canada."

3 And could I ask you, please, to
4 comment on your discussions with the ambassador
5 and how what you were asking for compares to what
6 was being stated by Mr. Neve?

7 HON. BILL GRAHAM: Well, I think
8 Mr. Neve is basically saying in his letter, in
9 many ways, what we've tried to do in many of these
10 cases.

11 Amnesty is a very respected
12 organization that has had tremendous experience
13 here, and we're all in these situations where, if
14 somebody is held abroad, your first desire is to
15 get the person home. That was clearly what our
16 preferred route was too.

17 But since the Syrians had been
18 saying to us they intended to try him for,
19 particularly, this Muslim Brotherhood, I think
20 Mr. Neve in his letter to me is basically saying
21 what we then tried to achieve.

22 You say, okay, if you're going to
23 try him -- there's no way we can force you to hand
24 him over to us, so then the only alternative is,
25 apart from just leaving him in limbo, which as

1 I've said is not acceptable, is to have a trial
2 which would be as open and fair and as transparent
3 as possible.

4 I know counsel for the Commission
5 expressed with me the other day some cynicism
6 about the possibility of that, you know, in Syria,
7 and I think that's a recognizable fact in dealing
8 with many countries around the world where the
9 trial procedures and protections for individuals
10 are never the same.

11 So what we try and do in those
12 circumstances is, at the same time, impress upon
13 the foreign government that we want access, we
14 want the fair trial, and, if possible, we try and
15 get an observer or somebody appointed who can move
16 that along.

17 In this case we went to
18 Mr. Lockyer to see if we could have somebody
19 there. If we felt there was going to be a trial,
20 we said, well okay, let's see if we can put some
21 pressure on the government, et cetera.

22 So, again, this is not unlike our
23 previous conversation about the consular agreement
24 with the United States. It's a second best, but
25 it's better than the worst alternative, which is

1 to do nothing and to have the person in a state of
2 incarceration without any redress.

3 MS McISAAC: Just being conscious
4 of the time, sir, I'll just have one last question
5 for you, and that is: You may be aware that
6 Ms Catterall testified, I believe it was
7 yesterday, and possibly the day before as well,
8 that she had some concern about the extent to
9 which you were aware of the gravity of Mr. Arar's
10 situation in Syria, and I was wondering if you
11 would have a comment with respect to her concern?

12 HON. BILL GRAHAM: Well, I didn't
13 see Marlene's testimony, but I do recall that when
14 she came back from Syria, she said to me, "I did
15 not appreciate, you know, how serious these
16 charges were against Mr. Arar. You know, why
17 didn't you", I guess, "give me more of a heads up
18 or something?"

19 And I think what I said to her
20 was, "Look, I mean, I can't -- I don't know what
21 the Syrians were going to tell you about Mr. Arar
22 and don't necessarily accept everything they say
23 at face value. But I did my best to convey to you
24 there were problems, but we believed he should be
25 brought back. He's a Canadian, we should bring

1 him back."

2 I wasn't going to, you know, paint
3 for her some sort of a picture that there's a host
4 of allegations against him which could be totally
5 and utterly foundless. So I gave her the basic
6 facts.

7 She then, I think, found that the
8 Syrians, when she got there, had, you know, raised
9 allegations that were much more serious, in her
10 mind, than what I had conveyed to her at the time.

11 I wasn't seeking to misconvey to
12 her. I told her that we had problems. That's why
13 she was going.

14 So I can't -- I don't know exactly
15 what motivated her to take that position, but I
16 tried to tell her facts, but I didn't try to paint
17 Mr. Arar in a worse position than we believed was
18 appropriate.

19 MS McISAAC: Thank you.

20 THE COMMISSIONER: Thank you,
21 Ms McIsaac.

22 Mr. Cavalluzzo?

23 EXAMINATION

24 MR. CAVALLUZZO: Mr. Minister, I
25 have four or five questions --

1 HON. BILL GRAHAM: Yes, sir.

2 MR. CAVALLUZZO: -- and we'll have
3 you out of here in short order.

4 The first question relates to a
5 number of questions you were asked relating to
6 disputes within government between agencies,
7 between ministries, and so on and so forth, and
8 the effect hopefully at the end of the day is that
9 Canada speaks with one voice, and you were shown a
10 number of decks and memos concerning possible
11 solutions.

12 The question that I have for you
13 is, in these particular circumstances, when
14 Mr. Pardy was using his best efforts to get
15 Mr. Arar back but was running into some
16 interference from other agencies who had their own
17 mandates and so on and so forth --

18 HON. BILL GRAHAM: Right.

19 MR. CAVALLUZZO: -- the question
20 that I have for you is: What was the Privy
21 Council Office doing?

22 Isn't the Privy Council Office to
23 be the centre at which these disputes within
24 government should be resolved so that Canada
25 speaks with one voice?

1 And the question is a simply one:
2 Where was the Privy Council Office?

3 --- Pause

4 HON. BILL GRAHAM: I do not recall
5 speaking to the Clerk personally about these
6 issues, but I would have to believe that in the
7 interdepartmental, you know, discussions that
8 Mr. Pardy was having, there would have been a
9 representative from PCO there.

10 There normally would be, and it
11 would either be the Assistant Secretary for
12 Foreign Affairs or the security person who would
13 be there.

14 I mean, you'd have to check the
15 record to see. I'd be quite surprised if that
16 were not the case.

17 And ultimately, of course, the
18 Privy Council Office would have been involved when
19 it was decided to send a letter by the Prime
20 Minister, because they would be directly involved
21 in making sure that that letter was in conformity
22 with what they thought was the appropriate thing
23 for the Prime Minister to say, and you will recall
24 that letter was basically the same as the one that
25 we were arguing about that I didn't send.

1 MR. CAVALLUZZO: But ultimately,
2 so that we properly understand the machinery of
3 government, it is the role of the Privy Council
4 Office to resolve these differences so that, at
5 the end of the day, Canada speaks with one voice?

6 HON. BILL GRAHAM: It's the role
7 of the Privy Council Office to resolve them at the
8 bureaucratic level; it is the role of the Cabinet,
9 and personal relationships between the Prime
10 Minister and Ministers, to resolve them at the
11 political level.

12 And sometimes the role of
13 government, the object is, if at all possible, to
14 resolve them at the bureaucratic level before you
15 take them up to meetings between Ministers and the
16 Prime Minister, but we do that, in the normal
17 course of government, all the time.

18 When I was Foreign Affairs
19 Minister, I assumed what I was doing was
20 absolutely right and the Defence Minister didn't
21 know what he was talking about. I now assume the
22 reverse.

23 --- Laughter / Rires

24 It is the natural human nature
25 of things.

1 MR. CAVALLUZZO: Right.

2 The second question relates to
3 questions relating to torture and whether, if you
4 were notified of the torture allegations,
5 whether -- you said before that would have
6 energized you.

7 And the question that you had,
8 when you were responding to me and Ms Edwardh, is
9 whether there would be any different result and
10 it's hard to speculate.

11 HON. BILL GRAHAM: Yes.

12 MR. CAVALLUZZO: But we do have
13 empirical evidence before us as to what happened
14 when you did hear of the allegations of torture,
15 and of course I'm talking about in the summer of
16 2003, when the Syrian Human Rights Committee
17 stated in their report that Mr. Arar was tortured.

18 HON. BILL GRAHAM: Mm-hmm.

19 MR. CAVALLUZZO: And what you did,
20 and we don't have to go back to the documents, but
21 what you did, you immediately tried to call the
22 Syrian Foreign Minister, had trouble getting
23 through to him.

24 However, you sent your Assistant
25 Deputy Minister in to see the Syrian Ambassador to

1 Canada. He sat down and protested, and so on and
2 so forth.

3 And lo and behold, what happened
4 within a few days was that Mr. Pillarella was
5 called in to the Syrian office and was told that
6 Mr. Arar could have the next consular visit on
7 August 14.

8 HON. BILL GRAHAM: Mm-hmm.

9 MR. CAVALLUZZO: Do you recall
10 that, that Pillarella --

11 HON. BILL GRAHAM: Yes, yes -- no.
12 Certainly, sir, yes.

13 MR. CAVALLUZZO: So that it would
14 appear that -- and just to put total context here.
15 Mr. Arar's previous visit was April 22. So it was
16 a huge period of time between April 22 and
17 August 14.

18 HON. BILL GRAHAM: Mm-hmm.

19 MR. CAVALLUZZO: So that I'm
20 putting it to you, when you became aware of the
21 allegation of torture, that you did become
22 energized, you had your officials do certain
23 things, and I suggest to you that there were
24 results.

25 HON. BILL GRAHAM: Mm-hmm. Well,

1 we certainly got faster movement. At least we got
2 the consular visit, as you say, and I think there
3 was the discussion, too, with the head of
4 intelligence that was in the record, yes.

5 MR. CAVALLUZZO: Now, the third
6 question is related to that, and that is, that we
7 got into the press scrum on August 14, and you
8 were given certain information and you responded
9 as a result of that information; and the focus of
10 your officials at that time was to physical
11 torture, as Ms Edwardh pointed out.

12 HON. BILL GRAHAM: Right.

13 MR. CAVALLUZZO: And probably the
14 reason for that is that the Syrian Human Rights
15 Committee had alleged a certain physical torture,
16 and your officials seemed to be suggesting that
17 you should go in to see Mr. Arar and find out if
18 that was going on, and so on and so forth.

19 And the question that I have is,
20 as Ms Edwardh has pointed out, the fact that
21 someone is mentally destroyed, as a result of his
22 conditions of detention, is torture, within the
23 meaning of the Convention Against Torture.

24 HON. BILL GRAHAM: Yes.

25 MR. CAVALLUZZO: And the question

1 that I have for you is that, after Mr. Arar's
2 situation, you said that you were going to -- or
3 within the department, you were going to instigate
4 a study or a report so that your officials would
5 become more sensitized to torture in countries
6 like Syria.

7 HON. BILL GRAHAM: Yes.

8 MR. CAVALLUZZO: And once again, I
9 ask you -- you instigated that report, and I'm
10 once again -- I'm asking Government counsel, I
11 guess, at this point in time, whether we do have
12 such a report.

13 We've asked for that information
14 before, and I just want to know if we have the
15 report or not, because I think it would be very
16 useful for the inquiry, and I do put that --

17 HON. BILL GRAHAM: You'll recall
18 that I -- this was sort of November. What are our
19 lessons learned? How do we do better? I changed
20 portfolios in January, so I wouldn't be -- but it
21 was my understanding that this was a work that was
22 ongoing in the department. But I couldn't speak
23 to it.

24 MR. CAVALLUZZO: We'll check to
25 see if we could get that report, because I think

1 it would be very useful to us, if it exists.

2 HON. BILL GRAHAM: Right.

3 MR. CAVALLUZZO: The fourth
4 question I have for you relates to Mr. Pillarella,
5 and, as you know, he was the Ambassador in Syria
6 at the time.

7 You were asked certain questions
8 by Ms Edwardh as to whether it was appropriate for
9 Mr. Pillarella to get an investigation report that
10 was done by the Syrians respecting Mr. Arar, and
11 your response was a common-sense one; that is, if
12 we're going to try to do everything we can to help
13 Mr. Arar, the more information we have, the
14 better, and you said that you thought that
15 Mr. Pillarella would have been derelict if he
16 didn't take that information back.

17 HON. BILL GRAHAM: Right.

18 MR. CAVALLUZZO: And perhaps
19 that's correct. But I guess the important
20 question isn't whether Mr. Pillarella got the
21 information from Syria, but isn't the important
22 question as to what Mr. Pillarella or DFAIT did
23 with the information after they came back -- or
24 after the information came back to Canada?

25 For example, were you aware that

1 that information was shared with CSIS and the
2 RCMP?

3 HON. BILL GRAHAM: Specifically,
4 no, but -- I mean, I'd have to sit down and have a
5 discussion about the appropriateness of whether
6 that is to be shared or not. But the fact that it
7 was shared? No, I wouldn't have known that.

8 MR. CAVALLUZZO: And that's
9 certainly a very important question --

10 HON. BILL GRAHAM: But I would
11 make the assumption that any information that came
12 into my department, that related to national
13 security issues, we have Mr. Livermore's office
14 there that acts as a coordinator, and whatever is
15 the appropriate action to be taken in respect of
16 that information will be taken by the department.

17 MR. CAVALLUZZO: But as a lawyer,
18 wouldn't you have a concern -- wouldn't you have a
19 concern if a Canadian detained overseas is under
20 investigation, for example, by the RCMP, and I sit
21 down with my consular official and I'm totally
22 candid, tell my consul official everything that I
23 think is relevant to why I'm in detention, and
24 that information is brought back to Canada and
25 shared with the RCMP, who is investigating me? As

1 a lawyer, instinctively, don't you find that
2 offensive?

3 HON. BILL GRAHAM: We'd have to
4 look and see whether or not it was inconsistent
5 with Canadian law and practice.

6 I mean, there's a lot of things,
7 as I said, that when we discussed Bill C-36 and
8 changed the Criminal Code to deal with how we
9 respond to terrorism, we anguished a great deal
10 about how we would get the right balance between
11 protecting civil liberties but ensuring that a
12 subway bombing like Madrid does not occur in
13 Canada and that Canadians are properly protected,
14 and that balance is presumably what this
15 Commission is all about.

16 And so I don't think that my
17 opinion, one way or another -- because you'll be
18 familiar with all these circumstances. You'll
19 have to make -- the Commissioner will have to make
20 that judgment, if it was appropriate in these
21 circumstances.

22 But I do say to you that, as
23 someone who is in Canadian public life, I believe
24 that the Canadian public strongly believe that
25 they must be protected by their government, which

1 is one of the fundamental obligations of
2 government, as well as to make sure that our civil
3 liberties are protected, and then they expect us
4 to be able to find the right balance to do that.

5 MR. CAVALLUZZO: Right. And
6 certainly there are a number of factors that you
7 take into account. But that very information --
8 or that very information that we're talking about
9 in this case, raises in spades that very important
10 question --

11 HON. BILL GRAHAM: Absolutely.

12 MR. CAVALLUZZO: -- about the
13 appropriate balance --

14 HON. BILL GRAHAM: Yes.

15 MR. CAVALLUZZO: -- between
16 national security and civil liberties --

17 HON. BILL GRAHAM: This case -- I
18 guess that's why we're having this inquiry.

19 MR. CAVALLUZZO: Final question,
20 Minister. You were asked a number of questions
21 relating to whether Mr. Pardy gave you
22 information.

23 And the first question I would
24 have is -- you've known Mr. Pardy for a while.
25 You were his Minister. And I'm wanting to know

1 whether you could express your view as to
2 Mr. Pardy's performance in his position as the
3 head of consular services while he was under your
4 supervision.

5 HON. BILL GRAHAM: Well,
6 Mr. Pardy -- I mean, how well I knew Mr. Pardy --
7 I met with him on several occasions. So what I'm
8 going to speak to, to some extent, is his
9 reputation in the department, which is only
10 hearsay from my perspective.

11 But I have to say that, as his
12 Minister, my understanding of Mr. Pardy was that
13 he was a highly motivated, extremely capable, and
14 very entrepreneurial person who did his best to
15 achieve results in some of the trickiest
16 situations in which Canadians can sometimes find
17 themselves and where there is no easy solution and
18 no -- often where there's no real law or not many
19 guide books.

20 Mr. Pardy was extraordinarily
21 effective and very respected in the role in which
22 he played, and I think -- he was certainly
23 appreciated by me; and my experience was, talking
24 to people that were in the position of Ms Mazigh
25 and others that had dealt with him, that they

1 always felt that he was going to bat for them and
2 doing his best possible job.

3 MR. CAVALLUZZO: My final question
4 relates to communications between you and
5 Mr. Pardy. You were asked a number of questions
6 as to, well, did Mr. Pardy tell you this? Did
7 Mr. Pardy tell you that?

8 How did you communicate with
9 Mr. Pardy? Was it just through these Q&A's that
10 we looked at, was it through briefing notes, or
11 did people in your office communicate with
12 Mr. Pardy?

13 HON. BILL GRAHAM: No, sir. I
14 mean, you can appreciate, with all -- everything
15 else I'm doing, I'm doing my job, and I had 12
16 political staff on my floor, including links with
17 the department. Mr. Fry in my office, who will be
18 giving evidence --

19 MR. CAVALLUZZO: Right.

20 HON. BILL GRAHAM: -- was the
21 person on top of this file, and he might have
22 talked to Mr. Pardy several times in a week
23 whereas I would only talk to him once a month.

24 But he would have been in regular
25 contact with him, along with the other

1 parliamentarians, with Ms Mazigh, with other
2 actors in this case on a regular basis.

3 MR. CAVALLUZZO: Okay.

4 Thank you, Minister. Those are my
5 questions.

6 HON. BILL GRAHAM: Well, thank you
7 very much, sir.

8 THE COMMISSIONER: Thank you,
9 Mr. Cavalluzzo.

10 Thank you -- let me thank you,
11 Minister, on my behalf and the people working in
12 the Commission, for the time and effort you have
13 put in to giving your evidence, coming here --
14 you've had to come back twice, I appreciate that,
15 and the straightforward and helpful way,
16 thoughtful way, that you have given your evidence.
17 I'm very appreciative of that.

18 HON. BILL GRAHAM: Thank you,
19 Mr. Commissioner. I have to say that, as I said,
20 obviously you have a very heavy responsibility,
21 because getting the balance right, in a free and
22 democratic society, with the threats that are
23 there today, is probably one of the biggest
24 challenges we have, and I want to wish you and
25 counsel the best, and I'd like to say to Mr. Arar,

1 Mrs. Arar, that no doubt things might have been
2 better handled if we had known everything in
3 retrospect, but I honestly believe that the people
4 in our public service are motivated by the highest
5 desire of conduct to help people and do the right
6 thing in these very difficult circumstances, and I
7 was very proud to be their Foreign Minister.
8 Thank you, sir.

9 THE COMMISSIONER: Thank you very
10 much.

11 We will then rise, and we're going
12 to resume at -- two o'clock? Two o'clock.

13 THE REGISTRAR: Please stand.

14 --- Upon recessing at 12:14 p.m. /

15 Suspension à 12 h 14

16 --- Upon resuming at 2:03 p.m. /

17 Reprise à 14 h 03

18 THE REGISTRAR: Please be seated.
19 Veuillez vous asseoir.

20 MS McISAAC: Mr. Commissioner,
21 Mr. Pardy has asked me to make a request of you
22 with respect to his testimony.

23 I have canvassed my friend and,
24 given my own anticipated cross-examination -- or
25 re-examination, which of course is always

1 difficult -- I have my doubts that we will be able
2 to finish this afternoon.

3 Mr. Pardy is understandably
4 concerned, as am I, that his evidence going in
5 piecemeal with witnesses in between, raising
6 issues which, because of his position, he has to
7 respond to, is simply not an expeditious way of
8 doing it.

9 We appreciate that the Commission
10 has a schedule, and we certainly concur with the
11 Commission's desire to stick to that schedule, but
12 if the result is that Mr. Pardy's evidence, which
13 is obviously extraordinarily important evidence,
14 does not go in in a sort of fixed, coherent
15 manner, that is not fair to Mr. Pardy. It is not
16 helpful to the Commission.

17 And my strong suspicion is that,
18 once we hear some of the witnesses who are
19 scheduled for the week after next, it will be
20 necessary to hear additional evidence from
21 Mr. Pardy in any event.

22 Accordingly, it is our request
23 that if we can find another date where we could
24 finish Mr. Pardy's testimony -- I understand
25 Mr. Cavalluzzo has some questions, Ms Edwardh

1 could complete her cross-examination in one
2 session, and then I could complete my
3 re-examination -- it would be far better for all
4 concerned.

5 THE COMMISSIONER: Mr. Cavalluzzo,
6 how long will your examination be?

7 MR. CAVALLUZZO: My examination
8 will be no longer than 15 minutes.

9 THE COMMISSIONER: Ms Edwardh, how
10 long do you think you will be?

11 MS EDWARDH: I would expect,
12 Mr. Commissioner, to be around 90 minutes, maybe
13 ten or fifteen minutes more, depending on how
14 loquacious my friend is, or I am.

15 THE COMMISSIONER: Do you have any
16 comment on the suggestion made by Ms McIsaac?

17 MS EDWARDH: I think Ms McIsaac's
18 observation that it isn't really fair for
19 Mr. Pardy to have his evidence dribble in, where
20 in fact he finds himself doing a running
21 commentary on everyone else's evidence, I think
22 that is a very fair observation.

23 I had hoped by making really solid
24 efforts to bring my cross-examination to a close
25 in around 90 minutes that that would have left my

1 friend sufficient time to do re-examination. And
2 I understand there may be matters that are quite
3 narrowly defined that require Mr. Pardy's
4 re-attendance, and that of course is up to
5 Commission counsel and Ms McIsaac. I may indeed
6 be of that view as well.

7 But it would be from my
8 perspective ideal if we could get done basically
9 today, and then deal with recalling him if it was
10 necessary.

11 THE COMMISSIONER: Thank you.

12 Ms McIsaac, how long do you expect
13 to be?

14 MS McISAAC: Of course it's always
15 difficult, sir, but I had anticipated it might
16 actually be as long as two and a half to three
17 hours -- hopefully less. That is certainly an
18 outside estimate.

19 THE COMMISSIONER: I think there
20 is an advantage -- we will go ahead this
21 afternoon.

22 Mr. Pardy, let me say to you that
23 I think it is unfortunate if we have to do it in a
24 piecemeal basis and you do have to come back a
25 third time.

1 First of all, from my standpoint,
2 I can assure you that I am able to understand the
3 evidence, and even though it's done in a piecemeal
4 basis I am able to follow it and put it in
5 perspective.

6 I think it is important that we
7 proceed, and clearly we are going to be able to
8 finish Ms Edwardh's cross-examination today.
9 Government counsel may or may not finish. I say
10 this with respect, Ms McIsaac. Typically, because
11 you are efficient and get to the point, you take
12 much less time than you do estimate.

13 If we can finish today, I think
14 that is good. And if we have to sit late, I am
15 prepared to do that.

16 It may be that you will have to
17 come back because there is further evidence.
18 Other witnesses are in the same position. That is
19 the nature of a public inquiry.

20 But I think that we should go
21 ahead and do the best we can and make the best use
22 of our time.

23 So we will proceed.

24 Mr. Cavalluzzo?

25 PREVIOUSLY SWORN: HENRY GARFIELD PARDY

1 EXAMINATION

2 MR. CAVALLUZZO: Commissioner,
3 there are two areas that I would like to spend
4 with Mr. Pardy. One is the area of documents that
5 have become less redacted in terms of the process,
6 after Mr. Pardy's evidence last week, and also an
7 area concerning Senator de Bané, who testified
8 yesterday.

9 I would initially like to refer to
10 the less-redacted document.

11 Maybe we will look at the memo of
12 June 5th. You will recall there are two memos,
13 June 3rd and June 5th, which are virtually
14 identical.

15 But we can look at the June 5th
16 memo, which is Exhibit P-103.

17 Mr. Pardy, I took you through
18 other aspects of this memorandum, you may recall,
19 in your direct examination last week. However, I
20 would like to refer you this afternoon to those
21 portions which have been removed in terms of
22 redactions, starting at paragraph numbered 9.

23 I am going to be dealing with
24 paragraphs 9 through 13.

25 Starting with paragraph 9, it

1 deals with the police interest in Mr. Arar. At
2 that point in time, once again we are at June 5th
3 of 2003.

4 In your memorandum, you set out
5 what the interest of the police is in Mr. Arar.
6 For example, you say:

7 "... CSIS initially indicated
8 that it had no interest in
9 Mr. Arar ..."

10 And Canadian police officials
11 have:

12 "... stated that their
13 interest in Mr. Arar was
14 based on his contacts with
15 persons in Ottawa who were of
16 interest to them."

17 So we see that the interest is
18 related to contacts or associations with other
19 people.

20 The paragraph goes on to identify
21 who those contacts are, Mr. Almalki and Mr. El
22 Maati, who are both, it says, former residents of
23 Ottawa. And it goes on to describe their
24 detention situation in Egypt and Syria.

25 And the question I would have at

1 this point in time: This description of the
2 police interest and the CSIS interest in Mr. Arar
3 as of June 5th, 2003, was given to you at the
4 meeting with CSIS and the RCMP on or about May
5 12th of 2003?

6 MR. PARDY: No. It goes back to
7 the discussions we had with them on October 16,
8 2002, the memorandum that Superintendent Wayne
9 Pilgrim sent to us on October 18th, and certainly
10 there were other discussions then over that
11 intervening period, coming up to, as you say, the
12 meeting at the PCO on May 12th.

13 Certainly it is an encapsulation
14 of that information.

15 MR. CAVALLUZZO: Okay. Regardless
16 of the evolution, the fact is that paragraph 9
17 would set out the status of the police interest in
18 Mr. Arar as of June 5th, 2003?

19 MR. PARDY: I think so, yes.

20 MR. CAVALLUZZO: Now, paragraph
21 10, the unredacted portion now, deals with
22 information from Canadians to Americans. I won't
23 read the whole thing but point out that in the
24 second sentence it says:

25 "In your meetings ..."

1 And of course this a memorandum or
2 letter to the Minister Graham:

3 "In your meetings with the
4 American Ambassador and
5 Secretary of State Powell
6 late last year, both stated
7 that American action in
8 deporting Mr. Arar was based
9 on information from Canadian
10 authorities. The American
11 Ambassador reiterated this in
12 response to a question from a
13 member of parliament in a
14 private meeting a few weeks
15 ago."

16 Can you identify who that Member
17 of Parliament is?

18 MR. PARDY: No. I think perhaps a
19 bit of shorthand was used there. This was the
20 dinner meeting at the Ottawa Harvard Club, and I
21 was under the impression when I wrote this that
22 the information had come through Ms Catterall, but
23 I think subsequent testimony has said that
24 Ms Catterall received it from an official in the
25 PMO.

1 MR. CAVALLUZZO: Right. And I
2 understand that the information that you received
3 was that on April 29th of 2003, Mr. Cellucci was
4 speaking to the Harvard Club of Ottawa and in that
5 speech indicated that there were Canadians who did
6 not want Mr. Arar back.

7 Is that fair, words to that
8 effect?

9 MR. PARDY: That summarizes the
10 consistent position that the American government,
11 or officials in the American government, took with
12 us, yes.

13 MR. CAVALLUZZO: Then the
14 memorandum goes on and it states it is clear the
15 RCMP was consulted by the Americans prior to their
16 decision to deport Mr. Arar, but again we have no
17 complete understanding of what was discussed.

18 Now, just two questions there. In
19 terms of this information that the RCMP was
20 consulted by Americans, was that, once again,
21 coming from that October 18th, 2002, memorandum
22 from Wayne Pilgrim to you?

23 MR. PARDY: Yes.

24 MR. CAVALLUZZO: And then it goes
25 on to state:

1 "We have no complete
2 understanding of what was
3 discussed."

4 Why is it as of June 5th, 2003,
5 that you do not have a complete understanding?

6 MR. PARDY: Well, I think it's the
7 issue which has been amply described over the last
8 few days: that the RCMP's method of operation was
9 that they did not share information that related
10 to criminal investigations with people outside of
11 the force. That, I think, still continues to be
12 the case and some people have argued that that is
13 one of the essential principles of democratic
14 government.

15 And that was clearly the case. We
16 did not have the details, and we were sort of
17 looking back into that area, I think, with some
18 measure of not knowing exactly just what was going
19 on in that particular sector.

20 MR. CAVALLUZZO: So this is
21 virtually almost, well, October, three months --
22 nine months after the event, you still don't have
23 a better understanding of what was said and
24 discussed between the Americans and the RCMP?

25 MR. PARDY: No. I think on that

1 very specific issue, the most precise information
2 we ever had was that contained in Superintendent
3 Pilgrim's message or memo of October 18th.

4 MR. CAVALLUZZO: We move on to the
5 next paragraph, which is paragraph 11 in the June
6 5th memo, dealing with the CSIS visit in November
7 of 2002.

8 It states:

9 "CSIS officials visited Syria
10 earlier this year and
11 discussed Mr. Arar with their
12 counterparts."

13 Now, did you know that their
14 counterparts were the Syrian Military Intelligence
15 at this point in time?

16 MR. PARDY: Yes.

17 MR. CAVALLUZZO: Okay. It goes
18 on:

19 "They did not meet Mr. Arar."

20 And then it says:

21 "Subsequent to these
22 discussions, Syrian officials
23 informed us that they were
24 informed by CSIS officials
25 that Canada did not want to

1 have Mr. Arar returned. The
2 CSIS officials denied that
3 they had said this to the
4 Syrian..."

5 And then the next part was
6 unredacted before.

7 Dealing with this, once again, it
8 seems to be a perennial problem.

9 Just to give you some context from
10 your earlier evidence and the evidence of Minister
11 Graham, before January 16th of 2003, DFAIT
12 officials, including the Minister, were advised
13 that the Syrians were getting a message from
14 somebody that Canada or certain agencies or people
15 in Canada did not want Mr. Arar back.

16 Do you recall that evidence?

17 MR. PARDY: Yes, and I am just
18 trying to think. The date you use is January
19 16th, 2003. Was that the first instance in which
20 we were given this information by the Syrians?

21 MR. CAVALLUZZO: January 16th. I
22 used that date because that was the call from
23 Mr. Graham to Mr. Shara'a, the Minister of Foreign
24 Affairs.

25 MR. PARDY: I would need to check

1 the written record. We received this information
2 from the Syrians on three occasions, it's my
3 recollection: once from the Deputy Minister of
4 Foreign Affairs; once, I think, from the General;
5 and once from the Syrian Ambassador here in
6 Ottawa.

7 It was a consistent message, but
8 it was spread over six to eight weeks. But I
9 can't recall when we heard it for the initial
10 time.

11 Can somebody remind me of that,
12 when it was first said?

13 MS McISAAC: The January C4 from
14 Ambassador Pillarella, which we will find, where
15 the Ambassador says that he received -- that is
16 the one in which he said they told them Mr. Arar
17 didn't want to come home, and that the CSIS -- the
18 security services didn't want him.

19 We will find the reference for
20 that in a minute. It's January.

21 MR. PARDY: Was that the
22 conversation, though, with the Deputy Foreign
23 Minister or the general? That is what I can't
24 recall. In any event --

25 MR. CAVALLUZZO: In any event, you

1 are getting a number of messages --

2 MR. PARDY: A number of messages.

3 MR. CAVALLUZZO: -- from the
4 Syrians saying what's going on with you guys.

5 MR. PARDY: Yes.

6 MR. CAVALLUZZO: And then on
7 January 16th or thereabouts we have the Minister
8 of Foreign Affairs of this country phoning the
9 Syrians, in particular the Syrian Foreign
10 Minister, and says "Whatever you have heard, the
11 message is clear: Canada wants Mr. Arar back"?

12 MR. PARDY: Yes. And as you know,
13 from the very first message we sent to the embassy
14 in Damascus from the Department of Foreign
15 Affairs, that message was that we wanted Mr. Arar
16 back, and I don't think that there is one message
17 in the thousands of pages that you have there of
18 our work on this case that would indicate any
19 hesitation on that issue whatsoever on our part.

20 MR. CAVALLUZZO: And I certainly
21 don't dispute that.

22 MR. PARDY: Yes.

23 MR. CAVALLUZZO: But there appears
24 to be hesitation from others, and let me bring you
25 through time.

1 MR. PARDY: Mm-hmm.

2 MR. CAVALLUZZO: The next event we
3 have after January 16 is we come to March 21, and
4 at a meeting between a couple of Members of
5 Parliament and Ambassador Arnous, he once again
6 indicates that there is, if we can put it nicely,
7 confusion in the Syrians' minds as to what Canada
8 wants in respect of Mr. Arar's release.

9 Of course, I'm talking about that
10 memorandum -- or note that was taken by Myra
11 Pastyr-Lupul. It says that Catterall and
12 Assadourian had met Arnous, and this is what was
13 said.

14 MR. PARDY: Yes.

15 MR. CAVALLUZZO: Okay.

16 So here we are, three months
17 later, a couple of months later, still confusion
18 in the Syrians' mind.

19 We then have the April 22 visit of
20 the two parliamentarians to Damascus and Mr. Arar,
21 and lo and behold, here we are, June 5, 2003,
22 which is a period of at least six months, half a
23 year, where we are still of the view that Syrians
24 still may be confused as to what the intentions of
25 Canada are.

1 So that the question I have is a
2 very simple one, and that is: Could no one, no
3 one, speak to CSIS and say, "Could you send a
4 three-line letter to the Syrians and say, "Forget
5 about this confusion, ambiguity, whatever you want
6 to call it, the Government of Canada, including
7 CSIS, wants Mr. Arar back in Canada"? Did anyone
8 ever do that?

9 MR. PARDY: We had some meetings,
10 and as you see in the third sentence in
11 paragraph 11 I report that CSIS officials denied
12 that they had said this to the Syrians.

13 The conversation that Ms Catterall
14 and Mr. Assadourian had with Ambassador Arnous on
15 March 21 or 20, the day before, I think it was,
16 brought out the element that maybe the Syrians
17 were confused as to the intent of a comment that
18 the CSIS officials had made, and certainly what we
19 were trying to do throughout this whole period, as
20 you will recall, is to get some degree of
21 coherence within the Canadian position. We never
22 achieved that until the Prime Minister intervened,
23 and I think the first intervention wasn't just the
24 letter to the President of Syria but I think the
25 first intervention was a letter to Dr. Mazigh,

1 where the Prime Minister set out what his position
2 was on the issues, and that was the first time.

3 But security and police
4 organizations, I think they are all over 21 and
5 they can answer for themselves as to why they did
6 not feel -- I can sort of interpret to a certain
7 extent --

8 MR. CAVALLUZZO: I don't want you
9 to interpret. They will be here and they will
10 answer these questions.

11 MR. PARDY: Exactly, and I
12 think -- but certainly from the perspective of our
13 actions, we tried to convince the Syrians that
14 there was no ambiguity on the part of the position
15 of the Government of Canada.

16 MR. CAVALLUZZO: And doesn't
17 that -- certainly as a Canadian, I'm very
18 concerned that we have a Canadian lingering in
19 jail in a foreign country such as Syria, with, as
20 I said before, not a stellar human rights record,
21 while it would seem to me a simple letter of three
22 lines, or no more, could have clarified this
23 confusion in the Syrians' minds and could have
24 activated them in some way so that Mr. Arar could
25 have returned to Canada earlier than he did --

1 MR. PARDY: That's one inter --
2 I'm sorry, I'm interrupting you.

3 MR. CAVALLUZZO: No.

4 MR. PARDY: That is one
5 interpretation.

6 Another interpretation, I mean,
7 over a long experience of dealing with
8 governments. Governments interpret information to
9 their maximum advantage.

10 My view would have been, or one
11 element in certainly my views on all of this, is
12 that the Syrians themselves found it advantageous
13 to establish some ambiguity as far as the position
14 of the Government of Canada was concerned.

15 I don't think they were ready to
16 release Mr. Arar much before they actually did so,
17 for a variety of reasons that we went over in my
18 direct testimony.

19 And so in the sense of whether or
20 not a, as you put it, a three-line letter from
21 CSIS to the Syrian Military Intelligence would
22 have made much difference, I'm -- I'm not sure.

23 The Syrians were quite
24 comfortable, I think, in terms of where they found
25 themselves and whether or not they overinterpreted

1 or misinterpreted a comment by CSIS officials,
2 well, maybe next week or the week after you might
3 have a chance to examine some of this.

4 MR. CAVALLUZZO: Well, the problem
5 with that, Mr. Pardy, is you say that the Syrians
6 took the advantage --

7 MR. PARDY: Yes.

8 MR. CAVALLUZZO: -- of the failure
9 to clarify the confusion. It would seem to me,
10 why not eliminate the advantage, so that they can
11 no longer, if they were taking advantage of the
12 ambiguity, eliminate it? It's one more factor
13 that --

14 MR. PARDY: This was a more robust
15 case, if I can use that term, in terms of the
16 events that were going on around it.

17 In other cases, the Syrians just
18 didn't -- as far as they were concerned, they
19 didn't even need an advantage. They just denied
20 all possible access to the Canadians that were in
21 detention and basically just acted accordingly.

22 In this case, there was this
23 additional level of sophistication, if I can use
24 that term.

25 MR. CAVALLUZZO: Right. Well

1 then, let us move on.

2 Paragraph 12 talks about what kind
3 of leverage we have with the Syrians at that point
4 in time, and it talks about the current tensions
5 between the Syrians and the United States
6 concerning their role in Iraq.

7 I guess we had discussed this
8 earlier, to a certain extent, as to the
9 considerations that would be part of the equations
10 that the Syrians would be assessing in terms of
11 releasing Mr. Arar or not.

12 And there's another -- I guess
13 another political factor that we should bring to
14 bear, and that of course is, at around this point
15 in time there was legislation introduced in the
16 American Congress, in particular on April 12,
17 2003, wherein the Americans were discussing taking
18 economic sanctions against Syria.

19 And in fact over time the
20 President did decide that he was going to pursue
21 economic sanctions against Syria.

22 And presumably that would be
23 another political consideration that we have to
24 put into the equation in terms of the Syrians'
25 response at this point in time.

1 MR. PARDY: Very much so.

2 I think I've given some comment on
3 this issue, of those larger geopolitical issues
4 that were playing, and I think it's instrumental
5 the title given to the American legislation that
6 was being discussed throughout most of 2003 in
7 Washington and was, I think, signed into law by
8 President Bush in January of 2004, the title of
9 that legislation was the Syrian Accountability Act
10 and Lebanese Sovereignty.

11 MR. CAVALLUZZO: Restoration Act.

12 MR. PARDY: Sovereignty
13 Restoration. Which gives you, really, in a very
14 concise phrase, American policy with respect to
15 both Lebanon and Syria.

16 And Syria being the object of both
17 issues, if you like, as detailed in that
18 legislation, were obviously concerned, and I think
19 their efforts in the -- certainly in the months of
20 2003, and I think there is some, certainly,
21 evidence out there in the media that the Syrians
22 were making every effort to establish sort of an
23 operational relationship with the United States,
24 and unfortunately, Mr. Arar was part of the -- I
25 don't want to say "bargaining" here, it's not

1 quite the right word -- but certainly was an
2 element in the discussions.

3 And that, I think perhaps more
4 than anything else, was a determining factor in
5 Syrian decision-making.

6 MR. CAVALLUZZO: Now, the final
7 paragraph that I'd like to refer to in Exhibit
8 P-103 is paragraph 13 -- this once again is the
9 June 5 memo -- and it relates to the cooperation
10 of CSIS and the RCMP, and it states:

11 "In recent days, we have
12 discussed the case with both
13 CSIS and the RCMP. They have
14 maintained their positions
15 that Mr. Arar, while not
16 under investigation in
17 Canada, is a person of
18 interest to them because of
19 the evidence of his
20 connections with others who
21 are. In these circumstances,
22 they will not provide any
23 direct support in having
24 Mr. Arar returned to Canada."

25 I just want to ensure that we're

1 aware that as of June 5, 2003, that this was the
2 position of CSIS and the RCMP. That they would
3 not provide direct support to having Mr. Arar
4 returned to Canada.

5 MR. PARDY: Yes, I think this
6 accurately reflects my understanding of their
7 position, and I think subsequent to this memo, as
8 we tried to firm up the language in the letter
9 that we wanted Mr. Graham to send to his Syrian
10 counterpart, I think the evidence on record would
11 show that there was probably a hardening of their
12 position in the aftermath of this memo.

13 MR. CAVALLUZZO: And is there
14 any -- do you have any idea as to why their
15 positions would be hardening subsequent to this
16 memo?

17 MR. PARDY: No. Whether or not
18 through their system, their investigations, they
19 were getting additional information; but certainly
20 I found, when they provided language -- when we
21 suggested that maybe we can upgrade the language
22 that Mr. Graham would include in his letter, they
23 came back with language which said to the effect
24 that there is now a national security
25 investigation of Mr. Arar, and that I regarded as

1 a considerable increase in their position.
2 Before, as I said here, that Mr. Arar was a person
3 of interest, and then we've jumped to the language
4 that they had suggested, that he is subject to a
5 national security investigation.

6 Now, I do not know what a national
7 security investigation represents. They
8 capitalized the words in their thing to us. And
9 whether there was any such thing. But the
10 language itself denotes that a hardening of -- not
11 a hardening, an increase in their views as far as
12 Mr. Arar was concerned.

13 MR. CAVALLUZZO: Now, you said
14 something earlier in your testimony which may be
15 related to this, and I'd like some assistance from
16 you on this, and that is, you were discussing with
17 either me or Ms Edwardh about the strategy of
18 having a political campaign to support -- or a
19 highly public campaign to support the efforts of
20 getting a Canadian detained abroad back to Canada.

21 One of the things you said
22 interested me, and that is that that kind of
23 highly visible or public strategy may have a
24 negative impact on certain agencies in Canada.

25 Do you recall that testimony?

1 MR. PARDY: Yes, I do.

2 MR. CAVALLUZZO: Do you think that
3 that was operating here as far as RCMP and CSIS
4 was concerned as Mr. Arar's public campaign in
5 Canada became more visible, their position
6 hardened somewhat?

7 MR. PARDY: Yes.

8 My testimony, I think, was that my
9 main concern was that the activities in Canada, in
10 support of Mr. Arar, was going to be detrimental
11 to our efforts with the Syrians.

12 MR. CAVALLUZZO: Right.

13 MR. PARDY: And in terms of my own
14 experience over the years, that's been the main
15 dynamic that I've been concerned with, with
16 respect to campaigns such as this in Canada.

17 But in this case, and it's very
18 rare, I think, as you probably know, for us to
19 have a case like this, where the role of CSIS and
20 the RCMP are so important.

21 But over that time, and I think in
22 answer to a question from Ms Edwardh, I said that
23 I think one of the issues here, because Ms Edwardh
24 was trying to make the point to me that this
25 publicity was quite instrumental in convincing the

1 Canadian government to take action, and I said,
2 no, it was my view that perhaps it had a
3 detrimental effect on the position of the RCMP and
4 CSIS and they're willing to be cooperative on this
5 issue.

6 And that's a thought that had not
7 appeared before in any of my previous experiences,
8 by and large. We've never had a case like this
9 quite before.

10 It's an idea that certainly I had
11 given some thought to and I think I've said to --
12 and I've concluded that, yes, that certainly would
13 be an element that had led to this hardening of
14 the position here.

15 MR. CAVALLUZZO: Well, I find that
16 absolutely amazing, that a Canadian agency would
17 harden its position as a result of people
18 exercising their guaranteed freedom of expression
19 under the Canadian Charter of Rights and Freedoms.

20 Are you sure that you think that's
21 what caused or was part of the hardening of their
22 position?

23 MR. PARDY: No, I said it was one
24 of the elements that went into it.

25 I don't know whether or not there

1 was additional evidence that had been collected
2 that would give support to some of their original
3 suspicions.

4 MR. CAVALLUZZO: Right.

5 MR. PARDY: But when asked about
6 the various elements that could have gone into
7 this --

8 MR. CAVALLUZZO: Right.

9 MR. PARDY: -- I identified this
10 as one of them, yes.

11 MR. CAVALLUZZO: Okay.

12 Interesting.

13 There is another document, P-104,
14 which I wonder if the witness may be of assistance
15 to.

16 This is another document that has
17 been added since your testimony. And you may be
18 able to help us; you may not recognize it.

19 We originally had -- as you can
20 see it's an e-mail dated November 19, 2002, from
21 Jonathan Solomon to Gar and Myra, your colleague,
22 and it says:

23 "We should make sure that the
24 press line that comes out is
25 talks about DFAIT as a whole

1 and not only of the Consular
2 section. I would also
3 suggest that 'have no
4 information linking her
5 husband with terrorist
6 organization' is not strictly
7 accurate. Better to say 'We
8 have no reason to believe
9 that he is a member of a
10 terrorist organization'."

11 And the other document has
12 printing on it. This is three pages in. And this
13 is the addition is this new document with the
14 either printing or handwriting on it, and I'm
15 wondering, is that your handwriting?

16 MR. PARDY: No, I write better
17 than that.

18 --- Laughter / Rires

19 MR. CAVALLUZZO: That answers that
20 question.

21 MR. PARDY: But can you tell me
22 what it says? I cannot make out the first
23 sentence there at all.

24 MR. CAVALLUZZO: I believe it
25 says:

1 "We are not handling any of
2 the law --"

3 THE COMMISSIONER: "Enforcement
4 activities."

5 MR. CAVALLUZZO:

6 "-- enforcement activities.
7 - We cannot make a statement
8 about the facts of the case."

9 MR. PARDY: I think that -- I
10 stand to be corrected, but I think that would have
11 been a comment that Ms Pastyr-Lupul would have
12 made, I think, in reaction to the suggestion being
13 made by Mr. Solomon here, that this was not our
14 area of expertise and therefore we would not
15 provide advice that went beyond what we were doing
16 ourselves.

17 MR. CAVALLUZZO: Okay. Then
18 that's helpful. And we are going to have her
19 testify so we can ask her about that.

20 Now, the final area, Mr. Pardy,
21 relates to evidence that was given by Senator de
22 Bané yesterday, and I understand that you were
23 either in the hearing room or watching it on TV so
24 that you observed the testimony. Is that correct?

25 MR. PARDY: Yes, I did.

1 MR. CAVALLUZZO: And in
2 particular, what I'm going to ask you about are
3 statements such as where Mr. de Bané was saying
4 that at a briefing that he was given prior to his
5 visit to Syria and Saudi Arabia in July of 2003,
6 that at the briefing he was told that the
7 Americans had said something like this to the
8 RCMP, and that is, that, "We're prepared to give
9 Arar back to Canada on the condition that you
10 arrest and put him in prison and charge him"

11 And Senator de Bané went on to say
12 that the Canadian response was, "We have a Charter
13 of Rights, and we do not have cause to charge him
14 and put him in jail."

15 I'm wondering if you recall that
16 testimony, because if you do, I'd like to ask you
17 several questions about it?

18 MR. PARDY: Yes, I do.

19 MR. CAVALLUZZO: Okay. Thank you.

20 The first is, do you recall
21 briefing Senator de Bané in respect of his trip to
22 Syria on behalf of Mr. Arar and Saudi Arabia on
23 behalf of Sampson?

24 MR. PARDY: I recall in general
25 terms that, yes, I put together a group of people

1 that would meet with Senator de Bané. Is it July
2 5 or 11, 2003? Is the --

3 MR. CAVALLUZZO: Well, we have a
4 tab number, 473.

5 MR. PARDY: But I think it was
6 July 11, was it?

7 MS McISAAC: Mr. Commissioner, I
8 can advise that as a result of the comment by
9 Mr. Cavalluzzo that that particular document was
10 fully redacted.

11 I have reviewed the document, and
12 the reason that it is fully redacted is that it
13 does not, in fact, mention Mr. Arar's situation at
14 all. It relates solely to Middle East issues in
15 general to give background information to the
16 Senator.

17 MR. PARDY: Was the date July 11
18 or 5, that the briefing took place?

19 MR. CAVALLUZZO: I can't help you
20 on that. What we have in the public documents
21 just says: Senator de Bané visited Damascus
22 July 19, 2003, topics and intervention points.
23 That's obviously the date of his trip.

24 MR. PARDY: Let's just say the
25 first half of July certainly. Because he was in

1 Saudi Arabia on the 17th, I think it was, so the
2 week before would have been perhaps the
3 appropriate time we would have met with him, yes.

4 MR. CAVALLUZZO: Do you recall
5 approximately how many people would have attended
6 this meeting?

7 MR. PARDY: Well, any meeting at
8 Foreign Affairs usually has a dozen people there,
9 yes.

10 MR. CAVALLUZZO: Do you recall
11 some people who attended besides yourself and
12 Senator de Bané?

13 MR. PARDY: Yes, I do.

14 MR. CAVALLUZZO: Why don't you
15 share some names with us.

16 MR. PARDY: I think Mr. Fry from
17 Mr. Graham's office was there, the director of the
18 political affairs division for Saudi Arabia and
19 the Gulf States, Ms Carmen Sylvain was there, I
20 think Ms Valerie Smith, who was her deputy
21 director was there. I think, from the Syrian
22 desk, I think, we would have had Mr. Harold
23 Hickman and perhaps Mr. Michael Chesson, and then
24 from my own bureau, certainly we would have had
25 Ms Patty Goodfellow, and Ms Myra Pastyr-Lupul. I

1 think that would have been roughly the group of
2 people there.

3 MR. CAVALLUZZO: Now, did you keep
4 notes of this meeting?

5 MR. PARDY: No. I was speaking.

6 MR. CAVALLUZZO: And you would
7 have followed those talking points which we could
8 find in tab 473?

9 MR. PARDY: No, I would have
10 spoken off the cuff. My recollection is that the
11 meeting was probably 90 per cent on Mr. Sampson,
12 the case in Saudi Arabia. It was a very complex
13 case for a number of reasons, and we were getting
14 close to the point where we thought that the visit
15 by Senator de Bané could be influential in tipping
16 the balance in the right direction, and I think
17 our assessment was not bad. Mr. Sampson was
18 released, I think, in approximately three weeks
19 after the Senator's visit.

20 And the rest of it, in terms of
21 Mr. Arar -- not that it was any less important or
22 anything like that, but I think the message was
23 more clear-cut and more to the point. The issue
24 there was to deliver a letter from the Prime
25 Minister to the President of Syria, and to make

1 direct appeal from the Prime Minister to the
2 President of Syria for Mr. Arar's immediate
3 release.

4 MR. CAVALLUZZO: Now, do you know
5 if anyone took notes or minutes of that meeting?

6 MR. PARDY: I don't know, no.
7 Whether access to the records that you have would
8 suggest that others at that meeting --

9 MR. CAVALLUZZO: I guess I can ask
10 government counsel if other participants at the
11 meeting have notes, and certainly we would review
12 the notes.

13 MS McISAAC: We will certainly
14 make further inquiries. I would hope they have
15 been turned over, if there are any, but we will
16 inquire.

17 THE COMMISSIONER: Thank you.

18 MR. CAVALLUZZO: Let's just focus
19 in on -- I understand that there are a number of
20 Middle Eastern issues that were discussed as well
21 as Mr. Sampson, but I want to just focus in on
22 Mr. Arar obviously and ask whether you recall
23 briefing Senator de Bané concerning Mr. Arar
24 during which you may have talked about some
25 communications between the Americans and the RCMP?

1 MR. PARDY: I would have attempted
2 to give the Senator a complete understanding of
3 this case, because when you send somebody out at
4 this level to discuss with officials of foreign
5 governments, and especially the President, you try
6 to give him as complete an understanding of the
7 issues that were involved in this matter.

8 Certainly the role of the United
9 States was a significant one, and in that I
10 certainly would have attempted to give the Senator
11 some understanding of their role, not only
12 initially on this case but certainly in subsequent
13 developments on the case and possibly as an
14 influence in Syrian decision-making. You wanted
15 to arm the Senator as much as possible so that
16 when these issues came up, he didn't have to turn
17 to somebody else for an answer.

18 As you know, the Senator is a very
19 knowledgeable person on Middle East issues and
20 certainly has been a superb emissary for Canada on
21 issues in the Middle East.

22 MR. CAVALLUZZO: Do you recall
23 what you told him, if anything, about American
24 communications with Canada concerning Mr. Arar,
25 which obviously would have been during his

1 detention in the United States between December
2 26th of 2002, and or about October 7th or 8th?

3 MR. PARDY: Yes. But my starting
4 point for this would have been the memorandum from
5 Superintendent Pilgrim that he sent to me on
6 October 8th, 2002. Apart from our discussion with
7 the RCMP on October the 16th, I think, that was
8 the only record that we had of the exchanges
9 between the RCMP and American officials. To this
10 day, that is the only written record that I have
11 of such exchanges, and I would have based my
12 comments on Superintendent Pilgrim's report to us.

13 MR. CAVALLUZZO: I wonder if the
14 witness might be shown the Garvie report, which is
15 Exhibit P-19.

16 If you refer to page 30 of P-19,
17 you will see that there is a memorandum. At the
18 top it says October 18th, 2002, and it states:

19 "Supt. Pilgrim responded to
20 the specific questions posed
21 by DFAIT and forwarded his
22 response to Insp. Roy."

23 Who, as we know, was the DFAIT LO.

24 "The response was as
25 follows."

1 And then we have the answers to
2 the questions that you had posed at the meeting on
3 October the 16th.

4 Is this the memorandum to which
5 you refer?

6 MR. PARDY: Yes, it is, except for
7 the redacted sections.

8 MR. CAVALLUZZO: I guess the most
9 pertinent question and answer would be found ten
10 lines up from the bottom where it says:

11 "Did the U.S. approach
12 Canadian authorities
13 regarding the possibility of
14 Arar's deportation?"

15 And the answer is:

16 "U.S. authorities requested
17 the RCMP provide information
18 that might assist in the
19 filing of criminal charges
20 against Arar. U.S.
21 authorities made enquiries as
22 to the level of interest the
23 RCMP had in pursuing Arar
24 criminally. They also made
25 enquiries as well as the

1 RCMP's ability to refuse
2 Arar's entry into Canada.
3 The U.S. authorities were
4 advised that the RCMP was
5 interested in Arar from a
6 criminal perspective. They
7 were also advised that where
8 Arar is a Canadian citizen,
9 the RCMP could not refuse his
10 entry into Canada."

11 Is that the exchange of
12 information -- questions, answers, and so on and
13 so forth -- that you think you may have given to
14 Senator de Bané at this briefing?

15 MR. PARDY: Essentially, yes, but
16 I would make one small addition, and this is in
17 the second-last sentence, which is the sentence
18 that says:

19 "The U.S. authorities were
20 advised that the RCMP was
21 interested in Arar from a
22 criminal perspective."

23 But in discussions, I think, an
24 additional clause was added to the effect that
25 they did not have sufficient evidence to see to

1 the laying of criminal charges. I think that
2 element was also certainly very much in my mind,
3 because it did come up at a number of times
4 subsequent, yes.

5 MR. CAVALLUZZO: Right. So that
6 you would suggest that wherein Senator de Bané
7 said that the words you used at this briefing were
8 the Americans saying, "We're prepared to give Arar
9 back to Canada on the condition that you arrest
10 and put him in prison and charge him" is
11 incorrect, but this version, as in the Pilgrim
12 letter, with the qualification that you have
13 given, is what you would have said?

14 MR. PARDY: Yes, I think different
15 people in the room could have interpreted my
16 comments -- I was not reading from Superintendent
17 Pilgrim's letter to me. I was providing a general
18 overview as to what I understood to be an element
19 in this case, and obviously different people might
20 have come to slightly different conclusions as to
21 the import of what I was saying here.

22 But the only information -- I come
23 back to -- what we had on this important element
24 in the case was what was said here in this memo
25 from Superintendent Pilgrim.

1 MR. CAVALLUZZO: You would agree
2 with me, though, that perhaps Senator de Bané was
3 given a reasonable implication of what he was
4 told. In other words, if you said to him that the
5 Americans said to the RCMP "can you refuse him
6 entry into Canada? Can you charge him
7 criminally?" that perhaps a reasonable implication
8 may be that if you are not prepared to arrest and
9 charge him, we are not going to send him up to
10 Canada?

11 MR. PARDY: On that -- I was
12 speaking, and obviously I wasn't interpreting
13 every word that I was saying here. And I think
14 Senator de Bané, who has given evidence of how he
15 interpreted this, there are other people who were
16 in that room who are -- I think one person in
17 particular is scheduled to give testimony here. I
18 think you can put that proposition to them as to
19 whether this was a unique interpretation or not.

20 But certainly what I was acting
21 upon was this information, and I think throughout
22 all of our correspondence I think on this case, as
23 you will see, where this issue comes up, this is
24 the language that we have tried to use.

25 MR. CAVALLUZZO: A couple of final

1 questions, Mr. Pardy.

2 MR. PARDY: Your 15 minutes are
3 long up.

4 --- Laughter / Rires

5 THE COMMISSIONER: Thank you,
6 Mr. Pardy.

7 MR. PARDY: And I have been
8 taciturn too.

9 MR. CAVALLUZZO: You sound like a
10 Court of Appeal judge. I usually go on and sit
11 down.

12 One would be: When this exchange
13 occurred between the Americans and the RCMP, it
14 was obviously before October 18.

15 MR. PARDY: Yes.

16 MR. CAVALLUZZO: Do you know what
17 date that exchange occurred?

18 MR. PARDY: I think -- and, again,
19 in part I think my memory has been influenced by
20 releases of information under ATI that was
21 reported in one of the newspapers around June or
22 July of 2004. This was information, I think, from
23 RCMP records. My memory suggests that this was
24 quite early on in the process that these exchanges
25 might have taken place.

1 But as I say, the ATI records from
2 the RCMP I think will give you --

3 MR. CAVALLUZZO: Well, why don't
4 we look. Take a look at P-21. There's an
5 indication there when the conversation was --

6 MR. PARDY: What page is that?

7 MR. CAVALLUZZO: P-19, page 21.

8 MR. PARDY: This is the Garvie
9 report?

10 MR. CAVALLUZZO: The Garvie
11 report.

12 You will see at the bottom below
13 the redaction, this is October 5th, which is a
14 Saturday -- October 5th, 2002.

15 It says somebody told somebody:

16 "... that 'as Arar is a
17 Canadian citizen, we (the
18 RCMP) cannot refuse him entry
19 into the country.'"

20 So likely this exchange occurred
21 on October the 5th, if we can accept this.

22 MR. PARDY: That is a Saturday
23 morning. Assuming the RCMP were working on a
24 Saturday, yes. Or it might have reflected
25 something earlier. I don't know.

1 MR. CAVALLUZZO: Let us assume
2 that some RCMP people work on Saturdays.

3 MR. PARDY: But I would suggest to
4 you that the ATI records are probably a bit more
5 fulsome in that area.

6 MR. CAVALLUZZO: And they may not
7 work on Saturday, but I know that you do, because
8 in checking your e-mails, you are not only working
9 on Saturdays and Sundays but you are sending
10 e-mails at three o'clock in the morning. So it is
11 likely one could have contacted you on Saturday,
12 October the 5th.

13 I am wondering if anybody in the
14 RCMP phoned you, or anybody in DFAIT, saying I
15 just had this strange conversation with the
16 Americans about Mr. Arar. You guys should know
17 about this.

18 MR. PARDY: No. All of my
19 meetings and conversations with the RCMP were in
20 normal working hours.

21 MR. CAVALLUZZO: Are you aware
22 whether anybody in DFAIT became aware of that
23 conversation on or about October the 5th, or
24 October the 6th, or October 7th?

25 MR. PARDY: No, until I think --

1 you mean in terms of dates, I don't think we were
2 ever certain of that.

3 But I think in terms of the
4 content of the conversation, that was reflected in
5 Superintendent Pilgrim's report to me.

6 MR. CAVALLUZZO: On October 18th?

7 MR. PARDY: On October 18th.

8 MR. CAVALLUZZO: Thank you,
9 Mr. Pardy.

10 THE COMMISSIONER: Thank you.

11 Ms Edwardh?

12 EXAMINATION

13 MS EDWARDH: I would like to
14 provide to the witness for his comments an article
15 written shortly after Mr. Arar's return entitled
16 "U.S. urged Canada to hold Arar; Canada refused to
17 make arrest - Americans sent him to Syria",
18 written by Mr. Graham Fraser.

19 THE COMMISSIONER: That will be
20 P-116.

21 MS EDWARDH: Thank you.

22 EXHIBIT NO. P-116: Article
23 entitled "U.S. urged Canada
24 to hold Arar; Canada refused
25 to make arrest - Americans

1 sent him to Syria", written
2 by Graham Fraser, and
3 published in the Toronto Star
4 on October 9, 2003

5 MS EDWARDH: Mr. Pardy, the reason
6 I am showing you this is this article was written
7 on October 9, 2003, very shortly after Mr. Arar
8 had come home, and the interesting thing about it
9 is that, if you read it carefully, it discloses a
10 remarkable similarity to the very conversation
11 that Senator de Bané described yesterday.

12 It begins with, in the second
13 paragraph:

14 "U.S. officials seized Maher
15 Arar when he was changing
16 planes in New York last year
17 and sent him to Syria because
18 Canada would not guarantee he
19 would be detained when he
20 returned to Ottawa, an
21 official involved in the case
22 says."

23 And then let me jump down two more
24 paragraphs, beginning with "When it was noted".

25 Do you see that?

1 MR. PARDY: Yes.

2 MS EDWARDH:

3 "When it was noted that Arar
4 was a Canadian, Canadian
5 security was contacted. "They
6 asked, 'Do you have anything
7 on him,'" an official closely
8 involved in the case said, on
9 condition that he not be
10 quoted by name.

11 "'Yes, indeed,' they were
12 told. 'He's watched because
13 he has been to Afghanistan
14 several times.'"

15 On the basis of that, the
16 official said, Arar was
17 arrested when the plane
18 landed in New York."

19 Now, here is the conversation:

20 ""Then they said to the
21 Canadians 'If we transfer
22 that man to you, can you give
23 us the assurance that you
24 will lay charges against
25 him?'" , the official said.

1 "And the Canadian police told
2 them 'No, we don't have
3 anything to lay charges
4 against him. We can't bring
5 any charges.'

6 And the American said 'If
7 you aren't going to do
8 anything, if you are going to
9 let him go free ...'"

10 According to the official,
11 Canadian officials replied,
12 "Wait a minute, he has
13 already worked for two years
14 in Boston and you never
15 bothered to do anything about
16 him.

17 "And now he's back in
18 Canada ... all we can say is
19 that he has previously been
20 in Afghanistan. That's not
21 enough given our Charter of
22 Rights."

23 The American said,
24 "Obviously we can do nothing
25 with you," ..."

1 And I am going to suggest,
2 Mr. Pardy, that remarkably the same gist to the
3 Senator's comment certainly is in this article,
4 that some official -- undoubtedly another Deep
5 Throat -- has made it very clear that there was a
6 query and Canada's inability to arrest, charge, or
7 detain meant that the Americans would not return
8 him? That is certainly the implication.

9 MR. PARDY: The text speaks for
10 itself, yes.

11 MS EDWARDH: And you will agree
12 that it bears a quite remarkable similarity to the
13 Senator's comments?

14 MR. PARDY: Yes, up to a point.
15 The only thing I can guarantee you is that, as you
16 know, for better or worse, I always spoke on the
17 record before retirement. And after retirement, I
18 always spoke on the record with respect to this
19 case --

20 MS EDWARDH: I wasn't suggesting
21 that was you, Mr. Pardy.

22 MR. PARDY: I am just making sure
23 we understand each other. There's a lot of other
24 people behind you that are going to draw
25 conclusions from your questions that basically are

1 totally unwarranted here.

2 In this case, I don't know. A lot
3 of other people had information about this case.
4 There are things there that I see are in error
5 right off the top.

6 He has been to Afghanistan several
7 times. Well, that is not factually correct.

8 MS EDWARDH: You don't know what
9 is in the RCMP or the CSIS brief. They may think
10 he has been there 16 times.

11 MR. PARDY: It could very well be,
12 but the issue here is where that information came
13 from.

14 MS EDWARDH: Certainly. But we
15 don't know.

16 MR. PARDY: We don't know. But I
17 am saying in terms of my own understanding of the
18 information, when I spoke to the media I think I
19 tried to be as accurate as possible in terms of
20 the facts, and I did not distort any of the facts
21 for any particular reason.

22 MS EDWARDH: While I can agree
23 that from your perspective this may hold an error,
24 certainly the implication of this article, which
25 is of the same tenor as the comments made by the

1 Senator, would indicate that the person making the
2 remarks is really someone speaking from the police
3 or intelligence perspective, not from DFAIT's
4 perspective?

5 MR. PARDY: Possibly.

6 MS EDWARDH: Let me go to another
7 area. Thank you, Mr. Pardy.

8 We have fussed around about this
9 poor confusion left in the minds of the Syrians
10 through some remark or inadvertent
11 misunderstanding led by CSIS, and we have asked
12 you innumerable times about it and we have asked
13 the Minister about it. And it dawned on me, when
14 Mr. Cavalluzzo was asking you again about it, that
15 we are all on the wrong path.

16 There was no confusion, Mr. Pardy.
17 The Syrians were quite right when they read the
18 refusal of the RCMP and CSIS to step up to the
19 plate and make any statements as a very strong
20 indication that they did not support Mr. Arar's
21 return.

22 You went to get the letter. You
23 couldn't get it. And I have no doubt that the
24 Syrians aren't wrong at all. They read the
25 situation right. Fair enough?

1 That is a very reasonable
2 hypothesis, isn't it?

3 MR. PARDY: I would say an
4 hypothesis. Whether it is completely reasonable
5 or not, is an entirely different matter. The day
6 that I understand the inner workings and thoughts
7 of the Syrian government, let me tell you, it is
8 going to be a rare day that happens.

9 I think given all of the issues
10 that surround this case, to reduce it down to one
11 hypothesis I think is entirely misleading for
12 everybody involved.

13 MS EDWARDH: But I am only
14 interested in one thing.

15 It is possible that the Syrians
16 were just using an ambiguity, as you said. They
17 found it. It was in their self-interest to
18 exploit.

19 Leaving that aside for just a
20 moment, if one takes the proposition that you as a
21 senior diplomat knew -- you needed the assistance
22 of the RCMP and CSIS to convey a message. That is
23 why you went to them; correct?

24 You thought it was the best way to
25 get the message across?

1 MR. PARDY: Yes, absolutely.

2 MS EDWARDH: So you go to them and
3 they say in various ways we won't support it. We
4 are aloof from Mr. Arar's status -- whatever that
5 means -- but aloof from his status.

6 Clearly you know you are on your
7 own; correct?

8 MR. PARDY: No, I think there are
9 others in the government that were quite willing
10 to support -- insofar as CSIS and the RCMP, I
11 think their corporate positions were as reflected
12 I think in the documents that are before you, yes.

13 MS EDWARDH: Right. So their
14 corporate position is, you're on your own.
15 They're not going to take any step that you can
16 extract from them to assist you. Right?

17 MR. PARDY: By the time we
18 succeeded, that was still the position, yes.

19 MS EDWARDH: And it seems to me
20 the inexorable conclusion then to draw from that
21 is that when the Syrians say that they felt that
22 there were certainly aspects of Canada that didn't
23 want Mr. Arar returned, they were certainly dead
24 right in these circumstances?

25 MR. PARDY: As I said earlier to

1 you, that is a hypothesis that you can go with,
2 but again, I'm back to the business that -- I
3 mean, yes, there were elements in the Canadian
4 government, and the documentation that I spent a
5 fair bit of my time writing reflects those
6 difference and there are reasons for those
7 differences -- but, and I come back here to the
8 point that we acting, in what we thought was -- as
9 the -- acting for the Canadian government, that we
10 were the ones that spoke and we tried to make that
11 understood in Damascus.

12 And we only got it finally
13 understood when we were able to get the Prime
14 Minister to sign the letters that he did, and we
15 went with those to the Syrians.

16 MS EDWARDH: And this is the case.
17 I mean, going around the RCMP and CSIS to the
18 Prime Minister, this is the case --

19 MR. PARDY: I --

20 MS EDWARDH: May I just finish the
21 question?

22 Even in circumstances where the
23 message to the police force, the national police
24 force in this country, was bring him home, and if
25 you've got the evidence, charge and try him, you

1 were prepared to promote that message, and they
2 still wouldn't support your initiative?

3 MR. PARDY: No, that was never a
4 part of my messaging. I'm sorry. Could you
5 repeat the question? But I certainly --

6 MS EDWARDH: Sure. I understood
7 the message was: Send Mr. Arar home.

8 And the further message that you
9 were prepared, and the Minister was prepared to
10 make, was: And if there is evidence of criminal
11 wrong-doing on the part of Mr. Arar, he will be
12 tried -- he will be charged and duly tried under
13 the laws of Canada?

14 MR. PARDY: I stand to be
15 corrected, but if you go through the record, my
16 position ended with the first part of your
17 statement. That was to send Mr. Arar home.

18 I did not even add the suggestion
19 that maybe -- something may happen to him once he
20 arrived in Canada, and certainly I was not
21 comfortable either with the suggestion that was
22 added in a couple of times in public comment to
23 the Syrian government saying, well, you charge
24 him. I did not like that proposition at all.

25 My position was, one level only:

1 Mr. Arar should be allowed to return to Canada.

2 What happened after that was not my concern.

3 MS EDWARDH: We're not
4 communicating --

5 MR. PARDY: Oh, I --

6 MS EDWARDH: Let me just put this
7 statement this way:

8 The Mounties know that if Mr. Arar
9 were to be brought home, they know, that if they
10 had evidence in which they could lay a criminal
11 charge, that indeed he could be arrested, he could
12 be detained or granted bail, he could stand his
13 trial and defend it. They know that. They're
14 police officers. Right?

15 MR. PARDY: Yes.

16 MS EDWARDH: So that their refusal
17 to assist must be assessed in light of the
18 knowledge that if they had any evidence, they
19 could try Mr. Arar. They could charge and try
20 him.

21 MR. PARDY: But you're asking me
22 to interpret what was going on within the police
23 side of the Canadian government, and I have --

24 MS. EDWARDH: Yes.

25 MR. PARDY: -- as the record

1 demonstrates, we had very little by way of hard
2 information here. It was very limited information
3 we had from the police or from CSIS with respect
4 to Mr. Arar's activities, either in Canada or in
5 the United States or some ten years ago in the
6 Near East.

7 MS EDWARDH: Well, it leaves an
8 even unhappier inference if you won't go with me
9 to the logical state of if they have evidence they
10 would duly charge him and he would be tried under
11 our laws.

12 You're left with this inference:
13 Knowing that they don't have evidence, that it's
14 better off to leave him there because they might
15 get evidence at some future date through some
16 means, through some interrogation of Mr. Arar or
17 somebody else.

18 MR. PARDY: No, I think my answer
19 to the earlier question was that I had limited
20 knowledge of what the RCMP may have known during
21 this period, and I think the testimony of a number
22 of people was that this was a standard practice in
23 the Government of Canada that information with
24 respect to criminal wrongdoing on the part of
25 Canadians was not shared by the national police

1 force with officials that did not have an
2 involvement in the criminal justice system.

3 MS EDWARDH: Well, saying that
4 Mr. Arar -- writing the letter that Mr. Cavalluzzo
5 proposes, that Mr. Arar should come home and the
6 RCMP must be understood to be saying that Canada
7 speaks with one voice isn't disclosing anything
8 about a criminal investigation or a national
9 security investigation.

10 MR. PARDY: Exactly. And that's
11 what we tried to do and did not succeed on that
12 particular point.

13 MS EDWARDH: Okay. So we'll let
14 them account for their aloofness.

15 I want to ask just one question.
16 At pages 4006 to 7, I had -- there was an inquiry
17 made of you, Mr. Parady, that consular reports were
18 shared with CSIS --

19 MR. PARDY: Could you give me the
20 tab reference and the book reference?

21 MS EDWARDH: I'm quoting you.

22 --- Laughter / Rires

23 MR. PARDY: Oh, okay. Is it in
24 the official records, or is that a newspaper
25 article?

1 MS EDWARDH: No, no, no. This is
2 the official transcript, but let me just -- this
3 was a question Mr. Cavalluzzo put.

4 It's really directed through you
5 to my friend sitting beside me, that there were
6 two consular reports shared with CSIS, and
7 Ms McIsaac was going to seek clarification of
8 that, and I'm at a point where I would like to ask
9 the witness some questions to determine if there
10 were those two reports and we have confirmation of
11 that fact now.

12 THE COMMISSIONER: Ms McIsaac, can
13 you respond to that?

14 MS EDWARDH: 4006-7.

15 MS McISAAC: I'm not certain I was
16 here for that testimony. Can you give me a
17 moment, please?

18 Remember the very first day
19 Mr. Baxter and Mr. Fothergill were here, which is
20 another bit of a difficulty, but...

21 --- Pause

22 MS McISAAC: I'm not sure what the
23 question is. Sorry. As I say, I wasn't here, so
24 I'm confused.

25 MS EDWARDH: I'm sorry.

1 Mr. Cavalluzzo had raised the -- sorry,
2 Mr. Commissioner.

3 Mr. Cavalluzzo had raised the
4 fact, in his examination-in-chief, that two
5 reports, one from the January 7 consular visit and
6 one from the April 23, had been shared with CSIS,
7 and I just want -- and there was some discussion
8 about the fact that Government counsel would
9 clarify that and whether we could know something
10 of the circumstances and dates and whatever, and
11 I'm asking whether I can have that now or what the
12 circumstances are.

13 MS McISAAC: I'm going to defer to
14 Mr. Cavalluzzo, because we did discuss that,
15 but...

16 MR. CAVALLUZZO: That was the
17 situation where we had a sidebar, and there were
18 two CSIS -- or there were two consular reports,
19 one of January 7 and one of April 22, and the
20 question was whether the Government was prepared
21 to release certain information relating to those
22 reports as to how they found themselves existing
23 in a CSIS file, and I had asked that that be
24 checked.

25 THE COMMISSIONER: I think the

1 fact is, though, that you were able to establish
2 they were in the CSIS file.

3 MR. CAVALLUZZO: They were in the
4 CSIS file, but the question was one step further,
5 and that is --

6 THE COMMISSIONER: How they got
7 there?

8 MR. CAVALLUZZO: -- in the CSIS
9 file, and that was the question.

10 THE COMMISSIONER: Right, yes.

11 Is the Government in a position to
12 respond to that yet?

13 MS McISAAC: Yes, we are. They
14 were both provided by Foreign Affairs to CSIS.

15 MS EDWARDH: May I ask one
16 question through you, Mr. Commissioner?

17 THE COMMISSIONER: Sure, please
18 do.

19 MS EDWARDH: Perhaps Ms McIsaac
20 could indicate whether they were provided through
21 ISI or ISD to CSIS.

22 MS McISAAC: They would have been
23 provided through ISI.

24 THE COMMISSIONER: Okay. Okay?

25 MS EDWARDH: Yes, and might we

1 take it that it was around the time those reports
2 were written?

3 MS McISAAC: I'm assuming so. I
4 haven't looked at the actual dates, but I'm
5 assuming so.

6 THE COMMISSIONER: Let's proceed
7 with the line of questioning on that basis. I
8 think that's reasonable. I don't suppose anything
9 turns on the exact date.

10 MS EDWARDH: No, no, no.

11 THE COMMISSIONER: Okay. Good.

12 MS EDWARDH: I have two or three
13 questions and then I'll go back to a theme.

14 At page 4054 of your
15 examination-in-chief, and perhaps I might take you
16 there -- or maybe it's even... No.

17 It's my cross-examination of you,
18 I'm sorry, Mr. Pardy.

19 THE COMMISSIONER: Do you want a
20 copy of the transcript, Mr. Pardy?

21 MR. PARDY: I would appreciate
22 that, yes.

23 THE COMMISSIONER: If counsel are
24 going to cross-examine on the transcript --

25 MS EDWARDH: No, it's a question

1 that I just wanted to ask about a reference. The
2 witness is certainly -- I'm pleased to provide him
3 with my copy even if it's even got yellow on it.
4 Do you have an extra? 4054 to 4056.

5 I can read it to you, and if you
6 want to see it in black and white, that's fine.

7 MR. PARDY: I read better than I
8 hear.

9 --- Laughter / Rires

10 MS EDWARDH: Okay.

11 --- Off microphone / Sans microphone

12 If you want to just look at the
13 beginning of the exchange, you can take a moment.

14 --- Pause

15 MS McISAAC: I have found an
16 additional one, if you want to give it to the
17 witness.

18 THE COMMISSIONER: I think we're
19 moving along okay, Ms McIsaac.

20 --- Laughter / Rires

21 MS EDWARDH: And the particular
22 portion I want to draw your attention to...

23 --- Pause

24 MR. PARDY: Yes, this relates to
25 the question of the date in the Garvie report.

1 Exactly.

2 MS EDWARDH: There are two parts
3 to my question. Now if you go over to your
4 response at 4056. Just take a moment to look at
5 that.

6 --- Pause

7 MS EDWARDH: And it's the first
8 part of that I want to start with asking you.

9 The words that I am interested in,
10 Mr. Pardy:

11 "I was also interviewed by
12 Superintendent Garvie, and I
13 provided --"

14 THE COMMISSIONER: Just a second.
15 We're having a microphone problem here. If you're
16 asking the question, you should either use this
17 microphone --

18 MR. PARDY: What was the page
19 again?

20 MS EDWARDH: 4056.

21 --- Pause

22 MR. PARDY: It ends at 4053.

23 MS EDWARDH: Ms McIsaac, can you
24 help us?

25 MR. PARDY: I think, having read

1 it now -- please, go ahead. I've read the -- yes,
2 okay.

3 THE COMMISSIONER: Let's just ask
4 the questions and we'll see how --

5 MS EDWARDH: The pages have are up
6 front?

7 MR. PARDY: I'm sorry, yes.

8 MS EDWARDH: I think my friend may
9 have put it at the front for you.

10 MR. PARDY: I'm sorry, there it
11 is. Yes, okay.

12 MS EDWARDH: You comment:

13 "May I comment as well on
14 that point?"

15 This is with respect to the
16 October 2 reference suggesting that the RCMP may
17 have known the allegations --

18 MR. PARDY: Mm-hmm.

19 MS EDWARDH: -- against Mr. Arar
20 on the day he was served with the document.

21 And then you make the comment:

22 "I was also interviewed by
23 Superintendent Garvie, and I
24 provided him with a copy of
25 the complete removal order

1 with this kind of information
2 there."

3 Do you see that answer?

4 MR. PARDY: Yes, I do.

5 MS EDWARDH: Sir, did you have a
6 copy of the complete removal order?

7 MR. PARDY: Yes, I did, but --
8 when I was interviewed by Superintendent Garvie, I
9 had a copy, yes.

10 MS EDWARDH: And where did you get
11 that copy?

12 MR. PARDY: From CBS.

13 MS EDWARDH: Right. So you got it
14 from the Centre for Constitutional Rights?

15 MR. PARDY: No, direct from CBS,
16 and that was given to me in -- I think it was
17 November of 2003, long after I had retired, yes.

18 MS EDWARDH: And I take it that
19 the copy -- when you use the language "complete
20 removal order", that there were some redactions in
21 the removal order provided to you by CBS?

22 MR. PARDY: Yes, there were
23 redactions, and as well the confidential addendum
24 to the removal order was not included either.
25 We're still looking for that, yes.

1 MS EDWARDH: Yes. I was hopeful
2 that you had the whole package when I saw this
3 answer.

4 MR. PARDY: CBS is still digging,
5 yes.

6 MS EDWARDH: Yes, and I
7 understand, sir, you also -- you said:

8 "...copy of a complete
9 removal order with this kind
10 of information there."

11 I guess I am just asking what was
12 the kind of information you were referring to?
13 Was it information pertaining to the fact that the
14 RCMP actually knew on October 2, or am I
15 reading --

16 MR. PARDY: No, I was speaking
17 more generally, I think, there, in terms of the
18 information generally about the -- and I think the
19 point under discussion where the four elements in
20 the American removal order that led to their
21 conclusion that an exclusion order should be
22 issued, yes.

23 MS EDWARDH: Now, in reviewing
24 this to continue my cross-examination, it seemed
25 to me, Mr. Pardy, that your reluctance to accept

1 my suggestion this was all a little mistake that
2 it was under the date of October 2, and it really
3 was a later date, Mr. Pardy, can you assist us, do
4 you have any information that the contents of the
5 notice received by Mr. Arar were transmitted to
6 the RCMP on October 2.

7 MR. PARDY: No. I think, going
8 back, and the transcript here -- I was reacting to
9 your suggestion that there was some simple
10 explanation in terms of the date being wrong, in
11 terms of the reference to October 2 in the Garvie
12 report, and I was not prepared to accept that at
13 face value.

14 Superintendent Garvie, I think,
15 demonstrated through his report that he was a
16 meticulous recorder of those kinds of facts, and I
17 was not prepared to accept your suggestion that it
18 was simply a mistake on his part.

19 MS EDWARDH: All right.

20 Certainly if Superintendent Garvie
21 is correct, that the October 2 date is the one
22 that should be applied to when the RCMP became
23 aware of these allegations, they would have been
24 aware of them at the same time Mr. Arar was in New
25 York?

1 MR. PARDY: You can draw that
2 conclusion, but I have no information whatsoever
3 to suggest -- to support your conclusion on that,
4 no.

5 MS EDWARDH: Well, no. But, I
6 mean, if you're not prepared to suggest -- or
7 accept the suggestion there's an error with regard
8 to the date, then the obvious statement is that
9 October 2 may be correct, and the RCMP may have
10 information, the same information Mr. Arar got on
11 the same day?

12 MR. PARDY: That is one
13 conclusion.

14 But, again, I come back to the
15 point that I had no information to support your
16 conclusion, and I only can give testimony -- I
17 think it's a fair assumption on my part to give
18 testimony on things that I know something
19 personally about.

20 And in this one I have no personal
21 knowledge, no.

22 MS EDWARDH: All right. Now, I
23 want to just review one other brief error.

24 We spent a fair time, on the last
25 occasion I was asking you questions, about the

1 distribution of information and your role in it.
2 There were a few follow-up questions I should have
3 asked you, but we called it a day.

4 You have described the basis upon
5 which you acted, sir, and I'm going to just -- I
6 don't want to explore it anymore, you fully put it
7 out there, but you were saying Mr. Arar gave a
8 consent and you acted on that consent. Is that a
9 fair summary of your evidence?

10 MR. PARDY: Yes, and I -- can
11 I --not only was it consent, I think, and I've
12 gone back and thought about the form of the words
13 and the way they were recorded.

14 I mean, beyond giving permission
15 for us to act on his behalf, I read them as a cry,
16 a plea for help. I mean, he's in a bewildering
17 situation and he is interested in terms of whoever
18 is out there to give him a hand.

19 So yes, the permission was there,
20 but I saw something even more fundamental than
21 that in terms of his words that he used and were
22 recorded by Ms Girvan.

23 MS EDWARDH: Well, in any event,
24 from the perspective of the law of privacy, what
25 you were concerned with was consent, and that's

1 what you were acting on?

2 MR. PARDY: Yes. But, again, the
3 other element in the privacy law is the issue of
4 using the information in a way that is going to be
5 helpful to the individual that is in difficulty.

6 MS EDWARDH: I am struggling with
7 that, because there are three prongs I just want
8 to put to you.

9 You have a right or there is a
10 right for the head of an institution to disclose
11 information when the balance -- and the language
12 the Act uses:

13 "...disclosure clearly
14 outweighs any invasion of
15 privacy that could result
16 from the disclosure and would
17 clearly benefit the
18 individual."

19 So that balancing. Sir, is it
20 your position you acted under this kind of
21 assessment of the benefits and risks as set out in
22 the Privacy Act?

23 MR. PARDY: Yes.

24 MS EDWARDH: Well if you did, sir,
25 then it is quite clear that the same section says

1 that if one discloses information in order to
2 effect that balance, the following applies:

3 "The head of a government
4 institution shall notify the
5 Privacy Commissioner, in
6 writing, of any disclosure of
7 personal information under
8 paragraph 2(m)."

9 That's the balancing one.

10 "Prior to the disclosure,
11 where reasonably practicable,
12 or in any other case
13 forthwith on the disclosure,
14 and the Privacy Commissioner
15 may, if the Commissioner
16 deems it appropriate, notify
17 the individual to whom the
18 information relates of the
19 disclosure."

20 Do you know, sir, whether the head
21 of the government institution made notification to
22 the Privacy Commissioner in respect of the
23 disclosures in this case?

24 MR. PARDY: No. And we took the
25 position -- and it comes up fairly frequently in

1 our work -- that if one were to go the precise
2 route that is laid out in the Act, then we are in
3 the problem here of whether or not we can be
4 effective in trying to help the Canadian to which
5 that information applies.

6 As you know, in the Act as well
7 there is a section which states -- and I will
8 paraphrase here a little bit, and certainly it was
9 in the back of my mind at the time; was that it
10 gives the right of a Canadian security or police
11 organization to apply to the deputy head of a
12 department that holds information. And pursuant
13 to a legitimate investigation that is under way
14 that then, in effect, a request can be made for
15 all information that might be held by the second
16 department. And there is that provision there.

17 MS EDWARDH: Yes, but that wasn't
18 acted on either.

19 MR. PARDY: It wasn't acted upon
20 but it's always there, and we have had instances
21 where that has come to the fore. I was concerned
22 that there not be wholesale release of
23 information, certainly in my view a controlled
24 release -- which it was, a very controlled
25 release, that this was in support of Mr. Arar.

1 And I made the assessment, as you
2 said -- well, did you do a risk analysis or
3 something to that effect? I was very careful to
4 make sure that any information that was released
5 was not helpful. And if you go through every one
6 of those reports, there is, I don't think, a
7 sentence in them that would support the conclusion
8 that this would have been helpful to an RCMP
9 criminal investigation or a security investigation
10 by CSIS.

11 MS EDWARDH: Well, I disagree,
12 sir. You and I both know what the first consular
13 visit says, and you know that Mrs. Girvan reviewed
14 the interrogation, the FBI interrogation, and
15 established that Mr. Arar was interrogated about a
16 man by the name of Abdullah, who we know now to be
17 Abdullah Almalki, and his connection was adverted
18 to and that information was provided to RCMP
19 and/or CSIS.

20 MR. PARDY: But I think the record
21 demonstrates maybe that information may have come
22 from Canadian sources anyway. I mean, I'm not
23 quite sure where the -- the large inference that
24 suddenly there is new information that is coming
25 into the process --

1 MS EDWARDH: No.

2 MR. PARDY: -- that is not already
3 on the record here.

4 MS EDWARDH: With the greatest of
5 respect, when it comes out of the mouths of
6 someone in the consular visit, it may well be an
7 admission that is damaging, and you are not
8 sitting in CSIS' brief or the Mounties' brief and
9 you can't make the assessment of how damaging that
10 information may be to their perceptions of
11 Mr. Arar?

12 MR. PARDY: No, I can't make that
13 assessment, but I can make the assessment whether
14 or not, from my perspective, it could be helpful
15 to Mr. Arar. And that was the only assessment
16 that I needed to make.

17 MS EDWARDH: I want to go back,
18 Mr. Pardy, and establish that the two exceptions,
19 one being that there can be a balancing --

20 MS McISAAC: Mr. Commissioner, I
21 am having some difficulty here because I don't
22 agree with Ms Edwardh's legal analysis that she is
23 putting to the witness in the first place as to
24 the limitations on the use of information under
25 the Privacy Act.

1 THE COMMISSIONER: We are not
2 going to have the witness resolve the legal
3 question as to whether or not it was properly
4 used. I suppose that will be an issue that I am
5 going to have to address in the end.

6 I think if you frame your
7 question, Ms Edwardh, so that you avoid having the
8 witness draw the legal conclusion -- ask him his
9 interpretation, which you have done, and on what
10 basis he acted. I think that's about as far as
11 you can go.

12 MS EDWARDH: One more factual
13 question I think may be of assistance to you.

14 THE COMMISSIONER: Right.

15 MS EDWARDH: And that is when
16 information is provided, Mr. Commissioner,
17 pursuant to a request made to an investigative
18 body, or by an investigative body for the purpose
19 of enforcing the laws of Canada, which is one of
20 the categories of exemption, I just want to
21 establish that there is a requirement under the
22 Act that a record be kept as well and that the
23 Privacy Commissioner notified.

24 THE COMMISSIONER: I think you can
25 ask the witness if that happened as a matter of

1 fact. And then in closing, or in argument at some
2 point, we can argue the other issue.

3 MS EDWARDH: Fair enough. And
4 that's my next question.

5 Was any notification given to the
6 Privacy Commissioner under either of those heads?

7 I think you have answered no with
8 respect to the balancing and now with respect to
9 investigation.

10 MR. PARDY: No. I think you have
11 collapsed a couple of issues here in your
12 question.

13 I made reference to the fact that
14 the head of a law enforcement or security
15 organization in Canada, pursuant to a legal
16 investigation, can make a request of another
17 department of government for information.

18 In those connections, in that kind
19 of a situation, then very clearly there is a
20 written record maintained. We have had situations
21 such as this where -- and basically it's left to
22 the deputy head of the department that holds the
23 information to make the decision as to whether
24 this kind of information should be released.

25 If the deputy head were to state

1 "no, I'm not going to release it", then there is
2 appeal to the Privacy Commissioner, as I
3 understand the process.

4 And we did have cases where those
5 written requests came in.

6 Now, what you are referring to was
7 not a request from the RCMP or CSIS for
8 information. It was a decision that I made that
9 we had information that was going to be helpful to
10 them, or helpful to Mr. Arar, in terms of what we
11 were trying to achieve here. And there is quite a
12 distinction between the two.

13 MS EDWARDH: Yes, there is,
14 Mr. Pardy. All I am doing is wanting to make very
15 clear that the procedure you adopted was
16 exclusively by reference to the consent that you
17 obtained, and that's all I am doing, sir. There
18 were no other provisions that you responded to or
19 relied upon.

20 MR. PARDY: The consent in all of
21 these cases is the most important one, absolutely,
22 yes.

23 MS EDWARDH: I would like then to
24 turn to the issue of your obligation, or the
25 obligation of consular affairs, to provide some

1 insight into information you share.

2 For example, if you are sharing
3 information from a consular visit, such as the
4 first consular visit in Syria on October 22nd, do
5 you think that you have any duty to ensure that
6 the recipient of that information has a grasp over
7 whatever limits or understanding you may put on
8 it?

9 MR. PARDY: Yes, the caveat rules
10 are certainly there, and I understand them, yes.

11 MS EDWARDH: No, I am not so much
12 talking about caveats, sir, as explaining that
13 there may be things said during these interviews,
14 such as "the Syrians are taking very good care of
15 me and all my needs are met", that kind of
16 statement.

17 MR. PARDY: Yes.

18 MS EDWARDH: You know it's
19 baloney. But if you are handing it on to another
20 entity, how do you ensure that the nuanced
21 understanding you have is shared with that entity?

22 MR. PARDY: I think the documents
23 would speak for themselves. But in addition to
24 the documents, there were conversations, some
25 involving members of the RCMP and CSIS, but more

1 directly with the officials in the ISI group in
2 Foreign Affairs, who very much throughout this
3 process interpreted all of this kind of material
4 very much in the same way that I did. And they
5 had daily conversations and the interpretation
6 took place in that way.

7 MS EDWARDH: But as I understand
8 Mr. Livermore's evidence, it was that when these
9 materials were handed over, for example, to the
10 RCMP, there was no briefing accompanying them that
11 might alert them to some of the things that you
12 would see in a nuanced reading of a document and
13 that Mr. Livermore might see.

14 So does that cause you concern, if
15 there was no briefing that went with it?

16 MR. PARDY: No, I don't think
17 that's a complete assessment of the environment in
18 which these exchanges took place. I think those
19 discussions were going on. And I think as the
20 paper record demonstrates, the officials in ISI, I
21 think, were very attuned to my thinking with
22 respect to how to interpret this material, and
23 they certainly would have passed that on, those
24 concerns or those issues on to the RCMP and CSIS,
25 who they were in contact with on a daily basis.

1 MS EDWARDH: So on November the
2 3rd or 4th, the RCMP -- and we are going to hear
3 from Mr. Cabana --

4 MR. PARDY: Yes.

5 MS EDWARDH: The RCMP and CSIS
6 received two documents. We understand that
7 they -- and let's deal with the Mounties for a
8 moment.

9 They receive a document that
10 purports to be an utterance of Mr. Arar given
11 during interrogation. All right?

12 They receive that document because
13 the ambassador obtains it and brings it back.

14 MR. PARDY: Yes, that's the single
15 sheet, yes.

16 MS EDWARDH: In addition, they
17 would have received, at the same time, the
18 consular note pertaining to the October 23rd
19 visit.

20 MR. PARDY: Yes.

21 MS EDWARDH: Now, sir, is it your
22 view that it would have been very clear to the
23 officers upon receipt of that information that
24 there was a substantial likelihood, even
25 probability, that the interrogation of Mr. Arar

1 had taken place in circumstances where he had been
2 the victim of abuse, of torture, of psychological
3 torture, or whatever?

4 Would that have been evident, and
5 should they know that?

6 MR. PARDY: The passing of those
7 two documents, the November 3rd one is not a
8 consular document as such. The October 23rd
9 consular visit is very much of a consular
10 document. The November 3rd one, I think one must
11 categorize under the hat that the ambassador is
12 wearing for other purposes here.

13 But in terms of the combination
14 together, you put them together, yes. And I don't
15 have the doubts that you seem to have that there
16 is an inability on the part of either the RCMP or
17 CSIS to interpret those documents in the
18 environment in which they were produced, or in
19 terms of the specific language that was used in
20 them.

21 There is a way to interpret that
22 information. And in addition, and I come back to
23 the fact that the officials in ISI -- one of them
24 is probably one of the foremost experts in the
25 Government of Canada on the Middle East -- would

1 have provided them with information, the context
2 in which this stuff should be looked at.

3 MS EDWARDH: So your assumption
4 then in sharing -- and this is very important in
5 understanding the motivation to share.

6 Your assumption in sharing,
7 Mr. Parady, is really important. It is when this
8 material is provided, and it's provided together,
9 in effect --

10 MR. PARDY: In this case, yes.

11 MS EDWARDH: That the context and
12 the information would be accompanied by a proper
13 understanding of the limits that should go on
14 to -- or the lack of reliability or the issues
15 surrounding reliability that should be attached to
16 those admissions?

17 MR. PARDY: Knowing an official
18 would look at every piece of paper that crosses
19 their desk, and look at it in exactly that same
20 way. And I don't have any hesitation in
21 suggesting that all of this material was looked at
22 in that way, both by officials in Foreign Affairs
23 and officials in the RCMP and CSIS.

24 I mean, these are not people that
25 sort of are rushing in one direction here, despite

1 the fact that the context in which they were
2 working. But they were quite capable of
3 interpreting how this information might have been
4 produced.

5 MS EDWARDH: And would you share
6 with me the view that it is part of the duty of
7 the department, whether through your office or
8 Mr. Livermore's office, to ensure that whoever is
9 getting this information appreciates its strengths
10 and weaknesses?

11 MR. PARDY: Oh, yes.

12 MS EDWARDH: Okay. So there is no
13 doubt in your mind that the information was then
14 shared from the perspective of ensuring that the
15 recipient of the information properly understood
16 the context in which it was obtained?

17 MR. PARDY: As I think my
18 testimony earlier on suggests, I was not sharing
19 the information solely on the basis of the -- or
20 the document solely on the basis contained -- or
21 the information contained in those documents.
22 There was a larger purpose at work here, and I
23 think I suggested that to you in my previous
24 testimony.

25 MS EDWARDH: Yes. I am not

1 concerned about your purpose. I am concerned that
2 in the process of giving information from consular
3 visits, which we have all agreed they have some
4 special features --

5 MR. PARDY: Yes.

6 MS EDWARDH: That in the process
7 of sharing those with the RCMP -- and I'm not
8 dealing with CSIS for the moment, with the RCMP,
9 that you have confidence that they were properly
10 contextualized and the strengths and weaknesses of
11 the information would be identified to the
12 recipient?

13 MR. PARDY: I think within -- your
14 question sets up an ideal situation, that I think
15 if one were reduce this down to a working level, I
16 don't have any doubts in my mind that the
17 information was understood itself, the words that
18 were used, and also the environment in which those
19 words were produced, both in terms of interview
20 with Mr. Martel and the piece of paper that the
21 Syrian Military Intelligence produced and gave to
22 Mr. Pillarella on November 3rd, yes.

23 MS EDWARDH: So if in the course
24 of Mr. Arar's interrogation the Syrians said --
25 and they did this with the first interview. He

1 had been there, according to them, less than a
2 day, when they had extracted from him a confession
3 that he belonged to some terrorist organizations.

4 MR. PARDY: Pakistani based. They
5 didn't say terrorist. They said a Pakistani
6 organization that was active in Montreal and
7 possibly --

8 MS McISAAC: Commissioner, this is
9 the very information that was contained in the
10 summary that Mr. Atkey prepared --

11 MS EDWARDH: No, it's not, I'm
12 sorry.

13 MS McISAAC: Is it somewhere else?

14 MS EDWARDH: Make your submission.

15 MS McISAAC: Well, if I am
16 mistaken, I apologize. But I didn't know that the
17 detail of what was in the statement or material
18 was available otherwise than in the summary which
19 had been prepared by Mr. Atkey, which had not yet
20 been released.

21 If I am mistaken, I apologize.

22 MS EDWARDH: With respect, the
23 reason that there was an objection taken to the
24 release of it was that the detail was sufficiently
25 lacking that it leads to, I thought, a

1 misunderstanding. And I don't need to take the
2 witness any further.

3 But I thought it was clear that we
4 had a record before us relating to the first
5 interrogation, and my friend has referred to it a
6 number of times. It describes the Syrian official
7 saying -- sorry, Mr. Cavalluzzo.

8 I obviously need a lot of help,
9 Mr. Commissioner.

10 MR. CAVALLUZZO: If you take a
11 look at tab 123, you will see the information.

12 THE COMMISSIONER: 123?

13 MR. CAVALLUZZO: Correct.

14 MS EDWARDH: Thank you.

15 And this is where I got the
16 Pakistani reference, and this is what I am
17 referring to, in paragraph 3.

18 "According to ... Arar has
19 apparently already admitted
20 that he has connections with
21 terrorist organizations..."

22 So the word "terrorist" was there.
23 And then there is another blank.

24 "... alluded to Pakistani
25 groups) ..."

1 In the plural.

2 So that certainly is up front on
3 October 22nd.

4 MR. PARDY: Yes.

5 MS EDWARDH: Do you have any
6 objections if I go any further?

7 THE COMMISSIONER: Well, just ask
8 your questions. If there are objections,
9 Ms McIsaac can make them.

10 MS EDWARDH: I have managed to
11 completely lose my place, Mr. Commissioner.

12 THE COMMISSIONER: Do you want to
13 take a --

14 MS EDWARDH: Yes, if we could have
15 a few minutes.

16 THE COMMISSIONER: We can take a
17 ten-minute break.

18 How are we doing time-wise? I am
19 just thinking --

20 MS EDWARDH: Can I do it on a
21 three-to-one ratio too?

22 THE COMMISSIONER: No. Only
23 Mr. Cavalluzzo gets away with that.

24 MS EDWARDH: I will try to move
25 through the rest of it.

1 Let's see. I started around 10 to
2 3:00, I believe, and thought I would take 90
3 minutes. I will take 90 minutes.

4 THE COMMISSIONER: That's great.
5 Do you have any better idea yet,
6 Ms McIsaac, how long you are going to be?

7 MS McISAAC: I still think I'm
8 going to be longer than I usually am. An hour and
9 a half maybe?

10 THE COMMISSIONER: Okay. One of
11 the things you might talk about during the
12 ten-minute break is, with the witness, as to
13 whether or not this is something we can complete
14 today. I'm prepared to sit as late as 6 or 6:30,
15 if we can do that.

16 MR. PARDY: I'm good for ten
17 o'clock.

18 --- Laughter / Rires

19 THE COMMISSIONER: That's a
20 witness I like, Mr. Pardy. We'll rise for ten
21 minutes.

22 THE REGISTRAR: Please stand.

23 --- Upon recessing at 3:40 p.m. /

24 Suspension à 3 h 40

25 --- Upon resuming at 3:54p.m. /

1 Reprise à 15 h 54

2 THE REGISTRAR: Please be seated.
3 Veuillez vous asseoir.

4 MS EDWARDH: Thank you,
5 Mr. Commissioner. Thank you for the moment to
6 reflect on where I was. I had lost it.

7 We were talking about the
8 obligation and duty to ensure that information
9 shared is properly contextualized, and I took you
10 to this document, that being the report from
11 Damascus in respect of the first consular contact,
12 and I guess it's not consular contact, this is a
13 contact from the ambassador to the head of
14 military intelligence on the eve of the first
15 consular contact.

16 MR. PARDY: Yes.

17 MS EDWARDH: And I thought it was
18 important, because we would assume that being --
19 this is setting up the consular contact, that this
20 kind of document and these kind of statements
21 would be shared through ISI with the RCMP and/or
22 CSIS, given the working relationship in this case.
23 Is that fair?

24 MR. PARDY: I don't know for
25 certain, but you could assume that information

1 such as this would have gone through ISI, yes.

2 MS EDWARDH: Right. So, here,
3 it's just as much -- there is just as much a need
4 to contextualize this information, Mr. Pardy, as
5 there is the actual consular information?

6 MR. PARDY: Absolutely, yes.

7 MS EDWARDH: Because indeed we
8 have the General announcing to the Ambassador,
9 there's already been a confession. Right?

10 MR. PARDY: Yes.

11 MS EDWARDH: And you and I know,
12 that, if we assume, as we do today, that Mr. Arar
13 has been held in detention incognito and
14 interrogated during this period, that confession
15 is probably worth nothing more than even the paper
16 it's written on?

17 MR. PARDY: Yes, I think one
18 could -- unless one could take elements out of
19 that, out of what is said in that report, and to
20 verify them through some independent means, then
21 the information is nothing more than words on
22 paper. Yes.

23 MS EDWARDH: Right. And certainly
24 that's, of course, what any intelligence or police
25 agency would want to do, is determine whether they

1 could verify so they could make their own case
2 against Mr. Arar?

3 MR. PARDY: Or not make a case.

4 MS EDWARDH: Yes. Either way.

5 MR. PARDY: Either way.

6 MS EDWARDH: And certainly you
7 would want to be very sure that they didn't
8 operate on the assumption that this admission was
9 per se like a confession obtained by a police
10 officer in a Canadian investigation? It's a whole
11 different kettle of fish?

12 MR. PARDY: Yes, it's quite
13 different, although I don't fully subscribe to
14 your analogy to the Canadian situation because, as
15 you know, there have been some very bad scenes in
16 Canadian investigations that have led to some
17 terrible results.

18 MS EDWARDH: Well, I would be the
19 first to admit that, sir, but if we have a
20 professional police officer in Canada, and they
21 know that what they're saying to people is to give
22 them instruction as to their rights, and indeed
23 they do not offer inducements, do not threaten,
24 and do not abuse, they're going to get a
25 statement, in theory, that is nothing like the

1 statement you would expect to be obtained by
2 Syrian Military Intelligence?

3 MR. PARDY: In the best of all
4 possible worlds, this was certainly not it, no.

5 MS EDWARDH: Right.

6 Now, we have another piece of
7 information that comes back after April 22, when
8 Mrs. Catterall and the other MP are informed by
9 military intelligence that Mr. Arar is about to
10 shortly stand his trial, and it will be alleged
11 that he's a member of al-Qaeda and that he trained
12 in 1993 in Afghanistan. Do you recall that
13 evidence?

14 MR. PARDY: Yes.

15 MS EDWARDH: Right. And we know
16 that that went directly back to the RCMP as well,
17 and it went also to CSIS?

18 MR. PARDY: But that information
19 was in the November 3 piece of paper as well. Up
20 to a point, yes.

21 MS EDWARDH: Up to a point.

22 MR. PARDY: Yes. There was an
23 overlap to some extent. Yes.

24 MS EDWARDH: Right. Well, you can
25 circle the same information --

1 MR. PARDY: Absolutely, yes.

2 MS EDWARDH: And that's exactly
3 what it appears to be doing in this case?

4 MR. PARDY: Yes.

5 MS EDWARDH: Now, the point I'm
6 just simply making is that, having been told --
7 Mrs. Catterall having been told and I guess
8 Sarkis -- I've forgotten his last name?

9 MR. PARDY: Assadourian.

10 MS EDWARDH: Assadourian. Having
11 been told that Mr. Arar had gone to Afghanistan
12 and trained in a camp for a period of time, I
13 would take it you would want the intelligence and
14 policing authorities in this country to approach
15 that information with as much caution as they did
16 the first suggestion that he's admitted to having
17 terrorist connections?

18 MR. PARDY: Yes, and I think I've
19 given testimony that I attach really no
20 significance to going to Afghanistan in 1993, and
21 certainly everybody that I was in contact with --
22 that was the understanding I gave them, that the
23 information itself was of no value in and of
24 itself.

25 MS EDWARDH: Yes. But I don't

1 want to talk about the historical context and the
2 fact that western governments were supporting
3 those elements in Afghanistan.

4 I am just going to talk about for
5 a moment, sir, that given the conditions that you
6 now know existed with respect to Mr. Arar's
7 detention and his interrogation, you would have
8 said you were in Afghanistan training in 1993
9 under those conditions.

10 MR. PARDY: That I was?

11 MS EDWARDH: Sure.

12 MR. PARDY: Possibly, yes.

13 MS EDWARDH: I certainly would
14 have.

15 MR. PARDY: But again, when I make
16 those kinds of connections, it is very important
17 that history be understood in this context,
18 because we are all here because of history, and
19 that is a very important consideration. When one
20 looks at these individual pieces of information,
21 they need to be judged as much as verification
22 from outside sources as verification against the
23 historical record.

24 MS EDWARDH: I understand that
25 point. My point, though, is different. That when

1 statements are coerced, or beaten, or tricked, or
2 whatever out of persons who are held in those
3 kinds of conditions, they are unreliable unless
4 they can be confirmed by completely independent
5 information?

6 MR. PARDY: Absolutely.

7 MS EDWARDH: All right. And of
8 course, in order to draw the conclusion of
9 unreliability, the persons receiving this
10 information must be alive to the reasonable
11 prospect of how these admissions were obtained;
12 right?

13 MR. PARDY: Oh, yes, yes.

14 MS EDWARDH: And so in passing on
15 this information, you would agree with me that it
16 was the duty of the Department of Foreign Affairs
17 to make sure that the recipient of the information
18 properly understood its context?

19 MR. PARDY: Yes.

20 MS EDWARDH: Thank you.

21 Just for a quick clarification, my
22 friend has taken you through Exhibit 103 in some
23 detail, but I have one other question I wish to
24 ask.

25 There is a reference to CSIS on

1 page 3 and it says:

2 "CSIS officials visited Syria
3 earlier this year..."

4 MR. PARDY: Is that the one --

5 MS EDWARDH: I'm sorry. That is
6 the fourth page, paragraph 11.

7 MR. PARDY: Yes.

8 MS EDWARDH: This document is
9 written by you in 2003?

10 MR. PARDY: Yes. May and June,
11 yes.

12 MS EDWARDH: Right. So the
13 ordinary construction of that language, Mr. Pardy,
14 would indicate that CSIS had visited Syria
15 sometime after January 1st, 2003 --

16 MR. PARDY: Yes, that was a
17 mistake that never got picked up; that is correct.

18 MS EDWARDH: I just wanted to
19 clarify whether they in fact had gone more than
20 once, to your knowledge.

21 MR. PARDY: I might have started
22 this memo in December. Sometimes it takes a while
23 to get them out.

24 But certainly it was November, as
25 I testified, on Thursday, I think it was.

1 MS EDWARDH: And so, to the best
2 of your knowledge, I take it, you have no
3 information that CSIS attended on more than one
4 occasion before your departure on August 31st,
5 2003?

6 MR. PARDY: That is correct, yes.

7 MS EDWARDH: I want to deal with
8 the chronology for one moment. There is a
9 reference in it that I wish to have you expand
10 upon, if I could. Just give me a moment.

11 It is P-106, if the witness could
12 be provided with that. Thank you.

13 And in particular, sir, I am
14 looking at the second page of the chronology.

15 Do you have that in front of you
16 now, Mr. Pardy?

17 MR. PARDY: Yes.

18 MS EDWARDH: And it is halfway
19 down the page under the notation "23.12.03", under
20 "(C)".

21 Do you see that reference?

22 MR. PARDY: Under 23.12.03, yes.

23 MS EDWARDH: And that date?

24 MR. PARDY: Yes.

25 MS EDWARDH: It states:

1 "In its annual report on
2 human rights in Syria, the
3 Canadian Embassy in
4 Damascus..."

5 Let me stop there. Am I correct,
6 sir, that on an annual basis the embassy gathers
7 information about the situation in human rights
8 and provides it to the department?

9 MR. PARDY: Yes. It is a standard
10 instruction that all embassies are under to report
11 on a standard list of conditions in each country.

12 MS EDWARDH: Is it something like
13 the Country Report that is posted on the State
14 Department website in the United States?

15 MR. PARDY: It's better.

16 MS EDWARDH: It's better.

17 And I take it that document is not
18 to be made available to us, but this is the only
19 summary I can find.

20 MR. PARDY: Mm-hmm.

21 MS EDWARDH: It says in the annual
22 report:

23 "... refers to the
24 persistence of allegations of
25 torture of Arar during his

1 imprisonment in Syria."

2 So am I to understand, sir, that
3 the embassy was picking up persistent allegations
4 of torture throughout the year that Mr. Arar was
5 in Syria?

6 MR. PARDY: I need a context in
7 terms of when the actual report was completed, I
8 think, by the embassy. This suggests that there
9 certainly was some -- how much time here? Was the
10 report produced in January of 2003, or was it
11 September of 2003?

12 I think we need a timeframe here
13 too. And I think this gives you -- that
14 timeframe, I think, would give you a better
15 understanding of this.

16 I am not disputing the fact as
17 displayed in that statement.

18 MS EDWARDH: I am not in a
19 position to assist you, sir, because I am the one
20 here who doesn't know anything about the
21 timeframe, but maybe someone will tell you if that
22 is not a matter over which national security
23 confidentiality is claimed.

24 My friend is looking, and I am
25 hopeful this will assist you.

1 MR. PARDY: Yes.

2 MS EDWARDH: If we could just wait
3 a moment, Mr. Commissioner?

4 --- Pause

5 MS McISAAC: The information
6 suggests the report itself is dated the 23rd of
7 December, but we are trying to figure out...

8 MS EDWARDH: If we use that as our
9 working hypothesis, if we can use that term,
10 Mr. Pardy, certainly this would suggest that the
11 embassy was picking up information, through
12 whatever sources it had, that constituted
13 persistent allegations of torture in respect of
14 Mr. Arar.

15 MR. PARDY: Yes.

16 MS EDWARDH: I have searched
17 through the document, sir. Leaving aside
18 sources -- and we don't want to compromise
19 those -- can you assist us as to whether or not
20 those persistent allegations of torture that came
21 to light while he was in prison were ever passed
22 on to you?

23 MR. PARDY: I may have been the
24 source of some of them. So in a sense, there was
25 no -- as a community in terms of a group of people

1 that were looking at the conditions under which
2 Mr. Arar was suffering, I think we were talking to
3 each other extensively and certainly the comment
4 being made by a variety of organizations, I think
5 principally Amnesty, the comments made by
6 Dr. Mazigh, the comments being made I think by a
7 variety of people, that this was an important
8 element in terms of understanding what was going
9 on.

10 So I don't think this comes as a
11 novel element to me at all.

12 MS EDWARDH: No. And you have
13 described your own conclusions and hypotheses.
14 But certainly it is fair to say from this
15 information, assuming it is written correctly on
16 the page, that the information is not solely
17 coming from Canada but it is also coming out of
18 Syria?

19 MR. PARDY: Yes. I think the
20 embassy, as was suggested by comments by other
21 people, was certainly not just talking to
22 officials of the Syrian government. They were
23 talking to a variety of people, and I think this
24 kind of -- and particularly in terms of private
25 Syrian citizens who may have been subject to this

1 sort of thing.

2 So there is a variety of sources
3 for this kind of information, yes.

4 MS EDWARDH: Now, I have to ask
5 one question: From the information you received
6 from your sources in Syria, did you ever acquire
7 information that Mr. Arar was tortured in prison
8 while he was there?

9 MR. PARDY: I am sorry, could you
10 repeat the beginning of the question? I wasn't
11 quite sure of the premise that you were putting
12 forward here.

13 MS EDWARDH: Were you privy ever
14 to information from Syrian sources through
15 Damascus --

16 MR. PARDY: Okay.

17 MS EDWARDH: -- that Mr. Arar was
18 being tortured in prison?

19 MR. PARDY: I don't think that
20 there is anything in the written record, but I
21 would have had discussions, I am trying to think,
22 certainly with the ambassador. And as you know,
23 there were numerous telephone calls that I had
24 with Ambassador Pillarella.

25 And I am trying to think that

1 there was another person that contacted me, and
2 while that person was not in Syria, that they did
3 have some contact into Syria, and basically went
4 over much of the kind of information that one sees
5 in the public literature.

6 MS EDWARDH: And do you know from
7 information provided to you from the ambassador
8 whether he received information from Syrian
9 sources that Mr. Arar was being tortured in
10 detention in Syria?

11 MR. PARDY: Yes, my recollection
12 is that -- I mean, we have touched on that issue.
13 Now, whether he said "well, I was just out talking
14 to a local taxi driver and this is..." No, it
15 didn't come down to that level of detail.

16 But as I testified the other day,
17 the working assumption that I was using here, that
18 in the initial days that Mr. Arar spent in the
19 hospitality of his Syrian hosts, he -- and that
20 was a tradition, that you did this in the early
21 days, and the fact they allowed us in less than
22 two weeks to go in to see him.

23 I think the interesting thing here
24 is, and I think this is supported -- and while we
25 didn't have that information at the time, what I

1 took from this, when they let us in, it gave us a
2 benchmark against which we could measure
3 Mr. Arar's state of mind and condition for all of
4 the subsequent visits.

5 And certainly while initially the
6 visits took place in a fairly compressed
7 timeframe -- I think we had five visits before the
8 end of December -- throughout that whole period
9 there was an increasing level of confidence that
10 the abuse did not continue in the intervals
11 between visits.

12 So that is where our level of
13 confidence started. Now, it fell off, I think
14 dramatically, after January 7th, where the visits
15 almost closed down. We were in again on February
16 18th, April 23rd, and then not until August the
17 14th.

18 And that was the troublesome thing
19 about the information that came from SHRC, and I
20 think I mentioned that in my testimony.

21 MS EDWARDH: Yes.

22 MR. PARDY: There wasn't a
23 timeframe for it. So that is why when it was
24 detailed in the letter to Dr. Mazigh on July 29th,
25 we took the action we did to see whether or not we

1 could go back in and measure Mr. Arar's condition
2 at that time against our earlier observations of
3 him.

4 MS EDWARDH: We have kind of gone
5 away from my question.

6 Would you just go back to the
7 question for a moment because I think you have had
8 an opportunity to develop that thinking earlier in
9 discussions.

10 The question is this: Were you
11 led to believe that the Canadian embassy, in the
12 preparation of its human rights analysis, had
13 independent information from Syrian sources about
14 Mr. Arar's treatment?

15 MR. PARDY: I would need to see
16 the report and to see what sources, because
17 normally in those kinds of reports, sources would
18 be identified. So I have no way of knowing a
19 report that became available in December after I
20 had left, just what the sources were for their
21 conclusions here.

22 MS EDWARDH: I am sorry, sir, I
23 cannot provide you a copy of this report in order
24 to pursue any further discussions.

25 MR. PARDY: Well, maybe the

1 Commissioner has seen it, or counsel for the
2 Commission, and then they can draw their
3 appropriate conclusions on this, yes.

4 MS McISAAC: I was going to say we
5 will review the report again and see whether there
6 are any additional parts of it that can be
7 released.

8 THE COMMISSIONER: Thank you,
9 Ms McIsaac.

10 MS EDWARDH: Thank you,
11 Mr. Commissioner.

12 There is also an indication
13 here -- and we are going to come to the 14th of
14 August. But if you go down to the third line, it
15 says that:

16 "Mr. Arar told an embassy
17 official, after his release,
18 that he was mistreated during
19 the first two weeks of his
20 imprisonment, left alone
21 thereafter but forced to sign
22 a confession before his
23 release."

24 Now, this raises very important
25 questions.

1 I take it, sir, that -- were you
2 aware of those facts, that that had been reported
3 to an embassy official after his release?

4 MR. PARDY: No, I wasn't, but the
5 information that is suggested here is not
6 materially different than what Mr. Arar gave
7 public testimony to when he returned.

8 The issue of being forced to sign
9 a confession before his release is almost a
10 standard item in these conditions. I have seen it
11 before in other countries. And that confession is
12 used then as an intimidation factor possibly in
13 terms of other family members or the possibility,
14 heaven forbid, that Mr. Arar might want to go back
15 to Syria.

16 MS EDWARDH: That would be a good
17 way of re-detaining him and ensuring that he
18 doesn't ever get out of prison again should he
19 pass through the border?

20 MR. PARDY: In my life and in my
21 experience, stranger things than that have
22 happened.

23 MS EDWARDH: What I would like to
24 do though is show you -- could the witness be
25 shown tab 508?

1 When Mr. Arar had his August 14th
2 consular visit --

3 MR. PARDY: 514?

4 MS EDWARDH: No, 508.

5 You had both a written memorandum
6 provided to you and you, as I think testified,
7 spoke to Mr. Martel after that visit.

8 Is that right?

9 MR. PARDY: No, I don't think I
10 spoke to Mr. Martel after that visit.

11 MS EDWARDH: I am sorry.

12 MR. PARDY: I stand --

13 MS EDWARDH: You have no --

14 MR. PARDY: No. There was a
15 report that came in, I am sorry, on August the
16 14th, and I cannot recall that I spoke to
17 Mr. Martel subsequent to that message.

18 MS EDWARDH: And we can get out
19 the actual report -- perhaps we should. It's at
20 507. Just keep our hands there between the two
21 documents.

22 I am going to tell you that it has
23 been confirmed for me that tab 508 are Leo
24 Martel's handwritten notes made immediately after
25 the visit.

1 What Mr. Martel says when he, as
2 you pointed out, was going in to see if there were
3 recent signs of torture, but he does answer the
4 question of the issue of torture in a very general
5 way.

6 Is that fair?

7 MR. PARDY: I assume what you are
8 telling me is 508 is Mr. Martel's notes,
9 handwritten notes, that he took. This is the
10 first time I have seen them in that sense.

11 MS EDWARDH: We will read them
12 carefully.

13 MR. PARDY: You read them
14 carefully. He writes worse than the last person,
15 yes.

16 MS EDWARDH: Yes, it looks like he
17 is a doctor.

18 Let's look at what he formally
19 reports to you.

20 At tab 507, under paragraph 3, he
21 reports to you as follows:

22 "He was able to express
23 himself freely at times and
24 he indicated that prison
25 conditions had been more

1 difficult in the past than
2 now. He mentioned he did not
3 wish to have adverse media
4 publicity as he felt this
5 would only harm his case.
6 'The Press will know the
7 truth when I return home.'
8 He confirmed he had not been
9 beaten nor tortured."

10 Do you see that?

11 MR. PARDY: Yes, I do.

12 MS EDWARDH: So when you received
13 this information that is reported to you, you will
14 agree with me that it doesn't seem to limit itself
15 to any statement of time?

16 MR. PARDY: That is correct.

17 MS EDWARDH: But you obviously had
18 in your mind -- and we will hear from Mr. Martel
19 what he had in his mind -- that he was really
20 going in to say what has happened in the very
21 near -- or in the present tense because you were
22 concerned about the report from the Syrian Human
23 Rights Committee; right?

24 MR. PARDY: Yes, we made the
25 assumption that the human rights committee, since

1 they didn't attach a timeframe to their
2 information, we took the worst possible
3 interpretation and said: Well, did that happen in
4 the last few days? Yes.

5 MS EDWARDH: I am going to just
6 take you to the things that -- and that is all he
7 says.

8 Now, if you go to his notes --

9 MR. PARDY: Can I make a comment
10 on that paragraph?

11 MS EDWARDH: Yes, certainly.

12 MR. PARDY: The words that are
13 used there, and particularly the quotes that he
14 mentioned, "The Press will know the truth when I
15 return home", I looked at that almost from a --
16 for want of a better word, almost a psychological
17 frame of mind here.

18 Here is a man that has just spent
19 11 months in some of the harshest conditions
20 probably that exist around the world, and yet he
21 can stand up and say -- there is hope in that
22 statement. He is going to get out of there and he
23 is still expressing hope that, "I am going to be
24 out of here and I will then tell you exactly what
25 has gone on."

1 I took some encouragement from
2 this statement, I mean, the way it was reported.

3 MS EDWARDH: Yes. But we have to
4 be mindful of the fact that it is coupled with his
5 own personal observation that his long detention
6 has destroyed him mentally.

7 MR. PARDY: Absolutely. And as
8 you know, people react differently to these kinds
9 of conditions. We know a person in common who --
10 some of the harshest conditions that I think
11 existed out there was ennobled by the process,
12 almost, as it were.

13 So you take these things with some
14 understanding of the range of possibilities that
15 are out there, in that sense.

16 But overall, I was quite
17 surprised. We had not seen him since April and
18 Mr. Martel goes in, and Mr. Arar stands up almost
19 and says "look, I am getting out of here some day
20 and I am going to tell the world what this was all
21 about".

22 I took some encouragement from
23 that, because we did not have many messages like
24 that out of this situation.

25 MS EDWARDH: I do want to go to

1 Mr. Martel's notes, if I could?

2 MR. PARDY: Yes.

3 MS EDWARDH: I have told you the
4 circumstances under which they were made. And
5 there is the first reference at the very top:

6 "Makes -- does not wish
7 adverse publicity..."

8 And that may be:

9 "Maher does not wish adverse
10 publicity on case."

11 And then can you help me on this?
12 Maybe we will all read together, Mr. Commissioner.
13 Everyone has a good handle on a few words.

14 "Prison conditions. I will
15 tell you the truth."

16 THE COMMISSIONER: "Asking Syria".

17 MS EDWARDH: "Asking Syria to
18 release me or to see a judge.
19 Which Syrian law I broke?"

20 That seems to be a question that
21 Mr. Arar is asking.

22 MR. PARDY: Mm-hmm.

23 MS EDWARDH: "Present conditions.
24 I have not been paralysed,
25 not beaten, not tortured."

1 Very beginning, very little.

2 3 by 6 by 7."

3 So that seems to refer to the
4 dimensions of the cell?

5 MR. PARDY: I --

6 MS EDWARDH: From what you now
7 know?

8 MR. PARDY: I think Mr. Martel --
9 again, as I say, if I read this in the context,
10 yes, that is the interpretation. Obviously the
11 location of his confinement was as small as that.

12 MS EDWARDH: "Sleeping on ground."

13 MR. PARDY: Mm-hmm.

14 MS EDWARDH: "Mentally destroyed."

15 MR. PARDY: Mm-hmm.

16 MS EDWARDH: It would appear very
17 much the case, Mr. Pardy, that Mr. Martel in his
18 notes at least was focusing on, as you noted, the
19 present conditions. "Was he then being tortured?"

20 MR. PARDY: Let me see.

21 MS EDWARDH: It starts with
22 "Present conditions".

23 MR. PARDY: Yes, but he says in
24 the last one, just before the numbers, 3, 6, and
25 7, that sentence, "very beginning, very little".

1 Is that accurate?

2 MS EDWARDH: We haven't heard from
3 Mr. Martel.

4 MR. PARDY: This is why I say
5 that. In terms of personal notes such as this, as
6 you have seen with my own notes, one word can
7 convey a lot as far as memory is concerned.

8 MS EDWARDH: I am going to suggest
9 to you this accords with your recollection that
10 you and Mr. Martel were focused on the present
11 condition of detention and whether Mr. Arar was at
12 that time being -- and I am going to use not just
13 torture but physically tortured.

14 That was your preoccupation?

15 MR. PARDY: Physical torture is
16 always in some ways -- how can I put this? -- the
17 most important consideration that one looks for,
18 because it is the physical torture that sets up
19 the victim thereafter.

20 I have read cases where, I mean,
21 somebody is physically tortured at the very
22 beginning and thereafter there is no physical
23 torture. But all you need to do is put on a
24 recording of sounds and the sphincter starts to
25 loosen. That is the reality of all this.

1 So you look to the physical
2 torture as an indication of what other things may
3 happen, yes.

4 MS EDWARDH: I completely
5 understand and I agree, and perhaps we should get
6 your observations about that.

7 But all I am trying to say is you
8 testified, sir, that your preoccupation with the
9 August 14th consular visit was to ascertain
10 whether Mr. Arar's current conditions involve the
11 use of physical torture.

12 That is what you were focused on?

13 MR. PARDY: In order -- yes, what
14 we had were a series of benchmarks. We saw
15 Mr. Arar on eight occasions previous to that, and
16 that gave us a set of benchmarks against which to
17 measure what his state was on August the 14th.

18 There wasn't a preoccupation with
19 the last two days. It was a set of observations
20 that could be compared with the other observations
21 that we had, and they did not materially change
22 except that there was more information direct from
23 Mr. Arar during the August 14th conversations than
24 perhaps were available from the earlier ones.

25 MS EDWARDH: And you were looking

1 to answer the suggestion in the Syrian Human
2 Rights Committee report?

3 MR. PARDY: Not to answer them. I
4 was looking for information that would give us, in
5 effect, a standard against which one would talk
6 about this to the Canadian public, yes.

7 MS EDWARDH: It does seem to me
8 that Mr. Martel is distinguishing the present
9 condition from the very beginning in his very own
10 note here?

11 MR. PARDY: Yes, I think so. I
12 think, as I have already testified, that the
13 working inference that we were using here was that
14 those harsh conditions existed at the very
15 beginning, and certainly then there was some
16 amelioration of how he was treated.

17 But we had certainly never had any
18 information about the physical confinement that he
19 was subject to, this 3, 6, and 7. There was never
20 a previous reference to that.

21 I first heard about it when
22 Mr. Arar gave public testimony, yes.

23 MS EDWARDH: If you can just
24 answer -- I don't want to abuse the privilege of
25 asking you questions, but if we could just get

1 through this by answering the question yes or no.

2 Would you agree the note seems to
3 distinguish between present condition and the very
4 beginning?

5 MR. PARDY: Am I allowed a "maybe"
6 here?

7 MS EDWARDH: Yes, absolutely.

8 MR. PARDY: I don't know. I mean,
9 this is something that Mr. Martel sat down and
10 wrote in the immediacy of that visit, and my
11 understanding is that he is going to be here in a
12 couple of weeks and will talk to you about all of
13 this.

14 You are asking me to interpret
15 what Mr. Arar meant here. I am sorry, I can't
16 help you to the extent that you would like.

17 MS EDWARDH: Well, we get some
18 better sense -- let me put the question very
19 simply to you.

20 There is nothing in the consular
21 note that would appear to tell you anything about
22 the conditions of confinement, unless I am missing
23 them because they are redacted.

24 There is nothing to suggest that
25 what Mr. Martel knew on August 14th, when he

1 walked out of that meeting, about the size of the
2 cell or sleeping on the floor or anything else,
3 was communicated to you August 14th?

4 MR. PARDY: I certainly can't
5 remember those numbers. They are very striking
6 numbers, and I think it's the kind of thing that
7 sticks in your mind the first time you hear them,
8 yes.

9 MS EDWARDH: And they are striking
10 because they are about the size of a grave?

11 MR. PARDY: Yes. Three, 6, and 7?
12 Yes.

13 MS EDWARDH: And in reviewing the
14 report, we can agree that there's no discussion of
15 that, nor any sense that the assertion he was not
16 tortured was limited to the current conditions?

17 I will break that down in two, I
18 am sorry.

19 MR. PARDY: Please, yes.

20 MS EDWARDH: There is nothing in
21 the report that refers to the size of the cell or
22 sleeping on the floor; correct?

23 MR. PARDY: That I see here. I
24 would need to be reminded of the redacted
25 portions, but that is not possible, I take, under

1 these conditions.

2 MS EDWARDH: I am sorry,
3 Mr. Pardy. If I could, I would. I have no reason
4 to think the government would redact the size of
5 the cell, but maybe they would.

6 MS McISAAC: I don't believe that
7 is covered in the redactions.

8 MS EDWARDH: Thank you. It seems
9 it's not there then.

10 And the second important
11 observation is that there is nothing in this
12 report that conveys any limitation to the
13 assertion "he confirmed that he had not been
14 beaten nor tortured".

15 That would seem to speak as though
16 it applied through the entire timeframe of
17 Mr. Arar's detention?

18 MR. PARDY: Yes, but I would
19 qualify it with the statement that Mr. Martel
20 quotes here:

21 "The Press will know the
22 truth when I return home."

23 So everything that was said was
24 qualified, in my mind, by that statement.

25 MS EDWARDH: All right. Now, the

1 issue of course, though, is we do get -- I hear
2 what you are saying, Mr. Pardy.

3 But the really critical issue is,
4 within -- I don't want to say a couple of hours.
5 It may have been more; it may have been less --
6 the Minister is standing there, pronouncing --
7 maybe it's in 24 hours -- that there has been a
8 consular visit, and Mr. Arar has independently
9 confirmed that he has not been tortured.

10 There is no limitation in time or
11 place and there is no reflection of the fact that
12 Mr. Arar is not speaking independently or outside
13 of the sight of his Syrian guests. All right?

14 So I need to know from you,
15 Mr. Pardy, I think we all need to know, is how
16 such a mistake, how such a briefing could go
17 forward and the Minister could find himself in a
18 position where he says that he was not alive to
19 the concerns that you had about Mr. Arar from his
20 initial interrogation, and then subsequently
21 understood this to be confirmation completely that
22 he had never been tortured?

23 Maybe you can help us understand
24 how that miscommunication takes place, because you
25 certainly testified, sir, that you had sent that

1 message both vertically and horizontally through
2 the department.

3 MR. PARDY: And I think -- I will
4 answer it in the general sense, and then try to
5 come in with the specifics shortly thereafter.

6 MS EDWARDH: Thank you.

7 MR. PARDY: As the Minister I
8 think has given testimony, the maze that exists --
9 and I use that term quite deliberately in terms of
10 something that is on my mind or on a piece of
11 paper that I wrote. By the time it gets to the
12 Minister, it's a fairly laborious process.

13 The Minister -- and I think this
14 is the essence of his testimony. His activities
15 and statements quite often, and particularly
16 statements that are made on the fly, are made on
17 the basis of verbal briefings from his staff.

18 MS EDWARDH: Yes.

19 MR. PARDY: And he also said that
20 it does not mean that everything gets completely
21 passed in this process.

22 What amazes me in this whole
23 process -- and I have been watching it for
24 years -- is that anything accurate ever gets said
25 when it goes through this process.

1 Mr. Graham was very, very good. I
2 don't think that there was, apart from this one
3 instance that I can think of, an example where one
4 word got mentioned that perhaps was inappropriate.
5 And Mr. Graham has already testified to that fact.

6 MS EDWARDH: Absolutely.

7 MR. PARDY: But what you have to
8 accept here is that it does not imply that other
9 people did not have this information. And the
10 value that they attached it, in terms of the
11 passing it on to the Minister, is something for
12 them to give evidence on.

13 But certainly I think for people
14 that I was working with on a daily basis, I did
15 not hide my views on this important issue. It was
16 out there.

17 But as time passed -- how can you
18 put it here? -- and you are dealing with the
19 details of trying to achieve something here,
20 whether it was coordination in government,
21 coherence in government, or trying to get an MP
22 visit done, or trying to get a Prime Ministerial
23 emissary on his way out to Syria, you didn't sort
24 of preface, every time you talked to somebody,
25 "Well, I think that back in October I thought

1 these terrible things were going on."

2 You sort of move beyond it because
3 there was a certain comfort factor in those
4 meetings that we had with Mr. Arar up until --
5 well, I would say February 18th. After that it
6 was really spotty in that sense.

7 So there was a comfort factor.
8 And I think maybe we might have reflected that
9 comfort factor in comments that we might have made
10 upwards and more broadly in the department.

11 MS EDWARDH: Did you, sir, as
12 well, give press interviews saying that, based
13 upon this information, that Mr. Arar had denied
14 being tortured?

15 MR. PARDY: I stand to be
16 corrected, but I don't think that I ever made that
17 kind of a statement publicly, because it is an
18 area that I did not want to engage the public on
19 because of the possible impact this could have.
20 We were already working under serious limitations,
21 both within the Canadian government and with the
22 Syrians. I did not want to add to our
23 difficulties in terms of what we were trying to do
24 to get Mr. Arar out of Syria.

25 And those kinds of things, if they

1 were displayed in the media, then that would have
2 definitely added to our problems.

3 MS EDWARDH: So what we are left
4 with, or what the Commissioner is left with, is in
5 this labyrinth of communication the message gets
6 sanitized, and it may be through error, simple
7 error, it may be because the person doesn't value
8 the message, or appreciate the significance of the
9 message, or it may be for some other reason that I
10 can't for the moment think of, but there could be
11 a bunch of reasons.

12 But it is clear, Mr. Pardy, that
13 the message didn't get through at the beginning,
14 in the first months of Mr. Arar's detention. And
15 that is what is of concern.

16 MR. PARDY: I would not use the
17 word "sanitize" because that suggests an ulterior
18 motive that is involved in all of this. I don't
19 think there was any ulterior motive involved,
20 either at the top or at the bottom on this issue.

21 I think the Minister has given
22 evidence in terms of his general understanding of
23 the events in the Middle East, and the conditions
24 in Syria in particular, and the possibility that
25 somebody like Mr. Arar could be subject to some

1 pretty nasty business.

2 I think that general understanding
3 was out there. But as the Minister has said,
4 would it have made any material difference to our
5 efforts?

6 I would make one statement
7 further: that if that information was generally
8 talked about in the media, the material difference
9 that it would have made would have made our job
10 that much harder in terms of helping Mr. Arar.

11 MS EDWARDH: All right. But let
12 me put another series of propositions and we can
13 do this quickly.

14 It is clear, sir, that there is no
15 written record of you recommending that the
16 Minister of Foreign Affairs be alive to the
17 serious and difficult conditions of detention and
18 probability of torture in the first two months of
19 Mr. Arar's detention. There is nothing on the
20 written record that gets us there.

21 Is that fair?

22 MR. PARDY: And as you will note
23 as well --

24 MS EDWARDH: Can we answer the
25 question?

1 MR. PARDY: It's not there. Can I
2 give you an explanation? of why that would be the
3 situation?

4 MS EDWARDH: Absolutely you can.

5 MR. PARDY: As you know, our
6 efforts to coordinate pieces of paper upwards that
7 encompassed a variety of views around the
8 government, it was one hell of a process.

9 So my approach to many of these
10 issues was to talk to the people directly
11 involved, because I didn't have to coordinate with
12 anyone.

13 And in terms of my views and in
14 terms of my views of what may have happened to
15 Mr. Arar in the initial days of his incarceration,
16 those views were certainly there in the minds of
17 the people that mattered.

18 MS EDWARDH: Right. But just to
19 be absolutely clear -- and we know you have said
20 you sent this information up to the Minister's
21 office. But do you, Mr. Pardy, have a
22 recollection of speaking specifically to the
23 Minister himself on this matter or would that have
24 been a member of his staff?

25 MR. PARDY: It would have been a

1 member of his staff. I think our meetings with
2 Mr. Graham on the case largely revolved around --
3 and I am trying to think. There weren't that
4 many.

5 The problem you run into, we
6 probably had six cases going that involved the
7 Minister at this point, and so there was a whole
8 series of meetings with him.

9 The ones specific to Mr. Arar? I
10 don't think there was more than two or three in
11 the year in which this case went on, and I think
12 they all related to -- well, one, the deck I think
13 was discussed at one point briefly, the issue of
14 coordination.

15 The other one was this old effort
16 on the letter, I think, in July -- or in June and
17 July, yes, of 2003.

18 And in those meetings -- you are
19 saying did I suddenly say to Mr. Graham, you know,
20 six months earlier, my view was that Mr. Arar had
21 been abused and tortured and everything else --

22 MS EDWARDH: I don't mean to
23 belittle this at all. I just want to establish
24 that you have no record, nor do you have any
25 recollection of communicating this information to

1 the Minister at any time during your
2 conversations?

3 MR. PARDY: Direct to Mr. Graham,
4 no.

5 MS EDWARDH: That is all I am
6 asking.

7 MR. PARDY: That is not there, no.

8 MS EDWARDH: And is the staff
9 member who you most frequently dealt with on these
10 issues Robert Fry?

11 MR. PARDY: It was Mr. Fry, but
12 also Ms Lobo. And there was other person there,
13 depending on what they needed information on.
14 There was one other lady, I think it was the
15 parliamentary -- Michelle Lobo was the press
16 person for Mr. Graham. And there was one other
17 person there. There were three of them, yes.

18 MS EDWARDH: Let me put a general
19 proposition to you.

20 The Minister has certainly left
21 the suggestion that had he known that torture or
22 conditions of confinement that didn't meet the
23 standards of the western world at all were at
24 play, it might have put the fire under everybody,
25 or it might have put the fire under him, and that

1 he may have had different conversations with his
2 colleagues at the cabinet table, the Solicitor
3 General, and I assume others, and he even went so
4 far as to suggest he may well have talked to
5 Mr. Cellucci.

6 So in retrospect, in retrospect,
7 Mr. Pardy, I am asking you would it not have been
8 more appropriate to not let this labyrinth perhaps
9 alter the message but put it directly on the
10 Minister's lap so there could be no doubt that he
11 knew what the passage of time could mean?

12 MR. PARDY: I have said before
13 that we were playing hockey on Saturday night, and
14 I think we played it successfully, and the
15 business of second-guessing myself on Sunday
16 morning about what we could have done differently,
17 I would rather leave that to the good graces of
18 this Commission and its Commissioner and let him
19 draw his conclusions as to whether or not certain
20 things could have been done better.

21 I am so close to this, and the
22 business of lighting the fire, my ass was already
23 burning on this case. I didn't need anybody to
24 light a fire under me to keep it going here. And
25 a lot of other people were in exactly the same

1 boat.

2 So the idea of second-guessing
3 ourselves in the way that you suggest, I don't
4 think it's appropriate in these -- maybe a year
5 from now I might have a bit more perspective on it
6 and I will sit down and we can have a drink
7 together and we can talk about it.

8 In this context I think it's
9 unfair to a lot of people in terms of what they
10 did to start second-guessing us at this stage
11 based on partial interpretation of the information
12 that may be available to you. And I would leave
13 that to the Commissioner.

14 MS EDWARDH: I am not going to sit
15 down and be quiet just yet, Mr. Pardy.

16 MR. PARDY: No, no, okay.

17 --- Laughter / Rires

18 MR. PARDY: I wasn't suggesting
19 that. I know you don't sit down --

20 MS EDWARDH: I want to put to you,
21 though -- we have the testimony of the Minister.

22 MR. PARDY: Yes, yes.

23 MS EDWARDH: And if you were
24 advising the man who took over your position or
25 the next one, if you were giving them a piece of

1 advice, wouldn't that piece of advice be today:
2 Make sure that in the communications that go up,
3 when you ask for support in the hierarchy, that
4 you are very clear. If you really believe that
5 the person who you are trying to extend help to is
6 a victim or is probably a victim of torture, don't
7 be soft with that message because they may not
8 hear.

9 MR. PARDY: Well, with all due
10 respect to the importance of this question, I am
11 not prepared to second-guess myself on that
12 particular issue yet. It may come to that.

13 But I am telling you that in terms
14 of the support that the Minister gave to us
15 throughout this case, it was -- and the record
16 will suggest it -- there was never an opportunity.

17 But the downside on the issue of
18 torture here was that if it got hung out there as
19 a major element in this case, well, I would
20 suggest to you that Mr. Arar would still be a
21 guest of the Syrian government.

22 I mean, this is a tough government
23 to deal with, and let me tell you, it is not easy.
24 And it is messages from Canada as you have already
25 demonstrated, that caused additional difficulties

1 here.

2 MS EDWARDH: Because you have said
3 that, Mr. Parady, I have to ask one question.

4 MR. PARDY: Last one.

5 MS EDWARDH: To what extent do
6 persons in your position as you were -- I know you
7 are not there now -- have to censor the
8 information that goes up the line in order that
9 those people who receive it don't make either
10 casual use of it or don't use it and cause
11 mistakes to be made?

12 MR. PARDY: There wasn't a
13 censoring of the information going up here because
14 in effect there were almost daily conversations
15 with people in Mr. Graham's office. It was more
16 an attempt to try to structure it so that when the
17 information got passed verbally to other people
18 that there was a deep sensitivity and
19 understanding of the damage that such information
20 could cause if it became a subject of public
21 debate.

22 MS EDWARDH: And is that why it is
23 not written down? We old lawyers are of the
24 belief that one of the ways of making sure that
25 information doesn't fall into the wrong hands and

1 be abused is you just don't write it down. You
2 speak to the person.

3 MR. PARDY: Well, in government
4 it's not much different. It's that in effect
5 because direct conversation is still the main
6 vehicle of conveying -- despite all of the bloody
7 paper that is available to you on this case, it is
8 still that personal conversation with an
9 individual that is still the most important
10 dimension here.

11 MS EDWARDH: And do we take it
12 from what your last comment that there were
13 matters like the discussion of torture that you
14 would not have written down in respect of Mr. Arar
15 in order to protect that information but to
16 exchange it on a verbal basis?

17 MR. PARDY: Well, part of the
18 problem was that this was based on no hard
19 information. It was inference. And it was only
20 when Mr. Martel saw him for the first time on
21 October 23rd -- I mean, one could almost -- and
22 you can put another interpretation on this.

23 It wasn't relief that -- because
24 we would have had a more difficult situation to
25 deal with. It wasn't relief. Here was a man who

1 was standing up, he was talking to us, and was
2 coherent.

3 So it wasn't sort of information
4 that you wanted to -- what's the word here? -- if
5 it was just the opposite, our observations of
6 Mr. Arar, then in effect we would have drawn quite
7 different conclusions.

8 MS EDWARDH: We have been through
9 the meanings you can attach to the consular visit,
10 and I do not want to go back there.

11 I am sorry, Mr. Commissioner, I am
12 taking longer than I said I would. The witness'
13 answers are longer than I expected they would be.

14 Shall I just keep going?

15 THE COMMISSIONER: Yes, I think if
16 you can.

17 MS EDWARDH: Then let me go to
18 another area.

19 We have a series of documents that
20 I wanted to ask you about.

21 In the Garvie report at page 41 --
22 one fact that is not a document -- there is a
23 suggestion that the Department of Foreign Affairs,
24 at the very top of the page, is making inquiry of
25 the RCMP about whether they wish to or are

1 interested in pursuing an interview with Mr. Arar.

2 Do you see that?

3 MR. PARDY: Yes.

4 MS EDWARDH: And this conversation
5 would have occurred -- I also have trouble with
6 whether everyone is using the dates in the same
7 way.

8 I think it is May 3rd.

9 MR. PARDY: May 14 in 2003.

10 MS EDWARDH: It is May. May 14th.

11 Do you know, sir, or were you
12 privy to any discussions about the willingness of
13 the Department of Foreign Affairs to act as a
14 facilitator for any RCMP interview if the Mounties
15 wanted one to take place?

16 Were you behind that in any way?

17 MR. PARDY: I was aware throughout
18 this period that there was a possibility that they
19 would like to go. It first came up in the
20 context -- or just prior to the initial planning
21 for the visit of Ms Catterall and Mr. Assadourian,
22 there was a suggestion.

23 MS EDWARDH: Do you know by whom?

24 MR. PARDY: Oh, it was direct from
25 the RCMP, I think, that they were interested in

1 going to Syria.

2 And I took the view, no. We had
3 just come through the experience of CSIS and mixed
4 messages being made and things like that, and I
5 was quite firm on that.

6 The only thing I could get from
7 them was a commitment that they wouldn't go prior
8 to the visit of the MPs, which took place.

9 And then afterwards, I think it
10 came up once, and I basically stuck my elbows out
11 and said no, this is not on. I think it would
12 create difficulties for us.

13 And I don't think it came to pass
14 whatsoever.

15 MS EDWARDH: So can you give us a
16 little better sense of the timeframe?

17 The first one you said is planning
18 around --

19 MR. PARDY: It was March of 2003,
20 yes.

21 MS EDWARDH: And I take it you
22 dealt directly with someone specifically in the
23 RCMP?

24 MR. PARDY: I think it was -- it
25 certainly would have involved the RCMP. It was at

1 a meeting that ISI had put together and certainly
2 there were representatives from the RCMP and CSIS
3 in that meeting, yes.

4 MS EDWARDH: And that is in March?

5 MR. PARDY: That is my
6 understanding that it was in March, yes.

7 MS EDWARDH: And was there any
8 discussion -- well, at that time you put the
9 kibosh to the idea that they are going?

10 MR. PARDY: Yes.

11 MS EDWARDH: And it is raised, I
12 gather, on two other occasions?

13 MR. PARDY: I can remember one
14 other, and I think it was in May, thereabouts, and
15 again, basically -- my recollection is that the
16 people in ISI fully agreed with me on this point.
17 So the message that is going back from the
18 Department of Foreign Affairs was a common one on
19 this issue.

20 But in this area, we were nervous
21 about it because the RCMP always retained the
22 right to decide for itself what it needed to do
23 overseas in respect of a criminal investigation.

24 So we were of the view that we had
25 to carry them almost, as it were, in terms of this

1 so that they didn't feel that they would exercise
2 their right to go overseas and do an interview.

3 By the same token, I think what we
4 had on our side was a very clear statement from
5 the Syrian Military Intelligence that they did not
6 want to talk to policemen. They had been burnt by
7 an experience where the German police went down to
8 Syria, and they felt they were badly burned, and
9 they said they would not deal with police going
10 overseas.

11 And we used that as a little bit
12 of a club against the Force as well.

13 MS EDWARDH: Right. And I take it
14 when you say the RCMP always placed a reservation
15 around there accession to not going, which was
16 nothing more or less than "if we want, we will go,
17 and you will not determine that for us", that's --

18 MR. PARDY: That is generally --
19 and that is the rule that is out there, as
20 uncomfortable as it is in a case such as this.

21 But generally, as a rule, they
22 will decide. The Commissioner has great
23 discretion, as you know, under the RCMP Act in
24 this area, and he has been prepared to exercise
25 it, too.

1 MS EDWARDH: But when they arrive
2 in Syria, they report in to Mr. Pillarella, who
3 represents the Government of Canada?

4 MR. PARDY: That would be the
5 expectation, yes.

6 MS EDWARDH: So if Mr. Pillarella
7 said to them, "Gentlemen, we have all been doing
8 everything we can to resolve this issue with
9 Mr. Arar. If we send you in there, it's not going
10 to help the situation. Go home." He has the
11 authority to do that?

12 MR. PARDY: He can try. But as
13 you remember, back in October I sent a message to
14 Ambassador Pillarella sensitizing him to the
15 possibility that something could happen through
16 the liaison officers who are posted overseas for
17 both organizations.

18 But again, I have seen things
19 where RCMP will show up in a country without any
20 reference to the ambassador, and that is possible.

21 MS EDWARDH: Right. So what you
22 are doing is sending out warning signals to the
23 Damascus embassy and to the liaison officers, I
24 suppose --

25 MR. PARDY: No, it would be to

1 the -- liaison officers generally are more
2 sensitive to the role of the ambassador in these
3 things than necessarily people back at
4 headquarters in the RCMP and CSIS.

5 So in a sense the ambassador is at
6 the switch to a certain extent on these issues.

7 MS EDWARDH: So certainly, in
8 accordance with the proper protocols, despite the
9 fact you didn't know CSIS was going to go and
10 would have objected, one would properly assume
11 that CSIS notified the ambassador and said, "We
12 are presenting ourselves here pursuant to our
13 mandate, and we have some work to do and here we
14 are."

15 MR. PARDY: That is my
16 understanding of what happened, yes.

17 MS EDWARDH: And the ambassador is
18 quite free, and indeed duty-bound to ensure that
19 the activities of that branch of the Government of
20 Canada do not fracture or break other initiatives
21 if he felt it was required?

22 MR. PARDY: Yes. He has that role
23 to play, yes.

24 MS EDWARDH: Yes. So let's go
25 then back to your understanding of the RCMP.

1 Is it your understanding,
2 Mr. Pardy, that you were able to kibosh any effort
3 on their part to actually travel to Syria to
4 interview Mr. Arar?

5 MR. PARDY: I don't know in the
6 definitive sense. I would hope that I had some
7 influence on them.

8 But I would add to the other thing
9 here -- and I know that you will look at this with
10 some degree of scepticism. The sharing of
11 information that went on was meant to try to --
12 what's the word here? -- to give pause to the idea
13 that they needed to go to Syria for any particular
14 purpose.

15 MS EDWARDH: Well, indeed, you
16 implied that when you say that you were carrying
17 them. In one of the answers to a question I
18 posed, Mr. Pardy, you said you were carrying them.

19 If I understand you correctly,
20 it's exactly that idea: that by sending them all
21 the information --

22 MR. PARDY: Not all of the
23 information; selected information. I don't agree
24 with your concept of the sieve. There is no sieve
25 on this issue, okay?

1 MS EDWARDH: The consular
2 information is selective. Certainly they got
3 whatever -- we know now they got whatever the
4 Syrian Military Intelligence would give them from
5 the investigation. They got that. That wasn't
6 selective?

7 MR. PARDY: No.

8 MS EDWARDH: But you were hoping
9 that by giving them consular information that
10 might back them off.

11 Is that right?

12 MR. PARDY: Information that in my
13 mind, my judgment, would not cause additional
14 difficulties for Mr. Arar with the RCMP and maybe
15 might have softened a heart or two.

16 MS EDWARDH: And it's fair to say
17 that having made -- now I understand the reasoning
18 here. But having made that decision, it's pretty
19 clear that if that was -- it's late in the day. I
20 was going to use the word buy-off. But if that is
21 what was given to them in order to keep them
22 happy --

23 MR. PARDY: Out of the equation in
24 Syria.

25 MS EDWARDH: Out of the equation.

1 It tells us how important it was
2 from your perspective that they actually not go
3 around you and present themselves to Syrian
4 Military Intelligence with the view to continuing
5 a criminal investigation in Canada?

6 MR. PARDY: Well, after our
7 experience on the CSIS issue, I think it was the
8 single-most issue that caused me -- I would think
9 about it almost on a daily basis. I did not want
10 that to happen.

11 So anything I could do to prevent
12 that from happening, I think the price was a
13 reasonable one yes.

14 MS EDWARDH: So when used the
15 language -- which, granted, I have a lot of
16 trouble with, Mr. Pardy -- that giving the RCMP
17 the consular documents was to benefit Mr. Arar,
18 part of the benefit was keeping the Mounties out
19 of the equation?

20 MR. PARDY: Yes, that is what I
21 have tried to say from day one.

22 MS EDWARDH: I am sorry. Keeping
23 them at home.

24 MR. PARDY: Yes. And that could
25 not be done by fiat or dictate, it had to be done

1 by co-option almost, as it were.

2 MS EDWARDH: And we do know that
3 CSIS got some information too. So let me just ask
4 you this: Was the decision in January, which was
5 the first consular visit that CSIS got, was that
6 decision on your part to provide CSIS that
7 consular information done with the exact same
8 understanding and purpose in mind: that maybe you
9 could buy them off with this information so that
10 they wouldn't go back?

11 MR. PARDY: My recollection was
12 that in terms of the process that I had with
13 Mr. Solomon, I was never asked about a release of
14 a document to CSIS.

15 My recollection is that all of the
16 releases I did were related to the RCMP, and I
17 would certainly make a distinction in my mind
18 between the two organizations.

19 Now, you have said -- I am aware I
20 think of three documents --

21 MS McISAAC: Mr. Commissioner, may
22 I assist, please?

23 I believe that there was evidence
24 during the in-camera session, and I feel very
25 uncomfortable because I do not accurately or

1 adequately remember the evidence. But I think the
2 evidence would tend to suggest that Mr. Pardy
3 probably was not aware of the sharing of that
4 particular document with CSIS.

5 But, as I say, I simply cannot
6 recall the evidence sufficiently to feel
7 particularly comfortable in the circumstance that
8 we are now in.

9 MS EDWARDH: Well, I can ask the
10 witness.

11 THE COMMISSIONER: Just a moment.
12 Mr. Cavalluzzo will comment.

13 MR. CAVALLUZZO: I feel confident
14 that Mr. Pardy's recollection is correct.

15 THE COMMISSIONER: Okay. Go
16 ahead, Ms Edwardh.

17 MS EDWARDH: And that is that you
18 didn't know it was being sent. Thank you very
19 much.

20 You are comfortable with that as a
21 footing to have the questions. You were not aware
22 that Mr. Solomon provided them to CSIS?

23 MR. PARDY: I was not consulted.

24 MS EDWARDH: Okay. I am sorry.
25 You remember not consulted.

1 You must have been very angry,
2 because you have made it very clear to this
3 Commissioner that when the RCMP got information,
4 they got it selectively and it was approved by
5 you?

6 MR. PARDY: I had retired when
7 that bit of information came my way on the CSIS.

8 MS EDWARDH: Right. So after you
9 were retired and reflected upon the fact that it
10 had been done without your authority, without your
11 approval, I take it that didn't conform to
12 departmental policy?

13 MR. PARDY: Certainly in terms of
14 my approach, it was that in effect anything that I
15 labelled consular information -- and I think this
16 is Mr. Livermore's testimony as well. If it was
17 consular information, then I should have been
18 consulted about it leaving the Department of
19 Foreign Affairs.

20 MS EDWARDH: Right. And you were
21 not consulted?

22 MR. PARDY: I was not on anything
23 that I went to CSIS that I can reflect about.

24 But the RCMP, yes, I was
25 consulted, and I made a deliberate decision about,

1 yes.

2 MS EDWARDH: And you have made it
3 very clear, sir.

4 MR. PARDY: Yes.

5 MS EDWARDH: I take it that you
6 have no understanding that differs -- no. Let me
7 try again.

8 That CSIS has no greater right to
9 the information than the RCMP. It would have to
10 be done with someone addressing the provisions of
11 the Privacy Act and going through whatever
12 reasoning there was about the appropriateness of
13 its release?

14 MR. PARDY: That is correct, yes.

15 MS EDWARDH: And I take it, sir,
16 that you are the proper person in the department
17 to have gone through that calibration?

18 MR. PARDY: Exactly.

19 MS EDWARDH: And that you never
20 did?

21 MR. PARDY: And I never did in
22 this instance, no.

23 MS EDWARDH: Would you like to
24 comment on the propriety of it being released
25 without your consent or approval?

1 MR. PARDY: I think the
2 Commissioner is going to be quite capable of doing
3 that when he looks at all of the information
4 because I still do not have all the -- I have no
5 information about the -- you are talking about
6 something that I am not aware of and generally I
7 don't talk about things unless I know something
8 about them, although you may disagree with that.

9 MS EDWARDH: No.

10 --- Laughter / Rires

11 MS EDWARDH: I shall hold my
12 tongue, Mr. Pardy.

13 Now, sir, the record, in talking
14 about the RCMP and DFAIT, we have another document
15 where the CSIS liaison officer sends a memo to
16 someone about questions.

17 Maybe we should show it to you.
18 It is P-67. I am sorry.

19 Could you show the witness P-67?

20 In looking at that document, sir,
21 does it help you identify that it came from the
22 CSIS liaison officer in Foreign Affairs?

23 MR. PARDY: I don't know. It
24 certainly ended up with CSIS. Where it
25 originated, I don't think it's self-evident from

1 the words on the page.

2 MS EDWARDH: All right.

3 MR. PARDY: It ended up in CSIS.
4 I don't think -- their chop is on it there in
5 terms of what they were doing, yes.

6 MS EDWARDH: Let me ask you this,
7 sir: Do you recall at any time in May and June or
8 April, May, and June of there being discussions
9 that, if the Mounties shouldn't go and you don't
10 want CSIS to go, that ISI should go and travel to
11 Syria?

12 MR. PARDY: No, I do not have any
13 recollection of that, although I would not have
14 the same anxiety level with some of the -- I know
15 the person who would go, and I would take some
16 measure of comfort in that person possibly being
17 in Syria and talking to a variety of people.

18 MS EDWARDH: And do you know, sir,
19 whether anyone of that type, in fact, travelled to
20 Syria?

21 MR. PARDY: No, I do not believe
22 that they did certainly prior to August 30, 2003.
23 I know for a fact that nobody did.

24 MS EDWARDH: And you use the date
25 of August 30, I take it, to mark your departure

1 from the department?

2 MR. PARDY: Welcome departure.

3 MS EDWARDH: I see. Okay.

4 --- Laughter / Rires

5 We have talked about the problems
6 that would have been created if the RCMP had
7 travelled from the perspective of trying to
8 interview Mr. Arar or interview, and indeed the
9 problems that were precipitated by CSIS.

10 I'd like you to help us with this
11 distinction, if there is one, because I don't see
12 it, Mr. Pardy.

13 One of the issues that the
14 Commissioner will have to struggle with is the
15 recurrent requests by Mr. Pillarella for the
16 products of the investigation.

17 I mean, I can take you through the
18 tabs, but I think you're familiar with the record,
19 Mr. Pardy, and we know that from the very
20 beginning, Mr. Pillarella passes back to Canada
21 information that there's a promise that he will
22 get the products of the investigative brief of the
23 Syrian Military Intelligence, right? It starts
24 right from the get-go, the first day?

25 MR. PARDY: I wouldn't use the

1 word "persistent" at all. I think
2 Mr. Pillarella's actions here were appropriate to
3 the circumstances, and he tried to obtain
4 information, and while the information may have
5 been dual use, the opportunity was that that
6 information could, in the end, be helpful to
7 Mr. Arar.

8 And I think it would be wrong to
9 characterize this with some degree of ulterior
10 motive on the part of Mr. Pillarella. But
11 persistence seems to suggest in this area just
12 that very concept --

13 MS EDWARDH: I don't mean to
14 suggest it. Let us put it this way: From time to
15 time, and quite regularly, Mr. Pillarella inquired
16 about, not just whether the investigation was
17 over, but whether or not he could have information
18 from the investigation? No judgment about it, but
19 that's what he did.

20 And, as you pointed out, this
21 information was dual-use information.

22 MR. PARDY: Yes.

23 MS EDWARDH: One of the uses was
24 intelligence and other information to go to
25 policing authorities in Canada, and the other part

1 of the information was that it might be useful to
2 Mr. Arar?

3 MR. PARDY: It was all useful to
4 Mr. Arar and in terms of our management of the
5 case.

6 Now, some of it may have been of
7 some use to the security and police organizations
8 back in Canada, but I did not regard any of the
9 information that Ambassador Pillarella obtained in
10 this context as being information that was of no
11 value to our assisting Mr. Arar.

12 MS EDWARDH: What was the dual
13 usage then?

14 MR. PARDY: The dual use was, in
15 effect, it gave -- take the Afghanistan
16 information, say, for example. The allegations of
17 al-Qaeda.

18 That information then, in terms of
19 the security and intelligence people, it gave
20 them, certainly on the Afghanistan side, it gave
21 them a very specific piece of information that
22 they could and should have -- I don't know whether
23 they did or not -- but it should have been
24 investigated to see whether the time -- we're
25 talking seven and a half months, I think it was,

1 was that piece of information? -- that that could
2 have established, well, if that didn't happen, the
3 Syrian house crumbled in terms of the information
4 that they were passing. So I saw it in that
5 context.

6 MS EDWARDH: And they may have
7 seen it as this is an important piece of
8 intelligence with respect to Mr. Arar?

9 MR. PARDY: But it was not
10 important until it was verified through
11 independent action by the Canadian police and
12 security agencies.

13 MS EDWARDH: Well, that's your
14 view of it. You know it's not important unless
15 it's verified. How do you know that this same
16 information, which was even leaked later on --

17 MR. PARDY: Mm-hmm?

18 MS EDWARDH: -- doesn't have its
19 own intrinsic value to them without confirmation?

20 MR. PARDY: I may have a slightly
21 higher opinion of the police force than is
22 suggested by your question, quite frankly.

23 I have worked with them for a long
24 number of years, and I think that that kind of
25 information coming into their system gives them a

1 starting point that might have been of some value
2 to our understanding of what happened in 1993, if
3 anything happened in 1993.

4 MS EDWARDH: This, of course, is
5 the same police force that leaked the information
6 after Mr. Arar came home --

7 MS McISAAC: I don't think we know
8 that.

9 MS EDWARDH: Hmm?

10 THE COMMISSIONER: Well, let's
11 just carry on.

12 MS EDWARDH: Is that an objection,
13 though? I think it's important, Mr. Commissioner.

14 THE COMMISSIONER: It's not
15 established as to who leaked it so --

16 MS EDWARDH: I appreciate that the
17 name of the person may never be known.

18 THE COMMISSIONER: Right.

19 MS EDWARDH: But it may indeed be
20 important that when someone is describing the
21 interior office space of the RCMP offices --

22 THE COMMISSIONER: But your
23 question was, this is the same police force, which
24 implies that it was an authorized leak by the RCMP
25 itself, and what's not established certainly is

1 that. It could have been a single individual,
2 albeit an RCMP officer.

3 MS EDWARDH: Okay. You're quite
4 right. Perhaps I misspoke myself. I'll leave it
5 as it was. But certainly the suggestion is it's
6 at least a member, if not a corporate decision.

7 MR. PARDY: Well, to balance the
8 record, I was interviewed about that leak as well.

9 I mean, so the interviewing that
10 went on was not unidirectional by any means. I
11 think there was an effort to establish whether or
12 not government itself, other parts of government,
13 might have been involved, because the document in
14 question was widely distributed.

15 MS EDWARDH: Now, I just have a
16 couple of other questions and I am pressing the
17 Commissioner's good graces.

18 I am troubled as well by the
19 suggestion that consular access -- there's a
20 commitment by the Department of Foreign Affairs to
21 providing consular access in the same way to
22 persons alleged to be involved in terrorist
23 activities as to an ordinary person who's been
24 arrested for a common assault in Washington, D.C.,
25 and I'm troubled because, of course -- and I know

1 you've read the material because I gave it to you
2 before you commenced your testimony, because it's
3 very clear in the Khadr case that the position of
4 the government, on behalf of the Department of
5 Foreign Affairs, with respect to consular
6 services, is that it is a matter of discretion, as
7 to whether consular services will be provided in
8 such a case.

9 Now, that may be a new position,
10 because you have left -- this is litigation that
11 commenced in 2004. But are you aware -- when you
12 were there, was that the position of the
13 department?

14 MR. PARDY: It's a legal -- it's a
15 position taken by the lawyers in the Department of
16 Foreign Affairs in terms of -- in a very narrow
17 sense.

18 I never agreed with it and I
19 objected to any suggestion that the delivery of
20 consular services did not occur other than on the
21 basis of obligation on the part of the Government
22 of Canada.

23 Now, there are lawyers out there
24 that are prepared because -- as you know, there
25 are a number of civil suits out there.

1 MS EDWARDH: For failing to
2 provide service.

3 MR. PARDY: For failing to
4 provide. And there is already one decision at the
5 Federal Court level that suggests -- and that's in
6 relation -- that's in relation to the Khadr case,
7 I think it is.

8 So that's out there as a matter of
9 law, I suppose, if I can use that term, but it's
10 not a position that I liked, and I fought against
11 it every time I could.

12 MS EDWARDH: Right.

13 MR. PARDY: Yes.

14 MS EDWARDH: Certainly it's a
15 position -- I understand, you, given your position
16 in the department, that you fought against it.

17 But certainly it's a position, I'm
18 going to suggest to you, that CSIS and the RCMP
19 took and promoted, because they wanted to put
20 forward the view that consular assistance for
21 these kinds of individuals was not to be given on
22 the same terms as you would give it, Mr. Pardy?

23 MR. PARDY: I don't think that
24 their objection was as sophisticated as you
25 suggest here.

1 MS EDWARDH: Perhaps not. What
2 was their objection?

3 MR. PARDY: Their objection, in
4 terms of -- largely arose from their very specific
5 responsibilities under the CSIS Act and the RCMP
6 Act, that they felt that that was their
7 responsibility, and their responsibility did not
8 involve providing assistance to the Department of
9 Foreign Affairs on any consular case.

10 That's -- it has happened before,
11 and I've argued this even with the RCMP, and we
12 had some measure of success in obtaining
13 cooperation from the RCMP on specific cases.

14 So I don't think that was based on
15 this narrow view of some lawyers that the
16 government was under no -- in terms of the
17 obligation of government to assist Canadians.

18 MS EDWARDH: Was there any
19 concern -- no.

20 Did the RCMP or CSIS have the view
21 that if consular assistance would be given to such
22 persons facing such allegations, then it had to be
23 coupled, fully, with the use of such information
24 for intelligence and police purposes.

25 MR. PARDY: No, I don't think that

1 that is a conclusion one can draw from any of
2 this.

3 MS EDWARDH: If I could have your
4 indulgence for a moment? So I can speak to my
5 client.

6 --- Laughter / Rires

7 --- Discussion off the record / Discussion
8 officieuse

9 MS EDWARDH: I have a couple more
10 questions and then, Mr. Commissioner, I understand
11 Ms McIsaac thinks she'll be several hours. I
12 don't know whether we are just going to continue
13 or --

14 THE COMMISSIONER: I'd like, if we
15 could, to finish with the cross-examination, so
16 that if we are going to be putting it over, I
17 think I would like it to be through that --

18 MS EDWARDH: All right. Now, I
19 just have a couple of questions.

20 One of the things I'd like you to
21 comment on -- and it was in unfortunate
22 circumstances. I'm not suggesting malafides on
23 anyone's part, Mr. Pardy, but when Mr. Lavertu
24 went to Syria, he was unable, because of
25 circumstances, as I read the note, to raise the

1 issue of Mr. Arar, although we had been instructed
2 to try?

3 MR. PARDY: Yes, that was the
4 commitment, that he was going to try to raise
5 this, because every official visitor that we had
6 going to Syria through this period, we wanted them
7 to talk about Mr. Arar, yes.

8 MS EDWARDH: Right. And you'll
9 agree with me that for whatever the reasons, and
10 we can expound upon them briefly, Mr. Lavertu's
11 failure to raise the Arar case was an
12 unfortunate -- may have given an unfortunate
13 message to the Syrian authorities by not conveying
14 that he was one of Canada's priorities?

15 MR. PARDY: Well, I did a message
16 back to I think Mr. Pillarella, which is in the
17 file there, and raised that point with him, and I
18 said -- and I think I used the word that it was
19 unfortunate it was not raised for the very point
20 you mentioned.

21 The ambassador came back and
22 suggested in his reply that perhaps I was being
23 overly pessimistic on the actual effect of not
24 raising it.

25 But again it was certainly

1 something that caused me -- because I wanted
2 everybody to raise this case, yes.

3 MS EDWARDH: And you were worried
4 by the failure to raise it in that context?

5 MR. PARDY: In that context, yes.

6 MS EDWARDH: Now, one or two last
7 issues.

8 I got the feeling from some of
9 your very late memorandums, particularly Exhibit
10 P-100, where you are discussing with Ms Pither and
11 Mr. Arar's wife events as they're coming up. But
12 you had some sense that the upcoming trial was
13 really, I think, an opening gambit for
14 negotiation, not going to be a real trial, an
15 opportunity for the Syrians to save face. Do you
16 recall those general conversations at that time?

17 MR. PARDY: Oh, very much so. But
18 I would preface by saying that no trial was
19 preferable in my mind, but if a trial, then it
20 opened up the possibility of a -- because once a
21 trial takes place, there is a decision, and
22 assuming the worst, that he is found guilty and
23 sentenced, then the opportunity is for executive
24 clemency to take place, and that is a well-known
25 feature of judicial systems in most parts of the

1 world, including Canada, although we don't do it
2 very often in Canada at all. Other countries use
3 it more extensively than we do.

4 MS EDWARDH: Right.

5 I wasn't even sure, when I was
6 reading your language about this might be an
7 opening negotiation, whatever, that you were
8 thinking there would be any real trial but,
9 rather, that this was kind of a Syrian subterfuge
10 that allowed an opportunity to think that maybe
11 Mr. Arar would be released.

12 My only question about this isn't
13 so much what you said because I think I understand
14 the gist of it, is had you received any
15 information through any communication from the
16 ambassador or anyone else that gave you a sense
17 that this might be developing?

18 MR. PARDY: No, that was my own
19 conclusion that I had reached. I don't think
20 there was anything in writing from the ambassador
21 on this point.

22 What spurred me, I guess, in all
23 of this, there was a report I came across, as I
24 started looking up the record of the Syrian
25 supreme state security court, which they were

1 going to use here, was the statement by one
2 observer, and I thought it was an informed
3 observer, that 75 percent of the cases that went
4 before that court was not based on any known
5 Syrian law.

6 MS EDWARDH: That's troubling.

7 MR. PARDY: That is troubling.

8 But, again, it sort of gave me the
9 idea that maybe this was a political event for the
10 Syrians and that could lead possibly to executive
11 clemency once it was completed.

12 MS EDWARDH: All right. That's
13 very helpful. Because it -- it's certainly a
14 prescient sense, given what transpired.

15 MR. PARDY: I was even more
16 prescient -- sorry.

17 MS EDWARDH: It's late in the day.
18 Prescient?

19 MR. PARDY: It was with Stephen
20 Watt, as you'll recall.

21 MS EDWARDH: Yes, yes.

22 Now, I have one -- I think one
23 other question that I want to deal with, and that
24 is, I want to know, Mr. Pardy, why you didn't
25 share with Mr. Arar's wife the consular reports.

1 If they were provided to persons
2 who consented -- who Mr. Arar had consented to
3 getting information, it's very clear that
4 Mr. Arar's consent was directly given with respect
5 to his wife, who was passionately wanting to know
6 everything she could about Mr. Arar. And it's
7 clear that she did not get those documents,
8 although she got selected information from those
9 documents.

10 And I wonder if you would please
11 explain why, despite the consent, that you did not
12 make them available to her?

13 MR. PARDY: The approach that we
14 use in talking to families about what's happening
15 to a member in these kinds of circumstances is to
16 provide everything. That's our starting point
17 here.

18 Then we condition that approach by
19 our experience in terms of how quickly the
20 information, from my lips to the Ottawa Citizen,
21 how much is going to be used in a public sense,
22 because there were days when I would speak to
23 Dr. Mazigh in my office and within 20 minutes I
24 was getting calls from the media about statements
25 that I made to her, which I found troublesome,

1 because you know my view generally on the role of
2 the media on these issues, and -- it was that.

3 But having said that, we certainly
4 did not -- we did give her complete reports that
5 came in from Damascus. I think at one point we
6 made arrangements for her to speak to Mr. Martel
7 so she could get a sense direct from Mr. Martel in
8 terms of what he was seeing, that sort of thing.

9 And we tried to give her what we
10 considered to be information -- and I think it --
11 I would say that 80 to 90 percent of the
12 information that came in in consular reports did
13 go to Dr. Mazigh in one form or another.

14 The trouble with the written
15 reports that we were hesitant to do it in
16 writing -- I would give her a copy of
17 Mr. Martel's -- was that I did not want to see
18 those reports in the media in Canada. It's as
19 simple as that.

20 Because I felt that, if that were
21 to happen, then, one, Mr. Martel would be less
22 effective in terms of trying to do his job there
23 and, secondly, the Syrians could have been very
24 bloody-minded and would have shut down the access
25 issue a lot sooner than they did.

1 MS EDWARDH: And I take it you did
2 not feel comfortable telling Dr. Mazigh that if
3 she wanted to receive these documents from you,
4 she would have to play ball and make sure that
5 they didn't fall into the public domain?

6 MR. PARDY: We had several
7 discussions on the whole issue of publicity in
8 Canada.

9 MS EDWARDH: Yes.

10 MR. PARDY: We spoke on several
11 occasions about that. I think initially she was
12 sensitive to that issue, but over time, that
13 sensitivity I think evaporated, and even at one
14 occasion I tried to enlist Michael Edelson in
15 terms of speaking to her, her lawyer, on this
16 issue. That's how strongly I felt about it.

17 But there's a variety of
18 motivations. I can understand, I mean, the
19 dynamic that's involved here, and we run into it
20 literally in every consular case.

21 I would say of the major cases,
22 where there are significant issues, I would say 60
23 percent of the people involved understand the need
24 for sensitivity because of its impact on our
25 ability to provide assistance.

1 In others, a dynamic is almost
2 created whereby they get almost co-opted by the
3 process, the advisors and the people that are
4 around that provide comment about, okay, get this
5 into the newspaper and this is going to do
6 something for you.

7 I've always found that the
8 supporters sometimes are not necessarily as
9 clear-cut in their objectives as I was on this
10 one.

11 MS EDWARDH: Yes, but you can
12 agree with me, sir, regardless of your
13 observations there, that no direct request was
14 made to her that if you want the actual consular
15 reports, then you cannot release them?

16 MR. PARDY: I cannot -- I don't
17 think it ever came up as an issue in the way that
18 you've just put it.

19 It did come up at the very end, I
20 think, when we had a meeting on August 19, and I
21 think this piece of paper reflects that, and some
22 of the things that was in the press -- they asked
23 for it, and at that point -- I'm not quite sure --
24 they had requested a copy of each of the consular
25 visit reports, and I agreed that they could have

1 them at this point, and I'm not quite sure whether
2 they were actually delivered or not because it
3 took some time to abstract them and I had left by
4 then.

5 MS EDWARDH: And I want to put one
6 other question to you, while your impression is
7 that the full reports were given, I think you mean
8 full verbal reports were given in conversation
9 with her --

10 MR. PARDY: I had I would say
11 hundreds of hours of conversation about
12 Dr. Mazigh, and I -- I mean, and in terms of what
13 I was saying to her, I don't think there was any
14 hesitation in sharing most of this information
15 with her verbally.

16 I was concerned about the written
17 reports getting into the media.

18 MS EDWARDH: If I were to suggest
19 to you, sir, that at no time did anyone, including
20 you, inform her that her husband was most likely
21 in Syria for the period of time from the 8th or
22 9th until October 21st, and she didn't learn that
23 until almost September before he was released.
24 She did not know that?

25 MR. PARDY: I cannot believe that

1 at all. That was -- I mean, the assumption that
2 we worked on, once Mr. Martel saw Mr. Arar on
3 October 23, when he said in that meeting that,
4 look, I've been here since -- I don't know what --
5 he only spent a limited amount of time in Jordan
6 and on top of that, the Foreign Minister of Jordan
7 told the Canadian ambassador that Mr. Arar had
8 only been in transit in Jordan and I can't believe
9 for a moment that in the conversation -- you ask
10 me to pin it down.

11 I'm absolutely flabbergasted that
12 that suggestion is out there. That was not --

13 MS EDWARDH: Certainly I take it
14 from your response, Mr. Pardy, if that piece of
15 information were inadvertently not provided, it
16 would have been a mistake?

17 MR. PARDY: Oh, absolutely.

18 MS EDWARDH: Okay.

19 MR. PARDY: Because it was -- a
20 large part of what happened afterwards to a
21 certain extent hinged on that piece of
22 information.

23 MS EDWARDH: Yes. Exactly.

24 Mr. Pardy, thank you for your
25 patience. Those are my questions.

1 THE COMMISSIONER: Thank you, Ms
2 Edwardh.

3 MR. PARDY: Thank you.

4 THE COMMISSIONER: Why don't we
5 take a break during which counsel can suggest
6 where we go from here and either let me know when
7 we resume --

8 There are -- and I'd like to
9 involve Mr. Pardy in the discussions as well, so
10 his wishes are taken into account.

11 What we have left is Ms McIsaac's
12 examination and the possibility of some
13 re-examination by Commission counsel.

14 The choices being to continue with
15 all or part of Ms McIsaac's examination today or
16 to pick another date.

17 If we're picking another date, if
18 we're going to have to go over, it strikes me that
19 during the week that the lawyers are being called
20 there may be some -- we're not talking about a lot
21 of time, we're talking about less than half a day
22 for certain. It may be that there's some
23 flexibility in that week.

24 But, in any event, if you talk to
25 one another about that, talk to Mr. Pardy and let

1 me know and we'll make the decision then.

2 THE REGISTRAR: Please stand.

3 --- Upon recessing at 5:24 p.m. /

4 Suspension à 5 h 24

5 --- Off Record Discussion / Discussion officieuse

6 --- Whereupon the hearing adjourned at 5:33 p.m.,

7 to resume on Friday, June 3, 2005,

8 at 9:30 a.m. / L'audience est ajournée

9 à 17 h 33, pour reprendre le vendredi

10 3 juin 2005 à 9 h 30

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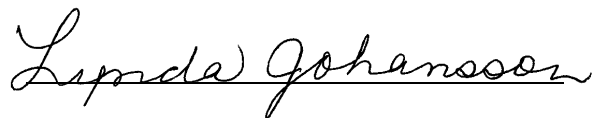
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Lynda Johansson,

C.S.R., R.P.R.

StenoTran

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