### 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:

Held at:

Salon Algonquin Ancien hôtel de ville 111, Promenade Sussex Ottawa (Ontario) Algonquin Room Old City Hall 111 Sussex Drive Ottawa, Ontario

le lundi 13 juin 2005

Monday, June 13, 2005

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1	Ottawa, Ontario / Ottawa (Ontario)
2	Upon resuming on Monday, June 13, 2005
3	at 10:03 a.m. / L'audience reprend le lundi
4	13 juin 2005 à 10 h 03
5	THE REGISTRAR: Please be seated.
6	Veuillez vous asseoir.
7	THE COMMISSIONER: Good morning.
8	MR. CAVALLUZZO: Mr. Commissioner,
9	I was advised by Mr. Waldman, counsel for
10	Mr. Arar, yesterday, that he wishes to bring a
11	motion at the outset of the proceedings this
12	morning in respect of an alleged leak to the
13	Toronto Star.
14	I spoke to him and we decided that
15	the best way to proceed would be for him to bring
16	the motion immediately this morning.
17	THE COMMISSIONER: Okay.
18	Mr. Waldman?
19	MR. WALDMAN: I have copies of the
20	article. I have given them to my friends, but I
21	don't know if you
22	THE COMMISSIONER: Do you want to
23	hand one up to me?
24	Pause
25	MOTION / REQUÊTE

1	MR. WALDMAN: Mr. Commissioner,
2	prior to the calling of evidence I wish to raise a
3	very serious matter that was brought to the
4	attention of Mr. Arar's legal team late last week.
5	I am referring to the article I have handed up
6	which was published in the Toronto Star on June 9,
7	2005.
8	In the article, the journalist
9	makes several assertions that are not on the
10	public record. He asserts that CSIS went to Syria
11	in order to sign an information-sharing agreement
12	with Canada.
13	THE COMMISSIONER: Just tell me
14	where you are reading from in the article that you
15	have handed up?
16	MR. WALDMAN: Starting at:
17	"instead, it was striking
18	a secret deal to exchange
19	information made vital by
20	September 11th, the impending
21	threat of an Iraq war and the
22	ebb and flow of guerillas
23	trained in Afghanistan
24	al-Qaeda camps. During that
25	meeting CSIS told the

1	Syrians" (As read)
2	So it is clear that the
3	information-sharing agreement is with the Syrians.
4	THE COMMISSIONER: Okay.
5	MR. WALDMAN: Mr. Travers goes on
6	to assert in the article, a little bit further on,
7	and I will just quote from it:
8	"During that meeting, CSIS
9	told the Syrians exactly what
10	it had been quietly and
11	consistently saying since
12	Mr. Arar's New York arrest in
13	September 2002, the Agency
14	had no interest in someone
15	whose only crime was knowing
16	other Muslims under
17	surveillance." (As read)
18	The third issue of concern is, at
19	the end of the article it talks about what was
20	transpiring in camera. That is on the third page.
21	THE COMMISSIONER: On which?
22	Somebody coughed, sorry.
23	MR. WALDMAN: On the third page it
24	talks about the in camera hearings where it says:
25	"Behind closed doors

1	O'Connor, who now knows all
2	that is ever likely to be
3	known about Arar's case, has
4	been warned those sources
5	will evaporate if Canada
6	signals that information sent
7	here in confidence may not
8	remain confidential."
9	(As read)
LO	First and foremost, I have
L1	discussed this with Mr. Arar and he wishes us to
L2	make clear that he is not criticizing the media
L3	whose function it is to report the news. Mr. Arar
L4	does not want the media to be blamed for this
L5	current leak.
L6	What is of concern to Mr. Arar is
L7	that this article contains three pieces of
L8	information that are not on the public record. I
L9	have just summarized those for you.
20	It is of deep concern to Mr. Arar
21	and his legal team that yet another leak of
22	information has occurred. As you are well aware,
23	one of the central issues for Mr. Arar in this
24	inquiry has been, up until now, the issue of leaks
25	that occurred prior to and after his return to

1	Canada. In our view, the purpose of those leaks
2	was to try to discredit Mr. Arar and prevent the
3	calling of a public inquiry. We will be making
4	submissions with you before the end of the inquiry
5	process about those leaks.
6	But these are new leaks and they
7	are far more serious, in our view, because these
8	leaks occurred during the course of the inquiry.
9	The author of the article assets facts that were
10	provided to him by someone with extensive
11	knowledge of Mr. Arar's dossier.
12	As you and the government
13	officials have received this information in
14	camera, you are well aware of the truth of the
15	facts stated. We are not, because we have not
16	been party to the in camera hearings.
17	In any event, even if we are now
18	told that these facts are not true, the fact
19	remains that it is an official from some
20	government agency who has determined to leak
21	information to a journalist during the course of
22	the inquiry.
23	If the information is true, then
24	it must now be stated on the public record. If it
25	is not true, then there must be an explanation as

1	to why officials would be propagating false
2	information during the course of your inquiry.
3	As we have stated, there have been
4	other leaks, but we are deeply concerned about
5	this leak because it is the first leak of
6	confidential information that has occurred since
7	the inquiry was called, as far as we are aware.
8	In this respect, it is of grave
9	concern that officials have chosen to seek to
10	defend their conduct by means of leaks to
11	journalists as opposed to authorizing the
12	Commissioner to release the evidence publicly
13	within the confines of this inquiry.
14	The intent of this release of
15	information off the record was to allow the
16	security services to defend themselves publicly
17	without being accountable for the information they
18	have provided. This has been an attempt to
19	preclude Mr. Arar, his counsel, and the
20	intervenors from being able to rely upon the
21	information in any official way.
22	If this were a court of law
23	there is no doubt in our submission that this
24	would constitute contempt which could lead to
25	legal proceedings.

1	However, there is no doubt in
2	our view that the conduct of these officials is
3	contemptuous of this inquiry process and is
4	grossly unfair to Mr. Arar. If this conduct is
5	condoned and allowed to continue, it will mean
6	that government officials who have asserted
7	national security confidentiality will feel
8	free to leak information through selective leaks
9	in order to get information out in the public
10	domain, while continuing in the course of the
11	inquiry to assert national security
12	confidentiality over the information.
13	Mr. Commissioner, you will recall
14	that Mr. Arar and his legal counsel received an
15	important document which we wanted to be in the
16	public domain. We had that document for months
17	and months, but pursuant to our undertaking we
18	respected our obligation to keep the document
19	confidential. We made motions before you and did
20	not release the document until the government
21	decided it could be released.
22	The officials of the Government of
23	Canada are clearly under the same undertaking, and
24	this leak is compatible with this undertaking.
25	In making this submission, we

1	wish to make it absolutely clear that we do not
2	believe that counsel was aware of this in any way,
3	and we are well aware of the efforts that counsel
4	for the government has taken since the Pardy
5	document was released to re-redact documents and
6	we appreciate this.
7	Given this, I am asking for a
8	ruling which would allow Mr. Arar and his counsel,
9	for the purpose of cross-examination of Mr. Fry,
10	Ambassador Pillarella, and any future witnesses,
11	to assert as a fact the information contained in
12	this article; namely, that the purpose of CSIS's
13	trip to Syria was for information-sharing; that
14	during the course of the agreement CSIS officials
15	asserted they had no concerns about Mr. Arar
16	because their only information on him was that he
17	had been seen by other persons who were of
18	interest; and that in the in-camera meetings it
19	has been suggested to you that it was vital to
20	Canada's national security that
21	information-sharing agreements remain sacrosanct,
22	and make strong recommendations that you not
23	interfere with that process.
24	In addition, we would request that
25	you immediately direct that the head of CSIS

1	conduct an investigation into this leak and report
2	back to you within as short a time as possible so
3	that the public can be informed about the source
4	of the leaks.
5	In asking for this investigation,
6	we wish to make it absolutely clear that Mr. Arar
7	does not condone or support the conduct directed
8	against other journalists who receive leaks. The
9	problem is not the media, but the persons who leak
10	the information.
11	In addition, we would seek to
12	recall Ministers Graham and Easter, especially
13	Minister Easter, because during the course of our
14	cross-examination he acknowledged the trip of CSIS
15	to Syria but refused to answer any questions. If
16	there were an information-sharing agreement,
17	Mr. Easter would have had to approve it and would
18	have had to have been intimately involved in that
19	process.
20	Minister Graham, of course, would
21	also have had to be consulted about the human
22	rights record and we would want to speak to both
23	Ministers about that.
24	Finally, we wish to have you

consider what consequences might flow from any

25

1	further leaks of information.
2	We would suggest that you consider
3	advising counsel for the government that further
4	leaks would jeopardize the participation of the
5	agencies involved in the inquiry process. If
6	persons appearing before the inquiry cannot
7	respect the integrity of the inquiry process, then
8	there must be consequences.
9	Thank you.
10	THE COMMISSIONER: Thank you,
11	Mr. Waldman.
12	Ms McIsaac?
13	MS McISAAC: Mr. Commissioner,
14	first of all, I only became aware of Mr. Waldman's
15	motion this morning, and I have been unable to
16	seek instructions with respect to the relief that
17	he is requesting.
18	I can, however, tell you that I am
19	equally concerned by this leak of information, as
20	is my entire counsel team, and that upon having
21	the article drawn to my attention I think the day
22	it appeared, or perhaps the day after, I made
23	inquiries of CSIS and asked them to take steps to
24	ascertain, if they were able, how this occurred.
25	I have not had a report back yet

1	on the matter and, as I say, we are equally
2	concerned with respect to this leak of information
3	and the effect that it has on the inquiry.
4	Beyond that I'm not sure at this
5	point I can say much more because, as I say, I
6	have not had an opportunity to seek or obtain any
7	instructions with respect to the relief that
8	Mr. Waldman is asking for, particularly with
9	respect to the questioning of upcoming witnesses.
10	I will endeavour to get those instructions as soon
11	as possible though.
12	THE COMMISSIONER: Mr. Cavalluzzo,
13	do you have anything to add?
14	MR. CAVALLUZZO: Just a few
15	comments, Commissioner.
16	First of all, some of the
17	information which Mr. Waldman is seeking has been
18	newly unredacted, if we can put it so bluntly, in
19	a new tab 218, which we will be introducing
20	through Mr. Pillarella tomorrow.
21	Second, in terms of the remedy,
22	certain aspects of it, in particular the recalling
23	of certain witnesses, I don't know if we need an
24	order to that effect. Certainly discussion
25	between Commission counsel and Mr. Arar's counsel

I think should be able to resolve that. If either
witness is required to be recalled, then we shall
certainly ensure that that occurs.
As far as the other aspect, in
terms of directing CSIS to do whatever, I really
have no submissions in respect of that.
THE COMMISSIONER: Do you have
anything in reply, Mr. Waldman?
MR. WALDMAN: Just briefly.
With respect to that newly
redacted document, it was just brought to my
attention this morning, very briefly, but I don't
think it goes quite as far as Mr. Travers'
article. It says they went to Syria to discuss
intelligence, but it doesn't talk about an
information-sharing agreement.
THE COMMISSIONER: First of all,
let me say I am obliged that you brought the
matter formally before the inquiry. I commend the
government for the response that they had already
taken to it. I think that is responsible. When I
read the article I had seen it before I too
had a similar concern as to whether or not there
had been some improper release.

25

I think the course that is being

1	followed now by the government should be allowed
2	to take its course. Let's see what that produces.
3	Ms McIsaac has indicated that she is making
4	inquiries and I will await her report back with
5	respect to those inquiries.
6	I agree with Mr. Cavalluzzo
7	that in terms of recalling witnesses, that is
8	something that I would hope that counsel could
9	work out amongst themselves. If there is
10	difficulty with that you can speak to me about it,
11	but I'm confident that you should be able to work
12	that out.
13	In terms of the cross-examination
14	of witnesses relating to matters that are in the
15	article, I suggest we wait and see how the
16	cross-examination goes.
17	I would be disinclined to say
18	that you can assert as a fact the matters that are
19	contained in the article. On the other hand, it
20	would strike me that a line of questioning
21	relating to those matters may be permissible. I
22	would have to see the context and I would rule at
23	the time.
24	I will not, however, in terms
25	of ruling on NSC, simply accept the notion that

1 because something has appeared, perhaps as a 2 result of an illegal or improper leak, in the newspaper should of itself necessarily constitute 3 a waiver or constitute a release of an otherwise valid NSC claim. 5 So that if information is in the 6 7 media, which is subject to a legitimate NSC claim, 8 and if it only found its way into the media as a 9 result of some improper or illegal leak, it seems to me that that would not necessarily result in a 10 11 finding in future that that information is not subject to an NSC claim. I would have to know 12 13 more about it. So that in terms of the relief 14 that you seek, Mr. Waldman, asserting as a fact, I 15 16 think that puts it too strongly. As I say, what I will do is defer a decision on that, see what 17 18 course the cross-examination takes, and I will 19 rule as we go. 20 In terms of the fourth point you raise, that is the consequences of further leaks, 21 22 obviously if there has been an improper or an 23 illegal leak of information, that is a most serious matter. A repeat of it, without a doubt, 24

would be most unfortunate. I will simply address

25

1	that situation if it arises in the future.
2	Okay? That's it.
3	MR. WALDMAN: Thank you.
4	MR. DAVID: If we could call
5	Mr. Fry, please?
6	Pause
7	THE COMMISSIONER: Good morning.
8	MR. DAVID: Mr. Commissioner,
9	appearing before you is Mr. Robert Fry.
LO	Mr. Robert Fry will be providing testimony in his
L1	capacity as being a political attache to Minister
L2	Graham at the relevant time that concerns this
L3	inquiry.
L4	So if we could ask Mr. Roy to
L5	swear Mr. Fry in.
L6	THE COMMISSIONER: Do you wish to
L7	be sworn or affirmed, Mr. Fry?
L8	MR. FRY: Sworn is fine,
L9	Mr. Commissioner.
20	SWORN: ROBERT RICHARD ALAIN FRY
21	THE COMMISSIONER: Your full name:
22	MR. FRY: Robert Richard
23	Alain Fry.
24	THE COMMISSIONER: Thank you. You
25	may be seated.

1	MR. FRY: Thank you.
2	MR. DAVID: Before we begin with
3	Mr. Fry's testimony, Mr. Commissioner, I would
4	like to file a series of four different documents.
5	The first is a Table of
6	Concordance. That would be Exhibit P-131.
7	EXHIBIT NO. P-131: Document
8	entitled "Table of
9	Concordance for Re-Redacted
10	Exhibits"
11	MR. DAVID: When you have it in
12	hand, I will explain to you what this is.
13	Essentially, what has occurred
14	over time, Mr. Commissioner, is that the redacted
15	documents are now being produced to the Commission
16	in newly redacted forms, so the contents as we go
17	along are in fact becoming more public and so we
18	have a new series of newly redacted not to say
19	"unredacted", but newly redacted documents. So
20	this table is to try to help us meander through
21	this new network of documents, Mr. Commissioner.
22	So in the left-hand column you
23	have reference to the old exhibit numbers and in
24	the right I don't want to say the completely
25	right-hand column, but in the column entitled "By

1	This Document" you have the new exhibit numbers
2	that refer to the new redactions.
3	This document is not up to date
4	with regard to what we will be filing today. As
5	these proceedings progress, we will be filing
6	additional tables of concordance.
7	THE COMMISSIONER: Will the
8	additional tables simply be an update of the
9	existing ones so we don't end up with more than
10	one table?
11	MR. DAVID: I will relay your
12	message, and I think it is a wise suggestion.
13	Laughter / Rires
14	MS McISAAC: I can always stop
15	changing the redactions if it is getting too
16	Laughter / Rires
17	MR. DAVID: The second document I
18	would file is a copy of the newly redacted
19	documents that pertain to Mr. Fry's testimony. So
20	if we could file that as Exhibit P-132.
21	Is that correct?
22	THE COMMISSIONER: Exhibit P-132.
23	I have it.
24	EXHIBIT NO. P-132: Newly
25	redacted documents pertaining

1	to Mr. Fry's testimony
2	MR. DAVID: Third, I would like to
3	file Mr. Fry's personal notes. That would be
4	Exhibit P-133.
5	THE COMMISSIONER: Yes.
6	EXHIBIT NO. P-133: Redacted
7	Personal Notes of Mr. Fry
8	MR. DAVID: Finally, as you know
9	Mr. Pillarella is scheduled to testify both
10	tomorrow and Wednesday; however, there is one
11	occasion where I will be referring to
12	Mr. Pillarella's documents, newly redacted
13	documents, and so I would like to file these at
14	this point so that I can refer them to Mr. Fry.
15	That would be Exhibit P-134.
16	THE COMMISSIONER: Okay.
17	EXHIBIT NO. P-134: Newly
18	redacted document of
19	Mr. Pillarella
20	MR. DAVID: Finally, if we could
21	file Mr. Fry's curriculum vitae. That would be
22	Exhibit P-135.
23	EXHIBIT NO. P-135:
24	Curriculum vitae of Mr. Fry
25	THE COMMISSIONER: Okay. Thank

1	you.
2	EXAMINATION
3	MR. DAVID: Mr. Fry, let us begin
4	by going through your CV.
5	First of all, you are a Member of
6	the Bar of Ontario since 1995?
7	MR. FRY: Yes.
8	MR. DAVID: You hold the position,
9	since February of 2002, of Senior Policy Advisor
10	to the Minister of Foreign Affairs?
11	MR. FRY: I held that position. I
12	no longer hold that position.
13	MR. DAVID: When did that cease?
14	MR. FRY: That ceased last summer,
15	I guess right after the cabinet shuffle after the
16	election. So July 2004 that changed.
17	MR. DAVID: So from February 2002
18	to July 2004
19	MR. FRY: Yes.
20	MR. DAVID: you did hold
21	this position?
22	So you were obviously intimately
23	involved with the Arar file, with the Arar
24	time-line, in that capacity?
25	MR. FRY: Yes.

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1	MR. DAVID: You also were Chief of
2	Staff to the Deputy Prime Minister of Canada, the
3	Honourable Herb Gray?
4	MR. FRY: Yes.
5	MR. DAVID: This was from October
6	of 2000 to January of 2002?
7	MR. FRY: Yes.
8	MR. DAVID: I also note on your CV
9	that for a period of approximately four months in
10	1995 you were again involved with the Ministry of
11	Foreign Affairs. You were Special Assistant to
12	Minister Andre Ouellet at the time?
13	MR. FRY: Yes, that is correct.
14	MR. DAVID: I note that you have
15	graduated with magna cum laude in common law, and
16	in civil law not quite, it was cum laude.
17	MR. FRY: Yes.
18	MR. DAVID: So congratulations
19	on that.
20	MR. FRY: Yes. Thank you for
21	pointing that out.
22	Laughter / Rires
23	MR. DAVID: If you could begin by,
24	first of all, describing what a Senior Policy
25	Advisor to a Minister, and namely to the Minister

1	of Foreign Affairs, does? What is your mandate?
2	What is your function?
3	MR. FRY: Gee, that is a question
4	my mother asks me all the time, "What do you do
5	for a living?"
6	It is actually not always easy to
7	explain. The title was Senior Policy Advisor. My
8	responsibility was to advise the Minister of
9	Foreign Affairs on overall matters of policy, to
10	help him, to provide him with advice and to give
11	him recommendations on decisions he had to make in
12	terms of the policy, foreign policies of Canada.
13	The Minister of Foreign Affairs is
14	in such demand any Cabinet Minister is in so
15	much demand they need staff to help them to
16	focus on sort of the key issues and to help them,
17	I guess, in some way to filter some of the
18	information because they are getting information
19	from so many different sources. There are lots of
20	demands on them from departments, there are lots
21	of demands on them from outside non-governmental
22	organizations and the like, so my role was in some
23	ways to help him, to brief him, to sort of take in
24	a lot of that information and help provide him
25	with the essentials, because there are only so

1	many hours in his day and he needed to on given
2	days he had to focus on different things.
3	I guess I could say I was sort of
4	the No. 2 in the office. There was the Chief of
5	Staff and then I was sort of No. 2 in the office.
6	I was Senior Policy Advisor, or Director of Policy
7	was the title actually. It changed during my time
8	there with him.
9	MR. DAVID: When we see Senior
10	Policy Advisor, is that to say that you are
11	briefed and well-versed in the policies of the
12	Department of Foreign Affairs, or does that refer
13	to something else?
14	MR. FRY: Yes.
15	I was not in Foreign Affairs. I
16	am on the personal staff of the Minister, so I
17	would I'm not a public servant in that sense.
18	I am what you would call exempt staff, so I report
19	directly to the Minister and I am tied to the
20	Minister. When the Minister leaves Foreign
21	Affairs, you know, I go too.
22	Yes, I guess that is a good way to
23	sort of describe it.
24	In terms of knowledge of the
25	department, I mean coming in in February 2002,

1	like the Minister, I was briefed and brought up to
2	speed and met with the variety of experts in the
3	Department of Foreign Affairs and was sort of
4	briefed on these matters in terms of being
5	informed of the policies of Canada and, you know,
б	where particular files were and things like that.
7	MR. DAVID: Thank you. I note
8	that on your CV you have been playing more or
9	less this role with seven different Cabinet
10	Ministers
11	MR. FRY: Yes, that's correct.
12	MR. DAVID: over the course of
13	your last 10 years.
14	MR. FRY: I have had some
15	experience in doing that, yes.
16	MR. DAVID: I would like to now
17	understand really you are the first to be of
18	the breed that you are in terms of the political
19	offices of the Minister of Foreign Affairs, and if
20	you could just provide us with an understanding
21	we have had much testimony, Mr. Fry, from various
22	bureaucrats, both senior and more middle
23	management from the Department of Foreign Affairs.
24	I would like to get an
25	appreciation now from you of how that differs and

how does it work with the political office of the
Minister in Foreign Affairs versus the permanent
bureaucratic structure? If you could just give us
an appreciation of the interplay that occurs, how
the both entities relate to each other?

MR. FRY: Each Federal Minister or Cabinet Minister has a staff of their own, maybe a dozen people. You have a Chief of Staff, you have a Senior Policy Advisor, a Director of Policy, you have a Director of Communications. These are all people that report directly to the Minister. They report solely to him and their responsibilities are to help him in his job.

I guess the distinction, where members of the public service are there, you know, even when you change Ministers they remain there, and I guess overall they ultimately report to the Minister through the Deputy Minister. Our direct political reporting relationship is solely with the Minister. I guess we are there to make sure that he has everything he needs, and to look out for his best interests and to help him further his own objectives and the things that he wants to accomplish and get done while he is Minister of Foreign Affairs.

Т	MR. DAVID: Okay. How does the
2	actual coordination occur between the permanent
3	body of civil servants within DFAIT and the
4	political office of the Minister?
5	MR. FRY: Well, I think it varies.
6	Each office sort of develops its own identity,
7	each Minister's office.
8	The Minister's staff would I
9	would interact regularly with officials in the
10	Department of Foreign Affairs, at all levels from
11	the Deputy Minister down to desk officers, to
12	gather information or to be briefed.
13	There were also departmental
14	briefings for the Minister, which I would
15	participate in, where the department would brief
16	the Minister and I would be there.
17	I would also brief the
18	Minister directly on a variety of matters, to
19	help him you know, give him you know, I
20	would get the two-hour version of something and
21	then I would give him the two-minute version
22	based on what he needed to know for Question
23	Period or whatever else.
24	MR. DAVID: So you are
25	certainly directly involved in the liaison between

1	the permanent body, the permanent structure of
2	Foreign Affairs, and the political structure of
3	Foreign Affairs?
4	MR. FRY: That's correct.
5	MR. DAVID: Is there anybody else
6	who is playing the role that you are playing
7	within the political office of the Minister with
8	regard to the permanent structure?
9	MR. FRY: Doing the same job
10	as myself
11	MR. DAVID: Doing the same job?
12	MR. FRY: or a similar job in a
13	different sort of subject?
14	MR. DAVID: Within the DFAIT
15	portfolio, is there anybody else that is playing
16	this liaison role that you were playing?
17	MR. FRY: Well, there would be
18	other members of the Minister's staff. They
19	wouldn't be doing the identical job of myself, but
20	you have the Director of Communications who would
21	be dealing with the Foreign Affairs Media Office,
22	and her job in this case her name was Isabelle
23	Savard her job would be to help prepare the
24	Minister to deal with scrums in the media. We
25	would have someone called a Legislative Assistant,

1	she dealt with all matters in the House of
2	Commons, whether it was legislation from Foreign
3	Affairs Committee, and Question Period above all,
4	preparing the Minister for Question Period. You
5	have the Chief of Staff, who has overall
6	responsibility for all the Minister's staff and
7	making sure that everything
8	MR. DAVID: This is the person
9	that you would report to?
10	MR. FRY: Yes.
11	MR. DAVID: That would be Mr. Dan
12	Costello at the time?
13	MR. FRY: That is correct.
14	MR. DAVID: In terms of your
15	involvement in the permanent structure of DFAIT,
16	it is my understanding that you were the key
17	person in terms of managing the Arar fact line.
18	Is that correct?
19	MR. FRY: Yes, that is correct.
20	Amongst my sort of
21	responsibilities was I had responsibility in the
22	Minister's office for the Middle East. In fact,
23	sort of a lot of the more difficult files I guess
24	I took care of just because of my experience, and
25	the Arar file was one that I was responsible for.

1	MR. DAVID: If you could describe
2	for us that experience, Mr. Fry, that made it most
3	appropriate for you to be involved in a fact
4	situation such as Mr. Arar's?
5	MR. FRY: I guess my experience at
6	having worked in this type of job for a while.
7	I mean, one thing that I guess I
8	would mention is the Minister came on in January
9	2002, I came on just shortly after in February of
10	2002. We were still relatively new to the
11	Department of Foreign Affairs. I guess that would
12	be when Mr. Arar was sort of taken into custody
13	and deported, that was seven or eight months into
14	the Minister's mandate. So we were still I
15	mean, I think it is still fair to say that we were
16	still learning about how Foreign Affairs worked.
17	I think the reason I was
18	assigned that file was because it had a
19	Canada-U.S. dimension to it, which I was
20	responsible for the Canada-U.S. file in our
21	office; Middle East, which I was also responsible
22	for, and also because it was of highly it was
23	what we would call a hot file.
24	MR. DAVID: High profile?
25	MR. FRY: High profile.

1	MR. DAVID: Did you have any
2	particular knowledge about the Middle East? Were
3	you trained in Middle Eastern affairs? Did you go
4	to the Middle East as a political attache?
5	MR. FRY: I mean, I am by no means
6	by no means an expert in Middle East affairs or
7	business, but I had a little bit of experience.
8	When I worked for the Deputy Prime Minister,
9	Mr. Gray, Mr. Gray was one of the senior Jewish
10	Members of Parliament and Ministers and so I had a
11	lot of I went with him to the Middle East. We
12	went to Israel and Palestinian Territories, so I
13	had a little bit of experience there.
14	I have travelled, you know, on
15	my own personal behalf in those areas of the
16	world, but, no, I wouldn't be considered a Middle
17	East expert.
18	MR. DAVID: Had you ever been
19	to Syria?
20	MR. FRY: No.
21	MR. DAVID: Were you aware of the
22	Syrian regime, its political tendencies?
23	MR. FRY: I would have been aware
24	in a general sense that a lot of those countries
25	in that region of the world, Iran, Iraq, Saudi

1	Arabia, Syria, you know, these were totalitarian
2	or authoritarian regimes.
3	MR. DAVID: Could you explain to
4	us, Mr. Fry, how it is you would have access to
5	your Minister, how you would brief him, how you
6	would make that liaison occur?
7	MR. FRY: I had pretty much
8	access any time I needed access, whether by phone
9	or in person. The Minister had a very busy
10	schedule, but we found time to brief him on a
11	variety of matters.
12	One of the key moments each day
13	where we knew we had time to brief the Minister
14	would be before Question Period. We always
15	assigned time to prepare him for sort of the daily
16	grilling he would get in Question Period. So I
17	knew if for some reason I wasn't able to speak to
18	him in the morning I could attend the Question
19	Period sort of briefing and talk to him about a
20	particular matter.
21	We also shared information in the
22	office. I could tell someone else, "Well, if you
23	are going to see the Minister this morning, could
24	you give this to him" or "could you tell him about
25	this?" I could say that to the Chief of Staff or

1	other people, depending on the Minister's
2	schedule. But I had access to the Minister any
3	time I needed it.
4	MR. DAVID: You referred to the
5	fact that the Minister sometimes would also be
6	receiving memorandums and briefing notes from the
7	permanent members of DFAIT, the civil servant
8	component of DFAIT.
9	MR. FRY: Yes.
10	MR. DAVID: Were you involved
11	in the development, in the requesting of briefing
12	notes, in the drafting of such memos or briefing
13	notes?
14	MR. FRY: Not so much in the
15	drafting. In some cases, I mean, we would make a
16	request of the department and then the department
17	would prepare a briefing note and that would sort
18	of come up the chain. It goes from the person who
19	drafts it to their Deputy Director, to their
20	Director, to their Director General, to their ADM,
21	to the Deputy Minister, and then to our office.
22	So we would make requests.
23	Other times these briefing
24	notes or other things would come up on their own.
25	They are initiated by the department because

1	they are something they thought the Minister
2	should know.
3	I wasn't involved in the drafting
4	of these per se, but I would request them and I
5	would see them. They would come to me. Often
6	they would come directly. They would come to me
7	to go to the Minister.
8	MR. DAVID: So you were in the
9	loop, if I could say, in terms of the processing
10	of briefing notes?
11	MR. FRY: Yes, I would say.
12	MR. DAVID: You have mentioned
13	already, Mr. Fry, in your testimony, that on
14	occasion you yourself would be the person briefed
15	at length in detail by various personnel within
16	DFAIT and that you would sort of filter through
17	the information and, instead of the two-hour
18	version you would give what you referred to as the
19	two-minute version to the Minister.
20	Was that part of your role to help
21	the Minister to decipher the information and to
22	exercise your discretion in terms of what
23	information should be going to the Minister or
24	could be going to the Minister?
25	MR. FRY: Yes, I think an

1	important part of my job is to exercise some
2	discretion to help I mean, I would always err
3	on the side of caution. I would want to make sure
4	that the Minister had all the information he
5	needed. But, as I said, there is such an
6	information dump on the Minister on a regular
7	basis that an important part of my job is using my
8	judgment and my discretion to make sure that he
9	gets what he needs depending on what he has to do.
10	I am also privy to his schedule,
11	so I knew who he was meeting, what was coming up,
12	what meetings he was going to be at and what he
13	needed to sort of wrap his mind around and focus
14	on to get ready for it.
15	I guess another part of the job
16	is that I am one of the few people that has the
17	big picture of where the Minister's head is at,
18	what he is going to have to do, whether he is
19	going to the NATO summit, whether he is going to
20	be chairing the G8, whether the pressure is on
21	him, he is going to have to appear before a House
22	of Commons Committee. So I am sort of
23	well-placed, and that is part of my job, is to
24	help him to focus and to get him what he needs at
25	the right time.

1	The department, senior officials
2	in the department, would also come to me, and
3	others in our office, to bring certain things to
4	our attention, but part of our job, in fact, is to
5	help, to use our discretion and our best judgment
6	MR. DAVID: Were there other
7	people such as you within the political office of
8	the Minister that were doing the same thing with
9	regard to other information coming from DFAIT in
10	terms of filtering, in terms of deciphering
11	MR. FRY: Yes.
12	MR. DAVID: and deciding what
13	should go forth.
14	Without saying that you were
15	necessarily competing with those other political
16	attache's, how many other people would be doing
17	more or less what you were doing in terms of the
18	filtering process?
19	MR. FRY: Everyone had sort of
20	assigned responsibilities, so there wouldn't be
21	people doing the same thing as I was doing, but
22	there would be other people working on other
23	things, like someone else would be taking care of
24	other parts of the world, Latin America for
25	ingtange

1	There were probably maybe five or
2	six other people who had a similar role.
3	Communications, you could say that she had a
4	particular role because she would be a similar
5	role of filtering, because she would have to be
6	able to point the Minister where the media was
7	coming from, what the media was talking about,
8	what the media spin was on a particular story, and
9	be able to focus him on the big stories of the
10	day, not on other things that could be a
11	distraction which may not be that important for
12	him, because someone mentioned something about
13	foreign affairs in some remote some other
14	issue. She would use her judgment and bring the
15	things to his attention that he needed to know.
16	The person who would deal with
17	Question Period. If you are going to prepare a
18	Minister, you need to be able to pick out what you
19	think are the five questions he is going to get at
20	Question Period. So you would have to pick out
21	those five and brief him on those five. You
22	couldn't brief him every day on sort of 30 things
23	because there is a remote possibility that this
24	one little thing could come up.
25	So I think that is a big part.

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1	The nature of the job that we do is in some ways
2	using our discretion to bring the right things to
3	his attention.
4	MR. DAVID: Okay.
5	Let us go to the documents now,
6	Mr. Fry, in terms of the time line. If I could
7	refer you to tab 92 in volume 1 of the DFAIT
8	documents?
9	I'm just going to use this
10	document as an introduction really to some
11	preliminary questions I have for you.
12	There is a series of four e-mails
13	here and the bottom one is the first one. It is
14	dated October 16th. It refers to preparation of
15	an updated Q&A.
16	"Q&A" I understand is more or less
17	a briefing for the Minister to prepare him for the
18	Question Period in the House of Commons?
19	MR. FRY: Also to deal with
20	the media.
21	MR. DAVID: The media.
22	MR. FRY: Yes.
23	MR. DAVID: So it has a dual
24	purpose?
25	MR. FRY: Yes.

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1	MR. DAVID: Then we see in the
2	second e-mail that you are again being looped in.
3	On the third e-mail, which was the second one from
4	the top, you are actually asking or you are
5	involving yourself directly, and you are saying:
6	"I assume a Q&A is being
7	prepared that we can forward
8	to the Minister in Halifax by
9	noon"
10	So the Minister was in Halifax at
11	this time.
12	And it concerns Maher Arar and
13	this is October 16th.
14	So let's first start with, when
15	did you first become aware, when did you first
16	become involved, and when did the name Maher Arar
17	mean something to you?
18	MR. FRY: I think the way this
19	first came to our attention was the media were
20	asking questions. So in fact it would have been
21	through Isabelle Savard, and I guess through media
22	relations at Foreign Affairs, that the media were
23	starting to ask questions about a Canadian that
24	had been detained in New York.
25	Because of that, we then started

1	to ask the department questions about it, "Well,
2	what is this about? Can you tell us what this is
3	about?" A Q&A is generally the quickest way to
4	get sort of a quick turn-around. Often there is a
5	backgrounder attached to a Q&A, so it is sort of
6	the basic questions that the Minister could expect
7	to be asked, some suggested answers, and bit of a
8	background on what this was about.
9	So I would say, for our needs,
10	when there was something being raised that we
11	wanted some quick answers to we would generally
12	request a Q&A. If it was really, really urgent,
13	we would pick up the phone and try to identify the
14	right person that could get us those answers for
15	the Minister.
16	MR. DAVID: Can you identify for
17	us when Mr. Arar became a reality to you, to the
18	job you fulfilled?
19	MR. FRY: I think the Minister
20	started we started getting questions on around
21	the 12th of October, which would be the end of
22	that week. So the 11th, 12th there started to be
23	questions raised in the media about, you know, a
24	Canadian that had been detained.
25	So what would happen is, there

1	would be calls coming in to Foreign Affairs asking
2	for the Minister's comment, asking the Minister
3	for an interview, you know: What does the
4	Minister have to say about this? Then we would
5	start to ask questions at our level like "Who is
6	this person and what happened?" We would start to
7	ask for information about the case.
8	MR. DAVID: Do you recall when you
9	first spoke to the Minister about Maher Arar?
10	MR. FRY: No, I don't recall
11	exactly the first time. It would have been
12	probably to prepare him for either Question Period
13	or a media scrum. You would have our Director of
14	Communications there, possibly the Legislative
15	Assistant, the Chief of Staff, and myself.
16	I would probably be the person
17	expected to know the keeper of more of the
18	detail and the background. The Director of
19	Communications would just want the basic outlines.
20	So we would have tried, again, to give the
21	Minister a quick two-minute version on, "In case
22	you are asked a question about this, this is what
23	we know, Minister."
24	MR. DAVID: Is it fair to say
25	that the Minister would be relying most on you in

1	terms of being briefed on what was happening on
2	the Arar fact line?
3	MR. FRY: At this particular time?
4	MR. DAVID: At this time.
5	MR. FRY: Yes.
6	MR. DAVID: How were you briefed?
7	How did you become familiar with the fact line?
8	MR. FRY: Well, there is the
9	official sort of way you are supposed to be
10	briefed and then there is the for expediency's
11	sake you sometimes have to take other measures.
12	I mean, the official way for me to be briefed
13	would probably be to sort of talk to the Deputy
14	Minister's office and ask, "I would like to
15	find out about this", and then a briefing would be
16	organized.
17	As I guess you get more
18	comfortable in your role and as the department
19	gets more comfortable with you, then you can pick
20	up the phone and speak to an Assistant Deputy
21	Minister, a Director General, or even go farther
22	down in to the department and get sort of more
23	because generally the keeper of the detail are
24	sort of the desk officers and the people down
25	there, especially in the beginning.

1	The other person I would rely
2	on, because this was a consular matter, was Gar
3	Pardy. Gar Pardy anything consular, I mean, he
4	would be the guy I would go to. He and I had a
5	good enough relationship that we would speak on
6	the phone.
7	MR. DAVID: So are you saying
8	that in this time period, in October of 2002, you
9	were already familiar with Gar and that you knew
10	Mr. Pardy?
11	MR. FRY: Yes, yes.
12	MR. DAVID: Had you dealt with him
13	on other cases?
14	MR. FRY: Gar Pardy is somewhat
15	legendary in Foreign Affairs. When I was there,
16	as you mentioned, for four months in 1995, Gar
17	Pardy was doing the same job. This was, I
18	guess I came in 2002, so seven years later he
19	was still in the same position, which is sort of
20	rare in Foreign Affairs because you have rotations
21	and people move. Gar Pardy was still doing the
22	same job as Director General of Consular Affairs.
23	Whenever I thought of consular he was the guy I
24	would go to. He was the keeper of all things
25	consular and, in fact, was revered within the

1	department as on consular matters, everyone
2	turned to Gar.
3	MR. DAVID: Do you recall speaking
4	to Mr. Pardy in this time period about Maher Arar?
5	MR. FRY: I don't recall
6	specifically, there were so many conversations.
7	Based just on the manner of operating, I would
8	probably have spoken to Gar around this time, the
9	middle of October, to get as much information as I
10	could about the case of Mr. Arar.
11	MR. DAVID: Are you able to
12	recall, Mr. Fry, what the Minister had been
13	briefed what was he briefed on? What was
14	he told about Arar in the beginning stages of
15	the affair?
16	MR. FRY: In the beginning it
17	would have been: A Canadian was detained in New
18	York, suspected of links to terrorism, and he was
19	in New York and now we don't know where he is. In
20	the beginning it was: Where is Mr. Arar?
21	By the time we came into play,
22	Mr. Arar was now gone, he was no longer in New
23	York, and the whole thing was: Where is he?
24	So in the initial weeks we were
25	trying to find out where Mr. Arar was. We had

1	narrowed it down to three places: He was either
2	still in the United States somewhere. Some
3	people there was speculation it could be
4	Guantanamo Bay. There was Jordan, and then Syria
5	Basically we were looking in those three we
6	were briefed and the Minister was briefed that:
7	We don't know. Mr. Arar was in New York, he is no
8	longer in New York, we are told he is been
9	deported, but we don't know where he is now.
10	MR. DAVID: How was it explained
11	to you that there was a possibility that he would
12	be in Jordan or Syria at this early stage, before
13	he is confirmed there?
14	MR. FRY: I mean, there was a bit
15	of confusion on our we were trying to figure
16	out, you know, why you know, why don't we know
17	where he is? How come somebody doesn't know? You
18	know, sometimes it takes a couple of days because
19	people are in transit, but after a couple of days
20	and we still didn't know where he was, I mean we
21	were basically informed that the United States
22	says they deported him, they don't have any more,
23	the Jordanians say they don't have him and the
24	Syrians say they don't have him.
25	Our missions I was basically

1	informed our missions and I think at the senior
2	levels, the Ambassadors were basically dispatched
3	to try and find you know, to inquire with their
4	governments, the local governments, and they were
5	basically told, no one knows where he is.
6	MR. DAVID: You can't explain why
7	Jordan and Syria were pointed to as being
8	possibilities?
9	MR. FRY: I think we were told
10	I mean, I think the Americans told us that they
11	had deported him to Syria. I can't remember why
12	we thought about Jordan.
13	MR. DAVID: Okay. So it was on
14	the indication of the Americans, basically.
15	MR. FRY: Yes.
16	MR. DAVID: Let's go to tab 94
17	now, Mr. Fry. There is a theme here that is being
18	developed, and that is basically your awareness,
19	your knowledge, your sensitivity to the fact that
20	there were allegations Mr. Arar could be the
21	subject of torture.
22	We have a letter that is
23	being issued by Amnesty International in the
24	United States that is going to James Ziglar,
25	the Commissioner of Immigration and

1	Naturalization Services in the U.S. It is dated
2	the 16th of October.
3	If you go to the second page of
4	the document, you will see there is a copy of this
5	letter that has been sent to Minister Graham, as
6	the Minister of Foreign Affairs of Canada. In
7	terms of the language that refers to torture,
8	first of all, the letter, in its second paragraph,
9	says that there is a concern or a fear that he may
10	have been deported to Syria.
11	If you go to the fourth paragraph,
12	the first two lines say the following:
13	"Amnesty International is
14	further concerned that
15	deportation to Syria would
16	place Maher Arar at risk of
17	serious human rights abuses
18	including torture and
19	incommunicado detention."
20	So this is a theme that is
21	being flagged to certainly the Commissioner in
22	the United States of Immigration INS, and it is
23	also being flagged to your Minister, Minister
24	Graham.
25	This is the same theme that you

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1	will find if you go to tab 80 in the same volume.
2	There are references to various media articles
3	that are being uploaded into the CAMANT system.
4	If we just take the first two, you
5	have an article here that is coming from the New
6	York Times, it is dated October 12th. On the
7	first page you will see that Mr. Riad Saloojee is
8	being quoted here, and the quote is:
9	"`There is a significant risk
10	that he will be tortured and
11	punished in Syria'."
12	So again the theme of abuse, human
13	rights abuses, torture, is being raised. It is
14	also being raised in an article that has been
15	reproduced that was in the Ottawa Citizen, again
16	on the 12th of October. That is the second
17	article in this tab. There is again a quote of
18	Mr. Saloojee, it is on page 3, the before-last
19	paragraph, and it says:
20	"Mr. Saloojee said Mr. Arar
21	may face severe punishment at
22	the hands of the Syrian
23	government because he avoided
24	compulsory military service
25	before leaving the country as

1	a teenager."
2	So in both media articles and in
3	official correspondence, Mr. Fry, it is clear that
4	there is a concern. There is an issue here that
5	Mr. Arar is being tortured or could be tortured.
6	I want to know how sensitive were
7	you to that reality at this early stage and
8	whether your Minister was briefed? Was it a
9	concern that was signalled to your Minister?
10	MR. FRY: Just one question. You
11	said the Amnesty letter came from the U.S. It is
12	the United Kingdom.
13	MR. DAVID: I'm sorry, it is from
14	the United Kingdom. U.K., I'm sorry. My mistake.
15	MR. FRY: If I might just say one
16	thing about correspondence, if we are talking
17	about the Amnesty letter.
18	The letter is not addressed to
19	the Minister. I will maybe just give you a bit of
20	a perspective about the amount of correspondence
21	that
22	I think the Minister would receive
23	at least a thousand pieces of correspondence a
24	week, and there is an executive correspondence
25	unit at Foreign Affairs, and the correspondence

1	will go into there for reply. Certain pieces of
2	correspondence, high-profile pieces of
3	correspondence, would come up to us quickly.
4	Because this letter wasn't
5	addressed to him I mean, to be honest with you,
6	I don't think I ever saw this Amnesty letter.
7	One, because it wasn't addressed specifically to
8	the Minister and, I mean, there is enough, I
9	guess, just dealing with the correspondence that
10	is directly addressed to a Minister. When going
11	through the documents that I did look through, I
12	mean the documents that were had, and to my
13	knowledge I never saw this specific Amnesty
14	letter.
15	In terms of the general if your
16	question is about our general perceptions of what
17	was going to happen to Mr. Arar in Syria, I mean
18	at that particular time, as I told you, we didn't
19	know where he was. I think I have already
20	testified that. We had general knowledge of
21	countries like Syria, China and Saudi Arabia that
22	don't have very good human rights records, but
23	based on media reports, I mean, to be honest with
24	you, there is I mean, I don't maybe you
25	could repeat to me exactly, where you would like

1	me to answer.
2	MR. DAVID: I'm happy to do so.
3	Let me ask you: At the early
4	stages you identified October 11th as being a
5	possible date where you were first made aware of
6	Maher Arar.
7	MR. FRY: Right.
8	MR. DAVID: Then we see the Q&A
9	coming out for October 16th, thereabouts.
10	Was Maher Arar identified within
11	your office I'm talking about the political
12	office as being a high profile case, as being a
13	high priority? Was it dealt with on that basis at
14	the beginning?
15	MR. FRY: Any time a Canadian is
16	imprisoned abroad and people are talking about
17	connections to terrorist organizations, in this
18	case al-Qaeda we have to remember what was
19	happening in the world at that time. I think on
20	October 12th actually it was the Bali bombings
21	where 200 people, including some Canadians, had
22	been killed.
23	So this was I would say that it
24	was high profile in the sense that you had a
25	Canadian who had been detained in New York and was

1	being accused of having connections to terrorism.
2	But at the same time there are many Canadians I
3	think at any given time there are 3,000 Canadians
4	in jails around the world. The Minister, you
5	know, with all his other duties, consular matters
6	for the most part very rarely came all the way up
7	to the Minister's office. The fact that we were
8	dealing with this I think is an indication that
9	we were dealing it specifically in the Minister's
10	office was an indication of the serious nature
11	that we attributed to this.
12	MR. DAVID: To the extent that you
13	are going to be briefing your Minister, though he
14	is in Halifax and out of town on other business,
15	indicate to me what the procedure is here.
16	But would it be Isabelle Savard's
17	job that you have identified as being the
18	communications facilitator for the Minister, would
19	it be her job to be reviewing media reports on
20	issues that concern the Minister's mandate?
21	MR. FRY: Yes. We get clippings,
22	what we call clippings. We get mounds of them.
23	Anywhere they mention Foreign Affairs or issues of
24	Canadian foreign policy and the like, on a daily
25	basis we probably get something an inch thick with

1	media reports involving the Department of Foreign
2	Affairs and the Minister and the like.
3	MR. DAVID: In fact, we see that
4	the importance that can be given to media reports
5	and the very fact they are being integrated into
6	the CAMANT note system within DFAIT, certain media
7	reports are being uploaded into the system, and I
8	have referred you to two examples on October 12th.
9	MR. FRY: Right.
10	MR. DAVID: So my question was,
11	and we are coming back to the question: In the
12	early stages of your dealings with the Arar fact
13	line, with the Arar case, with the fact that there
14	was speculation that he may have been sent to
15	Jordan or Syria or the United States, as you said,
16	what presence did the issue of torture have in
17	your briefings, in your knowledge first of all,
18	your personal knowledge of the Arar fact line, and
19	in your briefings that you were giving to your
20	Minister in the early stages?
21	MR. FRY: It would have had very
22	little, to be honest. Our priority at this point
23	was trying to find out where Mr. Arar was. The
24	fact that some person mentions in some article
25	that, you know, Syria has a poor human rights

1	record and they abuse their citizens, that
2	wouldn't have factored in very highly.
3	MR. DAVID: Do you recall,
4	Mr. Fry, whether you ever briefed Mr. Graham about
5	the possibilities of human rights abuses?
6	MR. FRY: In Syria?
7	MR. DAVID: In Syria.
8	MR. FRY: No.
9	MR. DAVID: Do you recall ever
LO	speaking to Mr. Pardy about that possibility, or
L1	Mr. Pardy speaking to you about that possibility
L2	existing in this scenario?
L3	MR. FRY: You will have to sort
L4	of I mean, things changed as the case evolved.
L5	Are we still talking before we know where he is?
L6	MR. DAVID: Yes.
L7	MR. FRY: Our priority at that
L8	particular time was trying to locate Mr. Arar. We
L9	were doing everything we could. We were
20	sending we were branching out. I mean,
21	messages were being sent around the world to try
22	to locate Mr. Arar. That was our priority.
23	MR. DAVID: So you are making
24	certainly the distinction between how you were
25	dealing with the case before October 21st

1	because that is the date that Syria confirms
2	MR. FRY: Yes.
3	MR. DAVID: that they hold and
4	detain Mr. Arar before October 21st, and after
5	October 21st.
6	Is that a fair statement?
7	MR. FRY: Yes.
8	MR. DAVID: My question is: When
9	he is in an unknown location, is it your testimony
LO	that basically the issue of torture, as far as you
L1	are concerned, and as far as your Minister is
L2	concerned, is not being addressed? It is not a
L3	live issue?
L4	MR. FRY: Well, we wouldn't have
L5	been dealing with that specific issue because we
L6	didn't really know where he was. If he was in
L7	we wouldn't have just talked about him in a
L8	general sense, and so it would have served no
L9	purpose to talk about this until we knew where
20	Mr. Arar was.
21	MR. DAVID: Okay. Once you do
22	have it confirmed that Mr. Arar is in Syria, which
23	is on October 21st
24	MR. FRY: Yes.
25	MR. DAVID: thereafter is it a

1	concern, is it an issue that you are addressing
2	that your Minister is made aware of?
3	MR. FRY: What we would do at
4	that point is, we were requesting consular access
5	and we were relying on our people on the ground to
6	report back to us in terms of what Mr. Arar's
7	state was, what he looked like and the like. So
8	we were relying on our people on the ground in
9	Syria to report back to us and to give us their
10	best advice.
11	MR. DAVID: Okay. Do you recall
12	torture being a concern in those reports being
13	sent to you?
14	MR. FRY: I would imagine. The
15	reason we want consular access it to verify the
16	well-being of the Canadian in question. Any time
17	you are dealing with regimes I mean, we are
18	fortunate to live in the country that we live in,
19	because other than Western Europe and Canada, the
20	U.S., I mean, many countries have poor human
21	rights records, whether it is China, Vietnam,
22	Indonesia, most of the Middle Eastern countries.
23	I think any time that our people, our consular
24	people, are dealing with Canadians detained in
25	those areas, it is always something that you want

1	to be watching for.
2	MR. DAVID: Certainly today you
3	will agree with me, Mr. Fry, that today you
4	understand that Syria does mistreat certain
5	detainees? I think that everybody in this room
6	now is very sensitive to that reality as being
7	part of the Syrian reality?
8	MR. FRY: Sure.
9	MR. DAVID: My question is: Were
10	you as sensitive, as knowledgeable about that
11	issue at this time, October of 2002? Were you
12	alive to that issue, you personally?
13	MR. FRY: What I would say about
14	that is, I mean, in the Minister's office we have
15	to deal with the facts that are given to us, the
16	specifics. Just because someone says in a general
17	sense that a particular country, a particular
18	regime, has a bad track record, you know, we
19	couldn't just go out and start making accusations.
20	If you are going to tell me
21	that I mean, I have heard stories of people
22	abused in many, many countries, including the
23	United States.
24	So I mean, yes, I think in a
25	general sense I would have known that many of

1	those countries in the Middle East had bad track
2	records and did repress dissent and abuse their
3	citizens, but I wouldn't have known specifics and
4	I couldn't have told you how often or things like
5	that. I wouldn't have been able to tell you that.
6	MR. DAVID: Okay. We can go now
7	to tab 95, which, for the record, is a follow-up
8	to tab 92, which was the request for the updated
9	Q&A. We see that Mr. Pardy here is responding and
10	sending on the consolidated updated
11	question-and-answer sheets.
12	It is simply for the record I'm
13	indicating that. That is as of October 17th.
14	Let's move on now to tab okay,
15	this is where we get into the funny business of
16	the newly redacted documents. I will refer you to
17	both tabs and that way, for the record, I think we
18	can make the correlation.
19	The old tab number would be
20	172 and the new tab number would be tab 1 in what
21	we have identified as P-132.
22	Pause
23	THE COMMISSIONER: Is this
24	referred to in the Table of Concordance?
25	MR. DAVID: No, that is today's

1	issue so we don't have an updated.
2	THE COMMISSIONER: I see.
3	MR. DAVID: Basically it is, in
4	the old series, tab 172. In the new series it
5	would be tab 1.
6	It is a series of e-mails,
7	Mr. Fry, there are six e-mails in all, and you are
8	directly concerned. Basically on page 2, if I
9	refer you to the first e-mail, it is the second
10	message on that page and it is dated October 30th
11	at 7:45 p.m.?
12	MR. FRY: Yes.
13	MR. DAVID: It is coming from you
14	and it is going to Gar Pardy.
15	MR. FRY: Yes.
16	MR. DAVID: You are just asking
17	him basically to keep you in the loop.
18	MR. FRY: Yes.
19	MR. DAVID: So can you just give
20	us where was this coming from?
21	MR. FRY: Well, because this was a
22	priority for our office, and because information
23	didn't always flow very quickly through briefing
24	notes and the like, I'm telling Gar here that
25	because this story keeps evolving in this case of

1	Mr I mean, there seems to be things happening
2	on a regular basis, on a daily basis, I'm asking
3	Gar to keep us briefed and especially the people
4	listed here: Dan, being the Chief of Staff,
5	Isabelle Savard being the Director of
6	Communications, Michelle Lobo, the Legislative
7	Assistant.
8	I'm sure Isabelle is going to be
9	very happy with me that my e-mail has been
10	Isabelle had gotten so many e-mails she wasn't
11	able to read it, so Gilles Plouffe is her
12	assistant.
13	This is my way of asking Gar to
14	keep us up to date as soon as he knows or hears
15	anything. Because things are happening so often,
16	it was important to us.
17	I mean it is an embarrassing
18	situation for a Minister to be in a scrum and the
19	reporters know more about what is going on than he
20	would. So I'm asking Gar to make sure that I'm
21	not saying that that happened, but this is a way
22	to avoid this from happening, was for his staff to
23	be given this information as quickly as possible
24	rather than it go through some sort of a briefing
25	note or waiting for a Q&A or something like that.

1	MR. DAVID: So basically it
2	is a response to the media coverage that you
3	are hearing?
4	MR. FRY: Yes. By this time, by
5	October 30th, this has become a very high profile
6	case, and we want to make sure that we have all
7	the up-to-date information as quickly as possible.
8	MR. DAVID: If we go to page 1 of
9	this tab, at the very bottom, there is a message
LO	again going from you to Gar, and it says "Thanks"
L1	and it goes on to page 2:
L2	"When does his wife get back?
L3	We were thinking of meeting
L4	the family next week."
L5	So there is obviously here an idea
L6	that maybe you would been meeting with Ms Mazigh.
L7	Would that meeting have been with the Minister?
L8	MR. FRY: I think we would have
L9	talked about it. It either would have been myself
20	or myself and the Minister.
21	MR. DAVID: Then if we go to
22	page 1, we see that Gar is responding that she is
23	going to be returning mid-November.
24	MR. FRY: Yes.
25	MP DAVID: So there is obviously

1	direct communication between you and Mr. Pardy.
2	My question is: How close were you in terms of
3	following the Arar time-line, the fact line? Was
4	it a daily affair with you and Mr. Pardy
5	discussing this case?
6	How often were you discussing the
7	matter with Mr. Pardy?
8	MR. FRY: Well, as you can see, I
9	rely heavily on Mr. Pardy to keep me briefed, and
10	therefore the Minister briefed, on everything that
11	was going on. As you mention, my e-mail, I'm
12	actually asking for his advice on the meeting.
13	I know that Gar and his consular
14	officials are dealing with the family. I mean,
15	that is their role as the consular officials in
16	the Department of Foreign Affairs is to deal with
17	family members and things like that.
18	But because of the nature, the
19	important nature of this case, we are actually
20	looking at possibly having a meeting at our level.
21	MR. DAVID: Was there anybody else
22	within the Office of the Minister that was also
23	dealing with consular affairs, with Gar Pardy,
24	with consular staff, within your office?
25	MR. FRY: Both Isabelle Savard and

1	Michelle Lobo would have, like me, wanted to get
2	the most up-to-date facts of what was happening of
3	the case. So I believe from time to time they may
4	have spoken to Gar Pardy, but generally I think
5	they relied on me I was sort of the main
6	liaison with Gar. Gar was my main liaison on this
7	case with the department apparatus and I would
8	keep Isabelle and Michelle in the loop the best I
9	could. nut there may have been times when they
10	spoke directly to him.
11	MR. DAVID: Okay. If we could now
12	go to P-133, which are your personal notes? I
13	believe it is the small extract here, Mr. Fry. It
14	is probably in the corner there.
15	Is that P-133? These are your
16	personal notes?
17	MR. FRY: Yes.
18	MR. DAVID: Okay. If you could go
19	to page 11. We are just following the chronology
20	of events here, it an entry for November 7th.
21	I bring your attention to the
22	bottom. It says, "Syria - Arar" and, I think,
23	"Treatment of Canadian Arar consular."
24	Then you may want to go to
25	Do you know what these notes

1	refer to?
2	MR. FRY: Well, sometimes these
3	are notes in terms of things that issues that
4	we need information on.
5	I mean, I think the first part
6	here, the "br", "briefing MPs and staff" on
7	something. I'm not sure, it may have been on
8	Arar, it may not have been.
9	MR. DAVID: Maybe if you go
LO	to page 19 of your notes there is a reference
L1	and I believe it is for the same date, November
L2	7th. It says at the very top, "Meeting with
L3	Secretary Powell."
L4	MR. FRY: Yes.
L5	MR. DAVID: Does that ring a bell?
L6	Do you recall what the
L7	circumstances of that were?
L8	MR. FRY: Well, this would have
L9	been either my notes of the meeting with Powell or
20	things that needed to be done or I needed to
21	prepare in anticipation of that.
22	MR. DAVID: This meeting occurred
23	on November the 14th?
24	MR. FRY: I'm not sure what the
25	date is on this. The Minister did meet with

1	Powell on November 14th, but I'm not sure if this
2	is connected to that.
3	MR. DAVID: Okay. We can go to
4	tab 2. This is the old 197, now tab 2. It is an
5	entry again, I believe, for November the 7th.
6	If you could go to the first page
7	of that tab, you are referring to
8	Pause
9	MR. DAVID: Actually, it is the
10	top message. It is at the very top, it says:
11	"Thanks for all this, Gar.
12	Please keep me posted -
13	Arar especially. We will
14	raise some of these with
15	Powell tomorrow."
16	So that would be, I suggest, a
17	message on November 13th with regard to the
18	meeting with Mr. Powell on the 14th?
19	MR. FRY: Yes.
20	MR. DAVID: If we go to tab 199,
21	which is now tab 3, we have the actual briefing
22	note that was prepared for the Minister with
23	regard to his meeting?
24	MR. FRY: Yes.
25	MR. DAVID: Mr. Graham has

1	testified extensively about this so I'm just
2	bringing that out for the record.
3	If we could now go to tab 214,
4	please, which is an entry for the 18th of
5	November.
6	Pause
7	MR. DAVID: This is an update
8	going from Gar to you, and it is an update about
9	the consular visit, the fact that Mr. Arar was
10	visited for a third time on November 12th.
11	Did you receive the consular
12	reports when such were filed?
13	MR. FRY: The consular reports
14	came in something we called a C-4, which is a
15	secure network that Foreign Affairs has. I'm
16	sure you are well-versed with it now, but it is
17	a secure network that we have with all our
18	embassies, so they report back. So you
19	actually have to have a separate computer with a
20	separate tower.
21	It is sort of complicated. They
22	were printed for our office and I would get a
23	daily stack of all the C-4s from around the world
24	and I would try and look through them.
25	High profile cases, we tried to

1	pull out the high profile ones. I do believe I
2	was seeing or I was asking to see any reports
3	on Mr. Arar that were coming from our embassies
4	abroad, I guess in this case Damascus. But Gar
5	would also brief me. I would also get verbal
6	briefs from Mr. Pardy as well, and e-mail, as you
7	can see.
8	MR. DAVID: Okay. If we could
9	go to tab 4 now in the small binder, which is old
10	tab 215.
11	This is a briefing note for the
12	Minister and at the very top it is referring to
13	the subject matter, and it says:
14	"Telephone call to Mr. Farouk
15	al-Shara'a, Minister of
16	Foreign Affairs of Syria"
17	This call in fact did not occur.
18	It occurred in fact on the 16th of January 2003,
19	but we see that in this time period, November
20	18th, there was a call that was being
21	contemplated.
22	Do you recall the circumstances
23	about that call and why it never took place?
24	MR. FRY: I think that I may
25	have asked the department. In consular matters

1	and I think the Minister sort of testified we
2	rely on the experience of our diplomats and Gar
3	Pardy and our senior officials, but you sort of
4	try and ramp up I guess the chain in terms of
5	putting pressure on a particular country in a
6	particular case.
7	I think I actually asked, because
8	of the pressure on the Minister and the like, that
9	we should get the Minister to call the Foreign
10	Minister. So the department actually prepared
11	some notes for that. I think we were told that he
12	wasn't available at that particular time.
13	But I think there was also advice
14	saying: Well, perhaps we should call in the
15	Ambassador first before we rushed to talk to the
16	Foreign Minister. So we held off on the call.
17	I think he wasn't available but we
18	also held off on the call.
19	The other thing, I think and I
20	don't have the Minister's schedule in front of
21	me there were also narrow windows of
22	opportunity in the Minister's schedule, because
23	you had time change I think Syria is about a
24	seven- or eight-hour time change, so unless you do
25	a call sort of by midday, it is already too late.

1	When I talk about "window", the
2	Minister would also travel. I think he went to
3	Prague around this time, there was the EU summit,
4	there was the NATO summit. So what may have
5	happened was we talked about doing it, the
6	Minister wasn't available, and we sort of
7	sorry, Minister Shara'a wasn't available and then
8	Minister Graham sort of got overtaken by other
9	events and I think the advice may have been from
10	senior ADM that, "Well, let's call in the Syrian
11	Ambassador first. We may be jumping ahead of
12	ourselves to go right to a phone call to the
13	Foreign Minister.
14	At the same time I think we were
15	getting reports. We were seeing Mr. Arar on a
16	regular basis. We had been in to see him I think
17	at least three times by this point. We were
18	getting reports that he looked good, that he was
19	fine. He wasn't happy that he was detained, but
20	we knew where he was and we were comfortable that
21	he seemed to be fine and now we were focusing on
22	trying to get him out.
23	MR. DAVID: Okay. Moving along
24	now to November 21st and 22nd. We know, Mr. Fry,
25	that CSIS went to Syria, visited Syria.

1	Let me first ask you: Were you,
2	in this time period when it was occurring or
3	proposed to occur, were you aware of that fact?
4	MR. FRY: No, I wasn't.
5	MR. DAVID: When did you become
6	aware of the fact that CSIS went to Syria?
7	MR. FRY: I believe it was early
8	January, just after the Christmas break in early
9	January.
10	MR. DAVID: Do you recall how you
11	learned about that trip?
12	MR. FRY: I learned from
13	Gar Pardy.
14	MR. DAVID: What were you told
15	about the trip?
16	MR. FRY: Gar Pardy told me that
17	CSIS had been to Syria, that they had been there
18	not because of Mr. Arar but because it is part of
19	their general intelligence-gathering and sort of
20	relationship-building. I may have asked: Well,
21	you know, what about the case of Mr. Arar? I was
22	told, no, they didn't meet with him. It was one
23	item that was discussed.
24	MR. DAVID: I would like to bring
25	vou now to Mr Dillarellate documents. That is

1	P-134 and it would be tab 8. This is a document,
2	in its present form, that became available to us
3	only very recently.
4	It is a message that is going
5	from there are two messages in this document.
6	The top one concerns a message
7	from ISI going to Ambassador Pillarella in
8	Damascus. You will see that there is reference to
9	Jim Wright in Prague.
10	If you recall, I think your
11	Minister was in Prague for a NATO Summit Meeting?
12	MR. FRY: Yes.
13	MR. DAVID: Did you accompany
14	Mr. Graham on this trip to Prague?
15	MR. FRY: No, I didn't.
16	MR. DAVID: Okay.
17	I would like to bring you to the
18	language, it is about in the middle part of the
19	top paragraph, and it says:
20	"You will remember that at an
21	interdepartmental meeting
22	held on Wednesday,
23	November 6, it was agreed
24	that it would be useful if
25	CSIS were to travel to Syria

1	to speak to Syrian
2	authorities on international
3	terrorism. In light of
4	recent media reporting on
5	Arar, we had doubts about the
6	timeliness of the CSIS visit,
7	although not about its
8	substance. This issue went
9	before the Minister on
LO	November the 18."
L1	I would suggest to you that that
L2	is Minister Graham.
L3	"He did not wish to defer the
L <b>4</b>	visit; however, he indicated
L5	that he wished to have a full
L6	report on the visit and the
L7	discussions with the Syrians
L8	before he communicated with
L9	the Syrian Foreign Minister."
20	So what is being alluded to in
21	this document, Mr. Fry, is the fact that,
22	within and if you go to the bottom message,
23	actually, which is the first message which is
24	coming from Mr. Solomon again to Mr. Pillarella
25	the day before you will read that it says:

1	"For your personal
2	information, following a
3	meeting with DMA"
4	That is the Associate Deputy
5	Minister, Paul Thibeault?
6	MR. FRY: Yes.
7	MR. DAVID: Then:
8	"of 18 November, senior
9	DFAIT representatives asked
LO	CSIS to delay their visit to
L1	Syria. While CSIS indicated
L2	that they would not attempt
L3	to visit Maher Arar, they
L4	still intended to continue
L5	with their planned visit to
L6	(somewhere) PCO chose
L7	not to intervene on this
L8	debate, so unless the
L9	Minister attempts to block
20	this visit, CSIS will arrive
21	in Damascus on schedule.
22	Updates to follow."
23	There is clearly concern about the
24	trip being expressed by DFAIT representatives.
25	T'm acking you: Were you aware of

1	this debate of this concern, and were you aware
2	that your Minister, according to the second
3	message on the top, seems to have been briefed and
4	asked to intervene directly and chose not to?
5	Do you have any knowledge in that
6	regard?
7	MR. FRY: In answer to your first
8	question, no, I was not aware of this debate. As
9	I said, the first time I became aware of the CSIS
10	visit I believe was in early January.
11	In terms of the Minister, I think
12	this is incorrect. To my knowledge, this issue
13	didn't go before the Minister. In fact, the
14	Minister was not aware of the CSIS visit either.
15	MR. DAVID: What is that knowledge
16	based on, Mr. Fry, that you can assert today that
17	in your opinion Mr. Graham was not asked to
18	intervene in this regard?
19	MR. FRY: Or that the issue even
20	went before him.
21	MR. DAVID: Or that the issue went
22	before him?
23	MR. FRY: I guess it is based on
24	my I mean, I have spoken prior to coming I
25	mean, I was aware of this document as well and in

1	my preparations for this I did talk to other
2	members of the staff, and I think the Minister
3	testified as well he was not aware of this. None
4	of us briefed him to that effect and he personally
5	was not aware of it.
6	MR. DAVID: To your knowledge,
7	certain issues such as this one, would they be
8	dealt with by the Deputy Minister or the Associate
9	Deputy Minister without ever going to the
10	Minister's level and being attributed to the
11	Minister?
12	Did you ever see that happen
13	before?
14	MR. FRY: It is rare. I mean, you
15	normally would not say that an issue had gone
16	before the Minister if it hadn't gone before the
17	Minister. I mean, mistakes can occur.
18	I mean, Mr. Jonathan Solomon, he
19	would not interact with the Minister and I think
20	it is fair to say he would be far down the chain.
21	So someone may have told Mr. Solomon that this
22	occurred and then he put it in a note. There
23	could have been a misunderstanding when someone
24	spoke to him.
25	I can't explain. All I can speak

1	to is that to my knowledge this issue did not go
2	before the Minister and that the first time that I
3	learned about this was right around the Christmas
4	break, right after Christmas.
5	MR. DAVID: Do you have any
6	knowledge, Mr. Fry, about anybody within the
7	political office of the Minister ever being
8	sensitized to the issue before you found out
9	in January?
10	MR. FRY: I don't think so. I
11	spoke to other members of the staff in the lead-up
12	to the inquiry and I don't think anyone I mean,
13	I definitely wasn't aware of the debate around
14	CSIS' visit.
15	Someone may have learned just
16	before the Christmas break, like the 20th or 21st,
17	about the CSIS visit. I mean, I heard some talk
18	to that effect. I think the first time that our
19	office was made aware was when I was made aware by
20	Mr. Pardy in early January.
21	MR. DAVID: When Mr. Pardy did
22	make you aware of this fact, that they had gone to
23	Syria, was he concerned about it? Was he
24	expressing concern about it? Was he expressing an
25	opinion about it to you?

1	MR. FRY: It is hard for me to
2	speculate. I don't know I mean, Mr. Pardy sort
3	of just gave me the information about the fact
4	that CSIS had been there. But he was actually
5	I mean, he was pretty clear in his the way it
6	was framed for me was, well, they were it was
7	almost like they were going anyways, and just
8	since they were there and the Arar case was an
9	item, an issue between our two countries, that it
10	was one of the items that was discussed. But in
11	fact it was framed to me as more of a visit that
12	had already been planned or that they were already
13	going to be making to Syria.
14	MR. DAVID: How did you react?
15	You are told by Mr. Pardy of this fact in
16	January, a couple of months after it has occurred.
17	How do you react to that, to the fact that you
18	were not briefed, that your Minister was not
19	briefed, and that you are finding out two months
20	after the fact?
21	What was your reaction?
22	MR. FRY: I think you can predict
23	my reaction, Mr. Commissioner. I mean, I was
24	unhappy. This was obviously a very important
25	case, high profile. You have seen e-mails where I

1	am asking to be briefed on almost a daily basis,
2	and here I find out about something relatively
3	significant I guess maybe the way it was framed
4	to me that made it less significant was: Well,
5	they were going anyways and they just happened to
6	talk about Mr. Arar. They didn't meet with
7	Mr. Arar." Maybe it was framed that way to
8	downplay the importance of it, but I was unhappy
9	and frustrated. This kind of thing should be
10	brought to our attention sooner and not two months
11	after the fact.
12	MR. DAVID: Did you pursue the
13	matter with anybody else, with your Minister, with
14	any other official within DFAIT?
15	MR. FRY: Well, Mr. Commissioner,
16	I think it is a regular occurrence in the jobs
17	that we have where Ministers get surprised by
18	issues, are not always briefed on issues,
19	sometimes someone decides not to brief us or tell
20	us. So, I mean, I think it is a regular
21	frustration in any Minister's office that things
22	happen that they are not really told about.
23	I mean, it happens to me in
24	my current job, it has happened to me throughout
25	my career that sometimes things just don't make

1	their way up, or some official doesn't think it is
2	necessary.
3	So there had been other occasions
4	where things I'm not talking about the Arar
5	case, I'm talking about other cases, where things
6	had occurred that we weren't briefed about, so I
7	guess I would have chalked that up to just another
8	situation where either someone thought we had been
9	told or been briefed and hadn't. I don't recall
10	that I took any sort of punitive action. I guess
11	my reaction would have been to brief the Minister
12	right away and to brief other staff in our office
13	right away.
14	MR. DAVID: Okay.
15	Let's go now to December 12th. It
16	is your personal notes, and I would refer you to
17	page 12, there is an entry. Your personal notes,
18	page 12? It simply says "Arar", and I think it
19	says, "Call. Agree to meet."
20	Do you recall what that entry
21	is about?
22	MR. FRY: I think it was a call to
23	Mrs. Mazigh.
24	MR. DAVID: Do you know for
25	MR. FRY: I mean these are sort

1	of sometimes me just reminding myself to do
2	different things.
3	MR. DAVID: Let's go to tab 5.
4	That would be the old tab 262.
5	It refers to the fact that your
6	Minister is meeting or going to meet the
7	Ambassador of Syria, Mr. Arnous.
8	In this document at tab 5 there
9	are two preliminary meetings and calls before the
10	actual meeting with the Ambassador. The first
11	concerns the fact that Minister Graham spoke with
12	Monia Mazigh and with Marlene Catterall. There
13	was a conference call prior to the Arnous visit.
14	Did you participate in that
15	conference call?
16	MR. FRY: Yes, I did.
17	MR. DAVID: Do you recall what
18	was discussed?
19	MR. FRY: This was the Minister's
20	opportunity to speak to Mrs. Mazigh directly, I
21	believe, and Marlene Catterall was also part of
22	that call, she being her Member of Parliament.
23	MR. DAVID: Okay. The very last
24	paragraph on the first page says:
25	"Minister Graham discussed

1	the case with Mrs. Arar who
2	asked how long her husband
3	may be detained. The
4	Minister replied that we did
5	not know and did not have any
6	control over the length of
7	the process."
8	Does that reflect, to your
9	recollection, what was discussed?
10	MR. FRY: Yes.
11	MR. DAVID: Do you want to add
12	anything else to that phone call?
13	MR. FRY: All I would say here
14	I mean, I had been speaking with the family, and I
15	know our consular officials were speaking with
16	them on a sort of regular basis, and this was just
17	an opportunity to I wanted to give part of
18	this was for me to reassure Mrs. Mazigh that we
19	were doing everything we could for her and for her
20	husband. I knew that she could get the
21	information and things that she needed from our
22	consular people, but I wanted her to know that at
23	the highest levels at Foreign Affairs, in the
24	Minister's office, me, as one of his key advisors,
25	that we were doing our very best to help her and

1	her husband and that I in fact arranged the
2	phone call so she could hear it directly from the
3	Minister that he was personally engaged on this
4	file and was taking personal attention to try to
5	help Mr. Arar.
6	MR. DAVID: On page 2, there is
7	also reference to a meeting with Sarkis
8	Assadourian and Marlene Catterall with yourself
9	and with Mr. Pardy.
10	Do you recall attending
11	that meeting?
12	MR. FRY: I don't actually recall
13	attending that meeting.
14	MR. DAVID: Okay. It says:
15	"Pardy and Fry briefed the
16	MPs on the case."
17	MR. FRY: Yes. I could have been
18	there. Generally when the department briefed
19	Members of Parliament we had a member of the
20	political staff there. I mean, I probably was
21	there, but I don't have any recollection of that
22	meeting per se. I think it would have probably
23	been generally a briefing to them on what we knew
24	up until this point.
25	MR. DAVID: Then there is

1	reference, finally, to the actual I believe
2	there was a telephone call between Minister Graham
3	and Mr. Arnous?
4	MR. FRY: No.
5	MR. DAVID: It was a meeting?
6	MR. FRY: We called him in, in the
7	diplomatic sense.
8	MR. DAVID: In the diplomatic
9	sense?
10	MR. FRY: It is a bit of a you
11	know, when a country is unhappy with the actions
12	of another country, you call in the Ambassador to
13	express your concern.
14	MR. DAVID: The concerns
15	being expressed by the Minister here were as
16	reflected in this document, basically unhappy
17	about the fact that Mr. Arar was being detained
18	and there was no trial?
19	I refer you to the middle or
20	just below, it says:
21	"Robert Fry asked if he had
22	any idea how long the process
23	may continue."
24	That is referring to the
25	investigation. Then the Ambassador replies.

1	So you directly intervened in
2	this meeting?
3	MR. FRY: Yes. I mean, I I
4	didn't always intervene. On some occasions, if
5	I mean, these are diplomatic meetings. You have
6	an Ambassador, you have a Foreign Minister, and
7	different issues are raised.
8	I think the Minister was
9	Ambassador Arnous, in fact, had been very helpful
10	and is a very was very helpful to us. In fact,
11	we got the sense that Ambassador Arnous was in
12	fact trying to help us, was being very
13	cooperative.
14	But I guess I pressed him here
15	to I think he was talking about the Syrians had
16	their own process, that they had to investigate
17	Mr. Arar and they were doing their own
18	investigation. He was talking in generalities and
19	so I tried to press him, saying, "How long,
20	Ambassador Arnous? We would want to bring
21	Mr. Arar back to Canada. Can you give us any idea
22	of how long it is going to be?"
23	MR. DAVID: We can move on now to
24	tab 288, which is tab 6 in the newly redacted
25	documents. It is an entry for the 16th of January

1	2003. It is a briefing note actually on the 15th
2	of January, but it refers to a call on the 16th
3	between Minister Graham and the Foreign Minister
4	of Syria.
5	I would like to bring you to
6	page 2 of the briefing note first before
7	discussing the actual call, Mr. Fry. There is a
8	concern it is the last bullet on page 2 here,
9	and the concern being expressed to Mr. Graham is:
10	"I understand from recent
11	reports that the Syrian
12	authorities may have the
13	impression that Canada has no
14	wish to see Mr. Arar return
15	to Canada. I would like to
16	make it very clear that the
17	Canadian government would
18	like Mr. Arar to be returned
19	to Canada."
20	There seems to be an allusion
21	here in the message, in the briefing note to the
22	Minister, that maybe there is mixed messages
23	that are going to the Syrians. I just want to
24	know what was your appreciation of this issue at
25	this time?

1	MR. FRY: We were advised that, I
2	think, reports coming back from Damascus, that the
3	Syrians were telling us that they felt like they
4	were getting mixed messages.
5	MR. DAVID: Maybe it would be
6	useful, before you pursue your answer, if you go
7	to page 3 of the document, of the same tab, the
8	last paragraph on the page. It says:
9	"CSIS has had discussions
10	with the Syrian authorities
11	concerning Arar."
12	Then it says:
13	"informed the Ambassador
14	that, according to his
15	information, CSIS had
16	indicated to Syrian military
17	intelligence that they have
18	no wish to see Mr. Arar
19	return to Canada and are
20	quite content with the way
21	things are. CSIS has
22	informed the Department that
23	this is not the case, that
24	they only told the Syrians
25	that Arar was not an active

1	target or priority for them."
2	So that is really the context in
3	which this call or one of the contexts in which
4	this call is going to occur. I just want your
5	appreciation of this issue of mixed messages or
6	confused messages.
7	MR. FRY: Maybe I can give the
8	Commissioner a bit of context as well?
9	I understand the focus of this, I
10	mean the inquiry and everything is Mr. Arar, but I
11	would like just to get people to remember what was
12	happening in the world at this time.
13	This was the lead-up to the Iraq
14	war. So if you go back, in fact it might be
15	useful for the Commission to you can see how
16	the case of Mr. Arar and what was happening at the
17	same time and where the focus of Foreign Affairs
18	and the focus of the Minister was.
19	In October, for instance or
20	September was when President Bush went to the
21	Security Council, or went to the U.N. and made a
22	big speech about how they wanted to work with the
23	U.N. Then it was the big lead-up to the Security
24	Council Resolution where Iraq had to sort of
25	divulge you know, put everything on the table,

1 allow inspectors back in. Then there was sort of the big deadline in December where if they didn't 2 3 submit all the reports by December, I think it was 7th or 8th -- so there was a lot of -- the Middle 4 5 East was very topical and it was in the news. In fact, I think you may see that 6 the Minister's is actually advised in the call 7 8 that the subject or the main -- don't just talk 9 about Mr. Arar in your call. For the Syrians, this is a very small issue. They are worried 10 11 about American invasion, they are worried about war in Iraq. There are a lot of other things 12 going on in the world. 13 So in fact part of the Minister's 14 call he actually talks about some of these other 15 16 things which are much more topical for the Syrians to eventually get to the case of Mr. Arar which, 17 18 to be frank, was the main subject, the main reason 19 why we were calling. 20 And, as you say, the main focus, 21 or the real message we wanted to get across, was 22 that the Minister of Foreign Affairs, speaking on 23 behalf of the Government of Canada, we wanted Mr. Arar back and we wanted to dispel any 24 impressions that the Syrians had about mixed 25

1	messages from Canada, and that the Foreign
2	Minister the Foreign Minister was assuring
3	their Foreign Minister that this was the case.
4	The reason, I think, that this
5	was prominent was because we had just received
6	reports from Damascus, from the Syrians, I think
7	there had been a meeting with Ambassador
8	Pillarella where the Syrians had said a lot of
9	what is in this briefing note, that they were
10	getting mixed messages.
11	MR. DAVID: So you sat in on this
12	phone call and you heard the Minister address this
13	issue with his counterpart?
14	MR. FRY: Yes.
15	MR. DAVID: Was it around this
16	time or within this context that Mr. Pardy
17	informed you that CSIS had been to Syria in
18	November?
19	MR. FRY: I think I had learned a
20	little bit just prior to this phone call. If I
21	hadn't learned before I mean, obviously it is
22	laid out in this briefing note, but I think I
23	would have learned in the lead-up, in the days
24	before this, about the visit.
25	MR. DAVID: We move now to

1	tab 320. This is an entry for January 28th.
2	THE COMMISSIONER: Is this a good
3	time to break?
4	MR. DAVID: Sure.
5	THE COMMISSIONER: We will rise
6	for 15 minutes.
7	MR. DAVID: Thank you.
8	THE REGISTRAR: Please stand.
9	Upon recessing at 11:39 a.m. /
10	Suspension à 11 h 39
11	Upon resuming at 11:58 a.m. /
12	Reprise à 11 h 58
13	THE REGISTRAR: Please be seated.
14	Veuillez-vous asseoir.
15	THE COMMISSIONER: We want to make
16	our efforts to limit our breaks to the exact time.
17	We are running late today. I have arranged with
18	the staff that we will sit as late as 6:30, but we
19	will finish this witness today.
20	MR. DAVID: Thank you,
21	Mr. Commissioner.
22	THE COMMISSIONER: Let's go.
23	MR. DAVID: Thank you,
24	Mr. Commissioner.
25	Mr. Fry, if you could go to

1	tab 320. This is where we left off.
2	MR. FRY: Tab 320.
3	MR. DAVID: It is a series
4	of e-mails between Amnesty International and
5	yourself, Alex Neve and yourself. Mr. Neve is
6	expressing the desire and this is on page 2 of
7	the document, he wants to meet the Ambassador,
8	Ambassador Arnous. So there is back and forth
9	on that.
LO	I guess my more general question
L1	is not so much about the contents of these e-mails
L2	as your relationship with NGOs and with Amnesty
L3	International in this case. How does that fit in?
L4	What was your approach in that regard?
L5	MR. FRY: Well, Amnesty
L6	International is a very credible and respected
L7	NGO. Alex Neve, I have dealt with him on a
L8	variety of issues. He was advocating on behalf of
L9	helping Madam Mazigh and helping the family so I
20	did speak with him from time to time and listened
21	to what he had to say. They offered advice and
22	suggestions about things that we should do.
23	If you want to talk about NGOs
24	more generally, there is the whole range of NGOs.
25	You have some that are not very credible people,

1	smaller organizations, dissidents that want to
2	sort of disparage or talk negatively about a
3	particular issue or particular country, and they
4	will run out of people's basements but they just
5	call them the Canadian organization for so and so.
6	But you then have organizations highly respected
7	and credible like Amnesty and Alex.
8	MR. DAVID: Did you deal with any
9	other NGOs for the Arar fact line than Amnesty?
10	MR. FRY: Well, there were
11	individuals that like Mr. Riad Saloojee had
12	actually called me on one occasion, but frankly I
13	didn't really deal with him very often, except I
14	think I really met him for the first time was in
15	June.
16	When Madam Mazigh came in to meet
17	the Minister, she brought with her about four or
18	five organizations. I think the Canadian Labour
19	Congress was there, the Canadian Arab Federation,
20	Amnesty, and then there was some other
21	organizations. Is it Carey Pithers? I don't know
22	what organization she was from, but they were
23	helping her.
24	MR. DAVID: In the second message
25	you are saying to Alex:

1	"I would encourage you to
2	speak to the Syrian
3	Ambassador. He's been very
4	helpful."
5	That was your position, you felt
6	hat it was appropriate for Amnesty International
7	to be getting involved directly.
8	MR. FRY: Yes. I mean, they were
9	approaching us, Commissioner, telling us to do
10	this, telling us to do that. I was, in turn,
11	encouraging them to do some things they could do
12	that could be helpful, you know, speak with the
13	Ambassador and other things. I was trying to give
14	them a bit of direction.
15	As I said earlier, Ambassador
16	Arnous had been very helpful and cooperative and I
17	was encouraging them to go speak to him as well.
18	I thought a meeting with Madam Mazigh, Mr. Arar's
19	wife, would be useful.
20	MR. DAVID: Did you know Mr. Neve
21	from previous occasions before this?
22	MR. FRY: Yes, I had met him at
23	some yes. The Department of Foreign Affairs
24	has a consultation on human rights with all kinds
25	of NGOs and organizations and I had met him there.

1	MR. DAVID: Okay. If we could go
2	to tab 7, which is old tab 325. This is what is
3	called an "Action Memorandum to the Minister". It
4	is dated March 1st of 2003.
5	MR. FRY: Tab 7 of my documents?
6	MR. DAVID: Yes, the Robert Fry
7	collection.
8	MR. FRY: Okay.
9	MR. DAVID: Entitled "Action
10	Memorandum to the Minister." It is what is
11	referred to also as a deck, and there is a
12	reference to the existence of deck. That is in
13	the third paragraph, which says:
14	"You will recall that on
15	February 24 officials briefed
16	you and several members of
17	your staff on the matter and
18	distributed a deck detailing
19	the background and the
20	initiatives the department
21	would be taking to ensure
22	that there was closer
23	cooperation between
24	government agencies."
25	So the theme that is being

1	developed here is interdepartmental coherence.
2	MR. FRY: Yes.
3	MR. DAVID: That is referred to
4	extensively in this document.
5	Do you have any knowledge, any
6	contribution, to this theme and to this
7	initiative?
8	MR. FRY: Well, at this time
9	I would have strongly agreed with this initiative,
10	but to be fair, I never saw I don't recall
11	ever seeing this document or being made aware
12	that there was this process this process was
13	taking place.
14	I would agree that
15	interdepartmental coherence and cooperation would
16	have been a good thing.
17	MR. DAVID: So you would have had
18	occasion to read the contents of this tab?
19	MR. FRY: In preparation for
20	this inquiry
21	MR. DAVID: In preparation for the
22	testimony.
23	MR. FRY: I have looked
24	through it.
25	MR. DAVID: So you did not have

1	knowledge of this initiative at this time
2	MR. FRY: No.
3	MR. DAVID: when it was being
4	developed? You did not intervene in this regard?
5	MR. FRY: No. The other thing I
6	might point out is this is not in the form of an
7	Action Memo to the Minister that it normally would
8	be. It looks like a bit of a draft.
9	You have seen other examples of
10	memos to Ministers and they are laid out in a very
11	specific way. This is not. Maybe there is a
12	final version of this, but it is not signed by
13	anyone and it is just a it looks like it is the
14	content without the proper formatting.
15	I don't know if this actually ever
16	became a real memo to the Minister. I think I
17	would have seen it if it had come up to us.
18	MR. DAVID: So to your knowledge
19	you did not intervene in terms of your Minister
20	taking a position vis-à-vis the contents of this
21	memorandum?
22	MR. FRY: No. I mean Gar and I,
23	as I said, spoke on a regular basis, and I'm sure
24	the two of us talked about the importance of
25	interdepartmental cooperation or coherence.

1	ognogially in this gage
	especially in this case.
2	MR. DAVID: Okay. If I can bring
3	you now to tab 332. Now the date is March 4th and
4	the theme is the trip of the MPs, Ms Catterall and
5	Mr. Assadourian, to Syria.
6	MR. FRY: Yes.
7	MR. DAVID: There is a series of
8	e-mails. On the first page, one e-mail that comes
9	from you, it is going to Gar, and just below the
10	dotted line it says:
11	"Okay thanks, Gar.
12	I haven't really spoken
13	to either MP recently. They
14	may have decided to do this
15	on their own because we were
16	not getting back to them.
17	John McNee stalled me for the
18	longest time.
19	It may not be a bad thing
20	as this allows us to keep our
21	distance and make this a
22	Parliamentary initiative."
23	I just would like your comments
24	about this comment where you are suggesting you
25	seem to be inclined of qualifying the exercise as

1	a parliamentary initiative rather than as opposed
2	to perhaps an initiative of the Minister of
3	Foreign Affairs
4	MR. FRY: What I might say
5	generally
6	MR. DAVID: or the Government
7	of Canada?
8	MR. FRY: Gar Pardy and I, now we
9	are I guess this is March we are trying to
10	think up different ways to approach the Syrians
11	and to try to make some progress on this file now.
12	It has been four or five or six months. So one of
13	the I'm not sure if it was my idea or Gar's
14	idea, but we thought we would send a parliamentary
15	delegation.
16	Members of Parliament don't
17	necessarily speak on behalf of the executive, the
18	Government of Canada, and therefore we actually
19	don't have full control over them. I mean,
20	Marlene Catterall for instance, she was working to
21	help Mr. Arar but she is not a member of the
22	government, of Cabinet. So a parliamentary
23	initiative is something different than, you know,
24	Government of Canada or the Cabinet.
25	MR. DAVID: Okay. If I could

1	bring you now to tab 336, simply for the record.
2	This is a letter that you signed,
3	it is dated March the 6th, it is going to Marlene
4	Catterall, and it is simply a letter of support.
5	Is this a standard practice in
6	this kind of scenario?
7	MR. FRY: These types of I
8	mean, not too common that I would write letters
9	like this.
10	I think Gar had actually said
11	they required a letter to be able to have the
12	department pay for the trip of Ms Catterall and
13	Mr. Assadourian.
14	MR. DAVID: Okay. If we go now to
15	tab 349 as well as Exhibit P-99.
16	THE COMMISSIONER: Exhibit P?
17	MR. DAVID: P-99.
18	Pause
19	MR. DAVID: There is a reference
20	at tab 349, in the top message that is going from
21	Gar to you on the 19th of March, and Mr. Pardy
22	says:
23	"Robert, no new
24	developments."
25	Again you just wanted to be

1	briefed on a regular basis in terms of the
2	situation in Syria.
3	"We are waiting for word from
4	Damascus for another visit to
5	Maher. Also Marlene and
6	Sarkis were to meet with the
7	Syrian Ambassador for lunch
8	today but so far no report."
9	So Mr. Pardy is reporting to you
LO	the fact that Ms Catterall and Mr. Assadourian
L1	were to meet and have lunch with the Ambassador of
L2	Syria, Mr. Arnous.
L3	If I bring you to P-99 now, this
L4	is a report that has been drafted by a DFAIT
L5	employee, Ms Myra Pastyr-Lupul, who is giving an
L6	account of this meeting. If I could bring you
L7	just to one excerpt of this account, and it is the
L8	second paragraph, it says:
L9	"They learned that"
20	That is Catterall and Assadourian
21	"initially during this
22	case that CSIS officials told
23	the Syrians that they have no
24	interest in Arar. `The
25	Syrians took this to mean

1	that the CSIS have no
2	interest in having Arar back.
3	They may have meant that they
4	have no security reasons to
5	investigate Arar in Canada.
6	Due to the miscommunication
7	the Syrians believed that
8	CSIS did not want Arar back
9	in Canada and therefore
10	decided to it detain him,
11	keep him in Syria'."
12	(As read)
13	Were you aware of this message
14	coming from the Ambassador at this time to the
15	MPs? Were you made aware of that?
16	MR. FRY: I wasn't aware of
17	the specifics.
18	I believe Ms Catterall would have
19	told me that, you know, the Syrians claim they are
20	still getting mixed messages from Canada. Upon
21	hearing that I would have expressed a lot of
22	frustration because, you know, going back to
23	January
24	MR. DAVID: It is an issue that
25	MR. FRY: the Foreign Minister

1	had been very clear with the Syrian Foreign
2	Minister, and here we would be two months later
3	having the Ambassador tell this to one of our
4	Members of Parliament. I would have found that
5	very frustrating.
6	I don't recall the specifics. In
7	fact, the first time I learned about this notion
8	that they had no interest in Mr. Arar and the
9	Syrians interpreted that, I only learned that of
10	preparing for this inquiry, but the general notion
11	that there had been some mixed messages, of
12	course, I was aware of that at the time.
13	I mean, what I might this was
14	something that had been ongoing, I guess, since we
15	thought we had dealt with it in January and it
16	kept going. All I can say to that is sometimes on
17	these things we never knew where it was coming
18	from. Was it true that they were getting mixed
19	messages?
20	The other thing I think it is fair
21	to say was that the Syrians you know when you
22	are talking to someone, they like to throw it back
23	on you. So there was actually some speculation
24	that the Syrians were saying this, that they were
25	getting mixed messages, just to try to throw it

1	back on us. "Well, you guys are the problem, you
2	are giving mixed messages." So there was a
3	variety of theories.
4	But to have, two months later,
5	having the Ambassador telling our Member of
6	Parliament, this was frustrating and we hoped to
7	solve it with a trip by the Members of Parliament.
8	MR. DAVID: Certainly in
9	January you understood the mixed message issue to
10	be in part attributable to CSIS, I mean in the
11	sense that CSIS was the identified communicator to
12	Syria back in January? That is the report that
13	you got from
14	MR. FRY: Yes, we understood, but
15	I wasn't sure that that was the source of the
16	mixed communication.
17	MR. DAVID: Certainly that is the
18	message again coming from the Ambassador in March,
19	it is also identifying CSIS as being
20	MR. FRY: Yes.
21	MR. DAVID: the party involved
22	in the mixed messaging.
23	Were you aware of any other mixed
24	message issue involving any other Canadian law
25	enforcement or security agency, or any agency for

1	that matter?
2	MR. FRY: I was not aware of any
3	and I would inquire on a regular basis.
4	I guess the other thing, either
5	the Syrians are making this up or else there is
6	some communication that is causing a mixed
7	message. You know, why two months later is this
8	still taking place? Are there ongoing discussions
9	or was this still the result of one discussion a
LO	long time ago? I didn't know.
L1	MR. DAVID: The fact remains, in
L2	March you were not reappraised of the issue in
L3	terms of the Arnous declaration to the MPs? That
L4	was not brought to your attention?
L5	MR. FRY: Could you I don't
L6	understand.
L7	MR. DAVID: What I mean is, the
L8	MPs sit down, have a lunch with Ambassador Arnous,
L9	they are getting this message. You were not
20	informed of that message at this time?
21	MR. FRY: No. I think the way I
22	would have been informed was Marlene saying: The
23	Syrians are still getting mixed messages, we need
24	to do something about this. I would have advised
0.5	her that she should speak to Wayne Faster and find

1	out if there were other messages coming, because 1
2	could only speak for Foreign Affairs.
3	MR. DAVID: Let's go now to
4	tab 388. Now we are in April of 2003 and there is
5	an issue of a letter being issued by Minister
6	Graham to his counterpart in Syria seeking
7	Mr. Arar's release and the language that that
8	letter could or possibly should include.
9	At this tab 388, Mr. Fry, we see
10	that there is a version, called the first version,
11	V.1, and it is the second paragraph. The language
12	that is being suggested to your Minister is that:
13	"Canadian officials have
14	determined that Mr. Arar has
15	not contravened any Canadian
16	laws and since arriving in
17	Canada with his family many
18	years ago has been a good
19	citizen of this country."
20	Were you in any way involved in
21	the drafting of this language that your Minister
22	was it was being proposed he would sign off on?
23	MR. FRY: No, I believe that this
24	was Mr. Pardy had drafted this. He or his staff
25	had put this letter together.

1	MR. DAVID: Okay. The top message
2	now, again coming from Gar to you, the second
3	paragraph says:
4	"Robert, Ms Catterall was
5	hopeful of obtaining a letter
6	from Mr. Easter. Have you
7	heard if she was successful?
8	Gar."
9	Were you in any way involved in
10	that process, and did you have any knowledge of
11	her push to get a letter from Minister Easter?
12	MR. FRY: Yes, and in fact I may
13	have suggested it to her, that she should
14	We were trying to find ways to
15	solve any notion of mixed messages, and the
16	Foreign Minister was getting ready to write a
17	letter, had said it verbally, we thought maybe the
18	way to solve this would be to get something from
19	the Solicitor General. So she had approached
20	Minister Easter at this time.
21	Later on, I don't know the
22	date of this, I did also approach Minister
23	Easter's office.
24	MR. DAVID: Why is it, Mr. Fry,
25	that at this time, in April, you would be

1	suggesting to Marlene Catterall to go to
2	Mr. Easter rather than do so yourself?
3	MR. FRY: Well, Ms Catterall is a
4	Member of Parliament, he is a parliamentary
5	colleague. She is the Member of Parliament for
6	Mr. Arar was her constituent. I can't speak to
7	Mr. Easter directly. I can speak to his office
8	and his staff, but she, as a Member of Parliament,
9	would have better access to him and could make the
10	plea directly.
11	MR. DAVID: If I bring you now to
12	tab 366, we will go to the second version, which
13	is the final version that Minister Graham would
14	have signed off on.
15	In the second paragraph, last
16	line, last sentence, it says:
17	"Let me again assure you that
18	there is no Canadian
19	Government impediment to
20	Mr. Arar's return to Canada."
21	So this is the final language that
22	was suggested to your Minister.
23	Were you involved in any way in
24	that drafting, in that language?
25	MR. FRY: I believe I was.

1	MR. DAVID: Okay. There is
2	clearly a
3	MR. FRY: Can you point to me
4	where we are?
5	MR. DAVID: Sure. It is the
6	second paragraph.
7	MR. FRY: Okay.
8	MR. DAVID: It is the
9	last sentence.
LO	MR. FRY: I see. Okay.
L1	MR. DAVID: Could you explain your
L2	involvement in that process, the development of
L3	the language?
L4	MR. FRY: All I can I mean, a
L5	draft would have come up and we would have
L6	discussions in terms of crafting and editing the
L7	language. This would have been sort of the final
L8	result of the letter that we put in front of the
L9	Minister.
20	MR. DAVID: In your assessment, is
21	this language stronger or weaker than the first
22	version that we referred to already at tab 388?
23	MR. FRY: Well, there was no
24	intention to sort of diminish the strength of the
0.5	language I think there may have been some

1	changes for clarity. Like, if you look at some
2	of the things that I mean, I wouldn't advise
3	the Foreign Minister to say things like, you know,
4	that "he has not broken any laws" where is
5	that: has not contravened any Canadian laws. He
6	and his family have been good citizens of this
7	country.
8	I mean, that is not Ministerial.
9	Can the Minister really say those kinds of things?
10	I mean, I couldn't tell him
11	whether Mr. Arar had really broken had he done
12	something like, you know, drinking and driving or
13	anything like that.
14	I mean, I think we were just
15	trying to get some more precision in the language
16	rather than increase it or decrease the strength
17	of the I mean, the notion we were trying to
18	get across was that we wanted to bring Mr. Arar
19	back to Canada and this was the view of the
20	Government of Canada and there was no impediment
21	to his return.
22	MR. DAVID: Who were you dealing
23	with in terms of the language that was finalized,
24	that was agreed upon?
25	MR. FRY: Well, I only can sort of

1	talk to you generally. On letters like this you
2	would get drafts, and then if we wanted to make
3	changes I would sometimes go back to senior
4	people, say in the Middle East Bureau, to get
5	their views. Gar, I would go back to Gar, and see
6	what he thought about this. Sometimes we would
7	even bring in, sort of, the legal section to get
8	their sort of view before we put the Minister's
9	name on this.
10	MR. DAVID: Were you aware,
11	Mr. Fry, that other government agencies such as
12	the RCMP or CSIS were involved in the process of
13	coming up with acceptable language that Minister
14	Graham would be signing off on?
15	MR. FRY: At this time?
16	MR. DAVID: At this time.
17	MR. FRY: No, I wasn't.
18	MR. DAVID: Okay. We go to
19	tab 395.
20	MS McISAAC: Mr. Commissioner, I
21	found that rather difficult, because the only
22	evidence I mean, Ms Catterall said she thought
23	they were involved.
24	The way the question has been put
25	leaves the impression that they were involved,

1	though Mr. Fry, who was directly involved, says he
2	doesn't know that they were involved.
3	I would think it would be helpful
4	if we had the question clarified a bit better.
5	MR. FRY: I don't think they were
6	involved, to be honest. I think this was just a
7	matter between consular affairs, the Minister's
8	office and senior officials. I don't think they
9	were consulted on this letter and I don't to my
10	knowledge, they weren't.
11	MR. DAVID: Okay.
12	THE COMMISSIONER: Okay.
13	MR. DAVID: Tab 395. This is the
14	MPs' trip report to Syria. I refer you to the
15	first message at the top. There is reference to
16	the fact:
17	"Further to the report below
18	and the apparent unhappiness
19	of Ms. Catterall
20	O/MINA/Fry"
21	Which is the Office of the
22	Minister.
23	Fry is you?
24	MR. FRY: Yes.
25	MR. DAVID: And:

1	"would like a more
2	complete read out of what the
3	Syrian intelligence would
4	have told her and how this
5	corresponded to the most
6	recent information we, in
7	this government, have about
8	Mr. Arar. We would need a
9	complete report from Damascus
10	on what the Syrians told
11	Ms Catterall about Mr. Arar
12	and how much of it we believe
13	to be accurate."
14	So if you could just give us the
15	context of this request that seems to be emanating
16	from you?
17	MR. FRY: I believe Ms Catterall
18	came back either it was through reading the
19	report myself or in speaking with Ms Catterall,
20	who claimed that you know, was unhappy. You
21	can see the nature of the report. She was unhappy
22	because she thought that we hadn't given her all
23	the information before she went over there.
24	I mean, I think it was a bit
25	traumatic. You are really faced with the reality

1	of the situation when you are in a Syrian military
2	interrogation room and you are faced Mr. Arar
3	is there in front of you.
4	To this day I don't really know
5	what the Syrians told her, other than I guess some
6	of the things that we had already seen in the
7	so-called confession. So I don't know if I was
8	trying to figure out whether it was just the
9	seriousness of the situation and that she had I
10	know she sort of had an emotional reaction to it,
11	or whether there were some things, some outlandish
12	things that were told to her. The Syrians, you
13	know, they could have said anything for all I
14	know, true and not true.
15	So here through our departmental
16	assistant I'm asking for Damascus to report if
17	they know why Ms Catterall was unhappy and what
18	was it, what did the Syrians say that really
19	shocked her?
20	MR. DAVID: Were you concerned
21	that perhaps the Minister's office had been not
22	informed, fully informed, fully briefed, about the
23	information that perhaps Canadian officials had in
24	terms of Syrian information?
25	MR. FRY: No. I mean, I and I

1	think the Commission, I mean, is faced with this
2	too. In my dealings with Ms Catterall I always
3	had to be very careful. I had a high level top
4	secret security clearance. Ms Catterall and
5	this is the difference between government and
6	Member of Parliament I couldn't always tell her
7	everything because I would be in breach of the
8	National Security Act.
9	So I always had to walk a fine
10	line. The same thing in my dealings with
11	Mrs. Arar. I mean Gar was under the same
12	difficulties. We had to walk a fine line between
13	what we could tell them and what we would say
14	which could be in breach of our national security
15	obligations.
16	I don't know, I would be
17	speculating here as to I know, I think,
18	Ms Catterall has testified that she thought that
19	there were some things that we didn't know, but I
20	think that would be incorrect. I think we didn't
21	tell some things to her only because some of these
22	things were highly confidential and it was not
23	within my power to. I had to be careful with what
24	I could divulge to her.
25	MR. DAVID: There is a reference

1	at the second paragraph in the top message:
2	"Could we set up a quick
3	meeting between you two,"
4	That is Gar Pardy and I would
5	say Dan Livermore, Robert, you, and myself,
6	Pierre Guimond, "on Tuesday", and that would be
7	April 29th.
8	Do you recall that meeting?
9	MR. FRY: I don't recall it.
LO	MR. DAVID: Okay. Let's go to
L1	tab 404. This is a letter from Ms Mazigh to the
L2	Minister, Minister Graham, seeking a meeting.
L3	There is a reference to
L4	information from you. This is in the first
L5	paragraph. It says:
L6	"I talked with your Senior
L7	Policy Advisor Mr. Robert
L8	Fry, and he suggested to me
L9	that a meeting can be
20	arranged depending on the
21	outcome of the Canadian
22	parliamentarian delegation to
23	Damascus."
24	Is that an accurate quote or an
) E	agguments moflogian of what was would have told

1	Ms Mazigh? That is number one.
2	MR. FRY: Maybe a bit of context?
3	MR. DAVID: Sure.
4	MR. FRY: Ms Mazigh was calling me
5	at least on a weekly basis. I didn't always speak
6	to her. I was dealing with a lot of other things
7	as well and I knew that it was the role of the
8	consular section to deal with her and the family.
9	But I did speak with her from time to time to
10	reassure her that the Minister and that I were
11	doing everything we could to try to help Mr. Arar.
12	So in one of those conversations I
13	think she was demanding she, from day one,
14	demanding a meeting, demanding that the Minister
15	get on a plane to fly to Syria, some of those
16	kinds of demands. I think what I would have been
17	telling her at this time was that, "Ms Mazigh,
18	let's wait. We are sending a delegation of
19	parliamentarians. Let's see how that goes.
20	Depending on how that goes then we will look at
21	getting a meeting with the Minister."
22	Again, for some context, in
23	consular cases families demand meetings with
24	the Minister. They think that is going to solve
25	all their problems and they just want to rush in

1	to a meeting with the Minister. It is part of
2	my job and Gar's job to advise them that we are
3	doing everything that we can and that rushing
4	into a meeting is not necessarily going to solve
5	the issue.
6	MR. DAVID: If we could go now to
7	tab 443? That is in volume 5. This is the actual
8	meeting, it is on June 12th between Minister
9	Graham and Monia Mazigh.
10	There is reference in this summary
11	of the fact that there is a letter in the works
12	from your Minister. That is referred to in the
13	fourth paragraph halfway through. It says:
14	"The Minister is currently
15	preparing a letter to the
16	Syrian Foreign Minister"
17	So in June, Mr. Fry, we had seen
18	the April version, the version 1 and 2. Is this
19	the same letter that is being contemplated at
20	this point?
21	MR. FRY: No. The letter in
22	April was the letter that we sent with the Members
23	of Parliament.
24	MR. DAVID: With the MPs.
25	MR. FRY: Right. So they

1	took that letter and were able to deliver it.
2	It was to show because, as I have said,
3	Members of Parliament are not necessarily members
4	of the executive, so we wanted to show that the
5	Minister agreed with them and supported them on
6	their visit, which was why we did that letter at
7	that time.
8	Here we are talking about a
9	second letter. In fact, we were in May, and I
10	know you have lots of background on this, but we
11	were talking about it, first, a joint letter
12	between the Foreign Minister and the Solicitor
13	General, and that is what we were sort of talking
14	about here.
15	MR. DAVID: Okay.
16	MR. FRY: They were suggesting
17	some language that we should put in that letter,
18	because again it was all about trying to tell the
19	Syrians that Canada wanted him back, we were
20	speaking with one voice and we wanted to make sure
21	that there was no misunderstanding.
22	MR. DAVID: So was it your
23	understanding that the drafting of this more
24	recent letter from your Minister involved
25	negotiations with other Canadian agencies?

1	MR. FRY: At this time?
2	MR. DAVID: At this time.
3	MR. FRY: Well, because we wanted
4	the Solicitor General to sign on, I knew there
5	would have to be when you do a joint letter
6	there has to be discussions between the
7	departments. I was also talking to Minister
8	Easter's office to try to get that letter
9	together.
10	MR. DAVID: Okay.
11	THE COMMISSIONER: Excuse me for
12	a second.
13	Pause
14	THE COMMISSIONER: Thank you.
15	Go ahead.
16	MR. DAVID: On page 2, still at
17	tab 443, there is a reference to the fact that:
18	"Robert Fry"
19	It's the last sentence.
20	"spent a few extra minutes
21	with Dr. Mazigh and her
22	entourage, to see if they
23	have anything further to
24	discuss."
25	Do you have any recollection in

1	that regard?
2	MR. FRY: Yes. Well, the
3	Minister had to rush to Question Period, and in
4	some cases he would he didn't want to interrupt
5	the meeting, there was still myself and other
6	senior officials from the Department of Foreign
7	Affairs, so we stayed behind to talk to the group
8	a little bit.
9	MR. DAVID: Okay. I refer you,
LO	Mr. Fry, to your personal notes, and that would be
L1	pages 14 and 15, that address the meeting that you
L2	had with Mrs. Arar and your Minister I should
L3	say Ms Mazigh.
L4	I don't want to go through the
L5	contents of your notes but, first of all, can
L6	you identify that pages 14 and 15 deal with
L7	that meeting?
L8	MR. FRY: I think this is yes,
L9	I do believe this to be that meeting.
20	MR. DAVID: Okay. You have had a
21	chance to reread these notes?
22	MR. FRY: I have, but not not
23	within a not today.
24	MR. DAVID: Okay. Would you like
25	to add anything to your notes about this meeting?

1	MR. FRY: One of the things
2	about it, sometimes my notes are things that
3	people are asking, sometimes they are just on what
4	was being said, other times it is on sort of
5	things that I think we should or I need to do.
6	So you see me talk of a "Joint
7	letter from SolGen and DFAIT" and that I think she
8	would have been saying "No, we need a letter from
9	the RCMP that says he has no criminal record".
LO	She did meet with the Syrian
L1	ambassador. "Irwin Cutler willing to act on
L2	Mr. Arar's behalf. Need a coherent position from
L3	the Government of Canada. North American Arab
L4	community very concerned. Another phone call,
L5	possible phone call to the Syrian Foreign
L6	Minister.
L7	Yes, I don't really have anything
L8	more to add.
L9	MR. DAVID: Okay. Then let's go
20	to tab 8 of your documents, which is old 442.
21	This is a message that is coming in from Alex Neve
22	as a follow-up to the meeting that you had with
23	Monia Mazigh?
24	MR. FRY: Yes.
25	MR. DAVID: He is reporting to you

1	the fact that he is aware that the Minister is
2	planning to send a letter to his Syrian
3	counterpart?
4	MR. FRY: Yes.
5	MR. DAVID: He is addressing the
6	contents of that letter, and he is saying, in the
7	second paragraph:
8	"I understand there was
9	discussion about this in the
10	meeting and that current
11	thinking is to indicate to
12	the Syrians that in Canada's
13	view there is `no impediment'
14	to Maher Arar's return to
15	Canada. I believe that Monia
16	made a strong plea to the
17	Minister to consider making
18	it clear that Canada has `no
19	evidence' that Maher Arar has
20	been involved in acts of a
21	criminal nature, including
22	terrorist activities."
23	So Mr. Neve is making the point,
24	at the following sentence:
25	"It is my understanding that

1	the latter is the case, and
2	that the Canadian government
3	is not, in fact, aware of any
4	such evidence. As such I
5	echo Monia's plea"
6	So he is clearly seeking stronger
7	language that that is being proposed?
8	MR. FRY: Yes.
9	MR. DAVID: So this was being
10	discussed. Do you recall you responding to this
11	message at this time?
12	MR. FRY: I don't recall
13	responding. Again, I receive lots of phone calls
14	and e-mails from Alex on some of these things.
15	But yes, the general tenor was there was
16	discussion on how we could make a strong letter.
17	From my point of view, there was
18	no use sending a letter that was similar to the
19	one we had just sent two months ago. So if we
20	were going to do another letter from the Minister
21	we had to I mean, that is why we are trying to
22	work on a joint letter. Because we were being
23	told I mean, even Mr. Neve and Madam Mazigh
24	that we needed something from the security folks,
25	from the RCMP, from them, because that is all the

1	Syrians would listen to. They were saying that
2	and so we wanted to get a joint letter. That is
3	what we had been working on.
4	MR. DAVID: Okay.
5	MR. FRY: Just another letter
6	from the Foreign Minister I didn't think would
7	be useful.
8	MR. DAVID: Another letter from
9	the Foreign Minister with basically the same
10	language, so no additional point being made here
11	MR. FRY: Right.
12	MR. DAVID: Speaking about the
13	language, I refer you now to P-117, which are the
14	relevant documents identified for Wayne Easter.
15	If you could go to tab 75, and it would be 6.6
16	75.0006, the sixth tab. We have a message coming
17	from Pierre Guimond, from your office, going to a
18	bunch of people, but essentially addressed to Gar
19	Pardy, saying:
20	"Minister's advisors have
21	reviewed your memo"
22	The memo in question is the
23	June 5th memo to Minister Graham?
24	MR. FRY: Right.
25	MR. DAVID:

1	"and draft letter from
2	Minister Graham to Syrian FM
3	Shara'a and we would like to
4	see the following change
5	made to the body of the
6	letter."
7	The change being suggested is:
8	"I assure you that there is
9	no evidence he is involved in
LO	terrorist activity"
L1	The suggestion is that you receive
L2	the concurrence of the SolGen, RCMP and CSIS in
L3	this regard.
L4	Were you involved in this
L5	furthering of the language at this point? The
L6	memo has gone to the Minister on June 5th, the
L7	draft letter is attached to this memo on June 5th,
L8	the draft June 5th letter simply refers to the
L9	fact that the Government of Canada has no
20	impediment to Mr. Arar's return, and the
21	Minister's office, your office, is now returning
22	the ball and seeking more robust language, I would
23	suggest to you?
24	MR. FRY: Yes.
25	MR. DAVID: Were you involved in

_	chac enterprise:
2	MR. FRY: Mr. Commissioner, if you
3	look at the date on it, June 17th, in fact we had
4	been involved in drafting trying to get a joint
5	letter or drafting a new letter since early May.
6	So here we are a month and a half later. We had
7	been going back and forth with language and, as I
8	said, a letter solely from the Foreign Minister
9	saying the same thing that was said in April was
10	of no use and so we were trying to either
11	strengthen the language but, even better, to have
12	a joint letter.
13	There was a lot of I mean this
14	is just one instance, but there was a lot of talk
15	of all different types of language. I mean, we
16	were open to discussion. It didn't have to be
17	exactly these words. There could have been we
18	were hoping to have a bit of a back and forth with
19	the Solicitor General's Department. I mean, if
20	they have some problem with one word, well let's
21	fix one word. If they didn't want to say it is
22	just terrorist activity but they wanted to so
23	there was a lot of discussion.
24	I know the inquiry has just this
25	in front of it here, I guess some of that may have

1	been verbal, but there was a lot of talk
2	throughout the month of May of different language
3	we could use. This was just one example where I
4	want to the departmental assistant and said, "We
5	would like to use this."
6	In some ways I was sort of
7	throwing out the gauntlet, saying, "This is what
8	we are going to do. Stop us if there is a
9	problem." Or I was hoping they would come back
10	with some alternative they could live with.
11	MR. DAVID: Okay. Were you
12	involved in direct negotiations with Mr. Easter's
13	office on the language?
14	MR. FRY: I did speak to Minister
15	Easter's office a few times, as I say, in May,
16	with because Gar was sort of going through the
17	official channels, the departmental channels. He
18	was talking to his counterparts. I was going to
19	the Minister's office, because I knew, if the
20	Minister agrees to sign something or if we could
21	come at it from both ends we could maybe get this
22	done, and I also knew Marlene Catterall was also
23	approaching Minister Easter. We were sort of
24	trying to approach from all ends to try and get a
25	joint letter with language that everyone could

1	live with.
2	MR. DAVID: Do you recall the
3	response that you were getting from the political
4	office of Minister Easter?
5	MR. FRY: They were sympathetic
6	and I think interested in trying to work with us
7	at the ministerial level. You know, we were
8	trying to work on some language.
9	MR. DAVID: So the sense that you
LO	got from basically your counterparts within
L1	Minister Easter's office is that they were
L2	receptive to
L3	MR. FRY: Yes.
L4	MR. DAVID: what you were
L5	seeking in terms of content?
L6	MR. FRY: Well, they were
L7	receptive to the idea of a joint letter and to
L8	let's work on the wording, so we were working on
L9	different things.
20	MR. DAVID: Were they receptive to
21	the more robust version of the claim with regard
22	to no evidence?
23	MR. FRY: I think I mean, just
24	like I would do at Foreign Affairs, my counterpart
05	in Minister Faster's office would you know he

1	would check with, you know, his senior officials
2	in SolGen and the others to try and get them to
3	sort of agree if it was certain types of language.
4	I think, you know, he tried to do that.
5	MR. DAVID: So you are saying
6	that basically at the political level there was
7	some receptivity to what you were trying to obtain
8	in terms of
9	MR. FRY: Yes, that was my sense.
10	MR. DAVID: Let us now go to
11	tab .0008, which is in the same binder just the
12	eighth tab. Here at page 3, Mr. Fry, page 3 of
13	the document, there is a response that is coming
14	back to DFAIT. That is on the next date, on
15	June 18th. It is being communicated to DFAIT via
16	Scott Heatherington, who is the ISI Director, or
17	was at the time, and he is relaying to you the
18	reaction on the part of both the RCMP and CSIS
19	and to the language that they would be comfortable
20	with.
21	I was wondering if you have any
22	comments about that language.
23	MR. FRY: Well, I know when I got
24	this message I either thought that the person who
25	proposed it was a little naive to think that this

1	would be helpful to Mr. Arar or that they were
2	sort of shutting the door on us.
3	I mean, one thing that did occur
4	in my conversations with Minister Easter's office
5	as I said, there was sort of initial receptivity;
6	but then in a further conversation I was told that
7	there was now a national security investigation in
8	the case of Mr. Arar and that the Minister's
9	office was, you know
10	I mean the way it was told to me
11	is that when RCMP or someone or CSIS tell the
12	Minister's office there is a security
13	investigation, then they don't need to say
14	anything else to the Minister's office. It is
15	basically a way of bringing down the veil and then
16	the Minister's office basically has to be
17	hands-off because there is now an investigation
18	and from a political point of view you need to
19	stay away.
20	MR. DAVID: So that message that
21	you interpreted as being, "Let's move on. We are
22	not going to ever agree to this," when did that
23	message come to you, Mr. Fry?
24	MR. FRY: I think at the end
25	of May in one of my conversations I was told by

1	Minister Easter's office that there was now a
2	national security investigation in the case of
3	Mr. Arar and as a result of that, you know, this
4	is the only language they could agree to.
5	MR. DAVID: So this is certainly
6	previous to the responses coming to you from Scott
7	Heatherington?
8	MR. FRY: Yes, it is previous
9	to this.
10	MR. DAVID: Okay. If we go now to
11	tab 10 in the same collection, we have a letter
12	that is drafted by Mr. Loeppky, who is the Deputy
13	Commissioner of Operations of the RCMP.
14	Again, there is comment on his
15	part on the proposed letter. If I could just
16	bring you to the second paragraph of his letter,
17	he says:
18	"We want to assure you"
19	This is going to Michel D'Avignon,
20	Director General of the Department of the
21	Solicitor General.
22	Do you know this person?
23	MR. FRY: No, I don't.
24	MR. DAVID: So Mr. Loeppky says:
25	"We want to aggire you that

1	the RCMP has no intention of
2	interfering with Mr. Arar's
3	consular rights. We do have
4	however major concerns with
5	the misleading statement made
6	in paragraph two of the
7	attached letter"
8	That is:
9	"I assure you that the
10	Government of Canada has no
11	evidence Mr. Arar was
12	involved in any terrorist
13	activities"
14	Which is basically your
15	suggestion.
16	MR. FRY: It was one of the
17	suggestions.
18	MR. DAVID: But if we go back
19	to the June 17th message that is being sent from
20	your office
21	MR. FRY: Right.
22	MR. DAVID: that is the exact
23	same language
24	MR. FRY: Yes, it is.
25	MR. DAVID: that is being

1	suggested.
2	Were you informed of the contents
3	of this letter? Were you aware that this was in
4	such a formal sense the RCMP's response?
5	MR. FRY: No, I was not.
6	MR. DAVID: When did you first see
7	this document?
8	MR. FRY: I saw it for the first
9	time in sort of preparing for this inquiry.
10	MR. DAVID: Okay.
11	MR. FRY: The one thing I can say
12	about the language I mean, if I would have seen
13	this I would have actually been disappointed,
14	because the whole idea was to try and negotiate
15	some language. It wasn't to just take, you know,
16	word for word what someone had said and say, "That
17	is unacceptable," and then that is it. I mean, we
18	were supposed to be trying to work something out.
19	MR. DAVID: I bring you now
20	MS McISAAC: Mr. Commissioner,
21	just for the record and I apologize for this
22	there are still redactions in this document which
23	are unnecessary. If it is compared with the
24	version that is at page 41 of P-19, the Garvie
25	report I helieve you get the entire text Ag I

1	say, I apologize for that.
2	THE COMMISSIONER: That's okay.
3	No problem. We have seen that redacted part.
4	MR. DAVID: Thank you.
5	THE COMMISSIONER: That is the
6	part that refers to there is a national security
7	investigation.
8	MS McISAAC: That's correct.
9	MR. DAVID: Thank you.
10	I would like to file a document at
11	this point.
12	This is an e-mail, Mr. Fry, that
13	is dated July 4, 2003 that is going from you to
14	Alex Neve.
15	This would be P-136?
16	THE COMMISSIONER: Exhibit P-136.
17	EXHIBIT NO. P-136: E-mail
18	dated 07/04/03 from Robert
19	Fry to Alex Neve
20	MR. DAVID: Thank you.
21	This is an e-mail dated July 4,
22	2003 that is going from you to Alex Neve. It says
23	in the first paragraph:
24	"As was requested in the
25	meeting we had with

1	Ms. Mazigh we have been
2	attempting to have all
3	government agencies adopt one
4	position in the case of
5	Mr. Arar in order to be able
6	to approach the Syrians with
7	one voice. Our attempts to
8	do this take time and frankly
9	have not been very successful
10	to date.
11	On the issue of our
12	letter to the Syrian FM, we
13	have also tried to insert the
14	stronger language that was
15	discussed at the meeting,
16	i.e. `that there is no
17	evidence that Mr. Arar was
18	involved in terrorist
19	activity in Canada'. We also
20	want sign-off from the
21	concerned departments on this
22	language - so far this too
23	has been unsuccessful. In
24	fact, tougher language
25	alternative has been

1	proposed."
2	That is in reference, obviously,
3	to Mr. Heatherington's message to you, I guess?
4	MR. FRY: Yes. I mean, I'm trying
5	to walk a fine line. I didn't write very many
6	e-mails like this in my time because I am actually
7	being very frank with Alex
8	MR. DAVID: That is not to say you
9	are not frank in general?
10	MR. FRY: No. But again, I am
11	walking a fine line here between violating my
12	obligations to maintain a certain amount of
13	secrecy in national security, but while being very
14	frank with Alex and the family about I mean,
15	this is the result of mounting frustration on our
16	part. I would say that after two months of trying
17	to negotiate some sort of letter or text we are
18	now we are farther behind now because we have
19	proposed language that talks about a national
20	security investigation, whereas initially, I mean,
21	it wasn't as hard as that.
22	So I'm sort of telling him without
23	being specific that, you know, things have not
24	only not gone that well but it has been more
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1	Now we have letters on the record
2	and e-mails on the record with people saying that
3	the Minister shouldn't do that but should do this.
4	So there is contrary advice being given to the
5	Minister.
6	MR. DAVID: If you take the
7	before-last paragraph, you go on to say:
8	"Canadian security officials
9	continue to have questions
10	about Mr. Arar and rather
11	than dissipate over time,
12	these have only increased in
13	number and severity."
14	This is the feeling that you are
15	getting in terms of the national security
16	component to the issue?
17	MR. FRY: Yes. This is my sort of
18	cagey way of sort of saying that I mean, this
19	is sort of my expression in what I think
20	without violating my obligations under the
21	National Security Act or whatever, secrecy, to
22	sort of say that, you know, often things will
23	as more information gets out and people sort of
24	get more comfortable with an issue and I guess
25	the example I told you about, my conversations

1	with Easter's office, where all of a sudden I'm
2	told after six months, I mean, this is you
3	know, in November of 2002 we are told that he was
4	a person of interest, now in May of 2003 two weeks
5	from another conversation I'm told that there is
6	now a national security investigation in the case
7	of Mr. Arar.
8	So that is what I'm sort of saying
9	here that, you know, rather than dissipate it is
10	increasing in severity because now there is a
11	national security investigation I'm told.
12	MR. DAVID: Your reference in the
13	last paragraph says:
14	"our manoeuvring room is
15	getting narrower by the day."
16	Any specific reference?
17	MR. FRY: It would just be my
18	manoeuvring room in terms of having a letter
19	well, first of all, a joint letter for both
20	Ministers to sign doesn't look like it is going to
21	happen. Even a letter from the Minister now
22	and this is where I get into that is even more
23	difficult, because now I have officials and I
24	have you know, when you have contrary advice to
25	say to the Minister "This is what you should be

1	saying," you know, it becomes harder to sort of go
2	against that advice, to not take that advice.
3	MR. DAVID: Okay. Let's go to
4	tab 466 now. The timeframe is basically the
5	beginning of July, July 3rd to July 7th. That is
6	tab 466.
7	The theme covered in this series
8	of e-mails and I'm not going to go through them
9	with you, it is simply to do with the fact that
10	Senator de Bané is it is being proposed that he
11	go to Syria as a representative or as an emissary
12	for the Prime Minister of our country.
13	My only question to you in that
14	regard, putting you in that context, were you
15	involved with the development of that scenario,
16	the de Bané trip?
17	MR. FRY: Yes, I was. I mean,
18	again, Gar and I were a bit of a team on these
19	things, and I don't in fact, the idea behind
20	the trip was around Mr. Sampson. We were starting
21	to hear Gar was working on this case as well.
22	That was the main focus of Mr. de Bané's trip and
23	we were going to try to send a letter and send
24	someone to Saudi Arabia because we thought we
25	could get Mr. Sampson out.

1	So then Gar and I talked about,
2	"Well, who should we send?" and it might even have
3	been my idea that we send Senator de Bané, because
4	of his knowledge of the region, very able
5	diplomat. You have seen him. very knowledgeable
6	and he is one of the best. He is able to open
7	doors and talk in a very diplomatic way. I have
8	known Senator de Bané for 17 years.
9	So Gar and I talked. We thought
10	about he should be the one we would send. Then
11	one of us said, "Well, hey, since he is going to
12	be in the region, why don't we get him to go to
13	Syria as well, see if he can go visit the Syrians,
14	possibly visit Mr. Arar?" Then we talked about
15	getting a letter from the Prime Minister since the
16	other trying to get a letter from both
17	Ministers or even just the Foreign Minister now
18	wasn't working very well. We said, "Well, let's
19	try for a letter from the Prime Minister." Again,
20	it is ratcheting it up. It is moving the know
21	you, a letter from the leader of the country
22	basically to the other, to the President, is
23	significant. It is a symbol or a signal to the
24	country.
25	MR. DAVID: We certainly have seen

1	the contents of the Prime Minister's letter. It
2	contains the language now that I have heard many,
3	many times, that I know off by heart, that there
4	is no
5	MR. FRY: Impediment.
6	MR. DAVID: Canadian government
7	impediment.
8	Is it your testimony, Mr. Fry,
9	that the transition from being a letter issued
10	from your Minister to the Prime Minister was
11	caused or was explained by the fact that you were
12	not able to bolster the language with the
13	complicity of the other agencies?
14	MR. FRY: I would say since we
15	were having difficulty with the other letter, you
16	know when you sort of run into a bit of an
17	obstruction or: Well, let's try something else.
18	Then this idea of, well, what better than a letter
19	from the Prime Minister? It doesn't get much
20	higher than that. So then we moved on to this
21	other option.
22	MR. DAVID: Okay. Your Minister,
23	Minister Graham, was he aware, was he apprised
24	of this de Bané initiative and was he approving
25	that process?

1	MR. FRY: I think he was. He
2	would have been aware that we were sending
3	someone, that we were sending Senator de Bané. He
4	wouldn't have been involved in sort of the
5	details.
6	In fact, as I have testified,
7	the real focus or the main focus was William
8	Sampson. Then we thought, well, since he is
9	there, let's try this for Mr. Arar as well,
10	because that was another heated hot file that
11	we were trying to solve.
12	MR. DAVID: Going now to tab 467.
13	Again the issue is the background to the Senator's
14	trip. I just want to refer you to on page 1 there
15	is a reference to the Graham letter and to the
16	fact that it is no longer necessary. In fact, the
17	top message coming from Gar says:
18	"Pierre, this is now
19	overlapped with the
20	appointment of the Prime
21	Minister's Personal Envoy.
22	Should have most matters
23	sorted out by Thursday and
24	then we can decide if the
25	letter from Mr. Graham will

1	be required."
2	So we see in these
3	communications that your Minister's letter is not
4	going to be going forward and it is now the Prime
5	Minister's letter.
6	MR. FRY: Yes.
7	MR. DAVID: Was your Minister made
8	aware of the transition in the letters being sent?
9	MR. FRY: From him to
10	MR. DAVID: To the Prime Minister.
11	MR. FRY: the Prime Minister?
12	I don't think so. I can't say
13	for sure.
14	MR. DAVID: Was your Minister
15	aware that there was originally a plan that he
16	send a letter?
17	MR. FRY: Yes. Yes, he was aware
18	of that, because in the meeting with Ms Mazigh
19	there was a lot of talk about that letter and what
20	the letter should say and about different
21	variations of language we could use.
22	I mean, we were trying to
23	accommodate the security or the intelligence I
24	guess the RCMP and CSIS is a better way to
25	describe it their concerns with some of the

1	language, basically overarching, you know,
2	declaration that he has you know, that we
3	wanted to have versus, you know, one that
4	basically wasn't any stronger than the one that we
5	had sent before.
6	MR. DAVID: Okay. Moving now to
7	tab 470, Mr. Fry. This is an entry for the 11th
8	of July actually, it concerns what is going to
9	be taking place on the Friday, which was a
10	briefing session for the benefit of Senator
11	de Bané for his trip to Saudi Arabia and Syria.
12	Mr. de Bané has testified in this
13	regard and explained to us that there were many
14	consular officials, many officials from the
15	Department of Foreign Affairs, and I understand
16	that you were present at this meeting.
17	MR. FRY: Yes, I was.
18	MR. DAVID: Do you recall taking
19	notes at this meeting?
20	MR. FRY: No, I don't think I
21	took notes.
22	MR. DAVID: Okay. There has been
23	testimony heard and I propose to try to summarize
24	as accurately as possible, but Senator de Bané's
25	testimony is to the effect that Mr. Pardy would

1	have informed him that essentially at one point
2	the United States authorities, the government
3	authorities, had basically offered the possibility
4	to Canada of returning Mr. Arar to Canada, and
5	this return was tied in to the idea, to the notion
6	that Mr. Arar was to be charged and detained in
7	Canada. Mr. de Bané, Senator de Bané, testified
8	to the effect that this is what was being
9	communicated to him by Mr. Pardy, that this was
10	information given at this briefing session by
11	Mr. Pardy.
12	So my question to you is: Do you
13	recall any such message and the contents of such a
14	message, if one was delivered?
15	MR. FRY: My recollection is
16	that I mean, this would have been a briefing
17	and you can see in the briefing note, A-10 is the
18	Minister's boardroom.
19	My recollection is that Senator
20	de Bané was basically told what we had sort of
21	already heard, was that the Americans had
22	contacted the Canadian authorities and had said:
23	If Mr. Arar comes back to Canada will he be
24	detained? Would he be charged? The answer was
25	no. So that is what he was basically told.

1	MR. DAVID: That fact that the
2	Americans had communicated to Canadian
3	authorities, that information, was that something
4	that you were aware of before this briefing?
5	MR. FRY: Yes. I was aware that
6	there had been some discussions between
7	authorities and that at some point there had been
8	someone's if Mr. Arar comes back to Canada,
9	would he be detained? Would he be charged? The
10	answer to that had been no.
11	MR. DAVID: Okay.
12	MR. FRY: I mean, that was
13	consistent what had been told to Senator
14	de Bané would have been consistent with what I
15	already had heard and know.
16	MR. DAVID: Simply for the record
17	I bring you to PCO tab that would be
18	Exhibit P-48 in volume 1 and it is tab 20. We
19	have the Prime Minister's letter that is dated
20	July the 11th. That you will find on the third
21	page.
22	MR. FRY: Which tab?
23	MR. DAVID: Tab 20.
24	MR. FRY: Thank you.
25	MR. DAVID: If you go to page 3

1	you will find the Prime Minister's letter. This
2	was his first letter. So we see that the exact
3	same language that was adopted in the Prime
4	Minister's letter was the end result of your
5	attempts
6	MR. FRY: Yes.
7	MR. DAVID: in terms of your
8	Minister's letter.
9	I think at this point,
10	Mr. Commissioner, we could break for lunch and
11	perhaps resume at 2 o'clock, if I may be so bold?
12	Thank you.
13	THE COMMISSIONER: We will rise
14	until 2:00.
15	THE REGISTRAR: Please stand.
16	Upon recessing at 12:58 p.m. /
17	Suspension à 12 h 58
18	Upon resuming at 2:01 p.m. /
19	Reprise à 14 h 01
20	THE REGISTRAR: Please be seated.
21	Veuillez vous asseoir.
22	MR. DAVID: Mr. Fry, we left off
23	with the Prime Minister's letter to Syria, and so
24	I'd like to now refer you to your personal notes.
25	If you could go to page 23. There's an entry I

1	believe it's around July 21, 2003, more or less
2	July 21, and there's an entry:
3	"- mixed signals to Syrians"
4	Must be related to Arar, I would
5	imagine?
6	MR. FRY: Yes, I may have been
7	writing down what someone had said, you know, just
8	that we were sending mixed signals to the Syrians
9	MR. DAVID: No specific
10	recollection?
11	MR. FRY: I can't. I would need
12	the date.
13	MR. DAVID: July 21 is the date
14	that we have.
15	MR. FRY: July 21?
16	MR. DAVID: Yes.
17	MR. FRY: No, I don't know what
18	MR. DAVID: Okay. Let us move on
19	to tab 502, which is the new tab 12.
20	THE COMMISSIONER: 502?
21	MR. DAVID: 502.
22	THE COMMISSIONER: What volume?
23	MR. DAVID: Volume 6. But you
24	shouldn't be thinking in terms of volumes any
25	more Mr Commissioner you have to thinking in

1	terms of new tab 12.
2	THE COMMISSIONER: New tab 12.
3	MR. DAVID: New tab 12. I'm being
4	scolded because I'm still thinking the old way.
5	THE COMMISSIONER: I can't imagine
6	who would scold you.
7	MR. DAVID: I don't know. Tab 12
8	refers to a number of messages. There's an idea
9	here of setting up a phone call between Minister
10	Graham and the Foreign Minister of Syria. There's
11	also an idea of calling in Mr. Arnous for a
12	meeting with Minister Graham.
13	The context in which this is
14	occurring has to do with a press conference that
15	is being held on August 7 by Alex Neve and Monia
16	Mazigh, and actually, I should have brought you
17	let's go to tab 496 in the previous volume.
18	THE COMMISSIONER: We're back into
19	volumes?
20	Laughter / Rires
21	MR. DAVID: Okay. Tab 11, I'm
22	sorry.
23	So tab 11, Mr. Fry, just to put
24	you in context again. If you go to page 5 of 8
25	would see in the hottom there's the nage

1	numbers. Page 5 of 8. The bottom third. There's
2	a reference:
3	"The following is a rough
4	transcript based on closed
5	captioning of a press
6	conference concerning Maher
7	Arar on, CTV-N 11h,
8	2003/08/07."
9	And there's a reference to, again,
10	various declarations from Monia Mazigh or Alex
11	Neve on the 7th of August.
12	And if you go to page 6 of 8,
13	you'll see in the second paragraph, second
14	sentence, Monia Mazigh is speaking and she says
15	the following:
16	"The syria human rights
17	community in london says my
18	husband has been beaten. He
19	has been beaten on the soles
20	of his body, and beat with
21	shredding cables. They say
22	he would be squashed into a
23	car tire so his head is
24	touching his toes. This is
25	very consistent with what the

1	u.S. State department says
2	happen in syrian prison."
3	And the next paragraph, again it's
4	Ms Mazigh who's speaking, and about halfway down
5	there's also a reference to various torture
6	allegations, and she's quoted as saying:
7	"The Committee of human
8	rights of syria based in
9	london has confirmed my
10	husband has been actually
11	betten, he has been whipped
12	with cables on the base of
13	his feet and other parts of
14	his body. The committee is
15	saying that he is being put
16	into the inside of a tire so
17	that his head will be
18	touching his feet. The
19	torture that is being
20	described that my husband is
21	receiveing is conforming to
22	the precipitation that the
23	american department is
24	describing for the conditions
25	in svria."

1	So on the 7th of August, there is
2	this press conference being held, and I suggest to
3	you that tab 12 is a response there is a
4	concern now about these allegations, confirmed
5	in other words, there seems to be confirmed
6	reports about the torture that was being practised
7	on Mr. Arar.
8	So if we go now to coming back
9	to tab 12, let's go to pages 9 and 10
10	MR. FRY: All I can say to that,
11	Commissioner, is that, I mean, this was a press
12	I mean, the Syrian Human Rights
13	MR. DAVID: London-based Syrian
14	MR. FRY: Yes. I mean, when we
15	talked about NGOs earlier, who knows what this
16	organization is, right? I mean, a bunch of
17	dissidents? I mean, any sort of information we
18	would look at, but and you never dismiss
19	anything outright, but, I mean, just because some
20	organization like this makes some allegation, you
21	know I think this is the first time actually
22	that we have any sort of specific allegations
23	that about Mr. Arar being tortured in Syria,
24	and this is a long time after he was first
25	detained.

1	MR. DAVID: If you go to page 10
2	of 10 of this tab
3	MR. FRY: Which tab would that be?
4	MR. DAVID: That's tab 12 of
5	your the Fry documents.
6	MR. FRY: Okay. The last page
7	10 of 10?
8	MR. DAVID: Yes, the last page.
9	The top message is coming from Mr. McIntyre, and
10	it's going to a number of people, and it's dated
11	August 7, the same date as the press conference,
12	and it says:
13	"As it has not been possible
14	to arrange a phone call with
15	Syrian FM Shara this
16	afternoon, MJM is calling in
17	Syrian ambassador at 16:30 to
18	register our serious concerns
19	about the report that
20	Mr. Arar has been tortured
21	and to call on the Syrians to
22	honour past promises and
23	reinstate consular access
24	forthwith."
25	And the second paragraph refers to

1	the fact that we're going to continue to arrange
	the fact that we're going to continue to arrange
2	the call between Graham and the Foreign Minister.
3	So were you aware that this was
4	going on at this time in response to the torture
5	allegations
6	MR. FRY: Well, we were very
7	concerned we had an organization claiming to
8	have information about Mr. Arar being tortured and
9	we were asking for confirmation from our people in
10	Damascus, and as you can see here, we were calling
11	in the ambassador MJM is John McNee, who was
12	the Assistant Deputy Minister for the Middle East.
13	He was calling in the Syrian Ambassador to
14	register our concern. There was talk of trying to
15	get a phone call.
16	I mean, it was getting a lot of
17	attention in Canada. Mr you know, the media
18	were asking us questions about this. And so we
19	were trying to, you know, get confirmation, find
20	out more, and we were also trying to express our
21	concerns with the Syrians, even though, as I said,
22	I mean, these were just this was a report from
23	an NGO out of London.
24	MR. DAVID: But you were
25	attempting to respond to the allegations?

1	MR. FRY: Yes. We were trying to
2	get more information and we were trying to respond
3	and show that we were concerned with what we
4	heard.
5	MR. DAVID: And were you
6	personally involved in those steps, in the
7	steps
8	MR. FRY: Well, around I
9	around this time, I actually left on holidays
10	around this period in early August. So when the
11	first when the reports first came out, I think
12	it was July, actually, when the Syrian human
13	rights report came out, and I was not present
14	in on these particular days, I was away. I was
15	on holidays, actually.
16	MR. DAVID: Do you recall when you
17	returned from holidays?
18	MR. FRY: I would have left in
19	early August and would probably have returned, I
20	think, about the third week in August, maybe
21	around the 20th.
22	MR. DAVID: Okay. And were you
23	sensitized to these allegations and to these
24	claims, the actual reports of torture?
25	MR. FRY: I think the initial

1	report actually came out when I was still there,
2	in July, but I wasn't in terms of it was
3	probably my suggestion that we look at some sort
4	of phone call and, you know, how do we raise this
5	with the Syrians? But I wasn't there, you know,
6	at this particular you can sort of see that
7	actually Dan Costello is dealing with it because
8	I'm not there.
9	MR. DAVID: Would you have
10	discussed the matter with Mr. Pardy for his
11	insight and input?
12	MR. FRY: I would have, and I
13	I'm not sure if this has been redacted or not, but
14	it was also discussed in Damascus. There's a part
15	where we have a report from Damascus, in fact,
16	where we raise it with them. I don't think I can
17	talk to that.
18	MR. DAVID: Okay. Let's see
19	maybe if I refer you to a document, it will help.
20	MR. FRY: Okay.
21	MR. DAVID: If you want to go to
22	tab 13, which is old tab 507, and I could bring
23	you to page 3 of the document of the tab. This
24	is the August 14 consular report, and I'm
25	sorry. It's yes, page 3. If you go to page 3

1	of the document
2	MR. FRY: Of tab 13?
3	MR. DAVID: Of tab 13, correct.
4	This is reporting about a visit on August 14 with
5	Mr. Arar?
6	MR. FRY: Mm-hmm.
7	MR. DAVID: And the third
8	paragraph refers to the language about torture,
9	and it says:
10	"He was able to express
11	himself freely at times and
12	he indicated that prison
13	conditions had been more
14	difficult in the past than
15	now. He mentioned he did not
16	wish to have adverse media
17	publicity as he felt this
18	would only harm his case
19	He confirmed that he had not
20	been beaten nor tortured. He
21	also said he had not been
22	paralysed. When asked to
23	explain he could not find
24	another word for it. He also
25	said his long detention had

1	destroyed him mentally. He
2	indicated that as far as he
3	know he was not receiving a
4	worse treatment that than
5	given to other prisoners."
6	So there was this consular report.
7	Do you recall seeing this consular
8	report dated August 14?
9	MR. FRY: I don't because I was
10	away at this period. I would have seen it later,
11	after upon my return.
12	If I might just move back a little
13	bit
14	MR. DAVID: Sure.
15	MR. FRY: Commissioner, just
16	for some context.
17	So, beginning of July, we're now
18	sending Senator de Bané, and the main reason
19	we're sending him, in the case of Mr. Sampson, but
20	also to Syria on behalf of Mr. Arar with the
21	letter.
22	Just for some context, and this is
23	actually still current, I mean, that's also when
24	the case of Ms Kazemi, in Iran, took place, in
25	early July 2003. So we were our office was

1	dealing with Ms Kazemi's case had just blown
2	up, where she had basically been killed in custody
3	in Iran, you had Mr. Sampson's case, and you also
4	had Mr. Arar's case. All three, very high-profile
5	consular cases.
6	And then partway through so
7	this was happening in July. Partway through July,
8	we had this report that came out from this human
9	rights organization out of London, so we were
10	trying to there was lots of media attention and
11	questioning and we were trying to figure out the
12	best way to address this. We couldn't we
13	weren't just going to ignore it, but we also I
14	mean, this is an organization I mean, we don't
15	know who they are, they're making these
16	allegations.
17	So then you've taken me through
18	some of the things that we did to try to respond
19	to that, and one of those things was demand a
20	consular visit with Mr. Arar to confirm for
21	ourselves what was taking place. And this is the
22	report here.
23	As I've said, I was away in the
24	beginning, the first part of August, and so I
25	would have seen this later on, but not at that

1	time.
2	MR. DAVID: Okay. And you said
3	that before leaving for your vacation, you had
4	heard of the issue, the allegations of torture?
5	You were sensitized to the human rights report
6	from London
7	MR. FRY: Yes, I believe I was
8	aware of the report.
9	MR. DAVID: Now, either before
LO	leaving for your vacation, or on return from your
L1	vacation, did you have discussions with Mr. Pardy
L2	concerning the issue of potential torture at this
L3	time, during this time period
L4	MR. FRY: I believe we had
L5	discussed the issue of the report and, in fact,
L6	Mr. Pardy didn't put too much stock in the report.
L7	I think he in fact there's an e-mail we might
L8	be able to direct the Commission to.
L9	MS McISAAC: Tab 486 I think
20	you're thinking of.
21	MR. FRY: Where I mean, I think
22	he said the same thing to me verbally, where Myra
23	Pastyr-Lupul actually writes an e-mail where she
24	says this is 486, page 2 of 12. She says:
25	"I showed this to Gar two

1	weeks ago and he does not
2	believe there is substance to
3	these allegations. We have
4	no reason to believe that
5	Maher is being tortured,
6	although we cannot prove that
7	he is not being mistreated,
8	since we have had no consular
9	access since April."
10	I mean, these are the similar
11	kinds of things that Gar would have told me as
12	well, that, I mean, you've got to take these kind
13	of organizations with a grain of salt. I mean,
14	you never know who they are. Sometimes they're
15	sort of dissidents for the country and it's in
16	their interests to criticize them.
17	MR. DAVID: Okay. So this, what
18	you just referred to is dated August 6. Is that
19	correct?
20	MR. FRY: Yes.
21	MR. DAVID: The e-mail from Myra
22	Pastyr-Lupul?
23	MR. FRY: Yes.
24	MR. DAVID: And you were on
25	vacation at this time?

1	MR. FRY: I was. But I just
2	referred to it because Gar was saying I think
3	he said similar things
4	MR. DAVID: Giving his
5	assessment
6	MR. FRY: Yes.
7	MR. DAVID: of what was coming
8	out of the London-based organization.
9	So you clearly did have
10	discussions with Mr. Pardy on the torture issue in
11	this time period?
12	MR. FRY: We had discussions about
13	the report
14	MR. DAVID: About the allegations?
15	MR. FRY: Yes.
16	MR. DAVID: And my question next
17	is, and we've touched upon this briefly this
18	morning, what other time was that discussed that
19	you recall specifically, discussions about
20	torture, allegations of torture in Syria, between
21	yourself and Mr. Pardy?
22	MR. FRY: You mean surrounding
23	this report, or in general?
24	MR. DAVID: No, in general.
25	MR. FRY: Well, I mean, if you're

1	referring to whether, did Mr. Pardy tell us I
2	heard about Mr. Pardy's testimony before the
3	Commission and whether he said to us at other
4	times that he thought Mr. Arar was being tortured,
5	and the answer to that is no.
6	I mean, I have tremendous respect
7	for Gar Pardy. I mean, if I was trapped somewhere
8	in the world, he's the guy I'd like trying to help
9	to get me out. I mean, Gar he did a job that
10	not many professional diplomats want to do. He
11	was head he was Director General for the
12	consular section of Foreign Affairs, and I think
13	for 20 or 25 years, he was helping Canadians from
14	around the world bring them home.
15	I mean, he deserves the Order of
16	Canada to be honest. For all the things that he
17	did to help bring people back from when they're
18	in not just medical conditions but people that
19	were detained.
20	I say this because I don't like to
21	be in a position where I have to contradict him,
22	but, Commissioner, I mean, he did not raise with
23	me that he believed Mr. Arar was being tortured.
24	MR. DAVID: Until this time
25	period?

1	MR. FRY: Well, at this time, we
2	discussed the report, and he didn't put too much
3	value in the report. But we still had to deal
4	with the report. We weren't going to ignore it.
5	And so we did there are measures we took.
6	MR. DAVID: And was it ever
7	discussed between yourself and somebody else
8	within DFAIT, other than Mr. Pardy?
9	MR. FRY: What was discussed?
LO	MR. DAVID: The issue of potential
L1	mistreatment
L2	MR. FRY: Whether Mr. Arar
L3	MR. DAVID: to Mr. Arar?
L4	MR. FRY: All I can say to that, I
L5	mean, it's hard to say. I mean, over the course
L6	of a year, when we talked about the case, whether
L7	at some point did we discuss, you know, his
L8	treatment.
L9	I mean, we were relying on reports
20	from the consulate sorry, from the consul in
21	Damascus, and the reports we were getting back was
22	that Mr. Arar was you know, obviously no one
23	would be feeling very well in the conditions
24	that you know, being held in detention, away
25	from their family, unjustifiably for all this

1	time. But the reports we were getting back on a
2	consistent basis was that we were getting access
3	to him, this was unprecedented, we were getting in
4	to see him on a regular basis, that he was happy
5	to see us, that he looked reasonably well, and
6	this was we were getting regular reports to
7	that effect.
8	So although the detention was
9	not you know, he was not pleased with this
10	at no time were we getting reports that anyone
11	suspected he was being tortured.
12	MR. DAVID: Raising the
13	possibility of torture? That he was raising the
14	possibility that Mr. Arar was being tortured?
15	MR. FRY: Who was raising it?
16	MR. DAVID: That Mr. Pardy. You
17	were not getting reports
18	MR. FRY: No. No one raised the
19	issue with me, or the Minister's office, that they
20	suspected
21	MR. DAVID: So again to your
22	knowledge, to the best of your knowledge, there
23	was nobody else within your office, within the
24	political office, that was getting reports from
25	Mr Dardy or anyhody also within DEATT that there

1	was the possibility that Mr. Arar was being
2	tortured?
3	MR. FRY: That's correct, we did
4	not. I mean, we had to rely on them for this
5	advice.
6	MR. DAVID: Okay. Moving on to
7	tab 505. I think that we'll be fairly brief here,
8	because, as I understand it now, that you were on
9	vacation.
10	This is a scrum or a news
11	conference that Mr. Graham is giving, and it's
12	dated August 14, so it's the same date of the
13	consular report that we've just reviewed.
14	If you go
15	MS McISAAC: Excuse me. Tab 405?
16	MR. DAVID: Oh, okay. This is the
17	405/505 issue? We will one day get this right,
18	Mr. Commissioner.
19	THE COMMISSIONER: Go ahead.
20	MR. DAVID: So what seems to be
21	405 in your volume is a reference to a transcript
22	of a news conference given or a news briefing
23	given by Mr. Graham, and towards the above the
24	last paragraph, there's reference to the fact that
25	Mr. Graham is quoted as saying:

1	"Our consular officials have
2	assure us that he's in good
3	physical condition. He
4	personally, totally rejects
5	all allegations of torture.
6	He was interviewed
7	independantly by our consular
8	officials and he has stated
9	that his condition is better
10	than it was before we started
11	to intervene on his behalf."
12	You were not involved in
13	Mr. Graham's briefing in this regard?
14	MR. FRY: No, I wasn't.
15	MR. DAVID: Do you know who was?
16	MR. FRY: I believe it was the
17	Minister's Chief of Staff, Dan Costello, was part
18	of that, but there may have been other members of
19	his staff as well.
20	MR. DAVID: And your belief that
21	possibly Mr. Costello was involved in the briefing
22	comes from where?
23	MR. FRY: From him.
24	MR. DAVID: From Dan Costello?
25	MR. FRY: Yes. I mean, Minister

1	Graham testified to this. I don't think it was
2	you could really qualify it as a briefing. I
3	think the Minister was sort of I mean the main
4	focus of this was Mr. Sampson. Mr. Sampson had
5	just been released after almost three years and he
6	was just released at the beginning of August. So
7	that's what all the media attention was about.
8	But at the same time the question
9	of the human rights report we figured could come
10	up in his scrum, and so there was, I think, a
11	quick sort of update on because we had just
12	received a consular note, I believe, that they had
13	been in to see Mr. Arar.
14	MR. DAVID: Okay. And Mr. Graham
15	has well described the circumstances in which that
16	briefing took place, so that's fine.
17	Let's go now to September 24, and
18	that would be tab 14 in the Fry documents. That
19	is old tab 576.
20	Again, it's a series of e-mails.
21	There are three e-mails he referred to, and
22	basically the Minister, Minister Graham, is saying
23	that it would be a good thing if there was a trial
24	in Syria to deal with the Arar situation.
25	You commented if you go to page

1	2 of the e-mail, it says:
2	"Monia spoke with Robert Fry
3	last night and was told that
4	this is the ""strategy"" of
5	MINA in prep for his meeting
6	with the Syrian Foreign
7	Minister."
8	So on one point, you know, the
9	Minister is quoted on if you go to the first
10	page, you'll see the Minister is quoted as saying:
11	"we are pleased that the
12	trial is going forth, as this
13	will be an opportunity for
14	Maher Arar to defend himself
15	in court."
16	And you're saying to Monia, you
17	know, she's concerned because she has concerns
18	about the quality of justice in Syria
19	MR. FRY: Right.
20	MR. DAVID: and what will
21	happen to her husband, and you're giving sort of
22	an explanation here why the Minister would be
23	taking this position publicly.
24	Could you just please explain what
25	the strategy you're referring to strategy and

1	what that was?
2	MR. FRY: Sure. I mean, I would
3	be careful I mean, this is fourth hand, I
4	think, being reported
5	MR. DAVID: And so I ask for your
6	version, Mr. Fry.
7	MR. FRY: I believe I mean, the
8	circumstances surrounding this is the Minister
9	there would have been a news report that the
10	Minister had said that we are pleased that a trial
11	is going forth and that Arar is going to get a
12	chance to defend himself, and Ms Mazigh would have
13	called me, you know, she would have been angry,
14	why is the Minister saying he's pleased that a
15	trial is going forth?
16	And so I was trying to settle her
17	down a little bit by saying, look, I mean, our
18	first preference is to bring Mr. Arar home. And
19	our strategy had been to push them to release him
20	to us, to tell them that there was no reason why
21	he couldn't come back to Canada and for them to
22	release him back to Canada, but if they're not
23	going to do that, rather than just leave him in
24	some limbo, he's been detained for almost a year,
25	without you know, the Minister had always

1	our secondary choice had always been to press them
2	to say, "Well, okay, if you're not going to
3	release him to us, at least let him know what he's
4	been charged with and give him a chance to defend
5	himself in a transparent judicial process."
6	I think earlier there were
7	actually some reports out of Damascus talking
8	about, that they were going to try him in a civil
9	court versus a military one. There was a bit of
10	back and forth on that.
11	So I think all I would have told
12	her was, well, since they're not going to release
13	him, at least if they give us a chance to have an
14	open judicial process where we can have observers,
15	and I think we had actually started to make
16	arrangements for him to have a lawyer, or the
17	family had been making arrangements for him to
18	have a lawyer, and then arrangements to send an
19	observer to observe the trial, this was sort of
20	our second-best choice.
21	So I think that's what had been
22	part of my conversation with Ms Mazigh, and I
23	would have also told her at this time that we were
24	hoping to meet with the Syrian Foreign Minister at
25	the U.N. later that month.

1	MR. DAVID: That is correct. And
2	that brings us to tab 580, which is in reference
3	to the Minister's meeting at the U.N. General
4	Assembly in New York with the Foreign Minister,
5	Shara'a, of Syria.
6	MR. FRY: You said 580?
7	MR. DAVID: 580, yes.
8	THE COMMISSIONER: Volume?
9	MR. DAVID: That's still in volume
10	6, I believe yes, 6. It's the last tab.
11	THE COMMISSIONER: Thank you.
12	MR. DAVID: I don't know if it's
13	really necessary, Mr. Commissioner, that you have
14	to look at it
15	THE COMMISSIONER: I've got it.
16	MR. DAVID: Okay.
17	Were you in New York with the
18	Minister at this time?
19	MR. FRY: Yes.
20	MR. DAVID: And were you present
21	when he met Foreign Minister Shara'a?
22	MR. FRY: Yes.
23	MR. DAVID: So you witnessed the
24	conversation between both men?
25	MR. FRY: Yes.

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1	MR. DAVID: We've heard evidence
2	from Mr. Graham that the Foreign Minister assured
3	him that they would do their best he would do
4	his best to bring to a positive conclusion
5	Mr. Arar's fate in Syria. Do you recall that
6	assurance being given to your Minister?
7	MR. FRY: I do.
8	MR. DAVID: And could you just
9	maybe give us your appreciation of what was said
10	and the message that was being given?
11	MS McISAAC: Mr. Commissioner,
12	I've instructed the witness that he can give the
13	general gist of the messages conveyed, but is not
14	to get into details of the conversation.
15	THE COMMISSIONER: Okay. Thank
16	you. Thank you, Ms McIsaac.
17	MR. DAVID: So with that "mise en
18	garde".
19	MR. FRY: I guess I would say
20	that I mean the way that the Minister
21	characterized it, that the Foreign Minister was
22	quite, seemed to show a willingness to try and
23	help. There was another individual that was not
24	so helpful at that same meeting.
25	MR. DAVID: That other individual,

1	less helpful, was in the company of Foreign
2	Minister Shara'a?
3	MR. FRY: Yes, he was we don't
4	know who he was, or what he was, but he was
5	sitting beside the Foreign Minister.
6	MR. DAVID: Was he admonished by
7	the Foreign Minister Shara'a?
8	MR. FRY: No, he was not
9	admonished.
10	MR. DAVID: All right.
11	MR. FRY: In fact, I I'm at
12	a you know, I don't know if this is general or
13	not, but, I mean, the point that the other
14	individual was making was that, in fact, all the
15	media attention, and I think referring to the
16	recent press conference by Ms Mazigh, was actually
17	going to make things more difficult and, in fact,
18	was interfering with well, I don't think
19	"interfering" is actually the right word.
20	MR. DAVID: Counterproductive?
21	MR. FRY: Counterproductive, and
22	was making it so they weren't going to release
23	Mr. Arar any time soon.
24	MR. DAVID: That there was no
25	intention to release him?

1	MR. FRY: Well, that if this
2	continued I mean, he made it very clear that
3	the publicity and the activities that Mrs. Mazigh
4	was taking was counterproductive and they weren't
5	happy with that, and if they weren't happy with
6	that then they were in no mood to help us.
7	MR. DAVID: In any way, to your
8	recollection, did the Foreign Minister try to
9	correct the situation in terms of those comments?
10	MR. FRY: No, he didn't.
11	MR. DAVID: On the 1st of October,
12	and I don't have a document to bring you to, but
13	your Minister telephoned or met, I'm sorry, the
14	Secretary General Moussa of the Arab League, and
15	they met in Ottawa, and we've heard testimony from
16	Mr. Graham that he sought his assistance in his
17	push to have Mr. Arar released.
18	My question is, were you there and
19	were you present during this discussion?
20	MR. FRY: Yes, I was.
21	MR. DAVID: Could you, again, just
22	give us your best recollection of what
23	MR. FRY: As the Minister said,
24	this was one amongst many issues that we raised
25	with Mr. Moussa, who is head of the Arab League,

1	former Foreign Minister of Egypt. I mean, the
2	discussion was around Middle East peace. There
3	was still a lot of, you know, suicide bombings and
4	things in Israel and the Palestinian Territories,
5	talking about Iraq, but we definitely raised the
6	issue of Mr. Arar and the Minister, in fact, was
7	very forceful in terms of telling Mr. Moussa that
8	this reflected very badly on the Arab world and
9	that could he help in some way.
10	MR. DAVID: Okay. Coming down to
11	Mr. Arar's release, which followed in the next few
12	days, October 4, I believe, Minister Shara'a
13	phoned Minister Graham, who was in Rome at that
14	time. Were you with Minister Graham at that time
15	in Rome?
16	MR. FRY: No, I was in Ottawa. I
17	received a phone call saying that Minister Shara'a
18	wanted to reach the Minister. So then I was I
19	contacted the Minister in Rome. He was at a
20	meeting in Rome. And told him that you know,
21	found out whether he was available to take the
22	call, and I then set up the call, set up a
23	three-way call with Minister Shara'a.
24	MR. DAVID: And were you, again,
25	participating in that conversation? Did you hear

1	what was discussed?
2	MR. FRY: I was on the call and,
3	again well, I mean, the gist of the
4	conversation was that we are, you know, going to
5	be releasing Mr. Arar in the next little while.
6	MR. DAVID: Okay. And were you
7	tasked in any way to follow up on that call?
8	MR. FRY: I spoke to I believe
9	I spoke to Ms Catterall, to make sure that she was
10	aware, because we were trying to make sure
11	anything that was happening, that we were keeping
12	her up-to-date.
13	But I also I was a bit torn,
14	because until we had him in our custody and, in
15	fact, until we knew he was freed, I didn't want to
16	get people's hopes up.
17	So it was difficult for me to sort
18	of I didn't want to because I didn't want to
19	say too much and have people rushing around until
20	we knew we had him back. So I was very careful,
21	and I think I spoke to Marlene Catterall and to
22	Monia, but just to tell them very you know, we
23	don't have him yet, but we're optimistic.
24	We didn't there was nothing in
25	the days leading up to that this call was sort

1	of out of the blue, and we thought he might be
2	calling to say, "oh, we are going to be trying him
3	in a civil trial, in a transparent trial, " and,
4	you know, our wildest dreams were that he was
5	going to say we're giving him back to you, and
6	they were fulfilled. So we were very excited.
7	But until we had him for sure, we
8	weren't going to do too much with that. This was
9	a Saturday. I think it was Saturday, October 4. I
10	think. We'd have to look at. That's 2002.
11	MR. DAVID: That's 2002.
12	MR. FRY: So I'm not sure the 4th
13	would be yes, so that was a Saturday. I would
14	also have spoken to the officials in our Middle
15	East branch at Foreign Affairs, Jillian Stirk, I
16	think is the person I spoke to, Director
17	responsible for Syria, and told them to let me
18	know as soon as, you know, we had any word whether
19	we actually had Mr. Arar back in our custody.
20	MR. DAVID: We go now to tab 597.
21	If you could that would be in volume 7. So I
22	think we have to change volumes here.
23	Can you identify with this
24	document? It's a statement it seems to be a
25	statement by Mr. Graham. Were you involved in the

1	drafting of this statement here?
2	MR. FRY: I think I would have
3	commented or provided some help in the drafting of
4	it, yes.
5	MR. DAVID: Okay. And it's simply
6	the confirmation that he has been released?
7	MR. FRY: Yes. I think what we
8	did is on Sunday, we got I got a call at 3:30
9	in the morning, and I was very for once I was
10	very pleased to receive a call in the middle of
11	the night telling me we have him, and he's in
12	our custody and he's with Mr. Martel.
13	So they were fiercely making
14	arrangements to get him out of the country and get
15	him on a plane, and once we knew he had cleared
16	Syrian air space and he was out of the country, we
17	put the Minister on a he was in Rome so we put
18	him on a call with Canadian journalists, and I
19	think this is part of I mean, he would have put
20	it in his own words, but this would have been part
21	of his opening statement to the Canadian media to
22	tell them that we Mr. Arar was now free.
23	MR. DAVID: All right. And we
24	come now to your personal notes, pages 16 and 17,
25	Mr. Fry I mean, 16 to 18, actually. And if you

1	could just turn that up?
2	This is an entry for October 7.
3	MR. FRY: Personal notes.
4	MR. DAVID: I'd like to deal now
5	with these three pages in some detail.
6	I believe they concern a briefing
7	that was provided to you and many others by
8	Mr. Leo Martel from the Damascus embassy
9	concerning conversation that he had with Mr. Arar
LO	in the context of his return to Canada and that
L1	Mr. Martel was providing you and many others with
L2	a briefing.
L3	Do you recall attending such a
L4	briefing?
L5	MR. FRY: Yes.
L6	MR. DAVID: And from your office,
L7	from the political office, was there anybody else
L8	in attendance?
L9	MR. FRY: I believe there was
20	someone from Communications.
21	MR. DAVID: Okay.
22	Have you had occasion to review
23	your notes about this meeting?
24	MR. FRY: I have.
25	MR. DAVID: Okay. And is there

1	anything that you'd like to correct in these notes
2	in terms of reflecting accurately what you recall
3	from the meeting?
4	MR. FRY: I think the one thing I
5	said here about him being moved to Sednaya after
6	the MP visit is incorrect.
7	MR. DAVID: Could you just for the
8	record
9	MR. FRY: So page 16.
10	MR. DAVID: Yes.
11	MR. FRY: The second page.
12	MR. DAVID: Right-hand side?
13	MR. FRY: Right-hand side. Sort
14	of
15	MR. DAVID: The fourth bullet.
16	MR. FRY: The fourth bullet.
17	MR. DAVID: It says:
18	"Moved to Sednaya"
19	MR. FRY: I don't know if I was
20	mistaken, or in fact the person who was saying
21	this was mistaken, but here I'm saying that he was
22	moved after the MP visit, which was in April, and
23	I think he was only moved in August. I believe
24	that
25	MR. DAVID: Okay.

1	MR. FRY: So that would be
2	incorrect.
3	MR. DAVID: I don't intend on
4	bringing you through these three pages in any
5	detail. We've heard much testimony about this
6	meeting. But I just want to assure myself that
7	you have gone through these notes, Mr. Fry. If
8	not, I'd do it with you now, but I just want to
9	make sure that they, in your opinion, accurately
10	reflect what was relayed to you by Mr. Martel?
11	MR. FRY: If I can just go through
12	them quickly?
13	MR. DAVID: Absolutely.
14	Pause
15	MR. FRY: I think that was my
16	notes accurately reflect what I was told at that
17	time. What I understood at that briefing.
18	MR. DAVID: Okay. Did you meet
19	Mr. Martel in any way in this time period,
20	privately or in another occasion than this one?
21	MR. FRY: No, this was the one
22	occasion I had to meet with him.
23	MR. DAVID: So this is the only
24	time that you obtained information from Mr. Martel
25	concerning Mr. Arar's treatment?

1	MR. FRY: No, I did there
2	were and I think the documents show that, where
3	I communicated directly with Mr. Martel later on.
4	But at this time, no.
5	MR. DAVID: Okay.
6	MR. FRY: I think that was I
7	mean, he told us everything he had, so there was
8	no real need to have another meeting.
9	MR. DAVID: And I'd like to bring
10	you to one entry, just because I need your
11	clarification, that's at page 17, right-hand side,
12	third bullet. It says, and I believe, or maybe
13	you want to read it.
14	MR. FRY: The one: "Pres waiting
15	for call from PM"?
16	MR. DAVID: Right. Do you know
17	what that refers to?
18	MR. FRY: Well, I believe I was
19	we were told either Leo was told, or Mr. Arar
20	was told, that the President of Syria hadn't
21	replied to the Prime Minister's letter because
22	they were waiting for a call from the Prime
23	Minister.
24	MR. DAVID: We know the Prime
25	Minister's letter was issued on July 11.

1	MR. FRY: Yes.
2	MR. DAVID: It was delivered by
3	Senator de Bané the third week of July. So is
4	this entry referring to the fact that with
5	regard to the follow-up to that letter at that
6	time?
7	MR. FRY: Yes. I think what I'm
8	saying what I was told at this time was that
9	someone told me, either Leo was told this, or
10	Mr. Arar was told this and he relayed it to Leo,
11	that the Syrians had said at one point that their
12	President was waiting for a call from the Prime
13	Minister of Canada.
14	MR. DAVID: Okay.
15	And would this have, to your
16	understanding, have delayed his release, the fact
17	that the Prime Minister didn't follow up with a
18	call to the President of Syria? Was that the
19	insinuation of this comment or
20	MR. FRY: No. I mean, that wasn't
21	my understanding, that this had been a delay, but
22	it may have been just a matter of I can't
23	speculate, counsel.
24	MR. DAVID: Okay.
25	MR. FRY: I mean, we know the

1	Prime Minister had sent a letter in July. We were
2	in fact waiting for a response from the Syrians.
3	It may be just a matter of fact.
4	Because I think you've seen the documentation that
5	we were making preparations for a call, so it may
6	have been relayed to the Syrians at some point.
7	You know, because, before you do these calls,
8	there's a lot of back and forth between officials,
9	so it may have simply been that the Syrians had
10	been preparing for a call from the Prime Minister.
11	MR. DAVID: Okay. I bring you now
12	to tab 643. And if you could go to the last page,
13	the fourth page, and it's simply we need your
14	clarification here. Are these your notes? Is
15	this your handwriting?
16	MR. FRY: It is.
17	MR. DAVID: And what are these
18	notes, what do they relate to?
19	MR. FRY: I believe these are the
20	notes I took after the meeting with Mr. Arar and
21	Monia on October 29, or either I took these
22	notes during that meeting or right after.
23	MR. DAVID: So you're saying that
24	they refer to what basically Mr. Arar told you
25	MP FPV. Vac

1	MR. DAVID: about his treatment
2	in Syria?
3	MR. FRY: In that when Mr. Arar
4	met with Minister Graham, we had a bit of a small
5	get-together. It was Maher, Monia, myself, and
6	Minister Graham in his office.
7	I mean, to be respectful, I didn't
8	want to take a lot of notes. In fact, we may have
9	even discussed not taking notes Mr. Arar may
10	have asked us, you know, not to take notes, we
11	just want to have a discussion. I mean, we were
12	very sympathetic to his plight. He had just come
13	back from a year's detainment and everything that
14	goes with it.
15	So, you know, I felt I didn't
16	feel it was appropriate for me to be sitting there
17	jotting down every note that he was saying. We
18	wanted to have a discussion.
19	So I may have taken sporadic
20	notes, or I may have tried to take some notes
21	afterwards just to, you know, remember what was
22	said in that discussion, and I think these may be
23	them.
24	I looked at them I actually
25	only saw them recently, and when I was looking at

1	them, they seemed to me to be these could have
2	been the notes that I took.
3	MR. DAVID: Okay.
4	Do you have any comments? Do you
5	want to correct anything these notes contain?
6	MR. FRY: I think they're very
7	similar to the notes I took I mean, very
8	consistent with what Mr. Martel told us.
9	I mean, some things that are
10	different here is about George. I mean, I don't
11	really I don't really remember I mean,
12	maybe I think something about George being
13	nemesis, George may have been one of the prison -
14	one of the guards.
15	And the other things are all
16	things that I think the Commission is well aware
17	of, you know, his conditions of detainment, the
18	fact that he was beaten, you know, mental strain,
19	treated the same as other prisoners, wanted to
20	thank thank George. Something about asking us
21	to tell the media that that's not true. Not
22	everything in the media was true as reported.
23	Move to Sednaya, quite angry. I think that's all
24	I
25	MR. DAVID: Okay. We can go now

1	to tab 625, which is also tab 16 in the Fry
2	documents, and this concerns the meeting that you
3	had with the Minister with Monia Mazigh and Maher
4	Arar.
5	My first question is, following
6	this meeting you were in attendance at this
7	meeting. There were two meetings, as you've
8	described. There was a more public meeting and
9	then there was a private meeting that was held
10	before, I believe?
11	MR. FRY: Yes.
12	MR. DAVID: Wherein there was just
13	yourself, the Minister, and Ms Mazigh and Mr. Ara
14	that were present?
15	MR. FRY: Yes.
16	MR. DAVID: Okay.
17	After both these meetings, do you
18	recall meeting Mr. Lockyer in a private setting
19	wherein you revealed to him certain information
20	concerning CSIS?
21	MR. FRY: I didn't meet him in a
22	private setting. It was at the general meeting
23	that I believe he alleges that this took place.
24	MR. DAVID: Okay. And do you
25	recall speaking to Mr. Lockyer at this time?

1	MR. FRY: Mr. Lockyer was part of
2	the discussion that we had. As you said, we had a
3	small group, the four of us, and then we moved to
4	a larger boardroom where there were probably 20
5	people and the discussion continued there for a
6	while and then the Minister had to leave.
7	Mr. Lockyer was present at that larger meeting.
8	MR. DAVID: Okay. And do you
9	recall making any sort of revelation to
10	Mr. Lockyer about CSIS and Syria?
11	MR. FRY: I don't really recall
12	making any particular declaration to Mr. Lockyer.
13	I'm familiar with what you're talking about
14	because I know it appeared in an affidavit
15	MR. DAVID: That's right.
16	MR. FRY: and it appeared
17	elsewhere. I think the only thing I can say to
18	that is, maybe I confirmed to them at that time
19	that there had been a CSIS visit, but I must
20	say I mean, to me, this was no news to anybody.
21	I mean, as far back I mean, this was October.
22	As far back as March, I mean, the Syrian
23	ambassador, who had been involved in this for a
24	long time, I mean, you showed me the briefing
25	the memo, where he had told members of Parliament,

1	Marlene Catterall, Sarkis Assadourian, and had
2	told a lot of people that CSIS had been to Syria.
3	So, I mean, I don't understand why
4	it's such a big it's a big item that merited an
5	affidavit, but, I mean, I could have at that time
6	confirmed, if somebody had said something about
7	CSIS, I could have confirmed, yes, it was my
8	understanding that CSIS had visited Syria.
9	MR. DAVID: Just to answer your
10	question, I think that my understanding of why it
11	became an issue in an affidavit was in terms of
12	whether the information was publicly available,
13	released information or not, so
14	MR. FRY: Right.
15	MR. DAVID: It was in that context
16	I think that there was reference.
17	Do you recall where you learnt and
18	when you learnt of the fact that CSIS had gone to
19	Syria? Was that from Mr. Pardy in January?
20	MR. FRY: Yes, it was in Mr.
21	Party's
22	MR. DAVID: Do you recall why it
23	was relevant to tell Mr. Lockyer give that
24	information to Mr. Lockyer at this time, that is,
25	at the time of your meeting in October?

1	MR. FRY: I don't. I don't recall
2	why it was relevant. It really wasn't the focus
3	of that discussion. I mean, the discussion was,
4	Mr. Arar having just come back, sort of dealing
5	with him and how do we deal with what the
6	Syrians his treatment and what they had done.
7	I mean, my recollection may have
8	been that it had come up and I had confirmed it,
9	and I didn't realize that it was such an important
10	thing that someone like me had confirmed that, but
11	obviously it was, and I mean, to me, it's an
12	example, and I guess it's an example to the
13	Commission, about, that the difficult line that
14	myself and Gar Pardy often had to walk, about what
15	things we could talk about and what things we
16	couldn't talk about.
17	I mean, we were on the front line.
18	I was talking to Monia Mazigh, I was talking to
19	Alex Neve, Gar was talking to the families as
20	well, and I'm talking to Marlene Catterall and I'm
21	trying to be forthcoming and trying to do what we
22	can to tell them that we're trying to help, and at
23	the same time, there are restrictions on me in
24	terms of what things I can and can't say, and
25	there's an example for you of where I, you know,

1	I'm accused of having made a gone too far.
2	MR. DAVID: Okay. Mr. Fry, the
3	last question with regard to tab 16. If you look
4	at the front page, the first page, there are two
5	manuscript entries at the bottom. Can you just
6	tell us if that is your handwriting?
7	MR. FRY: Could you repeat the tab
8	number?
9	MR. DAVID: Tab 16 of the Fry
10	documents, yes.
11	MR. FRY: Yes, this is my
12	handwriting.
13	MR. DAVID: Okay. And it says:
14	"Public inquiry can help.
15	Look at the best way to deal
16	with these cases."
17	Is that what
18	MR. FRY: Yes, that's correct.
19	MR. DAVID: And then:
20	"Sol Gen needs to"
21	MR. FRY:
22	" comment publicly about
23	leaks."
24	MR. DAVID: Okay.
25	MR. FRY: This would have been

1	around all those leaks, you know, with Juliet
2	O'Neill, and the leaks that were coming out from a
3	variety of sources about the case.
4	MR. DAVID: Okay.
5	Let's go to your personal notes,
6	and I bring you to page 4
7	MR. FRY: Just to clarify, the
8	reason I'm even saying that was that, it's not up
9	to the Minister of Foreign Affairs to be
10	commenting on these, because the media would have
11	been asking him for comment. I was sort of saying
12	SOLGEN has to deal with this, not us.
13	MR. DAVID: Okay.
14	MR. FRY: Sorry, which tab?
15	MR. DAVID: Page 4 of your
16	personal notes.
17	MR. FRY: Okay.
18	MR. DAVID: If you could identify
19	for us what these relate to. I believe it would
20	be the October 29 meeting, but I'm not quite
21	certain.
22	MR. FRY: So just on page 4.
23	MR. DAVID: Just page 4, yes.
24	MR. FRY: Well, I may have been
25	watching may have been watching the press

1	conference. Some of the things I'm sort of
2	jotting down are things that Mr. Waldman or
3	Mr. Arar may have said during the press
4	conference.
5	So it's, I mean, some notes on
6	what was being said. I think this was actually
7	not part of my it wasn't in my personal
8	notebook. It was sort of on separate pieces of
9	paper.
10	If you look at the top, it's like,
11	you know, Mr. Arar saying he couldn't say
12	everything. "They made him sign a document.
13	Appreciated visits, but couldn't talk. Had
14	several lost 40 pounds. Was held at the
15	Palestinian branch of the Syrian Intelligence. On
16	September 19-20, around there, another Canadian
17	arrived. Doesn't know why they have him there.
18	On September 28 moved back to Damascus. Stayed
19	there for a week."
20	So I think this is what Mr. Arar
21	was saying in his press conference on November 4.
22	And then there are some other things here. Here's
23	me saying: "Didn't thank the government or
24	Foreign Minister, but he thanked the MPs." That
25	was, you know, when Mr. Arar was sort of thanking

1	the Members of Parliament. You know, then he's
2	raising some of the questions that he raised.
3	"Why did this happen to me? Wants the truth to
4	come out in a public inquiry. Wants to clear his
5	name. Doesn't want this to happen to other
6	Canadian citizens. Canada's reputation on the
7	line."
8	And then Steve Watt, I think one
9	of the lawyers, was talking about the complicity
10	of the U.S. government, "demand public inquiry,
11	price of human rights versus terrorism."
12	MR. DAVID: Okay.
13	So that would be basically a
14	reference to the November 4 press conference?
15	MR. FRY: And then here I think
16	it's about Almalki whereas "he knew his brother,
17	met him in the mosque, sold him computers, casual
18	relationship."
19	MR. DAVID: Okay.
20	Let's go to tab 634, the date is
21	October 31. Now you're getting involved in
22	seeking clarifications about different versions
23	that concern the allegations of torture.
24	If you go to the third paragraph,
25	Mr. Fry, the first page, it says:

1	"Torture allegation is
2	inconsistent with statements
3	made by Arar to Martel during
4	meeting on August 14 in
5	Damascus and on October 6
6	while en route to Canada.
7	Please confirm info in ref
8	messages and Arar's comments
9	during travel back to Canada
10	following his release. It
11	would also be helpful to have
12	your assessment of the
13	conditions of detention,
14	which could be considered as
15	"degrading" or "inhuman",
16	e.g., the small size of
17	prison cell, long periods of
18	darkness and any other
19	relevant information. Please
20	provide your notes of this
21	meeting, as requested by
22	MINA/Fry."
23	So could if you just explain to us
24	why this is going forth at your request?
25	MR. FRY: Well, I guess we went

1	from jubilation, when we finally we freed
2	Mr. Arar, Gar Pardy and myself and a lot of other
3	people at Foreign Affairs, Leo and the ambassador,
4	who worked so hard to get him out, we got him out,
5	and then it's a one-day good news story and then
6	it's all about, you know, the horrible things that
7	happened to him and, you know, how the Canadian
8	government didn't respond properly.
9	Part here what I've seen I
10	guess in there's a chronology that was put out
11	by Amnesty, or what took place with Mr. Arar. And
12	in that chronology, on October August 14, they
13	say that in their chronology it talks about
14	Mr. Arar saying he basically told us at that
15	consular meeting that he had been tortured, and I
16	knew, at this point, that the same day Minister
17	Graham had been out in the news, in the media,
18	saying, "We met with Mr. Arar today and he told us
19	he hasn't been tortured."
20	So I was faced with a situation
21	where the media was going to say, "Well, Mr. Arar
22	says he told you, and your Minister, Minister
23	Graham, went out and said the exact opposite.
24	What's going on? Is he you know, did he lie
25	is he lying to Canadians?" I mean that was the

1	type that's the world that I function in with
2	the media.
3	So I can see this coming. I can
4	see that, you know because he hasn't had his
5	press conference yet, but we know he's going to do
6	his press conference, and I'm worried about a
7	situation where we're going to have: "Mr. Arar
8	says, he told you, and you, Minister, told
9	Canadians on August 14 that he didn't tell you.
10	You know, who's lying? Who's telling the truth?"
11	So I'm trying to figure out, you
12	know, I'm asking I'm going right to the source,
13	which is unusual, I'm going back.
14	First I'm going through the proper
15	channels, in Foreign Affairs, but I eventually go
16	directly to Mr. Martel and say check all your
17	notes. I mean, everything that we want to know
18	exactly what was said because we were told, and
19	the Minister was told, that Mr. Arar did not say
20	this and now we know he's going to come out and
21	say this. You know, we need some clarity as
22	someone who's right? Who's wrong? Is there
23	some confusion? Is there some misinterpretation?
24	So part of, I think, what you're
25	leading me through now is part of my trying to get

1	to the bottom of this, if I can, to avoid this
2	problem.
3	MR. DAVID: Okay. And just for
4	the record, if you go to tab 630, we see that
5	you're sending out a message concerning the
6	fact in reference to the meeting that you had
7	on October 29, this is a message coming out the
8	next day, where you're just reminding people,
9	let's keep our meeting and the contents of the
10	meeting with Mr. Arar confidential because there
11	seems to be an issue some information was
12	leaked.
13	MR. FRY: Yes. I mean, we we
14	all committed to Mr. Arar, when he came in, that
15	what he said to us was going to stay in this room
16	until he chose to divulge it at a press
17	conference. I mean, they're all professionals in
18	this room. The head of Legal, the head of
19	And the next day, Kirk Petrovic is
20	reporting that Mr. Arar has told the Canadian
21	government I believe this is what it was, that
22	he had been tortured. This had not yet come out
23	yet.
24	So Mr. Arar called me, and he was
25	very unhappy and he felt betrayed because he had

1	told us these things in confidence and now he
2	hears about it the next day in the newspaper.
3	I was very embarrassed and this
4	was a pretty harsh e-mail from me to the
5	Colleen Swords is the head of the Legal Division
6	at Foreign Affairs, Konrad Sigurdson is the head
7	of Consular, John McNee is the ADM, Middle East,
8	and I'm telling them, you know, Mr. Arar is really
9	unhappy and I hope none of you guys said anything
LO	to anyone.
L1	I didn't believe they did, but I
L2	was trying to figure out, how did this get out?
L3	Because the Minister didn't talk. We didn't talk.
L4	These people didn't talk. And so I was writing to
L5	them to say, you know, we've got to be very
L6	careful here.
L7	I wanted them to know that
L8	Mr. Arar was unhappy because of what had happened
L9	and I, in fact, reassured Mr. Arar too, and to the
20	best of my ability, it didn't come from us. We
21	don't know how this got out into the news.
22	MR. DAVID: Okay. And to follow
23	up on your request dated October 31 for precisions
24	from Mr. Martel, we have at tab 640 the comments
25	coming from Mr. Martel, and they are dated

1	November 3, and these are the precisions that
2	and it's the last paragraph that really refers to
3	what Mr. Arar had told him? So that's simply for
4	the record.
5	And then we go to the press
6	conference per se, which is on the next date,
7	which is October 4. And we've seen your notes in
8	that meeting.
9	So did you note inconsistencies
10	between what you were hearing at the press
11	conference and the private meeting that you had
12	with Mr. Arar on October 29?
13	MR. FRY: No. I think it was
14	quite consistent. I mean, the only concern was
15	the issue of whether he had said on August 14th to
16	Leo Martel that he had in fact been tortured. Leo
17	was saying this was not the case and in his press
18	conference he was saying he did.
19	But he didn't spend a lot of time
20	on it at the press conference. In fact, it didn't
21	become the huge issue that I thought it could
22	become at this time, at this point anyway.
23	MR. DAVID: Okay. Again, for the
24	record, pages 5 and 6 of your personal notes.
25	If you could just identify those

1	two pages? I believe that they are your comments
2	on the press conference.
3	MR. FRY: Where are we?
4	MR. DAVID: Personal notes,
5	pages 5 and 6.
6	MR. FRY: I think the only other
7	thing I might say, because I think you have asked
8	me a very general question about whether
9	everything he said in his press conference was
10	consistent with everything he said with us in
11	private? I would have to probably look a little
12	more closely before I there may be a couple
13	other things in there about, you know, some other
14	detail.
15	So I want to be careful giving a
16	blanket statement that everything is exactly the
17	same. Maybe I will have an opportunity to look at
18	both again and see exactly what was said in the
19	press conference and compare it.
20	MR. DAVID: Are you willing to
21	accept that by and large the two scenarios were
22	fairly consistent?
23	MR. FRY: Yes. I would say they
24	were fairly consistent, yes.
25	MR. DAVID: Okay. So coming

1	now to pages 5 and 6 of your personal notes.
2	Just just for purposes of identification, if
3	you could just tell us they do refer to the
4	press conference?
5	MR. FRY: Yes. I think this is
6	the continuation of the press conference. Yes.
7	MR. DAVID: Okay. Let's go to
8	tab 649 for an entry, again I believe on
9	November 4th, the day of the press conference.
10	These are entitled, "Arar Talking Points". They
11	are for your Minister?
12	MR. FRY: Yes.
13	MR. DAVID: There is also
14	reference to these at page 9 of your notes, so if
15	you want to just refer to that? It is the same
16	document actually.
17	Did you draft these
18	talking points?
19	MR. FRY: I did.
20	MR. DAVID: Okay.
21	MR. FRY: It is unusual for me to
22	draft talking points specifically in this form for
23	the Minister. But again, it was part of the
24	concern around this notion of that you are going
25	to have the Minister having said one thing on

1	August 14th and now Mr. Arar was saying he had
2	told us the opposite. So I was trying to give the
3	Minister the point was to give the Minister
4	some context how he could respond if he was asked
5	about that.
б	MR. DAVID: You are referencing
7	his statements on August 14th that were now
8	understood to be mistaken about the briefing that
9	he had obtained, that there were no allegations
LO	of torture?
L1	If you go to the before last
L2	paragraph, where the Minister is clarifying, and
L3	it is the second sentence:
L <b>4</b>	"All I can say is that my
L5	statements in August
L6	represent what was reported
L7	to me and what my officials
L8	and I believed to be the case
L9	at that time."
20	MR. FRY: Yes.
21	MR. DAVID: So it is just a matter
22	of clarifying
23	MR. FRY: Yes. I mean, he was
24	basically what he said in August was what he
25	was advised. I think the only slight nuance is

1	that in August he talked about meeting him
2	independently.
3	MR. DAVID: Right, independent
4	assessment or
5	MR. FRY: Yes. We spent a lot of
6	time trying to figure out where that came from. I
7	think there was a bit of a someone talked
8	about, you know, that Mr. Arar spoke more freely
9	than usual. That may have been transmitted to the
LO	Minister in the term of, you know, that he had an
L1	opportunity to Leo had an opportunity to speak
L2	to him sort of one-on-one.
L3	MR. DAVID: Okay. If you
L4	could just help us understand page 7 of your
L5	personal notes? There is an entry at the very
L6	top that says:
L7	"No specific allegations last
L8	summer."
L9	Or it seems to say that.
20	Pause
21	MR. DAVID: These unfortunately
22	are not dated.
23	Pause
24	MR. FRY: Yes. I'm not really
0.5	cure what these are These could have been just

1	sort of general just notes in terms of
2	MS McISAAC: Could they not be a
3	carry-on from the previous page?
4	Pause
5	MR. FRY: I mean, I think I'm
6	saying that there were specific allegations for
7	the first time last summer, which was the Syrian
8	Human Rights report. We were always sceptical
9	about, you know, how freely he could talk. I
10	think, yes, I am commenting about that August 14th
11	meeting.
12	MR. DAVID: Okay. Going now to
13	tab 740, and that would be in volume 8, Mr. Fry.
14	This is a briefing note that is
15	going to your Minister. It deals with two issues.
16	One is the criticism that was being addressed to
17	the Consular General in New York. I don't want to
18	deal with that in any way.
19	It is the first issue, it
20	is dealing with the contradictions between the
21	August 14th consular report and the contents
22	of the press conference. So this briefing note is
23	addressing certain contradictions that were
24	apparent.
25	My only question to you in this

1	regard: Was this a result of your investigation,
2	the briefing note that you were the
3	investigation in the sense of the clarifications
4	that you had sought from Damascus?
5	MR. FRY: Yes. I mean, this is
6	actually an example of I mean, this issue, as
7	you could tell, started around I mean, we
8	started inquiring at the end of October.
9	MR. DAVID: That's right.
10	MR. FRY: Now three weeks later we
11	get a briefing note, so it is a bit sort of it
12	probably started there and eventually I mean,
13	it shows you how these things can take time to get
14	up to us.
15	So I think this briefing note was
16	sort of the official departmental position on this
17	apparent contradiction.
18	MR. DAVID: Okay. If we can go
19	back now to tab 650, and that is in volume 7.
20	This refers to the fact that
21	your Minister is seeking clarifications from
22	Secretary Powell as to the identity of the
23	Canadian source that would have sent information
24	to U.S. authorities.
25	Did you sit in on this phone call

1	between Minister Graham and Secretary Powell?
2	MR. FRY: Yes, I was present.
3	MR. DAVID: I bring you now to
4	pages 3 and 4 of the same tab. Again, these are
5	just allegations concerning the press conference
6	and that DFAIT is advising the Ambassador in
7	Damascus that they want an investigation into the
8	allegations of torture.
9	At tab 700 at page 3 you have the
10	reply from Damascus. That would be in volume 8.
11	The reply is coming in on November the 10th?
12	Any comment about that?
13	MR. FRY: Where were you looking?
14	MR. DAVID: Page 3.
15	MR. FRY: Yes.
16	MR. DAVID: That would be the top
17	message on November 10th.
18	MR. FRY: So basically our embassy
19	is saying that they sent a diplomatic note to
20	them, but that there is no real response?
21	MR. DAVID: That's right.
22	MR. FRY: I may have seen this. I
23	mean, there is not much there.
24	MR. DAVID: Okay. We can go now
25	to tab 725, and that is

1	MR. FRY: The second bullet I
2	think is talking about someone else here.
3	MR. DAVID: Okay. An entry for
4	November 17th and 18th, Mr. Fry, at tab 725.
5	These are e-mails between Leo Martel and yourself
6	concerning the allegations of torture. There is a
7	series of four e-mails there.
8	MR. FRY: Yes.
9	MR. DAVID: My only question is:
10	This is now mid-November, or almost late November.
11	Again, the issue of torture allegations is being
12	followed up by yourself at this time.
13	Why is it still an issue? Why is
14	it still a concern?
15	MR. FRY: I think it is I
16	initially started following up after the meeting
17	with Mr. Arar.
18	MR. DAVID: Right. That is
19	October 29th
20	MR. FRY: October 29th, 30th
21	MR. DAVID: And you send your
22	e-mails
23	MR. FRY: back and forth.
24	And, you know, I tried to get the best information
25	I could from Damascus.

1	Then there was the press
2	conference and, I guess, the whole issue around
3	I think what happened was I was expecting a
4	blowout on November 4th during the press
5	conference and it didn't occur. There were other
6	discussions.
7	Later on, though, we started to
8	get questions again about this inherent
9	contradiction, so I was again back on the case
10	trying to get some more clarity because I wasn't
11	satisfied with what I had already gotten.
12	I think now I am going directly to
13	Leo, where initially I actually went through the
14	department, went through the proper channel. This
15	time I sort of end-runned everybody and I went
16	straight to Leo.
17	MR. DAVID: Okay. Again for the
18	record, your Minister had requested Mr. Powell to
19	do certain verifications and we have the follow-up
20	on December 2nd. That would be Exhibit P-105.
21	There was a phone call between
22	Secretary Powell and Minister Graham on
23	December 1, 2003. Did you sit in on this call,
24	Mr. Fry?
25	MR. FRY: Yes, I believe so.

1	MR. DAVID: The report speaks
2	for itself.
3	I would like to refer you now
4	and this is seeking clarification to pages 2
5	and 3 of your personal notes. There is reference
6	to a phone call being set up.
7	MR. FRY: Yes.
8	MR. DAVID: If you could
9	just explain if you recall what reference that
10	was in?
11	MR. FRY: These would be back when
12	Mr. Arar was first detained, so they would be a
13	year earlier. This would be 2002.
14	MR. DAVID: Okay.
15	MR. FRY: This is set up phone
16	calls, so set up phone call to the Syrian Foreign
17	Minister, you know, either charge him or release
18	him? Short form some of the things that we
19	were part of what we were asking the Syrians to
20	do.
21	MR. DAVID: If you could go to the
22	next page, page 3 of your notes. In the middle
23	there is a bullet that says:
24	"Canada using rogue states to
25	interrogate neonle "

1	Can you explain that reference?
2	It's about halfway down.
3	MR. FRY: Well, I think this part
4	of the press conference or, because it is
5	you know, I'm saying, "Why did this happen to
6	you?" Then the answer is, "Can't answer. Need a
7	public inquiry." "Do you believe complicity of
8	Canadians?" "Need public inquiry to answer."
9	So these are sort of some of the
10	questions that were asked and these were the
11	responses we were getting.
12	"Petrovich" is Curt Petrovich.
13	He was saying, "Canada unwilling to take you
14	back." Then "Consul" this would be our consul
15	in New York:
16	"said surprised they would
17	deport. Powell and Cellucci
18	said Canadian officials were
19	helpful."
20	So this is all around now I
21	think I mean, the first page is 2002. Here I
22	think we are back into 2003, because now we are
23	talking about the public inquiry. So these two
24	pages I think are two separate time periods.
25	MR. DAVID: I understand that

1	these were loose pages.
2	MR. FRY: Yes.
3	MR. DAVID: They were not part of
4	your notebook and they were not dated so we are
5	just trying to seek clarification.
6	MR. FRY: So when I'm saying,
7	"Canada using", someone else was saying that. I'm
8	not saying that. I'm saying someone in a press
9	conference or someone was accusing Canada of using
10	rogue states to interrogate people. This is not
11	me saying that.
12	MR. DAVID: Thank you, Mr. Fry.
13	Those are my questions.
14	THE COMMISSIONER: Mr. Waldman, do
15	you want to start now, or would you like to take
16	the break first?
17	MR. WALDMAN: It would be
18	easier if we took the break so I could organize
19	my papers.
20	THE COMMISSIONER: Okay. How long
21	do you think you will be?
22	MR. WALDMAN: An hour.
23	THE COMMISSIONER: Do you have any
24	idea, Ms McIsaac, how long you will be?
25	MS McISAAC: I don't think I will

1	be more than 15 minutes.
2	THE COMMISSIONER: Okay. We will
3	rise for 15 minutes.
4	THE REGISTRAR: Please stand.
5	Upon recessing at 3:13 p.m. /
6	Suspension à 15 h 13
7	Upon resuming at 3:30 p.m. /
8	Reprise à 15 h 30
9	THE REGISTRAR: Please be seated.
LO	Veuillez vous asseoir.
L1	EXAMINATION
L2	MR. WALDMAN: If I could ask the
L3	Registrar to give the witness P-85, tab 40. It is
L4	the loose documents, volume 5, tab 40.
L5	Just while we are waiting for you
L6	to get it, this is a set of notes, including
L7	yours, of different people who were at the
L8	debriefing. So it is tab 40.
L9	This is the October 7th debriefing
20	of Mr. Martel. I have gone through all of them,
21	and it seems that they are all quite consistent
22	MR. FRY: Sorry. I don't think I
23	have the right tab 40 for me is some Deputy
24	Commissioner operations
2.5	MR. DAVID: Volume 5.

1	THE COMMISSIONER: Volume 5 of
2	Exhibit P-85.
3	MR. WALDMAN: P-85.
4	MR. FRY: It's volume 2 I have.
5	MR. WALDMAN: Sorry. Maybe I
6	wasn't clear.
7	MR. FRY: Okay.
8	MR. WALDMAN: If we go through
9	these, the first one these are different people
LO	who attended the meeting, These are notes by
L1	someone by the name of Peter McRae who attended
L2	this.
L3	It says nine lines from the
L4	bottom:
L5	"Mental torture, beaten
L6	occasionally, stopped
L7	interrogating after two
L8	weeks."
L9	We will go on and just go through
20	them those are the same notes.
21	John McNee, page 4, "mental
22	cruelty" if you go page 2:
23	"Mental cruelty, angry,
24	slapped around in first two
25	weeks."

1	THE COMMISSIONER: Are we on
2	page 4 or page 2?
3	MR. WALDMAN: It's page 4.
4	THE COMMISSIONER: Thank you.
5	MR. WALDMAN: I think what
6	happens, Mr. Commissioner, is you get the
7	transcriptions and then you get the notes.
8	THE COMMISSIONER: I see.
9	MR. WALDMAN: So page 4 is the
LO	transcription of those notes.
L1	THE COMMISSIONER: You are talking
L2	about the fourth and fifth lines, "mental torture,
L3	beaten occasionally."
L4	MR. WALDMAN: Page 4,
L5	transcription of notes from John McKee. It says,
L6	page 2:
L7	"Mental cruelty, beaten
L8	occasionally, angry, slapped
L9	around." (As read)
20	Then I think there is I can't
21	read then there is your notes, which we have
22	already looked at, where it says, on the second
23	page of your notes, which is page 12 of 14:
24	"Beaten occasionally but
25	nothing too serious. Slapped

1	for first two weeks. Stopped
2	interrogating him. When
3	Sampson case comes up, was
4	asked about him." (As read)
5	Then I would like to take you
6	to what is it tab 508. Exhibit P-42,
7	volume 6 of 9, which we have been told are the
8	Martel notes taken after his interview in August
9	of 2003, where it says:
10	"Present condition - I have
11	not been paralyzed - not
12	beaten - not tortured.
13	Very beginning very little.
14	3 x 6 x 7.
15	Sleeping on ground. Mentally
16	destroyed."
17	Do you see that?
18	MR. FRY: Yes.
19	MR. WALDMAN: Then I would like to
20	take you back to the actual report of the consular
21	visit, which is one tab previous, tab 507, page 3
22	of 4.
23	So in this paragraph, he says:
24	"`The press will know the
25	truth'. He confirmed he

1	had not been beaten Nor
2	tortured. He also said he
3	had not been paralysed."
4	I put to you, Mr. Fry, that if you
5	look at all the other documents, and indeed what
6	you were told at the debriefing, all these notes
7	from yourself and from the other officials are
8	consistent with Mr. Martel's notes, which indicate
9	that during the first two weeks, in fact, Mr. Arar
10	was beaten.
11	Is that correct?
12	MR. FRY: Mr. Martel did advise us
13	when he came back of this, that Mr. Arar had told
14	him he had been beaten in the first few days or
15	first two weeks.
16	MR. WALDMAN: The first two weeks.
17	Right. So Mr. Martel advised you that on
18	August 14th Mr. Arar had told him that he had been
19	beaten during the first two weeks?
20	MR. FRY: No. He told us this
21	the information he was transmitting to us on
22	August 7th was a result of his he travelled
23	back with Mr. Arar.
24	THE COMMISSIONER: On October 7th.
25	MR. WALDMAN: October 7th. He

1	said October 7th.
2	MR. FRY: October 7th. The notes
3	that you read from Peter McRae, John McNee and
4	myself all relate to his debrief on October 7th.
5	MR. WALDMAN: Right. And
6	October 7th he told you that Mr. Arar had told him
7	that he was beaten during the first two weeks?
8	MR. FRY: Yes.
9	MR. WALDMAN: That is consistent
10	with his notes of the August 14th meeting, which
11	are in tab 508, which is where he said:
12	"At the beginning very
13	little."
14	MR. FRY: I think he says, "not
15	beaten - not tortured."
16	MR. WALDMAN: "Very beginning,
17	very little. 3 x 6 x 7."
18	MR. FRY: Yes, it says "very
19	beginning, very little".
20	MR. WALDMAN: "Sleeping on
21	ground."
22	MR. FRY: I don't know. This is
23	the first time I am actually seeing these.
24	MR. WALDMAN: So is it not fair to
25	say that in fact Mr. Martel's account of what

1	Mr. Arar told him is consistent with what Mr. Arar
2	said to a very large extent, because indeed during
3	his press conference Mr. Arar stated that it was
4	during the first two weeks that he was beaten
5	during interrogations. That is consistent with
6	these notes of your October 7th debriefing.
7	MS McISAAC: Would you like
8	to have the text of the press conference in front
9	of you?
10	MR. FRY: Sure.
11	MR. WALDMAN: Well, is it disputed
12	at all that Mr. Arar said during the press
13	conference that he was beaten
14	THE COMMISSIONER: Unless the
15	witness would like it.
16	Would you like it?
17	MR. FRY: Sure. Could I have
18	that.
19	MR. WALDMAN: I know we have an
20	unofficial transcription. Tab 645? Thank you.
21	Pause
22	MR. WALDMAN: No, that is not it.
23	That is the question and answer.
24	I'm sorry, Mr. Commissioner, I
25	wasn't prepared for this tab because I thought it

1	was not something that would be
2	THE COMMISSIONER: Somebody will
3	find it.
4	Pause
5	THE COMMISSIONER: I would have
6	thought Maître David would know the tabs by now.
7	Pause
8	MR. WALDMAN: Tab 693 someone is
9	saying.
10	Tab 693, volume 8. The
11	statements about his treatment in Syria begin at
12	the top of page 4.
13	You might want to take a minute
14	to read it.
15	Pause
16	MR. FRY: Okay.
17	MR. WALDMAN: Would you not agree
18	with me that Mr. Arar's position, as stated in his
19	press conference, was that he was beaten during
20	interrogations during the first two weeks. During
21	that time he was also subjected to mental torture
22	by being forced to listen to other people being
23	tortured, and also by being threatened with
24	ongoing torture if he didn't cooperate, and that
25	for the next 10 months he was held in a 3 by 6 by

1	7 cell.
2	Now, if you look at the notes that
3	I have just taken you to, is it not fair to say
4	that what Mr. Martel told you on the October 7
5	debriefing before Mr. Arar's meeting with the
6	Minister is, to a very large extent, consistent
7	with what Mr. Arar is saying in that statement?
8	MR. FRY: What Mr. Martel told
9	us on October 7th is consistent with what Arar
10	later said?
11	MR. WALDMAN: Yes. In other
12	words, you
13	MR. FRY: Yes, I think so. Where
14	were we again with the notes of the
15	MR. WALDMAN: P-85, tab 45.
16	Volume 5. Sorry. Have to make sure I get the
17	right number. Tab 40.
18	MR. FRY: Tab which?
19	MR. WALDMAN: Forty. Four-zero.
20	Pause
21	MR. FRY: Yes, I think I mean,
22	everyone reports that, you know, basically that he
23	had been beaten in the beginning during the first
24	two weeks. I think most people and that is
25	what we were told by Mr. Martel on October 7th.

1	MR. WALDMAN: Right. He also
2	described the mental torture, if I'm correct.
3	MR. FRY: Yes. In fact, my
4	notes say:
5	"Beaten occasionally but
6	nothing too serious. Slapped
7	for first two weeks. Stopped
8	interrogating him. Tire not
9	true or electric shock.
10	Beating with wires. Mental
11	torture. Brain destroyed."
12	As you just said.
13	MR. WALDMAN: Right. I
14	think there is also a description of the 3 by 6 by
15	7 cell?
16	MR. FRY: Yes.
17	MR. WALDMAN: Right.
18	MR. FRY: All these notes, all
19	these say that the story of the tire wasn't true,
20	but that, yes, he was beaten occasionally over the
21	first two weeks.
22	MR. WALDMAN: Right. Mr. Arar
23	clearly stated in the section you just read that
24	although he was threatened with the tire, which
25	would be the mental torture, he was never put on

1	the tire.
2	That's correct?
3	MR. FRY: That's correct.
4	MR. WALDMAN: So is it not fair
5	to say that to a very large extend what Mr. Fry
6	told you in the October 7th debriefing
7	Mr. Martel told you in the October 7th debriefing,
8	was consistent with what Mr. Arar said November 4,
9	2003?
10	MR. FRY: I guess the only slight
11	distinction was the word "occasional" versus
12	"intense". Mr. Arar talks about "intense
13	beatings", and in my notes and in Mr. McRae's
14	notes it talks about being beaten occasionally. I
15	mean, it's all relative, I guess.
16	MR. WALDMAN: That's fine. If we
17	go back to tab 507, this is the briefing note of
18	the October 14th consular visit.
19	MR. FRY: Okay.
20	MR. WALDMAN: I will read it to
21	you:
22	"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. He said
10	he had not been paralysed.
11	When asked to explain he
12	could not find another word
13	for it. He also said his
14	long detention had destroyed
15	him mentally."
16	Is it not fair to say this is
17	really an inaccurate or not consistent with
18	either the notes that make up tab 509 or what
19	Mr. Martel told you when he came back for the
20	debriefing on October 7th. Specifically, there is
21	no mention here of the beatings, albeit
22	occasional, number one.
23	Number two, there is no mention of
24	the size of the prison cell, 3 by 6 by 7, and the
25	10 months he spent there. And there is no mention

1	of the mental torture.
2	So is it not fair to say this
3	would you not agree with me that this is not a
4	completely accurate account of either the notes in
5	tab 508 or what he told you on October 7th?
6	MR. FRY: I mean, the difficult
7	thing for me, counsel, is that we are sort of
8	blending two different issues together here. We
9	are talking about October 7th, where Mr. Martel
10	travelled with Mr. Arar back and got a full
11	account of what happened, and then debriefed us,
12	and here we are talking about August 14th, which
13	is three months earlier, where Mr. Martel had just
14	met with Mr. Arar and was briefing us on what he
15	had heard at that particular meeting.
16	So I'm having trouble, because you
17	are sort of blending the two together.
18	MR. WALDMAN: But Mr. Martel's
19	notes, which are at tab 508, which were taken
20	contemporaneous
21	MR. FRY: Yes.
22	MR. WALDMAN: clearly have the
23	same you just agreed with me have the same
24	information to what you were told, in fact, on
) E	Ogtobor 7th? It doggribes the goll it doggribes

1	him been beaten at the beginning and it describes
2	him being mentally destroyed?
3	MR. FRY: I don't want to be
4	obstinate, but I would think these notes are more
5	consistent with what is actually in this note
6	here, though I would agree that some things are
7	slightly different.
8	As you point out, he says 3 by 6
9	by 7 cell, and then in the note he says "the
LO	prison conditions have been difficult". He talks
L1	like that. He doesn't reference that specifically
L2	in the report he does back to us.
L3	I think the handwritten notes are
L <b>4</b>	more consistent with the actual note he gives
L5	back report he sends back to Ottawa.
L6	MR. WALDMAN: Except that he says
L7	he had not been beaten, when the handwritten notes
L8	say he had been beaten occasionally, "at the very
L9	beginning, very little." Number one.
20	Number two, don't you think it
21	would important to put the precise prison
22	conditions, 3 by 6 by 7. I will get to it in a
23	second, but in testimony we heard from an
24	international law expert it was clearly suggested
25	that holding someone in a 3 by 6 by 7 cell for

1	10 months without having access to the light is
2	mental torture.
3	MR. FRY: Right.
4	MR. WALDMAN: So don't you think
5	it would have been important before the Minister
6	went out on a line and said Mr. Arar has not been
7	tortured, to have a more fuller account consistent
8	with the briefing notes that are at tab or the
9	notes that are in tab 508?
10	MR. FRY: I mean, I'm not
11	that comfortable trying to comment on what
12	Mr. Martel wrote and then reported back to us. I
13	mean, who am I to sort of say what he did or
14	didn't do properly?
15	You are right to say that he said,
16	"has not been paralysed, not beaten, not
17	tortured," and that is what is in the note. "He
18	confirmed that he had not been beaten nor
19	tortured, he also said he had not been paralysed."
20	You are right to say though that
21	the 3 by 6 by 7 is not in this note.
22	I don't really feel in a position
23	to comment on what Mr. Martel did or didn't do.
24	All I saw was this.
25	MR. WALDMAN: But this became the

1	matter of a whole series of e-mails going back and
2	forth about trying to determine whether there is
3	an inconsistency between what Mr. Arar had said
4	with respect to the August 14th visit
5	MR. FRY: Right.
6	MR. WALDMAN: and what
7	Mr. Martel had said. What I am trying to suggest
8	to you is that, in my view, the problem is not so
9	much in what was said. The notes indeed are
10	consistent with what Mr. Arar is saying, which was
11	that he was beaten at the beginning
12	MR. FRY: But the notes don't
13	say that.
14	MR. WALDMAN: Yes, it does. It
15	says, "not tortured. Very beginning - very
16	little."
17	MR. FRY: Okay. But I don't know
18	what that relates to. I guess you could say it
19	relates to what is above, but I you are going
20	to have to ask Mr. Martel.
21	MR. WALDMAN: Yes, we intend to
22	ask him that.
23	Okay. I would like to ask you to
24	go to tab 650, P-42, tab 650, which is this
25	Powell volume 7 of 9.

1	So this is the conversation with
2	Secretary of State Powell that you were present
3	when Minister Graham was there. I'm just going to
4	read to you the third line and following of the
5	first paragraph:
6	"In response to the
7	Minister's request for
8	assistance in determining who
9	in the Canadian government
LO	might have conveyed
L1	information to American
L2	authorities concerning
L3	Mr. Arar, Secretary Powell
L4	undertook to look into the
L5	matter immediately."
L6	So that is your recollection of
L7	what happened, there was a request to try and find
L8	out who had given information?
L9	MR. FRY: Yes.
20	MR. WALDMAN: I find this a bit
21	strange and confusing, given that we know in the
22	Garvie report that there was a memo. The Garvie
23	report is at P-19, page 30?
24	MR. FRY: Page 30?
25	MR. WALDMAN: I don't know if you

1	are familiar with this or not, that is why I'm
2	taking you to it.
3	MR. FRY: No, I'm not really.
4	MR. WALDMAN: Well, not with the
5	Garvie report.
6	MR. FRY: No.
7	MR. WALDMAN: With the
8	specific memo.
9	Mr. Pardy, when he became aware
10	that the RCMP might have been involved in sharing
11	information with the Americans, posed a list of
12	questions to the RCMP and on October 18, 2002 got
13	this memo back, which is reproduced at page 30.
14	MR. FRY: Mm-hmm. Okay.
15	MR. WALDMAN: So in this memo it
16	is clearly indicated. The answer to the second
17	question is:
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	Were you not aware of this memo or

1	this information before November 5, 2003?
2	MR. FRY: I think what we were
3	asking Powell for was, they claimed someone from
4	Canada had given the green light and we were
5	asking him to tell us who.
6	MR. WALDMAN: Okay. So just to
7	clarify, you were aware for a long time that
8	when did you become aware that in fact Mr. Arar
9	came to the attention of the American authorities
10	as a result of information-sharing with the RCMP,
11	which is in this October 18th memo?
12	MR. FRY: I think I would have
13	become aware of the fact that there had been
14	information-sharing probably that had been
15	brought I mean, the position had always been
16	that there was a constant information-sharing
17	between the United States and Canada on many, many
18	issues and that this was just one issue where
19	there had been information-sharing. I probably
20	would have become aware that there was
21	information-sharing in this particular case
22	sometime late November or December. I'm guessing,
23	I don't remember exactly, but it would have
24	been yes, 2002, late 2002.
25	MR. WALDMAN: But this memo goes

1	on further and says, in the fourth answer, that
2	after Mr. Arar was detained by the Americans the
3	U.S. asked for information that was provided by
4	the RCMP.
5	So were you aware of that as well?
6	MR. FRY: Which question are you
7	pointing me to?
8	MR. WALDMAN: The question is:
9	"Did the U.S. approach
10	Canadian authorities
11	regarding the possibility of
12	ARAR's deportation?"
13	It is the second last question.
14	That answer
15	MR. FRY:
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	Your question is?
12	MR. WALDMAN: That during this
13	time while Mr. Arar was in detention in the United
14	States there were conversations going back and
15	forth between the RCMP so it wasn't just a
16	general information-sharing.
17	MR. FRY: Right.
18	MR. WALDMAN: By October 18, 2002
19	at least Mr. Pardy was aware that during the time
20	Mr. Arar was in detention there was direct
21	communication between the RCMP and, we now know,
22	the FBI
23	MR. FRY: Right.
24	MR. WALDMAN: about Mr. Arar.
25	MR. FRY: Mm-hmm.

1	MR. WALDMAN: I just want to make
2	sure whether you were aware of that
3	MR. FRY: I was aware in a general
4	sense that there had been information-sharing.
5	Some of these specifics about had there had been
6	talk back and forth, as I sort of testified to you
7	about when I talked about Senator de Bané about
8	saying that, I was aware that the U.S. had asked
9	Canada if they could charge Mr. Arar, if he would
10	be detained if he came back to Canada.
11	So I was aware of the some of the
12	generalities. I don't recall seeing this specific
13	memo, but I was probably aware in the November
14	2002 area, or maybe a bit sooner, that there had
15	been, but definitely not until after Mr. Arar was
16	in Syria.
17	I guess my priority at that time
18	was no longer how he got there, but what are we
19	going to do about it? Now that he is there, how
20	are we going to make sure he is safe and how are
21	we going to get him back?
22	MR. WALDMAN: I just want to be
23	clear as to whether you knew that there was
24	information-sharing going on while Mr. Arar was in
25	detention, because the way this question in

1	tab 650 reads that I took you to, it would seem
2	that you were asking whether the Canadian
3	government had conveyed information to the
4	Americans concerning Mr. Arar, which is something
5	that your department was aware about
6	MR. FRY: Right.
7	MR. WALDMAN: a year previous.
8	It didn't make any sense to me
9	that on November 5, 2003, at a meeting where
10	moments are precious, you would be asking
11	Secretary of State Powell a question to which we
12	had the answer on October 18, 2002.
13	MR. FRY: Well, I mean, I see what
14	you are getting at, that you are saying why are we
15	asking for something that we already knew the
16	answer to?
17	I mean, all I can say is that
18	perhaps whoever drafted the note has not drafted
19	it exactly is not accurate in terms of how it
20	is being drafted.
21	We asked four specific questions
22	of Powell. Even if there were some things that
23	I mean you are saying that maybe we suspected we
24	sort of knew the answer to, still, we formally
25	wanted to put four questions to him and get his

1	formal answer to that.
2	MR. WALDMAN: You started saying
3	that perhaps the question was
4	MR. FRY: Well, it may be
5	MR. WALDMAN: not whether
6	information had been shared but whether somebody
7	had given the green light?
8	MR. FRY: No. Did I say that?
9	MR. WALDMAN: I thought you
LO	started saying that a few minutes ago.
L1	MR. FRY: No. I was just going to
L2	say the person who drafted this I mean, what
L3	happens with these is that there is sort of you
L4	have a phone call with Secretary of State Powell
L5	and you have the Minister talking on the phone,
L6	and then there are sort of officials listening in
L7	on the conversation, and Powell is doing the same
L8	thing on his side, so someone is taking notes and
L9	then writes sort of a report. So I mean sometimes
20	they're not always exactly they don't always
21	reflect exactly what was said.
22	I don't know what the answer to
23	your question is. I mean, what you're putting to
24	me is that we're asking something that we should
25	have already known, is that

1	MR. WALDMAN: And that a year ago,
2	according to the documents, Gar Pardy was told on
3	October 18, 2002, that the RCMP had shared
4	information with the Americans during Mr. Arar's
5	detention.
6	MR. FRY: I'd have to refresh my
7	memory on the exact questions that we asked.
8	You're quoting to me the summary, which is sort of
9	the top part of this C-4 note.
10	We asked four specific questions
11	of Powell, and maybe I could pull those
12	maybe someone could direct me to those four
13	specific questions.
14	MR. WALDMAN: Actually, one of the
15	questions is redacted, although I think it comes
16	out in the e-mail.
17	THE COMMISSIONER: I think we have
18	them all in public form.
19	MR. WALDMAN: In the e-mail.
20	MR. FRY: So the first question
21	was:
22	"Who provided the U.S.
23	government with the
24	information used in making
25	the decision to deport

1	Mr. Arar?" (As read)
2	So we were asking Powell for a
3	specific name.
4	If you'll recall Minister Graham's
5	testimony, he talked about how Powell and Cellucci
6	always talked about, "Talk to your guys, they
7	know." And we always used to say, "Well who
8	knows? Give us a name. Tell us who."
9	So the first question was, it
10	wasn't sort of information-sharing that occurred,
11	it was, "Who provided the U.S. government with
12	information used in making the decision to deport
13	Mr. Arar?"
14	So I think the important part is
15	about, it's not information-sharing in terms of
16	Mr. Arar in general, it's information to deport
17	him, and we wanted specifics.
18	So even if you're right to say
19	that we partially had a partial answer to that,
20	I think we wanted to formally put that question to
21	Powell.
22	MR. WALDMAN: I just want to be
23	clear about two things, because my concern was
24	whether you were I was very concerned because
25	when I read this I said you mean to say the

1	Minister and his assistants weren't aware a year
2	after the October 18 memo that during the time
3	Mr. Arar was in detention, that there was
4	information going back and forth between the
5	United States?
6	And I just want to be clear on
7	your answer
8	MR. FRY: We were aware that there
9	was information-sharing back and forth.
10	MR. WALDMAN: While he was in
11	detention? Because you're giving us a vague,
12	general answer.
13	MR. FRY: Yes.
14	MR. WALDMAN: Because we know that
15	there's information-sharing going back and forth
16	all the time.
17	MR. FRY: Yes.
18	MR. WALDMAN: This is much more
19	specific because, on October 18, 2002, you were
20	the Department was advised that there was
21	information-sharing while he was in detention,
22	going back and forth.
23	And I want to know whether you
24	were aware of that, or whether because it would
25	make more sense to ask the November 5, 2003

1	question, if weren't aware of it than if you were.
2	So, were you aware?
3	MR. FRY: Not while he was in
4	we would not have known
5	MR. WALDMAN: No, I'm not
6	talking
7	MR. FRY: but after the fact.
8	I mean, I it's difficult. I don't know if
9	in fact, I thought the information would have
LO	occurred before he was even in detention, the fact
L1	that some of the information that the Americans
L2	had may have the information-sharing had
L3	resulted in them having some of this information
L <b>4</b>	before he was in detention
L5	MR. WALDMAN: That's part of what
L6	that document says, that some of it occurred
L7	before.
L8	MR. FRY: Right. In other words
L9	more while he was
20	MR. WALDMAN: While he was in
21	detention
22	MR. FRY: I guess that would have
23	come to my attention at some point in 2002. But I
24	wouldn't have I mean, to be honest, I wouldn't
25	have spent a lot of attention with that, because

1	from my point of view now, I mean, this is water
2	under I mean, this you know, this is for a
3	public inquiry.
4	Our focus was on his well-being
5	and getting him back and how it happened or where
6	I was curious, and we wanted to know. But we
7	didn't always get all the details on that.
8	MR. WALDMAN: You didn't get all
9	the details. And I'm really concerned to know
10	whether you got that specific detail, which I
11	think is a pretty important detail to know, that
12	there was conversations while he was in detention
13	and I just want to know whether you got that
14	detail?
15	MR. FRY: I can't recall,
16	Mr. Waldman, whether I was told that there would
17	have been information-sharing while he was in
18	detention.
19	MR. WALDMAN: So I would assume
20	that it wouldn't have been something that you
21	would have passed on if you can't recall
22	whether you even got it, it wouldn't have been
23	something that was passed on to the Minister by
24	you?

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MR. FRY: No. I guess the only

25

1	thing and I know I was vague, but I guess what
2	I would say is that we knew there had been
3	information-sharing between the RCMP, the
4	Americans, obviously prior, you know, prior to him
5	being detained, or that there had, in a general
6	sense, been information-sharing which had been the
7	cause of his the fact that they had detained
8	him in New York. But the specifics around when
9	that occurred, I can't recall whether I was told
10	about that, and if I didn't know, I wouldn't
11	have I couldn't have briefed the Minister to
12	that effect.
13	MR. WALDMAN: Okay. Could I ask
14	you, please, to turn to P-42, volume 2, tab 130?
15	It's the record of the first consular visit. I
16	gather there's a more unredacted version at
17	Exhibit 92.
18	THE COMMISSIONER: At Exhibit
19	which?
20	MR. WALDMAN: Ninety-two, I've got
21	a note here. But let's just stick with this for
22	my purposes.
23	MR. FRY: Which tab are we?
24	MR. WALDMAN: Tab 130. Volume 2.
25	It's an October 23 memo. Have you found it? Yes.

1	MR. FRY: Yes, I have it.
2	MR. WALDMAN: I just want to
3	have you seen this? This is a C-4 consular report
4	about Mr. Arar after his first visit.
5	MR. FRY: Right.
6	MR. WALDMAN: So you testified
7	that you would have had access to these.
8	MR. FRY: Yes.
9	MR. WALDMAN: Do you recall
10	reading this one?
11	MR. FRY: Yes, I do.
12	MR. WALDMAN: So I just want to
13	take you to paragraph 3:
14	"3. Arar was brought to the
15	office at 10:30 and meeting
16	with Martel lasted
17	approximately one-half hour.
18	It was not possible to see
19	where exactly Arar was being
20	detained. After shaking
21	hands, Arar was shown a seat
22	at a distance. Questioning
23	started along the lines of
24	your instructions but it was
25	obvious subj was not free to

1	answer all of the questions.
2	Conversation took place in
3	English and was translated
4	into Arabic immediately.
5	Notes were taken at all times
6	by Syrians.
7	4. Subject appeared to be
8	healthy but this is difficult
9	to assess. He looked
10	resigned and submissive.
11	Numerous eye signals seemed
12	to indicate he was not free
13	to speak out. At least this
14	is the impression we had."
15	I don't want to read the whole
16	fifth paragraph. If I could ask you to go to the
17	fifth line:
18	"When prompted further for
19	answers, the Syrians told him
20	in Arabic he was not to
21	answer those questions."
22	So this is the first consular
23	visit that you read?
24	MR. FRY: Right.
25	MR. WALDMAN: And you testified

1	that you read this and you didn't have any
2	concerns about the well-being of Mr. Arar after
3	reading this.
4	MR. FRY: I think what I said was
5	I I mean, I wouldn't have seen it right away, I
6	would have seen it in the following days.
7	I would have been verbally briefed
8	by Gar Pardy, and what I would have wanted to know
9	was, you know, how is he? You know, what's our
10	assessment? What's the assessment of the people
11	on the ground? What's your assessment, Gar, as
12	somebody who's been doing this for 25 years?
13	In fact, our consular people were
14	quite upbeat, to be honest. I was getting a
15	positive response from people by saying, hey,
16	well, first of all, the Syrians acknowledged they
17	have him. Which is news. It's unprecedented.
18	Generally the Syrians won't even acknowledge they
19	have someone. Then I was being told, we're
20	getting in to see him, we're getting consular
21	access. And when we got in to see him, yes, he
22	was disoriented and, you know, consistent with
23	someone who's been thrown all over the you
24	know, detained in the U.S. for a while, then
25	thrown to the other side of the world and now held

1	in detention. You know, we were able to shake
2	hands with him, which is a you know, I think
3	those are the kinds of things you do, shaking
4	hands, getting a chance to touch the person's hand
5	to see if anything has been done to them.
6	Leo Martel is someone on the
7	ground that's we have to rely all I can do
8	is rely on that assessment, and it was reported to
9	us by Gar it was a positive we got to see him,
10	he looks okay, and, you know, we're going to
11	continue to try to get in to see him.
12	MR. WALDMAN: I think we all
13	acknowledged there were two positives that came
14	out of the meeting. One was (a) they acknowledged
15	him and (b) you got to see him.
16	But I guess I'm concerned about
17	your evaluation that, based upon this consular
18	note, it would seem to suggest that he was fine.
19	And I think Mr. Martel, in the
20	note, is making it clear that "subject appeared
21	healthy but it's difficult to assess. He looked
22	resigned and submissive. And eye contact seemed
23	to indicate he was not free to speak."
24	Which was confirmed later on in
25	the note where when he tried to say things he was

1	told that he couldn't. So I'm asking you whether,
2	would you agree with me, that this was at least a
3	
	pretty strong indication that there could be
4	regardless of the positive, that there should be
5	serious concerns about Mr. Arar's well-being based
6	upon this first consular note, and it was not
7	reasonable to assume at that time that at least in
8	terms of his physical condition and his mental
9	condition he was fine.
10	MR. FRY: I guess all I can answer
11	to you is that I mean, I was relying on the
12	advice I wouldn't have dissected this note word
13	for word, and I'm really not an expert to be able
14	to say that, you know, things you know, someone
15	who is trained in these matters may be able to
16	tell that someone who looks resigned and
17	submissive, that's a sign of something, or they're
18	not free to talk you know, these are
19	indications that I think that's what you're
20	saying to me, is these things should have jumped
21	out.
22	I'd been at Foreign Affairs for 8
23	months. I'm not an expert in consular matters or
24	matters of detainment. So, I mean, a quick
25	perusal of this for me I mean, "Subject appears

1	to be healthy. Looks resigned and submissive." I
2	mean, obviously not free to talk because there's
3	big Syrian security guards around him. But I
4	couldn't I wouldn't have been able to draw any
5	more conclusions than that.
6	MR. WALDMAN: Do you recall your
7	conversation with Mr. Pardy about this note?
8	MR. FRY: Well, my conversation
9	with Mr. Pardy about our first consular visit was
10	that, hey, we got in to see him, he looks okay,
11	the Syrians have acknowledged they have him the
12	fact that we get in to see him is, in
13	consular-speak, a very positive sign, because it
14	means that the Syrians know that you're seeing
15	your person and it becomes very difficult for them
16	to do things to people when you're allowed to go
17	and see them.
18	So the spin I got, Mr. Waldman,
19	was always that, this is good news, and we're
20	actually optimistic that we've actually got in to
21	see him.
22	MR. WALDMAN: I'd like to know a
23	bit about your understanding of torture, because
24	this became an issue in these e-mails going back
25	and forth and all of that.

1	So could you tell us what you
2	understand, I mean, given that you were asking
3	people whether Mr. Arar was tortured, what was
4	MR. FRY: I was asking people?
5	MR. WALDMAN: Whether Mr. Arar had
6	been tortured
7	MR. FRY: Where is that
8	MR. WALDMAN: In these e-mails
9	that went from you to Mr. Martel?
10	MR. FRY: Right.
11	MR. WALDMAN: You were asking what
12	the reports
13	MR. FRY: Well, I was asking what
14	had been said. I wasn't asking about torture. I
15	was asking for a report on what had been said.
16	MR. WALDMAN: I think the e-mails
17	talk about the allegations of torture and whether
18	they're consistent with
19	MR. FRY: The August 14 back and
20	forth.
21	MR. WALDMAN: Yes.
22	MR. FRY: Well, I mean, my concern
23	was what had been said. Did he say that to you?
24	That's what my back and forth was.
25	MR. WALDMAN: Could you tell us

1	what your understanding of torture is, or if you
2	don't feel comfortable
3	MR. FRY: Well, I think torture
4	you know, you could have a wide definition of
5	torture and, I mean, it almost may be different
6	I know the Convention against torture has a
7	particular definition. I mean, I'm sure there's
8	legal definitions of it. But, I mean, I think
9	there's also there's a particular you know,
LO	people can define torture in different ways.
L1	MR. WALDMAN: Okay, so we'll leave
L2	that. You're not a legal expert on that.
L3	MR. FRY: No, I'm not.
L4	MR. WALDMAN: So you acknowledge
L5	that you're not an expert on torture?
L6	MR. FRY: No, I'm not.
L7	MR. WALDMAN: So you leave that to
L8	the lawyers. Okay.
L9	But I want to ask you a bit
20	about you told us something not consistent with
21	something Mr. Pardy told us, because he had
22	suggested he told everybody horizontally and
23	vertically about his suspicions about torture.
24	But I want to ask you about
25	whether you had been Mr. Pardy was the only

1	person who might have been suspicious about this.
2	I mean, you we see throughout all of these
3	notes that you were in communication with people
4	like Alex Neve, and in numerous e-mails, he was
5	raising his concerns about the possibility of
6	torture. Is that fair to say? That in
7	conversations with you and in e-mails, Mr. Neve
8	said that he was concerned that there was a risk
9	of torture for Mr. Arar?
10	MR. FRY: I don't recall. Maybe
11	you could show me somewhere Mr. Neve said that to
12	me.
13	MR. WALDMAN: Well
14	MR. FRY: I don't think Mr. Neve
15	raised in e-mails to me that he thought Mr. Arar
16	was being tortured, but I could be
17	MR. WALDMAN: Okay, we'll have to
18	find them. I didn't think it was going to be a
19	matter of dispute so
20	And your testimony is you never
21	read the October 22 you never saw the
22	October 22 letter that Amnesty International
23	sent
24	MR. FRY: No.
25	MR. WALDMAN: that raised the

1	concerns of torture?
2	MR. FRY: No.
3	MR. WALDMAN: But you did tell us
4	that you were aware in general terms about the bad
5	human right record in Syria. Is that fair?
6	MR. FRY: Yes.
7	MR. WALDMAN: So given your
8	knowledge of the bad human rights I want to ask
9	you record in Syria, were you aware, for
LO	example, that there was another Canadian who had
L1	been detained in Syria, were you aware of his
L2	case, Mr. El Maati?
L3	MR. FRY: I would have learned of
L4	that later on. In the matter of Mr. Arar, I would
L5	have learned that there had been that there was
L6	Mr. Almalki that was detained in Syria, that there
L7	was Mr. Al Bushi that had been detained in Syria,
L8	and also Mr. El Maati, but I believe he was in
L9	Egypt.
20	MR. WALDMAN: Yes, but
21	Mr. El Maati was you began in January of 2002.
22	Is that correct?
23	MR. FRY: February 2002.
24	MR. WALDMAN: February 2002,
25	right.

1	And you told us that one of your
2	responsibilities was to liaise with Mr. Pardy
3	about important consular cases?
4	MR. FRY: Yes. Not all consular
5	matters, but I did deal with him on some consular
6	cases.
7	MR. WALDMAN: So you didn't have
8	any opportunity to deal with Mr. Pardy on the
9	El Maati file, because Mr. El Maati was in
10	detention during all of this time. He was
11	detained in November of 2001, if I'm not mistaken.
12	MR. FRY: Right.
13	MR. WALDMAN: And he was in Syria
14	for a period of time and then he was in Egypt.
15	You didn't have any dealings, or were not aware of
16	the El Maati case?
17	MR. FRY: It came to my attention
18	later on during the discussions about Mr. Arar.
19	MR. WALDMAN: Because there's
20	information in the material that we have that the
21	RCMP were aware about, that there were allegations
22	of that Mr. El Maati was making allegations of
23	torture while he was in Syria as early as July or
24	August of 2002, and Mr. Pardy testified to that
25	effect Were you not aware of that?

1	MR. FRY: No, I was never I
2	mean, to explain a little bit, I mean, the
3	Minister's office, like I said, there's a lot of
4	consular cases, a lot of Canadians detained around
5	the world, but very few actually made their way up
6	to the Minister's office. We allowed this I
7	mean, we allowed the Consular division of Foreign
8	Affairs deal with these matters.
9	The matters of I mean, when
LO	Mr. Arar was detained in Syria, then we started
L1	asking questions about other people that may have
L2	been there.
L3	MR. WALDMAN: So, if I understand
L4	you correctly, it's the high-profile cases that
L5	get a lot of public attention that become the
L6	focus of concern in the Minister's office?
L7	MR. FRY: No, I don't think it's
L8	that. I think that like I said, a lot of
L9	things Ministers' attention are focused on a
20	lot of different issues.
21	At this particular time we were
22	trying to keep Canada out of a war in Iraq, we
23	were trying to prevent a war in Iraq, so a lot of
24	the Minister's attention was focused around the
25	II.N., around dealing with Secretary Powell, the

1	Security Council, dealing with our ambassador at
2	the U.N., dealing with the Department of National
3	Defence.
4	I mean, there's lots of pressures
5	on the Minister, and I'm not trying to diminish
6	other consular cases, but this frankly the
7	Minister couldn't always be focusing on all
8	consular matters.
9	MR. WALDMAN: But if I understood
10	your evidence this morning correctly, I think you
11	told Mr. David that your interest in Mr. Arar's
12	case was piqued by repeated inquiries from the
13	media about Mr. Arar. Is that fair?
14	MR. FRY: It first came to our
15	attention through media inquiries.
16	MR. WALDMAN: And the consistent
17	media inquiries was a matter that kept it in
18	your as a matter of concern for the year as
19	well because it was one of those cases where the
20	media concern continued for the whole year. Is
21	that fair to say?
22	MR. FRY: I would say that also
23	the particular facts around the case of Mr. Arar
24	were another reason why it was on the Minister's
25	radar screen, because you have a Canadian citizen

1	who, while travelling through the U.S., is
2	detained in the U.S. and shipped to a third
3	country.
4	I mean, that's that strikes
5	fear in the hearts of many Canadians, especially
6	Canadians of Muslim or Arab origin. So the
7	particular facts around this case are, in fact,
8	what made it even such a high-profile case, not
9	just because we had media banging down the door.
10	MR. WALDMAN: Yes, but at the
11	beginning, it was the media that brought it to
12	your attention
13	MR. FRY: The first time it was
14	brought to our attention was through a media
15	inquiry, the Minister's attention.
16	MR. WALDMAN: So the media getting
17	involved in a case is not always a bad thing. Is
18	that fair to say, that in Mr. Arar's case, it was
19	the media attention that brought this case to your
20	attention?
21	MR. FRY: Yes, but whether that
22	I mean, whether it's a good thing or a bad thing,
23	I think you'll have to talk to I mean,
24	others will I think people have different
25	points of view as to whether lots of media

1	attention on a case actually helps the case or
2	hurts the case.
3	MR. WALDMAN: Okay. Thank you.
4	I'd like to talk a bit about
5	another area. You testified this morning that
6	despite the e-mail which indicated that the
7	Minister was advised of the trip to Syria by CSIS
8	in November, that was not the case?
9	MR. FRY: I don't believe so.
10	MR. WALDMAN: And that, as far as
11	you recall, you were not advised until January,
12	and as far as you're aware, the Minister was not
13	advised until January as well?
14	MR. FRY: To my knowledge, to my
15	recollection, I only found out about the CSIS
16	visit in early January, and I then brought it to
17	the Minister's attention.
18	MR. WALDMAN: You would agree with
19	me that your view was that this is something that
20	you ought to have been advised of before it
21	happened?
22	MR. FRY: Before the visit
23	happened?
24	MR. WALDMAN: Yes.
25	MR. FRY: The way I was briefed

1	was this actually was a visit it was sort of
2	ordinary housekeeping not a housekeeping, but
3	ordinary intelligence matters, and I wouldn't be
4	briefed if the intelligence agencies were normally
5	meeting with another country.
6	But, I mean, if you told me this
7	was specific to Mr. Arar, I would have said, yes,
8	I think we should have known about it, but I was
9	not briefed that way. I was told this was an
10	intelligence agency to intelligence agency
11	meeting, in which case that doesn't fall under our
12	specific
13	MR. WALDMAN: But this morning
14	you said you were upset when you weren't briefed
15	about it?
16	MR. FRY: I said that, yes, we
17	weren't happy that we only found out about it two
18	months after the fact considering that, you know,
19	the case of Mr. Arar was discussed at that
20	meeting.
21	MR. WALDMAN: So do you have any
22	explanation as to why you weren't advised about
23	the meeting?
24	MR. FRY: I don't know. Maybe
25	because my main source of information on Mr. Arar

1	was in liaisons with Mr. Pardy and Mr. Pardy
2	didn't know about the visit until around then so
3	that is when I found out about the visit.
4	MR. WALDMAN: Well, aren't there
5	other officials in I mean, clearly the people
6	in ISI and ISD were aware of the visit. Don't you
7	have channels of communication with them? I mean,
8	was this a breakdown in communication between I
9	mean, they were aware. They wrote an e-mail
LO	saying the Minister was aware.
L1	MR. FRY: Yes.
L2	MR. WALDMAN: Was this not a
L3	breakdown in communication between ISI and ISD,
L4	especially in light of the fact that they
L5	suggested that it wasn't such a good idea in view
L6	of Mr. Arar's situation?
L7	MR. FRY: Yes. I think it's fair
L8	to say I would have liked to have been informed
L9	about this sooner than we were.
20	MR. WALDMAN: As I pointed out to
21	you just a second ago, there is a suggestion in
22	the material that the DFAIT officials didn't want
23	CSIS to go to Syria. If you had been apprised of
24	the trip, would you have opposed the visit of CSIS
25	to Syria at that time?

1	MR. FRY: You are asking me to
2	speculate on that.
3	MR. WALDMAN: Okay. So you are
4	not
5	But clearly there are other
6	officials in the department that were opposed to
7	CSIS going
8	MR. FRY: Yes, I did see that in
9	the documentation.
LO	MR. WALDMAN: Now, I'm going to
L1	tread on to the area of this newspaper report,
L2	Mr. Commissioner, so if there is a I have tried
L3	to frame the question in a way that I think is
L <b>4</b>	appropriate.
L5	This newspaper report suggests
L6	that one of the purposes of the trip to Syria was
L7	to engage in an information-sharing agreement. We
L8	don't have confirmation of that fact, but if we
L9	assume for a second that this information in the
20	newspaper report is correct, are you aware of the
21	fact that the Minister of Foreign Affairs is
22	supposed to be consulted about the human rights
23	record before information-sharing agreements are
24	entered into with foreign countries?
25	MR. FRY: Well, my understanding

1	of the process because I have seen it in other
2	situations the Solicitor General writes to the
3	Minister of Foreign Affairs and asks I mean
4	under the Act the Minister of Foreign Affairs has
5	to agree to these types of agreements or these
6	types of Memorandums of Understanding.
7	Sorry, what is your
8	MR. WALDMAN: I'm asking you if
9	you are aware of whether this process was engaged
10	in this particular
11	MS McISAAC: Well, that would be
12	confirming whether or not the information is
13	correct, would it not?
14	THE COMMISSIONER: Mm-hmm. But I
15	think what you are able to say is that you are
16	aware that the process generally is if there is to
17	be an agreement for information-sharing then the
18	Minister must be consulted under the Act.
19	MR. FRY: Exactly.
20	MR. WALDMAN: So we can
21	assume that you just testified that you weren't
22	aware that CSIS was neither you nor the
23	Minister were aware that CSIS was going to Syria
24	in November 2003.
25	Is that correct?

1	MR. FRY: November
2	MR. WALDMAN: 2002.
3	MR. FRY: That I wasn't aware
4	MR. WALDMAN: that CSIS was
5	going to Syria in 2002 until January, until after
6	the trip?
7	MR. FRY: That's correct.
8	MR. WALDMAN: Neither you nor the
9	Minister were made aware in any way of this trip
10	prior to it happening?
11	MR. FRY: That's correct.
12	MR. WALDMAN: So if the purpose of
13	the well, I suppose I have made my point.
14	Pause
15	MR. WALDMAN: I just want to
16	clarify your evidence about when you briefed
17	Graham about the CSIS visit to Syria.
18	MR. FRY: I think it was in early
19	January that I briefed the Minister on this, in
20	the lead-up to the Shara'a call.
21	MR. WALDMAN: Are you sure about
22	that, because I believe the evidence of your
23	Minister was it was later in the year that he was
24	made aware of this visit.
25	MR. FRY: It would have been

1	before the Shara'a call, and the Shara'a call, I
2	think, was around the 16th of January.
3	MR. WALDMAN: January.
4	Pause
5	MR. WALDMAN: Moving on to another
6	topic, your evidence is that you were aware early
7	on that there was this information that the
8	Syrians had, this belief that CSIS did not want
9	Mr. Arar back.
10	MR. FRY: Right.
11	MR. WALDMAN: Indeed, if I
12	understood your evidence correctly, one of the
13	purposes of the phone call in January was for the
14	Minister to make it clear that Canada wanted
15	Mr. Arar back.
16	Is that fair?
17	MR. FRY: Yes, that was one of the
18	points that we made in the call.
19	MR. WALDMAN: But yet we know from
20	the evidence that was put before you this morning
21	that this problem persisted and the Syrians would
22	continue to repeat their belief that CSIS did not
23	want Mr. Arar back.
24	Are you aware of any other

communications from any of the security services

25

1	that might have led them to continue to be in that
2	belief, or am I treading on prohibited terrain
3	here? I don't know.
4	MR. FRY: I'm not aware of any.
5	MR. WALDMAN: All right. But it
6	is obvious that there was a serious communication
7	problem.
8	That's fair?
9	MR. FRY: Yes, and it persisted,
10	to our frustration.
11	MR. WALDMAN: Right. And that is
12	precisely why you decided that we needed this
13	letter that came from either came from the
14	Solicitor General and your Minister clarifying the
15	position?
16	MR. FRY: Yes.
17	MR. WALDMAN: Mr. Pardy
18	testified and you both agreed this was
19	extremely important?
20	MR. FRY: Yes.
21	MR. WALDMAN: So is it not fair to
22	say that the failure to get this letter was a
23	point of major frustration to you?
24	MR. FRY: I think what I would say
25	to that, Mr. Commissioner, is that we Gar Pardy

1	and I would brainstorm, we would brainstorm and
2	try to find ways to try to do what we could to
3	bring Mr. Arar home. We thought about all kinds
4	of different possibilities, from sending
5	parliamentarians there to phone calls to letters.
6	At this time, we are talking
7	around January, February, March, April, the one
8	message we kept getting back was that there was
9	this view amongst the Syrians that they were
10	getting conflicting messages from Canada.
11	So we were trying to find ways to
12	solve that. One of them we thought was either a
13	letter directly from the Solicitor General, which
14	I had actually advised and Marlene Catterall was
15	trying to get, and then a joint letter, as you
16	say, to try to find different ways of projecting
17	to the Syrians that Canada as a whole wanted him
18	back, there was no impediment to his return, and
19	we wanted everyone to sign on to that.
20	I guess one thing I would say, and
21	I think I said it in my previous testimony, is I
22	was a little bit suspicious that the Syrians could
23	be just using this as a bit of an excuse because
24	it is a very convenient excuse to say, "Well, it
25	is your fault he is not coming back." So it was

1	either that or
2	Because when the Foreign Minister
3	tells you in no uncertain terms that this is the
4	position of the Government of Canada, I found it
5	bizarre that two months later they continued to
6	think that there was a mixed message.
7	MR. WALDMAN: Of course, you
8	weren't privy to the conversations that might have
9	been going on at other levels?
10	MR. FRY: That's true.
11	MR. WALDMAN: Right. In terms
12	of it possibly being an excuse, that was just
13	speculation.
14	MR. FRY: Yes.
15	MR. WALDMAN: You had no knowledge
16	one way or the other?
17	MR. FRY: I tried to inform myself
18	about other conversations, because I did speak to
19	Wayne Easter office's and I would ask their
20	office, "Are there other communications going on?"
21	And we were consistently reassured at this time
22	that there were no parallel discussions ongoing.
23	MR. WALDMAN: Okay. But at
24	least the information you were getting in March
25	and April and May was that there was this mixed

1	message. At least the Syrians were communicating
2	to you that they were still confused and that
3	they still had a belief that CSIS didn't want
4	Mr. Arar back?
5	MR. FRY: Well, the Ambassador had
6	said that. I can't remember if there were other
7	sources of that.
8	But, yes, I think you are correct
9	to say that there was that impression at that time
10	still this whole concept of mixed messages.
11	MR. WALDMAN: If I
12	remember correctly, Mr. Pillarella mentioned it in
13	his report of the MP visit as well. So this was
14	in April.
15	MR. FRY: Okay.
16	MR. WALDMAN: So at least as late
17	as April you were getting this message.
18	MR. FRY: Right.
19	MR. WALDMAN: Don't you think it
20	was incumbent and CSIS, I understand, according
21	to Gar Pardy's memo, denied they had made this
22	statement.
23	Is that correct?
24	MR. FRY: Yes, that's correct.
25	You mean that they were talking to them at the

1	same time as we were.
2	MR. WALDMAN: And the Gar Pardy
3	memo says that CSIS denied that they had ever told
4	the Syrians they didn't want Mr. Arar back.
5	MR. FRY: Right.
6	that?
7	MR. FRY: I wasn't aware of the
8	technical I saw in preparing for the inquiry
9	the memo from Myra Pastyr-Lupul about the
10	discussion Marlene Catterall had with the
11	Ambassador. It is first time I learned about the
12	specific about language issue about, you know,
13	CSIS had said we had no interest in him and the
14	Syrians had interpreted we don't want him back.
15	Before the inquiry I had never heard of that sort
16	of nuance of language.
17	My understanding, all I kept
18	hearing was that your security folks have told us
19	that, you know, they don't want him back, and your
20	Foreign Minister is telling us that you do want
21	him back so, you know
22	MR. WALDMAN: But I was asking
23	a slightly different question. Maybe I wasn't
24	clear.
25	MR. FRY: Sorry.

1	MR. WALDMAN: The question I was
2	asking was: What was your understanding of CSIS's
3	response when the allegation was put to them.
4	"The Syrians have told us you said don't want Arar
5	back." What was your understanding of their
6	response?
7	MR. FRY: Well, I had to take them
8	at their word. The question was put to them and
9	they said they weren't
10	MR. WALDMAN: So that's the point.
11	As far as you understood, CSIS denied ever
12	communicating to the Syrians that they didn't want
13	Mr. Arar back?
14	MR. FRY: Yes.
15	MR. WALDMAN: Okay. So here we
16	have a situation: The Syrians are telling you
17	that CSIS is saying we don't want Mr. Arar back.
18	You and Mr. Pardy believe it is important that
19	this be clarified, and CSIS is saying, "We never
20	said that" or "We don't have any opposition to
21	Mr. Arar coming back."
22	Don't you think that CSIS, given
23	this clear misunderstanding which you and
24	Mr. Pardy identified as being an impediment to
25	Mr. Arar's return, don't you think they had an

1	obligation to clarify this?
2	MR. FRY: Well, that is why we
3	were trying to get a joint letter, is to try to
4	MR. WALDMAN: Right. You were
5	trying to get it but CSIS blocked it.
6	Isn't that fair to say?
7	MR. FRY: Well, I don't know who
8	blocked it. The RCMP and CSIS to be honest
9	with you, in the beginning, if I can take you back
10	to November-December, because we went to both CSIS
11	and the RCMP in November and December and CSIS had
12	basically said, you know, they didn't even know of
13	Mr. Arar and they had no interest, and the RCMP
14	seemed to be the people saying he was a person of
15	interest.
16	So, you know, at that time, CSIS
17	wasn't even a player and now, all of a sudden, I
18	mean, later on, now CSIS seems to be a player.
19	We took them at face value that
20	they hadn't said anything like that.
21	MR. WALDMAN: I understand that.
22	But CSIS and the RCMP are both under the Solicitor
23	General's office?
24	MR. FRY: Right.
25	MR. WALDMAN: And you approached

1	the Solicitor General's office and tried for
2	months to get a letter and were haggling over
3	wording and never got a letter.
4	My question to you is: Wouldn't
5	you agree with me that given that we identified
6	that there was this problem with respect to the
7	perception of CSIS' desire, that it was incumbent
8	upon the Solicitor General to clarify this in some
9	way or another?
10	MR. FRY: Well, what we were
11	trying to do, Mr. Waldman, was, in fact I
12	mean, these guys are you know, CSIS is very
13	secretive. I in fact hoped that even if they
14	didn't tell me about it or they didn't tell Gar
15	Pardy about it that this was being done, that if
16	they thought there was some confusion caused
17	that it was being clarified even if I didn't know
18	about it.
19	MR. WALDMAN: Right. So your
20	expectation was that the Solicitor General should
21	have clarified this confusion at some point or
22	another because this was
23	MR. FRY: Or in fact that maybe
24	they were doing it but they just wouldn't tell
25	little ol' me about it, that kind of thing.

1	MR. WALDMAN: In other words, all
2	I want you to agree with me is that there should
3	have been, in your view, some effort on the part
4	of the Solicitor General to clarify this
5	misunderstanding because it was an impediment to
6	Mr. Arar's return. Whether it happened and you
7	didn't know about it or not is another issue.
8	But would you agree with me that
9	was something they should have done?
10	MR. FRY: Yes. I mean, we were
11	hoping that the Solicitor General would
12	MR. WALDMAN: Thank you very much.
13	We were dealing with the issue of
14	the are you aware if you are not aware I
15	will move on that the Ambassador obtained
16	copies of the statements that Mr. Arar gave,
17	according to him under torture. Were you aware
18	that those statements were obtained by the
19	Ambassador and brought back to Canada and shared
20	with the RCMP and CSIS?
21	MR. FRY: I wasn't aware that
22	they were shared. I was aware of this one-page
23	so-called
24	MR. WALDMAN: Confession.
25	MR. FRY: Confession.

1	MR. WALDMAN: So you were aware,
2	but you weren't aware of the information-sharing?
3	MR. FRY: No.
4	MR. WALDMAN: Then it makes no
5	sense to ask you about anything Mr. Pardy told you
6	about why he shared the
7	Did Mr. Pardy discuss the
8	statements with you in any way at all?
9	MR. FRY: No. It was done
10	without I wasn't aware of that.
11	MR. WALDMAN: Did you get any
12	briefings from the RCMP or the Solicitor General
13	about Mr. Arar?
14	MR. FRY: It wasn't really
15	appropriate. I mean, my counterparts are the
16	Minister's office and the Minister's staff. It
17	would sort of be like I mean it is going
18	underneath them and getting briefings from their
19	officials. In some ways it wasn't really
20	appropriate for me. My way to go was sort of
21	through the Minister's office.
22	MR. WALDMAN: I'm going to stop
23	for one second.
24	Pause
25	MR. WALDMAN: Mr, Arar just wanted

1	me to mention to you one thing that he mentioned
2	to me during the break. Tab 693, volume 8.
3	Because you said that your concern
4	about clarifying what happened on August 14th was
5	because Mr. Arar said during the course of the
6	press conference that during that visit he was
7	you know, he told the consul that he was beaten.
8	I would put it to you that if you
9	look through here, there is no mention in this
10	document, or there was no mention in his statement
11	of the August 14th
12	MR. FRY: I actually didn't say
13	that. I said that in the chronology that they put
14	out before his press conference, in that
15	chronology when they talk about August 14th they
16	had in there that is where that was from.
17	Because, if you recall, I made my
18	inquiries about this even before his press
19	conference.
20	MR. WALDMAN: Right.
21	MR. FRY: So it was in this
22	chronology document that was put out that I saw
23	I mean, I saw this sort of coming and I was
24	worried that at the press conference this
25	potentially would

1	MR. WALDMAN: Do you not recall a
2	conversation you had with Mr. Arar before the
3	press conference where you asked him whether he
4	was going to raise the August 14th consular visit?
5	MR. FRY: Yes, I do.
6	MR. WALDMAN: Is it not correct
7	that he told you he wasn't going to raise the
8	August 14th meeting during his press conference?
9	MR. FRY: I don't know if he told
10	me he wasn't going to raise it.
11	The reason I raised it was because
12	it was in the chronology. That was also the
13	reason that Mr. Arar and I spoke, because I asked
14	him about this, and I don't recall if he told me
15	he wasn't going to raise it.
16	MR. WALDMAN: But you did have a
17	conversation about it?
18	MR. FRY: Yes.
19	MR. WALDMAN: But it is fair to
20	say that in his press conference there was no
21	mention of that?
22	MR. FRY: I would have to look,
23	but you are probably right.
24	MR. WALDMAN: Thank you.
25	THE COMMISSIONER: Ms McIsaac?

1	You don't need to go through that.
2	MR. WALDMAN: Okay.
3	EXAMINATION
4	MS McISAAC: Mr. Fry, I just want
5	to ask you a few questions of clarification, and
6	the first one relates to the understanding that
7	you had, and hence the Minister's office had, upon
8	Mr. Arar being located in Syria and the first
9	consular visits occurring.
10	If you wish, you could take a look
11	at the reports for the first two consular visits.
12	The first one is to be found at tab 130, and
13	you'll find the second one at tab 144 my
14	apologies, 147.
15	Now, I just want to be have you
16	got those?
17	MR. FRY: Yes.
18	MS McISAAC: I just want to be
19	clear. Upon receiving copies of the first
20	consular visit reports, and I understood you to
21	say that you did receive those eventually
22	perhaps not immediately.
23	MR. FRY: Right.
24	MS McISAAC: Did you receive
25	briefings concurrent with the consular visits from

1	Mr. Pardy?
2	MR. FRY: Yes, I would I mean,
3	I would talk to Gar Pardy. In fact, Gar Pardy was
4	more of my source of information than the actual
5	documents. I would rely on Gar Pardy to give me,
6	you know, a bit of a brief and an impression.
7	Sometimes things are not you don't always get,
8	you know, the full story on paper, so I would talk
9	to Gar Pardy and ask him for his impression
10	MS McISAAC: All right. So would
11	you have spoken to Mr. Pardy on or about October
12	23 with respect to the first consular visit?
13	MR. FRY: Yes, probably, the 23rd
14	or 24th.
15	MS McISAAC: All right. And what
16	is your recollection of what you were told about
17	Mr. Arar's general state of health and
18	comportment?
19	MR. FRY: I think basically I was
20	told that Mr. Arar looked fine. He was
21	disoriented. He had, you know, been in detention
22	for a while but that we were generally positive
23	and we were happy that we got to see him and that
24	Mr. Arar basically looked fine and looked in
25	reasonably good health.

1	MS McISAAC: Then the second
2	consular visit took place on October 29, and
3	that's at tab 147. Again, would you have had a
4	discussion with Mr. Pardy on or about October 29,
5	when the second consular visit took place?
6	MR. FRY: I probably would have
7	talked to him sometime after that as well. I
8	mean, we would have we wanted to make sure we
9	were getting regular access and getting in to see
10	him, so we were quite optimistic of the fact that
11	we had seen him, you know, again, a week later.
12	MS McISAAC: And, again, what was
13	the sense that you got from your discussion with
14	Mr. Pardy as to the assessment of Mr. Arar's
15	general state and condition?
16	MR. FRY: That it was improving,
17	in fact, that he was looking better. I always
18	want to be careful in what I'm saying because
19	Mr. Arar was, you know, in detention in Syria, so
20	I don't want to say that I was never told that
21	he was, you know, perfect, but that he looked
22	fine, he was in good health, he was actually I
23	mean, if you can see in this one, they actually
24	start to say he did not seem to be disoriented
25	anymore, he seemed, you know, able to speak more

1	freely, appreciated the visits, that the visits
2	were very helpful to him. And we were just happy
3	that we were getting in, because I can tell you in
4	some other consular cases, the countries don't
5	even let us in to see the people, and here we've
6	gotten in twice, you know, within a matter of a
7	week.
8	MS McISAAC: All right. And then
9	based on the information that you were receiving,
10	did you or the Minister believe that Mr. Arar was
11	being mistreated in the sense of being tortured by
12	the Syrian authorities?
13	MR. FRY: No, we did not think so.
14	MS McISAAC: Did you have any
15	information conveyed to you to the effect that
16	there was any belief that Mr. Arar had been
17	tortured prior to the first consular visit? And
18	by "tortured" I mean systematically abused for the
19	purpose of obtaining information from him?
20	MR. FRY: No, we did not believe
21	that to be the case.
22	MS McISAAC: Now moving on to a
23	separate topic. Could I ask you to be provided
24	with tab 7 of the new Book of Documents.
25	This is the document that

1	Mr. David took you to, called "Action Memorandum
2	to the Minister." There's reference here to a
3	February 24th briefing, second paragraph under the
4	heading "Background,"
5	"You will recall"
6	presumably meaning the
7	Minister
8	" that on February 24
9	officials briefed you and several
10	members of your staff on the
11	matter and distributed a deck
12	detailing the background and the
13	initiatives the department would
14	be taking to ensure that there was
15	closer cooperation between
16	government agencies."
17	Did you attend such a briefing,
18	Mr. Fry?
19	MR. FRY: I can't remember
20	attending that briefing because I I don't
21	remember this whole initiative. I mean, there
22	could have been there could have been some sort
23	of briefing on you know, with Gar on consular
24	matters, but, I mean, when I looked at this
25	document, it was a bit of a surprise to me, this

1	initiative about, you know, ensuring
2	interdepartmental coherence and management of such
3	files. I mean, there's nothing in here that I
4	would disagree with or that we would have
5	disagreed with, I think we would have agreed with
6	most of it, but I frankly don't remember any sort
7	of briefing or debate around this particular
8	this initiative.
9	MS McISAAC: And in the course of
10	preparing for your testimony today, did you have
11	occasion to inquire as to whether other members of
12	the Minister's staff recalled the briefing?
13	MR. FRY: I did speak to some, if
14	not all members of the Minister's staff, and no
15	one else remembers. I mean, sometimes,
16	Ms McIsaac, we would have a departmental briefing
17	and there would be several items on the agenda.
18	There could have been at some point some
19	discussion about, you know, consular affairs and
20	sort of interdepartmental cooperation, but not
21	not to this extent.
22	MS McISAAC: All right. Now, yet
23	another topic.
24	Could I ask the registrar to give
25	you tab 332, and you'll recall again. Mr. David

1	took you to this, and it relates to the visit of
2	Ms Catterall and Mr. Assadourian to Syria.
3	And you'll see just wait a
4	minute until everybody gets their documents.
5	Pause
6	There is a statement there:
7	"It may not be a bad thing as
8	this allows us to keep our
9	distance and make this a
10	Parliamentary initiative."
11	And in response to a question from
12	Mr. David, you made the point that it might be
13	useful to have a separate parliamentary initiative
14	as opposed to a governmental initiative.
15	I'm wondering if you could just
16	elaborate a bit for the Commissioner on why a
17	parliamentary delegation not directly associated
18	with the government might be a useful initiative?
19	MR. FRY: I think sometimes I
20	mean, parliamentarians, they can speak more
21	freely, they can there's things that they can
22	do that, you know, if someone from the government,
23	a Foreign Minister or other Minister you know,
24	they speak on behalf of the Government of Canada,
25	they don't always have the same freedom. I think

1	they're also viewed with maybe a little bit more
2	independence, they're sort of not tied to the
3	government line.
4	I mean, I think that's all I can
5	really say on that.
6	MS McISAAC: Okay. Just one point
7	of clarification, and there's no document for
8	this, and it may be my misunderstanding.
9	But did I understand you to say
10	or perhaps a better way of putting it is, did
11	Minister Graham know, at or about the time that it
12	happened, that the decision had been taken to have
13	a letter sent by the Prime Minister via Senator de
14	Bané, rather than having his letter sent?
15	MR. FRY: I don't think he would
16	have known about that.
17	MS McISAAC: He wouldn't have
18	known?
19	MR. FRY: No.
20	MS McISAAC: When would he have
21	become aware of the change in strategy?
22	MR. FRY: He left on holidays at
23	the beginning of July and we the idea to send
24	Senator de Bané and the change of letter and
25	things like that actually occurred sort of in the

1	first week of July. So I probably would have
2	briefed him sort of after the fact that, you know,
3	actually, Senator de Bané is going to go, we're
4	sending him to Syria, and now we're going to get a
5	letter from the Prime Minister, you know, it's as
6	high as you can go, and we're going to do that.
7	So the Minister wouldn't have been
8	made aware right away. He would have probably
9	been made aware after the fact.
10	MS McISAAC: But because he was
11	away on holidays at the time
12	MR. FRY: Yes.
13	MS McISAAC: Thank you.
14	Thank you. Those are my
15	questions, sir.
16	THE COMMISSIONER: Mr. David?
17	MR. DAVID: Two areas to clarify.
18	EXAMINATION
19	MR. DAVID: Mr. Fry, if I could
20	bring you to tab 123, Mr. Fry.
21	This is a report that is coming
22	from the ambassador the Canadian ambassador in
23	Damascus. It's dated October 22nd of 2002. Now,
24	I'm not saying that you saw this document let
25	me ask you, did you ever see this document, first

1	of all? It's a report from Ambassador Pillarella
2	as to the circumstances in which the Syrians
3	confirm that Mr. Arar is in Syria.
4	MR. FRY: Yes, I would have seen
5	this at some point, but probably not until a
6	little while after.
7	MR. DAVID: Can we narrow down
8	are we talking about weeks or months after the
9	fact that you would have seen this
10	MR. FRY: I would have
11	MR. DAVID: This is going to
12	several people. You're not on the list.
13	MR. FRY: No.
14	MR. DAVID: It's going to Gar
15	Pardy, for one, it's going to Dan Livermore, it's
16	going to consular JPE, emergency consular affairs
17	JPO, consular office, it's also going to ISI, GMD
18	and MJM so
19	MR. FRY: I probably would have
20	seen it, I mean, within a week to ten days, you
21	know, after the actual date or somewhere in
22	that vicinity.
23	I only say that because I think I
24	said earlier, with the C-4s, the way it worked, I
25	didn't receive them as e-mail. In fact,

1	sometimes I mean, if I wasn't if it weren't
2	directly addressed to me, they sort of had to be
3	passed along by others in the department. So if
4	someone else in here would have had to pass along
5	the message to me, and so this may have come up,
6	sort of a few days later, a week later, or
7	sometime, and then it would have been part of, you
8	know, a pile of C-4s that would come up.
9	This may have come to me from the
10	sort of the Middle East branch of Foreign
11	Affairs, and so I would have probably seen it
12	within a week to 10 days afterwards because we
13	were trying to I was asking for information on
14	it.
15	MR. DAVID: You've just been
16	referred, Mr. Fry, to the first two consular visit
17	reports
18	MR. FRY: Yes.
19	MR. DAVID: tab 130, and the
20	point being made is that, in itself, if you read
21	the reports, there's nothing that seems to
22	indicate any live concern for mistreatment and
23	that you agreed with that proposition.
24	MR. FRY: Yes.
25	MR. DAVID: So I'm asking you now,

1	let's look at the language here in this report,
2	and I'm going to ask you the same question: Would
3	a reasonable person, seeing this kind of language,
4	not think of I'm not saying that it was a clear
5	conclusion but would you not be concerned with
6	the issue of torture seeing the message that is
7	being relayed by the ambassador on October 22?
8	The first thing the ambassador
9	says is:
LO	"In a 45-minute meeting
L1	with
L2	somebody
L3	" he confirmed the
L4	information"
L5	MS McISAAC: Sorry.
L6	Mr. Commissioner, counsel has actually distributed
L7	a far less redacted copy of that document this
L8	morning. It's in a letter from Ms Verma that was
L9	delivered to me this morning.
20	MR. DAVID: This is a very dynamic
21	process. It's changing by the hour.
22	Could I have the benefit of
23	MS McISAAC: We didn't give you a
24	copy?
25	MR. DAVID: Well. no. not vet. I

1	haven't been at the office, Ms McIsaac, all day,
2	if you haven't noticed. So that's great. That's
3	very helpful.
4	Let's just look at the language,
5	and it's the first three paragraphs only I want to
6	bring you to.
7	"In a 45-minute meeting with
8	General Hassan Khalil"
9	Actually, we should file this,
10	Mr. Commissioner, at this point.
11	THE COMMISSIONER: Why don't we
12	there's going to be more of these. Why don't we
13	do it in an organized
14	MR. DAVID: Let's not file it.
15	Let's just refer to it.
16	THE COMMISSIONER: Does that not
17	make sense? Is there a number that fall into this
18	category, or just this document?
19	MS McISAAC: The letter says that
20	it will be reviewed with the ambassador tomorrow.
21	So I assume that it's one that should have been
22	but didn't make it into the booklet of documents
23	for the ambassador. But I'm not certain what the
24	plan is.

25

THE COMMISSIONER: Let's mark it

1	if you're referring	to it. What's the next
2	number?	
3	THE	REGISTRAR: 137.
4	THE	COMMISSIONER: 137.
5		EXHIBIT NO. P-137: Newly
6		redacted version of P-42, tab
7		123
8	MR.	DAVID: Maybe we could correct
9	that record tomorrow	v, if it's easier.
LO	THE	COMMISSIONER: All right. Go
L1	ahead.	
L2	MR.	DAVID: Mr. Fry,
L3		"In a 45-minute meeting with
L4		General Hassan Khalil, Head
L5		of Military Intelligence, he
L6		confirmed the information I
L7		had received the night before
L8		from"
L9	<u>\$</u>	somebody
20		" that Arar is now in
21		Syria and he is being
22		interrogated."
23	So t	the fact is, Canadian
24	authorities are gett	ting information from Syria
0.5	that the Syriang are	a confirming Arar's in Syria

1	and presumably within a day. And within a day,
2	the guy arrives in Syria, and he's being
3	interrogated.
4	And the second paragraph says:
5	" Khalil said that Arar
6	appeared at the Jordan/Syrian
7	border yesterday without
8	warning, escorted by
9	Jordanian officials who
10	handed him over."
11	The guy's in custody. It's clear
12	he's not there of his own free will.
13	"When I asked the General
14	whether the Americans had not
15	forewarned him of Arar's
16	arrival"
17	We'll see the answer in another
18	life, I guess.
19	Third paragraph:
20	"According to Gen Khalil,
21	Arar has already admitted
22	that he has connections with
23	terrorist organizations"
24	So the guy's just arrived in
25	Syria, and wouldn't you know it, the first thing

1	he does is he is admitting his membership in
2	terrorist organizations.
3	It's a rhetorical question. But I
4	think you'll agree with me, it was clearly not in
5	Mr. Arar's interests to admit to General Khalil or
6	to the military intelligence unit that he is a
7	member of a terrorist organization in Syria; would
8	you agree with me?
9	MR. FRY: Sure.
10	MS McISSAC: The connection goes
11	with
12	MR. DAVID: Would you agree with
13	me?
14	MR. FRY: Yes. I'm sure it would
15	not be in his interests.
16	MR. DAVID: And so he says:
17	" (the General alluded to
18	Pakistani groups) and they
19	would continue to interrogate
20	him."
21	Do you see that?
22	MR. FRY: Yes.
23	MR. DAVID: So it goes on and
24	says:
25	"In the General's view, this

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1	admission obviously excluded
2	any return to Canada. He
3	added that Arar would be
4	permitted to return to Canada
5	only if it were proven that
6	he had no connections with
7	terrorist activities, an
8	unlikely occurrence, given
9	his alleged admission"
10	Now, let's you know, I'm not
11	asking you to go very far in the interpretation of
12	this language. Would not a reasonable person, who
13	somehow is reasonably informed of Syria's human
14	rights records, of the structure of its
15	intelligence organizations, not read into this
16	that Arar's confessing and he's probably doing it
17	in circumstances where he's under duress?
18	MR. FRY: Well, I mean, the one
19	thing I would sort of reframe because there was
20	this talk about how, you know, they had him for 24
21	hours. But I think I don't think anyone really
22	believed that they only had him for 24 hours. I
23	mean, I think our suspicion all along was that he
24	had been in Syria longer than 24 hours. So no one
25	was going to contradict the Syrians at their word

Τ.	that they had just got him the hight before.
2	I think the missing if you had
3	to ask people, and you could ask other people from
4	Foreign Affairs, but I think there was always a
5	suspicion that he had been in Syria much longer
6	than just the U.S., Jordan and Syria were the
7	three choices and I think a lot of people thought
8	he had actually arrived in Syria sooner. So we
9	didn't believe that this was something that had
10	happened in just 24 hours.
11	MR. DAVID: So let's assume, in
12	your scenario, that he had been in Syria for two
13	weeks. You agree with me he's not been there
14	since before October 8, the day he was deported
15	from the United States.
16	Let's say he had been there for
17	two weeks, still, in those circumstances, for Arar
18	to admit to participation and belonging to
19	terrorist organizations, Pakistani groups are
20	referred to, wouldn't that indicate to you, a
21	reasonable person, reasonably informed about the
22	situation in Syria
23	MR. FRY: Right.
24	MR. DAVID: about the human
25	rights record, about how its various intelligence

1	branches operate, would a reasonable person not
2	have concluded that this person is possibly being
3	tortured to get this information?
4	MR. FRY: I wouldn't conclude from
5	this that he was being tortured.
6	MR. DAVID: Would you agree with
7	me that there is a reasonable grounds here to be
8	concerned about the issue of torture?
9	MR. FRY: I mean, to me, here, I
10	mean, the fact that he admits that he's linked to
11	some organization, I mean, we would we always
12	took it with a grain of salt. I mean, just
13	because he's in the custody of the Syrians just
14	because the Syrians say that he said this, we
15	weren't necessarily going to believe it. Just
16	like the so-called confession.
17	So whether he had just said it to
18	sort of get people off his back, whether it was
19	true, I mean
20	MR. DAVID: Well, if it was true,
21	was it in his interests to admit it was true?
22	MR. FRY: No.
23	MR. DAVID: And if he said it to
24	get people "off his back," to use your expression,
25	would that also not be a scenario where torture

1	was or abuse, human rights abuses, was an
2	operating assumption that was viable
3	MR. FRY: Well, you're asking me
4	to speculate on it. All I can tell you is from my
5	initial reading of this I would not determine that
6	this was a case of torture.
7	MR. DAVID: And that's going back
8	to the time you read this document in October of
9	2002?
10	MR. FRY: Yes. I mean, I also
11	I want to put some context on this.
12	I was talking to our consular
13	people, Mr. Pardy and others, who were verbally
14	briefing me and giving me assurance I was
15	relying on their expert advice and expert opinion.
16	I had been at Foreign Affairs for
17	eight months. I'm not an expert on consular
18	matters or matters dealing with these kind of
19	states. So I would read these, sort of, for
20	context, but I was relying on their expert
21	opinions in terms of what was actually happening,
22	and at no time was I told that people suspected he
23	was being tortured.
24	MR. DAVID: And with the benefit
25	of hindsight and with what you have learned since

1	that time, since October 2002, if you were to read
2	this kind of language today for another case,
3	would you be concerned about the treatment of that
4	Canadian at the hands of the Syrian authorities?
5	MR. FRY: Well, anyone who's at
6	the hands of the Syrians now, I think with what we
7	know about Mr. Arar's situation, with what he's
8	told us, I think we would have to be concerned.
9	MR. DAVID: Thank you.
10	I just the second matter I just
11	want to clarify has to do with the issue of the
12	phone calls or the phone call, I should say, to
13	the Syrian counterpart, Foreign Minister Shara'a.
14	This morning in chief we
15	reviewed I'd like to bring you to tab 8, which
16	is where I brought you in the Pillarella
17	documents, and you recall I took you, Mr. Fry, to
18	the language wherein, supposedly, the issue of the
19	CSIS visit was brought to the attention of the
20	Minister, Minister Graham, and you've given your
21	evidence in that regard, and I certainly don't
22	want to go back on it.
23	I simply bring you to the language
24	in the first paragraph, more than halfway down.
25	It says:

1	"This issue went before the
2	Minister on November 18."
3	Are you with me?
4	MR. FRY: Yes.
5	MR. DAVID: And I brought you to
6	that language.
7	It goes on. It says:
8	"He did not wish to defer the
9	visit; however, he indicated
10	that he wished to have a full
11	report on the visit and the
12	discussions with the Syrians
13	• • • "
14	And here's the part I want to draw
15	your attention to. It says:
16	" before he communicated
17	with the Syrian Foreign
18	Minister."
19	MR. FRY: Right.
20	MR. DAVID: So it's clear and
21	this is dated November 19 of '02, and so there is
22	an allusion here being made to the possibility
23	or there's a contemplation, certainly, that your
24	Minister will be calling Minister Shara'a.
25	MR. FRY: Right.

1	MR. DAVID: And I want to bring
2	you to two other documents that deal with this
3	call that never occurred in this time frame, and
4	the second document would be tab 12 of your the
5	Fry documents, tab 12, and that would be P-132.
6	I'm sorry, tab 12 of the
7	Pillarella documents. I'm getting confused in
8	these documents, Mr. Commissioner. So tab 12 of
9	the Pillarella documents.
10	Are you with me, Mr. Fry?
11	MR. FRY: Yes.
12	MR. DAVID: Okay. So it's a
13	message that is coming from Damascus. Again, it's
14	from Ambassador Pillarella. This one is dated
15	about a month later. It's December 12. And in
16	it, Ambassador in the first sentence,
17	Ambassador Pillarella refers to the "cancelled
18	phone call between MINA and Foreign Minister
19	Shara'a."
20	And paragraph 4 he says:
21	"My recommendation is that
22	indeed we should try to
23	arrange a call between Graham
24	and Shara'a." (As read)
25	So that's in December.

1	And then the final document I'll
2	bring you to is tab 261, and that would be in
3	volume 3. And this is a memo that is going to
4	O-MINA. So it is directed, I would imagine, to
5	you; is that a fair statement? Or to the Office
6	of the Minister?
7	MR. FRY: Yes, directed to the
8	Office of the Minister.
9	MR. DAVID: And it's dated
10	December 18. And it's in this document, and you
11	referred to it in your testimony, the fact that
12	it's being assessed that calling the Foreign
13	Minister is going to be difficult because he's
14	away, and that's at paragraph 3. He's travelling
15	a lot, he's going to Britain, so let's, instead of
16	you trying to call the Foreign Minister, let's
17	call in the Ambassador, Ambassador Arnous,
18	instead.
19	So we see that, and we know, we've
20	heard from your testimony, that, in fact, the
21	phone call occurred January 16.
22	MR. FRY: Yes.
23	MR. DAVID: The only point I want
24	to clarify with you is that this morning you, more
25	or less, evoked the explanation that's being given

1	in the December 18 memo to the Office of MINA, in
2	reference to the fact that the Foreign Minister of
3	Syria is going to be hard to nail down and to
4	locate and to find a convenient time to speak to.
5	And that's the explanation you gave for the fact
6	that the call didn't take place at that time.
7	MR. FRY: Yes. I might have been
8	incorrect in terms of why we we were supposed
9	to make a call there was the notes around
10	making the call in November
11	MR. DAVID: That's my question and
12	my only question to you, and that is, December,
13	you've explained it in a certain way. I want to
14	know, in November, where it's referred to in tab 8
15	of the Pillarella
16	MR. FRY: Yes?
17	MR. DAVID: we're also
18	referring to a phone conversation, why was it not
19	occurring at that time?
20	MR. FRY: Well, my recollection as
21	to why it did not occur and the fact of whether
22	he was there or not was actually a sub-point.
23	My recollection is that I spoke
24	with the Assistant Deputy Minister of Middle East
25	Bureau, John McNee, and possibly Gar Pardy, and I

1	was advised that we were jumping ahead of
2	ourselves I was jumping ahead of myself. I
3	think I was the one that was pushing for the call,
4	and maybe it speaks to my inexperience in matters
5	of consular affairs, and I would told, "Well, (a),
6	you can't jump ahead of yourself. You actually
7	should call in the ambassador first, deal at the
8	ambassador level, and then you ramp it up to the
9	Foreign Minister."
10	So I think what happened was,
11	there were wheels in motion, because I had put
12	them in motion, to have a call done. And then on
13	further discussion, I was advised the advice
14	given to me was, it's too quick. We actually need
15	to do the Ambassador first and then we need to
16	move to the Foreign Minister.
17	MR. DAVID: Thank you, Mr. Fry.
18	Those are my questions.
19	THE COMMISSIONER: Well, thank you
20	very much, Mr. Fry. That completes your evidence.
21	It's been very helpful and you've given it in a
22	very clear and straightforward way, and I
23	appreciate that very much. It's been easy to
24	follow.
25	MR. FRY: Well, thank you,

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1	Commissioner. I appreciate you though it
2	wasn't easy, I appreciate coming before you. I
3	spent a good part of a year on this, and I can
4	assure you that our intentions were good. We were
5	trying to get Mr. Arar out, and we were trying to
6	find every way possible to do that. I'm happy we
7	finally were successful, even though I'm sorry
8	that he had to suffer the way he did and it took
9	us as long as it did. But I can assure this
10	Commission that we did everything we could to try
11	to get him out.
12	THE COMMISSIONER: Thank you very
13	much, Mr. Fry.
14	Before we rise, I'll just deal
15	with a couple of scheduling things.
16	Tomorrow we're going to sit at
17	9:30. Mr. Bayne's motion, that he made reference
18	to today, will take place Thursday morning at
19	8:30, and Friday we'll be starting at nine
20	o'clock.
21	MR. WALDMAN: Just a point of
22	clarification. On Mr. Bayne's motion, are we
23	invited or not invited?
24	THE COMMISSIONER: You're invited.
25	It's a public motion.

1	MR. WALDMAN: Oh, it's a public
2	motion. Okay. I wasn't sure.
3	THE COMMISSIONER: Okay, so if
4	there's nothing else
5	MR. DAVID: Nothing else,
6	Mr. Commissioner.
7	THE COMMISSIONER: That's it.
8	9:30 tomorrow.
9	THE REGISTRAR: Please stand.
LO	Whereupon the hearing adjourned at 5:08 p.m.,
L1	to resume on Tuesday, June 14, 2005, at
L2	9:30 a.m. / L'audience est ajournée à 17 h 09,
L3	pour reprendre le mardi 14 juin 2005 à 9 h 30
L4	
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23	Lynda Johansson
24	Lynda Johansson,
25	C.S.R., R.P.R.

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