

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



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

**Audience publique**

**Public Hearing**

**Commissaire**

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

**Commissioner**

**Tenue à:**

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

le jeudi 16 juin 2005

**Held at:**

Algonquin Room  
Old City Hall  
111 Sussex Drive  
Ottawa, Ontario

Thursday, June 16, 2005

## APPEARANCES / COMPARUTIONS

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Ms Lori Sterling Mr. Darrell Kloeze Ms Leslie McIntosh	Ministry of the Attorney General/ Ontario Provincial Police
Mr. Faisal Joseph	Canadian Islamic Congress
Ms Marie Henein Mr. Hussein Amery	National Council on Canada-Arab Relations
Mr. Steven Shrybman	Canadian Labour Congress/Council of Canadians and the Polaris Institute
Mr. Emelio Binavince	Minority Advocacy and Rights Council
Mr. Joe Arvay	The British Columbia Civil Liberties Association

## APPEARANCES / COMPARUTIONS

Mr. Kevin Woodall	The International Commission for Jurists, The Redress Trust, The Association for the Prevention of Torture, World Organization Against Torture
Colonel M <sup>e</sup> Michel W. Drapeau	The Muslim Community Council of Ottawa-Gatineau
Mr. David Matas	International Campaign Against Torture
Ms Barbara Olshansky	Centre for Constitutional Rights
Mr. Riad Saloojee Mr. Khalid Baksh	Canadian Council on American-Islamic Relations
Mr. Mel Green	Canadian Arab Federation
Ms Amina Sherazee	Muslim Canadian Congress
Ms Sylvie Roussel	Counsel for Maureen Girvan
Ms Catherine Beagan Flood	Counsel for the Parliamentary Clerk
Mr. Norman Boxall	Counsel for Inspector Michael Cabana
Mr. Richard Bell	
Mr. Vince Westwick	Counsel for Ottawa Police Service

**TABLE OF CONTENTS / TABLE DES MATIÈRES**

	<b>Page</b>
<a href="#"><u>AFFIRMED: Michael David Edelson</u></a>	7213
<a href="#"><u>Examination by Mr. David</u></a>	7215
<a href="#"><u>Examination by Ms Edwardh</u></a>	7398
<a href="#"><u>Examination by Mr. Boxall</u></a>	7472
<a href="#"><u>Examination by Mr. Fothergill</u></a>	7512
<a href="#"><u>Examination by Mr. David</u></a>	7535

**LIST OF EXHIBITS / PIÈCES JUSTICATIVES**

<b>No.</b>	<b>Description</b>	<b>Page</b>
P-139	<a href="#"><u>Curriculum Vitae of Michael D. Edelson</u></a>	7214
P-140	<a href="#"><u>Newly Redacted Edelson Book of Documents</u></a>	7214
P-141	<a href="#"><u>Photocopy of extracts from Mr. Edelson's agenda book</u></a>	7218
P-142	<a href="#"><u>Time sheets of Mr. Edelson</u></a>	7229
P-143	<a href="#"><u>Handwritten notes taken by Mr. Edelson with transcribed attachment</u></a>	7242
P-144	<a href="#"><u>One page containing telephone message from Monia Mazigh</u></a>	7261
P-145	<a href="#"><u>Internet document entitled "About NYSDA" (New York State Defenders Association)</u></a>	7271
P-146	<a href="#"><u>Message from Rebecca Thornton dated October 17, 2002</u></a>	7289
P-147	<a href="#"><u>Message from Steve Watt dated October 18, 2002</u></a>	7290
P-148	<a href="#"><u>E-mail message dated October 22, 2002 from Steve Watt</u></a>	7290
P-149	<a href="#"><u>Two e-mails from Gar Pardy dated November 1, 2002</u></a>	7316
P-150	<a href="#"><u>Letter from M. Cabana to M. Edelson dated November 16, 2002</u></a>	7327
P-151	<a href="#"><u>Mr. Edelson's Client Ledger for Maher Arar</u></a>	7355
P-152	<a href="#"><u>E-mail from Dr. Monia Mazigh to Mr. Michael Edelson re a letter to John Manley, dated May 20, 2003, 1:57 p.m.</u></a>	7368

**LIST OF EXHIBITS / PIÈCES JUSTICATIVES**

<b>No.</b>	<b>Description</b>	<b>Page</b>
P-153	<a href="#"><u>E-mail from Dr. Monia Mazigh to Mr. Michael Edelson re Some questions, dated July 14, 2003, 3:19 p.m.</u></a>	7371
P-154	<a href="#"><u>Page referring to Mr. Michael Edelson's meeting with Ms Kerry Pitcher and Dr. Monia Mazigh on August 13, 2003</u></a>	7374
P-155	<a href="#"><u>Letter from Ms Shirley Heafey to Mr. Michael Edelson re RCMP Investigation into Chair's Complaint (Maher Arar), dated January 21, 2004</u></a>	7396
P-156	<a href="#"><u>Response letter from Mr. Michael Edelson to Ms Shirley Heafey re RCMP Investigation into Chair's Complaint (Maher Arar), dated January 22, 2004</u></a>	7396

1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon resuming on Wednesday, June 16, 2005

3 at 10:01 a.m. / L'audience reprend le mercredi

4 16 juin 2005 à 10 h 01

5 THE REGISTRAR: Please be seated.

6 Veuillez vous asseoir.

7 MR. DAVID: Good morning,

8 Mr. Commissioner.

9 THE COMMISSIONER: Good morning.

10 MS EDWARDH: I wonder if I could  
11 just have a moment, Mr. Commissioner.

12 I thought it was appropriate, and  
13 I do so with Mr. Arar's instructions, to indicate  
14 on the public record that he waives  
15 solicitor-client privilege in respect of his  
16 communications with Mr. Edelson, who of course  
17 represented him during a period of time.

18 THE COMMISSIONER: Thank you  
19 very much.

20 MR. DAVID: Thank you, Ms Edwardh.

21 I would like to introduce you to  
22 Mr. Michael Edelson, who is a defence attorney in  
23 Ottawa.

24 MR. EDELSON: Good morning.

25 MR. DAVID: Mr. Edelson, would you

1           like to be affirmed or sworn?

2                           MR. EDELSON:  Affirmed.

3           AFFIRMED:  MICHAEL DAVID EDELSON

4                           THE COMMISSIONER:  Your full name?

5                           MR. EDELSON:  Michael David

6           Edelson, E-D-E-L-S-O-N.

7                           THE COMMISSIONER:  Thank you.  You  
8           may be seated.

9                           MR. DAVID:  Mr. Commissioner, for  
10          your benefit, Mr. Edelson is a defence attorney  
11          practising criminal defence law in Ottawa and  
12          doing so since 1977.  It will be testimony in this  
13          regard that he will be -- in terms of his  
14          activities and mandate that he had with Mr. Arar,  
15          and it is in that context that he will be  
16          testifying.

17                           Before we begin the testimony, I  
18          would like to produce an updated version of our  
19          table of concordance.  It has already been filed  
20          as Exhibit P-131.  It is simply an updated  
21          version.

22                           THE COMMISSIONER:  Okay.

23                           MR. DAVID:  I would like to file  
24          now Mr. Edelson's curriculum vitae.

25          --- Pause



1 MR. DAVID: I would like to  
2 file with the greffier the books of newly  
3 redacted documents too. We will file both at the  
4 same time.

5 So the CV would be Exhibit No....?

6 THE REGISTRAR: The CV is P-139.

7 MR. DAVID: Exhibit P-139. Thank  
8 you.

9 EXHIBIT NO. P-139:

10 Curriculum vitae of Michael  
11 D. Edelson

12 THE COMMISSIONER: Merci.

13 --- Pause

14 MR. DAVID: As you can see,  
15 Mr. Edelson, this isn't your typical three-party  
16 proceeding.

17 --- Laughter / Rires

18 MR. DAVID: If we could also  
19 file -- I'm sorry to do this, monsieur le  
20 greffier, but I would like to file Mr. Edelson's  
21 Book of Documents, P-140. Thank you.

22 I believe that it has already been  
23 distributed to all parties. Thank you.

24 EXHIBIT NO. P-140: Newly  
25 Redacted Edelson Book of

1 Documents

2 EXAMINATION

3 MR. DAVID: Mr. Edelson, your  
4 reputation precedes you. I won't spend much time  
5 on your CV.

6 You were a member of the Bar of  
7 Ontario since 1977?

8 MR. EDELSON: That is correct.

9 MR. DAVID: You graduated magna  
10 cum laude with a common law degree from the  
11 University of Ottawa?

12 MR. EDELSON: That is correct.

13 MR. DAVID: I must announce to you  
14 that you are the second such graduate this week  
15 that we hear evidence from.

16 Mr. Fry also graduated magna  
17 cum laude.

18 You are a specialist in  
19 criminal litigation, as recognized by the Bar  
20 Society since 1989?

21 MR. EDELSON: That is correct.

22 MR. DAVID: That you have  
23 much experience in teaching, both in university  
24 settings, with the Federation of Canadian Law  
25 Societies and with the Bar Admission Course of

1 Ontario?

2 MR. EDELSON: Yes.

3 MR. DAVID: So, Mr. Edelson, I  
4 would like to begin with going back to the genesis  
5 phase of your involvement in the Arar file.

6 It is my understanding that before  
7 actually meeting Mr. Arar you had been consulted  
8 by other people, several other people, in the  
9 Ottawa area.

10 Ms Edwardh has made mention of the  
11 fact that you have a waiver of the privilege with  
12 regard to Mr. Arar --

13 MR. EDELSON: Yes.

14 MR. DAVID: -- but obviously that  
15 does not exist with regard to other clients.

16 But I was wondering if by way  
17 of context you could simply, as far as you can  
18 go, explain to the Commissioner how really you  
19 began and how you were initiated into the Arar  
20 fact line?

21 MR. EDELSON: Well, I became aware  
22 that there was a general investigation in the  
23 third week of January 2002. Four individuals  
24 attended at my office -- Maher Arar was not one of  
25 the four at that time -- and they had indicated to

1 me that the RCMP had either searched their  
2 premises pursuant to warrant, or they had cards of  
3 RCMP national security investigators left at their  
4 residences seeking interviews of them.

5 So they filled me in as to the  
6 details of what had happened in that regard and it  
7 was shortly thereafter that I heard from Mr. Arar  
8 for the first time.

9 MR. DAVID: I understand that  
10 these people, these clients that came to consult  
11 you and that eventually retained you, were from  
12 the Arab Muslim community here in Ottawa?

13 MR. EDELSON: Three of the four.

14 MR. DAVID: Three of the four.

15 So you were apprised of the fact  
16 that the RCMP had executed a number of search  
17 warrants on the 22nd of January of the year 2002?

18 MR. EDELSON: That is correct,  
19 yes.

20 MR. DAVID: I would like to  
21 enter now as an exhibit an extract from your  
22 agenda book.

23 MR. EDELSON: Yes.

24 MR. DAVID: If we could just file  
25 this document?

1                   That would be P-141, I believe.  
2                   EXHIBIT NO. P-141: Photocopy  
3                   of extracts from  
4                   Mr. Edelson's agenda book

5           --- Pause

6                   MR. DAVID: Mr. Edelson, I  
7           would like now to come to your first reference  
8           or your first encounter with the actual name of  
9           Maher Arar.

10                   The document we have just filed,  
11           P-141, if you could just describe what this  
12           document is?

13                   MR. EDELSON: This is actually two  
14           documents which have been amalgamated in the  
15           photocopy. In the lower left is a typical, I  
16           think they were pink at the time, phone message  
17           slip. The writing where it says "Maher Arar",  
18           with the first name misspelled, is my former  
19           assistant's writing. The writing on the top  
20           right, "Canadian engineer", is my writing, as is  
21           all the writing below, "Randy" -- actually, am I  
22           allowed to mention the name of these individuals?

23                   "Randy Buffam, National Security",  
24           with phone numbers, and on the right-hand side  
25           would have been such things as the date as well as

1 certain phone numbers and coordinates for  
2 Mr. Arar.

3 So what happened is, a phone  
4 message was received from him initiating his  
5 contact with my office.

6 The larger document, the full  
7 page, is a page out of my agenda -- my secretary's  
8 agenda, which was an appointments book, for all  
9 intents and purposes, and it indicates that on the  
10 30th of January at 2:30 Maher Arar is going to be  
11 coming to my office.

12 That handwriting was written by  
13 myself. I would have gotten the book, I was  
14 speaking to him, I would have written his name in  
15 with his cell phone and work number, and that was  
16 going to indicate that he was coming to see me on  
17 the 30th of January, which he did.

18 MR. DAVID: Before we get to the  
19 30th of January, can you give us the date in which  
20 the phone message --

21 MR. FOTHERGILL: I wonder if I  
22 might say something that was triggered by the  
23 disclosure of an investigator's name in the  
24 document, in this case Mr. Randy Buffam.

25 Obviously his name has been

1 quite widely circulated by Mr. Arar and his  
2 supporters, but I would say that as a general  
3 principle the mere fact that the identity of a  
4 police officer was disclosed to Mr. Edelson in his  
5 capacity as defence counsel should not be  
6 construed as a waiver of that individual's  
7 identity for all purposes.

8 As Commission counsel is aware,  
9 there is a National Security Confidentiality claim  
10 generally for the names of people who are involved  
11 in the conduct of national security investigations  
12 on the basis that if their identities become  
13 widely known it will make it more difficult for  
14 them to do their jobs.

15 I would also maintain that it is a  
16 necessary part of their job that occasionally they  
17 must reveal themselves either to individuals or to  
18 counsel, but that should not be construed as a  
19 waiver for all purposes.

20 One final point I would make is  
21 that some of these individuals are separately  
22 represented by counsel and I don't know whether  
23 Commission counsel has alerted these counsel to  
24 the fact that their clients' names may be made  
25 public in the proceeding.

1 THE COMMISSIONER: But if the  
2 name is disclosed to somebody like Mr. Edelson,  
3 Mr. Edelson is free to walk the streets of Ottawa  
4 and disclose it. He wouldn't be subject to any  
5 National Security Confidentiality claim, would he?

6 MR. FOTHERGILL: It is not an  
7 easy question to answer. He is free to walk the  
8 streets, but I think that the --

9 MR. EDELSON: I'm reassured.

10 THE COMMISSIONER: Your rights may  
11 be limited here.

12 MR. FOTHERGILL: I am pleased to  
13 state that without qualification.

14 --- Laughter / Rires

15 MR. FOTHERGILL: But I think, with  
16 respect, it is quite another thing for this  
17 Commission to publicize the names, knowing, as I  
18 suggest would be the inevitable result, that it  
19 will make them less effective as national security  
20 investigators.

21 THE COMMISSIONER: I'm not  
22 disagreeing with you, I just want to make sure I  
23 understand the position. Initially it is a little  
24 difficult to understand.

25 Mr. Edelson is free, having been



1 told by, in this case Mr. Buffam, that his name --  
2 would be free to tell anybody he chooses.

3 Is there any restriction or duty  
4 of confidentiality on him?

5 MR. FOTHERGILL: I would say is  
6 actually a duty of confidentiality, in that if he  
7 gains a reputation for not being able to maintain  
8 the confidence of information that is imparted to  
9 him by the police in the context of what might be  
10 fairly construed as a confidential meeting, it  
11 will lessen his own effectiveness as defence  
12 counsel. He can make that judgement.

13 THE COMMISSIONER: Was he asked in  
14 this instance when he was called by Corporal  
15 Buffam to maintain confidentiality?

16 MR. FOTHERGILL: Very likely not.  
17 But I think as we move forward in the evidence --  
18 and I am not making objection with respect to his  
19 name which, as I said, has been quite widely  
20 publicized.

21 We will anticipate here of  
22 meetings that Mr. Edelson had with police officers  
23 where, although I doubt that it was ever said  
24 explicitly, it was understood that they were  
25 speaking to him in his capacity as defence counsel

1           trying to further their interests and also the  
2           interests of his clients.

3                           I would say that there was a  
4           reasonable expectation at that time, on the part  
5           of the police, that the conversation would not be  
6           widely publicized, and it would not only lessen  
7           their effectiveness as police officers, but I say,  
8           with the greatest of respect, it may lessen  
9           Mr. Edelson's access to the police. If that is  
10          important to him, it is something that perhaps  
11          ought to be borne in mind.

12                           THE COMMISSIONER: Maybe when we  
13          get there, the first step will be to ask  
14          Mr. Edelson -- we are now getting ahead of  
15          ourselves -- whether or not he understood that the  
16          nature of those meetings were such that he was to  
17          maintain confidence.

18                           I will ask questions now. You can  
19          think about it.

20                           Was he free to tell his client the  
21          name of an officer he met with, and then was his  
22          client under the same obligation?

23                           MR. FOTHERGILL: I would expect he  
24          would be free to tell his client, yes.

25                           THE COMMISSIONER: But would his

1 client then be under a duty to not disclose the  
2 name publicly?

3 MR. FOTHERGILL: Again, we are  
4 talking about an exercise of judgment here.

5 THE COMMISSIONER: So we are not  
6 talking about law. We are not talking about an  
7 NSC claim here?

8 MR. FOTHERGILL: I don't think it  
9 is quite that simple, sir.

10 It is an NSC claim that I think  
11 has vulnerabilities because of the disclosure in  
12 issue, but I don't think that in itself undermines  
13 the NSC claim entirely.

14 I think it also goes beyond that  
15 and it is a question of how the police do their  
16 job and how a defence counsel does his job in  
17 dealing with the police.

18 So I think that to the extent  
19 that it is not necessary to fulfil your mandate to  
20 disclose the identities of these individuals, it  
21 should not be done.

22 THE COMMISSIONER: Right. But we  
23 can assume now that Mr. Arar, and anybody he  
24 chooses to tell, is free to disclose it so that --  
25 I mean we do get into a very unusual situation if

1 we now are calling people Mr. X and Mr. Y and,  
2 quite properly, Mr. Arar or Mr. Edelson or anyone  
3 else can walk out of the door of this inquiry and  
4 say: By the way, Mr. X is so and so and Mr. Y is  
5 so and on.

6 That situation, with the greatest  
7 of respect, some people might think -- I'm not  
8 saying it would be the case -- that this inquiry  
9 look a little foolish as a public inquiry, if that  
10 were to happen, that we go through hoops, calling  
11 people "X" and "Y" in a public inquiry when  
12 everyone is entitled to go out, perfectly  
13 properly, and say who "X" and "Y" are.

14 Let's wait and see when we  
15 get there.

16 MS EDWARDH: May I address you,  
17 Mr. Commissioner, very briefly?

18 THE COMMISSIONER: Yes.

19 MS EDWARDH: I think it is  
20 pertinent for you to know that Corporal Buffam  
21 left his business card with Mrs. Arar. That  
22 business card was given out in order to invite  
23 Mr. Arar to make a telephone call.

24 So with the greatest of respect  
25 to my friend, there cannot possibly be a National

1 Security Confidentiality claim about his  
2 attendance at their residence and the giving of  
3 his card and invitation to call back. I want  
4 to clarify right now that no such claim is  
5 being made.

6 MR. FOTHERGILL: That is correct.

7 THE COMMISSIONER: No. As I  
8 understand it, this is leading to something that  
9 is going to come up in the evidence about the  
10 names of some other officers.

11 I see Mr. Westwick is standing up.

12 MR. WESTWICK: Yes,  
13 Mr. Commissioner.

14 Mr. Commissioner, we have no  
15 independent submissions with respect to the names  
16 of Ottawa police officers. If the Government of  
17 Canada is exercising a claim, then we would assume  
18 that claim would extend to the Ottawa police  
19 officers that were involved in the project, but  
20 the Ottawa Police Service has no independent claim  
21 for the privacy of the --

22 THE COMMISSIONER: So the Ottawa  
23 Police Service, then, does not assert a claim with  
24 respect to the names of its officers.

25 MR. WESTWICK: That is

1 correct, sir.

2 THE COMMISSIONER: Thank you.

3 MR. FOTHERGILL: In that case,  
4 sir, certainly we would not do so in the face of  
5 the Ottawa Police Service not asserting a claim.

6 THE COMMISSIONER: Yes...?

7 MR. KLOEZE: Commissioner, if I  
8 might add on behalf of the Ontario Provincial  
9 Police, we are taking the same position as  
10 Mr. Westwick. To the extent that there were  
11 Ontario Provincial Police officers involved in  
12 Project A-OCANADA, we would rely on the judgment  
13 of the federal government in terms of making NSC  
14 claims that they think are appropriate. We are  
15 not making any independent claims.

16 THE COMMISSIONER: So that I  
17 understand, the Ontario Provincial Police, then,  
18 on behalf of any of its police officers, does  
19 not assert a claim that their names should not  
20 be disclosed?

21 MR. KLOEZE: That is correct,  
22 Mr. Commissioner.

23 THE COMMISSIONER: Thank you.  
24 That is helpful.

25 We will just proceed and see

1           what develops.

2                           MR. DAVID:  For the record, I  
3           don't believe that there is any other issue  
4           with regard to any other officer, but we will  
5           see as we go along in terms of identifying  
6           somebody else.

7                           Mr. Edelson, coming back now to  
8           P-141, the document, you have explained, is in  
9           fact two documents, one simply being an overlap or  
10          a photocopy that has been included on the agenda  
11          sheet.  I was going to ask you, in terms of the  
12          message that is coming to you from Mr. Arar, is  
13          there a date that that message was received on  
14          that you can indicate for the record?

15                          MR. EDELSON:  I'm sure it is on  
16          the original.  I believe that the first call was  
17          probably just before the 26th of January.

18                          MR. DAVID:  From Mr. Arar?

19                          MR. EDELSON:  Yes, that  
20          is correct.

21                          MR. DAVID:  Okay.  I would like to  
22          file now your time sheets, simply because I want  
23          to refer to them extensively in terms of  
24          reconstructing the chronology?

25                          MR. EDELSON:  Sure.

1 MR. DAVID: This would be  
2 Exhibit P-142.

3 EXHIBIT NO. P-142: Time  
4 sheets of Mr. Edelson  
5 --- Pause

6 MR. DAVID: So on page 1 of the  
7 document -- each page has been numbered at the  
8 bottom right-hand corner -- there is an entry for  
9 Mr. Arar.

10 First of all, can you tell us  
11 what method you used in terms of these time  
12 sheets, what they reflect?

13 How do you use this kind  
14 of document?

15 MR. EDELSON: Well, as you can  
16 see, this is typically a written docketing form.  
17 It has a number of codes at the top, and this  
18 docket would then, for the most part -- staff  
19 sometimes misses entries and I sometimes actually  
20 don't get to make entries -- are entered then into  
21 a computerized system, PCLaw, for what would  
22 typically be billing purposes.

23 I use these for two different  
24 reasons. Typically, many, many files in the  
25 office I might be on the phone speaking to a



1 client or someone relating to a client and I might  
2 jot down the purpose of the call or details from  
3 the call, as like a memo to file. Sometimes I  
4 would do it, depending on the conversation,  
5 sometimes I would not.

6 The hours are marked. The code  
7 refers to what is going on. For example, "26" is  
8 a telephone call.

9 MR. DAVID: Okay. This entry, can  
10 you tell us what this entry reflects?

11 MR. EDELSON: Yes. This entry  
12 would reflect -- actually refers back to the phone  
13 message in P-141, in the bottom left.

14 MR. DAVID: Okay?

15 MR. EDELSON: Maher Arar would  
16 have called our office. The message would have  
17 been handed over to me. I would have endeavoured  
18 to get a hold of him on the 26th at 10:30 a.m. I  
19 could not get a hold of him at that point so there  
20 was no answer entered on the docket at that point  
21 in time.

22 MR. DAVID: All right. The  
23 reference to Randy Buffam -- coming back to P-141,  
24 in the phone slip -- do you recall what  
25 circumstances?

1 MR. EDELSON: Yes.

2 MR. DAVID: You have described  
3 already that this was your handwriting. Do you  
4 recall when that inscription was made and in what  
5 circumstance?

6 MR. EDELSON: My belief is that  
7 that was made after I spoke to Maher. I was  
8 provided with this name, because I believe he had  
9 left a card with his wife. The particulars of  
10 that -- I wanted to get his phone number, the  
11 second number is his pager number, and I would  
12 have written that on the message. I probably had  
13 kept the message on my desk. I usually do that  
14 until I get to speak to the client. Sometimes I  
15 keep calling back. I think that is what that  
16 refers to.

17 MR. DAVID: So clearly on the 26th  
18 of January you are returning Mr. Arar's call, but  
19 you are leaving a message, he is not there --

20 MR. EDELSON: Yes.

21 MR. DAVID: -- and you don't  
22 actually speak to him on the 26th of January?

23 MR. EDELSON: I don't believe I  
24 did, no.

25 But someone else from my office

1           may have, because the appointment that was written  
2           in I was told about. I wrote it in myself for the  
3           30th. So it was either the 26th or shortly before  
4           the 30th that we actually did communicate and we  
5           made the appointment for him on the 30th.

6                       MR. DAVID: I would like to bring  
7           you now to -- if you could go to the Book of  
8           Documents that we have entitled the Edelson Book  
9           of Documents, P-140.

10                      MR. EDELSON: Yes?

11                      MR. DAVID: I would bring you  
12           to tab 9 and it is page 4 I would like to bring  
13           you to.

14                      In fact, there will be two  
15           documents, Mr. Edelson, I would like you to  
16           consult. The other is the Garvie report, which is  
17           Exhibit P-19.

18                      So if we could provide P-19 to  
19           Mr. Edelson?

20                      MR. EDELSON: Page 4 is the bottom  
21           right? Page 4 of 7, is that what you are  
22           referring to?

23                      MR. DAVID: Correct.

24                      MR. EDELSON: Right. I have it.

25                      MR. DAVID: Let's look at two

1 documents and I am going to ask you to make  
2 comments on what they refer to.

3 Beginning now with tab 9, page 4,  
4 the entry reads as follows:

5 "On this date..."

6 That date is the 22nd of January.

7 "...a number of search  
8 warrants were executed by  
9 A-OCANADA investigators which  
10 coincided with a number of  
11 interviews including Maher  
12 ARAR. On that date,  
13 investigators attended the  
14 ARAR residence on Woodridge  
15 Cr. where they were met by  
16 his wife Monia MAZIGH. She  
17 advised that her husband  
18 Maher was in Tunisia and that  
19 he would be returning in the  
20 next couple of days. A  
21 business card was left for  
22 him to contact investigators  
23 upon his arrival. Later that  
24 day, a phone message was  
25 received at A Div. from ARAR

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1 at a number in Tunisia. He  
2 was called at that number and  
3 it was clear that he was  
4 angry that police had shown  
5 up at his residence  
6 unannounced. He was told  
7 that he would not discuss  
8 specifics of the  
9 investigation over the phone  
10 and he should call us upon  
11 his return to Canada."

12 This is the part I would like you  
13 to focus on:

14 "The next morning, A-OCANADA  
15 investigators were contacted  
16 by ARAR's defense lawyer,  
17 Michael EDELSON..."

18 So that would be on the 23rd  
19 of January.

20 "...who said that his client  
21 would not be speaking with  
22 police. It was known that  
23 ARAR had arrived back in  
24 Canada that day."

25 --- Pause

1                   And as I say, there is another  
2                   document I would like you to now refer to and that  
3                   is the Garvie report, an extract, which is found  
4                   on page 8 of the Garvie report. The extract is  
5                   for the 23rd of January, which is the date that  
6                   apparently you would have called A-OCANADA on  
7                   Mr. Arar's behalf.

8                   It says the following:

9                   "Investigators were contacted  
10                  by ARAR's defence lawyer,  
11                  Mr. Michael Edelson who told  
12                  them that ARAR would not be  
13                  permitted to speak to the  
14                  investigators without legal  
15                  counsel present. Michael  
16                  Edelson was interviewed on  
17                  04/01/12. He related  
18                  that..."

19                 The interview was with Mr. Garvie,  
20                 Mr. Edelson. So it is your interview with  
21                 Mr. Garvie.

22                 MR. EDELSON: I follow you.

23                 MR. DAVID: Because I saw your  
24                 reaction, that's why.

25                 "He related that his first

1 contact with Maher ARAR was  
2 in early January of 2002.  
3 ARAR was concerned that  
4 information would be taken  
5 from his laptop and palm  
6 pilot, that had been seized  
7 during the secondary search  
8 conducted by Canada Customs  
9 01/12/20, and he was seeking  
10 advice. Michael Edelson was  
11 subsequently contacted by  
12 Maher ARAR after he had  
13 spoken to (somebody) by  
14 phone. Edelson was willing  
15 to allow the interview,  
16 however he dictated a number  
17 of criteria that would have  
18 to be met. Those criteria  
19 would have ensured that any  
20 statement given by Maher ARAR  
21 was likely to be  
22 inadmissible, and as those  
23 criteria were so restrictive,  
24 the investigators decided not  
25 to proceed with the

1 interview."

2 So my question is, there is  
3 definite reference to the fact that you called, on  
4 Mr. Arar's behalf, Project A-OCANADA on the 23rd  
5 of January.

6 Do you have any comments about  
7 that entry?

8 MR. EDELSON: You are referring  
9 now to the --

10 MR. DAVID: I am referring to  
11 tab 9, page 4 --

12 MR. EDELSON: Of P-140.

13 MR. DAVID: Yes.

14 MR. EDELSON: I have no comment  
15 really, no.

16 As I said earlier, my first  
17 contact with the individuals in question were --  
18 this is the four who came to see me, not  
19 Mr. Arar -- was January 23, 1002. I'm not sure  
20 that that is accurate, that I was, in fact, his  
21 lawyer per se or that -- he certainly hadn't  
22 consulted me yet.

23 I hadn't met him, physically. He  
24 wasn't in my office until the 30th, so I'm not  
25 really sure about the accuracy of that statement.



1 MR. DAVID: In terms of Mr. Arar?

2 MR. EDELSON: Yes.

3 MR. DAVID: Would it be accurate  
4 in terms of the other four?

5 MR. EDELSON: Yes.

6 MR. DAVID: Okay.

7 I bring you now to tab 10 of the  
8 Edelson documents, and if you could go to pages 8  
9 to 10, Mr. Edelson?

10 MR. EDELSON: Yes.

11 MR. DAVID: This is a letter that  
12 is signed by you and is dated the 28th of January.  
13 It is addressed to the RCMP and it concerns you  
14 representing a number of clients, and it says the  
15 following on the first page, page 8:

16 "Further to my voice mail to  
17 you on Friday afternoon,  
18 please be advised that the  
19 above-noted individuals will  
20 consent to interviews on  
21 certain terms and conditions  
22 as follows."

23 Then the conditions are set out.  
24 I don't want to bring you through those  
25 conditions, but there are a number of

1 conditions --

2 MR. EDELSON: Right.

3 MR. DAVID: -- as we see in terms  
4 of the bullets indicated on page 2 of your letter.

5 In the last paragraph it says:

6 "You will recall in our  
7 conversation last  
8 Wednesday..."

9 Wednesday is the 23rd of January,  
10 which is the entry of the RCMP that we have just  
11 reviewed.

12 "...you indicated your  
13 intention to return all of my  
14 clients' computer equipment  
15 as soon as possible and  
16 probably by Friday of last  
17 week."

18 Being the 25th of January.

19 "To date, this has not  
20 happened and I know you will  
21 not want to be seen to be  
22 holding my clients' business  
23 and personal property as a  
24 hostage in exchange for  
25 interviews. I look forward

1 to arranging for these  
2 interviews directly with you  
3 at your earliest convenience;  
4 I will be out of Court on  
5 Thursday and Friday of this  
6 week and wish to complete  
7 this process as soon as  
8 possible."

9 My question is simply this: On  
10 the 28th of January -- it is clear from P-141 that  
11 you meet Mr. Arar on the 30th of January. Were  
12 you writing this letter on the 28th on Mr. Arar's  
13 behalf to the RCMP?

14 MR. EDELSON: No. This actually  
15 confirms in my mind that the previous reference  
16 was in fact to the other clients who had consulted  
17 me, because it speaks of the search and the return  
18 of their computers and other belongings that had  
19 been seized.

20 To my knowledge, at this point  
21 Mr. Arar's residence had not been searched. So  
22 this would have referred to all or some of the  
23 four who had conferred with me about the  
24 January 22nd search, but not Mr. Arar.

25 MR. DAVID: Let us now go to

1 the 30th of January. We have seen from the entry  
2 of your agenda at P-141 that there is an  
3 appointment time indicated for Mr. Arar.

4 MR. EDELSON: Yes.

5 MR. DAVID: I refer you to page 2  
6 of your time sheets.

7 MR. EDELSON: My pages aren't  
8 numbered. I will just follow along with you.

9 MR. DAVID: Okay. Well, it is the  
10 entry for the 30th of January.

11 MR. EDELSON: Just give me the  
12 date. Yes, I have it.

13 MR. DAVID: At the bottom -- I  
14 mean, first of all we see that there is  
15 information that is blocked out. Obviously this  
16 is information --

17 MR. EDELSON: These are all  
18 other clients.

19 MR. DAVID: Other clients and are  
20 privileged.

21 So the bottom entry, could you  
22 just describe that entry for the 30th of January?

23 MR. EDELSON: Yes, this simply  
24 memorializes that for 45 minutes I met with  
25 Mr. Arar on that date. I followed that meeting

1 with a telephone call to Ann Alder, Crown counsel,  
2 which lasted for five minutes or less, in  
3 reference to my meeting with Mr. Arar.

4 MR. DAVID: Thank you.

5 I would like to now file,  
6 Mr. Clerk, notes that you took during this  
7 interview.

8 MR. EDELSON: Yes.

9 MR. DAVID: That would be...?

10 THE REGISTRAR: P-143.

11 MR. DAVID: P-143, thank you.

12 EXHIBIT NO. P-143:

13 Handwritten notes taken by  
14 Mr. Edelson with transcribed  
15 attachment

16 MR. DAVID: If you could describe  
17 to the Commissioner the contents of those notes?

18 MR. EDELSON: In it is original --

19 MR. DAVID: Just maybe we will  
20 let -- pardon me, I'm sorry. Sure.

21 MS EDWARDH: Mr. David has made  
22 the observation that these are notes of the  
23 interview, but I just want to put on the record it  
24 is my understanding that they are notes of two  
25 discrete and different interviews with two

1 different persons.

2 MR. DAVID: Mr. Edelson will  
3 explain that.

4 MS EDWARDH: Thank you.

5 MR. DAVID: Mr. Commissioner, just  
6 for your understanding, along with the actual  
7 manuscript notes of Mr. Edelson we have produced  
8 and filed -- with the collaboration of  
9 Mr. Edelson, and I thank you in that regard -- a  
10 typed version, the transcribed typed version.  
11 They have been reviewed by Mr. Edelson, so it will  
12 probably be easier if we follow the typed version  
13 rather than the manuscript version.

14 MR. EDELSON: The handwriting  
15 isn't the greatest.

16 THE COMMISSIONER: That is  
17 helpful.

18 MR. DAVID: I would like you to  
19 clarify, as Ms Edwardh has referred to, the fact  
20 that -- and we have a colour version of your  
21 notes, of your manuscript notes there.

22 MR. EDELSON: Okay.

23 MR. DAVID: There is black writing  
24 and there is red writing.

25 If you could, first of all, just

1 map out what these notes reflect?

2 MR. EDELSON: Certainly. In their  
3 original form, Mr. Commissioner, the notes are on  
4 a legal pad, yellow legal pad. The writing that  
5 is in black, what was I guess originally in black  
6 ink, that refers to the notes I made during the  
7 interview with Maher Arar, which would be on the  
8 30th of January.

9 The red notes, you will see at the  
10 very top it says, November 18, 2002 with Monia.  
11 That is actually a series of notes. On the front  
12 of the original interview note, as well as  
13 flipping over on the back, in red ink there are  
14 additional notes which I made in reference to a  
15 telephone call with her on the 18th of November,  
16 2002. So they were notes made at two separate and  
17 distinct times.

18 MR. DAVID: Can you tell us who  
19 was present on the 30th of January?

20 MR. EDELSON: Mr. Arar and myself.

21 MR. DAVID: Okay. I would like  
22 you to go through your notes in detail,  
23 Mr. Edelson for that interview.

24 MR. EDELSON: Okay. This was  
25 more -- typically as a criminal lawyer we are

1 retained to carry on a defence on behalf of a  
2 client who has been charged with some crime. This  
3 was not the case here. Mr. Arar at this point was  
4 seeking my advice about something that had  
5 happened and certain events that had transpired  
6 after that had happened and, as a result, he came  
7 in to meet with me at that time.

8 Normally, as I say, in a  
9 typical interview we would discuss certain issues  
10 relating to the criminal activity alleged against  
11 the client, we would arrange for a financial  
12 retainer to be put in place. That did not happen  
13 in this case.

14 So the format of the interview was  
15 simply Mr. Arar coming to my office, I took some  
16 personal details, which you will see at the top,  
17 about his address, phone numbers, coordinates,  
18 locations, background education in brief, his  
19 wife, family history.

20 Then he started to unfold for me a  
21 bit of background as to what he was doing. You  
22 will see that note starts with the words:  
23 "September 14, 1999, to Boston for Mathworks". I  
24 understood that was a company that he was employed  
25 with, I guess MathLab -- I can't remember whether



1           that was a software product or whatever it was  
2           that he was involved in marketing.

3                         He said he worked as an  
4           application engineer up to March 2001. He said  
5           he had returned to Ottawa and he was considering  
6           starting his own company and he would do external  
7           consultations for MathWorks even if he had his  
8           own company.

9                         There was a partner in the U.K., I  
10          understood, called Radioscape Systems, which I put  
11          "U.K. company", and he was involved in essentially  
12          a software-oriented business. The word I have  
13          here, which I'm not absolutely sure about, which  
14          is Seemalynk, L-Y-N-K, was to monitor  
15          communication systems, pre-sales and post-sales  
16          support, for companies such as Lucent and Nokia,  
17          which are telecommunications-related companies.

18                        He says he still consults -- this  
19          is, of course, at January 30th, 2002 -- but not  
20          putting in the hours he had formerly put in when  
21          he was working, I guess, full-time with MathWorks.

22                        MR. DAVID: Did you orient  
23          this interview?

24                        MR. EDELSON: In what sense?

25                        MR. DAVID: In the sense were you

1 leading Mr. Arar or were you just listening to  
2 what he had to say?

3 MR. EDELSON: No, a lot of times I  
4 would be prompting him with questions.

5 MR. DAVID: In terms of prompting,  
6 in terms of orientation of the interview, in terms  
7 of managing valuable lawyer time, what were you  
8 trying to elicit, to seek, in terms of information  
9 from Mr. Arar for the mandate that he seemed to  
10 want to give you?

11 MR. EDELSON: Well, in the first  
12 instance, I was simply trying to find out a bit  
13 about who he was, what his background was, his  
14 academic and educational background, his work  
15 history, his family history. That is what we did  
16 in the first moments of the interview, say the  
17 first half or so page of page 1.

18 Then I got into a little  
19 more detail as to what the purpose of his visit  
20 was, why he was here, and he then started to  
21 unfold that --

22 MR. DAVID: So can you just pursue  
23 your notes, please?

24 MR. EDELSON: Yes. At 17 to 21  
25 it says: December, he had gone from Ottawa to

1 Logan Airport in Boston for a project. He was  
2 stopped coming back in to Canada in Ottawa. At  
3 the time of that stop he had said to me that  
4 there was a hand search of his luggage. During  
5 that hand search he was asked a number of  
6 personal questions. He described the personnel as  
7 being very rude in their questioning of him at  
8 that time.

9 He had asked the personnel, "Is  
10 this routine?" In other words, the way that he  
11 was being treated. He looked around, he told me,  
12 and he saw no one else in the search area. There  
13 was him, all by his lonesome, with his luggage  
14 being searched and being questioned as he was.

15 He said they took his wallet,  
16 initially. They took all of his cards. I took  
17 to mean not only credit cards but, for example,  
18 if he had business cards in his wallet. He said  
19 he had a number of elite flying cards for  
20 airlines, and he said to me for a number of  
21 different airlines.

22 He said after about 45 minutes of  
23 this process, the female -- I assume Customs or  
24 immigration officer -- left, later returned to  
25 speak to him, and then started asking him

1           questions about his laptop computer. He said, "My  
2           laptop belongs to my company".

3                         There were questions about whether  
4           he should have declared his laptop coming back  
5           through Customs into Canada, and he said he did  
6           not declare it because it was to be returned.

7                         There were also then questions  
8           then posed to him about his Palm Pilot,  
9           specifically questions of whether he paid taxes on  
10          it, which I found unusual. I took that to mean,  
11          had he paid GST or had duties been paid on it.

12                        He was then told, "We are going to  
13          have to seize your laptop and your Palm Pilot".  
14          Mr. Arar told me he offered to pay whatever  
15          duties, taxes or other charges were being imposed  
16          at that point, because he said he had important  
17          work on his laptop and he wanted to take the  
18          laptop with him to continue working.

19                        There was an issue that arose, he  
20          said, about the value of the laptop, and that was  
21          a problem because at the point he was arriving  
22          there would have been no stores open for him to  
23          call or have them call to get the appraised value  
24          of the item, I guess the retail value of the item.

25                        He said that he had maintained his

1           calm. He was polite with them. He was told to  
2           call at some point before he came back to try and  
3           reclaim the items and he would be told when they  
4           would be ready. So he said subsequently -- and I  
5           didn't know the date or how many days -- he  
6           indicates he goes back to claim his laptop. He is  
7           told they will give it back.

8                           When he got it back it was in some  
9           sort of sealed bag. It seemed, from his point of  
10          view when he looked at it, externally to be okay.  
11          He told me that just before he left he had fully  
12          charged it 100 per cent and then when he opened  
13          the laptop and logged on he noticed that its  
14          charge had been reduced by 16 percent below the  
15          100 per cent that he had charged it at originally.

16                           He told me that it had been  
17          seized on the 20th -- in that meeting he gave me  
18          copies of the Customs and immigration documents  
19          that he had been given -- and he indicated to me  
20          that the log on, when he got the computer back, he  
21          observed to have been on the 21st of December, so  
22          the next day.

23                           MR. DAVID: Indicating that  
24          whatever entry was attempted was on the 21st?

25                           MR. EDELSON: That was the

1 substance of what I understood he was conveying  
2 to me.

3 Now, as I say, he handed me the  
4 documents from Customs. We went over them quite  
5 carefully and we were examining them. I was  
6 trying to look for some indication of the reason  
7 for the seizure.

8 We had some brief discussion about  
9 those documents. He left them with me.

10 Then our conversation turned  
11 to his return from Tunisia and the Buffam card.  
12 That is what the word "Buffam" refers to there,  
13 that Buffam had contacted his wife, left a card,  
14 and wanted him to contact Corporal Buffam about  
15 some issue.

16 Just going on from there, he had a  
17 feeling that his phone had been tapped because  
18 when he was talking to his -- I thought -- it says  
19 to mother. It may be Monia's mother. I'm not  
20 absolutely positive about that. But he said the  
21 RCMP called while he was talking to mother,  
22 7:30 a.m. while in Tunisia. And a phone number  
23 was left by Mr. Arar with the caller in Canada  
24 while he was in Tunisia and they never called.  
25 That is that note below, "Never called back." So,

1 in other words, he had left a number to be called  
2 and no one had ever called him back as a result of  
3 him having left that number.

4 He told me that he had been in  
5 Tunisia on vacation. He said that work would get  
6 slack in the month of January and, hence, he  
7 decided to go abroad for a while. He made it  
8 known to me that his wife's family was from  
9 Tunisia.

10 Then we got into a discussion  
11 about another individual.

12 MR. DAVID: If you could provide  
13 us with those details?

14 MR. EDELSON: He raised with me a  
15 question I assume that had been posed by national  
16 security personnel as to whether he knew an  
17 individual by the name of Safa Almalki and  
18 Abdullah Almalki.

19 He said he knew Safa, but, "he was  
20 not a direct friend", is the phrase I have  
21 recorded here, of Abdullah Almalki. He said he  
22 knew Safa and Nazih, who was Abdullah Almalki's  
23 brother, as well. He said he would see them at  
24 Friday evening prayers.

25 He said Friday that he, the

1 client, would attend at the large mosque. And he  
2 had told Safa, I guess, about the question or the  
3 inquiry that had been made. Safa had told him the  
4 RCMP had asked if Mr. Arar had extreme views about  
5 the United States of America.

6 MR. DAVID: Indicating that Safa  
7 had been interviewed --

8 MR. EDELSON: Yes.

9 MR. DAVID: -- by the RCMP?

10 MR. EDELSON: Yes. And that Safa  
11 then conveyed that segment of the interview to  
12 Maher Arar during, as I understood it, a brief  
13 meeting they had at the mosque on a Friday night.

14 I remember vividly Maher Arar  
15 looked at me, he put his hands up, and he sort of  
16 shook his head, and he said, "I admire the  
17 Americans." He didn't understand why he was  
18 being -- I guess his friend, Mr. Safa Almalki, was  
19 being questioned about his extreme views  
20 concerning the U.S.A.

21 So that --

22 MR. DAVID: I'm sorry.

23 MR. EDELSON: Go ahead.

24 MR. DAVID: Is there anything else  
25 you would like to add in terms of the contents of



1 the interview, in terms of what was shared by  
2 Maher Arar to you, or do these notes pretty much  
3 reflect a complete record of that interview?

4 MR. EDELSON: My notes are never a  
5 complete record because, you know, in 45 minutes  
6 with a client sometimes we are getting overview  
7 and details which we don't make notes of, but I  
8 would say that in substance this is largely what  
9 we discussed. We were trying to get some  
10 background.

11 I was trying to figure out: Why  
12 did the RCMP want to talk to this man? Why was  
13 his computer and laptop seized at the airport?  
14 What was going on?

15 MR. DAVID: Did you make any links  
16 at this point between the consultation of the four  
17 other clients earlier that week, or the week  
18 before, and Maher Arar and the circumstances that  
19 Maher Arar was finding himself in?

20 MR. EDELSON: That is a difficult  
21 question to answer because I think to answer it I  
22 have to disclose the identities of one or more of  
23 the four other clients.

24 MR. DAVID: Then we will not  
25 pursue that line of questioning.

1 MR. EDELSON: Okay.

2 MR. DAVID: Let me ask you  
3 finally, concerning the interview, your  
4 appreciation of Mr. Arar's conduct, his attitude.  
5 Was he guarded in the information, in the exchange  
6 of information with you? Was he forthcoming?  
7 Just give us your appreciation of Mr. Arar's  
8 attitude with you in terms of sharing information  
9 with you?

10 MR. EDELSON: Totally forthcoming.

11 MR. DAVID: I would like now -- I  
12 am going to bring you to some documents,  
13 Mr. Edelson, that do not concern you. They are  
14 RCMP documents. It is just to bring out for the  
15 record what was going on at the same time in these  
16 same days from the RCMP's perspective.

17 MR. EDELSON: All right.

18 MR. DAVID: So I bring you to an  
19 entry for the 22nd of January. That would be  
20 tab 12 of the Edelson documents.

21 MR. EDELSON: Yes.

22 MR. DAVID: If you could go to  
23 page 3.

24 MR. EDELSON: Yes, I have that.

25 MR. DAVID: Again, it is simply to

1           indicate on the record what was occurring from the  
2 RCMP's perspective in these days.

3                         So on the 22nd of January we have  
4 an entry here that well describes the fact that  
5 Mr. Arar's home was attended by officers of the  
6 RCMP, that they wanted to -- and let me read for  
7 the record what this document says:

8                                 "At this time I was met by  
9 ARAR's wife Monia MAZIGH at  
10 which time I identified  
11 myself as an RCMP officer and  
12 asked if I could speak with  
13 Maher ARAR. She stated that  
14 he was not at home. I asked  
15 where he was and she replied  
16 `abroad'. I asked what she  
17 meant by abroad and she  
18 replied `overseas'. I then  
19 asked how long he had been  
20 gone and she stated that he  
21 had been away for three  
22 weeks. I asked when he was  
23 coming back and she stated  
24 maybe three days. I asked  
25 where abouts he was overseas

1 and she stated Tunisia. I  
2 then gave her my business  
3 card and said that it was  
4 important that he to contact  
5 me as soon as possible."  
6 At approx. 1540 hrs., the  
7 same day, I was contacted via  
8 pager by NSIS (the National  
9 Security Investigation  
10 Service) that Maher ARAR had  
11 contacted the NSIS office to  
12 inquire as to why we were at  
13 his residence and that he was  
14 quite perturbed. He left a  
15 phone number in Tunisia where  
16 he could be reached which  
17 was..."

18 And the number is there.

19 "As was busy with searches  
20 during that day, I later  
21 called the number but there  
22 was no answer probably due to  
23 the time change."

24 We then have an entry for the  
25 activities on the Friday, January 25th, and simply

1           note that at 10 o'clock:  
2                           "...I called the ARAR  
3                           residence just to confirm if  
4                           his wife had been contacted  
5                           by him and when he was  
6                           scheduled to return from  
7                           Tunisia. When the number was  
8                           called, Maher ARAR (himself)  
9                           answered the phone. He was  
10                          then spoken to and stated  
11                          that he had attempted to  
12                          contact us from Tunisia and  
13                          was somewhat perturbed as to  
14                          why we had attended his  
15                          residence in his absence  
16                          without prior notice and  
17                          disturbed his pregnant wife.  
18                          It was explained to Mr. ARAR  
19                          that we did not know that he  
20                          was away and when we  
21                          discovered this, we only  
22                          spoke briefly with his wife,  
23                          gave her a business card and  
24                          requested to have him contact  
25                          investigators upon his

StenoTran

1 return."

2 Then the last paragraph says:

3 "Later on the same day, I  
4 received a voice message via  
5 my pager from Michael EDELSON  
6 who stated that if we wished  
7 to speak with his client  
8 Mr. ARAR, we would have to go  
9 through him. This was also  
10 passed onto (somebody) the  
11 proposed Saturday interview  
12 would be cancelled for now."

13 So this indicates that, again, you  
14 would have had a conversation on the Friday, the  
15 25th, concerning the proposed interview between  
16 Mr. Arar and the RCMP.

17 Do you have a recollection in  
18 that regard?

19 MR. EDELSON: Yes. I think  
20 that relates to my original phone call with  
21 Mr. Arar after his return. I undoubtedly would  
22 have told Mr. Arar not to attend that interview  
23 without me, obviously before he met with counsel,  
24 and to advise the RCMP that he would not be giving  
25 an interview before he had an opportunity to get

1 legal advice.

2 MR. DAVID: All right. We come  
3 back now to the regular chronology, your time  
4 line, and coming back to your time sheets, page 2,  
5 there is a reference to a phone conversation with  
6 Ann Alder.

7 MR. EDELSON: Right.

8 MR. DAVID: Was this concerning  
9 the interview conditions?

10 MR. EDELSON: I'm not sure that  
11 the actual conditions were articulated in that  
12 brief conversation. It was definitely, however,  
13 about the whole concept of him being interviewed  
14 by the police.

15 MR. DAVID: Okay. Did you  
16 indicate that fundamentally your client, Mr. Arar,  
17 was prepared to meet with the police?

18 MR. EDELSON: That was always  
19 his position.

20 MR. DAVID: We come now to an  
21 entry on your time sheets -- and that would be  
22 page 3 -- for the 31st of January.

23 MR. EDELSON: Yes.

24 MR. DAVID: If you could just read  
25 that out and tell us what it concerns?

1 MR. EDELSON: This is a telephone  
2 conversation with Paul Johnson, who was with that  
3 division at the RCMP at the time, although he is  
4 not an RCMP member, as I recall.

5 This was a follow-up of my  
6 telephone conversation with Ann Alder the day  
7 before, indicating I was awaiting a response with  
8 Ann Alder. This would have related to whether  
9 Mr. Arar was going to be interviewed and she was  
10 to get back to me as to the format of the  
11 interview. Obviously we had discussions about  
12 that ultimately back and forth for some time.

13 MR. DAVID: Okay. We are now  
14 going to jump forward in time. We just ended off  
15 with the 31st of January and we are going to move  
16 forward to the period of September and October of  
17 2002 and your involvement with Mr. Arar's  
18 detention in New York City.

19 MR. EDELSON: Yes.

20 MR. DAVID: I would like to enter  
21 as an exhibit at this point a one-page sheet with  
22 a message from Monia Mazigh. That would be P-144.  
23 Thank you.

24 EXHIBIT NO. P-144: One page  
25 containing telephone message



1 from Monia Mazigh

2 MR. DAVID: Mr. Edelson,  
3 concerning your activities and what you did for  
4 the period of, let's say, September 27th to  
5 October 1st, it starts off that Monia calls you?

6 MR. EDELSON: Yes.

7 MR. DAVID: If you could just  
8 describe what P-144 represents and whose writing  
9 is on this document?

10 MR. EDELSON: This is on a piece  
11 of -- it looks like a steno pad paper. The date  
12 at the top, September 27, 2002, 9:30 a.m. "TC,"  
13 which is "telephone call". That is my  
14 handwriting.

15 MR. DAVID: Okay.

16 MR. EDELSON: The name Monia,  
17 where it says "Nazigh" as opposed to "Mazigh",  
18 that is my former assistant, Kathleen Stewart's  
19 handwriting. Where it says "Tunisia, Zurich, plus  
20 New York City, Montreal", is my handwriting. The  
21 times written below are Ms Stewart's handwriting.

22 MR. DAVID: And the phone number,  
23 "0-1-1" -- oh, I'm sorry?

24 MR. EDELSON: Yes, I don't  
25 have it.

1 MR. DAVID: Okay.

2 MR. EDELSON: It was there, but I  
3 don't have it.

4 MR. DAVID: I have another  
5 version. I'm sorry. My mistake.

6 --- Laughter / Rires

7 MR. EDELSON: Then the United  
8 States Embassy with a phone number --

9 MR. DAVID: I will just indicate  
10 for the record it is a phone number overseas?

11 MR. EDELSON: The United States  
12 Embassy with a phone number is Ms Stewart's  
13 writing, as is the Department of Justice with a  
14 phone number. Where it says "via NYC," New York  
15 City, that is my handwriting, circled. Then  
16 below, where it says "Sue McNee (Roxborough)," is  
17 my handwriting.

18 MR. DAVID: So can you tell us  
19 what this reminds you of in terms of the  
20 occurrences for that day.

21 It was the Friday, September 27th?

22 MR. EDELSON: This, as I recall,  
23 was the initial phone call that alerted me to the  
24 fact that Maher Arar was returning from Tunisia  
25 via Zurich, New York City, to Montreal.

1                   The phone call was from Monia  
2                   Mazigh at that point from Tunisia. She had left a  
3                   number -- which I think is the blacked-out space,  
4                   if I recall correctly -- where she could be  
5                   reached there. The original call was received  
6                   by my secretary.

7                   Quite frankly, I can't  
8                   remember what time of the day I had a  
9                   conversation, but I think it was likely a  
10                  call-back from our office overseas seeking  
11                  follow-up as to what was going on.

12                  It was related to me verbally by  
13                  my secretary that this was of some urgency because  
14                  Mr. Arar was apparently travelling and had, as far  
15                  as she was concerned, become incommunicado. She  
16                  couldn't communicate with him. She didn't know  
17                  what had happened to him somewhere along that  
18                  travel path between Tunisia, Zurich, New York  
19                  City, Montreal.

20                  We had a sense later on, I think,  
21                  in the day, that something had happened in New  
22                  York City, because he was travelling through New  
23                  York and, hence, the number of the American  
24                  Embassy and below the Department of Justice.

25                  Then the number -- at least the

1 name without the number below is the -- that is  
2 the spouse of John McNee, who was then, I believe,  
3 Assistant Deputy Minister DFAIT. The Roxborough  
4 is the street they lived on, because I was going  
5 to look up their home number in the phone book  
6 because I wanted to try to get a hold of him and I  
7 didn't have his work number.

8 MR. DAVID: So essentially  
9 Ms Mazigh is asking you to help her find her  
10 husband?

11 MR. EDELSON: Well, she is asking  
12 me, can you make some inquiry -- you know, some  
13 inquiry as to where he is, what has happened to  
14 him? Yes. She didn't know anything really.

15 MR. DAVID: I would like to bring  
16 you to the Garvie report, P-19, and if we could go  
17 to page 16.

18 MR. EDELSON: Yes, I have that,  
19 page 16.

20 MR. DAVID: You will see at the  
21 very top there is an entry for the 27th of  
22 September 2002, which says:

23 "Mike Edelson told (somebody)  
24 that he was concerned that  
25 Maher Arar had gone missing."

1 MR. EDELSON: Yes.

2 MR. DAVID: So if you could  
3 just tell us what you did in your response to  
4 Ms Mazigh's call?

5 MR. EDELSON: Well, one of the  
6 first things I did was, I believe I telephoned the  
7 RCMP and tried to determine if they had  
8 information and conveyed to them that he had  
9 apparently gone missing, based on my previous call  
10 on the same day of concern from his wife that she  
11 had no idea what had happened to him.

12 MR. DAVID: Do you recall who you  
13 called and who you spoke to?

14 MR. EDELSON: I believe -- I  
15 believe I do, yes. I'm not absolutely positive  
16 though.

17 MR. DAVID: Can you tell us who  
18 you think you spoke to?

19 MR. FOTHERGILL: Well,  
20 Commissioner, if it is a member of the OPP or a  
21 member of the Ottawa Police Service, based on what  
22 we have just heard from their counsel, obviously  
23 it is not for me to object to that name.

24 If it is a member of the RCMP,  
25 other than Buffam or Cabana, I would ask that the

1 name not be disclosed unless there is a compelling  
2 reason to do so.

3 THE COMMISSIONER: Mr. Westwick  
4 is standing.

5 MR. WESTWICK: Perhaps,  
6 Mr. Commissioner, I should clarify myself. I am  
7 not waiving any privilege. I am simply saying  
8 that the Ottawa Police has no privilege beyond  
9 that which would arise from the Ottawa Police  
10 officer's involvement in the project. In other  
11 words, we don't have any independent --

12 So whatever concerns, national  
13 security claim concerns, the Government of Canada  
14 would be exercising in respect of members of  
15 A-OCANADA, and to the extent that an Ottawa  
16 officer was a member, they would like to take  
17 comfort and take coverage under that privilege,  
18 but beyond that the Ottawa Police don't have any  
19 independent claim.

20 That is the simple point I  
21 was trying to make. I wasn't trying to  
22 indicate that we were waiving anything that  
23 wasn't being extended insofar as the RCMP officers  
24 were concerned.

25 THE COMMISSIONER: Two things. As

1 I understand it, it is not necessarily an NSC  
2 claim. I'm not sure what it is, but it is not  
3 precisely an NSC claim.

4 Second, am I correct, there has  
5 been no application under our rules by any  
6 individual which contemplates that individuals can  
7 make an application to have their identity kept  
8 confidential? I don't have my book with me, but I  
9 recall that is --

10 MR. FOTHERGILL: The last  
11 proposition is certainly true, there has been no  
12 such application.

13 I can't entirely agree that  
14 this is not an NSC claim in the sense that  
15 insofar as it makes it less -- a national  
16 security investigator's job more difficult,  
17 makes the investigator less effective, it does  
18 have an impact on national security. So it is an  
19 NSC claim.

20 What I think I acknowledged to you  
21 earlier is that there is a vulnerability because  
22 of the disclosure to an individual who is not a  
23 government official --

24 THE COMMISSIONER: Who can then  
25 disclose it.

1 MR. FOTHERGILL: Who can then  
2 disclose it further.

3 But I still think this Commission  
4 should consider carefully whether it ought to be  
5 publicizing this name unless it is necessary to  
6 further the mandate.

7 But it is a national security  
8 concern that I am raising.

9 THE COMMISSIONER: Right. Well,  
10 are we at that point where this name, Mr. David,  
11 is one of those names that I should rule upon?

12 MR. DAVID: I don't believe so,  
13 Mr. Commissioner. I am very content in carrying  
14 on without requesting Mr. Edelson -- and I  
15 understand from Mr. Edelson it would be somewhat  
16 speculative as to exactly who the identity is. He  
17 is not even sure himself. So I think that --

18 THE COMMISSIONER: All right. Why  
19 don't you carry on. We may bump into it later on.

20 MR. DAVID: Okay. I think we  
21 will, but --

22 You did speak to somebody at the  
23 RCMP that day, on September 27th?

24 MR. EDELSON: It appears so, yes.

25 MR. DAVID: That is your



1           recollection of the events. You informed the RCMP  
2           that your client, Mr. Arar -- it was indicated to  
3           you by his wife, that he just was not to be found.  
4           He was --

5                         MR. EDELSON: I think I would have  
6           indicated to them the flight path, Tunisia,  
7           Zurich, New York, Montreal, and that he somewhere  
8           along the line had gone missing.

9                         MR. DAVID: This person that you  
10          communicated with, was this person affiliated to  
11          the A-OCANADA project?

12                        MR. EDELSON: I believe it is a  
13          person who was affiliated.

14                        MR. DAVID: So your instinct was  
15          to go back to A-OCANADA?

16                        MR. EDELSON: My instinct was to  
17          go back to the people who had demonstrated an  
18          interest in speaking to him, yes.

19                        MR. DAVID: Okay. What  
20          information did they give you? What feedback did  
21          they provide to you, Mr. Edelson?

22                        MR. EDELSON: None.

23                        MR. DAVID: Did they say that they  
24          would pursue the matter? Did they indicate any  
25          sort of collaboration?

1 MR. EDELSON: No collaboration per  
2 se, but my understanding was that they would  
3 attempt to make certain inquiries to see if they  
4 could track where he had gone.

5 MR. DAVID: Okay. I would like to  
6 now file a document that reflects your attempts in  
7 obtaining names of public defenders in New York.

8 This would be P-145, I believe.  
9 Thank you.

10 THE COMMISSIONER: Thank you.

11 EXHIBIT NO. P-145: Internet  
12 document titled "About NYSDA"  
13 (New York State Defenders  
14 Association)

15 MR. DAVID: This document, first  
16 of all, can you tell us what it is, Mr. Edelson?  
17 It is dated the 1st of October, 2002?

18 MR. EDELSON: This is run off of  
19 an Internet site which had a number of Legal Aid  
20 Society coordinates in New York, Brooklyn. What  
21 the smudge, Mr. Commissioner, says, outside the  
22 box, is "Brooklyn." And on the left -- this is  
23 all in my handwriting.

24 MR. DAVID: If you could go to  
25 page 3 of the document --

1 MR. EDELSON: I'm sorry, page 3  
2 of 13.

3 THE COMMISSIONER: I have it.

4 MR. EDELSON: Don Ryan, who was  
5 the attorney in charge of the Legal Aid Society in  
6 Brooklyn, I had received information that he might  
7 be at a Brooklyn Detention facility. I had made  
8 the assumption by this point, obviously, that  
9 there was some kind of national security  
10 investigation going on, so I assumed it would be a  
11 federal public defender who might be able to track  
12 down his whereabouts.

13 MR. DAVID: Now, you are  
14 focusing your attention to New York to Brooklyn,  
15 to New York City. Why are you orienting your  
16 efforts in this --

17 MR. EDELSON: As I recall, I had  
18 received a call from Ms Mazigh that she had some  
19 information that he might be in the Metropolitan  
20 Detention Center or --

21 MR. DAVID: So she actually  
22 indicated to you MDC?

23 MR. EDELSON: I think she did.  
24 I'm not absolutely positive about that.

25 In any event, what you will see

1 is I started to make some notes. I made a few  
2 phone calls. I had been given the Federal  
3 Defender's Division. You will see the New York  
4 phone number there for New York City and  
5 Manhattan; also the Eastern District of New York,  
6 the federal numbers there.

7 At that point I got on the phone  
8 with an individual by the name of Ashley Levy,  
9 L-E-V-Y, and had a conversation with her. She was  
10 not a lawyer. She was described to me as either a  
11 paralegal or a law clerk for the Federal Public  
12 Defender's Office, and she was attempting to be  
13 helpful. I explained the situation as I knew it,  
14 which was very limited, and asked her if she could  
15 make certain inquiries, or have a public defender  
16 make certain inquiries of their detention  
17 facilities to see if they could locate Maher Arar.

18 She called me back shortly  
19 thereafter, said some phone calls had been made,  
20 and, "I'm sorry, I cannot help you. We have not  
21 been able to locate him."

22 MR. DAVID: Okay. We go now to  
23 October 4th, Mr. Edelson, and I refer you to two  
24 documents in this regard. It refers to your first  
25 meeting with members of Project A-OCANADA.

1 MR. EDELSON: Yes.

2 MR. DAVID: So I would like to  
3 bring you to tab 8, and I bring you to page 3.

4 This entry in the RCMP documents  
5 says the following for the 4th of October:

6 "Insp. CABANA, (and others)  
7 met with lawyer Mike EDELSON,  
8 legal counsel for (somebody  
9 and) Maher ARAR. EDELSON  
10 expressed concerns about the  
11 detention of ALMALKI in Syria  
12 and ARAR in New York City.  
13 EDELSON was initially  
14 concerned that his clients  
15 were detained at the request  
16 of the RCMP however he was  
17 satisfied with our  
18 explanation that we had no  
19 control over events taking  
20 place in other countries. In  
21 relation to ARAR, it was  
22 EDELSON who advised us that  
23 his client was detained in a  
24 Brooklyn City Jail and that  
25 efforts were being made to

1                   retain local legal counsel.  
2                   While we were aware that ARAR  
3                   had been detained at JFK  
4                   Airport, American authorities  
5                   never appraised us of his  
6                   exact location."

7                   Let us now go to the Garvie  
8                   report, and I bring you to page 20 which is also  
9                   an entry for this date, October 4th.

10                  MR. EDELSON: I have that.

11                  MR. DAVID: You will see the date  
12                  appears in the left-hand corner, top, and it says  
13                  the following:

14                         "(Somebody) met with  
15                         Mr. Michael Edelson, legal  
16                         counsel for ARAR.  
17                         Apparently, Edelson had  
18                         expressed concerns about the  
19                         detention of ALMALKI in Syria  
20                         and ARAR in New York. The  
21                         focus of his concern was that  
22                         the RCMP had been complicit,  
23                         or had been involved, in the  
24                         detention of Maher ARAR. He  
25                         was informed that the RCMP

1 had no control over events  
2 taking place in other  
3 countries. Investigators  
4 reported that Mr. Edelson was  
5 satisfied with the  
6 explanation that he was  
7 given. At the same time,  
8 Edelson told ... that Arar  
9 was being detained in a  
10 Brooklyn City Jail and that  
11 efforts were made to retain  
12 local legal counsel.

13 During my interview with  
14 Mr. Edelson, he confirmed  
15 that at that time that he was  
16 satisfied that the RCMP and  
17 A-O Canada investigators did  
18 not have any involvement in  
19 Maher ARAR's detention, and  
20 that he had no factual  
21 information that would have  
22 led him to believe  
23 otherwise."

24 That was just to situate you in  
25 terms of the documents that exist from the RCMP

1 collection that we can refer to with regard to  
2 that meeting.

3 My first question is this: Could  
4 you please describe the meeting, who you met,  
5 where it occurred and what was discussed, and then  
6 I'm going to ask you to comment about certain  
7 extracts on these two documents?

8 THE COMMISSIONER: Just on the who  
9 you met I think will be a problem.

10 MR. FOTHERGILL: Only to restate  
11 the submissions I have already made.

12 THE COMMISSIONER: Let me get  
13 clear then.

14 This is a claim that you are  
15 making based on National Security Confidentiality?

16 MR. FOTHERGILL: Yes, that is  
17 correct, sir.

18 THE COMMISSIONER: Do you wish to  
19 have an NSC hearing on it so that you can call  
20 evidence other than evidence I have already heard?

21 MR. FOTHERGILL: I think it may be  
22 useful for me to take instructions.

23 THE COMMISSIONER: Okay. Because  
24 this is the situation: It seems to me that I  
25 would need evidence to support a claim where the



1 information has already been given to people who  
2 can disclose it publicly. I would want to hear  
3 evidence that that would indeed injure NSC, if  
4 that is the basis of the claim.

5 Quite frankly, the practicality of  
6 this inquiry is that if you make that claim in  
7 these circumstances, the reality is probably the  
8 claim will stand up and the names won't be  
9 disclosed for the reasons that I mentioned  
10 earlier. It would just delay the inquiry. We  
11 couldn't have that hearing. It would delay the  
12 inquiry it and would go off into the netherlands  
13 that we have discussed.

14 I can tell you that on the  
15 basis of the information that I have now heard  
16 about NSC, and thought back on it -- I can  
17 hear submissions -- but without any more  
18 evidence I would rule that this is not subject  
19 to an NSC claim.

20 Now, in fairness to you, the  
21 direct issue hasn't been raised before me about  
22 the names of individuals that were disclosed -- I  
23 am repeating -- but that have been disclosed to  
24 those who can make it public. I haven't heard  
25 evidence on that.

1                   In any event, on the current  
2                   evidentiary record, I would not support a claim  
3                   for NSC. Okay?

4                   You would like to take  
5                   instructions?

6                   MR. FOTHERGILL: Sir, I note  
7                   that it is 11:15, or almost. I wonder if this  
8                   would be a good time to take the mid-morning break  
9                   and I will seek instructions and convey my  
10                  position to Mr. David.

11                  THE COMMISSIONER: Okay. Because  
12                  we are going to keep bumping into this, probably  
13                  in this evidence, and Inspector Cabana's evidence,  
14                  so we might as well --

15                  MR. DAVID: Mr. Commissioner,  
16                  for your information, there are in fact four  
17                  meetings that I will be asking Mr. Edelson to  
18                  review for us.

19                  THE COMMISSIONER: This is going  
20                  to come up over and over so we might as well get  
21                  to the bottom of it now.

22                  We will rise for 15 minutes.

23                  THE REGISTRAR: Please stand.

24                  --- Upon recessing at 11:13 a.m. /

25                  Suspension à 11 h 13

1 --- Upon resuming at 11:28 a.m. /

2 Reprise à 11 h 28

3 THE REGISTRAR: Veuillez vous  
4 asseoir. Please be seated.

5 MR. DAVID: Mr. Commissioner,  
6 what government counsel has informed me of their  
7 position will be that whoever Mr. Edelson is able  
8 to identify, because he knows their name and is  
9 certain as to their identity, there will be no  
10 objection to their identity, to disclosing it for  
11 the record.

12 THE COMMISSIONER: Thank you.

13 MR. DAVID: We are therefore at  
14 your first meeting, Mr. Edelson, which occurred on  
15 Friday, October 4th, and I would like you to tell  
16 us where this meeting took place, who you met, and  
17 what was discussed?

18 MR. EDELSON: The meeting took  
19 place at the RCMP headquarters in Vanier, McArthur  
20 Road and the Vanier Parkway. It was in the IPOC's  
21 office, Integrated Proceeds of Crime Section  
22 office.

23 Present at the first meeting, as I  
24 recall, Inspector Cabana, Ann Alder, who was Crown  
25 counsel. She was lead counsel for the IPOC's

1 division during that period, and advised me at  
2 that point she had also been assigned the  
3 additional duties to act as counsel, legal  
4 advisor, to the National Security Section.

5 I think he was then a Staff  
6 Sergeant, Kevin Corcoran was present. I don't  
7 think -- he may have been Acting Inspector at that  
8 time. Tom Callaghan, from the Ottawa Police,  
9 seconded to the RCMP, was also present at that  
10 meeting.

11 MR. DAVID: It is Pat Callaghan?

12 MR. EDELSON: Pat Callaghan. I'm  
13 sorry, I said Tom. Pat Callaghan.

14 MR. DAVID: From the Ottawa  
15 Police.

16 MR. EDELSON: Yes.

17 MR. DAVID: Anybody else that you  
18 can recall?

19 MR. EDELSON: Me.

20 MR. DAVID: How long did the  
21 meeting last?

22 MR. EDELSON: Oh, I can't  
23 be precise, but it was less than an hour, I  
24 would say.

25 MR. DAVID: Can you summarize what

1 information was exchanged?

2 MR. EDELSON: Well, my purpose for  
3 this particular meeting was twofold. It related  
4 to two different clients. You will see in both of  
5 the extracts that you have pointed out to me,  
6 Mr. Almalki and Mr. Arar are both mentioned in the  
7 meeting. The detention of Mr. Almalki in Syria  
8 being the subject of one part of the discussion,  
9 and the issue of Mr. Arar having been detained in  
10 New York City being part of that discussion as  
11 well.

12 I was concerned to know whether  
13 the RCMP had played a role in the detention of  
14 either/or both of these individuals, and we had a  
15 discussion about that.

16 MR. DAVID: Were you the initiator  
17 of this meeting?

18 MR. EDELSON: I had asked for the  
19 meeting, as I recall, yes, yes.

20 MR. DAVID: You had asked for  
21 the meeting.

22 MR. EDELSON: Because this was --  
23 I think you have to understand it contextually.  
24 This was an extremely unusual scenario. As a  
25 lawyer I was not retained per se. I had had that

1 initial meeting with Mr. Arar and some subsequent  
2 discussions. I had had this somewhat frustrated  
3 and desperate call from his wife as to what has  
4 happened to him.

5 I thought that obviously the  
6 quickest way to find out where he was and why he  
7 was there was to go to the people who are  
8 originally wanted to question him. So I asked --  
9 I believe it was a call to Ann Alder, if I recall,  
10 and a meeting was convened as a result and those  
11 people were present at the meeting.

12 MR. DAVID: Okay. What  
13 information did you gather? What was told to you?

14 MR. EDELSON: Well, I think -- it  
15 was certainly indicated to me in fairly clear  
16 terms that the RCMP did not play a role in his  
17 detention in New York City and that they were not  
18 in control of the events surrounding the detention  
19 of Mr. Almalki in Syria.

20 That was the substance, the core,  
21 of what they were conveying to me.

22 MR. DAVID: Both documents I  
23 referred you to, Mr. Edelson, say that, and I will  
24 quote. In one of them it says:

25 "He was satisfied with our

1 explanation that we had no  
2 control over events taking  
3 place in other countries."

4 In the Garvie report it is  
5 quoted -- you are quoted -- or I can quote as you  
6 saying that:

7 "Edelson was satisfied with  
8 the explanation he was given.  
9 Edelson confirmed that at the  
10 time he was satisfied that  
11 the RCMP and A-OCANADA  
12 investigators did not have  
13 any involvement in Arar's  
14 detention and that he had no  
15 factual information that  
16 would have led him to believe  
17 otherwise." (As read)

18 Do you have any comments about  
19 those reports.

20 MR. EDELSON: Well that was  
21 their perception. That is not what I would have  
22 said to them.

23 MR. DAVID: What would you have  
24 said to them?

25 MR. EDELSON: Again, to put it in

1 context, I knew Ann Alder from having a long  
2 professional relationship with her as counsel over  
3 15 years.

4 I knew Kevin Corcoran, having had  
5 a professional relationship with him over many  
6 years in other cases, but I also knew him from a  
7 different perspective. I had actually been  
8 retained by a family member of Mr. Corcoran's, and  
9 had acted for that family member, and so I sort of  
10 knew him as well more on a personal level.

11 I knew Callaghan from his days in  
12 the Ottawa Drug Squad.

13 So the only person I really didn't  
14 know was Inspector Cabana. I believe that was the  
15 first time I had ever met him.

16 But the other officers I was quite  
17 familiar with. When we had the meeting I had  
18 indicated to them that for me this was sort of an  
19 information-gathering process. I was trying to  
20 determine what was going on with these two  
21 individuals. I indicated to them that the  
22 contents of the meeting, the information that they  
23 conveyed to me, I would not make notes about, and  
24 I did not. We had what I thought was a  
25 confidential, genuine, sincere discussion about



1           these events.

2                               What I recall telling them at the  
3           time was not that I was satisfied -- in fact, I  
4           was very frustrated because I couldn't get any  
5           information about these two individuals. I would  
6           have told them, "I will take your word for it that  
7           you did not participate, your division did not  
8           participate in the detention of these two  
9           individuals." I said, "I have no evidence to the  
10          contrary at this point, but I will take your word  
11          for it," because of the people I was dealing with,  
12          and I knew them and I accepted their word on it at  
13          that point.

14                              MR. DAVID: In representing  
15          Mr. Arar and figuring out why he was in the  
16          circumstances that he was, detained in New York  
17          City by American authorities at the Metropolitan  
18          Detention Center, did you ask the RCMP whether  
19          they had evidence against your client and what his  
20          position was vis-à-vis their involvement?

21                              MR. EDELSON: We certainly  
22          discussed that very issue in one of the meetings  
23          that we had. Now, I can't -- I'm just trying to  
24          recall whether it was the October meeting or  
25          whether it was the subsequent meeting, but we

1 definitely discussed at one point whether they had  
2 evidence to charge Mr. Arar or Mr. Almalki for  
3 that point.

4 My feeling is it may not have been  
5 at this meeting, however. This I thought was more  
6 an effort to gather information which might be  
7 utilized in trying to liberate Mr. Arar from New  
8 York detention and to assist in liberating  
9 Mr. Almalki from his detention in Syria.

10 MR. DAVID: I bring you to your  
11 time sheets now for an entry on October 10th.

12 MR. EDELSON: Yes.

13 MR. DAVID: If you could just  
14 read that. I believe it says, "Maher Arar," and  
15 "contact Ambassador in Damascus to see where he  
16 is." And then it says "In Tunis. Monia in  
17 Tunis."

18 MR. EDELSON: Yes.

19 MR. DAVID: Can you just tell us  
20 what that is about?

21 MR. EDELSON: This isn't an  
22 entirely satisfactory note because it doesn't  
23 really indicate who I spoke to.

24 I believe the reference is that I  
25 was going to make an effort, through DFAIT, to

1           have the Ambassador in Damascus -- we are now at  
2           the 10th, so we are six days after the original  
3           RCMP meeting. I think by this point I had  
4           received some information that Mr. Arar may well  
5           be in Syria. As a result, I was jotting down a  
6           thought I had that we contact the Canadian  
7           Ambassador through DFAIT in Syria, in Damascus, to  
8           determine if Mr. Arar was in fact there, being  
9           detained in Syria.

10                           The other reference is simply to  
11           Monia Mazigh being in Tunisia.

12                           MR. DAVID: And the fact that she  
13           called you?

14                           MR. EDELSON: I'm not sure that  
15           this was a call from her, no. I may have just  
16           been jotting this note, that at this point in  
17           time, this is where I thought she was.

18                           MR. DAVID: If we could go to  
19           page -- no, I'm sorry, not page, but October 14th.

20                           MR. EDELSON: I have it.

21                           MR. DAVID: There is an entry  
22           here, "telephone conversation to Tunisia".

23                           MR. EDELSON: That would have been  
24           a call to Ms Mazigh.

25                           MR. DAVID: Any recollection as to

1           what was discussed?

2                           MR. EDELSON:   This was probably a  
3           status report to her on information that we had  
4           gathered up to this point in time, I suspect,  
5           concerning where Maher Arar was.

6                           MR. DAVID:   Okay.  I would like to  
7           file now the next three documents together, and we  
8           will quickly review them.  It is more for the  
9           record than a question of substance.  They are  
10          entries for October 17th, 18th and for the 22nd of  
11          October.  They deal with messages and exchange of  
12          e-mails with Rebecca Thornton and Steve Watt.

13                          MR. EDELSON:   Yes.

14                          MR. DAVID:   So these three  
15          documents will be filed P-146 to P-148,  
16          Mr. Commissioner.

17                          THE COMMISSIONER:   Okay.  P-146  
18          being from Steve Watt?

19                          MR. DAVID:   No, P-146 would be  
20          Rebecca Thornton.  It is a message for October --

21   EXHIBIT NO. P-146:  Message  
22   from Rebecca Thornton dated  
23   October 17, 2002

24                          THE COMMISSIONER:   P-147, Steve  
25          Watt.

1 MR. DAVID: Yes.

2 EXHIBIT NO. P-147: Message  
3 from Steve Watt dated  
4 October 18, 2002

5 THE COMMISSIONER: P-148 the  
6 e-mail from Steve Watt.

7 MR. DAVID: That is correct.

8 EXHIBIT NO. P-148: E-mail  
9 message dated October 22,  
10 2002 from Steve Watt

11 MR. DAVID: So if you could just  
12 tell us, Mr. Edelson, for the 17th, there is a  
13 message here from Rebecca Thornton, what that is  
14 about?

15 MR. EDELSON: She was a lawyer  
16 with the Committee for Human Rights in New York.  
17 She called my office on that date and at that  
18 hour. This message was taken and the contents of  
19 the message recorded by my secretary. "KS" at the  
20 bottom is "Kathleen Stewart" I called her back  
21 and had a brief conversation with her, outlining  
22 what we were concerned about with respect to  
23 Mr. Arar.

24 I think at this point obviously he  
25 was gone from New York, so this was more

1 background. This group apparently worked on human  
2 rights cases in the New York area and I was just  
3 trying to get some background as to what had  
4 happened in New York City.

5 MR. DAVID: Okay. If we go  
6 now to October 18th, there is a message from Steve  
7 Watt --

8 MR. EDELSON: Yes. Steve Watt --

9 MR. DAVID: -- the Centre for  
10 Constitutional Rights.

11 MR. EDELSON: Yes. This was a  
12 message of October 18th. He had called my office.  
13 I actually spoke to him and you will see there is  
14 a return call on the 22nd of October in my docket  
15 in reference to that telephone with Mr. Watt.

16 MR. DAVID: Okay. So if we could  
17 go to page 7 -- no, I'm sorry, it is not page --

18 MR. EDELSON: October 22nd.

19 MR. DAVID: The entry for the 22nd  
20 of October, if you could just go through that?

21 MR. EDELSON: This, I believe,  
22 there may have been some telephone tag going on  
23 for a short while, but I did in fact speak to  
24 Mr. Watt on the 22nd of October and at that time  
25 we had a discussion about the case.

1                   It relates to a discussion -- it  
2                   also engaged Maureen Girvan. There was an issue  
3                   about questions and answers being asked in  
4                   Parliament, and Mr. Watt and I discussed reports  
5                   from the Syrian government that they had Mr. Arar  
6                   in custody.

7                   There was a discussion about  
8                   consular access being requested to gain access  
9                   to Mr. Arar.

10                  He then told me what the Centre  
11                  for Constitutional Rights did. They litigated  
12                  civil rights cases in the United States, and they  
13                  were involved in a number of proceedings at that  
14                  time relating to the PATRIOT Act, I guess, and  
15                  national security type investigations. He gave me  
16                  their website. He said they are a not-for-profit  
17                  litigation group.

18                  He also mentioned a couple of  
19                  other groups that I perhaps should take a look at.  
20                  One was the Centre for National Security Studies.  
21                  He also told me to take a look at the District of  
22                  Columbia Federal Court website because there was a  
23                  number of cases, he said, that had recently come  
24                  out of the Federal Court relating to detention  
25                  under the immigration legislation and whether or

1 not the Americans had to even release the names of  
2 who was detained to relatives, family members, to  
3 confirm whether or not they were even in jail.

4 MR. DAVID: In this regard, we  
5 have P-148, which is the e-mail message from him  
6 to you on the same date.

7 MR. EDELSON: He sent me -- the  
8 e-mail message included a number -- I think two  
9 decisions or two references to decisions from, I  
10 think, the Washington Federal Court relating to  
11 this issue which was being litigated: Whether or  
12 not the government had to confirm to the family  
13 members of detainees the very fact of whether they  
14 were in detention or not.

15 MR. DAVID: Just coming back to  
16 your time sheet for the 22nd, there is an entry on  
17 the second line and you referred to the name as  
18 Maureen Garvin.

19 What did he indicate to you?  
20 We understand it is Girvan. It would be  
21 Maureen Girvan.

22 MR. EDELSON: My understanding  
23 is -- and my memory is very vague about this  
24 name -- that perhaps she had had something to do  
25 with Mr. Arar's detention in New York City. I



1 can't remember the particulars, though.

2 MR. DAVID: Okay.

3 MR. EDELSON: Not that she was  
4 at fault --

5 MR. DAVID: No, no, I didn't take  
6 it that way. In fact the evidence is very clear  
7 in that regard, she was a consular official  
8 with --

9 MR. EDELSON: Right.

10 MR. DAVID: -- our Consul General  
11 in New York City?

12 MR. EDELSON: All right.

13 MR. DAVID: In fact the evidence  
14 is clear that in fact there were communications  
15 between Mr. Watt and Ms Girvan.

16 Coming now to an entry for the  
17 24th of October. If you could go to tab 4 of the  
18 Edelson documents?

19 MR. EDELSON: Right.

20 MR. DAVID: It is a document that  
21 is coming from the Assistant Deputy Minister,  
22 whose name is John McNee.

23 MR. EDELSON: Right.

24 MR. DAVID: It is his note. It  
25 says:

1 "Mike Edelson, 24.X.02."  
2 There are various notes on it  
3 such as:  
4 "Act for M Arar  
5 consular visit?  
6 How he got deported?  
7 CBC The National  
8 interview Syrian..."  
9 I'm not sure?  
10 MR. EDELSON: I think it is  
11 "Ambassador."  
12 MR. DAVID: "Ambassador" implies:  
13 "...gives impression can get  
14 out of..."  
15 MR. EDELSON: Military.  
16 MR. DAVID:  
17 "...military service  
18 if was member..."  
19 MR. EDELSON: "Terrorist  
20 organization".  
21 MR. DAVID: "Terrorist",  
22 thank you.  
23 Why don't you carry on?  
24 MR. EDELSON: The fear being  
25 expressed by me was that the Syrians were being

1 used as a proxy to torture him.

2 MR. DAVID: So my question is: Do  
3 you recall speaking to or calling Mr. McNee and,  
4 if so, why and the circumstances of that call?

5 MR. EDELSON: I definitely  
6 remember the call. John McNee was a friend of  
7 ours. Our sons ski-raced together. I knew  
8 John had been the former Ambassador to Syria and  
9 I thought of all the people who might be able  
10 to point me in the right direction as to who  
11 to contact at DFAIT or otherwise, he would be the  
12 man.

13 So I initiated this call. I  
14 called him. I gave him some background of who I  
15 was acting for, that was Maher Arar. Issues were  
16 discussed about how did he end up in Syria. Did  
17 he know? Was he getting consular visits?

18 The CBC had done a story on this  
19 issue. I think I have made mention of that  
20 somewhere in my dockets earlier on, that there had  
21 been a number of stories that had gone off about  
22 this issue.

23 But in any event --

24 MR. DAVID: If you look at the  
25 docket for the 23rd I think you will see a

1 reference to that.

2 MR. EDELSON: You are right. Kim  
3 Trynacity and Evan Dyer, he was the CBC Radio  
4 side, they were on the story and they were  
5 apparently doing stories now, making inquiries,  
6 what had happened to Mr. Arar. So we had a brief  
7 discussion about that.

8 I'm not quite sure what the  
9 "interview Syrian Ambassador issue" is about, but  
10 I think we had some discussion -- Mr. McNee was  
11 aware that certain nationals, say of Canada or  
12 whatever, who went back to Syria, might be  
13 detained for purposes of carrying out their  
14 military service, if it had been deferred, if they  
15 had left when they were youthful and had never  
16 served in the Syrian military. I think he was  
17 advising me that maybe this was a reason why he  
18 was being detained.

19 I think the "Interview Syrian  
20 Ambassador" relates to the story with the CBC,  
21 that he was telling people that you could be  
22 deferred from the military service in Syria.

23 "Question: Was he a member  
24 of a terrorist organization?"

25 The last two lines were my

1 expression of a fear and concern that I had that  
2 Syrians were being used as a proxy to torture  
3 Mr. Arar in some kind of U.S. intelligence  
4 investigation.

5 The Assistant Deputy Minister  
6 couldn't really comment on that, he really didn't  
7 have much information from what I could determine,  
8 but he referred me to -- he was the one who  
9 referred me to Gar Pardy.

10 MR. DAVID: Okay. We come now to  
11 your time sheet for October 24th in that regard,  
12 and if you could just read?

13 MR. EDELSON: Yes. That refers  
14 to me -- after the conversation with John McNee,  
15 he had given me Gar Pardy's phone number. He  
16 said, "This is the fellow in charge with dealing  
17 with people imprisoned overseas." He said, "He  
18 will get on top of this case. Give him a call."  
19 So I did.

20 MR. DAVID: So when you expressed  
21 to Mr. McNee your fears that the Syrians were  
22 being used as a proxy to gather information, to  
23 torture him, the reaction from Mr. McNee was what  
24 at that point?

25 MR. EDELSON: There really was

1 none. He didn't have a reaction at that point  
2 that I recall, but he said, "Look, you know, this  
3 is a serious matter. Here is the man to speak  
4 to", and he referred me to Mr. Pardy.

5 MR. DAVID: What was your thought  
6 based on -- how did you come to this way of  
7 thinking at this time?

8 MR. EDELSON: I guess the best  
9 way of explaining that would be this: I had had,  
10 in my practice, experience in dealing with what  
11 was one of the first anti-terrorism  
12 investigations in Canada with a young man who was  
13 the subject of being placed on the three  
14 anti-terrorism lists: The U.N., U.S, and Canadian  
15 lists, and he had approached and retained us. We  
16 were involved in an application by the U.S.  
17 government to try to extradite him to Boston,  
18 Massachusetts, to face charges with a brother who  
19 had been arrested there.

20 So in that context, we had some  
21 previous experience and background, you know, in  
22 reference to these national security issues, and  
23 from my perspective, we had been doing some  
24 reading obviously, and doing some background  
25 information-gathering and, furthermore, we became

1           aware -- I think I was aware already. I mean  
2           Syria's reputation, unfortunately, in the world  
3           community was not a good one in terms of this kind  
4           of activity.

5                               We had become aware as well  
6           that -- I didn't know the name at that point,  
7           "extraordinary rendition," which I guess we have  
8           all come to learn about, but I used the term that  
9           they would be used as a proxy because we had also  
10          heard that there were other individuals, I think  
11          one in Egypt, one in Syria -- or more -- we had  
12          obviously more in Syria because I knew Mr. Almalki  
13          was also there -- a concern that the U.S.  
14          government might be farming out interrogations to  
15          foreign regimes where the procedures during  
16          interrogations that would bind American  
17          authorities would no longer bind foreign regime  
18          authorities, including torture.

19                           MR. DAVID: So from what you had  
20          been exposed to through a case that you had  
21          handled, you sort of became -- you developed an  
22          awareness that this was a possible scenario then?

23                           MR. EDELSON: Yes.

24                           MR. DAVID: As of when did  
25          that become an understanding that you had,

1 Mr. Edelson?

2 MR. EDELSON: Oh, a year prior to  
3 this.

4 MR. DAVID: All right.

5 MR. EDELSON: There was no  
6 suggestion that the other individual had been  
7 tortured, but in our general information-gathering  
8 these were the kind of things we were starting to  
9 hear, that this was going on. This was the kind  
10 of practice that was being adhered to by the  
11 United States.

12 MR. DAVID: Simply for the record,  
13 Mr. Commissioner, P-88, which is Mr. Gar Pardy's  
14 notes, extracts from his diaries, there is a  
15 reference to a phone call with John McNee on this  
16 very same date, October 24th, as well as the fact  
17 that Mr. Pardy spoke to Michael Edelson that day.

18 MR. EDELSON: Yes, he did.

19 MR. DAVID: And you made an  
20 arrangement for a meeting on October 29th.

21 MR. EDELSON: That is correct.

22 MR. DAVID: Thank you.

23 We go now to tab 5 of the Edelson  
24 documents. Again, this is just for the record.  
25 It is simply an e-mail from Mr. Pardy confirming



1 the meeting on October 29th with you.

2 MR. EDELSON: Right.

3 MR. DAVID: If we could go to your  
4 time sheet for October 29th?

5 MR. EDELSON: Yes. I have that.

6 MR. DAVID: This entry is simply  
7 confirming that on this date you had a meeting  
8 with Mr. Pardy. It says:

9 "Meeting with Gar Pardy,  
10 DFAIT, Clair de Lune?"

11 MR. EDELSON: That is correct.  
12 That is where we met. It is a restaurant on  
13 Clarence Street.

14 MR. DAVID: I have been there a  
15 few times.

16 MR. EDELSON: Yes.

17 MR. DAVID: Can you tell us about  
18 that meeting, what was discussed --

19 MR. EDELSON: That is the first  
20 time I met Gar Pardy face-to-face. We sat down  
21 and we had a discussion about the case. It was  
22 not only specifically about the case, it was more  
23 a wide-ranging discussion about what was going on,  
24 from his perspective, in the world concerning  
25 national security investigations.

1                   Our minds then turned to the very  
2                   subject of Mr. Arar's situation, and we discussed  
3                   a number of issues relating to Mr. Arar and what  
4                   could be done to expedite his release and return  
5                   to Canada.

6                   One of the issues that was  
7                   discussed was a letter being obtained from the  
8                   RCMP that would set out certain particulars which  
9                   I would then turn over to DFAIT in an effort to  
10                  utilize that through the diplomatic channels to  
11                  hasten his release.

12                 MR. DAVID: Do you recall whose  
13                 initiative it was to raise the issue of the letter  
14                 as a possibility?

15                 MR. EDELSON: My recollection was  
16                 the possibility of a letter came from Gar Pardy,  
17                 but that the details or the contents of what might  
18                 be in the letter were -- I was sort of making  
19                 suggestions to him of three or four things that --  
20                 I said, "What about this? What about this? Would  
21                 this be helpful?" And he said, "Yes, yes, if you  
22                 could get that, that would be great." That is how  
23                 I think the discussion unfolded generally.

24                 MR. DAVID: Was it ever  
25                 contemplated that this be a DFAIT initiative

1           rather than a Michael Edelson initiative, to write  
2           to the RCMP, seeking this assistance?

3                       MR. EDELSON:  No, it was always --  
4           during our discussion on the 29th, it was me who  
5           was going to be writing.  Gar Pardy never  
6           mentioned he would be writing.

7                       MR. DAVID:  All right.  We go  
8           now to tab 1 of your documents.  I want to refer,  
9           this is not something that you are necessarily  
10          familiar with but it brings out the chain of  
11          events that follow your meeting with Gar Pardy on  
12          October 29th.

13                      This is an entry in the personal  
14          notes of a member of the RCMP A-OCANADA force on  
15          the 30th of October, and it says the following:

16                      "I received a call from Ann  
17                      Alder.  She advised me that  
18                      she had received a call from  
19                      Mike Edelson.  He had advised  
20                      Ann that he had met with  
21                      Director General - Gar Pardy  
22                      of DFAIT concerning Arar."

23                      If we just move on a bit to the  
24          last four sentences of that page.  It says:

25                      "Pardy wanted a letter from

1                   either DOJ or the RCMP  
2                   advising that Arar is a  
3                   person of interest to the  
4                   RCMP."

5                   Do you recall the discussion about  
6                   DOJ as being the possible issuer of this letter?

7                   MR. EDELSON: Well, DOJ only in  
8                   the sense of Ann Alder, perhaps, you know, writing  
9                   the letter, or someone acting on her behalf  
10                  writing the letter.

11                  MR. DAVID: The notes go on  
12                  to say:

13                         "This letter could facilitate  
14                         the release of Arar to  
15                         Canada. Edelson indicated  
16                         that if that was the case he  
17                         could facilitate an interview  
18                         between Arar and the RCMP."

19                  Do you recall sort of linking the  
20                  issuance of the letter by the RCMP and  
21                  collaboration by your client?

22                  MR. EDELSON: No, they weren't  
23                  linked per se, but obviously they had wanted to  
24                  speak to Maher Arar and I had indicated to them  
25                  during the meeting that, you know, you are likely

1 not going to get to interview him unless he is  
2 here, so let's get a letter done here.

3 Quite frankly, my focus -- I  
4 really wanted the letter from law enforcement.  
5 From my perspective, that would be a more powerful  
6 document than coming from any other source. In  
7 other words, our national investigative agency  
8 writing a letter saying the following. That  
9 letter then being handed to DFAIT, my  
10 understanding that, through diplomatic channels,  
11 that letter would go over to the Syrians, and they  
12 would see that he was not wanted here for any  
13 criminal activity and they would, hopefully, take  
14 that into account in their determination to send  
15 him back here.

16 But I do recall a discussion of,  
17 when he got back, we would try and arrange for  
18 that interview that we had discussed way back.

19 MR. DAVID: Now, going way back,  
20 and essentially going back to January of 2002, it  
21 was the position of your client that, yes, he  
22 would accept to be interviewed by the RCMP?

23 MR. EDELSON: Yes.

24 MR. DAVID: There were conditions  
25 that you had recommended to your client.

1 MR. EDELSON: Oh, yes.

2 MR. DAVID: But it was clear from  
3 day one that Mr. Arar accepted to meet the RCMP?

4 MR. EDELSON: Yes, and he said --  
5 when I told him the reason for the conditions and  
6 why I felt that they were necessary, he said, "I  
7 will take your advice on that." That is what you  
8 want clients to do, is to follow your advice, and  
9 he did.

10 MR. DAVID: I just want to make it  
11 clear for the record, Mr. Edelson, was that the  
12 position of your client, Mr. Arar, until the end  
13 of your mandate, that he was accepting to meet the  
14 RCMP on certain conditions?

15 MR. EDELSON: Well, the end of my  
16 mandate, I think, was mid October 2003, and he had  
17 just come back.

18 MR. DAVID: Right.

19 MR. EDELSON: And at that point,  
20 we did not discuss that. I felt my mandate, if  
21 you want to call it a mandate as such, it sort of  
22 ended when he got back to Canada and I was  
23 recommending to him at that point that he seek  
24 civil counsel and other counsel to pursue certain  
25 concerns he had based on what he told me when I

1 met with him.

2 MR. DAVID: Okay. Coming back to  
3 the notes of the RCMP officer on page 2, he says:

4 "I advised Ann I would speak  
5 with ... and discuss the  
6 matter.

7 - I spoke with (this person)  
8 and he indicated that it  
9 would be totally  
10 inappropriate for us to write  
11 any letter or attempt to get  
12 Arar out of custody when it  
13 was the Americans who had him  
14 detained."

15 MR. EDELSON: Yes.

16 MR. DAVID:

17 "I called Ann back and  
18 repeated this concern.

19 - I called Richard Roy and he  
20 advised me that he would look  
21 into the matter concerning  
22 Pardy and call me back. I  
23 told him of the  
24 inappropriateness of the  
25 request and that I would not

1                   respond to DFAIT or Edelson  
2                   by phone, that they must  
3                   document their request.  
4                   - I called Ann Alder back and  
5                   advised her to have Edelson  
6                   put any request on paper and  
7                   we would deal with same."

8                   MR. EDELSON: Yes.

9                   MR. DAVID: Okay. Let's now go to  
10                  your time sheets for the next date, October 31st.

11                  If you could just tell us what  
12                  that is about.

13                  MR. EDELSON: This time sheet --  
14                  obviously unbeknownst to me because I have never  
15                  seen these notes before -- does, in fact,  
16                  correspond to Ann Alder telling me --

17                  MR. DAVID: When you say you  
18                  haven't seen these notes, you were referring to  
19                  the tab 1.

20                  MR. EDELSON: That is right.

21                  MR. DAVID: Okay.

22                  MR. EDELSON: This docket is a  
23                  very brief reference to me having drafted a letter  
24                  on October 31, 2002 to Ann Alder setting out my  
25                  request and what I wanted in the letter, that Gar



1 Pardy and I had discussed at Clair de Lune.

2 MR. DAVID: Essentially you have  
3 certain notes there, you have four entries: "Key,  
4 not suspect?"

5 MR. EDELSON: Yes. If we go over  
6 the page, October 31, 2002. I have a telephone  
7 call with Ann Alder initially on that date.

8 MR. DAVID: Right.

9 MR. EDELSON: I was just jotting  
10 down the things that I discussed with her that I  
11 would like to see in the letter.

12 MR. DAVID: This had been  
13 discussed with Gar Pardy before?

14 MR. EDELSON: I'm not sure every  
15 one of them had been discussed, but certainly in  
16 substance most of these were the things I was  
17 suggesting to Gar Pardy that DFAIT would find  
18 helpful in expediting the release of Mr. Arar.

19 One was that -- and I felt was the  
20 key -- if I could get the RCMP to concede in  
21 writing that he was not a suspect, using it in the  
22 term that I understand as a criminal lawyer, that  
23 he was not a suspect in a terrorist investigation;  
24 that he was not wanted in Canada, in other words,  
25 there were no outstanding warrants for his arrest;

1           that he had no criminal record, so they would run  
2           a CPIC run and Canadian Police Information  
3           Computer run, and they would determine whether he  
4           had a record, maybe they would include that.

5                         This last comment is just sort of  
6           a summary of the above, namely, that he is a solid  
7           citizen, in other words, and we would get that  
8           letter. She said, you know, that is something you  
9           are going to have to put in writing.

10                        So this docket comes before  
11           the docket that is chronologically before it.  
12           In other words, the letter docket should  
13           actually have been listed after this, because  
14           this is the phone call that preceded the writing  
15           of the letter.

16                        MR. DAVID: Okay.

17                        MR. EDELSON: Okay?

18                        MR. DAVID: So the docket simply  
19           indicates, "Letter to Ann Alder."

20                        MR. EDELSON: That's right. That  
21           was the letter that then put in writing --

22                        MR. DAVID: We will come --

23                        MR. EDELSON: -- at her request,  
24           what we had discussed on the telephone.

25                        MR. DAVID: We will review

1           that letter.

2                                 Simply for the record,  
3           Mr. Commissioner, again I'm referring to  
4           Mr. Pardy's notes. It is not necessary to go to  
5           them, but he indicates on page 10 of P-88 that  
6           Mr. Edelson, after speaking to the prosecutor,  
7           called Gar Pardy.

8                                 MR. EDELSON: Yes.

9                                 MR. DAVID: I bring you now to  
10          tab 6 of the Edelson documents. This is Mr. Pardy  
11          sending an e-mail to Monia Mazigh, referring to  
12          the attempts by Mr. Edelson to get a letter from  
13          the RCMP.

14                                It is the fourth paragraph, and  
15          it says:

16                                "Michael Edelson and I have  
17                                been talking and we are  
18                                hoping to get a letter from  
19                                the police demonstrating that  
20                                there is no police interest  
21                                in Maher. If we get the  
22                                letter then we will use it  
23                                both in Syria and in the  
24                                United States. Take good  
25                                care, Gar."

1                   MR. EDELSON:  If I may, Mr. David,  
2                   the reference to the United States reminds me of  
3                   part of the discussion we had had at Clair de  
4                   Lune.  I had asked Mr. Pardy at Clair de Lune,  
5                   "Are you getting or are you not getting  
6                   information from the United States, one of our  
7                   neighbours and partners, as to why Mr. Arar was  
8                   seized and why he was sent over" -- I think I may  
9                   have even heard by this point that there was a  
10                  Jordan element to his deportation.

11                  We were discussing this during our  
12                  meeting and I remember -- and this really stood  
13                  out in my mind because of the term he used, he  
14                  said, "In all the years I have been doing this, I  
15                  can't remember being stonewalled like this by the  
16                  Americans.  We are not getting any information  
17                  about Mr. Arar out of the U.S."

18                  I think in part that puts  
19                  into context the reason why he wanted the letter.  
20                  I thought initially just to send to Syria, but I  
21                  see here as well he may well have contemplated  
22                  using it with the U.S., to try and, I guess,  
23                  maybe crowbar some information out of them at  
24                  this point.

25                  MR. DAVID:  Okay.  Thank you.

1 MR. EDELSON: I'm just speculating  
2 on the latter point.

3 MR. DAVID: I bring you now  
4 to P-83.

5 MR. EDELSON: Do I have that?

6 MR. DAVID: No, not yet. You will  
7 shortly be given P-83.

8 MR. EDELSON: Yes. Thank you.

9 MR. DAVID: If you could go to  
10 tab 1, Mr. Edelson?

11 MR. EDELSON: Yes.

12 MR. DAVID: Tab 1, and go to  
13 pages 228 and 229.

14 MR. EDELSON: I have it.

15 MR. DAVID: Is this your letter to  
16 Ann Alder?

17 MR. EDELSON: It is.

18 MR. DAVID: It sets out the four  
19 pieces of information that you are seeking?

20 MR. EDELSON: It does.

21 MR. DAVID:

22 "(1) The RCMP made no request  
23 to have Mr. Arar deported to  
24 Jordan or Syria"?

25 MR. EDELSON: Yes.

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MR. DAVID:

"(2) Mr. Arar does not have a criminal record.

(3) Mr. Arar is not wanted in Canada nor is there a warrant for his arrest.

(4) Mr. Arar is not a suspect with respect to any terrorist-related crime"?

MR. EDELSON: Yes.

MR. DAVID: So we go now to the two e-mails I would like to file from Mr. Pardy for November 1st. This is simply for the chronology.

Mr. Pardy, in these two e-mails is sending to you extracts of U.S. legislation that can possibly explain how the U.S. justified their actions vis-à-vis the deportation of Mr. Arar?

MR. EDELSON: This was part of the Clair de Lune meeting. I had said to Mr. Pardy, "you are going to have to assist me here because I am not aware of any legislation in Canada or the U.S. that would permit this deportation," "How was this legal", was the question. And he said, "I'm going to look at that."

1 I just see his note here.

2 "As mentioned on Wednesday  
3 evening..."

4 This was the meeting at Clair  
5 de Lune, so it was part of our discussion as how  
6 did the Americans rationalize doing this to Maher  
7 Arar?

8 You will see as well that in the  
9 last paragraph of my letter at tab 1, I mention  
10 that Mr. Pardy was leaving for Beirut, and I see  
11 that is the reference he makes in his e-mail, and  
12 I incorporated that information which he had given  
13 me verbally at the meeting at Clair de Lune into  
14 my letter, that he was going to be away on  
15 business in Beirut.

16 MR. DAVID: Thank you for that.  
17 The next document

18 THE COMMISSIONER: This will be  
19 P-149 then?

20 MR. DAVID: I'm sorry. P-149,  
21 yes.

22 EXHIBIT NO. P-149: Two  
23 e-mails from Gar Pardy dated  
24 November 1, 2002

25 MR. DAVID: If you could go

1 to tab 10 of the Edelson documents, and go to  
2 page 4.

3 This is for the record,  
4 Mr. Edelson. You don't have personal knowledge of  
5 this document. It is simply in the chain of  
6 events that surround your request to the RCMP, and  
7 I bring you to the last two paragraphs.

8 This is being signed by  
9 Mr. Cabana. I'm on page 4 of tab 10. So  
10 Mr. Cabana is writing to the officer in charge of  
11 "A" Division Criminal Operations, which was  
12 Mr. Antoine Couture?

13 MR. EDELSON: Yes, I have it.

14 MR. DAVID: The last two  
15 paragraphs, I will just read for the record:

16 "While at this juncture our  
17 project is aloof to  
18 Mr. Arar's status, the  
19 suggestions and comments of  
20 Mr. Pardy are highly  
21 problematic in that they seek  
22 to shift the responsibility  
23 for Mr. Arar's future status  
24 squarely on the RCMP. I  
25 believe DFAIT has to be



1 sensitized on the possible  
2 impact these types of  
3 discussions can have on an  
4 ongoing investigation.

5 We will be preparing a  
6 response to Mr. Edelson's  
7 request in the coming days.  
8 While we had no role to play  
9 in Mr. Arar's initial  
10 detention and subsequent  
11 deportation from the United  
12 States, we are not in a  
13 position at this time to  
14 categorically determine  
15 Mr. Arar's role. To be asked  
16 to do so at this stage is  
17 unreasonable."

18 We go to your time sheets for  
19 an entry on November 4th, please.

20 MR. EDELSON: Yes. This is an  
21 update by way of telephone call to Monia Mazigh as  
22 to where things stood at that point, that the  
23 letter had been written, we were awaiting a  
24 response, and a telephone call by way of follow-up  
25 to Ann Alder.

1                   At this stage I believe I was  
2 simply wondering: Where is my letter?

3                   MR. DAVID: We go to, again,  
4 tab 10, and if you could go to page 6. This is a  
5 follow-up to Mr. Cabana's memo to his superior,  
6 Mr. Couture. Mr. Couture and now going to  
7 headquarters on the matter, to Mr. Proulx, and  
8 says the following -- and this is November 6th, so  
9 it is five days after Mr. Cabana's memo to him.

10                   I bring you to the last two  
11 paragraphs, halfway down the second one, it says:

12                   "DFAIT must be sensitized to  
13 the possible impact such  
14 suggestions may have  
15 considering ongoing  
16 investigations to which ARAR  
17 may be associated. Project  
18 A-OCanada investigators are  
19 not in a position to provide  
20 any comment with respect to  
21 the status or role of  
22 Mr. ARAR in connection to the  
23 investigation.

24                   As this matter impacts on  
25 the relationship and

1                   responsibilities of the RCMP  
2                   and DFAIT, I believe  
3                   discussions between our  
4                   agencies should be initiated  
5                   by your office, in order to  
6                   clarify the current situation  
7                   and coordinate appropriate  
8                   procedures for dealing with  
9                   such matters."

10                   This again is going to  
11                   headquarters, to Assistant Commissioner Richard  
12                   Proulx, who is the Director of the CID Division.

13                   We then go to P-83, and if you  
14                   could go to tab 1. This is this binder here that  
15                   you just had a few moments ago. Again this is  
16                   just to set out the chain of events concerning the  
17                   letter.

18                   I bring you to pages 202 and 203.

19                   MR. EDELSON: Yes.

20                   MR. DAVID: It is simply a note --  
21                   in fact I will just refer to page 203, a note at  
22                   the bottom, it says:

23                   "A response to Michael  
24                   Edelson's letter will be  
25                   prepared by OIC, Project

1 A-OCANADA, officer in  
2 charge."

3 That is Mr. Cabana.

4 "Furthermore a memorandum  
5 with a copy of Mr. Edelson's  
6 letter was forwarded to HQ  
7 CID through channel outlining  
8 the action of DFAIT."

9 We then go to your time  
10 sheets, and if you could go for the entry on  
11 November 14th.

12 MR. EDELSON: Yes.

13 MR. DAVID: It refers to a  
14 conversation that you have with Gar Pardy.

15 MR. EDELSON: Yes.

16 MR. DAVID: If you could just read  
17 out those notes and give us the context of this  
18 conversation?

19 MR. EDELSON: I think I'm looking  
20 at the wrong November 14th --

21 MR. DAVID: There are two pages.

22 MR. EDELSON: The longer one.

23 Yes, yes. I have got it.

24 Yes, this was a conversation by  
25 telephone with Gar Pardy. He advised me that

1           Monia Mazigh was going to arrive, as I understood  
2           it, within about two hours, into Montreal. She  
3           had travelled through the assistance of the  
4           embassy in Paris, France, and she had cleared  
5           Paris okay.

6                               This reference, Mr. Commissioner,  
7           goes back to information she had given me, or that  
8           I had received earlier, that when Mr. Arar had  
9           left that he had a suitcase and in the suitcase  
10          was a passport or travel documents belonging to  
11          one of his children, which I think either had  
12          expired or was about to expire. He was going to  
13          renew that document and then return, I think, with  
14          the document, which would have facilitated the  
15          travel of that particular child.

16                              So Mr. Pardy -- I had asked the  
17          question, "What travel documents were they using?"  
18          And he said, "This has been arranged through our  
19          Embassy. They have cleared through Paris. They  
20          are okay. They will be driving from Montreal to  
21          Ottawa tonight."

22                              Now, the next reference is  
23          disconnected from the previous one. He is saying,  
24          "We will be in Tuesday." This is a consular visit  
25          to see Maher again. He told me that the previous

1 visit made it apparent to members, I guess, of the  
2 consular section at DFAIT, that his imprisonment  
3 was taking its toll, that they had been advised  
4 that the interrogations of Mr. Arar and three  
5 others in custody in Syria had been completed.

6 MR. DAVID: Was your understanding  
7 that the three others were Canadians?

8 MR. EDELSON: Well, I knew at  
9 least one was.

10 MR. DAVID: Okay.

11 MR. EDELSON: Quite frankly, I  
12 didn't know whether the others were.

13 MR. DAVID: Okay.

14 MR. EDELSON: But I assumed if  
15 Mr. Pardy was telling me about it, he would only  
16 be involved if they were Canadians.

17 He said that Mr. Arar's  
18 interrogation had also been completed at this  
19 point, and now the Syrians, what they would do is  
20 they would go out and they would compare  
21 everyone's interrogation for external  
22 inconsistency or consistency. Then they would  
23 go out and do some kind of investigation, I had  
24 no idea what it was, to verify whether what they  
25 were being told by the people being interrogated

1 was true.

2 MR. DAVID: So essentially seeking  
3 corroboration for the contents of the statements?

4 MR. EDELSON: Presumably.

5 Next, the subject turned to  
6 questions as to whether or not he had been abused  
7 or tortured, by me. Mr. Pardy indicated that in  
8 the consular visits they did not see evidence of  
9 what would have been physical abuse, but you will  
10 see above, where I said, "taking its toll,"  
11 obviously it was having some visible impact, I  
12 assume perhaps mentally or emotionally on  
13 Mr. Arar.

14 I had asked the question, "What  
15 about soft tissue injuries", in other words  
16 injuries that they could hide, that you couldn't  
17 see visibly, because I knew that one of the  
18 favourite modes of torture in the Middle East was  
19 to whip the soles of the feet. That is obviously  
20 not something you would readily see.

21 He said that "Our information is  
22 that his demeanour is good", but then he went on  
23 to say, "We cannot expect that he will be  
24 returning any time soon," that is to Canada. He  
25 said that Minister Graham was going to raise the

1 Arar issue with Colin Powell today. I can't  
2 remember the day that the Secretary of State was  
3 in Canada, or in Ottawa, but it was about this  
4 time, as I recall.

5 MR. DAVID: It is an accurate date

6 MR. EDELSON: Okay.

7 MR. DAVID: So it was on

8 November 14th.

9 MR. EDELSON: Okay.

10 MR. DAVID: Now, you raised the  
11 issue of torture, essentially, with Mr. Pardy?

12 MR. EDELSON: Not the first  
13 time, yes.

14 MR. DAVID: Not the first time?

15 MR. EDELSON: Right.

16 MR. DAVID: When did you first  
17 raise the issue? How was it discussed? Was  
18 Mr. Pardy concerned about possible physical or  
19 mental or emotional abuse? Was he concerned with  
20 the issue of torture? Was he alive to that issue  
21 with regard to Mr. Arar?

22 MR. EDELSON: All right. Let me  
23 just break down your question and answer it.

24 When was it discussed? You will  
25 recall that I had raised the issue with John McNee



1 in my telephone conversation, which he had noted,  
2 and that was October 24th.

3 I'm quite certain that one of the  
4 issues we would have discussed was my concern or  
5 fear that Mr. Arar might be the subject of torture  
6 in Syria when we met at Clair de Lune on the 29th  
7 of October, and he was very much alive to that  
8 issue. He knew that -- he articulated the view  
9 that these were certainly possibilities for  
10 detainees in countries such as Syria.

11 MR. DAVID: So it goes back to  
12 essentially your first meeting, the very first  
13 meeting you have with Gar Pardy on October 29th?

14 MR. EDELSON: Yes, my first  
15 discussion with DFAIT, with the Assistant Deputy  
16 Minister, John McNee, and then some further brief  
17 discussions with Gar Pardy about that.

18 Really my focus with Gar Pardy  
19 was: How do we get this guy out of there? I'm  
20 concerned that he may be being tortured. I have  
21 expressed that, you know, to the Deputy Minister.  
22 What can we do?

23 That gave rise to the letter and  
24 the other discussions that we had.

25 MR. DAVID: We go to November 16th

1 now, and if you could go to tab 10 of your  
2 documents and go to page 7. This is the response  
3 that Mr. Cabana provides to you. It is dated  
4 November 16th.

5 I would like to file at this  
6 moment another version of this letter, which is  
7 the version you received, Mr. Edelson.

8 MR. EDELSON: All right.

9 MR. DAVID: So that would be  
10 Exhibit...?"

11 THE COMMISSIONER: P-150.

12 EXHIBIT NO. P-150: Letter  
13 from M. Cabana to M. Edelson  
14 dated November 16, 2002

15 MR. EDELSON: Yes, that is the  
16 letter.

17 MR. DAVID: So Mr. Cabana says to  
18 you in a letter dated November 16th -- I see at  
19 the bottom it says, "Received November 27, 2002."

20 MR. EDELSON: Yes. Just to  
21 clarify, we have a long-standing practice in our  
22 office that we date stamp all incoming material --  
23 this started with Stinchcombe -- so that we would  
24 know exactly when disclosure was made to us, and  
25 we just do this with all of our incoming

1 documentation.

2 So notwithstanding the date is  
3 November 16th, we actually got the document on the  
4 27th in our office.

5 MR. DAVID: And Mr. Cabana is  
6 telling you the following:

7 "While I sympathise with the  
8 present situation of  
9 Mr. Arar's family and your  
10 plight in securing his  
11 release and return to Canada,  
12 I am not in a position to  
13 acquiesce to your request at  
14 this time. As you can  
15 understand, the RCMP, as a  
16 matter of course, does not  
17 involve itself in subjects of  
18 foreign policies.  
19 Furthermore, it would be  
20 improper for me to comment on  
21 Mr. Arar's present situation  
22 relative to our ongoing  
23 investigation.

24 At this juncture, I can  
25 only confirm that the RCMP

1 did not play any role  
2 relative to Mr. Arar's  
3 present situation. The RCMP  
4 was only advised of  
5 Mr. Arar's transfer to Syria  
6 after the fact. I can also  
7 confirm that Mr. Arar does  
8 not have a criminal record in  
9 Canada.

10 I apologize for not being  
11 able to be of more assistance  
12 and recommend that you pursue  
13 diplomatic channels through  
14 the Department of Foreign  
15 Affairs and International  
16 Trade who are responsible to  
17 provide support to Canadians  
18 incarcerated abroad."

19 My question to you, Mr. Edelson:  
20 Upon receipt of this letter on November 27th, what  
21 is your reaction?

22 MR. EDELSON: Total frustration.  
23 I got a quarter of a loaf, as it were, in terms  
24 of what my requests were. I think Inspector  
25 Cabana pretty accurately encapsulates it when he

1           refers to it as my plight in attempting to secure  
2           his release. You know, we are constantly bumping  
3           up against roadblocks, lack of information, and I  
4           was also concerned about the letter and the way it  
5           was worded.

6                           MR. DAVID: Do you pursue the  
7           matter? Did you follow up? Do you discuss the  
8           matter with Gar? Do you --

9                           MR. EDELSON: Well, the letter was  
10          sent to Gar Pardy. I said -- I think in a  
11          telephone call or whatever, but there was a  
12          conversation with Gar Pardy. The letter was sent  
13          over, and the purpose of that being to say, "Look,  
14          here is the letter. We finally got it. It is not  
15          entirely what we were asking for, but perhaps you  
16          can make some use of it."

17                           As I understood it, he said he  
18          would attempt to do that. He would take the  
19          letter and sort of make a run for it and try and  
20          utilize the letter to assist in the release.

21                           The letter's receipt incidentally,  
22          on the 27th, also motivated me calling up Ann  
23          Alder and the RCMP to try and set up another  
24          meeting, because I wanted to follow up on  
25          this immediately and see if I could get more

1 information from them than was disclosed in  
2 the letter.

3 MR. DAVID: So before we get  
4 to that, I bring you to your time sheets on  
5 November 18th.

6 MR. EDELSON: Yes.

7 MR. DAVID: If you could just read  
8 those out and tell us what they are about.

9 MR. EDELSON: November the 18th.

10 This is, first of all, a telephone  
11 conversation, a very brief one, with Monia Mazigh.  
12 She was, of course -- she knew that we were  
13 attempting to get the letter because of the e-mail  
14 from Gar Pardy. I had also told her we were  
15 attempting to get the letter. I was telling her  
16 at this point I don't have it yet. I would have  
17 told Gar Pardy the same thing the same day.

18 Then it goes on to relate to some  
19 further discussions with Gar Pardy about: DFAIT  
20 has not been shown, the symbol "anything," yet.

21 I was raising concerns as to  
22 whether or not there was an FBI involvement.  
23 So it says "FBI issues." Was the detention of  
24 Maher Arar the result of a nod -- that is the  
25 word there -- given by the RCMP? He also

1 indicated to me that they had seen him last  
2 Tuesday -- I take it the consular visits were on  
3 Tuesdays, for the most part, because I keep seeing  
4 this day coming up.

5 Also, that is "A. Alder," Ann  
6 Alder, "RCMP have nothing."

7 So this is November the 18th. The  
8 discussion with Gar Pardy. The original  
9 discussion was whether we had the letter yet and  
10 it segued off into some other topic.

11 MR. DAVID: Okay. And the fact of  
12 the nod by the RCMP, this is Mr. Pardy giving you  
13 his possible appreciation of what?

14 MR. EDELSON: I'm not sure it was  
15 Mr. Pardy giving it to me or me asking him whether  
16 he had a sense of whether this detention was --  
17 maybe "approved" is too strong a word, but whether  
18 they turned a blind eye to his detention and his  
19 deportation.

20 MR. DAVID: Okay. We come back to  
21 P-143, which is your personal notes, Mr. Edelson.  
22 We are going to now review your notes about the  
23 conversation that you have with Monia Mazigh.

24 These is your manuscript notes  
25 that we filed at the very beginning.

1 MR. EDELSON: Right, yes. Thank  
2 you. Let me find that again. Yes.

3 MR. DAVID: You explain at the  
4 beginning that the red part was the part that  
5 concerned your conversation with Monia Mazigh on  
6 November the 18th?

7 MR. EDELSON: That is correct.

8 MR. DAVID: If you could just read  
9 your notes in regard to that conversation?

10 MR. EDELSON: There is a redacted  
11 portion to the left of that. It simply indicates  
12 that on November 18th, 2002 Monia Mazigh called  
13 me. I had asked her how she was doing and how she  
14 was surviving financially. At this point I think  
15 the reference to being "on savings" relates to how  
16 she was getting by at that point in time.

17 Then there is a reference to her  
18 relating to me that she had been in Tunisia since  
19 June of 2002, that her -- I think it is baby son's  
20 passport was with Maher when he had left. I think  
21 this goes back to the issue of the travel  
22 documents shortly expiring and he was going back  
23 to renew the documents. That Maher was planning  
24 to come back on the 31st of October. He had left  
25 on the 25th of September. That when she returned,



1           that the Embassy had issued travel documents for  
2           her son. And in order to leave the country she  
3           needed authority from the Tunisian government and  
4           the authorities there.

5                         She said that there had been some  
6           problems in Tunisia, where Mr. Arar had been  
7           approached by, I think, some government officials,  
8           and she -- in this case, where it says "client,"  
9           you can read, unless I say otherwise, that it is  
10          Ms Mazigh speaking. She wasn't my client per se,  
11          but I was just using the short form.

12                        She was brought into an office,  
13          she said, for an interview with the Department of  
14          Interior Security, which was a division that also  
15          issued passports and travel documents. She said  
16          she was taken to an office and they questioned her  
17          regarding the location of Maher Arar. She had  
18          told them, "He is not here," and she said it was  
19          sort of odd because they also indicated that they  
20          already knew he was in Syria. And they asked her,  
21          "Does your husband know someone by the name of  
22          Almalki?" And her answer was, "You will have to  
23          ask my husband."

24                        They gave her the name of an  
25          individual, whose name is in my original notes.

1           In other words, she gave me the name. It wasn't a  
2           case where she didn't know the name. She gave me  
3           the first and last names of that individual.

4                         She told me that Maher had been  
5           trying to look for companies to expand network  
6           business -- or to network and expand business.  
7           Someone had given him the name of this particular  
8           person, who is redacted here, and I think he had  
9           given him his business card, that is, Maher had  
10          been given this Mr. X his business card. His name  
11          was someone who Monia understood had come up on  
12          some form of wiretap, and he may have been the  
13          person that either Maher had phoned to expand  
14          business opportunities or had phoned him.

15                        So I think she was surmising  
16          that the reason that this name was being put to  
17          her by the authorities in Tunisia were that there  
18          had been a wiretap of this individual, Mr. X, and  
19          that Maher's name had come up on the wiretap or  
20          some phone call.

21                        She said, "I saw a business card  
22          for Maher in the file of the Tunisian official."  
23          She said the file was there on the desk and she  
24          looked down and she saw in the file his -- she  
25          quickly recognized her husband's business card as

1           being in the file. She thought -- you know, I  
2           would have asked her, "Where do you think they got  
3           that?" And she said she thought they got it from  
4           Mr. X, who Maher had originally given it to expand  
5           his business interests.

6                         She told me that wiretaps, in  
7           other words what we would consider to be illegal  
8           wiretaps, were very common in Tunisia, that many  
9           people considered their phones to be tapped.

10                        Then she told me something that  
11           was quite curious, and that is that her mother had  
12           found a message in Ottawa asking Maher, who now is  
13           in detention in Syria, to come pick up his luggage  
14           from Dorval, where it was, I guess, in the  
15           American Airlines lost luggage department. This  
16           was Thursday, December 13th, where they were being  
17           advised they now have his luggage, and she was  
18           interested in getting the luggage because it had  
19           the child's travel documents, the passport and  
20           birth certificates, inside of it.

21                        On her way back from Tunisia she  
22           said that she was searched for an hour and a half,  
23           her money was counted, her credit cards --

24                        MR. DAVID: This is at the  
25           Canadian Customs?

1 MR. EDELSON: I believe that is  
2 what she is saying, yes.

3 That her money was counted, her  
4 credit card information was taken, her Tunisian  
5 passport was examined, and she had a notebook of  
6 receipts which they also examined carefully. That  
7 was done at Dorval. That is clarified in that  
8 line. Dorval is where the search was done.

9 She also said that DFAIT had met  
10 her in Paris. Everything was okay going through  
11 Paris, the problem was coming into the country.  
12 That relates back to Gar Pardy's comment to me  
13 that she was assisted by the consulate in Paris,  
14 moving through France.

15 So that is the red notations on  
16 the front and back of my original notes.

17 MR. DAVID: Okay. The next  
18 day, November 19th, I would like to -- I'm sorry.  
19 November 21st. Not the next day, but  
20 November 21st. If you could go to your time  
21 sheets.

22 MR. EDELSON: Yes.

23 MR. DAVID: This has to do with a  
24 telephone conversation you are having with Gar  
25 concerning the letter from the RCMP. You still

1           hadn't received it and I guess this is just you  
2           following up on the issue?

3                       MR. EDELSON:  Yes.  The letter  
4           wasn't in hand as of yet and so we had a  
5           conversation on the 21st.

6                       I'm looking at the one that has  
7           the 20th blacked out and the 21st circled?

8                       MR. DAVID:  That is correct.

9                       MR. EDELSON:  Right.  Again, there  
10          had been a consular meeting and they did not see  
11          any changes in reference to Mr. Arar.

12                      MR. DAVID:  Is that "changes" or  
13          "charges"?

14                      MR. EDELSON:  You are right.  I  
15          beg your pardon.  "Charges".

16                      He had asked me, "Have you seen  
17          any charges versus him, against him, yet?"  And my  
18          answer was, "No."

19                      MR. CAVALLUZZO:  Meaning from  
20          Canadian authorities.

21                      MR. EDELSON:  Right.  It may have  
22          actually even included the Syrian.  We may have  
23          had one of these exchanges like, "Is there  
24          anything going on in Syria?  Have they charged him  
25          there?"  He would have said, "No."  And he may

1 have asked me, "Is there anything going on in  
2 Canada? Have you heard about any charges here?"  
3 I would have said, "No, nothing. I'm waiting for  
4 the letter to confirm that."

5 MR. DAVID: Okay. Moving now to  
6 the next day, your docket for November 22nd.

7 MR. EDELSON: Yes.

8 MR. DAVID: If you could just go  
9 through those notes? It is a telephone call again  
10 with Gar Pardy.

11 MR. EDELSON: Yes, there was a  
12 telephone call with Mr. Pardy.

13 There was an indication of  
14 low-level interest. Quite frankly, I'm not quite  
15 sure what that note is all about.

16 MR. DAVID: It says, "Low  
17 level"...?

18 MR. EDELSON:

19 "... interest associations.  
20 Did no followup".

21 That is what it actually says.  
22 But I can't remember exactly what the details are  
23 of that discussion.

24 Then after that there is a brief  
25 discussion with Monia Mazigh. I'm telling her

1           that I'm going to be meeting with the RCMP on the  
2           following Monday.

3                         MR. DAVID:   That would have been  
4           November 25th.

5                         MR. EDELSON:  I believe.

6                         MR. DAVID:  In point of fact we  
7           will see that the meeting occurred on the 28th.

8                         MR. EDELSON:  Yes.  I think it had  
9           to be changed for one reason or another, I can't  
10          remember whether I was unavailable because I was  
11          in court or someone from A-OCANADA was  
12          unavailable.

13                        MR. DAVID:  We can then go to your  
14          charge sheet for the 25th of November.

15                        MR. EDELSON:  Right.  This is a  
16          conversation again with Monia Mazigh.  She told  
17          me that she was in financial difficulty and she  
18          had applied for financial assistance at that point  
19          in time.

20                        MR. DAVID:  All right.  Then we  
21          can go to your charge sheet for November 26th.

22                        MR. EDELSON:  That was a  
23          voice mail either to or from Ann Alder.  This is  
24          all about the letter.  I'm just wondering:  Where  
25          is it?

1 MR. DAVID: Trying to follow up.

2 MR. EDELSON: Right.

3 MR. DAVID: Then we have, on the  
4 27th, your reception of Mr. Cabana's letter?

5 MR. EDELSON: Right.

6 MR. DAVID: I bring you now to  
7 November 28th, which is your second meeting with  
8 members of A-OCANADA.

9 MR. EDELSON: Yes.

10 MR. DAVID: If you could just  
11 first turn to your time sheet for that day --

12 MR. EDELSON: Yes.

13 MR. DAVID: -- and read us  
14 the entry?

15 MR. EDELSON: This was about a  
16 one-hour meeting. It was again at RCMP  
17 headquarters. The officers who were present at  
18 that meeting were Callaghan, Cabana, Corcoran.

19 I believe Ms Alder was there, but  
20 I can't recall.

21 MR. DAVID: Well, it says, "and  
22 Ann Alder."

23 MR. EDELSON: Yes, it does. So I  
24 think she was there.

25 This was a meeting -- I have now



1 received the letter, of course, the day before.

2 MR. DAVID: Right.

3 MR. EDELSON: I am now  
4 pursuing with them some further questions as to  
5 Mr. Arar's status.

6 MR. DAVID: Okay. Maybe before  
7 you discuss the details of that meeting, if you go  
8 to tab 7, page 1, for an entry in regards to that  
9 meeting, and it says:

10 "09:00 ... I met with Ann  
11 Alder, Mike Cabana and  
12 defence counsel, Mike  
13 Edelson."

14 MR. EDELSON: Sorry. What page?

15 MR. DAVID: I'm sorry. Tab 7,  
16 page 1. First page.

17 MR. EDELSON: Yes, I have that.

18 MR. DAVID:  
19 "We discussed Maher Arar and  
20 his custody. We discussed  
21 information from the ... his  
22 arrest in New York and our  
23 knowledge of his status in  
24 Syria."

25 We can also go to P-83 and go to

1 tab 1 of P-83 and go to page 210.

2 MR. EDELSON: Yes?

3 MR. DAVID: It is my final  
4 reference for that meeting. It is about  
5 two-thirds of the way down:

6 "Had meeting with Maher  
7 Arar's lawyer. Groundwork  
8 was set. The wife will not  
9 go to the press."

10 MR. EDELSON: Yes.

11 MR. DAVID: So if you could  
12 tell us what was discussed at this meeting,  
13 Mr. Edelson?

14 MR. EDELSON: Well, obviously one  
15 of the things that was discussed was whether or  
16 not it was in Mr. Arar's interests that his wife  
17 promulgate information to the press, one of those  
18 things being the letter that we had just received,  
19 whether, for example, that would simply go, as I  
20 recollect it, directly to Gar Pardy for use  
21 through diplomatic channels or whether she would  
22 try and get out there and get press coverage to  
23 assist him in being released.

24 So that was one issue.

25 It was certainly a view

1           expressed by the RCMP at that time that it  
2           probably was better if the press route was not  
3           pursued at that particular stage.

4                         We would have had a discussion as  
5           well during that period of time about the  
6           detention of Mr. Arar, whether or not, I believe,  
7           the RCMP had had access to him. In other words,  
8           they had indicated an interest in interviewing him  
9           on a number of occasions. "Did you go and  
10          actually have access to him?" And they indicated  
11          no, that they would like to interview him, but  
12          were not able to obtain access to him for an  
13          interview in Syria.

14                        I can't recall whether it was at  
15          this meeting or a later meeting, I believe in  
16          December, where there was also discussion about  
17          CSIS having gone to Syria and having obtained some  
18          form of statement -- I don't know whether it was  
19          the interrogation statement or some transcript of  
20          Mr. Arar's interview in Syria.

21                        My best recollection of it is that  
22          the RCMP, at that stage at least, had not been  
23          given access to that interrogation, and that part  
24          was discussed at that point.

25                        I believe that --

1 MR. DAVID: Indicating that they  
2 were interested in obtaining the fruits?

3 MR. EDELSON: Well, indicating  
4 that they wanted to see it.

5 I remember saying, "What use would  
6 the statement be anyway if he was tortured? How  
7 credible, reliable, would that statement be if  
8 this man was tortured in order to get a statement  
9 from him in Syria?" I was generally fairly  
10 dismissive about anything that they had obtained  
11 from him in Syria as being reliable at that point.

12 MR. DAVID: They indicated to you  
13 that they wished to go to Syria, the RCMP did?

14 MR. EDELSON: I think they  
15 indicated that they had a desire to speak to him,  
16 and if they could be given to access, they were, I  
17 think, prepared to go. I knew that they -- I  
18 don't know if I can mention this or not -- but I  
19 was told that they --

20 THE COMMISSIONER: Just a second.  
21 Is there some doubt?

22 MR. EDELSON: I will be  
23 very careful.

24 THE COMMISSIONER: Do you know  
25 what it is, Mr. David?

1 MR. DAVID: No, I don't think he  
2 knows what it is.

3 MS EDWARDH: Nobody knows.

4 MR. EDELSON: No one knows yet.

5 THE COMMISSIONER: Why don't you  
6 walk over towards the thing there and tell  
7 Mr. David if there is some concern?

8 MR. EDELSON: It's a sidebar.

9 THE COMMISSIONER: A sidebar, yes.

10 MR. DAVID: Confession is a  
11 catholic concept.

12 --- Laughter / Rires

13 --- Pause

14 MR. DAVID: I need further  
15 consultation with Mr. Fothergill. If you can come  
16 the confessional, Mr. Fothergill?

17 --- Laughter / Rires

18 MR. EDELSON: Mr. Commissioner, if  
19 I can just make a point here that is also of some  
20 concern to me.

21 This discussion that we had was  
22 another one of these discussions where we were  
23 sort of taking each other into our confidences and  
24 saying, "Look, you know, I knew --" I see they  
25 made notes. But I said, "I'm not going to make

1 any notes. I'm treating this more or less as an  
2 off-the-record discussion. I am trying to get  
3 information to assist this man in his release from  
4 any possible source.

5 THE COMMISSIONER: Okay. We will  
6 address that point in a minute.

7 --- Pause

8 MS EDWARDH: Mr. Commissioner,  
9 before any representations are made, Mr. Edelson  
10 represents Mr. Arar and is in a meeting with  
11 Government of Canada employees, or RCMP officials  
12 or officers. If this is a matter relating to  
13 another client, of course Mr. Arar has no  
14 interest.

15 THE COMMISSIONER: I'm concerned  
16 about that.

17 MS EDWARDH: If in fact it is not  
18 related to another client but is related to  
19 Mr. Arar, rather than everybody else know, I  
20 should know first.

21 So with the greatest of respect,  
22 subject to that I would like to have the  
23 information. There may be a concern --

24 THE COMMISSIONER: Let me raise  
25 another issue, and perhaps we need to break.

1                   Mr. Edelson has raised the point  
2                   that this meeting and the earlier meeting and  
3                   perhaps subsequent meetings were conducted by him  
4                   on the basis of whether an express or implied  
5                   understanding, correct me if I'm wrong, that these  
6                   would be off-the-record discussions with the RCMP.  
7                   I'm not sure that it is because of matters of  
8                   National Security Confidentiality that --

9                   MR. EDELSON: No.

10                   If I may explain,  
11                   Mr. Commissioner? I knew these people personally.  
12                   I felt that if they had something they did not  
13                   want to say to me, they would have said, "Michael,  
14                   we can't tell you this."

15                   THE COMMISSIONER: Right.

16                   MR. EDELSON: They were conveying  
17                   information to me, which I was telling them -- and  
18                   from time to time I would interject and say, "Am I  
19                   permitted to tell this to Mrs. Arar?" There was a  
20                   point at which they told me one element of what  
21                   our discussion was, "Do not share this with  
22                   Mrs. Arar." This is part of the material that I  
23                   have related to counsel.

24                   Now, it later, apparently, I  
25                   guess, was -- In any event, it wasn't

1 confidential, Mr. Commissioner, in the sense that  
2 I was told never to talk about this to anyone  
3 else.

4 THE COMMISSIONER: The difficulty,  
5 and I'm not sure I can sort it out and maybe we  
6 need a break for you to talk about it, but let  
7 me -- sorry, let me just say what occurs to me.

8 I mean, it occurs to me,  
9 Mr. Edelson, that you are there as Mr. Arar's  
10 client?

11 MR. EDELSON: Counsel.

12 THE COMMISSIONER: Sorry, counsel.

13 MR. EDELSON: Right.

14 THE COMMISSIONER: So that as his  
15 counsel you would share with your client, in  
16 normal circumstances at least, information you  
17 have received. So Ms Edwardh's point, at least as  
18 a general rule, would be a good one.

19 MR. DAVID: As I can best  
20 understand the situation, Mr. Commissioner, what  
21 Mr. Edelson could say is not relevant to Mr. Arar  
22 directly or indirectly;

23 second, is the subject of National  
24 Security Confidentiality claims and is not in the  
25 public domain as we speak;



1                   third, I think that the  
2                   government's position is clearly that this  
3                   evidence would have to be heard in camera.

4                   Again, in terms of the relevancy,  
5                   I see no indication that there is any relevance to  
6                   Mr. Arar.

7                   THE COMMISSIONER: Okay. Well, on  
8                   that basis I would direct that Mr. Edelson not  
9                   disclose the information.

10                  That leaves open for you,  
11                  Ms Edwardh, the issue as between your client and  
12                  Mr. Edelson as counsel. That is another issue.

13                  MS EDWARDH: Indeed,  
14                  Mr. Commissioner.

15                  I believe I know what this  
16                  information is, I believe it is reflected in the  
17                  will-say, and I take a very different view from  
18                  that of Mr. David. I think that it is pertinent  
19                  and relevant to Mr. Arar.

20                  MR. DAVID: I don't want to  
21                  interrupt you, but I can say, Ms Edwardh, it is  
22                  not the subject matter of our will-say. As  
23                  Mr. Edelson has just said before, he has never  
24                  discussed the matter with us and it is not on  
25                  the will-say.

1 THE COMMISSIONER: Okay. In those  
2 circumstances, I am going to direct that the  
3 information not be disclosed through the hearing,  
4 but that doesn't foreclose Ms Edwardh seeking from  
5 Mr. Arar's counsel that information.

6 MR. EDELSON: Thank you.

7 THE COMMISSIONER: I leave that to  
8 the two of them to work out.

9 Thank you. Go ahead.

10 MR. DAVID: Thank you.

11 You were describing what was  
12 discussed at this meeting. Could you just carry  
13 on and tell us, in terms of Mr. Arar, what further  
14 information was gathered by you?

15 MR. EDELSON: Again, this meeting  
16 entailed discussions about two different clients,  
17 Mr. Arar being one of them. The focus of the  
18 meeting was my questions to them as to why they  
19 were not able to provide a letter which set out  
20 all of the matters I stipulated in my October 31st  
21 request. They gave me some brief explanation as  
22 to why that could not happen.

23 I believe it was at this meeting  
24 that we had a discussion about the reasons why he  
25 was a suspect -- or I shouldn't use the word

1 "suspect", why he was a person of interest,  
2 perhaps, in their minds, and they elucidated those  
3 issues for me.

4 MR. DAVID: Okay. Could you tell  
5 us what they indicated to you?

6 MR. EDELSON: Yes. I was told  
7 that as far as their investigation was concerned  
8 they had information that Mr. Arar's name had  
9 appeared on the Palm Pilots or in the phone  
10 directories of individuals who were of interest  
11 and that the names of those other individuals had  
12 appeared on his Palm Pilot or his phone directory  
13 and this they found to be suspicious.

14 Second, they would have told  
15 me that Mr. Arar, as far as their investigation  
16 had determined, was apparently in the United  
17 States of America on September the 11th when the  
18 World Trade Center bombing took place. They had  
19 also told me that there were rumours that they had  
20 heard that he had been in some kind of training  
21 camp in Afghanistan, and they believed that when  
22 his family left for Tunisia and travelled there  
23 that they were running away as opposed to going on  
24 a vacation.

25 The last item which they related

1 to me was the item which they asked me to keep  
2 confidential from Monia Mazigh, and that was that  
3 they were concerned -- they expressed a concern  
4 about the relationship which they felt existed  
5 between Mr. Arar and Abdullah Almalki.

6 I told her about all of the other  
7 things, but not about the last one because I had  
8 undertaken not to tell her.

9 MR. DAVID: Now, this idea that  
10 it was best if Ms Mazigh at this time not go to  
11 the press, that she not be running to the media,  
12 there seems to be, on your part, acquiescence to  
13 the idea that maybe it was counterproductive at  
14 this point?

15 Did you have a point on that, and  
16 what was your point of view?

17 MR. EDELSON: Well, you know, I  
18 was a stranger in a strange land in this whole  
19 thing. It was so almost Kafkaesque to deal with  
20 this investigation, that you didn't know if you  
21 would be taking a misstep, for example by going  
22 out and having a public campaign to release a  
23 particular individual, or whether they were  
24 working vigorously behind the scenes and they were  
25 telling you, "Listen, a press release right now,

1 at this very sensitive time, might interfere with  
2 our efforts to release him."

3 So the message I was being  
4 given at this point was, no press right now, and I  
5 took their advice on that, that this was a  
6 sensitive time not to address it in the press at  
7 that point. I believe I had a brief discussion  
8 with Gar Pardy about that as well, about whether  
9 the press should be utilized at this point, sort  
10 of as a last resort to try and get Mr. Arar  
11 released.

12 MR. DAVID: Did you sensitize  
13 Ms Mazigh to this point of view?

14 MR. EDELSON: Yes, I would have  
15 mentioned it to her in a telephone call.

16 MR. DAVID: If we go to your time  
17 sheets for December the 2nd, there is a reference  
18 to a meeting --

19 MR. EDELSON: Yes.

20 MR. DAVID: -- with Ms Mazigh.

21 MR. EDELSON: I think I had a  
22 telephone call with her.

23 I said, "I think given what I  
24 have been learned it would be best if we meet  
25 face-to-face." She came to my office and I

1 reported to her in substance the conversation I  
2 had had in my previous meeting at the RCMP  
3 headquarters, save and except for the Almalki  
4 issue.

5 MR. DAVID: We go now,  
6 Mr. Edelson, to your time sheets for  
7 December 28th -- no, I'm sorry, not your time  
8 sheets. We are going to have to file now your  
9 ledger cards for this entry.

10 So if we could produce  
11 Mr. Edelson's ledger card.

12 That would be P-151. Thank you.

13 EXHIBIT NO. P-151:

14 Mr. Edelson's Client Ledger  
15 for Maher Arar

16 MR. EDELSON: Thank you.

17 MR. DAVID: If you could first  
18 describe what the document is and what it  
19 represents?

20 MR. EDELSON: Generally speaking,  
21 this represents the transposition of the written  
22 docketing into a computerized format for billing  
23 purposes.

24 MR. DAVID: I bring you now to an  
25 entry on the second page, about a third of the way

1 down, for December 28, 2002.

2 MR. EDELSON: Yes.

3 MR. DAVID: And it says, "To  
4 conference with the RCMP."

5 MR. EDELSON: Yes.

6 MR. DAVID: Do you recall meeting  
7 the RCMP on this date?

8 MR. EDELSON: Yes, I recall there  
9 being another meeting.

10 MR. DAVID: Okay. Who was present  
11 again and what was discussed?

12 MR. EDELSON: Well, I believe, if  
13 memory serves me, that Cabana had left. My  
14 recollection now is that Inspector Warren Coons  
15 may now have been the head, and we would have met  
16 with otherwise the same players, Corcoran,  
17 Callaghan -- Ms Alder, was, to my recollection,  
18 not present at that meeting.

19 But I think it was Warren Coons  
20 who was the Inspector at that point, who was at  
21 the meeting.

22 The meeting was a discussion with  
23 respect to our ongoing concerns with respect to  
24 Mr. Arar, but also about -- a chunk of the meeting  
25 was about Mr. Almalki.

1                   MR. DAVID:   Concerning Mr. Arar,  
2                   do you have any specific recollections?  Did you  
3                   discuss the issue of his Palm Pilot and his  
4                   computer having been seized by customs?

5                   MR. EDELSON:  I think that there  
6                   was some brief discussion about that, and we  
7                   renewed the discussion about there having been  
8                   certain materials, you know, names on each other's  
9                   Palm Pilot.

10                   I remember there was a  
11                   discussion -- and again I can't recall the  
12                   specific date -- where I looked at -- I know Mike  
13                   Cabana was present at that particular meeting, and  
14                   Cabana was in front of me, Kevin Corcoran was on  
15                   my right, and I said, "Do you have evidence to  
16                   charge Maher Arar with any crime in Canada?"  And  
17                   the answer was no.

18                   Then I had asked whether there was  
19                   evidence to charge Mr. Almalki with any crime in  
20                   Canada?  And the answer was "Maybe" by one of them  
21                   and "No" by the other one.

22                   MR. DAVID:  So by and large the  
23                   meeting was mostly about Mr. Almalki?

24                   MR. EDELSON:  I would say if we  
25                   had to sort of split it up, I would think in terms



1 of time, it was more related to Mr. Almalki at  
2 that stage than it was to Mr. Arar.

3 MR. DAVID: Again, did you report  
4 to Ms Mazigh about this meeting?

5 MR. EDELSON: I likely would have.  
6 My habit was to keep her apprised of developments,  
7 so I suspect I would have done that.

8 MR. DAVID: On your ledger sheet,  
9 again for that same day, it notes, "Telephone call  
10 with Ann Alder."

11 Do you recall what that call was  
12 about? It is just underneath the --

13 MR. EDELSON: Yes, I see that.  
14 --- Pause

15 MR. EDELSON: No, I don't recall  
16 the specifics of that telephone call.

17 MR. DAVID: Okay. If we could now  
18 go to tab 286 of the DFAIT documents. This  
19 concerns a phone call that you are having with Gar  
20 Pardy on the issue of Ms Mazigh's resorting to the  
21 media. Tab 286 says the following -- it is an  
22 entry for the 10th of January.

23 MR. EDELSON: Yes.

24 MR. DAVID:

25 "I spoke to Michael Edelson

1 on January 10 and reviewed  
2 with him the latest  
3 developments on the case. He  
4 indicated that he will be in  
5 touch with Monia in the next  
6 few days and reinforce need  
7 for no public exposure on  
8 matter. He agrees with us  
9 that public comment at this  
10 time will not be helpful.  
11 Gar."

12 Any comments about that?

13 MR. EDELSON: Yes. Well, that  
14 simply reinforces the previous comment I made,  
15 that it looked like I was getting this  
16 information from both DFAIT and the RCMP that  
17 publicity was not going to be helpful at this  
18 point, that they were at a stage where they felt  
19 that their efforts would not be aided by  
20 publicity. He was simply reiterating what I had  
21 been told by the RCMP earlier.

22 MR. DAVID: Okay.

23 Mr. Commissioner, given the time  
24 it is, I think it would be appropriate to break  
25 for lunch.

1 THE COMMISSIONER: How are we  
2 doing? Is 2:15 okay?

3 MR. DAVID: Yes, 2:15 is fine.

4 THE COMMISSIONER: Okay. We will  
5 rise until 2:15.

6 MR. DAVID: Thank you.

7 THE REGISTRAR: Please stand.

8 --- Upon recessing at 12:58 p.m. /

9 Suspension à 12 h 58

10 --- Upon resuming at 2:15 p.m. /

11 Reprise à 14 h 15

12 THE REGISTRAR: Please be seated.  
13 Veuillez vous asseoir.

14 MR. DAVID: Mr. Edelson, we left  
15 off, it was the 10th of January. I bring you now  
16 to the 13th of January, and if you could go to  
17 your time sheets for that date.

18 MR. EDELSON: Yes, I have it.  
19 There was a conversation that day by telephone  
20 with Gar Pardy.

21 MR. DAVID: And then you have two  
22 pages of notes about that call, and if you could  
23 review your notes in detail, please?

24 MR. EDELSON: What there is, is  
25 the initial entry in the docket, and then on the

1 back -- what the next page indicates, is the --  
2 you'll see the arrow on the first page. This is  
3 the back of the first page, where I continued  
4 making my notes concerning Mr. Pardy's  
5 conversation with me.

6 The conversation begins, Gar Pardy  
7 is indicating to me that they had seen Mr. Arar  
8 the week before in Syria.

9 They were saying, this is the  
10 Syrians apparently were telling DFAIT, which was  
11 information conveyed to me by Mr. Pardy, that in  
12 1993 they had information that Mr. Arar had been  
13 to an Afghan training camp.

14 They also were saying that while  
15 he was at McGill University for several months,  
16 they were led to believe that he was involved in  
17 the Muslim Brotherhood, but there had not been  
18 much action in recent years, but they were saying  
19 that Mr. Arar was involved with them, "them" being  
20 the Muslim Brotherhood.

21 I've got this note which says --  
22 they suggest that it's much more difficult than in  
23 the past. I think that refers to the previous  
24 comment.

25 Then there was a discussion about

1           whether there was a possibility of a trial down  
2           the road for Mr. Arar, that is, my understanding  
3           was whether he might possibly be charged with  
4           something in Syria and be placed on trial there.

5                         I indicated there's nothing in our  
6           system which would indicate that he was facing any  
7           imminent charge or trial. I said there's no basis  
8           for them to do anything here.

9                         He said, as far as he knew, there  
10          was no basis for them to do anything in Syria.

11                        The last meeting with the  
12          ambassador, the Canadian Ambassador -- I assume  
13          this was the Canadian Ambassador to Syria -- there  
14          was a discussion about what Mr. Arar was up to and  
15          whether anything he was involved in -- how could  
16          this be a breach of Syrian law?

17                        I was told that the Arar family  
18          had historically been in opposition to the regime  
19          in Syria.

20                        He said there was no logic to any  
21          of this and reiterated that Mr. Almalki was also  
22          there. There was some family connection or  
23          connections with Afghanistan.

24                        Then I have a note about Monia  
25          with Syrian Ambassador, and I believe that

1 referred to the possibility that she would meet  
2 the Syrian Ambassador to Canada, and I've got a  
3 number of question marks there. I think that was  
4 raised as a possibility, that she might try and  
5 arrange such a meeting.

6 So that was the substance of our  
7 conversation on that day.

8 MR. DAVID: And Mr. Pardy did not  
9 specify the source of this information. This is  
10 information that he was conveying without  
11 specifying --

12 MR. EDELSON: No. My assumption  
13 was this was coming through their consular sources  
14 in Syria, but, no, he did not tell me the source.

15 MR. DAVID: If we could go now to  
16 January 17th of your time sheets --

17 MR. EDELSON: Yes.

18 MR. DAVID: -- for an entry which  
19 concerns, again, a phone call with Mr. Pardy, and  
20 the fact that he's reporting to you that  
21 Mr. Graham had spoken to the Foreign Minister of  
22 Syria.

23 MR. EDELSON: Yes. Mr. Graham had  
24 apparently done that, indicating they want  
25 Mr. Arar returned, and Mr. Pardy told me he had

1 spoken to Mr. Graham in reference to that  
2 conversation.

3 MR. DAVID: Okay. If we can go  
4 for an entry now on May 2nd, moving forward. This  
5 is a phone call with Monia Mazigh concerning the  
6 trial in Syria, and if you could just read that  
7 and give us some context?

8 MR. EDELSON: Yes. This is a  
9 conversation with Monia on the 2nd of May, and I  
10 think the trial in Syria comment relates to this  
11 notion that there was some -- I don't think it was  
12 really above a rumour -- that the Syrians might  
13 find some pretext for trying Mr. Arar on something  
14 in Syria, and the one issue that had been related  
15 to me previously was that he had been a member of  
16 the Muslim Brotherhood.

17 So I had indicated to her that it  
18 had been conveyed to me by Mr. Pardy, who I note  
19 here was very frank, that most of the problem was  
20 that the RCMP did not want to give us the letter  
21 we had requested.

22 In other words, with all of the  
23 matters that I had requested in that October 31st  
24 letter, and that the RCMP claimed they did not  
25 know about it -- I think this goes right back to

1 the inception, where he was transported to Syria.

2 MR. DAVID: And, again, these  
3 comments are coming to you from Monia Mazigh?

4 MR. EDELSON: No, I think in part  
5 it's an exchange that we're having during a  
6 telephone conversation relating to information  
7 that she and I had received from Mr. Pardy.

8 MR. DAVID: I understand.

9 I bring you now to Mr. Pardy's  
10 notes, P-88, and if you could go to page 25,  
11 there's an entry, I can read it to you, it's very  
12 brief, and it's for May 7, 2003. It says:

13 "Edelson, RCMP & Crown.

14 Evidence:name showed up in  
15 material of others."

16 MR. EDELSON: You better give me  
17 that reference again.

18 MR. DAVID: I'm sorry.

19 MR. EDELSON: Which tab?

20 MR. DAVID: It's tab 1?

21 MR. EDELSON: Tab 1, okay.

22 MR. DAVID: Page 25.

23 MR. EDELSON: Thank you.

24 MR. DAVID: It's the second box  
25 from the top for May 7th.



1 MR. EDELSON: Yes.

2 MR. DAVID: What has been --

3 MR. EDELSON: Yes.

4 MR. DAVID: And this has to do  
5 with a phone call with you?

6 MR. EDELSON: I think that this  
7 may be me conveying to Gar Pardy what had been  
8 conveyed to me by the RCMP, namely that there were  
9 these mutual phone calls -- phone names.  
10 Mr. Arar's name allegedly showing up in the Palm  
11 Pilots and phone directories of others and their  
12 names appearing in his. I probably conveyed that  
13 on to him.

14 MR. DAVID: I'm going to now refer  
15 you to four different entries that I will entitle  
16 the John Manley theme.

17 MR. EDELSON: All right.

18 MR. DAVID: If you can go to an  
19 entry in your time sheets on May 7th, please?

20 MR. EDELSON: Yes. I have it.

21 MR. DAVID: That's the first one.  
22 And it says -- it's, "Call with Pardy."

23 MR. EDELSON: Right.

24 MR. DAVID: "Regarding Manley" --  
25 or the name of Manley shows up on this date. That

1 would be May 7th?

2 MR. EDELSON: Yes.

3 QUESTIONER: Do you know what that  
4 concerns?

5 MR. EDELSON: Well, John Manley as  
6 I recall at that time, I think, was Deputy Prime  
7 Minister. I knew John from law school days. He's  
8 not a personal friend of mine. Although I have  
9 seen reference in some of the material to being a  
10 personal friend of mine, he's not. Although I  
11 think if I called him he would answer the phone.  
12 Or I could get through to him. I did not call him  
13 nor did I ever meet with him.

14 MR. DAVID: Okay. There's an  
15 entry on your time sheets for May 15th.

16 MR. EDELSON: Right.

17 MR. DAVID: And it says,  
18 "Telephone conversation with Monia re: meeting  
19 with Manley."

20 MR. EDELSON: Yes, I know at one  
21 point she was going to write a letter to  
22 Mr. Manley.

23 MR. DAVID: Okay. If we could  
24 file, at this point, a document that refers to  
25 that on May 20th.

1                   And that would be P-152, thank  
2           you.

3                   EXHIBIT NO. P-152: E-mail  
4                   from Dr. Monia Mazigh to  
5                   Mr. Michael Edelson re a  
6                   letter to John Manley, dated  
7                   May 20, 2003, 1:57 p.m.

8                   MR. DAVID: And, in fact, Monia  
9           Mazigh is sending to you, on May 20th, an e-mail  
10          saying:

11                   "This is the letter I wrote  
12                   to Mr. John Manley. If you  
13                   can follow up with him, I  
14                   really appreciate it."

15                   MR. EDELSON: Right.

16                   MR. DAVID: Attached is her  
17          letter, which has also been filed as tab 398 in  
18          the DFAIT documents, Mr. Commissioner. So there  
19          is that reference.

20                   And also, finally -- first of all,  
21          do you have any comments about Ms Mazigh's request  
22          to you on May 20th, if you respond to it?

23                   MR. EDELSON: Well, the letter, as  
24          I received it, was written to a number of  
25          different people, including the Minister Bill

1           Graham, Foreign Affairs, and Gar Pardy.

2                           And my recollection is that I had  
3           a conversation with Gar Pardy about the follow-up,  
4           and it wasn't viewed as necessarily helpful if I  
5           contacted John Manley personally. I know I didn't  
6           speak to him. I didn't speak to Mr. Manley, nor  
7           did I meet with him.

8                           MR. DAVID: Okay. And then the  
9           final reference I have for you on the Manley issue  
10          is at Exhibit P-103, which is a memo that went up  
11          to the Minister of Foreign Affairs, Mr. Graham,  
12          that is dated June the 5th, and that document will  
13          be brought to you.

14                          MR. EDELSON: Okay. Thank you.

15                          MR. DAVID: And I bring you to  
16          page 3, paragraph 7. And it says:

17                                 "Dr. Monia Mazigh has  
18                                 continued her efforts to  
19                                 obtain public and  
20                                 governmental support for the  
21                                 release of her husband. She  
22                                 has written to the American  
23                                 and Syrian ambassadors and  
24                                 discussed the matter with the  
25                                 Deputy Prime Minister at a

1 social function. We have  
2 been advised that the  
3 Canadian lawyer hired by  
4 Dr. Mazigh, Mr. Michael  
5 Edelson, a personal friend of  
6 the Deputy Prime Minister,  
7 will speak to him about the  
8 matter as well. Mr. Manley  
9 has asked a staff member to  
10 make inquiries of the  
11 Solicitor General ..."

12 So any comments about that?

13 MR. EDELSON: We're not personal  
14 friends.

15 MR. DAVID: Okay.

16 MR. EDELSON: Well, I mean, in the  
17 sense that we don't go out for dinner, I've never  
18 been to his home, he's never been to my home. If  
19 I met him on the street, we would say, "hello, how  
20 are you doing?" But we're certainly not -- what I  
21 would consider a personal friend.

22 MR. DAVID: Okay. We move on now  
23 to July 14th, and I'd like to file as an exhibit  
24 an e-mail from Monia to you, and that would be  
25 P-15 --

1 THE REGISTRAR: Three.

2 MR. DAVID: -- 3. Thank you.

3 EXHIBIT NO. P-153: E-mail  
4 from Dr. Monia Mazigh to  
5 Mr. Michael Edelson re Some  
6 questions, dated July 14,  
7 2003, 3:19 p.m.

8 MR. DAVID: In this message, Monia  
9 is seeking your input on a chronology she is  
10 drafting. Any comments about this?

11 MR. EDELSON: No, not really. I  
12 know we had a conversation about it. I did not  
13 write her a specific written response, although we  
14 did sit down later, and she provided me with a  
15 chronology, which is in my file, asked me to  
16 review it to determine if there was anything there  
17 that I thought was perhaps inaccurate or improper,  
18 but this particular document, there was no written  
19 response provided.

20 MR. DAVID: Okay. I now wish to  
21 bring you to Exhibit P-117, tab 35, and that's an  
22 entry for July 18th. So if you could have --

23 MR. EDELSON: Tab 5?

24 MR. DAVID: Tab 35.

25 MR. EDELSON: Thirty-five? Thank

1           you.

2                           MR. DAVID:  And I'll ask you to go  
3           to page 7, 7 of 10.

4                           MR. EDELSON:  Yes?

5                           MR. DAVID:  This is a letter dated  
6           July 18th, 2003.  It's addressed to Wayne Easter,  
7           Solicitor General of Canada.  It is signed by  
8           Monia Mazigh.  And I want to bring you to the next  
9           page, page 8, and I bring you to the third  
10          paragraph, and he or she says to the Minister:

11                           "Last November, 2002, Michael  
12                           Edelson, who was my husband's  
13                           lawyer at the time, asked the  
14                           RCMP to provide him with a  
15                           letter stating that they do  
16                           not have evidence linking my  
17                           husband to terrorist  
18                           activities.  This document is  
19                           very important because it was  
20                           intended to be given to the  
21                           Syrian authorities and US  
22                           authorities.  To date, the  
23                           RCMP has refused to supply  
24                           such a document.  Instead,  
25                           the RCMP gave Mr. Edelson a

1 list of questions for my  
2 husband. It would be very  
3 difficult for my husband to  
4 answer these questions, since  
5 Mr. Edelson has not been able  
6 to see my husband since he  
7 was detained -- indeed, the  
8 only time my husband has had  
9 access to any lawyer while in  
10 detention was almost ten  
11 months ago, in October,  
12 2002."

13 So I would like your comments  
14 about what is being raised here as a scenario  
15 wherein the RCMP provided to you questions for  
16 Mr. Arar and your dealing with those?

17 MR. EDELSON: I don't believe I  
18 ever received any questions from the RCMP. I  
19 think that there may have been a misapprehension.

20 From my recollection, I may well  
21 have discussed with Ann Alder, way back in the  
22 period of January-February, that I would want to  
23 see a written list of interrogatories relating to  
24 the questions they sought to have Mr. Arar answer.

25 But I don't recall actually seeing



1 a list of questions from the RCMP.

2 MR. DAVID: All right. If we can  
3 go to your time sheets for August the 13th?

4 MR. EDELSON: Yes.

5 MR. DAVID: And I believe it says  
6 Monia Arar for this date? And 05 is the code for  
7 conference?

8 MR. EDELSON: Yes.

9 MR. DAVID: So you had a meeting  
10 with Monia this day?

11 MR. EDELSON: And Kerry, I think  
12 it's Pither, P-I-T-H-E-R.

13 MR. DAVID: Yes.

14 MR. EDELSON: I have a memo, again  
15 a legal one, legal memo page.

16 MR. DAVID: I'd like to file this  
17 document at this point. That would be P-154, I  
18 believe.

19 EXHIBIT NO. P-154: Page  
20 referring to Mr. Michael  
21 Edelson's meeting with  
22 Ms Kerry Pither and Dr. Monia  
23 Mazigh on August 13, 2003

24 THE COMMISSIONER: A lot of paper  
25 today, Mr. Registrar.

1 --- Laughter / Rires

2 MR. DAVID: You can tell there's a  
3 lawyer as a witness, Mr. Commissioner. Lots of  
4 paper.

5 So this document refers to your  
6 meeting with Kerry Pither and Monia Mazigh?

7 MR. EDELSON: Yes, you'll see at  
8 the top right, it's dated October 13th, 2003 --

9 MR. DAVID: August 13th?

10 MR. EDELSON: August. I beg your  
11 pardon. August 13th, 2003.

12 MR. DAVID: If you could just tell  
13 us what this meeting is about?

14 MR. EDELSON: Yes.

15 Kerry Pither I had never met  
16 before, and she was introduced to me the Director,  
17 I think, of Social Justice for what was called the  
18 Solidarity Network, which I had never heard of  
19 before. And I had never heard of her before, but  
20 I was told she was trying to give some advice in  
21 media issues to Monia Mazigh.

22 So they came to me, and you'll see  
23 the title of the document that I've printed here  
24 is, to launch public campaign. So I guess in part  
25 to a certain degree, this goes back to the

1 previous questions that you posed about whether it  
2 was best to keep the press out of it.

3 It was now being determined that  
4 basically everything that had been tried  
5 heretofore had not worked, as a result of which  
6 perhaps now was the time to take a number of -- I  
7 call it the full-court press, put a number of  
8 pressure points here to work.

9 So down the right column, I  
10 started to mention, for example, some of the  
11 things, and, Mr. Commissioner, forgive me, public  
12 inquiry was the first one.

13 --- Laughter / Rires

14 THE COMMISSIONER: Maybe I won't.

15 MR. EDELSON: Public complaint to  
16 the RCMP was the second one, which I -- got  
17 underway eventually. SIRC. Parliamentary  
18 inquiry, either through the Justice committee or  
19 the Foreign Affairs committee, and I mentioned the  
20 name of Shirley Heafey of the RCMP where you might  
21 be able to file a complaint.

22 So these were the areas that I set  
23 out there, quite aside from just using the media,  
24 the press, the electronic media and printed media,  
25 to try and get the campaign revved up, and I

1 remember saying to her at this meeting, you know,  
2 I'm afraid, you know, this has been a very  
3 frustrating series of months for me as a lawyer.

4 You know, in Canada, if someone is  
5 in custody we bring bail hearings, we get them out  
6 or we don't get them out. But at least there's a  
7 process.

8 I said, here we have no process.  
9 We have to rely on Foreign Affairs, we have to  
10 rely on the political side to some degree. I  
11 said, quite frankly, I think you would be best  
12 served as a mother, as a wife, to go out and now  
13 start to apply pressure to have these things  
14 happen, because, I said, this may be the only way  
15 that you will get your husband released. Media  
16 pressure and pressure through these various  
17 available resources in government.

18 You'll see the diagram we wrote  
19 here, Canada, U.S.A., Jordan, Syria -- everything  
20 on this page is my handwriting.

21 So the way the meeting was left,  
22 essentially, was that I think this would be the  
23 strategy. That Monia Mazigh would sort of lead  
24 the way herself, a very bright, intelligent woman,  
25 and start to seek to put pressure, through these

1 various requests, let's have a public inquiry,  
2 let's have parliamentary committees, let's go to  
3 Question Period in Parliament and ask questions.  
4 Let's keep this man's name at the forefront of the  
5 media and Canadian life until someone gets up  
6 there and says, "How do we get this man home?"  
7 That was what this meeting was all about.

8 MR. DAVID: All right.

9 My next question concerns, and  
10 we're going to move ahead now to the actual date  
11 that Mr. Arar is released and returns to Canada.

12 MR. EDELSON: Yes.

13 MR. DAVID: You did not go meet  
14 him at the airport?

15 MR. EDELSON: No. I didn't know  
16 he was going to be at the airport.

17 MR. DAVID: How did you find out  
18 and who told you that Mr. --

19 MR. EDELSON: I saw him on  
20 television.

21 MR. DAVID: Okay.

22 We go now to an entry on your time  
23 sheets for October 14th.

24 MR. EDELSON: Right.

25 MR. DAVID: And it has to do with

1 the fact that Mr. Arar is intending to pick up his  
2 file at your office.

3 MR. EDELSON: Yes. He was, of  
4 course, back now, and no doubt was anxious to see  
5 the contents of the file. I indicated I had  
6 absolutely no objection to photocopying the file,  
7 which we did, and I think it was subsequently --

8 MR. DAVID: If you go to --

9 MR. EDELSON: Yes, I met them on  
10 the 16th --

11 MR. DAVID: On the 16th of  
12 October?

13 MR. EDELSON: Yes, that's correct.

14 MR. DAVID: It would be the time  
15 sheet for the 16th?

16 MR. EDELSON: Yes, Monia Mazigh  
17 and Maher Arar came to my office for a conference,  
18 and that's what is indicated on the 16th, and I  
19 remember -- I remember that meeting quite vividly.

20 MR. DAVID: Okay. And how long  
21 did that meeting last?

22 MR. EDELSON: Just over a half an  
23 hour, I would say.

24 MR. DAVID: And you had met  
25 Mr. Arar originally in -- in January, late January

1 of 2002.

2 MR. EDELSON: Right.

3 MR. DAVID: You now meet him again  
4 for the first time more than a year and a half  
5 later.

6 MR. EDELSON: Right.

7 MR. DAVID: Can you give us your  
8 appreciation of what you saw in the man? Was he  
9 the same? Was he the same person? Were there any  
10 differences that you noted?

11 MR. EDELSON: He was transformed.

12 MR. DAVID: And if you could  
13 qualify that, Mr. Edelson?

14 MR. EDELSON: Well, you know, I  
15 thought he looked like a hollow man, just sort of  
16 a shadow of his former self. Physically.

17 MR. DAVID: And what was your  
18 appreciation of his demeanour when you had  
19 originally met him in January of 2000 --

20 MR. EDELSON: I mean, he's  
21 super-intelligent, quite articulate. I found him  
22 fairly outgoing, very forthright in our  
23 discussions.

24 When I saw him he was very  
25 reticent, very quiet, withdrawn. His eyes were

1 sort of recessed. He was very thin and gaunt. He  
2 was sitting on my right. His wife was sitting on  
3 my left. And I remember turning to him ...

4 --- Pause

5 I'm sorry.

6 THE COMMISSIONER: Take a minute.  
7 Do you want to take a break?

8 MR. EDELSON: No, I'm fine. It  
9 was very emotional because, you know, after all  
10 this, I was -- it was sort of a hope against hope  
11 that he hadn't been tortured.

12 And I remember saying to him:  
13 "Tell me. Are all these things I'm hearing about  
14 you being tortured, are they true?" And he just  
15 looked at me and said, "Yes, they are." And I  
16 was -- I was sort of crushed by it.

17 MR. DAVID: Do you recall  
18 referring Mr. Arar to other counsel at that point,  
19 at this --

20 MR. EDELSON: Yes, I did. I gave  
21 him the names of several counsel, primarily civil  
22 counsel in Ottawa, to -- because, really, my role,  
23 whatever it was at that point, was really over.

24 He was back in Canada, and I felt  
25 if any of these various things I discussed with



1 his spouse earlier were to be pursued, now was the  
2 time to have other counsel go forward with those  
3 things, and I gave him several names and  
4 ultimately I heard who he had retained,  
5 Mr. Waldman and Ms Edwardh, and I had discussions  
6 with them later on.

7 MR. DAVID: Thank you. We go now  
8 to the very next day, and that's October 17th, and  
9 if you could turn up tab 11 and go to page 34.

10 MR. EDELSON: Tab 11.

11 MR. DAVID: Tab 11 is the  
12 before-last page.

13 MR. EDELSON: Yes.

14 MR. DAVID: And there's actually a  
15 series of four entries that I'd like to take you  
16 through that concern basically a request that was  
17 coming to you, or directed through you, from  
18 A-OCANADA, from Project A-OCANADA, the RCMP --

19 MR. EDELSON: Right.

20 MR. DAVID: -- in regards to a  
21 meeting, an interview with Mr. Arar.

22 So let me first bring you to page  
23 34 for an entry on October 17th, and it reads as  
24 follows:

25 "... called Edelson and left

1 a message indicating our  
2 interest in speaking with him  
3 about ARAR."

4 MR. EDELSON: Mm-hmm.

5 MR. DAVID: So a voice mail was  
6 left at your office.

7 The second entry is for October  
8 23rd, and it says:

9 "... received a voice mail  
10 from Edelson indicating he  
11 was in court yesterday and  
12 today He was involved in the  
13 ARAR release efforts but was  
14 unsure as to what  
15 representation role he would  
16 take and will not know for 10  
17 days or so. He would like to  
18 know what we are looking for,  
19 indicating he will pass on  
20 our request to ARAR."

21 There is a third e-mail -- I'm  
22 sorry, voice mail, that is on the same date, that  
23 is October 23rd, and it says:

24 "... contacted the office of  
25 Edelson and left a message

1                   indicating that Insp. Coons  
2                   and ... would like to meet  
3                   with him to speak about ARAR  
4                   and his other clients."

5                   And then finally, the third entry,  
6                   Mr. Edelson, is for October 27th, and it says:

7                   "... received a call from  
8                   Edelson in relation to Maher  
9                   ARAR ... He is prepared to  
10                  meet and have a conversation  
11                  about ... he is not clear as  
12                  to whom he is representing.  
13                  Agreed to meet on Tuesday  
14                  03-10-28."

15                  And finally, the fourth entry is  
16                  for the 28th of October, and that is on the next  
17                  page, page 35.

18                  MR. EDELSON: Yes?

19                  MR. DAVID: And it says -- and  
20                  actually, rather than read this, there's another  
21                  entry that is more complete, that I find is more  
22                  thorough, so if you could go to tab 2?

23                  MR. EDELSON: Same book?

24                  MR. DAVID: Same book, tab 2, and  
25                  go to pages 7 and 8 with regard to October 28th.

1           It's just I find it's a more thorough account.

2                           MR. EDELSON:   Seven?

3                           MR. DAVID:   Seven and 8.

4                           MR. EDELSON:   Yes.

5                           MR. DAVID:   So the entry for the  
6           28th of October reads:

7                                   "9:30   Met with Ann Alder re  
8                                   meeting with Mike Edelson.  
9                                   She is of the belief that ...  
10                                  may talk if granted  
11                                  immunity.   ... Not sure if he  
12                                  represents Arar.   We will  
13                                  determine same in meeting.  
14                                  Our position on Arar is that  
15                                  we are available to speak  
16                                  with him when he is able and  
17                                  willing.   It would appear DOJ  
18                                  is evaluating our file and  
19                                  may provide an opinion on  
20                                  future prosecution of file or  
21                                  at least what we must  
22                                  correct."

23                           And then it says:

24                                   "Met with Robert Fecteau to  
25                                  discuss above noted legal

1 issues."

2 And on the next page, which  
3 continues on for the date of October 28th at  
4 16:15:

5 "Met with Mike Edelson at  
6 office ..."

7 And that is your office address?

8 MR. EDELSON: Right.

9 MR. DAVID:

10 "Meeting with Mike Edelson to  
11 discuss ... He represents  
12 ... Discussed our interest  
13 in meeting with him for an  
14 interview. Willing to  
15 discuss immunity with crown  
16 if he will make himself  
17 available. Edelson will  
18 discuss, not sure that ...  
19 will agree."

20 And then it says:

21 "Talked about ... and he does  
22 not represent him. Some  
23 discussion of the issue of  
24 ... dealings with individuals  
25 believed to be associated to

1           AQ.  Talked about Arar, he  
2           has represented him in the  
3           past, but will not likely be  
4           doing so in the future.  He  
5           has been in contact with  
6           JAMES LOCHYEAR in TORONTO who  
7           deals with cases of the  
8           wrongfully convicted.  These  
9           matters may be pursued in  
10          this fashion.  Discussion  
11          about media leaks and it is  
12          our position that the info  
13          did not come from this  
14          project.  Info in leaks, as  
15          far as we are concerned is  
16          wrong, not consistent with  
17          what we know.  MIKE EDELSON  
18          will let ARAR know that we  
19          would like to interview  
20          same."

21                                   And the rest is redacted.

22                                   "18:50 Meeting complete."

23                                   So I brought you through  
24          essentially four steps, four different dates  
25          concerning what was an expressed desire by Project

1 A-OCANADA to meet your client, Mr. Arar.

2 MR. EDELSON: Yes, they did. They  
3 did want to, but they didn't meet him.

4 MR. DAVID: If you could just  
5 comment on the October -- did you meet them --  
6 well, obviously you did meet them --

7 MR. EDELSON: I met them but he  
8 wasn't there.

9 MR. DAVID: And could you tell us  
10 what further discussions, or further points were  
11 discussed at this meeting?

12 MR. EDELSON: Well, perhaps if I  
13 may start at page 7 of 9, tab 2. You'll see at  
14 the top of that page that I apparently reached  
15 someone on their cell phone -- I think I remember  
16 who it is, but I won't mention it -- and I  
17 indicated that I would be prepared to meet with  
18 them, just have a discussion. But I said, listen,  
19 you've got to keep in mind, I'm not sure whether  
20 I'm even going to be representing Mr. Arar now  
21 that he's back, but I'll meet with you, and I  
22 think the meeting took place on the 28th, as you  
23 said, at my office.

24 I see from this second note,  
25 October 28, 2003, that this individual met with

1 Ann Alder about the meeting with me. I know who  
2 the meeting was with. Am I permitted to indicate  
3 who it's with?

4 THE COMMISSIONER: I don't know.  
5 It's blacked out on my copy.

6 MR. FOTHERGILL: My understanding  
7 is that if this is a member of the police who  
8 identified himself to the witness, the witness can  
9 identify him.

10 MR. EDELSON: Okay. Well, I met  
11 with Kevin Corcoran.

12 I'm very interested to see this  
13 note and the discussion about immunity because I  
14 don't think I would have initiated any discussion  
15 about immunity, because for me immunity typically  
16 means that the person's done something wrong for  
17 which they need protection, whether it be  
18 transactional or other immunity, and in this  
19 particular case I had no evidence that would lead  
20 me to believe that Maher Arar had done anything  
21 wrong.

22 MR. DAVID: Was it necessarily  
23 concerning Maher Arar --

24 MR. EDELSON: No, it may have also  
25 been someone else, yes.



1                   So going over the page then, we  
2                   did meet, 4:15, in my office. There were some  
3                   discussions.

4                   I know they wanted to interview  
5                   more than one of my clients, Maher being one of  
6                   them, but I'm not -- I'm not certain that that is  
7                   the individual that's being discussed here in  
8                   terms of immunity.

9                   But in any event, I remember, I  
10                  did say to them, Listen, I've had a telephone  
11                  conversation with Jim Lockyer.

12                 MR. DAVID: You had had?

13                 MR. EDELSON: Yes.

14                 MR. DAVID: Okay.

15                 MR. EDELSON: I had been in  
16                  contact with Jim Lockyer in Toronto, and I told  
17                  them he's the fellow, you're probably familiar  
18                  with, who has done many cases with respect to the  
19                  wrongfully convicted, Guy Paul Morin, et cetera,  
20                  and I indicated that, based on the phone call I  
21                  had had, that there was a real likelihood that Jim  
22                  Lockyer was going to be involved in the  
23                  representation of Mr. Arar in some fashion.

24                 So I said, listen, I can't commit  
25                  to anything because I'm not sure I'm even going to

1 be actively representing Mr. Arar in the near  
2 future or at all.

3 And basically that's the way the  
4 conversation ended, with me saying to them,  
5 listen, I'll convey to Mr. Arar your desire to  
6 speak to him but I said, you know, this is likely  
7 going to be in the hands of other counsel at this  
8 point, so that's the way it ended.

9 MR. DAVID: And did you follow  
10 through with Mr. Arar?

11 MR. EDELSON: I believe I told  
12 him, but I'm not absolutely certain about that.

13 MR. DAVID: Okay.

14 MR. EDELSON: I may have related  
15 it to his lawyer rather than to him directly,  
16 because I do remember having some difficulty  
17 getting a hold of him, I think phone numbers were  
18 changing or something like that happened, and I  
19 may have called his lawyer rather than directly --  
20 I may have called Jim Lockyer rather than speaking  
21 to him.

22 MR. DAVID: Okay.

23 The next date I'd like to bring  
24 you to is concerning a meeting I believe you had  
25 with the RCMP, with Mr. Coons specifically, and

1           that would have been on November 7, 2003.

2                         MR. EDELSON:   Okay.

3                         MR. DAVID:   Do you recall that  
4           meeting and what it was about, and if you could  
5           just provide us with what you recollect?

6                         MR. EDELSON:   Well, there was a  
7           meeting with -- at which Inspector Coons was in  
8           attendance.  I don't think that discussion had  
9           much at all to do with Mr. Arar.  I think that  
10          discussion was largely relating to another client.

11                        MR. DAVID:   Did you indicate  
12          anything to Mr. Coons about information that you  
13          had, that had come to your attention, about  
14          correspondence that existed that was in Syria --

15                        MR. EDELSON:   Yes.

16                        MR. DAVID:   -- from Canadian  
17          agencies or Canadian authorities?

18                        MR. EDELSON:   I believe I did.

19                        MR. DAVID:   And if you could just  
20          indicate to us what you told Mr. Coons in that  
21          regard?

22                        MR. EDELSON:   All right.  There  
23          were other people also present at that meeting  
24          with Inspector Coons, and information was conveyed  
25          to him that while Mr. Almalki was being

1           interrogated and tortured in Syria, that he looked  
2           into a file that was being used for the process of  
3           interrogating him, and at different points in time  
4           he had seen letters with Canadian government, or  
5           whatever, letterhead on them. That he had seen  
6           the letterhead and on another occasion he had  
7           actually gotten to read a fragment of the letter,  
8           and that the substance of what we, I think,  
9           conveyed to Inspector Coons at that point was that  
10          the impediment to Mr. Almalki's return was the  
11          Canadian government, not the Syrian government,  
12          that it was the Canadian government that wanted  
13          him kept in Syria.

14                         MR. DAVID: And this you indicated  
15          to Mr. Coons?

16                         MR. EDELSON: I believe that was  
17          not precisely, but that was the substance of what  
18          was conveyed to him, was that there was a real  
19          concern, based on what we were conveying to him as  
20          information coming out of Syria, that Mr. Almalki  
21          was also being tortured and was being detained  
22          there and interrogated and that material had been  
23          sent to Syria by the Canadian government which was  
24          being used to assist in his interrogation and  
25          detention, and further his detention.

1 MR. DAVID: We come to the last  
2 page of your charge sheets concerning Maher Arar.

3 MR. EDELSON: Yes.

4 MR. DAVID: And perhaps it would  
5 be worthwhile to point out at this point that,  
6 though you have many charge sheets, I understand  
7 that you acted pro bono in this file?

8 MR. EDELSON: Yes. What had  
9 happened -- up to the point, and you'll see if you  
10 go to the actual sheet --

11 MR. DAVID: You're referring to  
12 the ledger sheet.

13 MR. EDELSON: There was a receipt  
14 of a sum of money --

15 MR. DAVID: It's been redacted.

16 MR. EDELSON: Which had been  
17 redacted. It was largely to cover any  
18 disbursements on the file, as it turned out,  
19 that's what we thought it would be.

20 This was money that was received  
21 as a result of a phone call from a lawyer in  
22 Toronto, with a major firm in Toronto, who had  
23 known Maher at McGill and said he wanted to put  
24 together some -- it was a small amount of money --  
25 to assist him in any way that he could, and he

1 sent -- he sent the cheque to my firm.

2 MR. DAVID: Okay. So coming now  
3 to the entry for November 24, 2003.

4 MR. EDELSON: Right.

5 MR. DAVID: "Chief Superintendent  
6 Brian Garvie ..."

7 MR. EDELSON: Right.

8 MR. DAVID: I'm not sure what the  
9 next word is.

10 MR. EDELSON: He -- "Assigned  
11 public complaints, Arar."

12 So he told me he had been assigned  
13 to investigate a public complaint that had been  
14 made to the RCMP with respect to Mr. Arar's case  
15 and the conduct of the RCMP, and he said he would  
16 like to meet with me.

17 MR. DAVID: Okay.

18 MR. EDELSON: And we did meet.

19 MR. DAVID: Simply for the record,  
20 if we could go to P-83, which is the --

21 MR. EDELSON: Right.

22 MR. DAVID: And I bring you to  
23 tab 3.

24 MR. EDELSON: Three.

25 MR. DAVID: And then pages 32

1 to 35.

2 MR. EDELSON: Thirty-two. Yes?

3 MR. DAVID: And this is a copy of  
4 your statement to Brian Garvie?

5 MR. EDELSON: Yes, it is.

6 MR. DAVID: Dated January 12,  
7 2004?

8 MR. EDELSON: Yes. That's the  
9 date we met.

10 MR. DAVID: Okay. I'd like to  
11 enter as an exhibit now two documents: One is a  
12 letter that is coming from Shirley Heafey to you,  
13 dated January 21, 2004. That would be P-155.

14 EXHIBIT NO. P-155: Letter  
15 from Ms Shirley Heafey to  
16 Mr. Michael Edelson re RCMP  
17 Investigation into Chair's  
18 Complaint (Maher Arar), dated  
19 January 21, 2004

20 MR. DAVID: And your response, the  
21 very next day, which would be P-156.

22 MR. EDELSON: Thank you.

23 EXHIBIT NO. P-156: Response  
24 letter from Mr. Michael  
25 Edelson to Ms Shirley Heafey

1 re RCMP Investigation into  
2 Chair's Complaint (Maher  
3 Arar), dated January 22, 2004

4 MR. DAVID: And so in Ms Heafey's  
5 letter on the 21st of January, she is inviting  
6 Mr. Arar's collaboration in the public's complaint  
7 process with the RCMP?

8 MR. EDELSON: Yes. I mean, two  
9 things were developing at this point. One was --  
10 obviously I was about to become a witness. So I  
11 obviously couldn't continue my representation of  
12 Mr. Arar.

13 So by this stage Mr. Waldman, I  
14 think, in any event, was either retained or was in  
15 the process of being retained. So I wrote back on  
16 the 22nd, the next day, and told her that my  
17 understanding was, just from the media, that Lorne  
18 Waldman was now representing Mr. Arar and that she  
19 forward the interview request to interview  
20 Mr. Arar to Mr. Waldman.

21 Because I had already given my  
22 interview myself, so I didn't -- I wouldn't have  
23 thought it appropriate, in any event, to continue  
24 any representation at that stage.

25 MR. DAVID: Mr. Edelson, thank



1           you.  Those are my questions.

2                           THE COMMISSIONER:  Ms Edwardh?

3                           MS EDWARDH:  I wanted to ask your  
4           indulgence, Mr. Commissioner.

5                           THE COMMISSIONER:  Sure.  Do you  
6           need a break?

7                           MS EDWARDH:  Just five minutes?  
8           Would that be convenient?

9                           THE COMMISSIONER:  Sure.  Why  
10          don't we do that?  That will be good.

11                          MS EDWARDH:  Thank you.

12                          THE REGISTRAR:  Please stand.

13          --- Upon recessing at 2:53 p.m. /

14                          Suspension à 14 h 53

15          --- Upon resuming at 3:01 p.m. /

16                          Reprise à 15 h 01

17                          THE REGISTRAR:  Please be seated.  
18          Veuillez vous asseoir.

19                          MS EDWARDH:  Thank you,  
20          Mr. Commissioner.  It allowed me to prop my books  
21          up.

22          EXAMINATION

23                          MS EDWARDH:  Mr. Edelson, before I  
24          begin, as you know, I represent Maher Arar, and I  
25          have been asked to personally thank you for your

1 efforts in trying to secure his release.

2 MR. EDELSON: Thank you.

3 MS EDWARDH: Now I'm going to jump  
4 around a little bit, so if you need to get  
5 anchored in a piece of paper or anything like  
6 that, please let me know.

7 I wanted to turn to the interview,  
8 or discussion, you had with Mr. Arar on  
9 January 30th.

10 MR. EDELSON: Yes.

11 MS EDWARDH: And just cover a  
12 couple of issues in it that I thought arose, and  
13 as I appreciate your observation that while this  
14 interview is undoubtedly designed to record and  
15 capture the essence of a conversation, you'll  
16 agree with me that, given how it's undertaken,  
17 there may be details and spellings and names that  
18 may not be particularly accurate?

19 MR. EDELSON: Oh, yes.

20 MS EDWARDH: So if I were to take  
21 you down to the first page of this interview,  
22 where you see, "Software oriented"?

23 MR. EDELSON: Yes.

24 MS EDWARDH: And suggest that the  
25 proper name that should be there is "Simulynk,"

1 and what that is is a software which itself  
2 simulates communications systems?

3 MR. EDELSON: I wouldn't disagree  
4 with that.

5 MS EDWARDH: Fair enough.

6 And I'd also like to go to the  
7 discussion that you had with Mr. Arar. It was his  
8 view, was it not, that he felt that the  
9 significant decline in the power on his laptop  
10 computer indicated that someone had done something  
11 more than simply turn it on?

12 MR. EDELSON: Oh, yes.

13 MS EDWARDH: And I take it the two  
14 of you are more than familiar with the term often  
15 used forensically as mirroring the hard drive?

16 MR. EDELSON: Yes.

17 MS EDWARDH: And what mirroring  
18 the hard drive does is to remove all data in the  
19 hard drive, including any spaces that may be  
20 there, to gather data that has been deleted from  
21 the computer system?

22 MR. EDELSON: Oh, I understand it  
23 to mean that they imaged the data in the hard  
24 drive, yes.

25 MS EDWARDH: But, more

1           importantly, by doing a mirror image of the hard  
2           drive, if someone has deleted something, unless  
3           it's been written over, you can capture deleted  
4           data?

5                           MR. EDELSON:  Well, that's my  
6           understanding, that they have the capability of  
7           doing that.

8                           MS EDWARDH:  So Mr. Arar felt, I  
9           take it, and you too were concerned, that the  
10          seizure of the laptop may have involved an  
11          inspection and a mirroring of all the images on  
12          the hard drive?

13                          MR. EDELSON:  Well, I think that  
14          he had the concern, and I certainly wasn't  
15          disagreeing with him, that there had been a search  
16          of his hard drive and maybe even his Palm Pilot.

17                          MS EDWARDH:  Now, just to jump to  
18          another interview.  In the latter part of  
19          December, when you meet with the four officers  
20          from A-OCANADA, that is when they disclose to you  
21          that they have some concern about who Mr. Arar had  
22          on his Palm Pilot and how that matched up with  
23          others of interest or other targets and  
24          information or contacts they had with Mr. Arar?

25                          MR. EDELSON:  It was either the

1 late November or the December meeting, yes.

2 MS EDWARDH: It's apparent, sir,  
3 that either at the time of this search at the  
4 border, or at some later date, the officers had  
5 actually obtained the contents of either the Palm  
6 Pilot and/or the laptop in order to draw that  
7 conclusion?

8 MR. EDELSON: Well, I think the  
9 inference is there. I didn't have any definitive  
10 information that that was the case. In other  
11 words, no one told me that that's how they got it.  
12 But I certainly assumed that's how they got that  
13 information, vis-à-vis the information on his Palm  
14 Pilot or laptop.

15 MS EDWARDH: Right, right. At  
16 least, as best you knew, that Mr. Arar had never  
17 volunteered handing over to the RCMP either his  
18 laptop or his Palm Pilot, so the only way they  
19 could have known what was in it was to have  
20 accessed it at some point?

21 MR. EDELSON: According to the  
22 information I had, that is correct.

23 MS EDWARDH: Now, going back again  
24 to the interview and his concerns, I want to bring  
25 you to the last eight or nine lines of the

1 interview and put to you a suggestion that may  
2 assist you in refreshing your memory.

3 I'm going to suggest to you that  
4 when Mr. Arar started to discuss the names of  
5 Mr. Almalki, and then Safa and Nazih, he was  
6 describing a very particular event that had  
7 occurred at Friday prayers when he had disclosed  
8 to Safa the contact with the RCMP, and Safa  
9 informed him that indeed Safa himself had been  
10 questioned about Mr. Arar's political and  
11 religious views?

12 MR. EDELSON: I would have no  
13 disagreement with that expanded view of what he  
14 told me.

15 MS EDWARDH: But you're content  
16 that that refreshes your recollection?

17 MR. EDELSON: Yes, yes.

18 --- Pause

19 MS EDWARDH: I just want to review  
20 another point in this. Apparently Mr. Arar  
21 expressed some concern that his phone was the  
22 subject of a wiretap?

23 MR. EDELSON: Yes.

24 MS EDWARDH: And there's a  
25 reference here I found a little difficult to

1 understand until I reflected on it over the  
2 luncheon recess?

3 MR. EDELSON: Page 2?

4 MS EDWARDH: Yes.

5 MR. EDELSON: Yes.

6 MS EDWARDH: And halfway down the  
7 page: Arar -- I'm sorry, your writing is as bad  
8 as mine?

9 MR. EDELSON: "Client felt phone  
10 tapped. RCMP called while talking to mother.  
11 7:30 a.m." It says, "He showed -- while in  
12 Tunisia."

13 MS EDWARDH: I'm going to just  
14 stop you there, sir, because I want to stop really  
15 at the first line.

16 MR. EDELSON: Right.

17 MS EDWARDH: Mr. Arar, I'm going  
18 to suggest, that what he said to you, was that,  
19 when he returned home he phoned his mother and  
20 immediately thereafter a telephone call was placed  
21 to his residence, that he answered, and it was the  
22 RCMP. And what he assumed is there was live  
23 listening going on to his telephone?

24 MR. EDELSON: Yes.

25 MS EDWARDH: Does that refresh

1 your recollection?

2 MR. EDELSON: Yes. Well, the note  
3 was made because of the -- although it's not clear  
4 as I've noted it --

5 MS EDWARDH: Right.

6 MR. EDELSON: -- about his concern  
7 that there was this quizzical coincidence between  
8 a conversation on the one hand and then, boom, he  
9 gets this phone call from the RCMP.

10 MS EDWARDH: And of course, sir,  
11 you know from your experience as a criminal  
12 defence counsel that there are some wiretaps that  
13 operate merely by a recording and others that  
14 operate by having police officers designated to  
15 listen in on live conversations?

16 MR. EDELSON: To monitor, yes.

17 MS EDWARDH: Yes. So indeed a  
18 monitor would be able to determine immediately, if  
19 there was a monitor on that phone line, that  
20 Mr. Arar was home because he was making the call?

21 MR. EDELSON: Yes.

22 MS EDWARDH: Now, I want to go, if  
23 I could, to an entirely different area, so that  
24 those who may not feel -- or know a great deal  
25 about the practice of criminal defence work will



1 understand the steps you took once you had been  
2 asked initially about an interview with Mr. Arar.

3 You've said, I think, two or three  
4 times, and this goes back to the beginning phase  
5 of your involvement with him, that you were in  
6 discussion with Mr. Arar and he personally had  
7 made it clear that he was prepared to have a  
8 conversation with the RCMP?

9 MR. EDELSON: That's true.

10 MS EDWARDH: And then, indeed, all  
11 the obligations of defence counsel kick in in  
12 assessing what legal advice you would give a  
13 client in those circumstances. Fair enough?

14 MR. EDELSON: Yes. Oh, yes.

15 MS EDWARDH: And one of the, of  
16 course, important factors you would consider was,  
17 had the authorities disclosed to you what was the  
18 investigation and what were the specific factual  
19 matters that your client was to be asked about.  
20 Right?

21 MR. EDELSON: Had they disclosed  
22 it to me?

23 MS EDWARDH: No, that's one of the  
24 issues you would have in your mind when you  
25 approached the question?

1 MR. EDELSON: Yes.

2 MS EDWARDH: And indeed, in  
3 Mr. Arar's case, there was no identifiable  
4 investigation, nor had anyone given to you any  
5 factual matters that Mr. Arar was to address?

6 MR. EDELSON: Well, what I had in  
7 hand at the time I gave that advice was this: I  
8 had had a meeting about a week before with a group  
9 of other individuals, whose names I am not in a  
10 position to disclose.

11 I had acted for another individual  
12 in an investigation a year earlier, where we  
13 discovered that information which had been  
14 provided by and to the Americans had resulted in a  
15 very significant action against our client, huge  
16 hardship to him in his life, and then when the  
17 Government of Canada, through senior counsel, went  
18 down to investigate the content of that file, they  
19 discovered there was really no substance to it.

20 MS EDWARDH: I think it's  
21 important, Mr. Edelson, to put some meat on your  
22 experience here. I know the matter is in large  
23 part public.

24 MR. EDELSON: Yes, it is.

25 MS EDWARDH: So perhaps you might

1           just develop, you know, what happened and what  
2           steps were taken and what was the ultimate result?

3                         MR. EDELSON:    Okay.

4                         MS EDWARDH:    Just tell the story  
5           for us.

6                         MR. EDELSON:    If I may segue for a  
7           moment.  The name of the individual is Liban  
8           Hussein.  He was the subject of an investigation  
9           in Boston called the Baracat investigation, which  
10          had to do with a sort of a more organized Huallah  
11          system, where people who had emigrated to the  
12          United States could come in, deposit cash for  
13          transfer back home to Somalia, for example, he was  
14          a Somalian originally before he came to Canada.

15                        And by having this system, because  
16          Somalia has no banking system, they were able to  
17          get money back to their loved ones overseas where  
18          they could support them from their work here in  
19          Canada, or the United States, for that matter.

20                        Now, when Mr. Hussein was under  
21          investigation, as a result of the provisions of  
22          the various legislation at that time.  He was  
23          placed on the U.N., U.S., and Canadian anti-terror  
24          lists.

25                        Once listed, the legislation

1 provides that no one can have any financial  
2 transactions with these people, which meant that  
3 the company that he then owned, which was a  
4 cleaning franchise out of the East Coast,  
5 literally pulled the plug on his business.

6 He employed family members and  
7 others, I think he had 12 or 13 employees. He  
8 lost all ability to earn income, he couldn't deal  
9 with anybody, he couldn't pay anybody, he couldn't  
10 even retain us, in effect.

11 So we brought a constitutional  
12 challenge in our factum. Ivan Whitehall, who was  
13 senior counsel then for Justice, went down to  
14 Boston because he met with us and told us this, he  
15 had viewed the file, and he came back and he said,  
16 "We are far from satisfied about the substance of  
17 this file and we will not represent the United  
18 States of America in any extradition proceedings."

19 And there were two other lawyers  
20 at that meeting, their names escape me now, and  
21 they said, "We are here to try and effect the  
22 removal of Mr. Hussein's name from the three  
23 lists. Try to get his life back together again."

24 Eventually they did succeed in  
25 doing that. It was quite a remarkable effort.

1 All charges, or all extradition applications here  
2 were dismissed, nothing went on. His life, after  
3 nine months, was back on the track again, after  
4 being the subject of national and international  
5 publicity. This man sort of had his life back in  
6 order to some extent.

7 Now, it was in that context that  
8 then these other people come to see me in January  
9 of '02, saying that on the 22nd that there had  
10 been searches and/or cards left for interviews.

11 I got phone calls subsequently  
12 from one of the individuals saying he was being  
13 constantly followed by the police. I called one  
14 of the officers involved and said what's going on?  
15 You know, whether there had been harassment or not  
16 was certainly crossing my mind at this stage.

17 In any event, in that context, I  
18 then get a call from Mr. Arar as well.

19 So, from my perspective, I really  
20 took with a large grain of salt the kind of  
21 information that I was getting, making claims that  
22 clients were guilty of certain allegations.

23 MS EDWARDH: And so I see you  
24 bringing a healthy scepticism to the assertions  
25 that there is a solid evidentiary base behind some

1 of these allegations.

2 So when you're coming, though, to  
3 the question of, should Mr. Arar speak to Corporal  
4 Buffam, it's my understanding from reading the  
5 record, Mr. Edelson, that the police had not given  
6 you any specific information about the allegations  
7 or what their objective was with Mr. Arar in order  
8 for you to give him legal advice?

9 MR. EDELSON: Yes. In fact, I  
10 remember, I think it was a conversation with Ann  
11 Alder early on where I asked, "Is this a  
12 criminal -- a traditional criminal investigation?  
13 Is it an intelligence investigation, like a  
14 national security investigation, anti-terrorist  
15 investigation?" "We cannot say."

16 MS EDWARDH: So then the advice  
17 you were forced to give Mr. Arar was really advice  
18 in a vacuum, and if I could just put a question to  
19 you, Mr. Edelson.

20 Many of us, with as much  
21 experience as you have, would have said to your  
22 client in those circumstances, "I urge you to say  
23 nothing to these officers until they are more  
24 forthcoming."

25 Or did you give different advice

1           because of Mr. Arar's decision that he wanted to  
2           speak to them?

3                           MR. EDELSON: Well, the way the  
4           conversation unfolded, essentially, was this: He  
5           indicated, "Listen, I have no objection to  
6           speaking to them." And I said, "Well, let me clue  
7           you in to the way the system works.

8                           As a criminal lawyer I would not  
9           advise a client normally to give a statement,  
10          period.

11                          However, if you are inclined to do  
12          so, given we have this information vacuum about  
13          what is really going on here with this  
14          investigation -- and I'm getting complaints made  
15          by all sorts of other sources about investigative  
16          activities -- I'm going to suggest to you that we  
17          have certain conditions or preconditions imposed  
18          before such an interview takes place to protect  
19          you."

20                          Now, there's two types of  
21          protection, of course. If he's merely being  
22          viewed as a witness or a person of interest, they  
23          still might want to interview him and try and get  
24          a KGB statement, you know, a sworn videotaped  
25          statement, for purposes of using it against

1 someone else. So he appears, in essence, through  
2 the video, qua witness, which, in certain  
3 circumstances, can put one's life in jeopardy.

4 On the other hand, they may be  
5 looking at him as a suspect, beyond what I would  
6 consider the sort of person of interest state, in  
7 which case you would typically tell someone to say  
8 nothing.

9 So I said in that context, I will  
10 insist, if I'm to act as your counsel -- we're  
11 dealing very early on, obviously -- that certain  
12 preconditions exist to that interview. And he  
13 said, "Look, I'll take your advice on that."

14 MS EDWARDH: And the  
15 preconditions -- well, let me just go back one  
16 step. It's my understanding from something you  
17 said earlier that Ann Alder told you that they  
18 wanted a statement on videotape made under oath  
19 but without having identified in what capacity  
20 Mr. Arar would be speaking?

21 MR. EDELSON: Yes.

22 MS EDWARDH: And it's in that  
23 context that you sit down to design the conditions  
24 that you think are appropriate to advise Mr. Arar  
25 about.



1                   And perhaps you just might  
2           identify those conditions and what your thinking  
3           is around why they were important?

4                   MR. EDELSON: Well, let's start  
5           with the KGB statement. I indicated that under no  
6           circumstances would I consent to Mr. Arar being  
7           interviewed with a videotaped, sworn statement,  
8           for the reasons I've articulated.

9                   I agreed that the statement could  
10          be audio taped. I agreed that a transcript would  
11          be prepared, and we would have an opportunity to  
12          review the transcript to correct anything that we  
13          viewed as having been erroneous or mistaken in the  
14          transcript.

15                  I indicated that the statement  
16          would not be under caution -- this is the typical  
17          police caution that they read to suspects that,  
18          you know: "You have the right to remain silent,  
19          but if you choose not to remain silent anything  
20          you say may be taken down and used in evidence" --  
21          for the simple reason that, although the courts  
22          don't necessarily adhere to this all the time, but  
23          the police think that they have a real problem  
24          with voluntariness if there is no caution.

25                  MS EDWARDH: Usually, as well, the

1           caution is preceded by words of, "You are under  
2           arrest on the charge of `blah.'"

3                       MR. EDELSON: Sometimes. That is  
4           correct.

5                       I also indicated that legal  
6           counsel, i.e. myself, personally, would be  
7           present during the entire interview, which they  
8           don't particularly like because it restricts  
9           sometimes the kind of interrogation approach that  
10          they might adopt.

11                      I said, "My client, if I object,  
12          will not answer certain questions." I also  
13          indicated that he will be free to voluntary leave  
14          at any time from that interview.

15                      So these were the types of  
16          conditions that I was insisting upon for this  
17          particular interview.

18                      MS EDWARDH: I take it that you  
19          felt that each of those conditions were  
20          appropriate, given the absence of information  
21          provided by either the officers or Ann Alder about  
22          the nature of the investigation and whether or not  
23          Mr. Arar himself was a witness or indeed a target?

24                      MR. EDELSON: Yes. In my  
25          experience, these weren't unusual conditions.

1 MS EDWARDH: That was my  
2 next question.

3 MR. EDELSON: I had dictated  
4 similar conditions in dozens of other criminal  
5 investigations where the client had indicated --  
6 and these are the exceptions, I might say, because  
7 in most cases you are simply going to say, "Don't  
8 make any statements" -- but where a client  
9 indicates, "listen, I want to clear my name," or  
10 "I want to make a statement," then I would say,  
11 "Look, yes, that is fine, but we are going to  
12 impose certain preconditions to that happening  
13 just to give you some additional protection."

14 MS EDWARDH: Indeed I want to  
15 go what the vast majority of persons would do  
16 and what advice they would give, and I think  
17 you have just identified it, it is a  
18 recommendation that persons should invoke their  
19 right to remain silent?

20 MR. EDELSON: Yes.

21 MS EDWARDH: I am going suggest to  
22 you that, of course, as you know, this is an  
23 exercise of both a legal and constitutional right?

24 MR. EDELSON: It is your  
25 constitutional right, yes.

1 MS EDWARDH: Furthermore, that the  
2 exercise of that right is not supposed to be held  
3 against you in any way?

4 MR. EDELSON: That is your Susan  
5 Nellis, I suppose.

6 MS EDWARDH: Since we graduated  
7 within a year of one another our history in the  
8 field of criminal law is quite similar.

9 MR. EDELSON: Yes.

10 MS EDWARDH: But of course that is  
11 the case of a nurse who was charged with murder  
12 and one of the principal basis for the charge was,  
13 in fact, her assertion of her right to remain  
14 silent and the right to speak to counsel?

15 MR. EDELSON: On the advice of  
16 counsel, yes.

17 MS EDWARDH: That was used against  
18 her. In theory we have learned that we are not  
19 supposed to do that.

20 MR. EDELSON: Perhaps.

21 MS EDWARDH: Well, we have  
22 learned it.

23 MR. EDELSON: Yes.

24 MS EDWARDH: So the advice you  
25 gave Mr. Arar was neither exceptional or unusual,

1 given your practice?

2 MR. EDELSON: Not my personal  
3 practice, no, it wasn't unusual.

4 MS EDWARDH: Were you  
5 surprised, sir, that given your long-standing  
6 relationship with Ms Alder, and also the officers  
7 who you had some familiarity with, and had worked  
8 with, that they failed to give you any parameters  
9 or boundaries or focus to what they were  
10 interested in?

11 MR. EDELSON: Not really  
12 surprised, in the sense that I had had many  
13 clients under investigation or suspicion in the  
14 past who did not get an informational component to  
15 the investigative activities of the police before  
16 interviews were requested.

17 In fact, sometimes the police  
18 purposefully refused to do it so that the client  
19 can't prepare themselves for what the interview is  
20 about. I have seen that many times in  
21 investigations. They will not define the nature  
22 of the investigation.

23 MS EDWARDH: Often, sir, those are  
24 the investigations which give rise to a refusal on  
25 the part of counsel to participate, though.

1 MR. EDELSON: Virtually always.

2 MS EDWARDH: In any event, I take  
3 it that your advice to Mr. Arar didn't change. It  
4 was a decision of the RCMP to decline the  
5 opportunity to interview Mr. Arar based upon the  
6 terms you set out.

7 MR. EDELSON: I do recall a  
8 phone call with Ann Alder. It was one of those,  
9 you know, "C'mon, Michael," phone conversations,  
10 "let's loosen up these conditions. Surely we  
11 can work out a deal." I said, "You tell me what  
12 this is all about and maybe we can." It didn't go  
13 any further.

14 But there was never any sense  
15 given to me that this was an urgent issue. It was  
16 a pretty relaxed series of discussions that we had  
17 about whether or not Mr. Arar would come in and  
18 give an interview.

19 MS EDWARDH: While your dockets  
20 don't perhaps indicate that it tailed on for days  
21 or even weeks, I take it your recollection is that  
22 this was kind of left on the table without a sense  
23 of importance or urgency by both of you?

24 MR. EDELSON: Well, you know, my  
25 dockets aren't always accurate, and I guess the

1 clients get a deal in that regard, but a lot of  
2 time -- I am in court usually every day, and a lot  
3 of the time I'm returning calls on a cell phone.  
4 I generally don't carry docket forms around with  
5 me when I'm in court. I might be making three or  
6 four calls to various people who are leaving  
7 messages. I'm calling in to my office, I'm not  
8 docketing them.

9 But I do recall very  
10 specifically, there were several conversations  
11 with Ann Alder about the conditions, her trying to  
12 cajole me into adhering to less stringent  
13 conditions, me standing my ground and saying, "No,  
14 until you tell me more and I know what his real  
15 situation is, I'm not prepared to loosen these  
16 conditions. I said, "he is prepared to talk to  
17 you, but you have got to tell me what this is  
18 about." "Well, I can't tell you."

19 MS EDWARDH: I want to go to a  
20 completely different area, if I could, and that  
21 is to the end of this tale which is your meetings  
22 with the officers in, I guess, November 28th and  
23 December.

24 MR. EDELSON: Yes.

25 MS EDWARDH: I just want to

1 spend a little bit of time on those meetings, if I  
2 could?

3 MR. EDELSON: Yes.

4 MS EDWARDH: In fact there are  
5 three or four meetings here that I am going to  
6 have to touch on.

7 But the first meeting you have is  
8 November 28th?

9 MR. EDELSON: Not the first  
10 meeting. The first meeting was in October.

11 MS EDWARDH: I'm sorry.

12 MR. EDELSON: I think the 4th  
13 of 2002.

14 MS EDWARDH: I just want to track  
15 through this entire time period.

16 For the record, I take it that  
17 at no time during any of your meetings were you  
18 ever given the information that the RCMP viewed  
19 they had reasonable and probable grounds to  
20 believe that Maher Arar was involved in any  
21 criminal activity that could be charged and  
22 tried in Canada?

23 MR. EDELSON: On the contrary,  
24 they told me specifically they did not have  
25 reasonable and probable grounds to charge him.



1 MS EDWARDH: If you don't have  
2 reasonable and probable grounds to charge someone,  
3 you also don't have reasonable and probable  
4 grounds to obtain a warrant for their arrest --  
5 this is just for the record, Mr. Edelson. I  
6 haven't lost my mind --

7 MR. EDELSON: The standard is  
8 identical, yes.

9 MS EDWARDH: And you wouldn't have  
10 a basis to obtain a search warrant in respect of  
11 his home?

12 MR. EDELSON: Yes.

13 MS EDWARDH: So the legal tools  
14 that are available to investigating officers when  
15 there is a reasonable basis to conclude a crime  
16 has been committed don't come into operation until  
17 you reach that threshold, by and large?

18 MR. EDELSON: Well, I think we  
19 have got to be careful with the wording you use.  
20 The grounds for investigating someone are quite  
21 different than the grounds for obtaining a search  
22 warrant or charging someone --

23 MS EDWARDH: I'm talking about the  
24 legal tools.

25 MR. EDELSON: The tools, yes. The

1 tools you have described, yes.

2 MS EDWARDH: Those provided for in  
3 the Criminal Code.

4 MR. EDELSON: The swearing of an  
5 information, or the obtention of a search warrant,  
6 or a wiretap.

7 MS EDWARDH: Or a wiretap. But  
8 police officers can conduct an investigation as  
9 they see fit, through interviews and discussions  
10 and background work.

11 MR. EDELSON: Yes. Absolutely.

12 MS EDWARDH: So during the entire  
13 period you were involved, I take it that neither  
14 Ann Alder or anyone else suggested anything other  
15 than they didn't have a basis to charge Mr. Arar?

16 MR. EDELSON: No one ever told me  
17 they had a basis to charge him.

18 MS EDWARDH: Now, we glossed over  
19 what I think is a very important thing you touched  
20 on, Mr. Edelson, which is a discussion you had  
21 with Inspector Coons. I take it that in the  
22 course of your discussions with Inspector Coons  
23 you were describing your concerns and information  
24 you had received as a result of your involvement  
25 with Mr. Almalki?

1 MR. EDELSON: Yes.

2 MS EDWARDH: Am I right that I  
3 heard you say that during the course of  
4 Mr. Almalki's interrogation and torture in Syria,  
5 he observed Canadian government documents in the  
6 hands of Syrian intelligence?

7 MR. EDELSON: Yes, but indirectly.  
8 The way that information -- I hadn't met  
9 Mr. Almalki.

10 MS EDWARDH: Right.

11 MR. EDELSON: That is Abdullah  
12 Almalki.

13 MS EDWARDH: Yes.

14 MR. EDELSON: But present at that  
15 meeting with me was Safa Almalki and Nazih  
16 Almalki, with Inspector Coons, and Safa Almalki  
17 and Nazih Almalki, along with their brother  
18 Yousef, who lives, I believe, in London, he is at  
19 the University of Western Ontario Medical School,  
20 they had received information from Syria on that  
21 issue, which I then conveyed to Warren Coons, more  
22 or less as you have described it, in that meeting.

23 MS EDWARDH: I take it the  
24 observations being conveyed to Coons were alarming  
25 to you because they bring back the spectre of

1           interrogation by proxy?

2                           MR. EDELSON: Well, alarming? At  
3 this point I wasn't alarmed by anything really, to  
4 be honest with you, but I wanted to sound the  
5 alarm with him that the concern we have -- let me  
6 explain the context of why I wanted to do that.

7                           I sought a similar letter from  
8 Warren Coons to the letter I had sought for  
9 Mr. Arar vis-à-vis Mr. Almalki, a letter which  
10 took far, far longer to get in the case of  
11 Mr. Almalki than it did in the case of Mr. Arar.  
12 However, that was a key element, again, to what I  
13 was trying to do on behalf of Mr. Almalki, is get  
14 a similar letter from the RCMP that would assist  
15 in hurrying Mr. Almalki's release.

16                           So just returning to your original  
17 question, I had received information from family  
18 members that Mr. Almalki had gotten information  
19 out to them that while being interrogated, and  
20 after lengthy torture at the Palestine Branch of  
21 the Syrian Intelligence, that he had an  
22 opportunity to look at a file being used by one of  
23 his interrogators -- and I believe that there were  
24 maybe two or three opportunities.

25                           The first, he just got a glance of

1           some Canadian government letterhead in his file.  
2           Then he got to read it in part.  What was being  
3           conveyed back to me, which was then told to Warren  
4           Coons, was, "Listen, we understand that the  
5           Canadian government is the problem here, not the  
6           solution, that he is seeing material in his own  
7           file, and being told during interrogation that  
8           `the reason you are not leaving us is the Canadian  
9           government doesn't want you back.  They want you  
10          to stay here'."

11                           MS EDWARDH:  I take it your  
12          impression was that the materials in the file were  
13          being used in the course of interrogation --

14                           MR. EDELSON:  Yes, absolutely.

15                           MS EDWARDH:  -- of your client,  
16          or of --

17                           MR. EDELSON:  That was my clear  
18          inference from those facts.  The reason I was  
19          telling Warren Coons that was the context, again  
20          returning to the letter.  I was saying, "If that  
21          is not true, if you aren't complicit in the notion  
22          that the government doesn't want him back," I  
23          said, "Give me a letter saying you are not  
24          standing in the way of his return."

25                           MS EDWARDH:  Can you tell us how

1 long it took you to get the letter in respect of  
2 Mr. Almalki?

3 MR. EDELSON: I don't have had  
4 a part of the file here. I didn't expect to  
5 have to refer to it, but I can tell you it was a  
6 period of, I think, about 3 months of phone calls.  
7 And I was on top of him all the time, constantly  
8 calling him.

9 He was very good. I mean, he  
10 constantly called me back and he would report to  
11 me that there were problems.

12 You know, it was a letter by  
13 committee. He said this had to be reviewed by  
14 legal counsel up and down and sideways, and sorry  
15 for the delays but we think we are going to get  
16 you the letter, but we don't have it yet, and  
17 another lawyer has to review it, or someone else  
18 in another department had to review it, so it took  
19 a number of months to get what was a relatively  
20 simple letter.

21 MS EDWARDH: Do you recall whether  
22 you took your concerns over Inspector Coons' head,  
23 because it does strike me that what you are being  
24 told at least is that the government is  
25 contributing not only to the detention but

1           potentially the interrogation and the methods by  
2           having proffered this kind of information?

3                           So I wonder, did you go beyond  
4           Inspector Coons?

5                           MR. EDELSON:   In the RCMP, do  
6           you mean?

7                           MS EDWARDH:   Yes.

8                           MR. EDELSON:   No, because I was  
9           told he was the new head of the division, taking  
10          over for Mike Cabana.  And if I may say so, I  
11          thought we developed almost an instant rapport.  
12          We got along extremely well together.  I thought  
13          he was a very sincere fellow.  I thought he was  
14          giving me the straight goods and he was doing  
15          his best.

16                          MS EDWARDH:   And you were content  
17          to deal with him then?

18                          MR. EDELSON:   I wanted to deal  
19          with him because I felt we had developed a good  
20          rapport.

21                          MS EDWARDH:   I then conclude you  
22          saw no reason to go any higher --

23                          MR. EDELSON:   No.

24                          MS EDWARDH:   -- in respect of  
25          your efforts?

1 MR. EDELSON: No.

2 MS EDWARDH: All right.

3 I want to go back then, if you  
4 just bear with me as we jump around various  
5 dates --

6 MR. EDELSON: Yes.

7 MS EDWARDH: -- to the desire of  
8 the RCMP to conduct an interview with Mr. Arar  
9 upon his return?

10 MR. EDELSON: Yes.

11 MS EDWARDH: You have been taken  
12 to a number of tabs, and I want specifically to  
13 take you to what we now call the Michael Edelson  
14 documents at tab 11 --

15 MR. EDELSON: Okay.

16 MS EDWARDH: -- and to  
17 page 31 of 35.

18 MR. EDELSON: Yes.

19 MS EDWARDH: Under the heading  
20 03-10-06, there is a note:

21 "A brief team meeting was  
22 held with investigators to  
23 update them on the release of  
24 Maher ARAR. (Blank) met with  
25 Insp. Coons to discuss the



1 ARAR situation, in particular  
2 our need to give  
3 consideration for an  
4 interview. ARAR is  
5 represented by Mike Edelson  
6 and we have met with him in  
7 the past. Discussed the need  
8 to interview ARAR at this  
9 time. Would the interview  
10 (as a witness) make it into  
11 the public domain..."

12 I want to just say this is the  
13 first time I have been able to identify any  
14 specific reference to how the person is being  
15 approached, and there is obviously a big  
16 difference to being a potential witness in a  
17 proceeding than being a suspect who is really  
18 being interrogated.

19 Now, around this time, when people  
20 were having discussions with you, were you told  
21 that the focus of the interview would be with  
22 Mr. Arar as a prospective witness?

23 --- Pause

24 MR. EDELSON: I don't recall.

25 MS EDWARDH: If you had been told

1           that, it would have been important information in  
2           any calculus that you would use in evaluating  
3           cooperation or not with the RCMP?

4                       MR. EDELSON:    Yes.

5                       MS EDWARDH:    On any other occasion  
6           in your dealings with the Arar matter, did anyone  
7           ever distinguish or define the basis of an  
8           interview, if one was going to take place, was it  
9           that of a witness or a suspect or a target, other  
10          than this reference I have just showed you?

11                      MR. EDELSON:    Are you talking  
12          post-return or at any time?

13                      MS EDWARDH:    Any time.

14                      MR. EDELSON:    No, not that  
15          I recall.

16                      MS EDWARDH:    I want to just  
17          clarify a reference from January 13th in respect  
18          of your time sheets.  That is Exhibit P-142, and  
19          the date, Mr. Edelson, is January 13th.

20                      MR. EDELSON:    Of 2002?

21                      MS EDWARDH:    Yes.  No, I'm sorry,  
22          it is 2003.

23          --- Pause

24                      MS EDWARDH:    I wanted, if I could,  
25          to ask you to tell me whether the references -- I

1 mean, often when you are dealing with these issues  
2 you are dealing with Mr. Almalki as well, in your  
3 own mind anyway, as you move these cases forward  
4 or try to?

5 MR. EDELSON: Not only in my own  
6 mind, but actually in discussions.

7 MS EDWARDH: Right. If I could  
8 just ask you to turn over to the notes. There is  
9 a reference there to Almalki, and I would like you  
10 to read it again, starting with:

11 "Arar family historically in  
12 opposition to regime."

13 MR. EDELSON: Oh, yes. Yes, I  
14 have it.

15 MS EDWARDH: Then there is an  
16 arrow going towards the left:

17 "No logic to any of this."

18 This is either your observations,  
19 or this is also Mr. Pardy, is it not?

20 MR. EDELSON: Yes.

21 MS EDWARDH: And:

22 "Almalki also there."

23 I take it that is a reference to  
24 Mr. Almalki being confined in Syria by Syrian  
25 Military Intelligence?

1 MR. EDELSON: Yes.

2 MS EDWARDH:

3 "Some family connect."

4 MR. EDELSON: "Connection,"  
5 probably.

6 MS EDWARDH: "Connections." All  
7 right.

8 Is that Mr. Almalki with respect  
9 to those "some family connections"?

10 MR. EDELSON: I would have to look  
11 at the redacted portion to answer that properly.

12 MS EDWARDH: Isn't that  
13 interesting.

14 MR. EDELSON: Well, I have  
15 the original.

16 MS EDWARDH: Without disclosing  
17 any confidential information, what I'm really  
18 trying to establish is the note, "Some family  
19 connect/connections in Afghanistan" relates to an  
20 observation about Mr. Almalki, and not Mr. Arar.

21 MR. DAVID: I just wish to state  
22 for the record that the redaction was at  
23 Mr. Edelson's request.

24 THE COMMISSIONER: It is not an  
25 NSC redaction, it is a privacy redaction.

1 MR. EDELSON: That's right. It's  
2 a privilege. Yes, solicitor-client issue.

3 MS EDWARDH: I'm not trying to get  
4 at that, I merely want to draw your attention and  
5 ask you the question, and suggest to you, sir,  
6 that the reference to some family connect or  
7 connections with the redactions-Afghanistan is a  
8 reference with respect to Mr. Almalki?

9 MR. EDELSON: Yes.

10 MS EDWARDH: Thank you.

11 I want to just talk about or take  
12 your mind back to your discussions at the meeting  
13 November 28th with Cabana, Corcoran, Ann Alder --  
14 was it Inspector Callaghan?

15 MR. EDELSON: No, I think it is  
16 Staff Sergeant or Sergeant, I'm not sure.

17 MS EDWARDH: I don't mean to  
18 demote anybody in my references.

19 I'm interested in some of the  
20 observations that you have made about this  
21 meeting, and I think you said something of great  
22 importance and I just don't want to pass over it.

23 You testified, in answer to a  
24 question -- sorry, there is no note here. I wish  
25 there was.

1 MR. EDELSON: No, that is fine.

2 MS EDWARDH: You testified in  
3 answer to a question composed by Commission  
4 counsel that there was a discussion at this  
5 meeting that indicated CSIS had obtained, or  
6 recently obtained, a form of statement and  
7 interview relating to Mr. Arar.

8 MR. EDELSON: I think my  
9 answer was that it was either at the November  
10 meeting or the December meeting. I wasn't  
11 absolutely certain.

12 MS EDWARDH: Fine. I am less  
13 concerned with the 30 days that may be different  
14 than your best recollection of the comments that  
15 were made.

16 MR. EDELSON: Right.

17 MS EDWARDH: What is significant  
18 for us is, indeed, we know CSIS attended in Syria  
19 on November 20th; we know that they met with the  
20 counterparts they have of Syrian Military  
21 Intelligence, and we know they discussed Mr. Arar.

22 The inference I drew from your  
23 remark, Mr. Edelson, was nothing more or less than  
24 this: That in your discussion with these four  
25 officers you were being told that a recent

1 statement and interview with Mr. Arar was in the  
2 hands of CSIS and had not yet been provided to the  
3 Mounties.

4 Is that your evidence, sir?

5 MR. EDELSON: Yes, that they  
6 wanted to get access to it.

7 MS EDWARDH: Yes. You made  
8 another interesting observation --

9 MR. EDELSON: May I just  
10 clarify that?

11 MS EDWARDH: Certainly.

12 MR. EDELSON: As I understood  
13 it, it wasn't a statement that CSIS had taken but  
14 it was the interrogation statement of Maher Arar  
15 by the Syrians that CSIS had a copy of, a  
16 transcript I understood, which the RCMP wanted to  
17 get access to.

18 MS EDWARDH: Right.

19 MR. EDELSON: I just want to make  
20 sure that it's clear. It is not something that  
21 CSIS was over there interrogating him in some way.

22 MS EDWARDH: No, apparently they  
23 declined the opportunity.

24 MR. EDELSON: I had no knowledge  
25 of that.

1 MS EDWARDH: In any event, you  
2 made the observation as well that you weren't sure  
3 what use any such document could be put to because  
4 its essential credibility or reliability was in  
5 issue because of the conditions of detention and  
6 the risk of torture.

7 That may be your thinking, but  
8 I really just want to put the question to you,  
9 Mr. Edelson: Did you say that to the officers and  
10 did you have --

11 MR. EDELSON: Oh, yes.

12 MS EDWARDH: Oh, you did.

13 MR. EDELSON: Oh, yes.

14 MS EDWARDH: Could you tell us  
15 about that conversation?

16 MR. EDELSON: I was very  
17 dismissive of any statement that would have been  
18 taken from Mr. Arar by Syrian Intelligence,  
19 saying, "What good is the statement --" to the  
20 effect, "What good is the statement if it is taken  
21 under torture? What credibility does a statement  
22 like that have? None."

23 MS EDWARDH: Do you recall --

24 MR. EDELSON: Keep in mind,  
25 Ms Edwardh, that they are telling me things like,



1           you know Mr. Arar is rumoured to have been in a  
2           training camp in Afghanistan, and all the rest of  
3           it. I assumed that this kind of stuff was  
4           emanating from the Syrians, and, in turn, somehow  
5           from Mr. Arar, or from some part of their  
6           investigation, so I was discounting it.

7                           I was saying, "Who cares what  
8           comes from the Syrians? I mean, given the  
9           circumstances of his likely interrogation."

10                          MS EDWARDH: What was the  
11           response?

12                          MR. EDELSON: I don't remember  
13           there being any specific response to my comment.

14                          MS EDWARDH: Did you ever, in  
15           your later conversations with any of the  
16           officers, obtain information that they had  
17           received that statement?

18                          MR. EDELSON: No.

19                          MS EDWARDH: Now, I want to turn  
20           to the issue of these allegations of 1993 in  
21           Afghanistan, and the Moslem Brotherhood, and I  
22           want to know, sir, since you were in contact on  
23           and off with Mr. Pardy or the Mounties over this  
24           entire period, did any of these people ever say to  
25           you, "All right, Mr. Edelson, using your good

1 office as pro bono defence counsel, it would help  
2 us if you could find out if certain facts are  
3 true. Could you try and gather together some  
4 financial records from Mr. Arar's family, because  
5 we think they might still be around in this time  
6 period before they are destroyed by banks, and see  
7 whether or not there is any evidence that we can  
8 put together to show, a couple of things, you  
9 know, his history, his roots, where he was  
10 working. Go back to McGill, get a transcript?"

11 Mrs. Mazigh does not have  
12 power of attorney. Did anybody say to you, "Go  
13 help her put had stuff together so it can be  
14 given to the Mounties, and given to the  
15 Ambassador, and given to consular affairs so they  
16 can deliver it to Syria to resist any allegation  
17 that may come forward"?

18 MR. EDELSON: No.

19 MS EDWARDH: Had you been asked to  
20 undertake these activities, would you have done  
21 it, in the circumstances?

22 MR. EDELSON: Well, I probably  
23 would have discussed it with Ms Mazigh at this  
24 point. I didn't have a client I could discuss it  
25 with per se.

1                   I think I would have been pretty  
2                   circumspect about doing that kind of thing. It is  
3                   sort of analogous to trying to develop an alibi  
4                   for a client and give that information over, but I  
5                   still didn't have a fix on what it was he was  
6                   being investigated for. I was hearing these vague  
7                   allegations about Moslem Brotherhood. My  
8                   understanding is he would have been a bit young at  
9                   the time, because the brotherhood, I thought, was  
10                  wiped out in Syria in the 1980s.

11                  MS EDWARDH: Early 1980s.

12                  MR. EDELSON: Right. I don't know  
13                  with certainty. It just struck me as being a  
14                  bogus claim.

15                  You know, I suspect that I  
16                  might have pursued it with Monia Mazigh and had  
17                  a discussion with her about it.

18                  MS EDWARDH: Had Monia asked your  
19                  assistance in doing anything --

20                  MR. EDELSON: But if this was  
21                  going to go to the Syrians, I mean I didn't have  
22                  a high level of trust that this would have any  
23                  great impact.

24                  Keep in mind, we had people -- I  
25                  was working on the file -- frustrated as I was,

1 but I was working on it. We had people in  
2 government, we had Marlene Catterall went over  
3 there, we had -- Mr. McTeague I think went over  
4 there, we had Minister Graham making  
5 representations, we had Gar Pardy, the head of the  
6 consular section, working on this, the Prime  
7 Minister wrote a letter, that didn't secure his  
8 release. I really wasn't of the view at this  
9 point that much that we were going to do, had  
10 that kind of request been made, would have had  
11 much success.

12 MS EDWARDH: I'm really not so  
13 much asking it on behalf of the Syrian Military  
14 Intelligence?

15 MR. EDELSON: The RCMP?

16 MS EDWARDH: If Mr. Pardy had said  
17 to you, "Listen, Mr. Edelson, it would be of help  
18 in our representations to the Syrians if I could  
19 prove "A" or "B". Surely then, with, I suppose  
20 the advice and support of Maher's wife, you would  
21 have then have taken some steps to assist  
22 Mr. Pardy?

23 MR. EDELSON: Well, when Mr. Pardy  
24 said at Clair de Lune a letter would be helpful, I  
25 said, "What kind of letter? Something that would

1 say A, B, C, D?" He said, "That would be  
2 fantastic. If you could get a letter that said  
3 A, B, C, D, I think that would be very useful."  
4 So if it was that kind of discussion, I would have  
5 pursued it.

6 MS EDWARDH: Eventually Mr. Pardy  
7 says to you, I think in one of the conversations  
8 you had, "There is really nothing we can do here."  
9 That is how I took his -- I think it is in  
10 January?

11 MR. EDELSON: I think he was in  
12 some respects, at certain times, more frustrated  
13 than I was, because he had access I didn't have.

14 MS EDWARDH: Yes.

15 MR. EDELSON: And I think that he  
16 prided himself on being effective at what he did,  
17 which was ameliorating or getting the release of  
18 Canadians abroad, and I think he was terribly  
19 frustrated in this case. He was frustrated with  
20 the Americans stonewalling him, he was frustrated  
21 with the Syrians --

22 MS EDWARDH: Did he ever express  
23 real frustration with you with the RCMP?

24 MR. EDELSON: The RCMP?

25 MS EDWARDH: Yes, and their

1 failure to --

2 MR. EDELSON: Only the one  
3 occasion where there was a concern expressed that  
4 we didn't get all the information in the letter  
5 that he had hoped to get. I think he was a little  
6 frustrated by that. But otherwise, no.

7 MS EDWARDH: All right.

8 Now, I want to just take you to a  
9 comment you made with respect to Exhibit P-150,  
10 the letter to you, Mr. Edelson. You made a  
11 comment about it and I just want to give you an  
12 opportunity to explain.

13 It is the letter, of course, we  
14 have just been talking about.

15 MR. EDELSON: Thank you. Yes.

16 MS EDWARDH: You testified that  
17 the letter caused you concerns. I'm trying to --  
18 I would just like your comment, sir, on what was  
19 it in the letter that you saw as concerning?

20 MR. EDELSON: Okay. I found it  
21 understandable from my perspective, based on my  
22 experience, that they weren't going to say: He is  
23 not the subject of any investigation, because they  
24 wanted to interview him. So whether he was either  
25 the subject of the investigation, or a potential

1 witness in reference to that investigation, I  
2 wasn't surprised I didn't see that as an inclusion  
3 in the letter.

4 What I was referring to in my  
5 comment was, where he states in the last sentence  
6 of paragraph 1:

7 "Furthermore, it would be  
8 improper for me to comment on  
9 Mr. Arar's present situation  
10 relative to our ongoing  
11 investigation ..."

12 Then he goes on to say, he uses  
13 this word "relative" again in the first sentence  
14 of what is the third paragraph:

15 "At this juncture I can only  
16 confirm that the RCMP did not  
17 play any role relative to  
18 Mr. Arar's present  
19 situation."

20 You may recall -- if I could  
21 have the October 31st letter that I wrote -- for  
22 just a moment?

23 MS EDWARDH: I have too many  
24 pieces of paper.

25 MR. EDELSON: I have the

1 original here.

2 MR. DAVID: P-83.

3 MS EDWARDH: P-83.

4 THE COMMISSIONER: What tab?

5 MS EDWARDH: I think it should be  
6 tab 1.

7 THE COMMISSIONER: Sorry, what  
8 page?

9 MS EDWARDH: Page 228.

10 MR. EDELSON: Thank you.

11 You will see in the letter, the  
12 first paragraph is: Did essentially the RCMP make  
13 a request to have Mr. Arar deported to Jordan or  
14 Syria? Then I get this response, which is:

15 "I can only confirm the RCMP  
16 did not play any role  
17 relative to his present  
18 situation."

19 I thought that unduly vague, given  
20 the question was a simple question, "Did you play  
21 any role in the request to have him sent to Jordan  
22 or Syria?"

23 His present situation was he was  
24 in jail in Syria.

25 MS EDWARDH: So you felt that



1 the answer wasn't responsive to the question  
2 you posed?

3 MR. EDELSON: Yes, I didn't see --  
4 yes, and I didn't see why they -- that was the one  
5 question they were probably going to be in a  
6 position to answer.

7 MS EDWARDH: Now, at the meeting  
8 of November 28th you have described the discussion  
9 you had -- and I don't want to take you there, and  
10 you have certainly identified what the factors  
11 were that the RCMP were concerned about.

12 One of the things you went on to  
13 say was you discussed the media and media strategy  
14 and the need in this very odd situation to not be  
15 mooting this in the public domain, but to keep  
16 your counsels.

17 So I have this question: The  
18 RCMP, in asking you that, what did they tell you  
19 they were doing? I mean, what did you, as counsel  
20 to Mr. Arar in the circumstance, even though he is  
21 in Syria -- I mean you are the one who is now  
22 bearing the burden of communication with the  
23 police -- what did they ever say they would do,  
24 could do, would try to do --

25 MR. EDELSON: Nothing.

1 MS EDWARDH: -- to assist him?

2 MR. EDELSON: Nothing. They  
3 didn't make any statement about assisting him in  
4 his release.

5 Remember, I just got the letter  
6 the day before. This is the day after the receipt  
7 of that letter we have just referred to. I went  
8 over there because of the letter, the fact that  
9 the letter didn't fulfil the four requests that I  
10 had made. We had a discussion about that. This  
11 basically was all we can give you. I was not  
12 informed that they were doing anything actively to  
13 secure his return, I was merely informed they  
14 would like to speak to him.

15 MS EDWARDH: So from your  
16 perspective, the only thing the officers were  
17 interested in doing was forwarding their own  
18 investigative objects while he was in Syria.  
19 There was nothing else that they were prepared to  
20 at least hint at?

21 MR. EDELSON: In terms of  
22 helping him?

23 MS EDWARDH: Yes, helping him.

24 MR. EDELSON: No. They expressed  
25 a desire to talk to him. They expressed a desire

1 to perhaps go there and talk to him. They were  
2 denied access they said. They certainly would  
3 like to talk to him if and when he returned, but  
4 nothing was indicated to me by the officers that,  
5 you know, in terms of a game plan that they were  
6 pursuing to secure his release so that they could  
7 pursue their own investigative objectives.

8 MS EDWARDH: Did you ever get the  
9 feeling that their view of it -- well, by anything  
10 that was said to you -- was that to assist any  
11 more actively in having Mr. Arar returned home  
12 would give the wrong message to the U.S. about  
13 Mountie cooperation?

14 MR. EDELSON: No. I remember  
15 we had a discussion which was -- I remember  
16 laughing about it with them to some extent, and  
17 that was in reference to Mr. Arar and Mr. Almalki,  
18 getting Mr. Arar and Mr. Almalki back here, and,  
19 you know, what can you guys do to facilitate that  
20 and assist that?

21 And words to the effect, "Well,  
22 listen. The Syrians really don't trust us. They  
23 don't trust our legal system. He will make bail."  
24 In other words, we can't guarantee them that we  
25 can detain these people if they are sent back and

1 we can't guarantee, you know, that a trial will go  
2 in a certain way.

3 There was a scepticism about our  
4 legal system which was expressed, which I laughed  
5 about. I said, "They don't like our Charter?"  
6 And "they don't have a Charter in Syria?" That  
7 sort of comment, you know a glib comment, was made  
8 back and forth.

9 But they did express that concern  
10 that the Syrians were not anxious to secure his  
11 release to Canada because they felt that, I guess,  
12 Canadians were soft in terms of our legal system.

13 MS EDWARDH: They could have a  
14 trial.

15 MR. EDELSON: "Soft" being my  
16 word, not their word.

17 MS EDWARDH: Of course. Indeed it  
18 is interesting that same question was asked, at  
19 least by the U.S. authorities apparently, when  
20 they spoke to the RCMP before Mr. Arar went to  
21 Syria, which was, "Does he have a right of entry  
22 as a Canadian citizen and indeed can he be  
23 detained," a similar set of concerns?

24 MR. EDELSON: That is one thing I  
25 know we discussed.

1 MS EDWARDH: I want to just  
2 canvass a couple of areas. We might as well go to  
3 this last one, it will take us a little bit of  
4 time.

5 We were reviewing the meeting, I  
6 think on either the 28th of November or the  
7 December meeting, and we came to a portion of that  
8 meeting where you thought perhaps the matters  
9 discussed with the RCMP were, in fact, not  
10 relevant to Mr. Arar.

11 Do you recall that?

12 MR. EDELSON: Oh, yes. This was  
13 when Mr. David was questioning me?

14 MS EDWARDH: Yes.

15 MR. EDELSON: The context, as I  
16 recall, was this, that the RCMP wanted to gain  
17 access to Mr. Arar in Syria to interview him, in  
18 other words travel there to conduct an interview,  
19 but they are being shut out, as it were. They  
20 were not gaining access successfully.

21 MS EDWARDH: I'm going to suggest  
22 to you that the -- I would like to explore this  
23 area, and I will -- maybe I should make the legal  
24 argument now, Mr. Commissioner.

25 THE COMMISSIONER: Why don't we

1 do that?

2 MS EDWARDH: Mr. Edelson has some  
3 information -- not a lot -- about a visit made by  
4 the RCMP to Afghanistan in the summer of 2002. At  
5 that time, the RCMP spent two days interviewing --

6 THE COMMISSIONER: Well, is this  
7 the information over which an NSC claim is made?

8 MS EDWARDH: I have no idea. I  
9 just know that this forms part of the public  
10 record.

11 It's on the CBC interview with  
12 Mr. Khadr, and Mr. Khadr is quite open about this  
13 and indeed would be prepared to testify to it. I  
14 know it because he has told me personally.

15 THE COMMISSIONER: Let me just ask  
16 Mr. Fothergill, because I'm a little bit in the  
17 dark about the claim that was made earlier.

18 MR. FOTHERGILL: Yes, I'm not  
19 entirely sure what's going on either, to tell you  
20 the truth.

21 This ordinarily would be subject  
22 to a claim of National Security Confidentiality.  
23 I think the relevance is highly questionable.  
24 Obviously, Ms Edwardh, through her ingenuity, has  
25 managed to piece things together and she's now

1 seeking a witness to confirm this.

2 There's not a great deal I can say  
3 or do to control this process.

4 THE COMMISSIONER: Well, no,  
5 that's not true. That's not true. I mean, first  
6 of all, if there's a piece of information,  
7 whatever it is, over which the Government asserts  
8 a National Security Confidentiality claim, then it  
9 will not come out through this inquiry until I  
10 rule that it should. So that the claim will, at  
11 the initial stage at least, preclude it from  
12 coming out.

13 Now, the process that we've agreed  
14 upon is that if the Government makes a claim, then  
15 I won't rule until there's been an opportunity to  
16 deal with it through an NSC process. That's the  
17 process that we agreed upon.

18 Now, what's happened in this  
19 case -- I reflected over the lunch hour a bit --  
20 is that this witness was apparently told  
21 information by RCMP officers that the Government  
22 takes the position was subject to a National  
23 Security Confidentiality claim, would be injurious  
24 to national security if disclosed publicly.

25 On the face of it one would say,

1 well, this witness certainly doesn't have  
2 top-secret clearance, so that on the face of it,  
3 if it was subject to National Security  
4 Confidentiality, there would have been a breach of  
5 that at that time, on the face of it.

6 The next point, though, and I made  
7 this earlier, the mere fact that somebody has  
8 breached National Security Confidentiality does  
9 not in itself remove the claim. It's not like a  
10 solicitor-client privilege that, when published,  
11 it automatically removes it. At least I think  
12 not.

13 That said, once information is  
14 made public, the argument then becomes any injury  
15 that occurs to National Security Confidentiality  
16 may have already occurred.

17 In any event, in response to your  
18 comment, that you don't know what -- don't have  
19 any control over this, I mean, you do have -- you  
20 are in a position to make a claim to this  
21 information. I take it you know what the  
22 information is.

23 MR. FOTHERGILL: I don't know the  
24 extent of the witness's knowledge but I appreciate  
25 your response.



1                   Let me clarify one thing, however.

2                   I think the concept of National  
3 Security Confidentiality is somewhat more flexible  
4 than perhaps you've expressed it.

5                   I don't think it follows  
6 necessarily that we're dealing with an  
7 unauthorized disclosure. I think it's conceivable  
8 that in certain cases officers of the State may  
9 intentionally and with authorization disclose  
10 sensitive material for a limited purpose. That is  
11 not to say that they disclose it for all purposes.

12                   There may be reasons, which I  
13 frankly don't know at the moment, why it would be  
14 significant and legitimate to share with a defence  
15 lawyer, representing some people who are of  
16 interest in a national security investigation,  
17 certain things that the police know. They have  
18 not thereby waived the privilege for all purposes,  
19 something I think our witness has actually  
20 acknowledged.

21                   So let me just state what my  
22 instructions are, and that's all I can do at this  
23 stage. My instructions are to assert National  
24 Security Confidentiality with respect to this  
25 information.

1                   It may be that Ms Edwardh is in  
2 possession of facts or arguments that would cause  
3 us to reconsider that. But I don't think that  
4 this is something that I'm comfortable doing on  
5 the public record at this stage.

6                   So what I might suggest is that I  
7 make my claim, and if perhaps, with the auspices  
8 of Commission counsel, we can have a clear  
9 understanding of what exactly is the public domain  
10 and how it got there, I can certainly seek  
11 instructions to withdraw that claim.

12                   But I think at the moment I must  
13 respect the instructions I have, which is to  
14 assert a claim of NSC with respect to this.

15                   THE COMMISSIONER: Let me suggest  
16 that Ms Edwardh makes her argument, and in the  
17 course of that argument you can obviously refer to  
18 matters that you know of from a public record --

19                   MS EDWARDH: Mr. Commissioner, I  
20 know nothing, from having received information  
21 through any other process.

22                   There is a gentleman by the name  
23 of -- may I do this now so my friend can inform  
24 himself?

25                   THE COMMISSIONER: Yes, that makes

1 sense. Go ahead.

2 MS EDWARDH: A man of some  
3 notoriety in this country is a gentleman by the  
4 name of Mr. Kadr, K-A-D-R. We have interviewed  
5 Mr. Kadr. He has also given lengthy interviews to  
6 the Canadian Broadcasting Corporation and they  
7 have seen fit to publish those interviews and  
8 broadcast them throughout this nation.

9 Mr. Kadr says that he cooperated  
10 with an interview in mid-2002 with four RCMP  
11 officers. During the course of those two days of  
12 interviewing, each lasting four to five hours  
13 each, he was shown numerous photographs. This  
14 interview is on a videotape, which I'm sure the  
15 Government of Canada, or the appropriate agencies,  
16 have. It took place in July and August of 2002.

17 Therefore, if -- and Mr. Kadr was  
18 in Afghanistan at the time of the interview by the  
19 four RCMP officers.

20 THE COMMISSIONER: In custody  
21 there?

22 MS EDWARDH: No.

23 THE COMMISSIONER: Oh, okay.

24 MS EDWARDH: And I understand  
25 that -- and he would be willing to come and say

1           this to the Commission. I don't think there's  
2           any --

3                           THE COMMISSIONER: I'm not sure it  
4           is relevant, but carry on.

5                           MS EDWARDH: Now, these are the  
6           same four officers who are working on the Arar  
7           case. These officers showed Mr. Kadr, I believe,  
8           a picture of Mr. Arar. Mr. Kadr, who was familiar  
9           with Khalden camp, did not identify Mr. Arar, at  
10          least that's what I believe. And if that isn't  
11          relevant to this inquiry, I can't imagine what  
12          else would be.

13                          So I believe there is evidence  
14          that Mr. Edelson can offer that can provide the  
15          essential link to show that the officers who  
16          interviewed Mr. Kadr are the same officers who  
17          were conducting the investigation into Mr. Arar.

18                          It is that link I wish to  
19          establish. I haven't pieced anything together in  
20          any surreptitious way, except ask a person if they  
21          would be prepared to give me a candid and  
22          forthright interview of certain facts.

23                          THE COMMISSIONER: So the facts  
24          you want right now simply are the four officers'  
25          names who are investigating Mr. Arar. We have

1           that evidence already.

2                       MS EDWARDH:   And then they had  
3           another conversation with Mr. Edelson, as part of  
4           the interview about Mr. Arar, that would provide,  
5           I believe, the evidentiary nexus to show that they  
6           are the same, or part of the same, group that  
7           travelled to Afghanistan and interviewed Mr. Kadr.

8                       And with that, I think it's as  
9           public as can be, I don't have any confidential  
10          information --

11                      THE COMMISSIONER:   That's the  
12          extent of what you seek to lead at this stage.

13                      MS EDWARDH:   Yes.   The linkage so  
14          that you will be satisfied, Mr. Commissioner, so  
15          that when people like Mr. Cabana come to take the  
16          stand, I fully intend to cross-examine them about  
17          their trip to Afghanistan in 2002.

18                      MR. FOTHERGILL:   One thing that I  
19          might seek to clarify is whether Mr. Kadr himself  
20          was able to identify the police officers, or if  
21          that is something that Ms Edwardh is seeking to  
22          establish for the first time from this witness.

23                      MS EDWARDH:   Mr. Kadr cannot at  
24          this time give me the information, but I'm sure  
25          that if I could have a copy of the videotape we

1           could view it and obtain the identity of the  
2           officers, or if I ask Mr. Edelson about his  
3           further conversation, I can satisfy the  
4           Commissioner that there is a link.

5                           THE COMMISSIONER:  What seems to  
6           be sought now, to help you, Mr. Fothergill, with  
7           whether or not you wish to assert a claim, is  
8           simply -- the question to this witness is to  
9           whether or not he has information as to who the  
10          individuals were that Ms Edwardh has read about  
11          and heard about in the public media?  I think  
12          that's the question.

13                          MR. FOTHERGILL:  As I understand  
14          her account of what is public, that does not  
15          include the identity of the four officers --

16                          THE COMMISSIONER:  No, there would  
17          be no -- it would be -- that's what the additional  
18          question is, I think, as she fairly puts it, it  
19          would be to establish the link, presumably that,  
20          one can assume --

21                          MR. FOTHERGILL:  In that case I  
22          will have to take instructions.

23                          THE COMMISSIONER:  Okay.  Is that  
24          something that you're likely be able to do in  
25          the --

1 MR. FOTHERGILL: I may be able to  
2 obtain those instructions quite quickly if we  
3 could break for five minutes.

4 THE COMMISSIONER: Okay, we could  
5 do that.

6 Is this your last area of  
7 cross-examination, Ms Edwardh?

8 MS EDWARDH: I think I have two  
9 other brief ones. But they are brief, and I don't  
10 believe --

11 THE COMMISSIONER: What about  
12 other cross-examinations? Mr. Boxall, are you  
13 going to have any questions?

14 MR. BOXALL: I do.

15 THE COMMISSIONER: How long will  
16 you be.

17 MR. BOXALL: I hope short so --

18 THE COMMISSIONER: You have to  
19 press the button back there.

20 MR. BOXALL: I hope short, but  
21 less than half an hour and hopefully 15 minutes.

22 THE COMMISSIONER: Okay.

23 Mr. Bell, do you have any  
24 questions?

25 MR. BELL: I don't believe I will

1 have any.

2 THE COMMISSIONER: And  
3 Mr. Fothergill, how long will you be?

4 MR. FOTHERGILL: I will have some  
5 questions. I expect some of them may be canvassed  
6 by Mr. Boxall, but I think I should reserve half  
7 an hour or so.

8 THE COMMISSIONER: We'll rise for  
9 ten minutes.

10 THE REGISTRAR: Please stand.

11 --- Upon recessing at 4:10 p.m. /

12 Suspension à 16 h 10

13 --- Upon resuming at 4:19 p.m. /

14 Reprise à 16 h 19

15 MR. FOTHERGILL: Commissioner, my  
16 clients do not feel comfortable making a decision  
17 on short notice. They will look seriously at what  
18 Ms Edwardh has put on the public record and I will  
19 try to have instructions within a reasonable  
20 period of time, but I'm been told I cannot have  
21 instructions in the short time we have -- just had  
22 available to us.

23 THE COMMISSIONER: When do you  
24 think you will have the instructions? Tomorrow?

25 MR. FOTHERGILL: I'm honestly not



1           sure. I think --

2                           THE COMMISSIONER: It would be  
3           important to have the instructions before next  
4           Wednesday.

5                           MR. FOTHERGILL: This is what I  
6           was thinking. I think I can certainly give you  
7           the assurance that I will have the instructions by  
8           next Wednesday.

9                           And if it's a matter that we can  
10          explore, then I suspect it's a matter we can  
11          explore without this witness. There will be other  
12          witnesses who could potentially address it one way  
13          or the other.

14                          THE COMMISSIONER: Or we can  
15          always agree on what this witness might answer. I  
16          think Ms Edwardh has just one or two questions on  
17          the point. So we can always agree on what the  
18          answer might be, and then put it on the record  
19          assuming --

20                          MS EDWARDH: I'm sorry,  
21          Mr. Commissioner, we can always run it by the  
22          witness and make sure it's factually accurate if  
23          we're going to reach an agreement --

24                          THE COMMISSIONER: What I wouldn't  
25          want to have to do is call Mr. Edelson back, with

1 his busy schedule.

2 MR. EDELSON: Much appreciated.

3 MS EDWARDH: I'm not sure he wants  
4 to come.

5 THE COMMISSIONER: How do you like  
6 to be a witness as compared to a lawyer?

7 --- Laughter / Rires

8 THE COMMISSIONER: Let me say on  
9 this issue what I've said several times before,  
10 and this is not to suggest that the government  
11 should do one thing or another.

12 We have heard evidence relating to  
13 the matters under discussion in camera, so that  
14 this is an issue, like others, that we've  
15 canvassed in camera.

16 I don't say that, though, for  
17 purposes of saying that it shouldn't be explored  
18 in public by any means. I'm just repeating that  
19 fact.

20 Okay, Ms Edwardh we'll handle that  
21 issue that way, and if you want to carry on.

22 MS EDWARDH: Thank you. Switch  
23 topics.

24 I'd like to go to your  
25 November 14th note made in your time sheets?

1 MR. EDELSON: Yes.

2 MS EDWARDH: And I want to just  
3 reflect a little further on the conversation or  
4 conversations you may have had with Mr. Pardy, and  
5 I take it from your remarks, Mr. Edelson, the  
6 question of whether or not Maher Arar was being  
7 abused or tortured while held by Syrian military  
8 intelligence was one at the front of your  
9 thoughts?

10 MR. EDELSON: Yes, from the point  
11 I spoke to John McNee onward.

12 MS EDWARDH: And that we know is  
13 early on in the piece?

14 MR. EDELSON: Well, it was, I  
15 think, October 24th.

16 MS EDWARDH: And you have one  
17 conversation November 14th with Mr. Pardy?

18 MR. EDELSON: Yes.

19 MS EDWARDH: And you make certain  
20 kind of cryptic notes with respect to it, but I  
21 take it what is back on your lips as a question  
22 is: What are the conclusions with respect to the  
23 issue of torture?

24 And in addition to the notes here,  
25 might I take it from what you said that Mr. Pardy

1 was saying, "Well, there is nothing we can see by  
2 way of evidence of abuse. We certainly can't  
3 exclude it." And, indeed, I'm going to suggest to  
4 you, he went further and shared with you the fact,  
5 and he's testified to this, that it was his  
6 working hypothesis that some kind of torture or  
7 abuse had occurred at least in the early stages of  
8 the interrogation?

9 MR. EDELSON: Well, let me put it  
10 to you this way: (a) I specifically addressed it  
11 with Mr. McNee on the October 24, 2002. On  
12 October 29, 2002, I met with Mr. Pardy, and I, no  
13 doubt, reiterated that same concern that I had  
14 previously expressed with the Assistant Deputy  
15 Minister.

16 We then had this subsequent phone  
17 call, and this was his reviewing with me the  
18 information they had received to this point.

19 Part of my job here, as it were,  
20 as it got distilled, was, a lot of it was  
21 information, trying to get information from any  
22 possible source we could as to what was going on.

23 So I got this information, that  
24 the interrogations had taken place, that there  
25 were three individuals, plus Mr. Arar, the

1           verifications were being sought, and then the  
2           subject again arose in the consular visit, he  
3           would sort of report back to me on these. I think  
4           they were the Tuesday visits. "How does he look?"  
5           He said, "Well, he doesn't appear to have been  
6           abused when we look at him, but he's saying the  
7           interrogations have taken their toll," so I assume  
8           what they meant by that, in terms of his  
9           demeanour, his mental status, given the other  
10          comment that he wasn't physically abused, and I  
11          had asked the question, "Well, what about soft  
12          tissue injuries, for example?" Was he being  
13          beaten or abused in some way that would be beyond  
14          the consular officer's ability to observe,  
15          physically looking at him? I didn't know what the  
16          setup was. Was he in a cell? Was he behind a  
17          desk? Was he fully -- you know, did he have shoes  
18          on? I didn't know what he looked like. He said,  
19          "Well, his demeanour seems to be good," but -- you  
20          know, the issue of torture was at the forefront of  
21          my discussions, and he -- he was alert to it.

22                           MS EDWARDH: Yes.

23                           MR. EDELSON: No question about  
24          it.

25                           MS EDWARDH: I just wanted to

1 capture, though, the consensus, if any, was that  
2 Mr. Pardy's position was, while they hadn't seen  
3 anything, they couldn't exclude it from going on  
4 and Mr. Arar himself was in precarious  
5 circumstances, being as he was in the Palestine  
6 Branch of Syrian Military Intelligence?

7 MR. EDELSON: I'm not sure I knew  
8 at that point that he was at the Palestine Branch.  
9 But, having said that, I don't think there's any  
10 question that -- it wasn't even a question of  
11 excluding it. I think, as you said, it was sort  
12 of an operating assumption that this is probably  
13 happening.

14 MS EDWARDH: And did Mr. Pardy  
15 also share with you some of the troubling features  
16 of the consular visit, for example, that no  
17 private access was given to Mr. Arar, and things  
18 like that?

19 MR. EDELSON: I remember he told  
20 me at one point something about him only being  
21 able to speak in Arabic, if I'm not mistaken, so  
22 that it could be overheard by Syrian personnel who  
23 were within earshot of the interview. I believe  
24 there was something in that regard.

25 MS EDWARDH: Right. And just --

1 my last point in this area: The working  
2 assumption that you've just identified as being  
3 your own, I take it, there's no question that as  
4 far as you could determine in your discussions  
5 with Mr. Pardy, it was his working assumption as  
6 well?

7 MR. EDELSON: I'd have to say yes.  
8 He was very alert to the probability that he might  
9 be physically abused or tortured, yes.

10 MS EDWARDH: A couple of last  
11 questions, if I could.

12 When you met the officers at  
13 either the November 28th meeting or December 28th  
14 meeting, would it be fair to conclude that they  
15 conveyed to you quite specifically that it was  
16 Mr. Almalki who was the target of the  
17 investigation?

18 MR. EDELSON: Yes.

19 MS EDWARDH: And not Mr. Arar?

20 MR. EDELSON: Yes. "Target"  
21 having a specific implication, yes.

22 MS EDWARDH: Yes.

23 One last question: In your  
24 conversation with Dr. Mazigh, when -- I think it  
25 was November 18th, after Mr. Arar had been --

1 MR. EDELSON: Yes.

2 MS EDWARDH: -- taken, held in  
3 custody, and she's just now returned.

4 MR. EDELSON: Mm-hmm.

5 MS EDWARDH: I think you misspoke  
6 yourself when you said that the luggage had  
7 arrived on December the 13th.

8 In fact, the reference to it here  
9 would mean that the luggage from Dorval had come  
10 in on the 13th of November. You would have had to  
11 know that because you've written it down already,  
12 November the 18th.

13 MR. EDELSON: Just give me a  
14 moment.

15 MS EDWARDH: I think? Oh, I'm  
16 sorry. Your note does say December 13th, but the  
17 interview, as I understand it, is in November.

18 MR. EDELSON: Yes, I could hardly  
19 be speaking prospectively. I think you're  
20 probably right. It's probably written down  
21 incorrectly. It probably should have said  
22 November 13th.

23 MS EDWARDH: I just wanted to  
24 bring that to your attention.

25 MR. EDELSON: Actually that's the



1 first time I noticed that. You're right. Because  
2 it says that they now have his luggage at Dorval.

3 MS EDWARDH: Now, the other thing  
4 is, over the course of your communications with  
5 Dr. Mazigh during the time that you spent with her  
6 from this interview, and as you discussed the  
7 situation, can you just confirm for us that she  
8 was always clear in your discussions with her that  
9 she and Maher Arar had been in Tunisia really  
10 vacationing?

11 MR. EDELSON: Yes.

12 MS EDWARDH: And at no time did  
13 they indicate to you that they had moved on any  
14 permanent basis --

15 MR. EDELSON: No.

16 MS EDWARDH: -- to Tunisia? And  
17 do you recall whether, when the officers told you  
18 that they believed that the couple and children  
19 had fled, do you ever moot that point with them or  
20 say, let's look at the evidence you've got?

21 MR. EDELSON: No. The latter?  
22 No, I don't think I ever queried them on that. I  
23 was just sort of gathering information. I do  
24 think that I told them that I understood that they  
25 were simply there on vacation.

1                   They said, "We think they have  
2 fled." They talked about doing some form of  
3 investigation of their having left, that it seemed  
4 to have been unduly precipitous, that their  
5 furniture had been moved out of their townhouse --  
6 they made comments like that, and I said, "Well, I  
7 don't know about any of that." I had no  
8 information --

9                   MS EDWARDH: Certainly over the  
10 course of the months that you dealt with  
11 Dr. Mazigh, you never got such an indication?

12                   MR. EDELSON: No. I have a note:  
13 "Were there on vacation, not permanent move of  
14 residence."

15                   I may -- it may well have been,  
16 too, there was some illness with her mother or a  
17 family member?

18                   MS EDWARDH: In Tunisia?

19                   MR. EDELSON: Yes. I sort of have  
20 a vague recollection of that may have motivated  
21 one of the trips.

22                   MS EDWARDH: And that may have  
23 kept them there longer than they initially  
24 thought?

25                   MR. EDELSON: Perhaps, yes.

1 MS EDWARDH: If I may have your  
2 indulgence, Mr. Commissioner.

3 Those are my questions.  
4 Mr. Edelson, and thank you very much.

5 MR. EDELSON: You're welcome.

6 MS EDWARDH: Pleasure  
7 cross-examining you. You don't get to do that  
8 very often.

9 --- Laughter / Rires

10 THE COMMISSIONER: Mr. Boxall?

11 It's probably best if you come  
12 over, if it's convenient, if you can.

13 EXAMINATION

14 MR. BOXALL: Mr. Edelson, I'll  
15 deal first with the letter that you were  
16 requesting from the RCMP in the fall of 2002.

17 Now, you indicated that you met,  
18 in fact, several meetings, you had met with  
19 Mr. Cabana, you had met with Mr. Corcoran,  
20 Mr. Callaghan, and Ms Alder?

21 MR. EDELSON: Yes.

22 MR. BOXALL: And apart from  
23 Mr. Cabana, the others were all known to you?

24 MR. EDELSON: Yes.

25 MR. BOXALL: And you had

1           considerable respect for them?

2                           MR. EDELSON:   Yes.

3                           MR. BOXALL:   And in particular,  
4           with respect to Ms Alder, you knew that she was a  
5           senior counsel?

6                           MR. EDELSON:   Yes.

7                           MR. BOXALL:   And you knew that she  
8           was working with this particular investigative  
9           team?

10                          MR. EDELSON:   Yes.

11                          MR. BOXALL:   And, in fact, you  
12           were using her as your point person in many times  
13           to speak with the team?

14                          MR. EDELSON:   Oh, on this  
15           occasion?

16                          MR. BOXALL:   Yes.

17                          MR. EDELSON:   Yes.

18                          MR. BOXALL:   Right.  And you  
19           certainly had complete confidence in her as  
20           counsel?

21                          MR. EDELSON:   We had a  
22           long-standing professional relationship,  
23           first-name basis.  Total confidence.  If she gave  
24           me her word on something, it happened.

25                          MR. BOXALL:   Right.  And she was

1 present with you with meetings with the officers?

2 MR. EDELSON: Two meetings.

3 MR. BOXALL: Right. And it  
4 appeared to you that she was quite involved with  
5 the investigation, in the sense that she was  
6 available to them for advice?

7 MR. EDELSON: Yes. The first time  
8 we met I said to her, words to the effect, "Ann,  
9 what gives here? You're the head of IPOC's. What  
10 are you doing over here in national security?"

11 She sort of sheepishly said,  
12 "Well, for the time being I'm seconded here and  
13 I'm giving advice to this section," and we sort of  
14 chuckled about it and we went on.

15 MR. BOXALL: And your experience  
16 as a criminal lawyer, it's not every investigation  
17 that has counsel assigned to it for advice?

18 MR. EDELSON: The majority don't.

19 MR. BOXALL: The majority don't.  
20 And generally you would agree that, having such  
21 experienced counsel present to give advice to  
22 investigators, is in fact a good thing for  
23 investigations?

24 MR. EDELSON: As long as the  
25 investigators are candid with counsel and are

1 making proper disclosure so that they can get  
2 proper advice back, absolutely.

3 MR. BOXALL: And so certainly  
4 having a senior counsel assisting an investigation  
5 is a good way of proceeding?

6 MR. EDELSON: From my perspective,  
7 yes.

8 MR. BOXALL: All right. Now, you  
9 had written a letter, after having spoken with  
10 Mr. Pardy, and you were requesting certain  
11 specific information.

12 Now, as experienced defence  
13 counsel, how regularly would you ask for this type  
14 of letter, if ever, from police officers doing an  
15 investigation?

16 MR. EDELSON: As an experienced  
17 defence counsel dealing with this type of  
18 investigation, or any investigation?

19 MR. BOXALL: Any investigation.

20 MR. EDELSON: Very rare.

21 MR. BOXALL: And certainly the  
22 investigators wouldn't be under any obligation to  
23 deal with you?

24 MR. EDELSON: No.

25 MR. BOXALL: Right. And they met

1 with you and you wrote a specific letter?

2 MR. EDELSON: Yes.

3 MR. BOXALL: And you've indicated  
4 in your testimony you had some concern because you  
5 thought the reply to -- particularly to Point 1  
6 was vague?

7 MR. EDELSON: Well, I think it was  
8 two things: There was some concern, but some  
9 disappointment that I didn't get what I was hoping  
10 to get because Mr. Pardy was saying that these  
11 elements would be very useful. But otherwise, no.

12 MR. BOXALL: But you're very  
13 experienced at asking questions, surely?

14 MR. EDELSON: I hope so, by this  
15 point.

16 MR. BOXALL: And if you don't get  
17 the answer you don't like, you don't normally  
18 quit?

19 MR. EDELSON: Well, that's why we  
20 had a meeting the next day, after I received the  
21 letter.

22 MR. BOXALL: But there was no  
23 follow-up letters?

24 MR. EDELSON: No.

25 MR. BOXALL: Can we just take a

1 look at your letter which is at tab 10, page 211.

2 MR. EDELSON: Have I got the right  
3 book?

4 MR. BOXALL: There's a lot of  
5 different books. Newly redacted documents for  
6 Michael Edelson.

7 MR. EDELSON: The one I have is in  
8 reference to a different client. That's a January  
9 28, 2002 letter.

10 Which one have you got?

11 MR. BOXALL: I'm looking at the  
12 letter of the 21st.

13 MR. EDELSON: Where is that?

14 MR. BOXALL: Tab 10, page -- you  
15 know what? Page 2.

16 MR. EDELSON: Oh, page 2. Thank  
17 you.

18 I have it, yes.

19 MR. BOXALL: Dated October 31,  
20 2002?

21 MR. EDELSON: Yes.

22 MR. BOXALL: And the first point  
23 that you wished a letter of reply was: (1) that  
24 the RCMP made no request to have Mr. Arar deported  
25 to Jordan or Syria.



1                   That's what you requested?

2                   MR. EDELSON: That's correct.

3                   MR. BOXALL: A very specific and,  
4 in fact, somewhat narrow request?

5                   MR. EDELSON: It's specific.

6                   MR. BOXALL: All right. And what  
7 I would suggest to you, sir, is that when you take  
8 a look at the response of the letter of November  
9 16th, P-150 --

10                  MR. EDELSON: Right.

11                  MR. BOXALL: -- the response is:  
12                    "At this juncture, I can only  
13                    confirm that the RCMP did not  
14                    play any role relative to  
15                    Mr. Arar's present situation.  
16                    The RCMP was only advised of  
17                    Mr. Arar's transfer to Syria  
18                    after the fact."

19                  MR. EDELSON: Yes.

20                  MR. BOXALL: And, sir, I would  
21 suggest to you that the reply you were given would  
22 certainly be more expansive, and would include the  
23 fact that they made no request. They did not play  
24 any role relative -- surely if they had made a  
25 request, that would have been role relative.

1 MR. EDELSON: Well, that's one  
2 interpretation, no question about it.

3 MR. BOXALL: And, in fact, there  
4 would be lots of roles they could have played  
5 short of a request that could be fairly  
6 concerning, I would think, to Mr. Arar's counsel?

7 MR. EDELSON: In what sense?

8 MR. BOXALL: Well, you may not  
9 make a request but there may have been other roles  
10 other than a request?

11 MR. EDELSON: Yes, they could have  
12 leaked information, such things as that. Yes,  
13 that's true.

14 MR. BOXALL: But what they said is  
15 they did not play any role relative to Mr. Arar's  
16 present situation. They were only advised of  
17 Mr. Arar's transfer to Syria after the fact.

18 And I'm suggesting to you what you  
19 got was, in fact, is a more comprehensive response  
20 than you requested.

21 MR. EDELSON: Than I requested?  
22 Well, yes, in the sense that, was there a request  
23 to have Mr. Arar, in quotes, deported or sent to  
24 Jordan or Syria? I suppose that is one  
25 interpretation available.

1 MR. BOXALL: Well, certainly --  
2 certainly you would agree, sir, that there was no  
3 such request as far as anything I've ever seen,  
4 but you would agree with me, if there was, in  
5 fact, a request, that you would think that letter  
6 would be false --

7 MR. EDELSON: If there was a  
8 request by the RCMP --

9 MR. BOXALL: If there was, in  
10 fact, a request?

11 MR. EDELSON: That letter would be  
12 false.

13 MR. BOXALL: So, in fact, the  
14 letter excludes the possibility of a request.

15 MR. EDELSON: Let me just tell you  
16 why I answered in the way I did, in a sense.

17 I remember that I watched -- I  
18 think it was Assistant Commissioner Proulx testify  
19 before a House committee and he was asked if the  
20 RCMP played any role in Maher Arar's --

21 MR. FOTHERGILL: I'm sorry to  
22 stand, but again I note the absence of anybody  
23 representing the Parliamentary Law Clerk, and I  
24 think you have ruled that you do not want on your  
25 record evidence of what was said in Parliamentary

1 proceedings.

2 --- Laughter / Rires

3 THE COMMISSIONER: No, I agree.

4 MS EDWARDH: Perhaps the witness,  
5 could just say as a result of information received  
6 or observed he formed the following view.

7 THE COMMISSIONER: That is --

8 MR. EDELSON: I watched it on  
9 television.

10 MS EDWARDH: Apparently that  
11 doesn't matter for our purposes.

12 MR. EDELSON: I see. I was just  
13 trying to explain the context of my answer,  
14 because I had a discussion about that subject with  
15 the members, including Mr. Boxall's client, and I  
16 raised that issue, and they gave me an answer.

17 So it all was in the mix of how  
18 I viewed the way the letter was drafted and what  
19 the RCMP knew or what they were doing in reference  
20 to this response, but if I'm not permitted to  
21 answer, that's fine.

22 MR. BOXALL: But certainly you  
23 would agree with me that the way the letter is  
24 worded it is certainly open to the understanding,  
25 and in fact the valid interpretation, would be

1           that the RCMP made no request to have Mr. Arar  
2           deported to Jordan or Syria?

3                         MR. EDELSON:    Yes.

4                         MR. BOXALL:    The question two,  
5           that Mr. Arar does not have a criminal record was  
6           contained in the reply you received?

7                         MR. EDELSON:    True.

8                         MR. BOXALL:    Okay.  With respect  
9           to whether someone is a suspect or not, you would  
10          not expect a reply from an officer in an ongoing  
11          investigation to reveal that, would you?

12                        MR. EDELSON:    In some cases, yes.  
13          They might be prepared, for example, to tell us  
14          whether the person is simply being treated as a  
15          witness or a suspect.

16                        MR. BOXALL:    Generally that might  
17          be in a case where you are attempting to negotiate  
18          a statement, or you have the person present or...

19                        MR. EDELSON:    That could be one  
20          circumstance.

21                        MR. BOXALL:    But clearly in this  
22          case you were aware of the fact that the officers  
23          had not had the opportunity of interviewing him?

24                        MR. EDELSON:    To that point, no.

25                        MR. BOXALL:    As far as you knew,

1 he had not been interviewed?

2 MR. EDELSON: Yes, as far as I  
3 knew, no, he had not been.

4 MR. BOXALL: You would agree with  
5 me that you were looking essentially for a  
6 complete exclusion of the person, of a person that  
7 the police had not interviewed yet?

8 MR. EDELSON: Exclusion?

9 MR. BOXALL: Exclusion of him as a  
10 suspect. You wanted to have them put in writing  
11 that he was not a suspect --

12 MR. EDELSON: Yes, keeping in mind  
13 the purpose of the letter, which was go to DFAIT  
14 and then to Syria. Yes, I wanted an indication  
15 that he wasn't a suspect so that the Canadian  
16 government would not be seen as in any way an  
17 impediment to his return.

18 MR. BOXALL: Was there any  
19 discussion of why Mr. Pardy might not request a  
20 letter from you directly?

21 MR. EDELSON: No.

22 MR. BOXALL: Because it would  
23 seem to me that you were going to request the  
24 letter and then you were going to have to turn it  
25 over to Mr. Pardy?

1 MR. EDELSON: That is correct.

2 MR. BOXALL: There was never any  
3 discussion then between you and Mr. Pardy of him  
4 asking for the information direct?

5 MR. EDELSON: Not that I  
6 recall, no.

7 MR. BOXALL: Because certainly it  
8 was Mr. Pardy's department that you were seeking  
9 to use this information with to seek his release.  
10 You weren't expecting the RCMP to go and ask for  
11 his release?

12 MR. EDELSON: No question.

13 MR. BOXALL: That then just  
14 follows up with the other discussions at around  
15 this period of time about whether or not press  
16 coverage would be advisable, and you are  
17 indicating that at one of those meetings you were  
18 advised that in their opinion they didn't think it  
19 was advisable?

20 MR. EDELSON: At that time.

21 MR. BOXALL: Right. And you had  
22 received similar advice from Mr. Pardy?

23 MR. EDELSON: At that time.

24 MR. BOXALL: If you had thought  
25 that it was advisable, after consultation with

1           your client, or your client's family, or DFAIT,  
2           you would have done what you thought was  
3           appropriate?

4                         MR. EDELSON: Well, having had  
5           this experience with other clients, it is, at  
6           best, an educated guess what a foreign government  
7           will say in reaction to negative media publicity  
8           in another country.

9                         But I think the premise of your  
10          question is largely accurate, yes.

11                        MR. BOXALL: You were asked if the  
12          RCMP indicated that they were doing anything  
13          themselves for his release and you said, no, they  
14          didn't tell you they were.

15                        MR. EDELSON: True.

16                        MR. BOXALL: But nor would you  
17          expect them to be. That would be a matter for  
18          DFAIT, would it not be, to seek his release?

19                        MR. EDELSON: In that sense, but  
20          given that they wanted to interview him, and given  
21          they had indicated that they would go over to  
22          Syria to do so, if they could gain access, I  
23          thought there was a mutuality of interests between  
24          the RCMP and DFAIT in having him returned here so  
25          he could be interviewed.



1                   In other words, I was trying to  
2                   play both sides of that fence. I wanted to use  
3                   the RCMP, to the extent I could, and their  
4                   interest in interviewing him as part of the  
5                   leverage to get him back here. Once he was  
6                   here, he had all the protections here that  
7                   he didn't have there. So I was using every  
8                   resource I could, really, at that point, to try to  
9                   get him here.

10                   MR. BOXALL: That would be your  
11                   function to use every resource?

12                   MR. EDELSON: Absolutely.

13                   MR. BOXALL: And to use every  
14                   lever you could?

15                   MR. EDELSON: Yes.

16                   MR. BOXALL: The investigators  
17                   would also have their own function, which would be  
18                   to investigate.

19                   MR. EDELSON: Well, they have  
20                   their agenda, absolutely.

21                   MR. BOXALL: It is not agenda,  
22                   they have their responsibility --

23                   MR. EDELSON: No question. Yes,  
24                   I agree.

25                   MR. BOXALL: And it is a very

1 important responsibility to be in charge of an  
2 investigation, is it not?

3 MR. EDELSON: It should be.

4 MR. BOXALL: And the threshold for  
5 an investigation is not reasonable and probable  
6 grounds, is it, sir?

7 MR. EDELSON: No.

8 MR. BOXALL: What is the threshold  
9 for an investigation?

10 MR. EDELSON: That is a very  
11 good question.

12 MR. BOXALL: All right.

13 MR. EDELSON: Some days I'm not  
14 sure, because when I look at investigations that  
15 are done I can't figure out why they are being  
16 investigated.

17 I think there has to be some kind  
18 of credible complaint or evidence or information  
19 that would cause a policing agency to initiate an  
20 investigation of a Canadian citizen.

21 MR. BOXALL: Some level of  
22 suspicion --

23 MR. EDELSON: Some level of  
24 credible information.

25 MR. BOXALL: Suspicion?

1 MR. EDELSON: No, I'm not going to  
2 agree with you on "suspicion".

3 MR. BOXALL: All right. But, sir,  
4 it is certainly much less than reasonable and  
5 probable grounds?

6 MR. EDELSON: Yes, I agree  
7 with that.

8 MR. BOXALL: You have indicated  
9 earlier there would be a requirement for  
10 reasonable and probable grounds to arrest  
11 Mr. Arar?

12 MR. EDELSON: Yes.

13 MR. BOXALL: As far as you know  
14 while you were acting for him he wasn't arrested  
15 in Canada?

16 MR. EDELSON: No.

17 MR. BOXALL: There would be a  
18 requirement for reasonable and probable grounds to  
19 search his residence?

20 MR. EDELSON: Yes.

21 MR. BOXALL: As far as you know  
22 his residence wasn't searched while you were  
23 acting for him?

24 MR. EDELSON: With a warrant?

25 MR. BOXALL: Right.

1 MR. EDELSON: With a warrant?

2 MR. BOXALL: With a warrant.

3 MR. EDELSON: Not that I'm

4 aware of.

5 MR. BOXALL: I would like to go

6 back, sir, to in January the indication that there

7 was interest in interviewing Mr. Arar.

8 MR. EDELSON: Which January now?

9 MR. BOXALL: January 2002.

10 MR. EDELSON: Yes?

11 MR. BOXALL: You had a letter that

12 you wrote on other clients, which is at tab 10?

13 MR. EDELSON: At the back, yes.

14 MR. BOXALL: Which sets out the

15 conditions.

16 MR. EDELSON: Right.

17 MR. BOXALL: Was there any similar

18 letter written for Mr. Arar?

19 MR. EDELSON: No. This was a

20 discussion with Ann Alder in which I set out for

21 her the conditions.

22 MR. BOXALL: Would it be fair that

23 the conditions would be the same?

24 MR. EDELSON: No. Let me just

25 assist you in that. Just give me a moment.

1 --- Pause

2 MR. EDELSON: There was no  
3 condition with respect to the return of seized  
4 items because at that point to my knowledge  
5 Mr. Arar's premises had not been searched.

6 MR. BOXALL: Right.

7 MR. EDELSON: That there was also  
8 a verbal discussion at one point vis-à-vis the  
9 additional client, or clients, that no information  
10 that was garnered from these interrogations or  
11 questions would be passed on to any third party  
12 agency or country.

13 MR. BOXALL: That was with respect  
14 to the first group of four, or with respect to --

15 MR. EDELSON: It is with respect  
16 to another client.

17 MR. BOXALL: Another client?

18 MR. EDELSON: Yes. So what I'm  
19 saying, Mr. Boxall, I'm just trying to answer your  
20 question specifically.

21 The conditions that I was  
22 trying to set out for Mr. Arar were not exactly  
23 the same as the subsequent conditions because I  
24 had perhaps a little more information and  
25 experience about this which caused me to impose

1 more questions later.

2 MR. BOXALL: Okay. But this is --  
3 the letter you wrote on January 28, 2002, the  
4 conditions -- perhaps we don't call them  
5 conditions, it lists under, "the format of the  
6 interview shall be as follows."

7 Was the format that you  
8 discussed with Ms Alder for any interview of  
9 Mr. Arar the same as that set out in this letter  
10 dated January 28th?

11 MR. EDELSON: Not entirely  
12 identical, but very similar.

13 MR. BOXALL: Okay. So, for  
14 example, would it have included the interview  
15 shall take place at your office?

16 MR. EDELSON: I think we did  
17 discuss that.

18 MR. BOXALL: And the interviews  
19 may be videotaped but unsworn?

20 MR. EDELSON: I had originally  
21 told Ms Alder, as I recall, that it would be audio  
22 taped only.

23 MR. BOXALL: Okay.

24 MR. EDELSON: I may be mistaken  
25 about that, but I think it was to be audio taped.

1 MR. BOXALL: And not video?  
2 MR. EDELSON: Right.  
3 MR. BOXALL: And:  
4 "Interviews will be without  
5 caution with a specific rider  
6 they will not be used in any  
7 proceedings for any purpose  
8 and they have been  
9 specifically induced by your  
10 statement that none of the  
11 individuals are suspects in  
12 any crime but merely  
13 witnesses;"  
14 Would that have been the format?  
15 MR. EDELSON: A similar rider  
16 would have been conveyed to her, although not  
17 identical.  
18 MR. BOXALL: But very similar.  
19 Correct?  
20 MR. EDELSON: Similar, yes.  
21 MR. BOXALL: Would you agree with  
22 me that in your role as defence counsel certainly  
23 the customary advice, as you have indicated, would  
24 be to make, perhaps, no statement at all?  
25 MR. EDELSON: Yes.

1                   MR. BOXALL:  So a defence counsel,  
2                   being cautious, if a person is going to make a  
3                   statement, may well, as you have here, put  
4                   conditions on it that limit the value of the  
5                   statement to the authorities?

6                   MR. EDELSON:  Yes.

7                   MR. BOXALL:  In fact, that  
8                   condition that you have put on it, that they  
9                   cannot be used in any proceedings for any purpose,  
10                  makes the statement effectively worthless?

11                  MR. EDELSON:  No, it doesn't.

12                  MR. BOXALL:  What value would you  
13                  it have left?

14                  MR. EDELSON:  Intelligence  
15                  purposes.  Background.  Which we discussed.

16                  Sometimes they were more  
17                  interested -- or at least as interested in  
18                  obtaining intelligence and background about  
19                  certain individuals from an investigative  
20                  perspective as they were, perhaps, in getting  
21                  usable statements for a future criminal  
22                  proceeding.

23                  I think in the context,  
24                  Mr. Boxall, that they didn't have grounds to  
25                  charge anybody at this point.



1                   MR. BOXALL: That is correct. But  
2 with respect to that, if the statement was given,  
3 it has a -- the only potential use is  
4 intelligence.

5                   MR. EDELSON: Right.

6                   MR. BOXALL: Because the wording  
7 you have chosen, and you chose it deliberately as  
8 experienced counsel, "not to be used in any  
9 proceedings for any purpose," is very broad?

10                  MR. EDELSON: Yes.

11                  MS EDWARDH: I'm going to just  
12 object, Mr. Commissioner, because it is unclear to  
13 me whether Mr. Edelson has said that particular  
14 condition was attached to the discussions he had  
15 with Ann Alder.

16                  THE COMMISSIONER: I think he said  
17 a similar condition.

18                  MR. EDELSON: Vis-à-vis Mr. Arar,  
19 that is correct. The content of that objection is  
20 accurate.

21                  The condition wasn't exactly this  
22 condition.

23                  THE COMMISSIONER: Do you remember  
24 what the condition was?

25                  MR. EDELSON: The condition would

1           have been more to the effect that this would not  
2           be under caution and that any statement he gave  
3           would have been specifically viewed as a statement  
4           that was not voluntary in the legal sense, in that  
5           regard, from the point of view of a caution having  
6           been given, that it could be used against him in  
7           some proceeding.

8                         MR. BOXALL: Well, not only would  
9           it not be able to be used against him, it wasn't  
10          going to be used for other purposes also.

11                        MR. EDELSON: I'm not sure  
12          that that part of the rider was attached to  
13          the Arar statement, as opposed to some of the  
14          other individuals.

15                        MR. BOXALL: Do you have any notes  
16          of what you discussed with Ms Alder with respect  
17          to these conditions?

18                        MR. EDELSON: Just let me think  
19          for a moment.

20          --- Pause

21                        MR. EDELSON: I have notes of my  
22          discussions with Ms Alder, but they are in another  
23          individual's file. I believe I have some  
24          handwritten notes in another file.

25                        MR. BOXALL: Do you have any

1 notes with respect to discussions with Ms Alder  
2 with respect to this particular interview request  
3 for Mr. Arar?

4 MR. EDELSON: Do I have  
5 handwritten notes in respect to that? No.

6 MR. BOXALL: Do you have  
7 typewritten notes?

8 MR. EDELSON: Well -- just let me  
9 pause for a moment.

10 --- Pause

11 MR. EDELSON: I don't believe  
12 so, no.

13 MR. BOXALL: Or audiotape notes?

14 MR. EDELSON: No.

15 MR. BOXALL: Any type of record as  
16 to what was discussed?

17 MR. EDELSON: Well, there is this  
18 record which was made relatively contemporaneous  
19 with the oral discussions that were going on  
20 vis-à-vis Mr. Arar.

21 So, as I said earlier, many of the  
22 conditions were very, very similar, but some were  
23 different.

24 MR. BOXALL: But it appears at  
25 first that the conditions that were different were

1 in fact potentially more restrictive with respect  
2 to Mr. Arar. For example, it was gone from video  
3 to audio.

4 MR. EDELSON: I don't understand  
5 how that is more restrictive.

6 MR. BOXALL: Well, do you not  
7 think a video statement would supply more  
8 information than an audio?

9 MR. EDELSON: Well, I think more  
10 information that you visually see a person  
11 talking, yes. But in terms of the statement, it  
12 would be identical.

13 MR. BOXALL: Was there a  
14 particular reason for choosing just audio  
15 with him?

16 MR. EDELSON: At the initial  
17 request with respect to Mr. Arar?

18 MR. BOXALL: Mm-hmm.

19 MR. EDELSON: It was just a  
20 condition that I indicated to Ms Alder that we  
21 would be requesting in that case.

22 MR. BOXALL: What is the purpose  
23 of having it unsworn?

24 MR. EDELSON: I didn't want a  
25 KGB-type statement. Because I was operating in an

1 information vacuum in this case and the statement,  
2 if sworn, can potentially be used for two  
3 purposes: One, it can be used as a witness  
4 statement against a third party, for reasons that  
5 I earlier articulated. I didn't want a sworn  
6 statement done for that purpose. Or it could  
7 potentially be used against him.

8 As you are familiar, when a KGB  
9 statement is done it is preceded by several  
10 warnings, one of which is two Criminal Code  
11 warnings about the use of the statement, the  
12 legality of giving false evidence.

13 If it is sworn and the person can  
14 subsequently be established to have said something  
15 that is wrong, there is potential for charges for  
16 giving contradictory evidence, or evidence under  
17 oath, that is misleading, which can lead to a  
18 separate and distinct criminal offence.

19 It is like the Martha Stewart  
20 scenario, you know, you can't get her for insider  
21 trading, but she lied about something that took  
22 place during an interview.

23 I would not a client to be in a  
24 position where they are giving a sworn statement  
25 when I know nothing about the substance of the

1 investigation.

2 R. BOXALL: But if it has a  
3 condition that it is not to be used in any  
4 proceedings for any purpose, and it is only to be  
5 used for intelligence, then we don't have a KGB  
6 issue for a sworn statement, do we?

7 MR. EDELSON: No one agreed that  
8 it was going to be used only for intelligence. No  
9 one told me that. Ms Alder never agreed to that.

10 And documents I have seen  
11 subsequently tend to demonstrate it was the  
12 opposite, where the officers indicate, "the  
13 problem with Edelson's conditions is we can never  
14 use this as an admissible statement in a  
15 proceeding."

16 MR. BOXALL: And that was the  
17 purpose of the conditions?

18 MR. EDELSON: The purpose of the  
19 conditions was to best guard Mr. Arar. One of the  
20 purposes was exactly that, that it could not be  
21 made admissible in a proceeding.

22 MR. BOXALL: Thank you.

23 --- Pause

24 MR. BOXALL: You indicated that  
25 in your meeting in either November or December

1           there was discussion about a statement that  
2           apparently CSIS had come into possession of via  
3           the Syrians, and that you had indicated what value  
4           would it have?

5                           MR. EDELSON:  Yes.

6                           MR. BOXALL:  Right.  Certainly  
7           that is the position you were taking at that time.

8                           However, can you understand as an  
9           experienced counsel that regardless of whether or  
10          not it would have admissibility in Canada or  
11          whatever, that there would be an interest in the  
12          investigator in reading it?

13                          MR. EDELSON:  Absolutely.

14                          MR. BOXALL:  Right.  So it  
15          wouldn't surprise you that they would like to  
16          see it?

17                          MR. EDELSON:  Not at all.

18                          MR. BOXALL:  In fact, if you  
19          had been offered it, you would have liked to have  
20          seen it?

21                          MR. EDELSON:  Absolutely.  I would  
22          have read it.  It wasn't offered though.

23                          MR. BOXALL:  But you would  
24          certainly understand why the investigators would  
25          want to receive this?

1 MR. EDELSON: Oh, yes, yes.

2 MR. BOXALL: You would expect a  
3 diligent investigator to look at it at least.  
4 Weight is another question, but to look at it?

5 MR. EDELSON: I think absolutely  
6 they would want to look at it. They told me they  
7 wanted to look at it.

8 MR. BOXALL: You would expect that  
9 that would be appropriate for them investigating?

10 MR. EDELSON: I don't know if it  
11 is appropriate in the terms of the intelligence  
12 community and how they share information, but  
13 appropriate as an investigator, absolutely.

14 MR. BOXALL: With respect to this  
15 meeting in November or December -- I wasn't quite  
16 sure of the date when this occurred, but you  
17 indicated you met with some officers and it was  
18 with respect to Mr. Almalki and Mr. Almalki's  
19 allegation that when he had been questioned in  
20 Syria he had seen, in fact, documents from the  
21 Canadian government, or something to that effect.

22 What was the source of that  
23 information?

24 MR. EDELSON: His brother.

25 MR. BOXALL: Which brother?



1 MR. EDELSON: My recollection was  
2 that it was Safa, although it may have been Nazih.

3 MR. BOXALL: Had they received  
4 that information directly from Mr. Almalki, or  
5 from some other source, or do you know?

6 MR. EDELSON: I know, but I can't  
7 tell you.

8 MR. BOXALL: I will think about  
9 that for a bit.

10 But that does then perhaps raise  
11 another issue.

12 You were retained by Mr. Arar in  
13 January of 2002?

14 MR. EDELSON: As I said earlier,  
15 it wasn't a traditional retainer, as you and I  
16 would normally perceive it when we are dealing  
17 with a client under suspicion in a criminal  
18 investigation. It was more of a giving of advice  
19 on an initial basis, and trying to arrange for, or  
20 facilitate, the statement or interview to take  
21 place that Mr. Arar was prepared to give and which  
22 I discussed with Ms Alder.

23 Really fairly limited at that  
24 point to those issues.

25 MR. BOXALL: But certainly you

1           were retained with him for advice?

2                           MR. EDELSON:    Yes.

3                           MR. BOXALL:   And part of that  
4           advice was retained in respect of potential  
5           statement?

6                           MR. EDELSON:   I considered myself  
7           acting as his counsel, yes, on those issues.

8                           MR. BOXALL:   Certainly the RCMP  
9           could take it that you were his counsel?

10                          MR. EDELSON:   Oh yes.

11                          MR. BOXALL:   You held yourself out  
12           as his counsel?

13                          MR. EDELSON:   Yes.  No question.

14                          MR. BOXALL:   All right.  And you  
15           also were acting for Mr. Almalki?

16                          MR. EDELSON:   Not at that point.

17                          MR. BOXALL:   Okay.  Not at  
18           that point?

19                          MR. EDELSON:   No.  I can't tell  
20           you who I was acting for.

21                          MR. BOXALL:   We know on your  
22           evidence earlier today that at a later point you  
23           certainly were acting for Mr. Almalki?

24                          MR. EDELSON:   Yes.

25                          MR. BOXALL:   Are you in a position

1 to say when you began acting for Mr. Almalki?

2 MR. EDELSON: No, for two reasons.  
3 One, that part of this whole issue is the subject  
4 of a national security application in the Federal  
5 Court, and another application that went to the  
6 Court of Appeal recently with respect to sealed  
7 affidavits.

8 I think I would be in a very  
9 difficult position to try and answer that  
10 particular question.

11 MR. BOXALL: All right. At any  
12 point in the proceedings -- and I appreciate that  
13 at certain points your clients are out of the  
14 country -- at any point in the proceedings did it  
15 occur to you that you may be in a conflict of  
16 interest, acting for both Mr. Almalki and  
17 Mr. Arar?

18 MR. EDELSON: Yes.

19 MR. BOXALL: All right. Can you  
20 indicate at what point did that occur to you?

21 MR. EDELSON: It was much later on  
22 when it was -- I couldn't pinpoint a date,  
23 Mr. Boxall, but much later on I became concerned  
24 that there may be a perceived conflict because of  
25 information that I was hearing from other sources.

1 MR. BOXALL: Well, at one  
2 point also did you not receive, at least from  
3 your evidence, you were told that Mr. Almalki  
4 was a target?

5 MR. EDELSON: I received  
6 information that at one point that Mr. Almalki --

7 MR. BOXALL: Was a suspect?

8 MR. EDELSON: -- was a target, or  
9 suspect, if you like.

10 MR. BOXALL: Target or suspect?

11 MR. EDELSON: Yes.

12 MR. BOXALL: You were also aware  
13 of the request to interview Mr. Arar?

14 MR. EDELSON: Well, from the  
15 beginning?

16 MR. BOXALL: Right?

17 MR. EDELSON: Yes.

18 MR. BOXALL: From the outset?

19 MR. EDELSON: Yes.

20 MR. BOXALL: Would there not be  
21 at least a potential or perceived conflict there,  
22 acting for someone from whom they are seeking a  
23 statement and also acting for a suspect or target?

24 MR. EDELSON: I didn't know they  
25 were seeking a statement by Mr. Arar that might

1           implicate Mr. Almalki.

2                           If I did know, I would agree with  
3 your premise, there would be a potential conflict.

4           MR. BOXALL:   But certainly we see  
5 that the conversations with the same investigative  
6 team take place on the same date.  Within the same  
7 time period you will go out to speak to them about  
8 one and then the other?

9                           MR. EDELSON:  Some did, yes.  In  
10 the latter conversations you are correct.

11         --- Pause

12                          MR. BOXALL:  Those are my  
13 questions.

14                          THE COMMISSIONER:  Just before you  
15 sit down, and this may be by way of academic  
16 interest, it occurs to me that the Parliamentary  
17 Clerk's claim of privilege would not extend to the  
18 reference to the evidence of Mr. Proulx before a  
19 parliamentary committee -- probably wouldn't  
20 extend, the nub of the claim of privilege being  
21 the possibility that the reference to such  
22 evidence in a proceeding like this might result in  
23 impeachment.

24                          This witness, it struck me, as he  
25 began to give that answer, was not about to say

1 anything that would have impeached the evidence as  
2 given before the parliamentary committee, he was  
3 merely doing it as by way of explanation and to  
4 give a context for a letter that he later wrote.

5 I say that not to encourage any  
6 further questions, but simply so that if the issue  
7 comes up again it is important to look at the  
8 nature of the claim and the ruling I made which  
9 was limited to the danger being of impeachment of  
10 statements made in Parliament, or it could be  
11 extended to evidence given in a parliamentary  
12 committee. I think that also was the ruling in  
13 the Gomery case.

14 In any event, I think the  
15 question was satisfactorily answered without  
16 getting into that debate. I simply wanted to put  
17 that on the record.

18 Mr. Fothergill...?

19 --- Off microphone / Sans microphone

20 THE COMMISSIONER: Is it more  
21 efficient for you to ask it rather than whisper in  
22 Mr. Fothergill's ear?

23 MR. BOXALL: It would be.

24 THE COMMISSIONER: Please come  
25 forward.

1                   MR. BOXALL:  Sir, with respect to  
2                   the conversations that took place in October and  
3                   November and December of 2002 with the  
4                   investigators or Ms Alder, are you testifying with  
5                   the benefit of any notes about those  
6                   conversations?

7                   MR. EDELSON:  No.  I think  
8                   you will notice from my will-state that I  
9                   indicated that I told the officers and Ms Alder I  
10                  was treating this as a conversation for which I  
11                  was not going to make notes.  In fact, as we sat  
12                  in the room I had nothing in front of me, I made  
13                  no notes.

14                  MR. BOXALL:  Fair enough.  Then  
15                  have you had the benefit of anything to assist  
16                  your memory with respect to what was discussed?

17                  MR. EDELSON:  Yes.

18                  MR. BOXALL:  What was that?

19                  MR. EDELSON:  Well, as discussed  
20                  earlier, I was asked about the particulars of  
21                  those two meetings by Commission counsel, and I  
22                  indicated some what I thought were the salient  
23                  features of the meetings.

24                  I was shown a document in relation  
25                  to Ms Mazigh in which she related to counsel, I

1 believe, four or five elements of what after the  
2 meeting I related to her as having taken place  
3 during the meeting, and I was asked, "Does this  
4 strike you as being a reasonably accurate  
5 depiction of what you discussed at that meeting  
6 with the RCMP?" And I said, "Yes, it did", except  
7 for one factor, which was the Almalki factor.

8 MR. BOXALL: Are you relying on  
9 those documents that were shown to you to be able  
10 to advise the Commission as to what was discussed?

11 MR. EDELSON: Well, to the extent  
12 that they assisted in refreshing my memory, yes.

13 MR. BOXALL: Because I would also  
14 note that it appears that, at least in the letter  
15 Ms Mazigh wrote -- I can't remember the Minister,  
16 but in one of the letters she wrote she indicated  
17 that you had told her about the RCMP questions.

18 MR. EDELSON: All right, yes. The  
19 list of questions being sent to me, yes.

20 MR. BOXALL: Right. And you  
21 indicated that that did not accord with your  
22 recollection?

23 MR. EDELSON: I don't have any  
24 recollection, nor do I have them in my file, of  
25 having received a document of interrogatories,



1           although I think I requested them of Ms Alder.  
2           This was part of our discussion, send me the  
3           questions in advance, but I don't think I ever  
4           got them.

5                           MR. BOXALL:   So that would be --  
6           at least it appears on the surface of it, that  
7           would be an occasion where what Ms Mazigh  
8           documents you telling her is not accurate, based  
9           on your recollection?

10                           MR. EDELSON:  I don't think I told  
11           her that.  I think what I may have told her was  
12           this, that I had requested from the RCMP a list of  
13           questions, but I do not believe I would have told  
14           her that I received the list, because I don't  
15           believe I received it and I have nothing in my  
16           file evidencing the fact that I did receive it.

17                           MR. BOXALL:  So with respect to  
18           the issue about those meetings in October and  
19           November, and you indicated there was some  
20           discussion about telephone numbers from Palm  
21           Pilots and so on --

22                           MR. EDELSON:  Right.

23                           MR. BOXALL:  -- would that be a  
24           matter that you refreshed your memory from  
25           Ms Mazigh's notes?

1 MR. EDELSON: No, I remember that  
2 part of the conversation independently.

3 MR. BOXALL: Who told you that?

4 MR. EDELSON: Who told me that?

5 MR. BOXALL: Which officer told  
6 you that?

7 MR. EDELSON: I believe it was  
8 Kevin Corcoran who made that comment.

9 MR. BOXALL: At which meeting?

10 MR. EDELSON: That is a very good  
11 question. Let me think.

12 You mean was it the November or  
13 December meeting, is that --

14 MR. BOXALL: Whichever.

15 MR. EDELSON: I can't  
16 recall specifically. I think it was the  
17 November meeting.

18 MR. BOXALL: Certainly in these  
19 conversations you weren't expecting the officers  
20 to outline all the evidence that they may be in  
21 possession of. You would never expect that. You  
22 might hope for that, but you certainly wouldn't  
23 expect it, would you, sir?

24 MR. EDELSON: I agree.

25 MR. BOXALL: All right. Those are

1 the questions I have.

2 THE COMMISSIONER: Thank you.

3 Mr. Fothergill...?

4 EXAMINATION

5 MR. FOTHERGILL: Mr. Edelson, you  
6 said that at some point it occurred to you that  
7 you might be in a conflict of interest in terms of  
8 your representation of both Mr. Almalki and  
9 Mr. Arar.

10 Correct?

11 MR. EDELSON: Yes.

12 MR. FOTHERGILL: In addition to  
13 Mr. Almalki, you were also representing a number  
14 of other people who were of interest to the police  
15 in the context of the same investigation.

16 Isn't that right?

17 MR. EDELSON: I don't know if it  
18 was in the context of the same investigation.

19 MR. FOTHERGILL: Well, you told us  
20 that you were consulted by a number of people  
21 after some residences and businesses were searched  
22 in January of 2002.

23 Correct?

24 MR. EDELSON: Yes.

25 MR. FOTHERGILL: Without giving us

1           their names, can you tell us how many of those  
2           people you ultimately represented?

3                           MR. EDELSON:  Mr. Commissioner,  
4           I have a problem with this question, and it is  
5           this:  People who are the subject matter of  
6           search warrants are sealed by court order, and  
7           there is presently an application before the  
8           Federal Court, Chief Justice Lutfy, brought by the  
9           Department of Justice, to ensure that these names  
10          never be released.

11                           I am having some difficulty  
12          with answering the question because it may tend  
13          to indicate that certain people I was acting for  
14          were part of that group that are presently under  
15          seal.  So I am feeling between a rock and a hard  
16          place here to some degree.

17                           THE COMMISSIONER:  I understand  
18          the sensitivity.  The question at this point is  
19          simply how many people.

20                           Do you intend to go further  
21          than that?

22                           MR. FOTHERGILL:  I certainly don't  
23          need their names.

24                           THE COMMISSIONER:  Do you feel  
25          that indicating the number would tend to disclose

1 the names?

2 MR. EDELSON: It wouldn't tend to  
3 disclose the names, but the number of people who  
4 were searched are part of the sealing order that  
5 was brought by the Department of Justice.

6 THE COMMISSIONER: Right.

7 MR. FOTHERGILL: Could we  
8 proceed on the basis that you were representing  
9 some -- more than one -- people who consulted you  
10 as a result of those searches?

11 MR. EDELSON: As a result of  
12 searches?

13 MR. FOTHERGILL: Or interviews  
14 that were conducted on that day, or attempted to  
15 be conducted?

16 MR. EDELSON: Yes.

17 MR. FOTHERGILL: So more than one  
18 in addition to Mr. Arar?

19 MR. EDELSON: Mr. Arar wasn't  
20 searched.

21 MR. FOTHERGILL: No, but there  
22 was an attempt to interview him on that day, was  
23 there not?

24 MR. EDELSON: Apparently.

25 MR. FOTHERGILL: The fact that

1           there was an attempt to interview Mr. Arar on that  
2           day was something that you learned at your first  
3           interview with him?

4                         MR. EDELSON:    Yes.

5                         MR. FOTHERGILL:  Did you not make  
6           the connection at that time that Mr. Arar might be  
7           of interest to the police for the same reasons  
8           that the other people you were representing were  
9           of interest to the police?

10                        MR. EDELSON:    No.

11                        MR. FOTHERGILL:  It did not occur  
12           to you that this might be a common investigation?

13                        MR. EDELSON:    Might?  I suppose it  
14           could have been.  But based on --

15                        Again, to answer the question I  
16           would have to disclose information I got from  
17           other clients, which I don't feel I am at liberty  
18           to do, and I can't do.

19                        MR. FOTHERGILL:  And I won't ask  
20           you to.

21                        But I am suggesting to you that  
22           there were a number of factors that would have  
23           told you that Mr. Arar was of interest to the  
24           police in the context of the same investigation  
25           that gave rise to the searches?

1 First of all, do you dispute that  
2 proposition?

3 MR. EDELSON: Perhaps you could  
4 advise me what those factors might be.

5 MR. FOTHERGILL: The interview, as  
6 I mentioned, took place on the same day --

7 MS EDWARDH: I object. There was  
8 no interview.

9 MR. FOTHERGILL: Yes, that is  
10 quite right. I'm sorry.

11 MR. EDELSON: The request.

12 MR. FOTHERGILL: The request for  
13 the interview took place on the same day.

14 The individual who left his  
15 card was Mr. Buffam. He was involved with  
16 national security.

17 I noted that when Mr. Arar was  
18 detained in New York, you knew the people to call  
19 and you knew that they were the people who had  
20 tried to interview him earlier. I appreciate you  
21 may have learned that later --

22 MR. EDELSON: You are going to  
23 have to expand on that a little bit.

24 I knew the people to call, I knew  
25 they were the people who wished to interview him?

1 MR. FOTHERGILL: That's right. I  
2 think you told us once Dr. Mazigh contacted you  
3 when Mr. Arar had gone --

4 MR. EDELSON: I called Ann Alder.

5 MR. FOTHERGILL: -- and you knew  
6 that --

7 Well, let me just simply ask you  
8 simply: Are you telling us that it did not occur  
9 to you that Mr. Arar was of interest to the police  
10 for the same reason that the other people you were  
11 representing were of interest to the police?

12 MR. EDELSON: For reasons I can't  
13 disclose, the answer is yes, based on other  
14 information that was in my possession.

15 At that stage, there was in my  
16 mind no connection.

17 MR. FOTHERGILL: All right.  
18 So when you tell us that one of the conditions  
19 that you impose on any interview was that  
20 anything Mr. Arar said could not be used against  
21 anybody at all --

22 MR. EDELSON: Oh, I didn't say I  
23 imposed that condition in respect of Mr. Arar.  
24 That is in the other letter.

25 MR. FOTHERGILL: Are you saying



1           that the effect of the conditions you imposed in  
2           relation to Mr. Arar was not the same?

3                       MR. EDELSON:  No, the condition  
4           that I was concerned about in reference to  
5           Mr. Arar was that he would not be interviewed  
6           under caution, and there would not be a sworn  
7           videotaped, i.e. KGB statement taken from  
8           Mr. Arar, plus several other conditions which were  
9           perhaps of less concern to the police.  For  
10          example, the interview would be on neutral turf,  
11          in my boardroom, I would be present or another  
12          lawyer, et cetera.

13                      MR. FOTHERGILL:  Right  So if  
14          I suggest to you that the police formed the  
15          impression that one of the conditions of  
16          Mr. Arar's interview was that anything he said  
17          could not be used against anybody that they  
18          were investigating in the context of that  
19          particular investigation, does that come as a  
20          surprise to you?

21                      MS EDWARDH:  Well, it depends  
22          on -- "use" is a very broad definition I have come  
23          to learn in this.  Used as background or  
24          intelligence; no.  Used as a document that could  
25          be introduced before a judge in evidence; yes, it

1           wasn't going to be used like that.

2                           MR. FOTHERGILL:  Exactly.  That is  
3           really what I'm driving at.  Used as evidence.

4                           MR. EDELSON:  Yes.  That was the  
5           whole purpose.

6                           MR. FOTHERGILL:  The whole  
7           purpose was that nothing Mr. Arar said could be  
8           used as evidence, either against him or against  
9           anybody else who might be involved in that same  
10          investigation.

11                          MR. EDELSON:  My main concern was  
12          it could not be used against him.

13                          MR. FOTHERGILL:  Yes.

14                          MR. EDELSON:  But you are saying  
15          against anyone else involved in the same  
16          investigation.  I didn't know they were involved  
17          in the same investigation when we had the  
18          discussion.  I just told you that.

19                          MR. FOTHERGILL:  Yes, you did.  
20          All right.  Thank you.

21                          Let me move to another  
22          subject then.

23                          You were asked about your  
24          knowledge of extraordinary rendition, and I think  
25          you told us that you learned the term itself

1 later, but you were aware of -- I think what you  
2 described as outsourcing of interrogation --

3 MR. EDELSON: Proxying.

4 MR. FOTHERGILL: That sort  
5 of thing?

6 MR. EDELSON: Yes.

7 MR. FOTHERGILL: You said you  
8 learned that in advance of Mr. Arar's  
9 circumstances when he was stopped in New York in  
10 September of 2002.

11 Do you recall saying that?

12 MR. EDELSON: I recall saying that  
13 when I spoke to John McNee --

14 MR. FOTHERGILL: Yes.

15 MR. EDELSON: -- on October 24th  
16 that I had used that phrase, and I recall saying  
17 that I had learned about this kind of activity  
18 going on specifically in countries such as Syria  
19 as a result of research and background we had done  
20 for other clients.

21 MR. FOTHERGILL: When you speak  
22 in terms of knowing that this kind of activity was  
23 going on, I take it what you are referring to is  
24 the Americans apprehending somebody in one country  
25 outside the United States and moving them to

1 another country outside the United States.

2 Correct?

3 MR. EDELSON: Not necessarily  
4 outside the United States.

5 MR. FOTHERGILL: Can you point to  
6 an example before Mr. Arar where somebody was  
7 removed from the United States to undergo  
8 interrogation in a second country?

9 MR. EDELSON: There was a  
10 gentleman -- and I don't know if I have my facts  
11 correct here. There was a gentleman sent to Egypt  
12 at one point. I don't remember the name.

13 MR. FOTHERGILL: From the United  
14 States, you mean?

15 MR. DAVID: I don't recall.

16 MR. FOTHERGILL: Well, I'm  
17 suggesting that is rather important, and I'm  
18 suggesting prior to Mr. Arar's case there was no  
19 case that anybody could identify where somebody  
20 had been apprehended in the United States and  
21 moved to a third country, such as Egypt, for more  
22 robust interrogation, if I can put it that way.

23 Do you disagree?

24 MR. EDELSON: I wouldn't disagree  
25 with your proposition.

1 MR. FOTHERGILL: You mentioned  
2 that Mr. Arar's mistreatment was at the forefront  
3 of your mind --  
4 MR. EDELSON: Sorry,  
5 Mr. Arar's...?  
6 MR. FOTHERGILL: Mistreatment?  
7 MR. EDELSON: Yes.  
8 MR. FOTHERGILL: Possible torture.  
9 MR. EDELSON: Yes.  
10 MR. FOTHERGILL: Was in the  
11 forefront of your mind very early on --  
12 MR. EDELSON: Yes.  
13 MR. FOTHERGILL: -- and that you  
14 had raised this in your discussion with Mr. McNee?  
15 MR. EDELSON: Yes.  
16 MR. FOTHERGILL: Do you recall if  
17 you raised that with the RCMP specifically when  
18 you were seeking the letter that you thought might  
19 assist in obtaining Mr. Arar's release?  
20 MR. EDELSON: I don't know if it  
21 was raised specifically connected to the letter  
22 request, but it was definitely discussed with the  
23 RCMP members.  
24 MR. FOTHERGILL: Can I ask you to  
25 refer to Exhibit P-140, tab 1, please?

1 MR. EDELSON: Is that --

2 MR. FOTHERGILL: That's the newly

3 redacted document.

4 MR. EDELSON: Yes, in which tab?

5 MR. FOTHERGILL: It's tab 1.

6 MR. EDELSON: Thank you.

7 MR. FOTHERGILL: These are some

8 officer's notes.

9 MR. EDELSON: Page?

10 MR. FOTHERGILL: I think the very

11 first page.

12 MR. EDELSON: Yes?

13 MR. FOTHERGILL: I wonder if you

14 could help us make sense of something we read

15 here. It begins:

16 "I received a call from Ann

17 Alder."

18 This is a police officer writing.

19 "She advised me that she had

20 received a call from Mike

21 Edelson. He had advised Ann

22 that he had met with the

23 Director General - Gar Pardy

24 of DFAIT concerning Arar."

25 And then this is the bit that I'd

1           like your comment on:

2                               "Pardy had told Edelson that  
3                               Canadian Consular staff had  
4                               visited with Arar recently  
5                               and indicated he was not  
6                               being tortured and was being  
7                               well treated by the Syrians."

8                               Is that something that Mr. Pardy  
9           told you and you, in turn, related to the police?  
10          --- Pause

11                              MR. EDELSON:   Just give me one  
12          moment.

13          --- Pause

14                              This, as I understand,  
15          November 30, 2002, Mr. Fothergill.  Is that  
16          correct?

17                              MR. FOTHERGILL:  That's correct,  
18          yes.

19                              MR. EDELSON:  And this would have  
20          been immediately after this note, the meeting I  
21          had with Mr. Pardy.

22                              MR. FOTHERGILL:  Yes.

23                              MR. EDELSON:  For the first time.

24                              I don't recall this being  
25          something I conveyed to Ms Alder, and I certainly

1 don't recall it being something that Mr. Pardy had  
2 specifically told me. This was the first meeting  
3 when I actually substantively spoke to Mr. Pardy  
4 at Clair de Lune restaurant.

5 MR. FOTHERGILL: Yes?

6 MR. EDELSON: I don't recall that  
7 being part of the discussion.

8 MR. FOTHERGILL: So you can't help  
9 us with why this appears in the officer's notes?

10 MR. EDELSON: I'm afraid I can't.

11 MR. FOTHERGILL: Ms Edwardh asked  
12 you whether -- if you had been asked to assist in  
13 refuting allegations that apparently were made by  
14 Syrian authorities, whether you would have done  
15 so, and I think you expressed some scepticism  
16 about the value of the initiative. Do you  
17 remember saying that?

18 MR. EDELSON: Yes.

19 MR. FOTHERGILL: And would you  
20 agree with me that, similarly, this letter you  
21 were attempting to obtain from the police might  
22 ultimately have had very little impact because  
23 there were other forces at work that were keeping  
24 Mr. Arar in Syria?

25 MR. EDELSON: No doubt Mr. Pardy



1 and I considered whether it would have any  
2 significant impact. But he was the one who raised  
3 the idea, I was the one who suggested the content.  
4 And he was the expert.

5 I was a novice in this area, and I  
6 felt that if this expert, the head of the consular  
7 division, is telling me that he feels this would  
8 be helpful in advancing his efforts to expedite  
9 Mr. Arar's release and return, I would do my best  
10 to obtain such a letter.

11 MR. FOTHERGILL: Now, when you say  
12 it was his idea, are you telling us that it was  
13 his idea specifically that you, as a defence  
14 lawyer, should request the letter, or, more  
15 generally, that a letter of this nature could be  
16 useful?

17 MR. EDELSON: The latter.

18 MR. FOTHERGILL: All right. Thank  
19 you. Then am I right in assuming that you  
20 volunteered your services because of the  
21 particular rapport you had with the police?

22 MR. EDELSON: Well, it was also in  
23 the context of, you know, what can I do here? I  
24 need to rely on your experience. What will be  
25 helpful to you because you are the -- I saw him as

1 the point man in an effort to release Mr. Arar.  
2 Not me, in essence. I'm here in Canada. They  
3 have consular staff. DFAIT has all of their  
4 people. We have an ambassador there, et cetera.

5 So from that perspective, I saw  
6 his role as far more important than my own, but at  
7 the same time, I thought I might be able to get a  
8 letter. As you know, I spoke to Ann Alder and she  
9 had told me, "Put it in writing," which I did. I  
10 didn't know what I was going to get back, quite  
11 frankly.

12 MR. FOTHERGILL: So I suppose the  
13 advantage that you had over Mr. Pardy was your  
14 special relationship with the police, if I can  
15 call it that way?

16 MR. EDELSON: Well, I don't know  
17 how special it is.

18 MR. FOTHERGILL: No, but you  
19 described them as people who, in some cases,  
20 transcended a professional relationship and even  
21 became a personal relationship, at least in the  
22 case of one officer, with his family, if not with  
23 him personally?

24 MR. EDELSON: You're right.

25 MR. FOTHERGILL: And by the sound

1 of it, one of the special services you can offer  
2 your clients is that you know the police and they  
3 know you?

4 MR. EDELSON: Well, that is  
5 something that happens after almost 30 years of  
6 doing this. But I didn't expect any of those  
7 officers would be authoring that letter.

8 MR. FOTHERGILL: Who did you  
9 expect would author the letter?

10 MR. EDELSON: I thought it would  
11 be someone higher up. I thought they'd have to  
12 get authority from well up in the ranks to write  
13 that kind of letter. Quite frankly I didn't --  
14 when I say those officers, I'm talking about  
15 Callaghan, Corcoran, I didn't know Cabana.

16 MR. FOTHERGILL: Right.

17 MR. EDELSON: So when he wrote the  
18 letter, I was pleased, but I didn't necessarily  
19 expect him to have written a letter.

20 MR. FOTHERGILL: And obviously, as  
21 a defence lawyer, you understood that the police  
22 would recognize when they put something like this  
23 in writing, this was also potential evidence in  
24 the event that Mr. Arar was ever charged?

25 MR. EDELSON: What do you mean?

1 MR. FOTHERGILL: Well, if the  
2 police wrote a letter to you as a defence lawyer,  
3 saying that as of this date there is no evidence  
4 implicating your client or, even better, if you  
5 got what you wanted, he's not even a suspect. If  
6 at some point in the future he were charged, there  
7 would be nothing to stop you from using this in  
8 evidence in his defence?

9 MR. EDELSON: I suppose, but  
10 things change. A person can be a suspect, they  
11 can have no evidence against them at one point in  
12 time, and then they could develop a case, or  
13 receive new information or evidence against them  
14 at a later point in time. Whether it would be a  
15 weighty piece of evidence or even usefully  
16 admissible at a future trial, I'm not certain.

17 I certainly could concede, though,  
18 I probably would have tried to use it.

19 --- Laughter / Rires

20 MR. FOTHERGILL: Thank you.

21 You mention that sometime later  
22 you made a similar request for a letter in respect  
23 of another client, Mr. Almalki, and this was -- by  
24 this time Inspector Coons was heading up the  
25 Project A-OCANADA. Correct?

1 MR. EDELSON: That's correct.

2 MR. FOTHERGILL: And you said it  
3 took a very long time for you to get a response.

4 MR. EDELSON: That's correct.

5 MR. FOTHERGILL: And one of the  
6 reasons that was conveyed to you was that legal  
7 advice was required -- legal advice was required?

8 MR. EDELSON: Yes, he told me it  
9 was a letter by committee, that this was going  
10 through a number of different levels, different  
11 departments, different governmental departments,  
12 there were a number of meetings that were required  
13 to approve the final wording of the letter, it was  
14 being viewed very carefully.

15 I think I have a sense of why, now  
16 that I have seen a bit of the fire storm that took  
17 place after the Pardy incident, but you're quite  
18 right, it took some time, and that was the  
19 rationale he was disclosing to me why it was  
20 taking so much time. In fact, he was apologetic  
21 in some respects.

22 MR. FOTHERGILL: But you inferred  
23 from that this was, from the police's point of  
24 view, a significant departure from policy in  
25 respect of which advice was needed?

1                   MR. EDELSON: Well, I already have  
2 one letter. That's why I was saying to him, why  
3 is it taking so long? I got this letter in a  
4 matter of weeks, why are you taking so long?

5                   MR. FOTHERGILL: You're referring  
6 to the letter?

7                   MR. EDELSON: The November 16,  
8 2002 letter, on Arar.

9                   MR. FOTHERGILL: The one Officer  
10 Cabana gave you?

11                   MR. EDELSON: That's right.

12                   MR. FOTHERGILL: But am I right in  
13 thinking that the Almalki letter you subsequently  
14 received was perhaps a little bit more responsive  
15 from your point of view? Was it more  
16 satisfactory?

17                   MR. EDELSON: I'd really have to  
18 read it again, but I thought it would be helpful.

19                   MR. FOTHERGILL: And I'm  
20 suggesting to you that that was a significant  
21 departure from policy for the police, and that's  
22 why it took so long to get you that letter?

23                   MR. EDELSON: Well, you know,  
24 departures are relative, and I'm not trying to be  
25 evasive.

1                   But what I'm getting at is this:  
2           These two cases were so extraordinary, they were  
3           so unusual in terms of my role as a lawyer that,  
4           quite frankly, I don't know if it was the usual  
5           course in international investigations that the  
6           RCMP did or did not provide letters. I hadn't had  
7           a lot of experience dealing with these types of  
8           cases.

9                   So with that caveat, it was  
10          unusual to get a letter like this, in my  
11          experience, but it may not have been unusual in  
12          the greater experience of counsel who do  
13          international consular-type cases where people are  
14          imprisoned overseas. I honestly don't know.

15                   MR. FOTHERGILL: All right.  
16          That's fine. Thank you.

17                   I think the final area I'd like to  
18          ask you some questions about is the information  
19          you received through Mr. Almalki's relatives about  
20          the presence of Canadian documents being used to  
21          interrogate Mr. Almalki in Syria, and I appreciate  
22          that this is a somewhat sensitive area for you  
23          because you feel that there's a source you can't  
24          disclose?

25                   MR. EDELSON: Yes.

1 MR. FOTHERGILL: So if I ask you a  
2 question that you feel uncomfortable answering,  
3 please just say so.

4 MR. EDELSON: I will.

5 MR. FOTHERGILL: At this time,  
6 presumably you're aware that Mr. Almalki had no  
7 consular access?

8 MR. EDELSON: At which time?

9 MR. FOTHERGILL: At the time that  
10 this information was imparted to you?

11 MR. EDELSON: I'm trying to  
12 distinguish between the time the information was  
13 imparted to me and the time when it was imparted  
14 to the RCMP at the meeting. You see, the  
15 question -- that's what I'm trying to think about  
16 here, because clearly I did have a discussion of  
17 that sort with the RCMP.

18 MR. FOTHERGILL: On November 7,  
19 2003.

20 MR. EDELSON: I believe that was  
21 the date, yes.

22 When -- it's just a question of  
23 when that information came to me relative to that  
24 particular meeting, because you're asking me when  
25 did I get the information as opposed to give it.



1 MR. FOTHERGILL: That's right.

2 MR. EDELSON: All right.

3 MR. FOTHERGILL: Well, I'm not  
4 sure that Mr. Almalki ever received consular  
5 access at any time --

6 MR. EDELSON: I honestly don't  
7 think he did.

8 MR. FOTHERGILL: I don't think he  
9 did either. Really, all I'm suggesting to you,  
10 Mr. Edelson, is that you must have regarded with  
11 some scepticism the reliability of this  
12 information, given that everything we hear about  
13 the inability of people incarcerated in Syria to  
14 communicate freely with the outside world. So how  
15 can it possibly be that Mr. Almalki was able to  
16 report to anybody the details of his interrogation  
17 and the contents of the file that was used to  
18 interrogate him?

19 MR. EDELSON: That's the part I  
20 can't answer.

21 MR. FOTHERGILL: All right.

22 MS EDWARDH: I think, in fairness  
23 to the witness, the record shows that I believe  
24 Mr. Almalki was well out of Syria and into Egypt  
25 by July --

1 THE COMMISSIONER: No, that was  
2 El Maati --

3 MS EDWARDH: I'm sorry.

4 MR. FOTHERGILL: No, that was  
5 somebody else.

6 MS EDWARDH: My apologies.

7 MR. FOTHERGILL: Those are my  
8 questions. Thank you very much.

9 MR. EDELSON: You're welcome.

10 THE COMMISSIONER: Mr. David?

11 MR. DAVID: Just one brief  
12 question, Mr. Edelson.

13 EXAMINATION

14 MR. DAVID: It concerns the  
15 information that you're getting from the RCMP at  
16 either the November or December meeting in '02  
17 that concerns the links that the RCMP were making  
18 in terms of information that was found in  
19 electronic devices, that is, they're telling you,  
20 on one hand, there was information that they had  
21 from Arar's equipment that was disclosing the fact  
22 that it had names of people that they were  
23 interested in; and on the other hand, they also  
24 had information from those other people they were  
25 interested in in terms of their electronic

1 equipment.

2 My question is very simple: In  
3 terms of the equipment that was identified to you  
4 that they had access to for Arar, do you know --  
5 do you recall whether -- was it only the Palm  
6 Pilot, or did it include the Palm Pilot and the  
7 laptop as being the reference equipment?

8 MR. EDELSON: My recollection was  
9 that the names and/or phone numbers, you know, the  
10 coordinates for certain individuals, was -- these  
11 were recorded on his Palm Pilot, on their Palm  
12 Pilots, and/or their phone directories, words to  
13 that effect.

14 MR. DAVID: So what you recall is,  
15 in terms of Mr. Arar's personal equipment, it was  
16 a Palm Pilot; it did not include his laptop?

17 MR. EDELSON: I don't recall  
18 hearing that it was his laptop at that meeting.

19 MR. DAVID: Thank you.

20 MR. EDELSON: You're welcome.

21 THE COMMISSIONER: Well, that's  
22 it. Thank you, Mr. Edelson. It's been a long  
23 day --

24 MR. EDELSON: Yes, it has.

25 THE COMMISSIONER: -- and a

1 different role for you. I appreciate very much  
2 your coming and the time --

3 MR. EDELSON: You're very welcome.

4 THE COMMISSIONER: -- you put in  
5 to preparing. I'm much obliged.

6 MR. EDELSON: Thank you.

7 THE COMMISSIONER: Okay. That  
8 completes it for today. We start tomorrow morning  
9 at nine?

10 MR. DAVID: Nine o'clock,  
11 Mr. Commissioner.

12 THE COMMISSIONER: Okay. We'll  
13 rise until then.

14 THE REGISTRAR: Please stand.

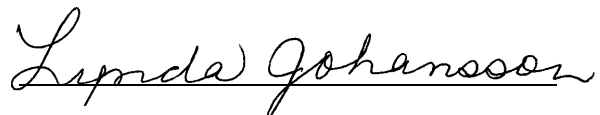
15 --- Whereupon the hearing adjourned at 5:32 p.m.,  
16 to resume on Friday, June 17, 2005,  
17 at 9:00 a.m. / L'audience est ajournée  
18 à 17 h 32, pour reprendre le vendredi  
19 17 juin 2005 à 9 h 00

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Lynda Johansson,

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C.S.R., R.P.R.

## A

<b>Abdullah</b> 7252:18 7252:21,22 7353:5 7424:11	7345:16 7373:9 7436:6,17 7442:13 7448:2 7450:17,20 7467:17 7485:22 7533:7 7534:5 7536:4	7243:6 7260:11 7378:10 7394:10	<b>advised</b> 7233:17 7238:18 7274:22 7281:1 7304:17 7304:19 7308:4 7308:20 7309:5 7321:25 7323:3 7329:4 7336:17 7370:2 7478:16 7479:16 7484:18 7523:19,21	7511:24 7525:20
<b>ability</b> 7409:8 7466:14	2467:17 2485:22 2533:7 2534:5 2536:4	<b>add</b> 7227:8 7253:25	7281:1 7304:17 7304:19 7308:4 7308:20 7309:5 7321:25 7323:3 7329:4 7336:17 7370:2 7478:16 7479:16 7484:18 7523:19,21	<b>agreed</b> 7384:13 7414:9,10 7452:13,17 7499:7,9
<b>able</b> 7222:7 7272:11 7273:21 7280:7 7296:9 7329:11 7344:12 7351:19 7373:5 7376:21 7385:16 7405:18 7408:16 7430:13 7458:20 7459:24 7460:1 7467:21 7495:9 7509:9 7527:7 7534:15	<b>accessed</b> 7402:20 <b>accord</b> 7509:21 <b>account</b> 7306:14 7385:1 7459:14 <b>accuracy</b> 7237:25 <b>accurate</b> 7237:20 7238:3 7325:5 7399:18 7419:25 7462:22 7485:10 7494:20 7509:4 7510:8	<b>addition</b> 7464:24 7512:12 7514:18 <b>additional</b> 7244:14 7281:3 7416:13 7459:17 7490:9 <b>address</b> 7225:16 7245:17 7347:6 7354:6 7386:7 7407:5 7462:12 <b>addressed</b> 7238:13 7372:6 7465:10 <b>adhere</b> 7414:22 <b>adhered</b> 7301:10 <b>adhering</b> 7420:12 <b>adjourned</b> 7537:15 <b>admire</b> 7253:16 <b>admissibility</b> 7500:10 <b>admissible</b> 7499:14 7499:21 7529:16 <b>Admission</b> 7215:25 <b>adopt</b> 7415:10 <b>advance</b> 7510:3 7520:8 <b>advancing</b> 7526:8 <b>advantage</b> 7527:13 <b>advice</b> 7236:10 7245:4 7260:1 7307:7,8 7354:5 7375:20 7406:12 7407:7 7411:8,16 7411:17,25 7413:13 7416:16 7417:15,24 7419:3 7441:20 7474:6,13,17,21 7475:2 7484:22 7492:23 7502:18 7503:1,4 7530:7,7 7530:25	<b>advising</b> 7297:17 7305:2 <b>advisor</b> 7281:4 <b>affairs</b> 7329:15 7369:1,11 7376:19 7377:9 7439:15 <b>affidavits</b> 7504:7 <b>affiliated</b> 7270:10 7270:13 <b>affirmed</b> 7213:1,2 7213:3 <b>Afghan</b> 7361:13 <b>Afghanistan</b> 7352:21 7362:23 7433:19 7438:2 7438:21 7451:4 7456:18 7458:7 7458:17 <b>afraid</b> 7377:2 7525:10 <b>afternoon</b> 7238:17 <b>agencies</b> 7320:4 7392:17 7456:15 <b>agency</b> 7306:7 7487:19 7490:12 <b>agenda</b> 7217:22 7218:4 7219:7,8 7228:10 7241:2 7486:20,21 <b>ago</b> 7320:15 7373:11 <b>agree</b> 7268:13 7386:19 7399:16 7462:15,17 7474:20 7480:2,4 7481:3,23 7483:4 7486:24 7488:2,6 7492:21 7506:2	<b>agreement</b> 7462:23 <b>agrees</b> 7359:8 <b>ahead</b> 7223:14 7253:23 7351:9 7378:10 7456:1 <b>Aid</b> 7271:19 7272:5 <b>aided</b> 7359:19 <b>airlines</b> 7248:20,21 7336:15 <b>airport</b> 7248:1 7254:13 7275:4 7378:14,16 <b>ajournée</b> 7537:17 <b>alarm</b> 7425:5 <b>alarmed</b> 7425:3 <b>alarming</b> 7424:24 7425:2 <b>Alder</b> 7242:1 7260:6 7261:6,8 7280:24 7283:9 7285:1 7304:17 7305:8 7309:4,16 7309:24 7310:7 7311:19 7314:16 7318:25 7330:23 7332:5,6 7340:23 7341:19,22 7342:11 7356:17 7358:10 7373:21 7385:7 7389:1 7411:11 7413:17 7415:21 7418:6 7419:8 7420:11 7423:14 7434:13 7472:20 7473:4 7489:20 7491:8 7491:21 7494:15 7495:16,22 7496:1 7497:20 7499:9 7502:22 7508:4,9 7510:1 7517:4 7523:17 7524:25 7527:8 <b>alert</b> 7466:21
<b>abouts</b> 7256:25 <b>above-noted</b> 7238:19 <b>abroad</b> 7252:7 7256:16,17 7329:18 7442:18 <b>absence</b> 7258:15 7415:20 7480:22 <b>absolutely</b> 7246:13 7251:20 7266:15 7272:24 7379:6 7391:12 7423:11 7426:14 7435:11 7475:2 7486:12 7486:20 7500:13 7500:21 7501:5 7501:13 <b>abuse</b> 7324:9 7325:19 7465:2,7 <b>abused</b> 7324:6 7464:7 7466:6,10 7466:13 7468:9 <b>academic</b> 7247:14 7506:15 <b>accept</b> 7306:22 <b>accepted</b> 7286:12 7307:3 <b>accepting</b> 7307:13 <b>access</b> 7223:9 7292:8,8 7344:7 7344:10,12,23	<b>acted</b> 7285:9 7394:7 7407:11 <b>acting</b> 7281:7 7296:15 7305:9 7488:14,23 7503:7,15,20,23 7504:1,16 7505:22,23 7513:13 <b>action</b> 7321:8 7361:18 7407:15 <b>actions</b> 7315:18 <b>actively</b> 7391:1 7447:12 7448:11 <b>activities</b> 7213:14 7257:25 7262:3 7372:18 7412:16 7418:15 7439:20 <b>activity</b> 7245:10 7300:4 7306:13 7421:21 7520:17 7520:22 <b>actual</b> 7218:8	<b>admission</b> 7215:25 <b>adopt</b> 7415:10 <b>advance</b> 7510:3 7520:8 <b>advancing</b> 7526:8 <b>advantage</b> 7527:13 <b>advice</b> 7236:10 7245:4 7260:1 7307:7,8 7354:5 7375:20 7406:12 7407:7 7411:8,16 7411:17,25 7413:13 7416:16 7417:15,24 7419:3 7441:20 7474:6,13,17,21 7475:2 7484:22 7492:23 7502:18 7503:1,4 7530:7,7 7530:25 <b>advisable</b> 7484:16 7484:19,25 <b>advise</b> 7259:24 7412:9 7413:24 7509:10 7516:4	<b>aided</b> 7359:19 <b>airlines</b> 7248:20,21 7336:15 <b>airport</b> 7248:1 7254:13 7275:4 7378:14,16 <b>ajournée</b> 7537:17 <b>alarm</b> 7425:5 <b>alarmed</b> 7425:3 <b>alarming</b> 7424:24 7425:2 <b>Alder</b> 7242:1 7260:6 7261:6,8 7280:24 7283:9 7285:1 7304:17 7305:8 7309:4,16 7309:24 7310:7 7311:19 7314:16 7318:25 7330:23 7332:5,6 7340:23 7341:19,22 7342:11 7356:17 7358:10 7373:21 7385:7 7389:1 7411:11 7413:17 7415:21 7418:6 7419:8 7420:11 7423:14 7434:13 7472:20 7473:4 7489:20 7491:8 7491:21 7494:15 7495:16,22 7496:1 7497:20 7499:9 7502:22 7508:4,9 7510:1 7517:4 7523:17 7524:25 7527:8 <b>alert</b> 7466:21	

7468:8	<b>amalgamated</b>	7523:16,21	7264:14 7266:9	7299:15 7334:7
<b>alerted</b> 7220:23	7218:14	7527:8	7275:17 7291:1	7406:25 7430:15
7263:23	<b>ambassador</b>	<b>announce</b> 7215:13	7297:5 7348:24	<b>appropriate</b>
<b>alibi</b> 7440:3	7287:15 7288:1,7	<b>answer</b> 7221:7	7352:16 7361:10	7212:12 7227:14
<b>alive</b> 7325:20	7295:11,12	7230:20 7254:21	7363:24 7388:14	7320:7 7359:24
7326:7	7296:8 7297:9,20	7254:21 7257:22	7403:20 7436:22	7397:23 7413:24
<b>allegation</b> 7439:16	7362:12,12,13,25	7325:23 7334:22	7449:19 7452:20	7415:20 7456:15
7501:19	7363:2 7439:15	7338:18 7357:17	7481:10 7500:2	7485:3 7501:9,11
<b>allegations</b> 7410:22	7527:4	7357:20 7367:11	7514:24 7525:13	7501:13
7411:1,6 7438:20	<b>ambassadors</b>	7373:4,24	<b>Appeal</b> 7504:6	<b>approve</b> 7530:13
7440:7 7525:13	7369:23	7415:12 7433:11	<b>appear</b> 7385:17	<b>approved</b> 7332:17
<b>alleged</b> 7245:10	<b>ameliorating</b>	7434:23 7435:3,9	7466:5	<b>approx</b> 7257:6
<b>allegedly</b> 7366:10	7442:17	7446:1,6 7462:15	<b>appeared</b> 7352:9	<b>AQ</b> 7387:1
<b>allow</b> 7236:15	<b>America</b> 7253:5	7462:18 7476:17	7352:12 7474:4	<b>Arab</b> 7217:12
<b>allowed</b> 7218:22	7352:17 7409:18	7481:13,16,21	<b>appearing</b> 7366:12	<b>Arabic</b> 7467:21
7398:20	<b>American</b> 7264:23	7490:19 7504:9	<b>appears</b> 7269:24	<b>Arar</b> 7213:14
<b>Almalki</b> 7252:17	7275:4 7286:17	7506:25 7515:15	7275:12 7413:1	7216:5,7,12,19,24
7252:18,21	7300:16 7336:15	7517:13 7534:20	7496:24 7509:14	7217:7 7218:9,17
7253:18 7274:11	7369:22	<b>answered</b> 7258:9	7510:6 7525:9	7219:2,10 7220:1
7275:19 7282:6,7	<b>Americans</b> 7253:17	7404:21 7480:16	<b>application</b> 7246:4	7224:23 7225:2
7283:19 7287:2,9	7293:1 7308:13	7507:15	7268:5,7,12	7225:21,23
7300:12 7334:22	7313:16 7316:6	<b>answering</b> 7513:12	7299:16 7504:4,5	7228:12,18
7353:5 7355:3	7407:14 7442:20	7533:2	7513:7	7229:9 7230:15
7356:25 7357:19	7520:24	<b>answers</b> 7292:3	<b>applications</b>	7233:12,14,25
7357:23 7358:1	<b>amount</b> 7394:24	<b>anticipate</b> 7222:21	7410:1	7234:23 7235:12
7362:21 7392:25	<b>analogous</b> 7440:3	<b>anti-terror</b> 7408:23	<b>applied</b> 7340:18	7236:1,3,12,20
7393:20 7403:5	<b>anchored</b> 7399:5	<b>anti-terrorism</b>	<b>apply</b> 7377:13	7237:19 7238:1
7423:25 7424:9	<b>and/or</b> 7402:6	7299:11,14	<b>appointment</b>	7240:11,24
7424:12,15,16,16	7410:10 7536:9	<b>anti-terrorist</b>	7232:1,5 7241:3	7241:3,25 7242:3
7424:17 7425:9	7536:12	7411:14	<b>appointments</b>	7244:7,20 7245:3
7425:11,13,18	<b>angry</b> 7234:4	<b>Antoine</b> 7317:12	7219:8	7245:15 7247:1,9
7427:2 7432:2,9	<b>Ann</b> 7242:1 7260:6	<b>anxious</b> 7379:4	<b>appraised</b> 7249:23	7249:14 7251:23
7432:22,24	7261:6,8 7280:24	7449:10	7275:5	7253:4,12,14
7433:8,20 7434:8	7283:9 7285:1	<b>anybody</b> 7222:2	<b>appreciate</b> 7368:14	7254:2,18,19
7448:17,18	7304:16,20	7224:23 7281:17	7399:13 7453:24	7256:13 7257:10
7468:16 7501:18	7305:8 7308:4,17	7409:9,9 7434:18	7504:12 7516:20	7258:2,8,18
7502:4 7503:15	7309:4,16,24	7439:12 7480:22	7532:21 7537:1	7259:8,16,21,22
7503:23 7504:1	7310:7 7311:19	7493:25 7517:21	<b>appreciated</b> 7463:2	7260:16 7261:9
7504:16 7505:3,6	7314:16 7318:25	7518:17 7519:9	<b>appreciation</b>	7263:24 7264:14
7506:1 7509:7	7330:22 7332:5	7521:19 7534:16	7255:4,7 7332:13	7265:25 7270:2
7512:8,13	7340:23 7341:22	<b>anyway</b> 7345:6	7380:8,18	7273:17 7274:9
7529:23 7531:13	7342:10 7358:10	7432:3	<b>apprehended</b>	7274:12,21
7532:21 7533:6	7373:21 7385:7	<b>apart</b> 7472:22	7521:20	7275:2,16,20,24
7534:4,15,24	7389:1 7411:10	<b>apologetic</b> 7530:20	<b>apprehending</b>	7276:8 7282:6,9
<b>Almalki's</b> 7252:22	7413:17 7415:21	<b>apologies</b> 7535:6	7520:24	7283:1 7286:15
7393:10 7424:4	7419:8 7420:11	<b>apologize</b> 7329:10	<b>apprised</b> 7217:15	7287:2,7,14
7425:15 7501:18	7423:14 7434:13	<b>apparent</b> 7323:1	7358:6	7288:4,8 7289:5
7532:19	7474:8 7489:20	7402:2	<b>approach</b> 7415:9	7290:23 7292:5,9
<b>aloof</b> 7317:17	7494:15 7517:4	<b>apparently</b> 7235:6	<b>approached</b>	7295:4 7296:15

7297:6 7298:3	7413:24 7414:6	7328:9,21 7329:2	7432:16	<b>assist</b> 7287:8
7303:3 7304:22	7415:23 7417:25	7329:5 7342:5	<b>articulate</b> 7380:21	7315:21 7330:20
7305:2,14,18,24	7419:3,5,17	7343:7,16	<b>articulated</b>	7343:23 7347:3
7307:3,12	7421:20 7423:15	7344:20 7349:9	7260:11 7326:8	7393:24 7394:25
7308:12 7310:18	7425:9,11 7429:8	7351:5 7352:8	7414:8 7498:5	7403:2 7425:14
7313:7,17	7429:24 7430:1,4	7366:10 7395:14	<b>Ashley</b> 7273:8	7441:21 7447:1
7314:23 7315:2,4	7430:8,22 7431:6	7397:6 7403:10	<b>aside</b> 7376:23	7448:10,20
7315:7,18 7316:7	7432:11 7433:20	7407:3 7412:1	<b>asked</b> 7222:13	7489:25 7508:15
7319:16,22	7435:7,21 7436:1	7439:4 7444:9,18	7248:5,9 7253:4	7522:19 7525:12
7322:8 7323:4	7436:14 7437:18	7478:15,17	7256:12,14,16,19	<b>assistance</b> 7304:2
7324:13 7325:1	7438:1,5 7445:13	7479:6,15,17	7256:22,24	7322:3 7329:11
7325:21 7326:5	7446:20 7448:11	7480:20 7490:5	7273:14 7282:18	7340:18 7440:19
7329:7 7331:24	7448:17,18	7518:16 7520:8	7282:20 7283:8	<b>assistant</b> 7262:18
7334:6,17	7449:20 7450:10	7521:18 7522:2,5	7292:3 7313:4	7265:3 7294:21
7338:11 7342:19	7450:17 7457:6,8	7522:19 7526:9	7318:15 7322:16	7298:5 7320:11
7344:6 7347:10	7457:9,17,25	7535:21 7536:15	7324:14 7333:13	7326:15 7465:14
7347:13,19	7458:4 7464:6	<b>area</b> 7216:9	7334:20 7336:2	7480:18
7348:19,22	7465:25 7467:4	7248:12 7291:2	7338:16 7339:1	<b>assistant's</b> 7218:19
7349:21 7350:6	7467:17 7468:19	7405:23 7420:20	7353:1 7357:18	<b>assisted</b> 7337:13
7350:19 7351:13	7468:25 7470:9	7450:23 7460:6	7370:9 7371:15	7509:12
7351:17 7352:15	7477:24 7479:23	7468:1 7526:5	7372:13 7398:25	<b>assisting</b> 7447:3
7353:5 7354:10	7482:1,5 7488:11	7532:17,22	7406:2,19	7475:4
7355:15 7356:24	7489:7,18	<b>areas</b> 7376:22	7411:11 7439:19	<b>associated</b> 7319:17
7357:1,16 7358:2	7490:22 7491:9	7450:2	7440:18 7449:18	7386:25
7361:7,12,19	7494:18 7495:13	<b>argument</b> 7450:24	7466:11 7480:19	<b>Association</b>
7362:2,14,17	7496:3,20 7497:2	7453:14 7455:16	7485:11 7508:20	7271:14
7363:25 7364:13	7497:17 7499:19	7455:17	7509:3 7519:23	<b>associations</b>
7373:16,24	7502:12,21	<b>arguments</b> 7455:2	7525:11,12	7339:19
7374:6 7378:11	7504:17 7505:13	<b>arose</b> 7249:19	<b>asking</b> 7248:25	<b>assume</b> 7224:23
7379:1,17,25	7505:25 7512:9	7399:12 7466:2	7265:9,11	7226:17 7248:23
7381:18 7382:21	7514:18,19	<b>arrange</b> 7245:11	7279:17 7330:15	7252:15 7324:12
7383:3,13,20	7515:1,6,23	7306:17 7363:5	7332:15 7336:12	7362:12 7459:20
7384:3,9 7385:12	7516:17 7517:3,9	7502:19	7441:13 7446:18	7466:7
7385:14 7387:1	7517:20,23	<b>arranged</b> 7322:18	7476:13 7484:4	<b>assumed</b> 7272:10
7387:18 7388:1	7518:2,5,8 7519:7	<b>arrangement</b>	7533:24	7323:14 7402:12
7388:20 7389:20	7521:6 7523:24	7301:20	<b>asseoir</b> 7212:6	7404:22 7438:3
7389:23 7390:23	7524:4 7525:24	<b>arranging</b> 7240:1	7280:4 7360:13	<b>assuming</b> 7462:19
7391:1,5,10	7527:1 7528:24	<b>arrest</b> 7310:25	7398:18	7526:19
7392:9 7394:2	7531:8 7536:4	7315:6 7342:22	<b>assert</b> 7226:23	<b>assumption</b> 7272:8
7395:11 7396:18	<b>Arar's</b> 7212:13	7415:2 7422:4	7227:19 7454:23	7363:12 7467:12
7397:3,12,18,20	7231:18 7234:16	7488:10	7455:14 7459:7	7468:2,5
7398:24 7399:8	7235:7,10 7237:4	<b>arrested</b> 7299:19	<b>asserting</b> 7227:5	<b>assurance</b> 7462:7
7400:7 7401:8,21	7240:12,21	7488:14	<b>assertion</b> 7417:13	<b>attached</b> 7368:16
7401:24 7402:16	7255:4,7 7256:5,9	<b>arrival</b> 7233:23	<b>assertions</b> 7410:24	7494:14 7495:12
7403:4,20 7404:7	7261:17 7276:19	<b>arrive</b> 7322:1	<b>asserts</b> 7452:7	<b>attachment</b>
7404:17 7405:20	7284:13 7293:25	<b>arrived</b> 7234:23	<b>assessing</b> 7406:12	7242:15
7406:2,6 7407:5	7303:2 7317:18	7469:7	<b>assigned</b> 7281:2	<b>attempt</b> 7271:3
7410:18 7411:3,7	7317:23 7318:9	<b>arriving</b> 7249:21	7395:10,12	7308:11 7330:18
7411:17 7413:20	7318:15 7323:17	<b>arrow</b> 7361:2	7474:17	7514:22 7515:1

**attempted** 7250:24  
7258:11 7514:14  
**attempting**  
7273:12 7330:1  
7331:13,15  
7482:17 7525:21  
**attempts** 7271:6  
7312:12  
**attend** 7253:1  
7259:22  
**attendance** 7226:2  
7392:8  
**attended** 7216:24  
7233:13 7256:5  
7258:14 7435:18  
**attention** 7272:14  
7392:13 7434:4  
7469:24  
**attitude** 7255:4,8  
**attorney** 7212:22  
7213:10 7272:5  
7439:12  
**audio** 7414:10  
7491:21,25  
7497:3,8,14  
**audiotape** 7496:13  
**August** 7374:3,23  
7375:9,10,11  
7456:16  
**auspices** 7455:7  
**author** 7528:9  
**authoring** 7528:7  
**authorities** 7275:4  
7286:17 7300:17  
7300:18 7334:4  
7335:17 7338:20  
7372:21,22  
7392:17 7406:17  
7449:19 7493:5  
7525:14  
**authority** 7334:3  
7528:12  
**authorization**  
7454:9  
**automatically**  
7453:11  
**available** 7377:17  
7385:15 7386:17  
7422:14 7461:22

7474:6 7479:25  
**awaiting** 7261:7  
7318:23  
**aware** 7216:21  
7220:8 7275:2  
7297:11 7300:1,1  
7300:5 7315:22  
7482:22 7489:4  
7505:12 7520:1  
7533:6  
**awareness** 7300:22  
**A-O** 7276:17  
**A-OCanada**  
7227:12 7233:9  
7234:14 7235:6  
7237:4 7267:15  
7270:11,15  
7273:25 7284:11  
7304:14 7319:18  
7321:1 7340:11  
7341:8 7382:18  
7382:18 7388:1  
7401:20 7529:25  
**a.m** 7212:3 7230:18  
7251:22 7262:12  
7279:24 7280:1  
7404:11 7537:17

---

### B

**B** 7441:19 7442:1,3  
**baby** 7333:19  
**back** 7216:4 7226:3  
7228:7 7230:12  
7230:23 7231:15  
7234:23 7244:13  
7248:2 7249:4  
7250:2,6,7,8,20  
7251:25 7252:2  
7256:23 7260:3,4  
7261:10,12  
7270:15,17  
7273:18 7278:16  
7290:20 7293:15  
7297:12 7306:15  
7306:17,18,19,20  
7307:17,22  
7308:2,17,22  
7309:4 7322:7  
7326:11 7332:20

7333:21,22,24  
7336:21 7337:12  
7337:16 7361:1,3  
7364:25 7373:21  
7375:25 7379:4  
7381:24 7388:21  
7397:15 7402:23  
7406:4 7408:13  
7408:17 7409:15  
7409:23 7410:3,5  
7413:15 7424:25  
7426:3,9,22  
7427:10 7429:3  
7434:12 7439:10  
7448:18,25  
7449:8 7460:19  
7462:25 7464:21  
7466:3 7475:2  
7486:5 7489:6,13  
7527:10  
**background**  
7245:18,21  
7247:13,14  
7254:10 7291:1,3  
7296:14 7299:21  
7299:24 7423:10  
7493:15,18  
7518:23 7520:19  
**bad** 7404:7  
**bag** 7250:9  
**bail** 7377:5  
7448:23  
**banking** 7408:16  
**banks** 7439:6  
**Bar** 7215:6,19,25  
**Baracat** 7408:9  
**base** 7410:25  
**based** 7266:9,21  
7277:15 7299:6  
7307:25 7390:20  
7393:19 7419:5  
7443:21 7510:8  
7515:14 7517:13  
**basically** 7376:4  
7382:16 7391:3  
7447:11  
**basis** 7220:12  
7278:4,15 7348:4  
7350:8 7362:7,10

7417:12 7422:10  
7422:15 7423:15  
7423:17 7431:7  
7470:14 7473:23  
7502:19 7514:8  
**bear** 7429:4  
**bearing** 7446:22  
**beaten** 7466:13  
**before-last** 7382:12  
**beg** 7338:15  
7375:10  
**began** 7216:19  
7504:1 7506:25  
**beginning** 7233:3  
7332:25 7333:4  
7406:4 7505:15  
**begins** 7361:6  
7523:15  
**behalf** 7227:8,18  
7235:7 7237:4  
7240:13 7245:1  
7305:9 7425:13  
7441:13  
**belief** 7231:6  
7385:9  
**believe** 7214:22  
7218:1 7228:3,16  
7231:8,23 7265:2  
7266:6,14,15  
7269:12 7270:12  
7271:8 7276:22  
7283:9 7284:16  
7285:14 7287:14  
7287:24 7291:21  
7317:25 7319:1  
7320:2 7337:1  
7340:5 7341:19  
7344:6,15,25  
7350:15,16  
7351:23 7354:7  
7356:12 7361:16  
7362:25 7373:17  
7374:5,18  
7389:20 7391:11  
7391:24 7392:18  
7393:16 7421:20  
7424:18 7425:23  
7457:7,10,13  
7458:5 7460:10

7460:25 7467:23  
7495:23 7496:11  
7509:1 7510:13  
7510:15 7511:7  
7533:20 7534:23  
**believed** 7352:21  
7386:25 7470:18  
**Bell** 7460:23,25  
**belonging** 7322:10  
**belongings** 7240:18  
**belongs** 7249:2  
**benefit** 7213:10  
7508:5,15  
**Beruit** 7316:10,15  
**best** 7299:8  
7344:21 7349:19  
7353:10 7354:24  
7376:2 7377:11  
7402:16 7428:15  
7435:14 7472:11  
7485:6 7499:19  
7526:9  
**better** 7344:2  
7365:16 7529:4  
**beyond** 7224:14  
7267:8,18 7413:5  
7428:3 7466:13  
**big** 7430:15  
**Bill** 7368:25  
**billing** 7229:22  
7355:22  
**bind** 7300:16,17  
**binder** 7320:14  
**birth** 7336:20  
**bit** 7245:21  
7247:12 7304:23  
7399:4 7421:1  
7440:8 7450:3  
7451:16 7452:19  
7502:9 7516:23  
7523:25 7530:16  
7531:14  
**black** 7243:23  
7244:5,5  
**blacked** 7338:7  
7389:5  
**blacked-out** 7264:3  
**blah** 7415:2  
**Blank** 7429:24



<b>blind</b> 7332:18	7486:10,13,16,21	7339:24 7351:21	7266:25 7411:4	7291:14 7296:4,6
<b>blocked</b> 7241:15	7486:25 7487:4,8	7354:7 7357:6	7516:15	7296:13 7298:18
<b>boardroom</b>	7487:12,21,25	7365:12 7429:21	<b>bullets</b> 7239:4	7301:15 7304:16
7518:11	7488:3,8,13,17,21	7460:9,9 7535:11	<b>bump</b> 7269:19	7304:18 7307:21
<b>bogus</b> 7440:14	7488:25 7489:2,5	<b>briefly</b> 7225:17	<b>bumping</b> 7279:12	7308:22 7310:7
<b>bombing</b> 7352:18	7489:9,11,14,17	7258:22	7330:2	7311:14 7318:21
<b>bono</b> 7394:7	7489:22 7490:6	<b>bright</b> 7377:24	<b>burden</b> 7446:22	7318:24 7330:11
7439:1	7490:13,17,19	<b>bring</b> 7232:6,11,12	<b>business</b> 7225:21	7335:20 7339:9
<b>book</b> 7214:21,25	7491:2,13,18,23	7238:7,24	7225:22 7233:21	7339:12 7354:15
7217:22 7218:4	7492:1,3,18,21	7255:12,14,18	7239:22 7246:12	7354:22 7358:9
7219:8,13 7232:7	7493:1,7,12,24	7265:15 7274:3,3	7248:18 7257:2	7358:11,16,19
7232:8 7265:5	7494:1,6 7495:8	7275:8 7287:10	7258:23 7316:15	7360:22 7363:19
7268:8 7384:23	7495:15,25	7312:9 7314:3	7335:6,6,9,10,14	7364:5 7366:5,22
7384:24 7477:3	7496:6,13,15,24	7317:7 7319:10	7335:21,25	7367:12 7376:7
<b>books</b> 7214:2	7497:6,13,18,22	7320:18 7331:4	7336:5 7409:5	7384:7 7390:20
7398:20 7477:5	7499:2,16,22,24	7341:6 7355:24	<b>businesses</b> 7512:21	7394:21 7404:20
<b>boom</b> 7405:8	7500:6,14,18,23	7360:15 7365:9	<b>busy</b> 7257:19	7405:9,20
<b>border</b> 7402:4	7501:2,8,14,25	7369:15 7371:21	7463:1	7410:18 7419:8
<b>borne</b> 7223:11	7502:3,8,25	7372:8,9 7377:5	<b>button</b> 7460:19	7429:13 7462:25
<b>Boston</b> 7245:23	7503:3,8,11,14,17	7382:22 7391:23		7465:17 7491:4
7248:1 7299:17	7503:21,25	7395:22 7402:24	<b>C</b>	7516:18,24
7408:9 7409:14	7504:11,19,23	7424:25 7469:24	<b>C</b> 7442:1,3	7523:16,20
<b>bottom</b> 7229:8	7505:1,7,10,12,16	<b>bringing</b> 7410:24	<b>Cabana</b> 7266:25	7527:15
7230:13 7232:20	7505:18,20	<b>brings</b> 7304:10	7274:6 7280:24	<b>Callaghan</b> 7281:8
7241:13,21	7506:4,12	<b>broad</b> 7494:9	7285:14 7317:9	7281:11,12,13
7279:21 7290:20	7507:23 7508:1	7518:22	7317:10 7321:3	7285:11 7341:18
7320:22 7327:19	7508:14,18	<b>broadcast</b> 7456:8	7327:3,13,17	7356:17 7434:14
<b>boundaries</b> 7418:9	7509:8,13,20	<b>Broadcasting</b>	7328:5 7329:25	7472:20 7528:15
<b>box</b> 7271:22	7510:5,17,23	7456:6	7341:18 7342:11	<b>called</b> 7222:14
7365:24	7511:3,5,9,14,18	<b>Brooklyn</b> 7271:20	7356:13 7357:13	7230:16 7234:2
<b>Boxall</b> 7460:12,14	7511:25	7271:22 7272:6,7	7357:14 7428:10	7235:6 7237:3
7460:17,20	<b>Boxall's</b> 7481:15	7272:14 7274:24	7434:13 7458:15	7246:10 7251:21
7461:6 7472:10	<b>Branch</b> 7425:20	7276:10	7472:19,23	7251:24,25
7472:14,22,25	7467:6,8	<b>brother</b> 7252:23	7528:15 7531:10	7252:1,2 7257:21
7473:3,7,11,16,18	<b>breach</b> 7362:16	7299:18 7424:17	<b>Cabana's</b> 7279:13	7258:2,8 7266:13
7473:25 7474:3	7453:4	7501:24,25	7319:5,9 7341:4	7273:18 7288:13
7474:15,19	<b>breached</b> 7453:8	<b>brotherhood</b>	<b>cajole</b> 7420:12	7290:17,20
7475:3,8,19,21,25	<b>break</b> 7279:8	7361:17,20	<b>calculus</b> 7431:2	7291:12 7296:14
7476:3,12,16,22	7325:23 7347:25	7364:16 7438:21	<b>call</b> 7225:23 7226:3	7308:17,19
7476:25 7477:4	7349:6 7359:24	7440:7,9	7228:16 7230:2,3	7309:4 7312:7
7477:11,14,19,22	7381:7 7398:6	<b>brought</b> 7334:12	7230:8 7231:18	7333:12 7367:11
7478:3,6,11,20	7460:3	7369:13 7387:23	7234:10 7242:1	7375:17 7382:25
7479:3,8,14	<b>Brian</b> 7395:6	7409:11 7513:8	7244:15 7249:23	7391:19,20
7480:1,9,13	7396:4	7514:5	7249:23 7250:2	7404:10 7408:9
7481:22 7482:4,8	<b>brief</b> 7245:18	<b>Buffam</b> 7218:23	7259:20 7262:13	7410:13 7427:10
7482:16,21,25	7251:8 7253:12	7219:24 7222:1	7263:23 7264:1,5	7517:4
7483:4,9,18,22	7260:12 7290:21	7222:15 7225:20	7266:4,9 7272:18	<b>caller</b> 7251:23
7484:2,7,13,21,24	7297:6 7309:23	7230:23 7251:11	7277:19 7283:3,9	<b>calling</b> 7225:1,10
7485:11,16	7326:16 7331:11	7251:12,13,14	7288:15,24	7231:15 7296:3

7330:22 7420:7 7427:8 <b>calls</b> 7262:5 7273:2 7273:19 7366:9 7410:11 7420:3,6 7427:6 <b>call-back</b> 7264:10 <b>calm</b> 7250:1 <b>camera</b> 7350:3 7463:13,15 <b>camp</b> 7352:21 7361:13 7438:2 7457:9 <b>campaign</b> 7353:22 7375:24 7376:25 <b>Canada</b> 7226:17 7234:11,24 7236:8 7248:2 7249:5 7251:23 7267:13 7276:17 7297:11 7299:12 7303:5 7305:15 7307:22 7310:24 7315:5,22 7324:24 7325:3 7328:11 7329:9 7339:2 7347:11 7357:16,20 7363:2 7372:7 7377:4,19 7378:11 7381:24 7407:17 7408:14 7408:19 7421:22 7449:11 7456:15 7488:15 7500:10 7527:2 <b>Canadian</b> 7215:24 7218:20 7288:6 7299:14 7311:2 7336:25 7338:20 7362:12,13 7370:3 7378:5 7392:16,17 7393:4,11,12,23 7408:23 7424:5 7426:1,5,8 7449:22 7456:6 7483:15 7487:20 7501:21 7524:3	7532:20 <b>Canadians</b> 7323:7 7323:16 7329:17 7442:18 7449:12 <b>cancelled</b> 7259:12 <b>candid</b> 7457:21 7474:25 <b>canvass</b> 7450:2 <b>canvassed</b> 7461:5 7463:15 <b>capability</b> 7401:6 <b>capacity</b> 7220:5 7222:25 7413:19 <b>capture</b> 7399:15 7401:3 7467:1 <b>card</b> 7225:21,22 7226:3 7231:9 7233:21 7251:11 7251:13 7257:3 7258:23 7335:9 7335:10,21,25 7337:4 7355:11 7516:15 <b>cards</b> 7217:2 7248:16,17,18,19 7336:23 7355:9 7410:10 <b>care</b> 7312:25 <b>careful</b> 7345:23 7422:19 <b>carefully</b> 7251:5 7269:4 7337:6 7530:14 <b>cares</b> 7438:7 <b>carry</b> 7245:1 7269:19 7295:23 7351:12 7420:4 7457:4 7463:21 <b>carrying</b> 7269:13 7297:13 <b>case</b> 7219:24 7222:1 7225:8 7227:3 7245:3,13 7291:25 7298:18 7300:20 7302:21 7302:22 7305:16 7334:8 7335:2 7359:3 7389:19 7395:14 7402:10	7407:3 7413:7 7417:11 7425:10 7425:11 7442:19 7452:19 7457:7 7459:21 7482:17 7482:22 7497:21 7498:1 7507:13 7521:18,19 7527:22 7529:12 <b>cases</b> 7285:6 7291:2 7292:12 7292:23 7387:7 7390:18 7416:7 7432:3 7454:8 7482:12 7527:19 7532:2,8,13 <b>cash</b> 7408:12 <b>categorically</b> 7318:14 <b>catholic</b> 7346:11 <b>Catterall</b> 7441:2 <b>cause</b> 7455:2 7487:19 <b>caused</b> 7443:17 7490:25 <b>caution</b> 7414:16,17 7414:24 7415:1 7492:5 7495:2,5 7518:6 <b>cautious</b> 7493:2 <b>CAVALLUZZO</b> 7338:19 <b>caveat</b> 7532:9 <b>CBC</b> 7295:7 7296:18 7297:3 7297:20 7451:11 <b>cell</b> 7219:15 7388:15 7420:3 7466:16 <b>cent</b> 7250:12,15 <b>Center</b> 7272:20 7286:18 7352:18 <b>Centre</b> 7291:9 7292:10,20 <b>certain</b> 7219:1 7238:21 7245:5,9 7271:3 7273:15 7273:16 7277:6 7280:9 7297:11	7303:8 7307:14 7307:24 7310:3 7326:3 7357:8 7375:25 7390:6 7391:12 7410:22 7412:17 7413:2 7413:11 7415:12 7416:12 7435:11 7439:2 7442:12 7449:2 7454:8,17 7457:22 7464:19 7475:10 7493:19 7504:13 7513:13 7529:16 7536:10 <b>certainly</b> 7227:4 7237:21 7244:2 7268:11 7283:15 7286:21 7310:15 7326:9 7343:25 7370:20 7401:14 7402:12 7410:16 7436:11 7446:10 7448:2 7453:1 7455:10 7462:6 7465:2 7471:9 7473:19 7475:3 7475:21 7478:22 7480:1,2 7481:22 7481:24 7484:7 7488:4 7492:22 7500:6,24 7502:25 7503:8 7503:23 7506:4 7511:18,22 7513:22 7524:25 7529:17 <b>certainty</b> 7440:13 <b>certificates</b> 7336:20 <b>cetera</b> 7390:19 7518:12 7527:4 <b>chain</b> 7304:10 7317:5 7320:16 <b>Chair's</b> 7396:17 7397:2 <b>challenge</b> 7409:12 <b>change</b> 7257:23 7419:3 7529:10 <b>changed</b> 7340:9	<b>changes</b> 7338:11 7338:12 <b>changing</b> 7391:18 <b>channel</b> 7321:7 <b>channels</b> 7303:10 7306:10 7329:13 7343:21 <b>charge</b> 7250:14 7272:5 7287:2 7298:16 7317:10 7321:2 7340:14 7340:21 7357:16 7357:19 7362:7 7394:2,6 7415:2 7417:12 7421:25 7422:2 7423:15 7423:17 7487:1 7493:25 <b>charged</b> 7245:2 7250:12,15 7338:24 7362:3 7417:11 7421:21 7528:24 7529:6 <b>charges</b> 7249:15 7299:18 7338:13 7338:15,17 7339:2 7410:1 7498:15 <b>charging</b> 7422:22 <b>Charter</b> 7449:5,6 <b>cheque</b> 7395:1 <b>Chief</b> 7395:5 7513:8 <b>child</b> 7322:15 <b>children</b> 7322:11 7470:18 <b>child's</b> 7336:19 <b>choose</b> 7414:19 <b>chooses</b> 7222:2 7224:24 <b>choosing</b> 7497:14 <b>chose</b> 7494:7 <b>chosen</b> 7494:7 <b>chronologically</b> 7311:11 <b>chronology</b> 7228:24 7260:3 7315:14 7371:9 7371:15
---	--	---	---	---

**chuckled** 7474:14  
**chunk** 7356:24  
**CID** 7320:12  
 7321:7  
**circled** 7263:15  
 7338:7  
**circulated** 7220:1  
**circumspect**  
 7440:2  
**circumstance**  
 7231:5 7446:20  
 7482:20  
**circumstances**  
 7230:25 7254:18  
 7278:7 7286:16  
 7296:4 7349:16  
 7351:2 7406:13  
 7411:22 7413:3  
 7414:6 7438:9  
 7439:21 7467:5  
 7520:9  
**citizen** 7311:7  
 7449:22 7487:20  
**City** 7261:18  
 7262:20 7263:15  
 7263:25 7264:19  
 7264:22 7272:15  
 7273:4 7274:12  
 7274:24 7276:10  
 7282:10 7283:17  
 7286:17 7291:4  
 7293:25 7294:11  
**civil** 7292:12  
 7307:24 7381:21  
**claim** 7220:9  
 7221:5 7224:7,10  
 7224:13 7226:1,4  
 7226:17,18,20,23  
 7227:5,19 7250:6  
 7267:13,19  
 7268:2,3,14,19  
 7277:14,25  
 7278:4,6,8,19  
 7279:2 7440:14  
 7451:7,17,22  
 7452:8,10,14,23  
 7453:9,20 7455:7  
 7455:11,14  
 7459:7 7506:17

7506:20 7507:8  
**claimed** 7364:24  
**claims** 7227:14,15  
 7349:24 7410:21  
**Clair** 7302:10  
 7310:1 7313:3,4  
 7315:20 7316:4  
 7316:13 7326:6  
 7441:24 7525:4  
**Clarence** 7302:13  
**clarified** 7337:7  
**clarify** 7226:4  
 7243:19 7267:6  
 7320:6 7327:21  
 7431:17 7436:10  
 7454:1 7458:19  
**cleaning** 7409:4  
**clear** 7234:3  
 7240:10 7277:13  
 7283:15 7294:6  
 7294:14 7307:2  
 7307:11 7384:11  
 7405:3 7406:7  
 7416:9 7426:17  
 7436:20 7455:8  
 7470:8  
**clearance** 7453:2  
**cleared** 7322:4,19  
**clearly** 7231:17  
 7350:2 7482:21  
 7533:16  
**clerk** 7242:6  
 7273:11 7480:23  
**Clerk's** 7506:17  
**client** 7223:20,22  
 7223:24 7224:1  
 7230:1,1 7231:14  
 7234:20 7245:2  
 7245:11 7253:1  
 7254:6 7259:7  
 7260:16 7270:2  
 7274:23 7286:19  
 7305:21 7306:21  
 7306:25 7307:12  
 7334:8,10  
 7347:13,18  
 7349:10,15  
 7350:11 7355:14  
 7388:1 7392:10

7404:9 7406:13  
 7406:19 7407:15  
 7411:22 7412:9  
 7415:11 7416:5,8  
 7418:18 7426:15  
 7439:24 7440:4  
 7477:8 7481:15  
 7485:1 7490:9,16  
 7490:17 7498:23  
 7502:17 7529:4  
 7529:23  
**clients** 7216:15  
 7217:10 7220:24  
 7223:2 7238:14  
 7239:14,22  
 7240:16 7241:18  
 7241:19 7254:17  
 7254:23 7274:14  
 7282:4 7307:8  
 7351:16 7384:4  
 7390:5 7410:22  
 7418:13 7420:1  
 7461:16 7485:5  
 7489:12 7490:9  
 7504:13 7515:17  
 7520:20 7528:2  
**client's** 7485:1  
**clue** 7412:6  
**Coast** 7409:4  
**code** 7230:6 7374:6  
 7423:3 7498:10  
**codes** 7229:17  
**coincided** 7233:10  
**coincidence** 7405:7  
**Colin** 7325:1  
**collaboration**  
 7243:8 7270:25  
 7271:1 7305:21  
 7397:6  
**collection** 7277:1  
**colour** 7243:20  
**Columbia** 7292:22  
**column** 7376:9  
**come** 7218:7  
 7226:9 7260:2,20  
 7279:20 7292:23  
 7298:10 7299:6  
 7300:8 7307:17  
 7311:22 7332:20

7333:24 7335:11  
 7335:19 7336:13  
 7346:15 7387:13  
 7392:13 7394:1  
 7408:12 7410:8  
 7419:17 7422:16  
 7439:17 7452:9  
 7456:25 7458:15  
 7463:4 7469:9  
 7472:11 7500:2  
 7507:24 7518:19  
 7518:22  
**comes** 7311:10  
 7438:8 7507:7  
**comfort** 7267:17  
**comfortable**  
 7455:4 7461:16  
**coming** 7219:11,16  
 7228:7,12  
 7230:23 7245:15  
 7248:2 7249:4  
 7256:23 7260:4  
 7293:15 7294:16  
 7294:21 7306:6  
 7308:2 7318:7  
 7332:4 7337:11  
 7363:13 7365:3  
 7382:17 7393:20  
 7395:2 7396:12  
 7411:2 7452:12  
 7537:2  
**comment** 7237:14  
 7277:6 7298:6  
 7311:5 7319:20  
 7328:20 7337:12  
 7359:9,14  
 7361:24 7364:10  
 7388:5 7438:13  
 7443:9,11,18  
 7444:5,8 7449:7,7  
 7453:18 7466:10  
 7511:8 7524:1  
**comments** 7233:2  
 7237:6 7284:18  
 7317:19 7359:12  
 7365:3 7368:21  
 7370:12 7371:10  
 7373:13 7435:14  
 7471:6

**Commission**  
 7220:8,23  
 7221:17 7269:3  
 7435:3 7455:8  
 7457:1 7508:21  
 7509:10  
**Commissioner**  
 7212:8,9,11,18  
 7213:4,7,9,22  
 7214:12 7216:18  
 7221:1,10,21  
 7222:13 7223:12  
 7223:25 7224:5  
 7224:22 7225:17  
 7225:18 7226:7  
 7226:13,14,22  
 7227:2,6,7,16,22  
 7227:23 7242:17  
 7243:5,16 7244:3  
 7266:20 7267:3,6  
 7267:25 7268:24  
 7269:9,13,18  
 7271:10,21  
 7272:3 7277:8,12  
 7277:18,23  
 7279:11,15,19  
 7280:5,12  
 7289:16,17,24  
 7290:5 7301:13  
 7312:3 7316:18  
 7320:11 7322:6  
 7327:11 7345:20  
 7345:24 7346:5,9  
 7346:18 7347:5,8  
 7347:15,24  
 7348:11,15  
 7349:1,4,12,14,20  
 7350:7,14 7351:1  
 7351:7 7359:23  
 7360:1,4 7368:18  
 7374:24 7375:3  
 7376:11,14  
 7381:6 7389:4  
 7398:2,4,5,9,20  
 7433:24 7445:4,7  
 7450:24,25  
 7451:6,15 7452:4  
 7455:15,19,25  
 7456:20,23

7457:3,23	7376:21 7395:13	7282:12 7290:22	7413:23 7414:2	<b>confirm</b> 7258:3
7458:11,14	7396:18 7397:2,6	7325:18,19	7415:16,19,25	7293:3,12
7459:4,5,16,23	7487:18	7326:20 7330:4	7416:4 7419:10	7328:25 7329:7
7460:4,11,15,18	<b>complaints</b>	7333:5 7347:15	7420:11,13,16	7339:4 7444:16
7460:22 7461:2,8	7395:11 7412:14	7352:7 7353:3	7437:5 7489:15	7445:15 7452:1
7461:15,23	<b>complete</b> 7240:6	7387:15 7401:9	7489:21,23	7470:7 7478:13
7462:2,14,21,24	7254:3,5 7384:21	7435:13 7446:11	7490:21,23	<b>confirmed</b> 7276:14
7463:5,8 7472:2	7387:22 7473:19	7504:23 7518:4	7491:4,5 7493:4	7284:9
7472:10 7480:18	7483:6	<b>concerning</b>	7495:17 7496:22	<b>confirming</b>
7481:3,7 7494:12	<b>completed</b> 7323:5	7253:20 7255:3	7496:25 7499:13	7301:25 7302:7
7494:16,23	7323:18	7259:15 7260:8	7499:17,19	<b>confirms</b> 7240:15
7506:14 7507:20	<b>completely</b> 7420:20	7262:3 7289:5	7517:18 7518:1,8	<b>conflict</b> 7504:15,24
7507:24 7512:2	<b>completes</b> 7537:8	7302:24 7304:22	7518:15	7505:21 7506:3
7513:3,17,24	<b>complicit</b> 7275:22	7308:21 7320:16	<b>conduct</b> 7220:11	7512:7
7514:6 7535:1,10	7426:21	7337:25 7357:1	7255:4 7395:15	<b>connect</b> 7433:3
7536:21,25	<b>component</b>	7361:4 7364:5	7423:8 7429:8	7434:6
7537:4,7,11,12	7418:14	7387:25 7389:23	7450:18	<b>connected</b> 7522:21
<b>commit</b> 7390:24	<b>composed</b> 7435:3	7391:24 7394:2	<b>conducted</b> 7236:8	<b>connection</b> 7319:22
<b>committed</b> 7422:16	<b>comprehensive</b>	7443:19 7479:6	7348:3 7514:14	7362:22 7433:4
<b>committee</b> 7290:16	7479:19	7523:24	7514:15	7515:6 7517:16
7376:18,19	<b>computer</b> 7239:14	<b>concerns</b> 7238:13	<b>conducting</b>	<b>connections</b>
7427:13 7480:19	7249:1 7250:20	7260:25 7267:12	7457:17	7362:23 7433:6,9
7506:19 7507:2	7254:13 7311:3	7267:13 7274:10	<b>conference</b> 7356:4	7434:7
7507:12 7530:9	7357:4 7400:10	7275:18 7307:25	7374:7 7379:17	<b>connect/connecti...</b>
<b>committees</b> 7378:2	7400:21	7331:21 7356:23	<b>conferred</b> 7240:23	7433:19
<b>common</b> 7215:10	<b>computerized</b>	7358:19 7363:19	<b>Confession</b>	<b>consensus</b> 7467:1
7336:8 7515:12	7229:21 7355:22	7367:4 7378:9	7346:10	<b>consent</b> 7238:20
<b>communicate</b>	<b>computers</b> 7240:18	7402:24 7423:23	<b>confessional</b>	7414:6
7232:4 7264:16	<b>concede</b> 7310:20	7427:22 7443:17	7346:16	<b>consider</b> 7269:4
7534:14	7529:17	7449:23 7535:14	<b>confidence</b> 7222:8	7336:7 7370:21
<b>communicated</b>	<b>conceivable</b> 7454:7	7535:17	7223:17 7473:19	7406:16 7413:6
7270:10	<b>concept</b> 7260:13	<b>conclude</b> 7422:15	7473:23	<b>considerable</b>
<b>communication</b>	7346:11 7454:2	7428:21 7468:14	<b>confidences</b>	7473:1
7246:15 7446:22	<b>concern</b> 7255:13	<b>conclusion</b> 7402:7	7346:23	<b>consideration</b>
<b>communications</b>	7266:10 7269:8	<b>conclusions</b>	<b>confidential</b>	7430:3
7212:16 7294:14	7275:21 7298:1	7464:22	7222:10 7268:8	<b>considered</b> 7336:9
7400:2 7470:4	7300:13 7308:18	<b>concordance</b>	7285:25 7349:1	7503:6 7526:1
<b>community</b>	7326:4 7346:7,20	7213:19	7353:2 7433:17	<b>considering</b> 7246:5
7217:12 7300:3	7347:23 7353:3	<b>condition</b> 7490:3	7458:9	7319:15
7501:12	7382:16 7393:19	7493:8 7494:14	<b>confidentiality</b>	<b>consistency</b>
<b>companies</b> 7246:16	7401:14,21	7494:17,21,22,24	7220:9 7221:5	7323:22
7246:17 7335:5	7403:21 7405:6	7494:25 7497:20	7222:4,6,15	<b>consistent</b> 7387:16
<b>company</b> 7245:24	7425:5 7443:3	7499:3 7517:23	7226:1 7277:15	<b>constantly</b> 7330:2
7246:6,8,11	7449:9 7465:13	7518:3	7348:8 7349:24	7410:13 7427:7
7249:2 7409:3	7476:4,8 7518:9	<b>conditions</b> 7238:21	7451:22 7452:8	7427:10
<b>compare</b> 7323:20	7519:11	7238:23,25	7452:23 7453:4,8	<b>constitutional</b>
<b>compared</b> 7463:6	<b>concerned</b> 7236:3	7239:1 7260:9,11	7453:15 7454:3	7291:10 7292:11
<b>compelling</b> 7267:1	7264:15 7265:24	7306:24 7307:5	7454:24	7409:11 7416:23
<b>complaint</b> 7376:15	7267:24 7274:14	7307:14 7412:17	<b>confined</b> 7432:24	7416:25

<b>construed</b> 7220:6 7220:18 7222:10	7496:18	7288:22 7290:21 7298:14 7321:14 7321:18,24 7326:1 7330:12 7331:11 7332:23 7333:5,9 7337:24 7338:5 7340:16 7355:1 7360:19 7361:5,6 7363:7 7364:2,9 7365:6 7367:18 7369:3 7371:12 7384:10 7390:11 7391:4 7399:15 7405:8 7406:8 7411:10 7412:4 7437:15 7458:3 7459:3 7464:3,17 7468:24 7508:10 7511:2	7425:8 7426:4,19 7427:22 7428:4 7429:25 7529:24 <b>cooperated</b> 7456:9 <b>cooperation</b> 7431:3 7448:13 <b>coordinate</b> 7320:7 <b>coordinates</b> 7219:1 7245:17 7271:20 7536:10 <b>copies</b> 7250:18 <b>copy</b> 7321:5 7389:5 7396:3 7436:15 7458:25 <b>Corcoran</b> 7281:6 7285:4 7341:18 7356:16 7357:14 7389:11 7434:13 7472:19 7511:8 7528:15 <b>Corcoran's</b> 7285:8 <b>core</b> 7283:20 <b>corner</b> 7229:8 7275:12 <b>Corporal</b> 7222:14 7225:20 7251:14 7411:3 <b>Corporation</b> 7456:6 <b>correct</b> 7215:8,12 7215:21 7217:18 7226:6 7227:1,21 7228:20 7232:23 7268:4 7277:17 7290:7 7301:21 7302:11 7333:7 7338:8 7348:5 7379:13 7385:22 7402:22 7414:12 7415:4 7478:2 7484:1 7492:19 7494:1,19 7506:10 7512:10 7512:23 7521:2 7521:11 7524:16 7524:17 7529:25 7530:1,4 <b>correctly</b> 7264:4 <b>correspond</b>	7309:16 <b>correspondence</b> 7392:14 <b>corroboration</b> 7324:3 <b>counsel</b> 7220:5,8 7220:18,22,23,23 7222:12,25 7224:16 7235:15 7242:1 7259:23 7266:22 7274:8 7275:1,16 7276:12 7280:6 7280:25,25 7281:3 7285:2 7307:24,24 7342:12 7348:23 7349:11,12,15 7350:12 7351:5 7381:18,21,22 7382:2 7391:7 7405:12 7406:11 7407:17 7409:13 7413:10 7415:6 7417:14,16 7418:25 7427:14 7435:4 7439:1 7446:19 7455:8 7473:5,20 7474:17,21,25 7475:4,13,17 7479:6 7492:22 7493:1 7494:8 7500:9 7503:7,9 7503:12 7508:21 7508:25 7532:12 <b>counsels</b> 7446:16 <b>counted</b> 7336:23 7337:3 <b>counterparts</b> 7435:20 <b>counterproductive</b> 7353:13 <b>countries</b> 7274:20 7276:3 7284:3 7326:10 7520:18 <b>country</b> 7334:2 7337:11 7456:3 7485:8 7490:12
<b>consult</b> 7294:10	7403:15 7407:18			
<b>consular</b> 7292:8 7294:7 7295:5 7296:17 7322:24 7323:2 7324:8 7332:2 7338:10 7363:13 7439:15 7441:6 7466:2,14 7467:16 7524:3 7526:6 7527:3 7533:7 7534:4	7428:16 7494:19 7526:3 <b>contents</b> 7242:17 7253:25 7285:22 7290:18 7303:17 7324:3 7379:5 7402:5 7534:17			
<b>consular-type</b> 7532:13	<b>context</b> 7213:15 7216:17 7222:9 7285:1 7299:20 7313:19 7321:17 7364:7 7410:7,17 7413:9,23 7425:6 7426:19 7450:15 7481:13 7493:23 7507:4 7512:15 7512:18 7515:24 7518:18 7526:23			
<b>consulate</b> 7337:13				
<b>consult</b> 7217:10 7232:16				
<b>consultation</b> 7254:16 7346:15 7484:25				
<b>consultations</b> 7246:7	<b>contextually</b> 7282:23	<b>conversations</b> 7405:15 7419:9 7420:10 7438:15 7442:7 7464:4 7506:5,10 7508:2 7508:6 7511:19		
<b>consulted</b> 7216:7 7237:22 7240:16 7512:20 7514:9	<b>continue</b> 7249:18 7397:11,23	<b>convey</b> 7279:9 7391:5		
<b>consults</b> 7246:18	<b>continued</b> 7361:3 7369:18	<b>conveyed</b> 7253:11 7266:8 7285:23 7361:11 7364:18 7366:8,12 7392:24 7393:9 7393:18 7424:21 7424:24 7426:3 7468:15 7492:16 7524:25 7530:6		
<b>contact</b> 7219:5 7233:22 7236:1 7237:17 7251:14 7257:4 7258:12 7258:24 7287:15 7288:6 7296:11 7387:5 7390:16 7403:8 7438:22	<b>continues</b> 7386:3	<b>conveying</b> 7251:1 7283:21 7348:16 7363:10 7366:7 7393:19		
<b>contacted</b> 7234:15 7235:9 7236:11 7251:13 7257:7 7257:11 7258:4 7369:5 7383:24 7517:2	<b>contradictory</b> 7498:16 <b>contrary</b> 7286:10 7421:23 <b>contributing</b> 7427:25 <b>control</b> 7274:19 7276:1 7283:18 7284:2 7452:3 7453:19 <b>convened</b> 7283:10 <b>convenience</b> 7240:3 <b>convenient</b> 7398:8 7472:12 <b>conversation</b> 7223:5 7230:4 7239:7 7251:10 7259:14 7260:5 7260:12 7261:2,6 7264:9 7273:9	<b>convicted</b> 7387:8 7390:19 <b>Coons</b> 7356:14,19 7384:1 7391:25 7392:7,12,20,24 7393:9,15 7423:21,22 7424:16,21,24		
<b>contacts</b> 7401:24				
<b>contained</b> 7482:6				
<b>containing</b> 7261:25				
<b>contemplated</b> 7303:25 7313:21				
<b>contemplates</b> 7268:6				
<b>contemporaneous</b>				

7504:14 7520:24 7521:1,8,21 <b>couple</b> 7233:20 7292:18 7399:12 7439:8 7450:2 7468:10 7470:18 <b>course</b> 7212:16 7215:25 7246:19 7328:16 7331:12 7342:1 7347:13 7379:4 7405:10 7406:16 7412:21 7416:22 7417:10 7423:22 7424:3 7426:13 7443:13 7449:17 7455:17 7456:11 7470:4 7471:10 7532:5 <b>court</b> 7240:4 7292:22,24 7293:10 7340:11 7383:11 7420:2,5 7504:5,6 7513:6,8 <b>courts</b> 7414:21 <b>Couture</b> 7317:12 7319:6,6 <b>cover</b> 7394:17 7399:11 <b>coverage</b> 7267:17 7343:22 7484:16 <b>CPIC</b> 7311:2 <b>Cr</b> 7233:15 <b>credibility</b> 7437:4 7437:21 <b>credible</b> 7345:7 7487:18,24 <b>credit</b> 7248:17 7336:23 7337:4 <b>crime</b> 7245:2 7280:21 7315:9 7357:16,19 7422:15 7492:12 <b>criminal</b> 7213:11 7215:19 7244:25 7245:10 7306:13 7310:22 7311:1 7315:3 7317:11 7329:8 7405:11 7405:25 7411:12	7411:12 7412:8 7416:4 7417:8 7421:21 7423:3 7474:16 7482:5 7493:21 7498:10 7498:18 7502:17 <b>criteria</b> 7236:17,18 7236:23 <b>crossing</b> 7410:16 <b>cross-examination</b> 7460:7 <b>cross-examination...</b> 7460:12 <b>cross-examine</b> 7458:16 <b>cross-examining</b> 7472:7 <b>crowbar</b> 7313:23 <b>crown</b> 7242:1 7280:24 7365:13 7386:15 <b>crushed</b> 7381:16 <b>cryptic</b> 7464:20 <b>CSIS</b> 7344:17 7435:5,18 7436:2 7436:13,15,21 7500:2 <b>cum</b> 7215:10,17 <b>curious</b> 7336:11 <b>current</b> 7279:1 7320:6 <b>curriculum</b> 7213:24 7214:10 <b>custody</b> 7292:6 7308:12 7323:5 7342:20 7377:5 7456:20 7469:3 <b>customary</b> 7492:23 <b>customs</b> 7236:8 7248:23 7249:5 7250:18 7251:4 7336:25 7357:4 <b>CV</b> 7214:5,6 7215:5 <b>C'mon</b> 7419:9 <b>C.S.R</b> 7537:25	<b>Damascus</b> 7287:15 7288:1,7 <b>danger</b> 7507:9 <b>dark</b> 7451:17 <b>data</b> 7400:18,20,23 7401:4 <b>date</b> 7218:25 7219:19 7228:13 7233:5,6,12 7235:5 7239:19 7241:12,25 7250:5 7262:11 7275:9,11 7290:17 7293:6 7301:16 7302:7 7309:10 7310:7 7325:5 7327:22 7328:2 7356:7 7357:12 7360:17 7366:25 7372:22 7374:6 7378:10 7383:22 7386:3 7391:23 7396:9 7402:4 7431:19 7501:16 7504:22 7506:6 7529:3 7533:21 <b>dated</b> 7238:12 7271:17 7289:22 7290:3,9 7316:23 7327:3,14,18 7368:6 7369:12 7371:6 7372:5 7375:8 7396:6,13 7396:18 7397:3 7477:19 7491:10 <b>dates</b> 7387:24 7429:5 <b>David</b> 7212:7,20,25 7213:3,5,9,23 7214:1,7,14,18 7215:3,9,13,22 7216:3,14 7217:9 7217:14,20,24 7218:6 7219:18 7228:2,18,21 7229:1,6 7230:9 7230:14,22 7231:2,17,21	7232:6,11,23,25 7235:23 7237:10 7237:13 7238:1,3 7238:6,11 7239:3 7240:25 7241:5,9 7241:13,19 7242:4,9,11,16,19 7242:21 7243:2,5 7243:18,23 7244:18,21 7246:22,25 7247:5,22 7250:23 7252:12 7253:6,9,22,24 7254:15,24 7255:2,11,18,22 7255:25 7260:2,8 7260:15,20,24 7261:13,20 7262:2,7,15,22 7263:1,4,9,18 7265:8,15,20 7266:2,12,17 7269:10,12,20,25 7270:9,14,19,23 7271:5,15,24 7272:13,21 7273:22 7274:2 7275:11 7279:10 7279:15 7280:5 7280:13 7281:11 7281:14,17,20,25 7282:16,20 7283:12,22 7284:23 7286:14 7287:10,13,19 7288:12,18,21,25 7289:6,14,19 7290:1,7,11 7291:5,9,16,19 7293:4,15 7294:2 7294:5,10,13,20 7294:24 7295:12 7295:16,21 7296:2,24 7298:10,20 7299:5 7300:19 7300:24 7301:4 7301:12,19,22	7302:3,6,14,17 7303:12,24 7304:7 7305:11 7306:19,24 7307:2,10,18 7308:2,16 7309:9 7309:17,21 7310:2,8,12 7311:16,18,22,25 7312:9 7313:1,25 7314:3,6,9,12,15 7314:18,21 7315:1,11 7316:16,20,25 7317:14 7319:3 7320:20 7321:13 7321:16,21 7323:6,10,13 7324:2 7325:5,7 7325:10,14,16 7326:11,25 7327:9,17 7328:5 7330:6 7331:3,7 7332:11,20 7333:3,8 7336:24 7337:17,23 7338:8,12 7339:5 7339:8,16 7340:3 7340:6,13,20 7341:1,3,6,10,13 7341:21 7342:2,6 7342:15,18 7343:3,11 7345:1 7345:12,25 7346:1,7,10,14 7349:19 7350:18 7350:20 7351:10 7352:4 7353:9 7354:12,16,20 7355:5,17,24 7356:3,6,10 7357:1,22 7358:3 7358:8,17,24 7359:22 7360:3,6 7360:14,21 7363:8,15,18 7364:3 7365:2,8 7365:18,20,22,24 7366:2,4,14,18,21
--	--	--	--	--

**D****D** 7214:11 7442:1,3

7366:24 7367:14	7514:14,22	7419:4 7461:16	7499:11	<b>designated</b> 7405:14
7367:17,23	7515:2 7516:6,13	<b>decisions</b> 7293:9,9	<b>demonstrated</b>	<b>designed</b> 7399:14
7368:8,16 7369:8	7536:23	<b>declare</b> 7249:6	7270:17	<b>desire</b> 7345:15
7369:15 7370:15	<b>days</b> 7233:20	<b>declared</b> 7249:4	<b>demonstrating</b>	7387:25 7391:5
7370:22 7371:2,8	7250:5 7255:16	<b>decline</b> 7400:9	7312:19	7429:7 7447:25
7371:20,24	7256:2,24	7419:4	<b>demote</b> 7434:18	7447:25
7372:2,5 7374:2,5	7285:11 7288:2	<b>declined</b> 7436:23	<b>denied</b> 7448:2	<b>desk</b> 7231:13
7374:9,13,16	7318:7 7319:9	<b>defence</b> 7212:22	<b>department</b>	7335:23 7466:17
7375:2,9,12	7359:6 7367:7	7213:10,11	7263:13 7264:24	<b>desperate</b> 7283:3
7378:8,13,17,21	7383:17 7419:20	7220:5 7222:11	7329:14 7334:13	<b>destroyed</b> 7439:6
7378:25 7379:8	7435:13 7451:5	7222:25 7224:16	7336:15 7427:18	<b>detail</b> 7244:22
7379:11,14,20,24	7456:11 7487:13	7235:10 7245:1	7484:8 7513:9	7247:19 7360:23
7380:3,7,12,17	<b>de</b> 7302:10 7310:1	7342:12 7405:12	7514:5	<b>details</b> 7217:6
7381:17 7382:7	7313:3,4 7315:20	7405:25 7406:11	<b>departments</b>	7230:2 7245:16
7382:11,14,20	7316:5,13 7326:6	7439:1 7454:14	7530:11,11	7252:13 7254:7
7383:5 7384:19	7441:24 7525:4	7475:12,17	<b>departure</b> 7530:24	7303:17 7339:22
7384:24 7385:3,5	<b>deal</b> 7289:11	7492:22 7493:1	7531:21	7342:7 7399:17
7386:9 7388:4,9	7309:7 7353:19	7526:13 7528:21	<b>departures</b>	7534:16
7389:22 7390:12	7405:24 7409:8	7529:2,8	7531:24	<b>detain</b> 7448:25
7390:14 7391:9	7419:11 7420:1	<b>defender</b> 7272:11	<b>depending</b> 7230:4	<b>detained</b> 7274:15
7391:13,22	7428:17,18	7273:15	<b>depends</b> 7518:21	7274:23 7275:3
7392:3,11,16,19	7452:2,16	<b>defenders</b> 7271:7	<b>depiction</b> 7509:5	7276:9 7282:9
7393:14 7394:1,4	7472:15 7475:23	7271:13	<b>deportation</b>	7286:16 7288:9
7394:11,15	<b>dealing</b> 7224:17	<b>Defender's</b> 7273:3	7313:10 7315:18	7293:2 7297:13
7395:2,5,8,17,19	7286:11 7298:16	7273:12	7315:23 7318:11	7297:18 7308:14
7395:22,25	7299:10 7320:8	<b>defense</b> 7234:16	7332:19	7373:7 7393:21
7396:3,6,10,20	7373:16 7413:11	<b>deferred</b> 7297:14	<b>deported</b> 7295:6	7449:23 7516:18
7397:4,25	7432:1,2 7454:6	7297:22	7314:23 7445:13	<b>detainees</b> 7293:13
7433:21 7445:2	7475:17 7502:16	<b>define</b> 7418:21	7477:24 7479:23	7326:10
7450:13 7521:15	7532:7	7431:7	7482:2	<b>detention</b> 7261:18
7535:10,11,14	<b>dealings</b> 7386:24	<b>definite</b> 7237:3	<b>deposit</b> 7408:12	7272:7,20
7536:14,19	7431:6	<b>definitely</b> 7260:12	<b>Deputy</b> 7265:3	7273:16 7274:11
7537:10	<b>deals</b> 7387:7	7287:1 7296:5	7294:21 7298:5	7275:19,24
<b>day</b> 7233:24	<b>dealt</b> 7471:10	7522:22	7326:15,21	7276:19 7282:7
7234:24 7250:22	<b>debate</b> 7507:16	<b>definition</b> 7518:22	7367:6 7369:25	7282:13 7283:17
7257:7,20 7259:3	<b>December</b> 7247:25	<b>definitive</b> 7402:9	7370:6 7465:14	7283:18 7284:14
7261:6 7263:20	7250:21 7336:16	<b>degree</b> 7215:10	<b>describe</b> 7218:11	7286:8,18 7287:8
7264:8,21	7344:16 7354:17	7375:25 7377:10	7241:22 7242:16	7287:9 7292:24
7266:10 7269:23	7355:7 7356:1	7513:16	7262:8 7277:4	7293:14,25
7301:17 7307:3	7401:19 7402:1	<b>delay</b> 7278:10,11	7355:18	7318:10 7331:23
7325:2 7331:17	7420:23 7435:10	<b>delays</b> 7427:15	<b>described</b> 7231:2	7332:16,18
7332:4 7337:18	7450:7 7468:13	<b>deleted</b> 7400:20	7248:6 7273:10	7336:13 7344:6
7337:19 7339:6	7469:7,16	7401:2,3	7423:1 7424:22	7373:10 7393:25
7341:11 7342:1	7499:25 7501:15	<b>deliberately</b> 7494:7	7446:8 7520:2	7393:25 7427:25
7358:9 7360:19	7508:3 7511:13	<b>deliver</b> 7439:16	7527:19	7437:5
7363:7 7374:10	7535:16	<b>demeanour</b>	<b>describes</b> 7256:4	<b>determination</b>
7382:8 7396:21	<b>decided</b> 7236:24	7324:22 7380:18	<b>describing</b> 7351:11	7306:14
7397:16 7420:2	7252:7	7466:9,19	7403:6 7423:23	<b>determine</b> 7266:7
7447:6,6 7476:20	<b>decision</b> 7412:1	<b>demonstrate</b>	<b>design</b> 7413:23	7285:20 7288:8

7298:7 7311:3	7537:1	7221:2 7227:20	7496:16 7502:22	7470:8 7484:14
7318:14 7371:16	<b>difficult</b> 7220:13	7267:1 7278:9,22	7508:16,19	7494:14 7495:22
7385:13 7405:18	7221:24 7254:20	7278:23 7331:1	7509:5,10	7496:1,19
7468:4	7268:16 7361:22	7351:3 7403:7	7522:22	<b>dismissed</b> 7410:2
<b>determined</b>	7373:3 7403:25	7406:17,21	<b>discussing</b> 7313:11	<b>dismissive</b> 7345:10
7352:16 7376:3	7504:9	7452:24	<b>discussion</b> 7251:8	7437:17
<b>develop</b> 7408:1	<b>difficulty</b> 7340:17	<b>disclosing</b> 7280:10	7252:10 7282:8	<b>dispute</b> 7516:1
7440:3 7529:12	7349:4 7391:16	7433:16 7530:19	7282:10,15	<b>distilled</b> 7465:20
<b>developed</b> 7300:21	7513:11	7535:21	7285:25 7291:25	<b>distinct</b> 7244:17
7428:11,19	<b>diligent</b> 7501:3	<b>disclosure</b> 7219:23	7292:1,7 7297:7	7498:18
<b>developing</b> 7397:9	<b>dinner</b> 7370:17	7224:11 7268:22	7297:10 7302:21	<b>distinguish</b> 7431:7
<b>developments</b>	<b>diplomatic</b> 7303:10	7327:24 7454:7	7302:23 7303:23	7533:12
7358:6 7359:3	7306:10 7329:13	7475:1	7304:4 7305:5	<b>distributed</b>
<b>develops</b> 7228:1	7343:21	<b>disconnected</b>	7306:16 7313:3	7214:23
<b>devices</b> 7535:19	<b>direct</b> 7252:20	7322:23	7316:5 7326:15	<b>District</b> 7273:5
<b>DFAIT</b> 7265:3	7278:21 7350:8	<b>discounting</b> 7438:6	7332:8,9 7339:23	7292:21
7287:25 7288:7	7351:2 7484:4	<b>discovered</b> 7258:21	7339:25 7344:4	<b>disturbed</b> 7258:17
7296:11 7302:10	<b>directed</b> 7382:17	7407:13,19	7344:16 7346:21	<b>Div</b> 7233:25
7303:9,25	<b>direction</b> 7296:10	<b>discrete</b> 7242:25	7347:2 7348:21	<b>division</b> 7261:3
7304:22 7306:9	<b>directly</b> 7240:2	<b>discuss</b> 7234:7	7351:24 7354:7	7273:3 7281:1
7309:1 7310:17	7343:20 7349:22	7245:9 7307:20	7356:22 7357:6,7	7286:7 7317:11
7317:25 7319:12	7391:15,19	7308:5 7330:7	7357:11 7361:25	7320:12 7334:14
7320:2 7321:8	7483:20 7502:4	7342:7 7357:3	7362:14 7386:23	7428:9 7526:7
7323:2 7326:15	<b>Director</b> 7304:21	7385:25 7386:11	7387:10 7388:18	<b>docket</b> 7229:18
7331:19 7337:9	7320:12 7375:16	7386:15,18	7389:13,14	7230:20 7291:14
7358:18 7359:16	7523:23	7403:4 7429:25	7392:8,10 7399:8	7296:25 7309:22
7361:10 7368:18	<b>directories</b> 7352:10	7439:24 7491:17	7400:7 7406:6	7311:10,11,12,18
7483:13 7485:1	7366:11 7536:12	<b>discussed</b> 7254:9	7423:20 7435:4	7339:6 7360:25
7485:18,24	<b>directory</b> 7352:12	7277:5 7278:13	7435:24 7440:17	7420:4
7523:24 7527:3	<b>disagree</b> 7400:3	7280:17 7286:22	7442:4 7446:8	<b>docketing</b> 7229:16
<b>diagram</b> 7377:18	7521:23,24	7287:1 7289:1	7447:10 7448:15	7355:22 7420:8
<b>diaries</b> 7301:14	<b>disagreeing</b>	7292:4 7296:16	7463:13 7481:14	<b>dockets</b> 7296:20
<b>dictated</b> 7236:16	7221:22 7401:15	7302:18 7303:2,7	7483:19 7484:3	7419:19,25
7416:3	<b>disagreement</b>	7306:18 7310:1	7489:20 7490:8	<b>document</b> 7217:25
<b>difference</b> 7430:16	7403:13	7310:10,13,15	7500:1 7510:2,20	7218:10,12
<b>differences</b>	<b>disappointment</b>	7311:24 7325:17	7519:18 7522:14	7219:6,24 7228:8
7380:10	7476:9	7325:24 7326:4	7525:7 7533:16	7229:7,14 7235:2
<b>different</b> 7229:23	<b>disbursements</b>	7342:19,20	<b>discussions</b>	7256:7 7262:9
7242:25 7243:1	7394:18	7343:12,15	7261:11 7283:2	7271:6,12,15,25
7248:21 7282:4	<b>disclose</b> 7221:4	7344:24 7350:24	7318:3 7320:3	7294:20 7306:6
7285:7 7350:17	7224:1,20,24	7351:12 7356:11	7326:17,24	7309:3 7316:17
7351:16 7366:15	7254:22 7268:25	7369:24 7373:21	7331:19 7346:22	7317:5 7322:13
7368:25 7387:24	7269:2 7278:2	7381:25 7386:12	7348:6 7351:16	7322:14 7328:3
7393:3 7405:23	7350:9 7401:20	7388:11 7390:7	7380:23 7382:5	7355:18 7367:24
7411:25 7420:20	7407:10 7454:9	7430:7 7435:21	7388:10 7390:3	7369:12 7371:18
7422:21 7435:13	7454:11 7513:25	7439:23 7446:13	7419:16 7423:9	7372:18,24
7477:5,8 7496:23	7514:3 7515:16	7449:25 7450:9	7423:22 7430:20	7374:17 7375:5
7496:25 7530:10	7517:13 7532:24	7470:6 7491:8	7432:6 7434:12	7375:23 7437:3
7530:10,11	<b>disclosed</b> 7220:4	7493:15 7495:16	7466:21 7468:4	7508:24 7509:25



7518:24 7523:3	7470:2	<b>easier</b> 7243:12	7270:5,12,16,21	7325:12,15,22
<b>documentation</b>	<b>doubt</b> 7222:23	<b>East</b> 7324:18	7270:22 7271:1	7326:14 7327:7,8
7328:1	7345:21 7379:4	7409:4	7271:16,18	7327:13,15,20
<b>documents</b> 7214:3	7465:13 7525:25	<b>Easter</b> 7372:6	7272:1,4,17,23	7329:19,22
7214:21 7215:1	<b>dozens</b> 7416:4	<b>Eastern</b> 7273:5	7273:23 7274:1,7	7330:9 7331:6,9
7218:14 7228:9	<b>Dr</b> 7368:4 7369:17	<b>easy</b> 7221:7	7274:9,13,22	7332:14,21
7232:8,9,15	7370:4 7371:4	<b>Edelson</b> 7212:16	7275:10,15,17	7333:1,7,10
7233:1 7238:8	7374:22 7468:24	7212:22,24,25	7276:4,8,14	7337:1,22 7338:3
7250:18 7251:4,9	7470:5 7471:11	7213:2,3,5,6,10	7279:17 7280:7	7338:9,14,21
7255:12,14,20	7517:2	7214:11,15,25	7280:14,18	7339:7,11,18
7273:24 7274:4	<b>drafted</b> 7309:23	7215:3,8,12,21	7281:12,16,19,22	7340:5,8,15,22
7276:25 7277:7	7481:18	7216:2,3,13,21	7282:2,18,22	7341:2,5,9,12,15
7283:22 7289:7	<b>drafting</b> 7371:10	7217:13,18,23	7283:14,23	7341:23 7342:3
7289:15 7294:18	<b>draw</b> 7402:6	7218:6,13 7220:4	7284:7,9,20,25	7342:13,14,17
7301:24 7304:8	7434:4	7221:2,3,9,25	7286:21 7287:12	7343:2,10,13,14
7312:10 7317:1	<b>drew</b> 7435:22	7222:22 7223:14	7287:18,21	7345:3,14,22
7322:10,17	<b>drive</b> 7400:15,18	7225:2 7228:7,15	7288:14,20,23	7346:4,8,18
7327:2 7333:22	7400:19,24	7228:19,25	7289:2,13	7347:9 7348:1,9
7333:23 7334:1	7401:2,12,16	7229:4,15	7290:12,15	7348:16 7349:9
7334:15 7336:19	<b>driving</b> 7322:20	7230:11,15	7291:8,11,18,21	7349:11,13,21
7358:18 7368:18	7519:3	7231:1,6,20,23	7293:7,22 7294:3	7350:8,12,23
7396:11 7424:5	<b>Drug</b> 7285:12	7232:8,10,15,19	7294:9,12,18,19	7351:6,15 7352:6
7429:14 7477:5	<b>due</b> 7257:22	7232:20,24	7294:23 7295:1	7353:17 7354:14
7499:10 7501:20	<b>duties</b> 7249:11,15	7234:17 7235:11	7295:10,15,19,24	7354:19,21
7509:9 7510:8	7281:3	7235:16,20,22	7296:5 7297:2	7355:6,16,20
7532:20	<b>duty</b> 7222:3,6	7236:10,14	7298:13,25	7356:2,5,8,12
<b>doing</b> 7213:12	7224:1	7237:8,12,14	7299:8 7300:23	7357:5,24 7358:5
7245:21 7297:5	<b>Dyer</b> 7297:3	7238:2,5,8,9,10	7301:1,2,5,17,18	7358:13,15,23,25
7299:23,24		7239:2 7240:14	7301:21,23	7359:13 7360:14
7313:14 7316:6	<b>E</b>	7241:4,7,11,17,23	7302:2,5,11,16,19	7360:18,24
7333:13 7360:2	<b>ear</b> 7507:22	7242:8,14,18	7303:15 7304:1,3	7363:12,17,23
7370:20 7387:4	<b>earlier</b> 7237:16	7243:2,7,9,11,14	7304:19 7305:7	7364:8 7365:4,13
7401:1,7 7409:25	7254:17 7268:21	7243:22 7244:2	7305:15,22	7365:16,19,21,23
7428:14 7440:2	7278:10 7296:20	7244:20,23,24	7306:23 7307:1,4	7366:1,3,6,17,20
7440:19 7446:19	7322:8 7348:2	7246:24 7247:3	7307:11,15,19	7366:23 7367:2,5
7447:12,17	7359:21 7382:1	7247:11,24	7308:15 7309:1,5	7367:16,20
7455:4 7471:2	7407:12 7413:17	7250:25 7252:14	7309:8,13,20,22	7368:5,15,23
7474:10 7475:14	7451:17 7453:7	7253:8,10,23	7310:5,9,14	7369:14 7370:5
7481:19 7485:12	7488:9 7496:21	7254:4,20 7255:1	7311:17,20,23	7370:13,16
7507:3 7528:6	7498:5 7502:14	7255:10,13,17,20	7312:6,8,10,12,16	7371:5,11,23,25
<b>DOJ</b> 7305:1,6,7	7503:22 7508:20	7255:21,24	7313:1 7314:1,5,8	7372:4,12,25
7385:17	7516:20	7259:5,19 7260:7	7314:10,11,14,17	7373:5,17 7374:4
<b>domain</b> 7349:25	<b>earliest</b> 7240:3	7260:10,18,23	7314:20,25	7374:8,11,14
7430:11 7446:15	<b>early</b> 7236:2	7261:1,19 7262:2	7315:10,19	7375:7,10,14
7455:9	7411:11 7413:11	7262:6,10,16,24	7317:1,4,13	7376:15 7378:12
<b>Don</b> 7272:4	7440:11 7464:13	7263:2,7,11,22	7318:20 7320:19	7378:15,19,24
<b>door</b> 7225:3	7465:7 7522:11	7265:11,18,23	7321:12,15,19,22	7379:3,9,13,16,22
<b>Dorval</b> 7336:14	<b>earn</b> 7409:8	7266:1,5,14	7323:8,11,14	7380:2,6,11,13,14
7337:7,8 7469:9	<b>earshot</b> 7467:23	7269:14,15,24	7324:4 7325:6,9	7380:20 7381:8

7381:20 7382:10	7433:1,4,10,14	7489:19,24	7536:17,20,22,24	7429:2,7,11,16,19
7382:13,19,25	7434:1,9,15	7490:2,7,15,18	7537:3,6	7430:25 7431:5
7383:4,10,25	7435:1,8,16,23	7491:11,16,20,24	<b>Edelson's</b> 7213:24	7431:13,16,21,24
7384:6,8,18,23	7436:5,9,12,19,24	7492:2,15,20,25	7214:20 7218:4	7432:7,15,21
7385:2,4,8 7386:5	7437:9,11,13,16	7493:6,11,14	7223:9 7318:6	7433:2,6,12,16
7386:8,10,17	7437:24 7438:12	7494:5,10,13,18	7320:24 7321:5	7434:3,10,17
7387:17 7388:2,7	7438:18,25	7494:25 7495:11	7355:11,14	7435:2,12,17
7388:12 7389:10	7439:18,22	7495:18,21	7374:21 7433:23	7436:7,11,18,22
7389:24 7390:13	7440:12,20	7496:4,8,11,14,17	7499:13	7437:1,12,14,23
7390:15 7391:11	7441:15,17,23	7497:4,9,16,19,24	<b>educated</b> 7485:6	7437:25 7438:10
7391:14 7392:2,6	7442:11,15,24	7499:7,18 7500:5	<b>education</b> 7245:18	7438:14,19
7392:15,18,22	7443:2,10,15,20	7500:13,17,21	<b>educational</b>	7439:19 7440:11
7393:16 7394:3,8	7444:25 7445:10	7501:1,5,10,24	7247:14	7440:18 7441:12
7394:13,16	7446:3,25 7447:2	7502:1,6,14	<b>Edwardh</b> 7212:10	7441:16 7442:6
7395:4,7,10,18,21	7447:21,24	7503:2,6,10,13,16	7212:20 7216:10	7442:14,22,25
7395:24 7396:2,5	7448:14 7449:15	7503:19,24	7225:16,19	7443:7,16
7396:8,16,22,25	7449:24 7450:12	7504:2,18,21	7242:21 7243:4	7444:23 7445:3,5
7397:8,25	7450:15 7451:2	7505:5,8,11,14,17	7243:19 7346:3	7445:9,25 7446:7
7398:23 7399:2	7457:14 7458:3	7505:19,24	7347:8,17	7447:1,15,23
7399:10,19,23	7459:2 7462:25	7506:9 7508:7,17	7350:11,13,21	7448:8 7449:13
7400:3,12,16,22	7463:2 7464:1,5	7508:19 7509:11	7351:4 7382:5	7449:17 7450:1
7401:5,13,25	7464:10,14,18	7509:18,23	7398:2,3,7,11,19	7450:14,21
7402:8,21	7465:9 7466:23	7510:10,22	7398:23 7399:3	7451:2,8,24
7403:12,17,23	7467:7,19 7468:7	7511:1,4,7,10,15	7399:11,20,24	7455:1,16,19
7404:3,5,9,16,24	7468:18,20	7511:24 7512:5	7400:5,13,17,25	7456:2,22,24
7405:2,6,16,21	7469:1,4,13,18,25	7512:11,17,24	7401:8,17 7402:2	7457:5 7458:2,13
7406:9,14,21	7470:11,15,21	7513:3 7514:2,11	7402:15,23	7458:21,23
7407:1,6,21,24	7471:12,19,25	7514:16,19,24	7403:15,19,24	7459:10 7460:7,8
7408:3,6 7411:5,9	7472:4,5,14,21,24	7515:4,10,13	7404:4,6,13,17,25	7461:18 7462:16
7411:19 7412:3	7473:2,6,10,14,17	7516:3,11,22	7405:5,10,17,22	7462:20 7463:3
7413:21 7414:4	7473:21 7474:2,7	7517:4,12,22	7406:10,15,23	7463:20,22
7415:3,24 7416:3	7474:18,24	7518:3 7519:4,11	7407:2,20,25	7464:2,12,16,19
7416:20,24	7475:6,16,20,24	7519:14 7520:3,6	7408:4 7410:23	7466:22,25
7417:4,9,15,20,23	7476:2,7,14,19,24	7520:12,15	7411:16 7413:14	7467:14,25
7418:2,11 7419:1	7477:2,6,7,13,16	7521:3,9,24	7413:22 7414:25	7468:10,19,22
7419:7,24	7477:21 7478:2,5	7522:4,7,9,12,15	7415:18 7416:1	7469:2,5,15,23
7420:24 7421:3,9	7478:10,19	7522:20 7523:1,4	7416:14,21	7470:3,12,16
7421:12,23	7479:1,7,11,21	7523:6,9,12,21	7417:1,6,10,17,21	7471:9,18,22
7422:5,7,12,18,25	7480:7,11,15	7524:2,11,19,23	7417:24 7418:4	7472:1,6 7481:4
7423:4,11,16,20	7481:8,12 7482:3	7525:6,10,18,25	7418:23 7419:2	7481:10 7494:11
7424:1,7,11,14	7482:7,12,19,24	7526:17,22	7419:19 7420:19	7516:7 7518:21
7425:2 7426:14	7483:2,8,12,21	7527:16,24	7420:25 7421:4	7525:11 7534:22
7426:17 7427:3	7484:1,5,12,20,23	7528:4,10,17,25	7421:11,14	7535:3,6
7428:5,8,18,23	7485:4,15,19	7529:9 7530:1,4,8	7422:1,9,13,23	<b>Edwardh's</b>
7429:1,6,10,13,15	7486:12,15,19,23	7531:1,7,11,17,23	7423:2,7,12,18	7349:17
7429:18 7430:5	7487:3,7,10,13,23	7532:25 7533:4,8	7424:2,10,13,23	<b>effect</b> 7409:10,21
7430:24 7431:4	7488:1,6,12,16,20	7533:11,20	7426:11,15,25	7437:20 7448:21
7431:11,14,19,20	7488:24 7489:1,3	7534:2,6,10,19	7427:21 7428:7	7474:8 7495:1
7432:5,13,20	7489:8,10,13,16	7535:9,12 7536:8	7428:16,21,24	7501:21 7518:1

7536:13	<b>emotional</b> 7325:19	7274:4 7275:9	7403:6 7410:17	7215:2 7398:22
<b>effective</b> 7221:19	7381:9	7287:11 7288:21	7419:2 7437:1	7472:13 7512:4
7268:17 7442:16	<b>emotionally</b>	7291:19 7293:16	7453:17 7507:14	7535:13
<b>effectively</b> 7493:10	7324:12	7294:16 7302:6	7528:24	<b>examined</b> 7337:5,6
<b>effectiveness</b>	<b>employed</b> 7245:24	7304:13 7318:19	<b>events</b> 7245:5	<b>examining</b> 7251:5
7222:11 7223:7	7409:6	7321:10 7341:14	7270:1 7274:19	<b>example</b> 7230:7
<b>efficient</b> 7507:21	<b>employees</b> 7347:11	7342:8 7355:9,25	7276:1 7283:18	7248:17 7343:19
<b>effort</b> 7287:6,25	7409:7	7358:22 7360:25	7284:2 7286:1	7353:21 7376:10
7303:9 7409:25	<b>encapsulates</b>	7363:18 7364:4	7304:11 7317:6	7408:13 7466:12
7527:1	7329:25	7365:11 7366:19	7320:16	7467:16 7482:13
<b>efforts</b> 7272:16	<b>encounter</b> 7218:8	7367:15 7371:22	<b>eventually</b> 7217:11	7491:14 7497:2
7274:25 7276:11	<b>encourage</b> 7507:5	7378:22 7382:23	7376:17 7409:24	7518:10 7521:6
7354:2 7359:19	<b>endeavoured</b>	7383:7 7384:5,15	7442:6	<b>exceptional</b>
7369:18 7383:13	7230:17	7384:21 7385:5	<b>everybody</b> 7347:19	7417:25
7399:1 7428:25	<b>ended</b> 7261:14	7395:3 7449:21	<b>everyone's</b> 7323:21	<b>exceptions</b> 7416:6
7526:8	7307:22 7391:4,8	<b>equipment</b> 7239:14	<b>evidence</b> 7215:15	<b>exchange</b> 7239:24
<b>Egypt</b> 7300:11	<b>enforcement</b>	7535:21 7536:1,3	7222:17 7226:9	7255:5 7289:11
7521:11,21	7306:4	7536:7,15	7277:20,20,25	7365:5
7534:24	<b>engaged</b> 7292:2	<b>erroneous</b> 7414:13	7278:3,18,25	<b>exchanged</b> 7282:1
<b>eight</b> 7402:25	<b>engineer</b> 7218:20	<b>escape</b> 7409:20	7279:13,13	<b>exchanges</b> 7338:23
<b>either</b> 7217:1	7246:4	<b>essence</b> 7399:15	7286:9,19 7287:2	<b>exclude</b> 7465:3
7220:17 7232:3	<b>ensure</b> 7513:9	7413:1 7527:2	7294:6,13 7324:8	7467:3
7273:10 7305:1	<b>ensured</b> 7236:19	<b>essential</b> 7437:4	7350:3 7357:15	<b>excludes</b> 7480:14
7322:11 7335:13	<b>entailed</b> 7351:16	7457:15	7357:19 7372:16	<b>excluding</b> 7467:11
7340:23 7376:18	<b>enter</b> 7217:21	<b>essentially</b> 7246:11	7389:19 7414:20	<b>exclusion</b> 7483:6,8
7397:14 7401:25	7261:20 7396:11	7265:8 7306:20	7436:4 7439:7	7483:9
7402:3,5,17	<b>entered</b> 7229:20	7310:2 7324:2	7457:13 7458:1	<b>executed</b> 7217:16
7415:21 7432:18	7230:20	7325:11 7326:12	7463:12 7465:2	7233:8
7435:9 7443:24	<b>entire</b> 7415:7	7377:22 7387:24	7470:20 7480:25	<b>exercise</b> 7224:4
7450:6 7451:19	7421:15 7423:12	7412:4 7445:12	7487:18 7498:12	7416:23 7417:2
7468:13 7499:25	7438:24	7483:5	7498:16,16	<b>exercising</b> 7226:17
7519:8 7534:9	<b>entirely</b> 7224:13	<b>est</b> 7537:17	7503:22 7505:3	7267:14
7535:16	7268:13 7287:22	<b>establish</b> 7433:18	7506:18,22	<b>exhibit</b> 7213:20
<b>either/or</b> 7282:14	7330:15 7405:23	7457:19 7458:22	7507:1,11	7214:5,7,9,24
<b>EI</b> 7535:2	7451:19 7491:11	7459:19	7511:20 7518:25	7217:21 7218:2
<b>electronic</b> 7376:24	<b>entitle</b> 7366:15	<b>established</b>	7519:3,8 7528:23	7229:2,3 7232:17
7535:19,25	<b>entitled</b> 7225:12	7498:14	7529:3,8,11,13,15	7242:12 7261:21
<b>element</b> 7313:10	7232:8	<b>et</b> 7390:19 7518:12	<b>Evidence:name</b>	7261:24 7271:11
7348:20 7425:12	<b>entries</b> 7229:19,20	7527:4	7365:14	7289:21 7290:2,8
<b>elements</b> 7476:11	7289:10 7310:3	<b>evaluating</b> 7385:18	<b>evidencing</b> 7510:16	7316:22 7327:10
7509:1	7366:15 7382:15	7431:2	<b>evidentiary</b> 7279:2	7327:12 7355:13
<b>elicit</b> 7247:8	<b>entry</b> 7229:8	<b>Evan</b> 7297:3	7410:25 7458:5	7368:3 7369:10
<b>elite</b> 7248:19	7230:9,10,11	<b>evasive</b> 7531:25	<b>exact</b> 7275:6	7370:23 7371:3
<b>elucidated</b> 7352:2	7233:4 7237:7	<b>evening</b> 7252:24	<b>exactly</b> 7269:16	7371:21 7374:19
<b>emanating</b> 7438:4	7239:10 7241:1	7316:3	7327:24 7339:22	7396:11,14,23
<b>embassy</b> 7263:8,12	7241:10,21,22	<b>event</b> 7272:25	7455:9 7490:22	7431:18 7443:9
7264:24 7322:4	7250:24 7255:19	7279:1 7296:23	7494:21 7499:20	7522:25
7322:19 7334:1	7256:4 7257:24	7348:25 7390:9	7519:2	<b>exist</b> 7216:15
<b>emigrated</b> 7408:11	7260:21 7265:21	7397:14,23	<b>EXAMINATION</b>	7276:25 7413:12

<b>existed</b> 7353:4 7392:14	<b>explored</b> 7463:17	7312:11 7316:11	7508:11 7510:16	7352:15 7362:9
<b>expand</b> 7335:5,6,13 7336:4 7516:23	<b>exposed</b> 7300:20	7331:13 7368:3,9	7514:25 7530:20	7387:15 7409:16
<b>expanded</b> 7403:13	<b>exposure</b> 7359:7	7370:24 7371:3	7535:21	7425:10,10
<b>expansive</b> 7478:22	<b>express</b> 7348:4 7442:22 7449:9	7383:21	<b>factor</b> 7509:7,7	7468:4 7480:3
<b>expect</b> 7223:23	<b>expressed</b> 7274:10 7275:18 7295:25	<b>e-mails</b> 7289:12	<b>factors</b> 7406:16	7482:25 7483:2
7324:23 7427:4	7298:20 7326:21	7315:12,15	7446:10 7515:22	7488:13,21
7461:5 7482:10	7344:1 7353:3	7316:23	7516:4	7527:6
7485:17 7501:2,8	7387:25 7403:21		<b>facts</b> 7426:18	<b>farming</b> 7300:14
7511:21,23	7443:3 7447:24	<b>F</b>	7439:2 7455:2	<b>fashion</b> 7387:10
7528:6,9,19	7447:25 7449:4	<b>face</b> 7227:4	7457:22,23	7390:23
<b>expectation</b> 7223:4	7454:4 7465:14	7299:18 7452:25	7521:10	<b>fault</b> 7294:4
<b>expecting</b> 7484:10	7525:15	7453:2,5	<b>factual</b> 7276:20	<b>favourite</b> 7324:18
7511:19	<b>expression</b> 7298:1	<b>face-to-face</b>	7284:15 7406:18	<b>FBI</b> 7331:22,23
<b>expedite</b> 7303:4	<b>extend</b> 7226:18	7302:20 7354:25	7407:5	<b>fear</b> 7295:24
7526:8	7506:17,20	<b>facilitate</b> 7305:13	<b>factually</b> 7462:22	7298:1 7326:5
<b>expediting</b> 7310:18	<b>extended</b> 7267:23	7305:17 7448:19	<b>factum</b> 7409:12	<b>fears</b> 7298:21
<b>experience</b> 7215:23	7507:11	7502:20	<b>failed</b> 7418:8	<b>features</b> 7467:15
7299:10,21	<b>extensively</b>	<b>facilitated</b> 7322:14	<b>failure</b> 7443:1	7508:23
7405:11 7407:22	7228:23	<b>facilities</b> 7273:17	<b>fair</b> 7400:5 7406:13	<b>Fecteau</b> 7385:24
7411:21 7415:25	<b>extent</b> 7224:18	<b>facility</b> 7272:7	7468:14 7489:22	<b>federal</b> 7227:13
7443:22 7474:15	7227:10 7267:15	<b>facing</b> 7362:6	7508:14	7272:11 7273:2,6
7485:5 7490:25	7410:6 7448:16	<b>fact</b> 7216:11,20	<b>fairly</b> 7222:10	7273:11 7292:22
7526:24 7532:7	7453:24 7458:12	7217:15 7220:3	7283:15 7345:9	7292:24 7293:10
7532:11,12	7486:3 7509:11	7220:24 7228:9	7380:22 7459:18	7504:4 7513:8
<b>experienced</b>	<b>external</b> 7246:6	7232:14 7237:3	7479:5 7502:23	<b>Federation</b>
7474:21 7475:12	7323:21	7237:20 7240:16	<b>fairness</b> 7278:20	7215:24
7475:16 7476:13	<b>externally</b> 7250:10	7243:19 7256:4	7534:22	<b>feedback</b> 7270:20
7494:8 7500:9	<b>extract</b> 7217:21	7263:24 7279:16	<b>fall</b> 7472:16	<b>feel</b> 7405:24
<b>expert</b> 7526:4,6	7235:3,4	7286:3 7288:8,12	<b>false</b> 7480:6,12	7461:16 7513:24
<b>expire</b> 7322:12	<b>extracts</b> 7218:3	7291:23 7293:13	7498:12	7515:17 7532:23
<b>expired</b> 7322:12	7277:7 7282:5	7294:6,13,14	<b>familiar</b> 7285:17	7533:2
<b>expiring</b> 7333:22	7301:14 7315:16	7301:16 7309:15	7304:10 7390:17	<b>feeling</b> 7251:17
<b>explain</b> 7216:18	<b>extradite</b> 7299:17	7320:21 7329:6	7400:14 7457:8	7287:4 7448:9
7243:3 7315:17	<b>extradition</b>	7332:11 7340:6	7498:8	7513:15
7333:3 7348:10	7409:18 7410:1	7347:17 7363:20	<b>familiarity</b> 7418:7	<b>feels</b> 7526:7
7425:6 7443:12	<b>extraordinary</b>	7368:8 7379:1	<b>family</b> 7245:19	<b>feet</b> 7324:19
7481:13	7300:7 7519:24	7411:9 7417:13	7247:15 7252:8	<b>fellow</b> 7298:16
<b>explained</b> 7228:8	7532:2	7418:17 7421:4	7285:8,9 7293:2	7390:17 7428:13
7258:18 7273:13	<b>extreme</b> 7253:4,19	7447:8 7450:9	7293:12 7328:9	<b>felt</b> 7307:6,20
<b>explaining</b> 7299:9	<b>extremely</b> 7282:24	7453:7 7463:19	7352:22 7362:17	7310:19 7348:12
<b>explanation</b>	7428:12	7465:4 7469:8	7362:22 7409:6	7353:4 7359:18
7274:18 7276:6	<b>eye</b> 7332:18	7472:18 7473:11	7425:17 7432:11	7381:24 7400:8
7284:1,8 7351:21	<b>eyes</b> 7380:25	7474:22 7478:4	7433:3,9,18	7401:8 7404:9
7507:3	<b>E-D-E-L-S-O-N</b>	7478:18,23	7434:6 7439:4	7415:19 7428:19
<b>explicitly</b> 7222:24	7213:6	7479:3,17,19	7471:17 7485:1	7445:25 7449:11
<b>explore</b> 7450:22	<b>e-mail</b> 7290:6,8	7480:5,10,13	7527:22	7526:6
7462:10,11	7293:5,8 7301:25	7481:25 7482:22	<b>fantastic</b> 7442:2	<b>female</b> 7248:23
		7493:7 7497:1	<b>far</b> 7216:17	<b>fence</b> 7486:2
		7500:18 7501:20	7264:14 7352:7	<b>field</b> 7417:8

<b>figure</b> 7254:11 7487:15	7416:11 7435:1 7435:12 7481:21 7532:16	<b>focus</b> 7234:13 7275:21 7306:3 7326:18 7351:17 7418:9 7430:21	7261:10 7355:22 7491:5,7 7492:14	7518:13 7519:2,6 7519:13,19 7520:4,7,14,21 7521:5,13,16 7522:1,6,8,10,13 7522:16,24 7523:2,5,7,10,13 7524:15,17,22 7525:5,8,11,19 7526:11,18 7527:12,18,25 7528:8,16,20 7529:1,20 7530:2 7530:5,22 7531:5 7531:9,12,19 7532:15 7533:1,5 7533:9,18 7534:1 7534:3,8,21 7535:4,7
<b>figuring</b> 7286:15	<b>fire</b> 7530:16	<b>focusing</b> 7272:14	<b>formed</b> 7481:6 7518:14	<b>Fothergill's</b> 7507:22
<b>file</b> 7213:23 7214:2 7214:3,19,20 7216:5 7217:24 7228:22 7230:3 7242:5 7271:6 7289:7 7315:12 7327:5 7335:22 7335:23,24 7336:1 7355:8 7367:24 7370:23 7371:15 7374:16 7376:21 7379:2,5 7379:6 7385:18 7385:20 7393:2 7394:7,18 7407:18 7409:15 7409:17 7425:22 7426:1,7,12 7427:4 7440:25 7495:23,24 7509:24 7510:16 7534:17	<b>firm</b> 7394:22 7395:1	<b>follow</b> 7235:22 7241:8 7243:12 7304:11 7307:8 7330:7,24 7341:1 7368:13 7391:9	<b>former</b> 7218:18 7262:18 7296:8 7380:16	<b>found</b> 7235:3 7249:10 7270:3 7336:12 7352:13 7380:21 7403:25 7443:20 7535:18
7228:22 7230:3 7242:5 7271:6 7289:7 7315:12 7327:5 7335:22 7335:23,24 7336:1 7355:8 7367:24 7370:23 7371:15 7374:16 7376:21 7379:2,5 7379:6 7385:18 7385:20 7393:2 7394:7,18 7407:18 7409:15 7409:17 7425:22 7426:1,7,12 7427:4 7440:25 7495:23,24 7509:24 7510:16 7534:17	<b>first</b> 7217:8 7218:7 7218:8,18 7223:13 7228:16 7229:10 7235:25 7237:16 7238:15 7241:14 7243:25 7247:11,16,17 7266:6 7271:15 7273:24 7277:3 7280:14,23 7285:15 7299:11 7302:19 7325:12 7325:14,16 7326:12,12,14 7331:10 7335:3 7341:11 7342:16 7347:20 7355:17 7361:2,3 7366:21 7368:20 7376:12 7380:4 7382:22 7399:21 7404:15 7421:7,9,10 7425:25 7430:13 7444:13 7445:12 7452:5 7458:22 7470:1 7472:15 7474:7 7477:22 7490:14 7496:25 7515:2 7516:1 7523:11 7524:23 7525:2	<b>followed</b> 7241:25 7410:13	<b>forth</b> 7261:12 7449:8	<b>four</b> 7216:23,25 7217:13,14 7237:18 7238:4 7240:23 7254:16 7254:23 7279:16 7303:19 7304:24 7310:3 7314:18 7366:15 7382:15 7387:24,24 7401:19 7420:6 7421:5 7435:24 7447:9 7456:10 7456:12,19 7457:6,24 7459:15 7490:14 7509:1
7228:22 7230:3 7242:5 7271:6 7289:7 7315:12 7327:5 7335:22 7335:23,24 7336:1 7355:8 7367:24 7370:23 7371:15 7374:16 7376:21 7379:2,5 7379:6 7385:18 7385:20 7393:2 7394:7,18 7407:18 7409:15 7409:17 7425:22 7426:1,7,12 7427:4 7440:25 7495:23,24 7509:24 7510:16 7534:17	<b>first-name</b> 7473:23	<b>following</b> 7235:8 7238:15 7274:5 7275:13 7304:15 7306:8 7319:8 7328:6 7338:2 7340:2 7358:21 7481:6	<b>forthcoming</b> 7255:6,10 7411:24	<b>forthright</b> 7380:22 7457:22
7228:22 7230:3 7242:5 7271:6 7289:7 7315:12 7327:5 7335:22 7335:23,24 7336:1 7355:8 7367:24 7370:23 7371:15 7374:16 7376:21 7379:2,5 7379:6 7385:18 7385:20 7393:2 7394:7,18 7407:18 7409:15 7409:17 7425:22 7426:1,7,12 7427:4 7440:25 7495:23,24 7509:24 7510:16 7534:17	<b>fit</b> 7423:9 7456:7	<b>follows</b> 7233:4 7238:22 7382:24 7454:5 7484:14 7491:6	<b>forward</b> 7222:17 7239:25 7261:14 7261:16 7364:4 7382:2 7397:19 7432:3 7439:17 7507:25	<b>forwarded</b> 7321:6
7228:22 7230:3 7242:5 7271:6 7289:7 7315:12 7327:5 7335:22 7335:23,24 7336:1 7355:8 7367:24 7370:23 7371:15 7374:16 7376:21 7379:2,5 7379:6 7385:18 7385:20 7393:2 7394:7,18 7407:18 7409:15 7409:17 7425:22 7426:1,7,12 7427:4 7440:25 7495:23,24 7509:24 7510:16 7534:17	<b>follow-up</b> 7339:20 <b>follow-up</b> 7261:5 7264:11 7318:24 7319:5 7369:3 7476:23	<b>foolish</b> 7225:9	<b>forwarding</b> 7447:17	<b>Fothergill</b> 7219:21 7221:6,12,15 7222:5,16 7223:23 7224:3,8 7226:6 7227:3 7266:19 7268:10 7269:1 7277:10 7277:16,21 7279:6 7346:15 7346:16 7389:6 7451:16,18 7453:23 7458:18 7459:6,13,21 7460:1 7461:3,4 7461:15,25 7462:5 7480:21 7507:18 7512:3,5 7512:12,19,25 7513:22 7514:7 7514:13,17,21,25 7515:5,11,19 7516:5,9,12 7517:1,5,17,25
7228:22 7230:3 7242:5 7271:6 7289:7 7315:12 7327:5 7335:22 7335:23,24 7336:1 7355:8 7367:24 7370:23 7371:15 7374:16 7376:21 7379:2,5 7379:6 7385:18 7385:20 7393:2 7394:7,18 7407:18 7409:15 7409:17 7425:22 7426:1,7,12 7427:4 7440:25 7495:23,24 7509:24 7510:16 7534:17	<b>force</b> 7304:14	<b>forces</b> 7525:23	<b>forwarded</b> 7321:6	<b>forwarding</b> 7447:17
7228:22 7230:3 7242:5 7271:6 7289:7 7315:12 7327:5 7335:22 7335:23,24 7336:1 7355:8 7367:24 7370:23 7371:15 7374:16 7376:21 7379:2,5 7379:6 7385:18 7385:20 7393:2 7394:7,18 7407:18 7409:15 7409:17 7425:22 7426:1,7,12 7427:4 7440:25 7495:23,24 7509:24 7510:16 7534:17	<b>forced</b> 7411:17	<b>foreclose</b> 7351:4	<b>forwarded</b> 7321:6	<b>forwarding</b> 7447:17
7228:22 7230:3 7242:5 7271:6 7289:7 7315:12 7327:5 7335:22 7335:23,24 7336:1 7355:8 7367:24 7370:23 7371:15 7374:16 7376:21 7379:2,5 7379:6 7385:18 7385:20 7393:2 7394:7,18 7407:18 7409:15 7409:17 7425:22 7426:1,7,12 7427:4 7440:25 7495:23,24 7509:24 7510:16 7534:17	<b>forefront</b> 7378:4 7466:20 7522:2 7522:11	<b>foreign</b> 7300:15,17 7328:18 7329:14 7363:21 7369:1 7369:11 7376:19 7377:9 7485:6	<b>forwarded</b> 7321:6	<b>forwarding</b> 7447:17
7228:22 7230:3 7242:5 7271:6 7289:7 7315:12 7327:5 7335:22 7335:23,24 7336:1 7355:8 7367:24 7370:23 7371:15 7374:16 7376:21 7379:2,5 7379:6 7385:18 7385:20 7393:2 7394:7,18 7407:18 7409:15 7409:17 7425:22 7426:1,7,12 7427:4 7440:25 7495:23,24 7509:24 7510:16 7534:17	<b>forensically</b> 7400:15	<b>forensically</b> 7400:15	<b>forwarded</b> 7321:6	<b>forwarding</b> 7447:17
7228:22 7230:3 7242:5 7271:6 7289:7 7315:12 7327:5 7335:22 7335:23,24 7336:1 7355:8 7367:24 7370:23 7371:15 7374:16 7376:21 7379:2,5 7379:6 7385:18 7385:20 7393:2 7394:7,18 7407:18 7409:15 7409:17 7425:22 7426:1,7,12 7427:4 7440:25 7495:23,24 7509:24 7510:16 7534:17	<b>forgive</b> 7376:11	<b>form</b> 7229:16 7244:3 7334:11 7335:12 7344:18 7435:6 7471:2	<b>forwarded</b> 7321:6	<b>forwarding</b> 7447:17
7228:22 7230:3 7242:5 7271:6 7289:7 7315:12 7327:5 7335:22 7335:23,24 7336:1 7355:8 7367:24 7370:23 7371:15 7374:16 7376:21 7379:2,5 7379:6 7385:18 7385:20 7393:2 7394:7,18 7407:18 7409:15 7409:17 7425:22 7426:1,7,12 7427:4 7440:25 7495:23,24 7509:24 7510:16 7534:17	<b>format</b> 7245:14	<b>format</b> 7245:14	<b>forwarded</b> 7321:6	<b>forwarding</b> 7447:17

<b>frankly</b> 7264:7 7278:5 7306:3 7323:11 7339:14 7377:11 7454:13 7527:11 7528:13 7532:4	7238:16 7269:2,6 7326:16 7331:19 7342:4 7346:14 7351:13 7388:10 7388:10 7393:25 7419:13 7459:3 7464:3 7465:4 7507:6 7513:20	7287:6 7298:22 7400:20 7439:3 <b>gathered</b> 7289:4 7351:14 <b>gathering</b> 7470:23 <b>gaunt</b> 7381:1 <b>general</b> 7216:22 7220:2 7294:10 7301:7 7304:21 7349:18 7370:11 7372:7 7523:23 <b>generally</b> 7220:10 7303:23 7345:9 7355:20 7420:4 7474:20 7482:16 7526:15	7462:6 7469:13 7474:21 7489:25 7502:21 7506:25 7507:4 7524:11 7533:25 <b>given</b> 7225:22 7236:20 7250:19 7273:2 7276:7 7278:1 7284:8 7298:15 7314:7 7316:12 7322:7 7331:25 7335:7,9 7335:10 7336:4 7344:23 7345:16 7354:4,23 7359:23 7372:20 7397:21 7399:16 7407:4 7411:5 7412:12 7415:20 7418:1,5 7419:15 7421:18 7438:8 7439:14,14,15 7445:19 7456:5 7466:9 7467:17 7478:21 7485:20 7485:20 7494:2 7495:6 7507:2,11 7534:12	7288:18 7291:5 7291:17,20 7294:17 7301:23 7302:3 7304:7 7305:11 7306:11 7309:9 7310:5 7312:4 7314:9,12 7315:11 7316:25 7317:1 7318:18 7319:3,4 7320:13 7320:14 7321:9 7321:10 7323:20 7323:23 7326:25 7327:1,2 7337:20 7339:8 7340:13 7340:21 7342:7 7342:25,25 7343:1,9,19 7344:9 7345:13 7345:17 7351:9 7353:10 7354:16 7355:5 7358:18 7360:16 7363:15 7364:3 7365:10 7366:18 7370:17 7372:2 7374:3 7377:12 7378:2 7378:13,22 7379:8 7382:2,7,9 7384:22,25 7394:10 7395:20 7400:6 7405:22 7413:15 7416:15 7419:12 7420:19 7428:3,22 7429:3 7439:10,12 7440:21 7448:1 7449:1 7450:2 7456:1 7463:24 7483:13 7484:10 7485:21 7489:5 7506:7 7513:20
<b>free</b> 7221:3,7,25 7222:2 7223:20 7223:24 7224:24 7415:13 <b>freely</b> 7534:14 <b>Friday</b> 7238:17 7239:16 7240:5 7252:24,25 7253:13 7257:25 7259:14 7263:21 7280:15 7403:7 7537:16	<b>furthermore</b> 7299:25 7321:4 7328:19 7417:1 7444:7 <b>future</b> 7317:23 7385:20 7387:4 7391:2 7493:21 7529:6,16	<b>genesis</b> 7216:4 <b>gentleman</b> 7455:22 7456:3 7521:10 7521:11 <b>genuine</b> 7285:25 <b>getting</b> 7223:14 7254:6 7296:17 7313:5,5,16 7333:16 7336:18 7359:15 7391:17 7410:21 7412:14 7442:17 7448:18 7493:20 7507:16 7532:1 7535:15	<b>gives</b> 7295:13 7474:9 <b>giving</b> 7226:2 7259:24 7332:12 7332:15 7428:14 7474:13 7498:12 7498:16,24 7502:18 7512:25 <b>glance</b> 7425:25 <b>glib</b> 7449:7 <b>glossed</b> 7423:18 <b>go</b> 7216:18 7225:10 7225:12 7228:5 7232:7 7238:8 7240:25 7244:22 7252:7 7253:23 7255:22 7259:8 7265:16 7270:15 7270:17 7271:24 7273:22 7275:7 7278:12 7283:7	<b>going</b> 7216:4
<b>frankly</b> 7264:7 7278:5 7306:3 7323:11 7339:14 7377:11 7454:13 7527:11 7528:13 7532:4	<b>gain</b> 7292:8 7450:16 7485:22 <b>gaining</b> 7450:20 <b>gains</b> 7222:7 <b>game</b> 7448:5 <b>Gar</b> 7298:9,15 7301:13 7302:9 7302:20 7303:16 7304:5,11,21 7309:25 7310:13 7310:17 7312:7 7312:25 7316:23 7321:14,25 7326:13,17,18 7330:8,10,12 7331:14,17,19 7332:8 7337:12 7337:24 7339:10 7343:20 7354:8 7358:19 7359:11 7360:20 7361:6 7366:7 7369:1,3 7441:5 7523:23	<b>Girvan</b> 7292:2 7293:20,21 7294:15 <b>give</b> 7219:19 7241:11 7247:10 7250:7 7255:7 7270:20 7298:18 7321:17 7364:7 7364:20 7365:16 7375:20 7380:7 7406:12 7411:8 7411:17,25 7412:9 7416:13 7416:16 7418:8 7418:24 7419:18 7426:23 7430:2 7440:4 7443:11 7447:11 7448:12 7457:21 7458:24	<b>glance</b> 7425:25 <b>glib</b> 7449:7 <b>glossed</b> 7423:18 <b>go</b> 7216:18 7225:10 7225:12 7228:5 7232:7 7238:8 7240:25 7244:22 7252:7 7253:23 7255:22 7259:8 7265:16 7270:15 7270:17 7271:24 7273:22 7275:7 7278:12 7283:7	<b>goes</b> 7224:14 7250:6 7322:7 7326:11 7331:18 7333:21 7364:25 7375:25 7406:4 7444:12
<b>friend</b> 7225:25 7252:20 7253:18 7296:6 7367:8,10 7370:5,21 7455:23 <b>friends</b> 7370:14 <b>front</b> 7244:11 7337:16 7357:14 7464:8 7508:12 <b>fruits</b> 7345:2 <b>frustrated</b> 7283:2 7286:4 7440:25 7442:12,19,19,20 7443:6 <b>frustrating</b> 7377:3 <b>frustration</b> 7329:22 7442:23 <b>Fry</b> 7215:16 <b>fulfil</b> 7224:19 7447:9 <b>full</b> 7213:4 7219:6 <b>fully</b> 7250:11 7458:16 7466:17 <b>full-court</b> 7376:7 <b>full-time</b> 7246:21 <b>function</b> 7370:1 7486:11,17 <b>fundamentally</b> 7260:16 <b>furniture</b> 7471:5 <b>further</b> 7223:1	<b>Gar</b> 7298:9,15 7301:13 7302:9 7302:20 7303:16 7304:5,11,21 7309:25 7310:13 7310:17 7312:7 7312:25 7316:23 7321:14,25 7326:13,17,18 7330:8,10,12 7331:14,17,19 7332:8 7337:12 7337:24 7339:10 7343:20 7354:8 7358:19 7359:11 7360:20 7361:6 7366:7 7369:1,3 7441:5 7523:23 <b>garnered</b> 7490:10 <b>Garvie</b> 7232:16 7235:3,4,19,21 7265:16 7275:7 7284:4 7395:6 7396:4 <b>Garvin</b> 7293:18 <b>gather</b> 7283:13	<b>gathered</b> 7289:4 7351:14 <b>gathering</b> 7470:23 <b>gaunt</b> 7381:1 <b>general</b> 7216:22 7220:2 7294:10 7301:7 7304:21 7349:18 7370:11 7372:7 7523:23 <b>generally</b> 7220:10 7303:23 7345:9 7355:20 7420:4 7474:20 7482:16 7526:15 <b>genesis</b> 7216:4 <b>gentleman</b> 7455:22 7456:3 7521:10 7521:11 <b>genuine</b> 7285:25 <b>getting</b> 7223:14 7254:6 7296:17 7313:5,5,16 7333:16 7336:18 7359:15 7391:17 7410:21 7412:14 7442:17 7448:18 7493:20 7507:16 7532:1 7535:15	<b>given</b> 7225:22 7236:20 7250:19 7273:2 7276:7 7278:1 7284:8 7298:15 7314:7 7316:12 7322:7 7331:25 7335:7,9 7335:10 7336:4 7344:23 7345:16 7354:4,23 7359:23 7372:20 7397:21 7399:16 7407:4 7411:5 7412:12 7415:20 7418:1,5 7419:15 7421:18 7438:8 7439:14,14,15 7445:19 7456:5 7466:9 7467:17 7478:21 7485:20 7485:20 7494:2 7495:6 7507:2,11 7534:12 <b>gives</b> 7295:13 7474:9 <b>giving</b> 7226:2 7259:24 7332:12 7332:15 7428:14 7474:13 7498:12 7498:16,24 7502:18 7512:25 <b>glance</b> 7425:25 <b>glib</b> 7449:7 <b>glossed</b> 7423:18 <b>go</b> 7216:18 7225:10 7225:12 7228:5 7232:7 7238:8 7240:25 7244:22 7252:7 7253:23 7255:22 7259:8 7265:16 7270:15 7270:17 7271:24 7273:22 7275:7 7278:12 7283:7	<b>going</b> 7216:4

7219:10,16  
 7226:9 7228:11  
 7230:7 7233:1  
 7249:12 7251:16  
 7254:14 7255:12  
 7255:15 7261:9  
 7261:14,15  
 7264:11 7265:4  
 7272:10 7277:6  
 7279:12,19  
 7285:20 7287:25  
 7291:22 7301:9  
 7302:23 7304:5  
 7306:1,19,20  
 7311:9 7315:21  
 7315:25 7316:14  
 7319:6 7320:10  
 7322:1,12  
 7324:25 7332:22  
 7333:22 7337:10  
 7338:24 7339:1  
 7340:1 7346:25  
 7351:2 7352:23  
 7353:21 7355:8  
 7359:17 7366:14  
 7367:21 7378:10  
 7378:16 7388:20  
 7390:1,22,25  
 7391:7 7399:3  
 7402:23 7403:3  
 7404:13,17,23  
 7410:14 7412:13  
 7412:16 7416:7  
 7416:11,21  
 7421:5 7427:15  
 7431:8 7432:16  
 7440:21 7441:9  
 7443:22 7446:5  
 7450:21 7451:19  
 7460:13 7462:23  
 7465:3,22 7467:3  
 7483:23,24  
 7488:1 7493:2  
 7494:11 7495:10  
 7496:19 7499:8  
 7508:11 7516:22  
 7519:1 7520:18  
 7520:23 7527:10  
 7530:9

**Gomery** 7507:13  
**good** 7212:7,9,24  
 7279:8 7300:3  
 7312:24 7324:22  
 7349:18 7398:10  
 7427:9 7428:19  
 7437:19,20  
 7438:25 7466:19  
 7474:22 7475:5  
 7487:11 7511:10  
**goods** 7428:14  
**gotten** 7219:13  
 7393:7 7425:18  
**government**  
 7226:16 7227:13  
 7267:13 7268:23  
 7280:6 7292:5  
 7293:12 7299:17  
 7300:14 7334:3,7  
 7347:11 7377:17  
 7393:4,11,11,12  
 7393:23 7407:17  
 7424:5 7426:1,5,9  
 7426:22 7427:24  
 7441:2 7452:7,14  
 7452:21 7456:15  
 7463:10 7483:16  
 7485:6 7501:21  
**governmental**  
 7369:20 7530:11  
**government's**  
 7350:2  
**graduate** 7215:14  
**graduated** 7215:9  
 7215:16 7417:6  
**Graham** 7324:25  
 7363:21,23  
 7364:1 7369:1,11  
 7441:4  
**grain** 7410:20  
**granted** 7385:10  
**great** 7303:22  
 7405:24 7434:21  
 7440:23 7452:2  
**greater** 7532:12  
**greatest** 7223:8  
 7225:6,24  
 7243:15 7347:21  
**greffier** 7214:2,20

**ground** 7420:13  
**grounds** 7421:19  
 7421:25 7422:2,4  
 7422:20,21  
 7487:6 7488:5,10  
 7488:18 7493:24  
**Groundwork**  
 7343:7  
**group** 7291:1  
 7292:17 7407:8  
 7458:6 7490:14  
 7513:14  
**groups** 7292:19  
**GST** 7249:11  
**guarantee** 7448:24  
 7449:1  
**guard** 7499:19  
**guarded** 7255:5  
**guess** 7244:5  
 7245:25 7246:21  
 7249:24 7253:2  
 7253:18 7292:14  
 7299:8 7300:7  
 7313:22 7323:1  
 7336:14 7338:1  
 7348:25 7375:24  
 7419:25 7420:22  
 7449:11 7485:6  
**guilty** 7410:22  
**guy** 7326:19  
 7390:19  
**guys** 7448:19

## H

**h** 7212:4 7279:25  
 7280:2 7360:9,11  
 7398:14,16  
 7461:12,14  
 7537:18,19  
**habit** 7358:6  
**half** 7247:17  
 7336:22 7379:22  
 7380:4 7460:21  
 7461:6  
**halfway** 7319:11  
 7404:6  
**hand** 7248:4,5  
 7338:4 7405:8  
 7407:7 7413:4

7535:20,23  
**handed** 7230:17  
 7251:3 7306:9  
**handing** 7402:17  
**handle** 7463:20  
**handled** 7300:21  
**hands** 7253:15  
 7391:7 7424:6  
 7436:2  
**handwriting**  
 7219:12 7231:3  
 7243:14 7262:14  
 7262:19,20,21  
 7263:15,17  
 7271:23 7377:20  
**handwritten**  
 7242:13 7495:24  
 7496:5  
**happen** 7225:10  
 7245:12 7351:22  
 7377:14  
**happened** 7217:6  
 7219:3 7239:20  
 7245:5,6 7264:17  
 7264:21 7265:13  
 7266:11 7283:4  
 7291:4 7297:6  
 7391:18 7394:9  
 7408:1 7452:18  
 7473:24  
**happening** 7416:12  
 7467:13  
**happens** 7528:5  
**harassment**  
 7410:15  
**hard** 7400:15,18,19  
 7400:23 7401:1  
 7401:12,16  
 7513:15  
**hardship** 7407:16  
**hasten** 7303:11  
**head** 7253:16  
 7356:15 7427:22  
 7428:9 7441:5  
 7474:9 7526:6  
**heading** 7429:19  
 7529:24  
**headquarters**  
 7280:19 7319:7

7320:11 7341:17  
 7355:3  
**Heafey** 7376:20  
 7396:12,15,25  
**Heafey's** 7397:4  
**healthy** 7410:24  
**hear** 7215:15  
 7278:2,17 7301:9  
 7534:12  
**heard** 7217:7  
 7266:22 7277:20  
 7278:15,24  
 7300:10 7313:9  
 7339:2 7350:3  
 7352:20 7375:18  
 7375:19 7382:4  
 7424:3 7459:11  
 7463:12  
**hearing** 7277:19  
 7278:11 7351:3  
 7381:13 7440:6  
 7504:25 7536:18  
 7537:15  
**hearings** 7377:5  
**held** 7417:2  
 7429:22 7464:7  
 7469:2 7503:11  
**hello** 7370:19  
**help** 7265:9  
 7273:20 7439:1  
 7439:13 7441:17  
 7459:6 7523:14  
 7525:8  
**helpful** 7227:24  
 7243:17 7273:13  
 7303:21 7310:18  
 7359:10,17  
 7369:4 7441:24  
 7526:8,25  
 7531:18  
**helping** 7447:22,23  
**heretofore** 7376:5  
**hide** 7324:16  
**high** 7440:22  
**higher** 7428:22  
 7528:11  
**highly** 7317:20  
 7451:23  
**hint** 7447:20

<b>hired</b> 7370:3	<b>husband's</b> 7335:25 7372:12	7324:11 7440:23 7525:22 7526:2	<b>incarcerated</b> 7329:18 7534:13	7305:15,24 7308:8 7324:7
<b>historically</b> 7362:18 7432:11	<b>Hussein</b> 7408:8,20	<b>impacts</b> 7319:24	<b>inception</b> 7365:1	7332:1 7334:19
<b>history</b> 7245:19 7247:15,15 7417:7 7439:9	<b>Hussein's</b> 7409:22	<b>imparted</b> 7222:8 7533:10,13,13	<b>incident</b> 7530:17	7344:8,10 7345:12,15
<b>hold</b> 7230:18,19 7265:6 7391:17	<b>hypothesis</b> 7465:6	<b>impeached</b> 7507:1	<b>incidentally</b> 7330:21	7352:5 7359:4 7362:5 7364:17
<b>holding</b> 7239:22	<b>I</b>	<b>impeachment</b> 7506:23 7507:9	<b>inclined</b> 7412:11	7379:5,18 7388:17 7390:20
<b>hollow</b> 7380:15	<b>idea</b> 7266:11 7323:24 7353:9	<b>impediment</b> 7393:10 7483:17	<b>include</b> 7311:4 7459:15 7478:22	7393:14 7400:10 7412:5 7414:5,15
<b>home</b> 7256:5,14 7265:5 7370:18 7370:18 7378:6 7404:19 7405:20 7408:13 7422:11 7448:11	7353:13 7451:8 7526:3,12,13	<b>implicate</b> 7506:1	<b>included</b> 7228:10 7293:8 7338:22	7415:5,13 7416:5 7435:5 7448:4
<b>honest</b> 7425:4	<b>identical</b> 7422:8 7491:12 7492:17 7497:12	<b>implication</b> 7468:21	<b>including</b> 7233:11 7300:18 7368:25	7472:17 7476:3 7485:12,21
<b>honestly</b> 7461:25 7532:14 7534:6	<b>identifiable</b> 7407:3	<b>implied</b> 7348:4	7400:19 7481:15	7488:8 7492:23 7497:20 7499:24
<b>hoops</b> 7225:10	<b>identified</b> 7256:10 7389:8 7413:19	<b>implies</b> 7295:12	<b>inclusion</b> 7444:2	7500:3 7501:17 7508:9,22
<b>hope</b> 7381:10,10 7460:17,20 7476:14 7511:22	7416:17 7446:10 7468:2 7536:3	<b>importance</b> 7419:23 7434:22	<b>income</b> 7409:8	7509:16,21 7510:19 7524:5
<b>hoped</b> 7443:5	<b>identify</b> 7280:8 7389:9 7414:2	<b>important</b> 7223:10 7249:16 7257:4	<b>incoming</b> 7327:22 7327:25	<b>indicates</b> 7219:9 7250:6 7259:13
<b>hopefully</b> 7306:13 7460:21	7430:13 7457:9 7458:20 7521:19	7372:19 7406:16 7407:21 7414:3 7423:19 7431:1	<b>incommunicado</b> 7264:15	7250:6 7259:13 7311:19 7312:5
<b>hoping</b> 7312:18 7476:9	<b>identifying</b> 7228:5	7462:3 7487:1 7507:7 7521:17 7527:6	<b>inconsistency</b> 7323:22	7333:11 7361:1 7416:9
<b>hostage</b> 7239:24	<b>identities</b> 7220:12 7224:20 7254:22	<b>importantly</b> 7401:1	<b>incorporated</b> 7316:12	<b>indicating</b> 7250:23 7253:6 7261:7
<b>hour</b> 7281:23 7290:18 7336:22 7379:23 7452:19 7460:21 7461:7	<b>identity</b> 7220:3,7 7268:7 7269:16 7280:9,10 7459:1 7459:15	<b>impose</b> 7416:12 7490:25 7517:19	<b>incorrectly</b> 7469:21	7345:1,3 7361:7 7363:24 7383:1
<b>hours</b> 7230:6 7246:20 7322:2 7456:12	<b>illegal</b> 7336:7	<b>imposed</b> 7249:15 7412:17 7517:23 7518:1	<b>independent</b> 7226:15,20 7227:15 7267:11 7267:19	7383:10,19 7384:1 7484:17 7513:25
<b>House</b> 7480:19	<b>illness</b> 7471:16	<b>impression</b> 7295:13 7426:12 7518:15	<b>independently</b> 7511:2	<b>indication</b> 7251:6 7339:13 7350:5
<b>HQ</b> 7321:6	<b>image</b> 7401:1	<b>imprisoned</b> 7298:17 7532:14	<b>indicate</b> 7212:13 7219:16 7228:14	7471:11 7483:14 7489:6
<b>hrs</b> 7257:6	<b>imaged</b> 7400:23	<b>imprisonment</b> 7323:2	7256:1 7260:16 7263:9 7267:22 7270:24 7287:23	<b>indirectly</b> 7349:22 7424:7
<b>Huallah</b> 7408:10	<b>images</b> 7401:11	<b>improper</b> 7328:20 7371:17 7444:8	7293:19 7362:6 7389:2 7392:11 7392:20 7419:20	<b>individual</b> 7252:11 7252:17 7268:6
<b>hug</b> 7407:15	<b>imagine</b> 7457:11	<b>inability</b> 7534:13	7470:13 7499:12 7504:20 7513:13	7268:22 7273:8 7301:6 7334:25
<b>human</b> 7290:16 7291:1	<b>immediately</b> 7330:25 7404:20 7405:18 7524:20	<b>inaccurate</b> 7371:17	<b>indicated</b> 7216:25 7239:4,12 7241:3	7335:3,18 7353:23 7388:25
<b>hurrying</b> 7425:15	<b>immigration</b> 7248:24 7250:18 7292:25	<b>inadmissible</b> 7236:22	7250:19 7270:2,6 7272:22 7283:15 7285:18,21	7390:7 7407:11 7408:7 7516:14
<b>husband</b> 7233:17 7265:10 7334:21 7334:23 7369:21 7372:17 7373:2,3 7373:6,8 7377:15	<b>immunity</b> 7385:11 7386:15 7389:13 7389:15,15,18 7390:8	<b>inappropriate</b> 7308:10		<b>individuals</b> 7216:23 7218:22
	<b>impact</b> 7268:18 7318:2 7319:13	<b>inappropriateness</b> 7308:24		



7220:17,21	7402:10,13,13,22	<b>initiated</b> 7216:19	<b>instructions</b>	7336:5 7343:16
7224:20 7237:17	7407:13 7410:21	7296:13 7320:4	7212:13 7277:22	7485:23
7238:19 7268:6	7411:6 7412:12	7389:14	7279:5,9 7454:22	<b>interfere</b> 7354:1
7278:22 7282:14	7415:20 7421:18	<b>initiating</b> 7219:4	7454:23 7455:11	<b>Interior</b> 7334:14
7285:21 7286:5,9	7423:5,23 7424:8	<b>initiative</b> 7303:13	7455:13 7459:22	<b>interject</b> 7348:18
7300:10 7352:10	7424:20 7425:17	7303:25 7304:1	7460:2 7461:19	<b>international</b>
7352:11 7386:24	7425:18 7428:2	7525:16	7461:21,24	7329:15 7410:4
7407:9 7410:12	7431:1 7433:17	<b>initiator</b> 7282:16	7462:3,7	7532:5,13
7459:10 7465:25	7438:16 7440:4	<b>injure</b> 7278:3	<b>Integrated</b> 7280:21	<b>Internet</b> 7271:11
7492:11 7493:19	7443:4 7451:3,7	<b>injuries</b> 7324:15,16	<b>intelligence</b> 7298:3	7271:19
7495:14 7536:10	7452:6,21	7466:12	7411:13 7424:6	<b>interpretation</b>
<b>individual's</b> 7220:6	7453:13,21,22	<b>injurious</b> 7452:23	7425:21 7432:25	7479:2,25
7495:23	7454:25 7455:20	<b>injury</b> 7453:14	7435:21 7437:18	7481:25
<b>induced</b> 7492:9	7458:10,24	<b>ink</b> 7244:6,13	7441:14 7464:8	<b>interrogate</b>
<b>indulgence</b> 7398:4	7459:9 7465:18	<b>input</b> 7371:9	7467:6 7493:14	7532:21 7534:18
7472:2	7465:21,21,23	<b>inquire</b> 7257:12	7493:18 7494:4	<b>interrogated</b>
<b>inevitable</b> 7221:18	7470:23 7471:8	<b>inquiries</b> 7271:3	7499:5,8 7501:11	7323:25 7393:1
<b>inference</b> 7402:9	7475:11 7479:12	7273:15,16	7518:24	7393:22 7425:19
7426:18 7435:22	7481:5 7484:4,9	7297:5 7370:10	<b>intelligent</b> 7377:24	7430:18
<b>inferred</b> 7530:22	7487:18,24	<b>inquiry</b> 7225:3,8,9	<b>intend</b> 7458:16	<b>interrogating</b>
<b>info</b> 7387:12,14	7490:9,24 7497:8	7225:11 7253:3	7513:20	7393:3 7436:21
<b>inform</b> 7455:23	7497:10 7498:1	7265:12,13	<b>intended</b> 7372:20	<b>interrogation</b>
<b>information</b> 7222:8	7501:12,23	7278:6,10,12	<b>intending</b> 7379:1	7323:18,21
7236:4 7241:15	7502:4 7504:25	7376:12,18	<b>intention</b> 7239:13	7344:19,23
7241:16 7247:8	7505:6 7515:16	7378:1 7452:9	<b>intentionally</b>	7393:24 7415:9
7255:5,6,8 7266:8	7517:14 7529:13	7457:11	7454:9	7424:4 7425:1
7270:20 7272:6	7532:18 7533:10	<b>inscription</b> 7231:4	<b>intents</b> 7219:9	7426:7,13 7428:1
7272:19 7276:21	7533:12,23,25	<b>inside</b> 7336:20	<b>interest</b> 7270:18	7436:14 7438:9
7278:1,15	7534:12 7535:15	<b>insider</b> 7498:20	7305:3 7312:20	7465:8 7520:2
7279:16 7282:1	7535:18,20,24	<b>insist</b> 7413:10	7339:14,19	7521:8,22
7283:13 7284:15	<b>informational</b>	<b>insisting</b> 7415:16	7344:8 7347:14	7534:16
7285:22 7286:5	7418:14	<b>insofar</b> 7267:23	7352:1,10 7383:2	<b>interrogations</b>
7287:6 7288:4	<b>information-gath...</b>	7268:15	7386:12 7401:23	7300:14,16
7289:3 7298:7,22	7285:19 7299:25	<b>Insp</b> 7274:6 7384:1	7412:22 7413:6	7323:4 7465:24
7311:2 7313:6,16	7301:7	7429:25	7454:16 7486:4	7466:7 7490:10
7313:23 7314:19	<b>informed</b> 7270:1	<b>inspection</b> 7401:11	7489:7 7500:11	<b>interrogatories</b>
7316:12 7322:7	7275:25 7280:6	<b>Inspector</b> 7279:13	7504:16 7506:16	7373:23 7509:25
7324:21 7330:3	7403:9 7447:12	7280:24 7281:7	7512:7,14 7515:7	<b>interrogators</b>
7331:1 7337:4	7447:13	7285:14 7329:24	7515:9,23 7517:9	7425:23
7342:21 7343:17	<b>ingenuity</b> 7451:24	7356:14,20	7517:11	<b>interrupt</b> 7350:21
7347:3,23	<b>initial</b> 7263:23	7392:7,24 7393:9	<b>interested</b> 7336:18	<b>interview</b> 7235:19
7348:17 7349:16	7283:1 7318:9	7423:21,22	7345:2 7389:12	7235:20 7236:15
7350:9,16 7351:3	7360:25 7452:11	7424:16 7427:22	7418:10 7434:19	7237:1 7242:7,23
7351:5,14 7352:8	7497:16 7502:19	7428:4 7434:14	7447:17 7493:17	7244:7,12,23
7359:16 7361:11	<b>initially</b> 7221:23	7529:24	7493:17 7535:23	7245:9,14
7361:12 7363:9	7248:16 7274:13	<b>instance</b> 7222:14	7535:25	7246:23 7247:6
7363:10 7365:6	7310:7 7313:20	7247:12	<b>interesting</b> 7433:13	7247:16 7253:11
7392:12,24	7406:2 7471:23	<b>instant</b> 7428:11	7436:8 7449:18	7254:1,3 7255:3
7393:20 7401:24	<b>initiate</b> 7487:19	<b>instinct</b> 7270:14,16	<b>interests</b> 7223:1,2	7259:11,15,22,25

7260:9 7261:11 7276:13 7295:8 7297:9,19 7305:17 7306:1 7306:18 7334:13 7344:11,13,20 7382:21 7386:14 7387:19 7390:4 7397:19,19,22 7399:7,14,21 7401:18 7402:24 7403:1 7406:2 7412:18,23 7413:12 7415:7 7415:14,17 7418:19 7419:5 7419:18 7429:8 7430:4,8,9,21 7431:8 7435:7 7436:1 7443:24 7450:17,18 7451:11 7456:10 7456:14,18 7457:22 7458:4 7467:23 7469:17 7470:6 7485:20 7491:6,8,14 7496:2 7498:22 7502:20 7505:13 7514:22 7515:1,3 7516:5,8,13,20,25 7517:19 7518:10 7518:16	7456:5,7 7491:18 7492:4 7514:13 <b>introduce</b> 7212:21 <b>introduced</b> 7375:16 7518:25 <b>investigate</b> 7395:13 7407:18 7486:18 <b>investigated</b> 7440:6 7487:16 <b>investigating</b> 7422:14,20 7457:25 7501:9 7518:18 <b>investigation</b> 7216:22 7234:9 7257:9 7272:10 7298:4 7310:23 7318:4 7319:23 7323:23 7328:23 7352:7,15 7353:20 7396:17 7397:1 7406:18 7407:4,12 7408:8 7408:9,21 7411:12,13,14,15 7412:14 7415:22 7418:13,22 7423:8 7438:6 7443:23,25 7444:1,11 7454:16 7457:17 7468:17 7471:3 7474:5,16 7475:4 7475:15,18,18,19 7482:11 7487:2,5 7487:9,20 7499:1 7502:18 7512:15 7512:18 7515:12 7515:24 7518:19 7519:10,16,17	7418:15 7447:18 7448:7 7473:8 7493:19 7506:5 <b>investigator</b> 7268:17 7500:12 7501:3,13 <b>investigators</b> 7217:3 7221:20 7233:9,13,22 7234:15 7235:9 7235:14 7236:24 7258:25 7276:3 7276:17 7284:12 7319:18 7429:22 7474:22,25 7475:22 7486:16 7500:24 7508:4 <b>investigator's</b> 7219:23 7268:16 <b>invitation</b> 7226:3 <b>invite</b> 7225:22 <b>inviting</b> 7397:5 <b>invoke</b> 7416:18 <b>involve</b> 7328:17 <b>involved</b> 7220:10 7226:19 7227:11 7246:2,11 7275:23 7292:13 7299:16 7323:16 7361:16,19 7362:15 7383:12 7390:22 7401:10 7410:14 7421:20 7423:13 7474:4 7516:15 7519:9 7519:15,16	7292:2 7293:11 7296:19,22 7297:9 7303:13 7325:1,11,17,20 7325:20,25 7326:8 7333:21 7338:2 7343:24 7347:25 7350:11 7350:12 7355:4 7357:3 7358:20 7364:14 7369:9 7386:23 7419:15 7424:21 7434:2 7437:5 7438:20 7463:9,14,21 7464:23 7466:20 7481:16 7499:6 7502:11 7504:3 7507:6 7510:18 <b>issued</b> 7334:1,15 <b>issuer</b> 7305:6 <b>issues</b> 7245:9 7296:15 7299:22 7303:3,6 7326:4 7331:23 7352:3 7375:21 7386:1 7399:12 7406:24 7432:1 7502:24 7503:7 <b>item</b> 7249:24,24 7352:25 7353:1 <b>items</b> 7250:3 7490:4 <b>Ivan</b> 7409:12 <b>i.e</b> 7415:6 7518:7	7239:18 7240:10 7240:11,24 7241:1,10,22 7244:8,19 7246:19 7252:6 7255:19 7256:3 7257:25 7260:22 7261:15 7306:20 7358:22 7359:1 7360:15,16 7363:16 7379:25 7379:25 7380:19 7396:6,13,19 7397:3,5 7399:9 7410:8 7431:17 7431:19 7442:10 7477:8 7489:6,8,9 7491:3,10 7502:13 7512:22 <b>January-February</b> 7373:22 <b>jeopardy</b> 7413:3 <b>JFK</b> 7275:3 <b>Jim</b> 7390:11,16,21 7391:20 <b>job</b> 7220:16 7224:16,16 7268:16 7465:19 <b>jobs</b> 7220:14 <b>Johansson</b> 7537:24 <b>John</b> 7265:2 7294:22 7296:6,8 7298:14 7301:15 7325:25 7326:16 7366:16 7367:5,7 7368:6,12 7369:5 7464:11 7520:13 <b>Johnson</b> 7261:2 <b>Jordan</b> 7313:10 7314:24 7377:19 7445:13,21 7477:25 7479:24 7482:2 <b>jot</b> 7230:2 <b>jotting</b> 7288:5,16 7310:9 <b>judge</b> 7518:25 <b>judgement</b> 7222:12 <b>judgment</b> 7224:4
<b>interviewed</b> 7235:16 7253:7 7260:13 7261:9 7306:22 7414:7 7456:4 7457:16 7458:7 7483:1,7 7485:25 7518:5	<b>investigations</b> 7220:11 7292:15 7299:12 7302:25 7319:16 7416:5 7418:21,24 7474:23 7487:14 7532:5	<b>involvement</b> 7216:5 7261:17 7267:10 7276:18 7284:13 7286:20 7331:22 7406:5 7423:24 <b>IPOC's</b> 7280:20,25 7474:9 <b>issuance</b> 7305:20 <b>issue</b> 7224:12 7228:3 7249:19 7251:15 7278:21 7282:9 7286:22	<b>J</b> <b>jail</b> 7274:24 7276:10 7293:3 7445:24 <b>JAMES</b> 7387:6 <b>January</b> 7216:23 7217:17 7219:10 7219:17,19 7228:17 7231:18 7231:22 7233:6 7234:19 7235:5 7236:2 7237:5,19 7238:12 7239:9	
<b>interviewing</b> 7344:8 7451:5 7456:12 7482:23 7486:4 7489:7				
<b>interviews</b> 7217:4 7233:11 7238:20 7239:25 7240:2 7242:25 7410:10 7418:16 7423:9	<b>investigative</b> 7306:7 7412:15			

7227:12  
**juin** 7212:4  
 7537:19  
**July** 7370:23  
 7371:6,22 7372:6  
 7456:16 7534:25  
**jump** 7261:14  
 7399:3 7401:17  
 7429:4  
**junction** 7317:16  
 7328:24 7444:15  
 7478:12  
**June** 7212:2  
 7333:19 7369:12  
 7537:16  
**Justice** 7263:13  
 7264:24 7375:17  
 7376:18 7409:13  
 7513:8,9 7514:5  
**justified** 7315:17

---

**K**


---

**Kadr** 7456:4,5,9,17  
 7457:7,8,16  
 7458:7,19,23  
**Kafkaesque**  
 7353:19  
**Kathleen** 7262:18  
 7290:20  
**keep** 7231:15  
 7279:12 7332:3  
 7353:1 7358:6  
 7376:2 7378:4  
 7388:19 7437:24  
 7440:24 7446:15  
**keeping** 7483:12  
 7525:23  
**kept** 7231:13  
 7268:7 7393:13  
 7471:23  
**Kerry** 7374:11,22  
 7375:6,15  
**Kevin** 7281:6  
 7285:4 7357:14  
 7389:11 7511:8  
**key** 7310:3,20  
 7425:12  
**KGB** 7412:24  
 7414:5 7498:8

7499:5 7518:7  
**KGB-type** 7497:25  
**Khadr** 7451:12,12  
**Khalden** 7457:9  
**kick** 7406:11  
**Kim** 7297:2  
**kind** 7229:13  
 7272:9 7298:3  
 7300:3 7301:8,9  
 7323:23 7352:20  
 7410:20 7415:9  
 7419:22 7428:2  
 7438:3 7440:2  
 7441:10,25  
 7442:4 7464:20  
 7465:6 7487:17  
 7520:17,22  
 7528:13  
**KLOEZE** 7227:7  
 7227:21  
**knew** 7252:16,19  
 7252:22 7273:13  
 7285:1,4,6,10,11  
 7286:12 7296:7  
 7300:12 7323:8  
 7324:17 7326:8  
 7331:12 7334:20  
 7345:17 7346:24  
 7348:11 7362:9  
 7367:7 7402:16  
 7467:7 7473:4,7  
 7481:19 7482:25  
 7483:3 7516:18  
 7516:19,24,24  
 7517:5  
**know** 7220:22  
 7225:20 7239:20  
 7250:5 7254:5  
 7258:19 7264:16  
 7265:12,14  
 7282:12 7285:14  
 7296:17 7299:2  
 7299:21 7300:6  
 7305:8,25 7311:8  
 7323:12 7326:21  
 7327:24 7330:2  
 7334:21 7335:2  
 7336:1 7344:18  
 7345:18,24

7346:24 7347:19  
 7347:20 7350:15  
 7353:17,20  
 7357:8,12  
 7364:25 7367:3  
 7367:20 7369:5  
 7371:12 7377:1,2  
 7377:4 7378:15  
 7380:14 7381:9  
 7383:16,18  
 7387:17,18  
 7389:1,4 7390:4  
 7391:6 7398:24  
 7399:6 7405:11  
 7405:24 7407:22  
 7408:1 7410:15  
 7412:24 7414:18  
 7416:22 7419:9  
 7419:24 7420:14  
 7427:12 7435:18  
 7435:19,21  
 7438:1,22 7439:9  
 7440:12,15  
 7448:5,19 7449:1  
 7449:7,25 7451:9  
 7451:14 7453:18  
 7453:21,23  
 7454:13,17  
 7455:18,20  
 7464:12 7466:15  
 7466:17,18,20  
 7469:11 7471:7  
 7477:15 7488:13  
 7488:21 7498:20  
 7498:25 7501:10  
 7502:5,6 7503:21  
 7505:24 7506:2  
 7512:17 7519:16  
 7521:10 7522:20  
 7526:23 7527:8  
 7527:10,16  
 7528:2,3,15  
 7531:23 7532:4  
 7532:14 7536:4,9  
**knowing** 7221:17  
 7520:22  
**knowledge** 7240:20  
 7317:4 7342:23  
 7436:24 7453:24

7490:4 7519:24  
**known** 7220:13  
 7234:22 7252:8  
 7394:23 7402:19  
 7472:23  
**knows** 7280:8  
 7346:2,3,4  
**KS** 7290:19  
**K-A-D-R** 7456:4

---

**L**


---

**lack** 7330:3  
**land** 7353:18  
**laptop** 7236:5  
 7249:1,2,4,13,17  
 7249:18,20  
 7250:6,13  
 7254:13 7400:9  
 7401:10 7402:6  
 7402:14,18  
 7536:7,16,18  
**large** 7253:1  
 7357:22 7407:22  
 7410:20 7422:17  
**largely** 7254:8  
 7392:10 7394:17  
 7485:10  
**larger** 7219:6  
**lasted** 7242:2  
**lasting** 7456:12  
**late** 7379:25 7402:1  
**latest** 7359:2  
**laude** 7215:10,17  
**laughed** 7449:4  
**laughing** 7448:16  
**Laughter** 7214:17  
 7221:14 7263:6  
 7346:12,17  
 7375:1 7376:13  
 7463:7 7472:9  
 7481:2 7529:19  
**launch** 7375:24  
**law** 7213:11  
 7215:10,24  
 7224:6 7273:11  
 7306:4 7362:16  
 7367:7 7417:8  
 7480:23  
**lawyer** 7234:16

7235:10 7237:21  
 7244:25 7247:7  
 7273:10 7274:7  
 7282:25 7290:15  
 7310:22 7343:7  
 7370:3 7372:13  
 7373:9 7375:3  
 7377:3 7391:15  
 7391:19 7394:21  
 7412:8 7427:17  
 7454:15 7463:6  
 7474:16 7518:12  
 7526:14 7528:21  
 7529:2 7532:3  
**lawyers** 7409:19  
**le** 7212:3 7214:19  
 7537:18  
**lead** 7280:25  
 7377:23 7389:19  
 7458:12 7498:17  
**leading** 7226:8  
 7247:1  
**leaked** 7479:12  
**leaks** 7387:11,14  
**learn** 7300:8  
 7518:23  
**learned** 7354:24  
 7417:18,22  
 7515:2 7516:21  
 7519:25 7520:8  
 7520:17  
**leave** 7334:2  
 7351:7 7415:13  
**leaves** 7350:10  
**leaving** 7231:19  
 7316:10 7420:6  
 7426:8  
**led** 7276:22  
 7284:16 7361:16  
**ledger** 7355:9,11  
 7355:14 7358:8  
 7394:12  
**left** 7217:3 7218:15  
 7225:21 7230:13  
 7231:9 7233:21  
 7248:24 7250:11  
 7251:9,13,23  
 7252:1,3 7257:14  
 7264:2 7271:22

7297:15 7322:9	7327:6,12,16,18	7232:25 7262:4	7390:24 7391:5	7474:24 7530:3
7333:11,20,24	7329:20 7330:4,9	7306:2 7309:9	7405:15 7412:5	7531:3,4,22
7352:22 7356:13	7330:12,14,19,20	7378:1,2,2,4	7416:9 7426:4	7536:22
7360:14 7377:21	7331:2,13,15	7414:4 7419:10	7441:17 7448:22	<b>longer</b> 7300:17
7381:3 7382:25	7332:9 7337:25	7470:20	<b>listening</b> 7247:1	7321:22 7425:10
7383:6,25	7338:3 7339:4	<b>level</b> 7285:10	7404:23	7471:23
7410:10 7419:22	7340:24 7341:4	7339:17 7440:22	<b>lists</b> 7299:14,15	<b>long-standing</b>
7432:16 7471:3	7342:1 7343:18	7487:21,23	7408:24 7409:23	7327:21 7418:5
7493:13 7516:14	7351:19 7364:20	<b>levels</b> 7530:10	7491:5	7473:22
<b>left-hand</b> 7275:12	7364:24 7367:21	<b>lever</b> 7486:14	<b>literally</b> 7409:5	<b>look</b> 7225:9
<b>legal</b> 7235:14	7368:6,11,17,23	<b>leverage</b> 7486:5	<b>litigated</b> 7292:11	7232:25 7239:25
7244:4,4 7260:1	7372:5,15 7393:7	<b>Levy</b> 7273:8	7293:11	7251:6 7265:5
7271:19 7272:5	7396:12,14,24	<b>Liban</b> 7408:7	<b>litigation</b> 7215:19	7292:19,21
7274:8 7275:1,15	7397:5 7425:7,8,9	<b>liberate</b> 7287:7	7292:17	7296:24 7299:2
7276:12 7281:3	7425:14 7426:20	<b>liberating</b> 7287:8	<b>little</b> 7221:23	7308:20 7315:25
7315:24 7374:15	7426:23 7427:1	<b>liberty</b> 7515:17	7225:9 7247:18	7330:13 7335:5
7374:15 7385:25	7427:12,16,20	<b>lied</b> 7498:21	7399:4 7403:25	7346:24 7413:13
7406:12 7411:8	7441:7,24,25	<b>life</b> 7378:5 7407:16	7421:1 7443:5	7416:11 7425:22
7415:5 7416:23	7442:2 7443:4,10	7409:23 7410:2,5	7450:3 7451:16	7433:10 7461:17
7422:13,24	7443:13,17,19	7413:3	7464:3 7490:24	7466:4,6 7470:20
7427:14 7448:23	7444:3,21	<b>liked</b> 7500:19	7516:23 7525:22	7477:1 7478:8
7449:4,12	7445:11 7447:5,7	<b>likelihood</b> 7390:21	7531:14	7487:14 7501:3,4
7450:23 7495:4	7447:8,9 7472:15	<b>limit</b> 7493:4	<b>live</b> 7404:22	7501:6,7 7507:7
7530:6,7	7475:9,14 7476:1	<b>limited</b> 7221:11	7405:15	<b>looked</b> 7248:11
<b>legality</b> 7498:12	7476:21 7477:1,9	7273:14 7454:10	<b>lived</b> 7265:4	7250:10 7253:15
<b>legislation</b> 7292:25	7477:12,23	7502:23 7507:9	<b>lives</b> 7424:18	7335:24 7357:12
7315:16,22	7478:8 7480:5,11	<b>line</b> 7216:20	<b>loaf</b> 7329:23	7359:15 7380:15
7408:22,25	7480:14 7481:18	7254:25 7260:4	<b>local</b> 7275:1	7381:15 7393:1
<b>legitimate</b> 7454:14	7481:23 7483:13	7270:8 7293:17	7276:12	7466:18
<b>lengthy</b> 7425:20	7483:20,24	7337:8 7404:15	<b>locate</b> 7273:17,21	<b>looking</b> 7321:19
7456:5	7489:11,18	7405:19	<b>location</b> 7275:6	7338:6 7383:18
<b>lessen</b> 7222:11	7491:3,9 7507:4	<b>lines</b> 7297:25	7334:17	7413:5 7466:15
7223:6,8	7509:14 7517:24	7402:25	<b>locations</b> 7245:18	7477:11 7483:5
<b>letter</b> 7238:11	7522:18,21	<b>link</b> 7457:15,18	<b>LOCHYEAR</b>	<b>looks</b> 7262:11
7239:4 7240:12	7525:20 7526:10	7459:4,19	7387:6	<b>loosen</b> 7419:10
7303:7,13,16,18	7526:14,15	<b>linkage</b> 7458:13	<b>Lockyer</b> 7390:11	7420:15
7304:25 7305:6,9	7527:8 7528:7,9	<b>linked</b> 7305:23	7390:16,22	<b>Lorne</b> 7397:17
7305:10,13,20	7528:13,18,19	<b>linking</b> 7305:19	7391:20	<b>lost</b> 7336:15 7409:8
7306:2,4,8,9,11	7529:2,22 7530:9	7372:16	<b>log</b> 7250:20	7422:6
7308:11 7309:23	7530:13 7531:2,3	<b>links</b> 7254:15	<b>Logan</b> 7248:1	<b>lot</b> 7247:3 7374:24
7309:25 7310:11	7531:6,8,13,22	7535:17	<b>logged</b> 7250:13	7420:1,2 7451:3
7311:8,12,15,19	7532:10	<b>lips</b> 7464:21	<b>logic</b> 7362:20	7465:20 7477:4
7311:21 7312:1	<b>letterhead</b> 7393:5,6	<b>list</b> 7373:1,23	7432:17	7532:7
7312:12,18,22	7426:1	7374:1 7509:19	<b>London</b> 7424:18	<b>lots</b> 7375:3 7479:4
7313:19 7314:15	<b>letters</b> 7393:4	7510:12,14	<b>lonesome</b> 7248:13	<b>loved</b> 7408:17
7316:9,14	7476:23 7509:16	<b>listed</b> 7311:13	<b>long</b> 7256:19	<b>Low</b> 7339:16
7318:23 7319:2	7532:6	7408:25	7281:20 7285:1	<b>lower</b> 7218:15
7320:17,24	<b>letter's</b> 7330:21	<b>listen</b> 7353:25	7379:20 7427:1	<b>low-level</b> 7339:14
7321:6 7326:23	<b>let's</b> 7225:14	7388:18 7390:10	7460:15 7461:3	<b>Lucent</b> 7246:16

**luggage** 7248:4,13  
7336:13,15,17,18  
7469:6,9 7470:2  
**lunch** 7359:25  
7452:19  
**luncheon** 7404:2  
**Lune** 7302:10  
7310:1 7313:4,4  
7315:20 7316:5  
7316:13 7326:6  
7441:24 7525:4  
**Lutfy** 7513:8  
**Lynda** 7537:24  
**L'audience** 7212:3  
7537:17  
**L-E-V-Y** 7273:9  
**L-Y-N-K** 7246:14

## M

**M** 7295:4 7327:13  
7327:13  
**Maati** 7535:2  
**magna** 7215:9,16  
**Maher** 7216:24  
7218:9,17  
7219:10 7230:15  
7231:7 7233:11  
7233:18 7236:1  
7236:12,20  
7244:7 7253:12  
7253:14 7254:2  
7254:18,19  
7256:13 7257:10  
7258:8 7263:24  
7265:25 7273:17  
7274:9 7275:24  
7276:19 7287:14  
7289:5 7296:15  
7305:24 7312:21  
7316:6 7322:25  
7331:24 7333:20  
7333:23 7334:17  
7335:4,9,13,22  
7336:4,12  
7342:19 7343:6  
7355:15 7357:16  
7379:17 7384:8  
7389:20,23  
7390:5 7394:2,23

7396:18 7397:2  
7398:24 7421:20  
7429:24 7436:14  
7464:6 7470:9  
7480:20  
**Maher's** 7335:19  
7441:20  
**mail** 7238:16  
7340:23 7383:5,9  
7383:22  
**main** 7519:11  
**maintain** 7220:15  
7222:7,15  
7223:17  
**maintained**  
7249:25  
**major** 7394:22  
**majority** 7416:15  
7474:18,19  
**making** 7222:18  
7227:13,15  
7277:15 7297:5  
7303:18 7361:4  
7405:20 7410:21  
7420:5 7441:4  
7461:16 7475:1  
7535:17  
**man** 7254:12  
7296:12 7299:3  
7299:12 7345:8  
7347:3 7378:6  
7380:8,15 7410:5  
7456:2 7527:1  
**managed** 7451:25  
**managing** 7247:7  
**mandate** 7213:14  
7224:19 7247:9  
7269:6 7307:13  
7307:16,20,21  
**Manhattan** 7273:5  
**Manley** 7366:16,24  
7366:25 7367:5  
7367:19,22  
7368:6,12 7369:5  
7369:6,9 7370:8  
**manuscript** 7243:7  
7243:13,21  
7332:24  
**man's** 7378:4

**map** 7244:1  
**March** 7246:4  
**marked** 7230:6  
**marketing** 7246:2  
**marks** 7363:3  
**Marlene** 7441:2  
**Martha** 7498:19  
**Massachusetts**  
7299:18  
**matched** 7401:22  
**material** 7327:22  
7348:22 7365:15  
7367:9 7393:22  
7426:6 7454:10  
**materials** 7357:8  
7426:12  
**MathLab** 7245:25  
**Mathworks**  
7245:23 7246:7  
7246:21  
**matter** 7270:24  
7299:3 7308:6,21  
7319:7,24  
7328:16 7330:7,8  
7347:12 7350:22  
7350:24 7359:8  
7369:24 7370:8  
7407:22 7408:19  
7431:6 7462:9,10  
7481:11 7485:17  
7510:24 7513:5  
7531:4  
**matters** 7320:9  
7348:7 7351:20  
7364:23 7387:9  
7406:19 7407:5  
7450:8 7455:18  
7463:13  
**Maureen** 7292:2  
7293:18,21  
**Mazigh** 7233:16  
7256:9 7261:22  
7262:1,17 7264:2  
7265:9 7272:18  
7288:11,24  
7312:11 7318:21  
7322:1 7331:11  
7332:23 7333:5  
7333:12 7334:10

7339:25 7340:16  
7353:2,10  
7354:13,20  
7358:4 7364:5  
7365:3 7368:4,9  
7369:17 7370:4  
7371:4 7372:8  
7374:23 7375:6  
7375:21 7377:23  
7379:16 7439:11  
7439:23 7440:16  
7468:24 7470:5  
7471:11 7508:25  
7509:15 7510:7  
7517:2  
**Mazigh's** 7266:4  
7358:20 7368:21  
7510:25  
**McArthur** 7280:19  
**McGill** 7361:15  
7394:23 7439:10  
**McNee** 7263:16  
7265:2 7294:22  
7296:3,6 7297:10  
7298:14,21,23  
7301:15 7325:25  
7326:16 7464:11  
7465:11 7520:13  
7522:14  
**McTeague** 7441:3  
**MDC** 7272:22  
**mean** 7224:25  
7241:14 7248:17  
7249:10 7300:1  
7349:8 7370:16  
7380:20 7397:8  
7400:23 7427:9  
7428:6 7432:1  
7434:17 7438:8  
7440:21 7446:19  
7446:21 7452:5  
7453:19 7469:9  
7511:12 7521:14  
7528:25  
**Meaning** 7338:19  
**means** 7389:16  
7463:18  
**meant** 7256:17  
7409:2 7466:8

**meat** 7407:21  
**media** 7353:11  
7358:21 7375:21  
7376:23,24,24  
7377:15 7378:5  
7387:11 7397:17  
7446:13,13  
7459:11 7485:7  
**Medical** 7424:19  
**meet** 7240:11  
7245:7 7260:17  
7307:3,13  
7354:24 7363:1  
7367:13 7369:7  
7378:13 7380:3  
7384:2,10,13  
7388:1,3,5,6,17  
7388:21 7390:2  
7395:16,18  
7401:19  
**meeting** 7216:7  
7222:10 7241:25  
7242:3 7250:17  
7253:13 7273:25  
7277:2,4 7280:14  
7280:16,18,23  
7281:10,21  
7282:3,7,17,19,21  
7283:1,10,11  
7285:17,22  
7286:24,25  
7287:5 7288:3  
7301:20 7302:1,7  
7302:9,18  
7304:11 7305:25  
7313:12 7315:20  
7316:4,13  
7326:12,13  
7330:24 7338:10  
7340:1,7 7341:7  
7341:16,18,25  
7342:7,9 7343:4,6  
7343:12 7344:15  
7344:15 7347:10  
7348:2,2 7351:12  
7351:15,18,23  
7354:18 7355:2  
7356:6,9,18,21,22  
7356:24 7357:13

7357:23 7358:4	7425:18 7481:15	7420:7	7274:7 7295:1	<b>misspelled</b> 7218:18
7362:11 7363:5	7522:23	<b>met</b> 7223:21	7304:19 7342:11	<b>misspoke</b> 7469:5
7367:18 7374:9	<b>memo</b> 7230:3	7233:15 7236:18	7342:12 7357:12	<b>misstep</b> 7353:21
7374:21 7375:6	7319:5,9 7369:10	7237:23 7241:24	7385:8 7386:5,10	<b>mistake</b> 7263:5
7375:13 7377:1	7374:14,15	7256:8 7259:23	7387:17 7428:10	<b>mistaken</b> 7414:13
7377:21 7378:7	<b>memorandum</b>	7274:7 7275:14	7430:5 7523:20	7467:21 7491:24
7379:19,21	7321:4	7277:4,9 7280:16	<b>military</b> 7295:15	<b>mistreatment</b>
7382:21 7385:8	<b>memorializes</b>	7285:15 7302:12	7295:17 7297:14	7522:2,6
7385:13 7386:10	7241:24	7302:20 7304:20	7297:16,22	<b>mix</b> 7481:17
7386:13 7387:22	<b>memory</b> 7293:23	7308:1 7326:6	7432:25 7435:20	<b>Mm-hmm</b> 7383:4
7388:11,22	7356:13 7403:2	7337:9 7342:10	7441:13 7464:7	7469:4 7497:18
7389:1,2 7391:24	7508:16 7509:12	7356:15 7370:19	7467:6	<b>modes</b> 7324:18
7392:4,7,23	7510:24	7375:15 7379:9	<b>mind</b> 7223:11	<b>moment</b> 7212:11
7402:1 7407:8	<b>mental</b> 7325:19	7379:24 7380:19	7240:15 7313:13	7327:6 7408:7
7409:20 7421:7	7466:9	7385:7,24 7386:5	7388:19 7406:24	7444:22 7454:13
7421:10,10	<b>mentally</b> 7324:12	7388:7,25	7410:16 7422:6	7455:12 7469:14
7424:15,22	<b>mention</b> 7216:10	7389:10 7396:9	7432:3,6 7434:12	7489:25 7495:19
7429:21 7434:12	7218:22 7296:19	7409:14 7424:8	7437:24 7440:24	7496:9 7524:12
7434:21 7435:5	7316:9 7345:18	7429:24 7430:6	7483:12 7517:16	<b>moments</b> 7247:16
7435:10,10	7376:10 7388:16	7435:19 7465:12	7522:3,11	7320:15
7446:7 7450:5,7,8	7529:21	7468:12 7472:17	<b>minds</b> 7303:1	<b>Monday</b> 7340:2
7468:13,14	<b>mentioned</b> 7278:9	7472:18,19	7352:2	<b>money</b> 7336:23
7476:20 7499:25	7282:6 7292:18	7474:8 7475:25	<b>mine</b> 7367:8,10	7337:3 7394:14
7501:15 7509:2,3	7304:6 7316:2	7501:17 7523:22	7404:8	7394:20,24
7509:5 7511:9,13	7354:15 7376:19	<b>method</b> 7229:11	<b>Minister</b> 7265:3	7408:17
7511:17 7524:20	7516:6 7522:1	<b>methods</b> 7428:1	7294:21 7298:5	<b>Monia</b> 7233:16
7525:2 7533:14	<b>Merci</b> 7214:12	<b>Metropolitan</b>	7324:25 7326:16	7244:10 7256:9
7533:24 7535:16	<b>mercredi</b> 7212:3	7272:19 7286:17	7326:21 7363:21	7261:22 7262:1,5
7536:18	<b>mere</b> 7220:3	<b>Michael</b> 7212:22	7367:7 7368:25	7262:16 7264:1
<b>meetings</b> 7222:22	7453:7	7213:3,5 7214:10	7369:11,25	7287:16 7288:11
7223:16 7279:17	<b>merely</b> 7405:13	7234:17 7235:11	7370:6 7372:10	7312:11 7318:21
7286:22 7348:3	7412:21 7434:4	7235:15 7236:10	7441:4,7 7465:15	7322:1 7331:11
7420:21 7421:1,5	7447:13 7492:12	7259:5 7275:15	7509:15	7332:23 7333:5
7421:17 7472:18	7507:3	7301:17 7304:1	<b>minute</b> 7347:6	7333:12 7335:11
7474:1,2 7484:17	<b>message</b> 7218:16	7312:16 7320:23	7381:6	7339:25 7340:16
7508:21,23	7219:4,20	7348:13 7358:25	<b>minutes</b> 7241:24	7353:2 7359:5
7510:18 7530:12	7228:12,13	7368:5 7370:4	7242:2 7248:22	7362:24 7364:5,9
<b>member</b> 7215:6	7230:13,16	7371:5 7372:11	7254:5 7279:22	7365:3 7367:18
7261:4 7266:20	7231:12,13,19	7374:20 7396:16	7398:7 7460:3,21	7368:4,8 7369:17
7266:21,24	7233:24 7259:4	7396:24 7419:9	7461:9	7370:24 7371:4,8
7267:16 7285:8,9	7261:22,25	7429:13 7477:6	<b>mirror</b> 7401:1	7372:8 7374:6,10
7295:18 7297:23	7289:20,21	<b>microphone</b>	<b>mirroring</b> 7400:15	7374:22 7375:6
7304:14 7364:15	7290:2,9,13,18,19	7507:19,19	7400:17 7401:11	7375:21 7377:23
7370:9 7389:7	7291:6,12 7293:5	<b>mid</b> 7307:16	<b>misapprehension</b>	7379:16 7440:16
7471:17	7293:8 7336:12	<b>Middle</b> 7324:18	7373:19	7440:18
<b>members</b> 7267:14	7354:3 7371:8	<b>mid-morning</b>	<b>misleading</b> 7498:17	<b>Monia's</b> 7251:19
7273:25 7293:2	7383:1,25	7279:8	<b>misses</b> 7229:19	<b>monitor</b> 7246:14
7293:13 7323:1	7448:12	<b>mid-2002</b> 7456:10	<b>missing</b> 7265:25	7405:16,18,19
7341:8 7409:6	<b>messages</b> 7289:11	<b>Mike</b> 7265:23	7266:9 7270:8	<b>monsieur</b> 7214:19

**month** 7252:6  
**months** 7361:15  
 7373:11 7377:3  
 7410:3 7427:6,19  
 7471:10  
**Montreal** 7262:20  
 7263:25 7264:19  
 7270:7 7322:2,20  
**moot** 7470:19  
**mooting** 7446:15  
**Morin** 7390:19  
**morning** 7212:7,9  
 7212:24 7234:14  
 7537:8  
**Moslem** 7438:21  
 7440:7  
**mosque** 7253:1,13  
**mother** 7251:19,19  
 7251:21 7336:11  
 7377:12 7404:10  
 7404:19 7471:16  
**motivated** 7330:22  
 7471:20  
**Mountie** 7448:13  
**Mounties** 7436:3  
 7438:23 7439:14  
**move** 7222:17  
 7261:15 7304:23  
 7370:22 7378:10  
 7432:3 7471:13  
 7519:21  
**moved** 7470:13  
 7471:5 7521:21  
**moving** 7337:14  
 7339:5 7364:4  
 7520:25  
**murder** 7417:11  
**Muslim** 7217:12  
 7361:17,20  
 7364:16  
**mutual** 7366:9  
**mutuality** 7485:23

---

**N**

---

**name** 7213:4  
 7218:8,18,22  
 7219:14,23,25  
 7221:2 7222:1,19  
 7223:21 7224:2

7231:8 7252:17  
 7262:16 7265:1  
 7266:23 7267:1  
 7269:5,10 7273:8  
 7280:8 7293:17  
 7293:24 7294:22  
 7300:6 7334:21  
 7334:24,25  
 7335:1,2,7,10,16  
 7335:19 7352:8  
 7366:10,25  
 7376:20 7378:4  
 7399:25 7408:7  
 7409:22 7416:9  
 7455:22 7456:4  
 7521:12  
**names** 7220:10,24  
 7221:17 7226:10  
 7226:15,24  
 7227:19 7269:11  
 7271:7 7278:8,22  
 7293:1 7335:3  
 7352:11 7357:8  
 7366:9,12  
 7381:21 7382:3  
 7399:17 7403:4  
 7407:9 7409:20  
 7457:25 7513:1,9  
 7513:23 7514:1,3  
 7535:22 7536:9  
**narrow** 7478:4  
**nation** 7456:8  
**national** 7217:3  
 7218:23 7220:9  
 7220:11 7221:5  
 7221:19 7225:25  
 7252:15 7257:8  
 7267:12 7268:15  
 7268:18 7269:7  
 7272:9 7277:15  
 7281:4 7292:15  
 7292:20 7295:7  
 7299:22 7302:25  
 7306:7 7348:8  
 7349:23 7410:4  
 7411:14 7451:22  
 7452:8,22,24  
 7453:3,8,15  
 7454:2,16,23

7474:10 7504:4  
 7516:16  
**nationals** 7297:11  
**nature** 7223:16  
 7415:22 7418:21  
 7507:8 7526:15  
**Nazigh** 7262:17  
**Nazih** 7252:22  
 7403:5 7424:15  
 7424:17 7502:2  
**near** 7391:1  
**necessarily** 7268:1  
 7304:9 7369:4  
 7389:22 7414:22  
 7454:6 7521:3  
 7528:18  
**necessary** 7220:16  
 7224:19 7269:5  
 7307:6 7312:4  
**need** 7277:25  
 7346:14 7347:25  
 7349:6 7359:6  
 7389:17 7398:6  
 7399:4 7430:2,7  
 7446:14 7513:23  
 7526:24  
**needed** 7334:3  
 7530:25  
**negative** 7485:7  
**negotiate** 7482:17  
**neighbours** 7313:7  
**neither** 7417:25  
 7423:13  
**Nellis** 7417:5  
**netherlands**  
 7278:12  
**network** 7335:5,6  
 7375:18  
**neutral** 7518:10  
**never** 7251:24,25  
 7254:4 7275:5  
 7297:15 7304:5  
 7309:14 7349:2  
 7350:23 7370:17  
 7370:18 7375:15  
 7375:18,19  
 7402:16 7419:14  
 7471:11 7484:2  
 7499:9,13

7511:21 7513:10  
**new** 7261:18  
 7262:20 7263:14  
 7263:25 7264:18  
 7264:21,22  
 7270:7 7271:7,13  
 7271:20 7272:14  
 7272:15 7273:3,4  
 7273:5 7274:12  
 7275:20 7282:10  
 7283:17 7286:16  
 7287:7 7290:16  
 7290:25 7291:2,4  
 7293:25 7294:11  
 7342:22 7428:9  
 7516:18 7520:9  
 7529:13  
**newly** 7214:2,24  
 7477:5 7523:2  
**nexus** 7458:5  
**night** 7253:13  
**nine** 7402:25  
 7410:3 7537:9,10  
**nod** 7331:24  
 7332:12  
**Nokia** 7246:16  
**normal** 7349:16  
**normally** 7245:8  
 7412:9 7476:17  
 7502:16  
**notations** 7337:15  
**note** 7244:12  
 7245:22 7251:25  
 7258:1 7279:6  
 7287:22 7288:16  
 7294:24 7316:1  
 7320:20,21  
 7339:15 7361:21  
 7362:24 7364:18  
 7388:24 7389:13  
 7405:2 7429:20  
 7433:18 7434:24  
 7463:25 7469:16  
 7471:12 7480:22  
 7509:14 7524:20  
**notebook** 7337:5  
**noted** 7326:1  
 7380:10 7385:25  
 7405:4 7516:17

**notes** 7242:6,13,17  
 7242:22,24  
 7243:7,21,21  
 7244:1,3,6,9,11  
 7244:14,16,22  
 7247:23 7254:2,4  
 7254:7 7273:1  
 7285:23 7295:2  
 7301:14 7304:14  
 7305:11 7308:3  
 7309:15,18  
 7310:3 7312:4  
 7321:17 7332:21  
 7332:22,24  
 7333:9 7334:25  
 7337:16 7339:9  
 7346:25 7347:1  
 7358:9 7360:22  
 7360:23 7361:4  
 7365:10 7432:8  
 7464:20,24  
 7495:15,21,24  
 7496:1,5,7,13  
 7508:5,11,13  
 7510:25 7523:8  
 7525:9  
**notice** 7258:16  
 7461:17 7508:8  
**noticed** 7250:13  
 7470:1  
**notion** 7364:11  
 7426:21  
**notoriety** 7456:3  
**notwithstanding**  
 7328:2  
**not-for-profit**  
 7292:16  
**November** 7244:10  
 7244:15 7315:13  
 7316:24 7318:19  
 7319:8 7321:11  
 7321:20 7325:8  
 7326:25 7327:4  
 7327:14,18,19  
 7328:3 7329:20  
 7331:5,9 7332:7  
 7333:6,12  
 7337:18,19,20  
 7339:6 7340:4,14

7340:21 7341:7 7372:11 7392:1 7395:3 7402:1 7420:22 7421:8 7434:13 7435:9 7435:19 7446:8 7450:6 7463:25 7464:17 7468:13 7468:25 7469:10 7469:12,17,22 7478:8 7499:25 7501:15 7508:3 7510:19 7511:12 7511:17 7524:15 7531:7 7533:18 7535:16 <b>novice</b> 7526:5 <b>NSC</b> 7224:7,10,13 7227:13 7268:1,3 7268:14,19 7277:19 7278:3 7278:16,19 7279:3 7433:25 7451:7 7452:16 7455:14 <b>NSIS</b> 7257:8,11 <b>nub</b> 7506:20 <b>number</b> 7217:16 7219:15 7229:17 7231:10,11,11 7233:7,10 7234:1 7234:2 7236:16 7238:14,25 7248:5,19,20 7251:22 7252:1,3 7257:15,18,21 7258:7 7262:22 7263:8,10,12,14 7264:3,23,25 7265:1,5,7 7271:19 7273:4 7292:13,23 7293:8 7296:21 7298:15 7303:3 7344:9 7363:3 7368:24 7376:6,7 7427:19 7429:12 7512:13,20 7513:25 7514:3	7515:22 7530:10 7530:12 <b>numbered</b> 7229:7 7241:8 <b>numbers</b> 7218:24 7219:1 7245:17 7273:6 7391:17 7510:20 7536:9 <b>numerous</b> 7456:13 <b>nurse</b> 7417:11 <b>NYC</b> 7263:14 <b>NYSDA</b> 7271:12 <hr/> <b>O</b> <hr/> <b>oath</b> 7413:18 7498:17 <b>object</b> 7266:23 7415:11 7494:12 7516:7 <b>objection</b> 7222:18 7280:10 7379:6 7412:5 7494:19 <b>objective</b> 7411:7 <b>objectives</b> 7448:7 <b>objects</b> 7447:18 <b>obligation</b> 7223:22 7475:22 <b>obligations</b> 7406:11 <b>obliged</b> 7537:5 <b>observation</b> 7242:22 7399:13 7433:20 7436:8 7437:2 <b>observations</b> 7424:24 7432:18 7434:20 <b>observe</b> 7466:14 <b>observed</b> 7250:21 7424:5 7481:6 <b>obtain</b> 7344:12 7369:19 7422:4 7422:10 7438:16 7459:1 7460:2 7525:21 7526:10 <b>obtained</b> 7303:7 7344:17 7345:10 7402:5 7435:5,6 <b>obtaining</b> 7271:7	7345:2 7422:21 7493:18 7522:19 <b>obtention</b> 7423:5 <b>obviously</b> 7216:14 7219:25 7241:15 7259:23 7261:11 7266:22 7272:8 7283:5 7290:24 7299:24 7300:12 7305:23 7309:14 7324:11,19 7343:14 7388:6 7397:10,11 7413:11 7430:15 7451:24 7455:17 7528:20 <b>occasion</b> 7393:6 7431:5 7443:3 7473:15 7510:7 <b>occasionally</b> 7220:16 <b>occasions</b> 7344:9 <b>occur</b> 7504:15,20 7515:11 7517:8 <b>occurred</b> 7277:5 7280:14 7340:7 7403:7 7453:16 7465:7 7501:16 7512:6 <b>occurrences</b> 7263:20 <b>occurring</b> 7256:1 <b>occurs</b> 7349:7,8 7453:15 7506:16 <b>October</b> 7261:16 7262:5 7271:17 7273:23 7274:5 7275:9 7280:15 7286:24 7287:11 7288:19 7289:10 7289:11,20,23 7290:4,9 7291:6 7291:12,14,18,20 7291:24 7294:17 7298:11 7301:16 7301:20 7302:1,4 7304:12,15 7307:16 7309:10 7309:24 7310:6	7326:2,7,13 7333:24 7351:20 7364:23 7373:11 7375:8 7378:23 7379:12 7382:8 7382:23 7383:7 7383:23 7384:6 7384:16,25 7385:6 7386:3 7388:5,25 7421:10 7444:21 7464:15 7465:11 7465:12 7477:19 7508:2 7510:18 7520:15 <b>odd</b> 7334:19 7446:14 <b>offence</b> 7498:18 <b>offer</b> 7457:14 7528:1 <b>offered</b> 7249:14 7500:19,22 <b>office</b> 7216:24 7219:5,11 7229:25 7230:16 7231:25 7237:24 7245:15 7257:11 7264:10 7273:12 7280:21,22 7290:17 7291:12 7320:5 7327:22 7328:4 7334:12 7334:16 7354:25 7379:2,17 7383:6 7383:24 7386:6,7 7388:23 7390:2 7420:7 7439:1 7491:15 <b>officer</b> 7220:4 7223:21 7228:4 7248:24 7256:11 7267:16 7308:3 7317:10 7321:1 7482:10 7511:5 7523:18 7527:22 7531:9 <b>officers</b> 7222:22 7223:7 7226:10 7226:16,19,24	7227:11,18 7256:5 7267:23 7285:16 7341:17 7347:12 7401:19 7402:4 7405:14 7410:14 7411:23 7415:21 7418:6 7420:22 7422:14 7423:8 7435:25 7437:9 7438:16 7447:16 7448:4 7452:21 7454:8 7456:11,19 7457:6,7,15,16,24 7458:20 7459:2 7459:15 7468:12 7470:17 7474:1 7475:14 7482:22 7499:12 7501:17 7508:9 7511:19 7528:7,14 <b>officer's</b> 7267:10 7466:14 7523:8 7525:9 <b>official</b> 7268:23 7294:7 7335:22 <b>officials</b> 7334:7 7347:11 <b>off-the-record</b> 7347:2 7348:6 <b>oh</b> 7262:23 7281:22 7301:2 7307:1 7399:19 7400:12 7400:22 7406:14 7432:13 7437:11 7437:12,13 7450:12 7456:23 7469:15 7473:14 7477:16 7501:1 7503:10 7517:22 <b>OIC</b> 7320:25 <b>okay</b> 7213:22 7228:21 7230:9 7230:14 7238:6 7241:9 7243:22 7244:21,24 7250:10 7255:1 7260:15 7261:13 7262:15 7263:1
---	--	--	---	--



7269:20 7270:19	7215:7 7216:1	7337:16 7425:16	7229:6,7 7232:12	7402:13,18
7271:5 7273:22	7227:8,11,17	7433:15 7445:1	7232:20,21	7510:20 7536:5,6
7277:23 7279:3	7424:19	<b>originally</b> 7244:5	7233:3 7235:4	7536:11,11,16
7279:11 7283:12	<b>onward</b> 7464:11	7250:15 7283:8	7237:11 7238:15	<b>paper</b> 7262:11
7289:6,17 7291:5	<b>open</b> 7249:22	7336:4 7379:25	7238:15 7239:4	7309:6 7374:24
7291:16 7294:2	7350:10 7451:12	7380:19 7408:14	7241:5 7247:17	7375:4 7399:5
7298:10 7308:2	7481:24	7491:20	7247:17 7255:23	7444:24
7309:9,21	<b>opened</b> 7250:12	<b>other's</b> 7357:8	7260:4,22	<b>paragraph</b> 7239:5
7311:16,17	<b>operate</b> 7405:13,14	<b>Ottawa</b> 7212:1,1	7261:24 7265:17	7259:2 7312:14
7313:25 7322:5	<b>operating</b> 7467:12	7212:23 7213:11	7265:19 7271:25	7316:9 7369:16
7322:20 7323:10	7497:25	7215:11 7216:9	7272:1 7274:3	7372:10 7444:6
7323:13 7325:6,9	<b>operation</b> 7422:16	7217:12 7221:3	7275:8 7288:19	7444:14 7445:12
7332:11,20	<b>Operations</b>	7226:16,18,20,22	7288:19 7291:17	<b>paragraphs</b> 7317:7
7337:10,17	7317:11	7227:5 7246:5	7291:17 7304:24	7317:15 7319:11
7339:5 7342:6	<b>opinion</b> 7385:19	7247:25 7248:2	7308:3 7310:6	<b>paralegal</b> 7273:11
7347:5 7350:7	7484:18	7266:21 7267:8,9	7312:5 7317:2,9	<b>parameters</b> 7418:8
7351:1 7352:4	<b>OPP</b> 7266:20	7267:15,18	7319:4 7320:21	<b>pardon</b> 7242:20
7356:10 7358:17	<b>opportunities</b>	7281:8,14	7327:2 7342:8,14	7338:15 7375:11
7359:22 7360:2,4	7335:14 7425:24	7285:12 7322:21	7342:16,16	<b>Pardy</b> 7298:9
7364:3 7365:21	<b>opportunity</b>	7325:3 7336:12	7343:1 7355:25	7299:4 7301:17
7367:14,23	7259:25 7414:11	7381:22	7361:1,2,3	7301:25 7302:8,9
7369:8,14	7419:5 7425:22	<b>ought</b> 7223:11	7365:10,22	7302:20 7303:16
7370:15,22	7436:23 7443:12	7269:4	7369:16 7372:3,9	7304:5,11,21,25
7371:20 7378:21	7452:15 7482:23	<b>outgoing</b> 7380:22	7372:9 7374:15	7308:22 7310:1
7379:20 7389:10	<b>opposed</b> 7262:17	<b>outline</b> 7511:20	7374:19 7377:20	7310:13,17
7390:14 7391:13	7352:23 7495:13	<b>outlining</b> 7290:21	7382:9,12,22	7312:7,10 7313:4
7391:22 7392:2	7533:25	7321:7	7384:17,17	7315:12,15,20
7395:2,17	<b>opposite</b> 7499:12	<b>outset</b> 7505:18	7386:2 7388:13	7316:10,23
7396:10 7408:3	<b>opposition</b> 7362:18	<b>outside</b> 7271:21	7388:14 7390:1	7317:20 7321:14
7429:15 7443:20	7432:12	7520:25 7521:1,4	7394:2 7399:21	7321:25 7322:16
7456:23 7459:23	<b>oral</b> 7496:19	7534:14	7404:3,7 7429:17	7323:15 7324:7
7460:4,22	<b>order</b> 7225:22	<b>outsourcing</b> 7520:2	7445:8,9 7477:1	7325:11,18
7463:20 7482:8	7320:5 7334:2	<b>outstanding</b>	7477:14,15,16	7326:13,17,18
7491:2,13,23	7345:8 7402:6	7310:25	7523:9,11	7330:10,12
7503:17 7537:7	7410:6 7411:7	<b>overheard</b> 7467:22	<b>pager</b> 7231:11	7331:14,17,19
7537:12	7513:6 7514:4	<b>overlap</b> 7228:9	7257:8 7259:5	7332:8,12,15
<b>once</b> 7406:1	<b>ordinarily</b> 7451:21	<b>overseas</b> 7256:18	<b>pages</b> 7238:8	7339:10,12
7408:25 7453:13	<b>organization</b>	7256:25 7263:10	7241:7 7314:13	7343:20 7354:8
7486:5 7517:2	7295:20 7297:24	7264:10 7298:17	7320:18 7321:21	7358:20 7360:20
<b>ones</b> 7408:17	<b>organized</b> 7408:10	7408:17 7532:14	7360:22 7384:25	7361:6,11 7363:8
7460:9	<b>orient</b> 7246:22	<b>overview</b> 7254:6	7395:25	7363:19,25
<b>one's</b> 7413:3	<b>orientation</b> 7247:6	<b>owned</b> 7409:3	<b>paid</b> 7249:9,11,11	7364:18 7365:7
<b>one-hour</b> 7341:16	<b>oriented</b> 7399:22	<b>o'clock</b> 7258:1	<b>Palestine</b> 7425:20	7366:7,22 7369:1
<b>one-page</b> 7261:21	<b>orienting</b> 7272:15	7537:10	7467:5,8	7369:3 7432:19
<b>ongoing</b> 7318:4	<b>original</b> 7228:16		<b>palm</b> 7236:5	7438:23 7441:5
7319:15 7328:22	7242:18 7244:3	<b>P</b>	7249:8,13 7352:9	7441:16,22,23
7356:23 7444:10	7244:12 7259:20	<b>pad</b> 7244:4,4	7352:12 7357:3,9	7442:6 7464:4,17
7482:10	7264:5 7288:2	7262:11	7366:10 7401:16	7464:25 7465:12
<b>Ontario</b> 7212:1,1	7332:8 7334:25	<b>page</b> 7219:7,7	7401:22 7402:5	7467:14 7468:5

7475:10 7476:10	7473:3,8 7494:13	7323:25 7336:9	7245:16 7248:6	7390:20 7391:17
7483:19,25	7496:2 7497:14	7348:11 7368:25	7285:10 7304:13	7394:21 7403:21
7484:3,22	7504:10 7518:19	7392:23 7408:11	7317:4 7332:21	7404:9 7405:9,19
7523:23 7524:2,8	7526:21 7533:24	7409:2 7410:8	7367:8,10 7370:5	7410:11 7419:8,9
7524:21 7525:1,3	<b>particularly</b>	7420:6 7430:19	7370:13,21	7420:3 7427:6
7525:25 7527:13	7399:18 7415:8	7438:24 7440:24	7418:2 7527:21	7465:16 7536:9
7530:17	7476:5	7441:1 7448:25	7536:15	7536:12
<b>Pardy's</b> 7298:15	<b>particulars</b> 7231:9	7454:15 7458:15	<b>personally</b> 7348:11	<b>phoned</b> 7335:13,14
7301:13 7312:4	7294:1 7303:8	7512:14,20	7369:5 7398:25	7404:19
7337:12 7361:4	7508:20	7513:2,5,13,19	7406:6 7415:6	<b>phones</b> 7336:9
7365:9 7467:2	<b>parties</b> 7214:23	7514:3,9 7515:8	7451:14 7527:23	<b>photocopy</b> 7218:2
7484:8	<b>partner</b> 7246:9	7516:18,19,24,25	<b>personnel</b> 7248:6,9	7218:15 7228:10
<b>Paris</b> 7322:4,5,19	<b>partners</b> 7313:7	7517:10 7527:4	7252:16 7467:22	<b>photocopying</b>
7337:10,11,13	<b>party</b> 7490:11	7527:19 7532:13	<b>persons</b> 7243:1	7379:6
<b>Parkway</b> 7280:20	7498:4	7534:13 7535:22	7416:15,18	<b>photographs</b>
<b>Parliament</b> 7292:4	<b>pass</b> 7383:19	7535:24	<b>person's</b> 7389:16	7456:13
7378:3 7507:10	7434:22	<b>perceive</b> 7502:16	<b>perspective</b>	<b>phrase</b> 7252:20
<b>parliamentary</b>	<b>passed</b> 7259:10	<b>perceived</b> 7504:24	7255:16 7256:2	7520:16
7376:17 7378:2	7490:11	7505:21	7285:7 7299:23	<b>physical</b> 7324:9
7480:23,25	<b>passport</b> 7322:10	<b>percent</b> 7250:14	7302:24 7306:5	7325:18
7506:16,19	7333:20 7336:19	<b>perception</b> 7284:21	7410:19 7443:21	<b>physically</b> 7237:23
7507:2,11	7337:5	<b>perfectly</b> 7225:12	7447:16 7475:6	7380:16 7466:10
<b>part</b> 7220:16	<b>passports</b> 7334:15	<b>period</b> 7212:17	7493:20 7527:5	7466:15 7468:9
7223:4 7229:18	<b>Pat</b> 7281:11,12,13	7261:16 7262:4	<b>pertinent</b> 7225:20	<b>pick</b> 7336:13
7234:12 7282:8	<b>path</b> 7264:18	7281:1 7344:5	7350:18	7379:1
7282:10 7313:3	7270:6	7373:22 7378:3	<b>perturbed</b> 7257:14	<b>picture</b> 7457:8
7313:18 7315:19	<b>PATRIOT</b> 7292:14	7412:10 7421:15	7258:13	<b>piece</b> 7262:10
7316:5 7332:3	<b>Paul</b> 7261:2	7423:13 7427:6	<b>phase</b> 7216:5	7399:5 7451:25
7333:4,4 7344:23	7390:19	7438:24 7439:6	7406:4	7452:6 7464:13
7348:22 7353:12	<b>pause</b> 7213:25	7461:20 7484:15	<b>phone</b> 7218:16,24	7529:15
7365:4 7375:24	7214:13 7218:5	7506:7	7219:1,3,15,20	<b>pieced</b> 7457:19
7401:18 7407:23	7229:5 7234:25	<b>permanent</b>	7229:25 7230:12	<b>pieces</b> 7314:19
7418:25 7426:2	7346:13 7347:7	7470:14 7471:13	7230:24 7231:10	7444:24
7427:4 7438:5	7358:14 7381:4	<b>permit</b> 7315:23	7233:24 7234:9	<b>pilot</b> 7236:6 7249:8
7451:9 7458:3,6	7403:18 7430:23	<b>permitted</b> 7235:13	7236:14 7245:17	7249:13 7352:12
7465:19 7486:4	7431:23 7490:1	7348:19 7389:2	7251:17,22	7357:3,9 7401:16
7495:12 7503:3	7495:20 7496:9	7481:20	7257:15 7258:9	7401:22 7402:6
7504:3 7510:2	7496:10 7499:23	<b>person</b> 7270:9,10	7259:20 7260:5	7402:14,18
7511:2 7513:14	7506:11 7524:10	7270:13 7285:13	7262:22 7263:8	7536:6,6,11,16
7514:4 7525:7	7524:13	7305:3 7308:7	7263:10,12,14,23	<b>Pilots</b> 7352:9
7534:19	<b>pay</b> 7249:14 7409:9	7335:8,13 7352:1	7264:1 7265:5	7366:11 7510:21
<b>participate</b> 7286:7	<b>PCLaw</b> 7229:21	7380:9 7412:22	7273:2,4,7,19	7536:12
7286:8 7418:25	<b>people</b> 7216:8,8	7413:6 7430:14	7298:15 7301:15	<b>pink</b> 7218:16
<b>particular</b> 7282:3	7217:10 7220:10	7457:20 7473:12	7309:2 7311:14	<b>pinpoint</b> 7504:22
7322:15 7335:7	7225:1,7,11	7482:14,18	7335:20 7352:9	<b>Pither</b> 7374:12,22
7344:3 7353:23	7270:17 7278:1	7483:6,6 7493:2	7352:12 7358:19	7375:6,15
7357:13 7371:18	7283:7,11	7497:10 7498:13	7363:19 7364:5	<b>place</b> 7245:12
7389:19 7403:6	7286:11 7296:9	7529:10	7366:5,9,9,11	7274:20 7276:2
7415:17 7430:1	7297:21 7298:17	<b>personal</b> 7239:23	7367:11 7388:15	7280:16,19

7284:3 7352:18	7281:2 7286:10	7226:18,20,23	7266:15 7272:24	7393:17
7388:22 7412:18	7286:13 7287:1,3	7227:5,9,11,17,18	<b>possession</b> 7455:2	<b>preclude</b> 7452:11
7431:8 7456:16	7288:3,16 7289:4	7234:4,22	7500:2 7511:21	<b>preconditions</b>
7465:24 7491:15	7290:24 7296:10	7260:14,17	7517:14	7412:17 7413:12
7498:22 7502:21	7298:24 7299:1	7266:21 7267:8,9	<b>possibilities</b> 7326:9	7413:15 7416:12
7506:6 7508:2	7300:6 7307:19	7267:18 7281:8	<b>possibility</b> 7303:14	<b>pregnant</b> 7258:17
7509:2 7513:16	7307:23 7313:9	7281:15 7311:2	7303:16 7362:1	<b>premise</b> 7485:9
7516:6,13	7313:24 7314:2	7312:19,20	7363:1,4 7480:14	7506:3
7530:17	7318:22 7323:19	7389:7 7405:14	7506:21	<b>premises</b> 7217:2
<b>placed</b> 7299:13	7331:16 7333:14	7410:13 7411:5	<b>possible</b> 7239:15	7490:5
7362:4 7404:20	7333:16 7340:6	7414:17,23	7240:8 7257:5	<b>prepare</b> 7418:19
7408:23	7340:18 7344:24	7418:15,17	7300:22 7305:6	<b>prepared</b> 7260:17
<b>plan</b> 7448:5	7345:11 7346:19	7423:8 7446:23	7318:1 7319:13	7320:25 7345:17
<b>planning</b> 7333:23	7347:6 7348:1,20	7454:17 7458:20	7325:18 7332:13	7384:9 7388:17
<b>play</b> 7283:16	7349:17 7353:14	7475:14 7483:7	7347:4 7465:22	7406:7 7414:11
7318:8 7329:1	7353:15,16	7512:14 7515:7,9	7522:8	7420:15,16
7444:17 7445:16	7354:4,7,9,13	7515:24 7517:9	<b>possibly</b> 7225:25	7447:19 7451:13
7445:20 7478:14	7356:20 7359:18	7517:11 7518:9	7315:17 7362:3	7457:21 7482:13
7478:23 7479:15	7367:21,24	7518:14 7523:18	7534:15	7502:21
7486:2	7374:17 7381:18	7524:9 7525:21	<b>post-return</b>	<b>preparing</b> 7318:5
<b>played</b> 7282:13	7381:23 7391:8	7526:21 7527:14	7431:12	7537:5
7479:4 7480:20	7393:9 7394:5,5,9	7528:2,21 7529:2	<b>post-sales</b> 7246:15	<b>presence</b> 7532:20
<b>players</b> 7356:16	7397:9 7402:20	7531:21	<b>potential</b> 7430:16	<b>present</b> 7235:15
<b>please</b> 7212:5	7403:20 7425:3	<b>police's</b> 7530:23	7443:25 7494:3	7244:19 7280:23
7238:18 7247:23	7439:24 7441:9	<b>policies</b> 7328:18	7498:15 7503:4	7281:6,9 7283:11
7277:4 7279:23	7453:6 7462:17	<b>policing</b> 7487:19	7505:21 7506:3	7328:8,21 7329:3
7280:4 7318:19	7464:10 7465:18	<b>policy</b> 7530:24	7528:23	7341:17 7356:10
7360:7,12,23	7467:8,20 7468:1	7531:21	<b>potentially</b> 7428:1	7356:18 7357:13
7366:19 7398:12	7470:19 7473:12	<b>polite</b> 7250:1	7462:12 7497:1	7392:23 7415:7
7398:17 7399:6	7476:5,15	<b>political</b> 7377:10	7498:2,7	7424:14 7444:9
7461:10 7507:24	7477:22 7482:24	7403:10	<b>pour</b> 7537:18	7444:18 7445:17
7522:25 7533:3	7486:8 7490:4,8	<b>portion</b> 7333:11	<b>Powell</b> 7325:1	7445:23 7474:1
7537:14	7493:25 7495:5	7433:11 7450:7	<b>power</b> 7400:9	7474:21 7478:15
<b>pleased</b> 7221:12	7502:24 7503:16	<b>posed</b> 7249:8	7439:12	7479:16 7482:18
7528:18	7503:18,22	7252:15 7376:1	<b>powerful</b> 7306:5	7518:11
<b>Pleasure</b> 7472:6	7504:12,14,20	7446:2	<b>practicality</b> 7278:5	<b>presently</b> 7513:7
<b>plight</b> 7328:10	7505:2,6 7512:6	<b>position</b> 7221:23	<b>practice</b> 7299:10	7513:14
7330:1	7513:18 7521:5	7227:9 7260:19	7301:10 7327:21	<b>press</b> 7343:9,17,22
<b>plug</b> 7409:5	7521:12 7527:1	7279:10 7280:7	7405:25 7418:1,3	7344:2 7353:11
<b>plus</b> 7262:19	7529:6,11,14	7286:20 7306:21	<b>practising</b> 7213:11	7353:25 7354:4,6
7465:25 7518:8	7530:23 7531:15	7307:12 7318:13	<b>prayers</b> 7252:24	7354:9 7376:2,7
<b>point</b> 7220:20	<b>pointed</b> 7282:5	7319:19 7328:12	7403:7	7376:24 7460:19
7230:19,20	<b>points</b> 7376:8	7350:2 7385:14	<b>precarious</b> 7467:4	7484:15
7240:20 7245:3	7388:10 7393:3	7387:12 7407:10	<b>preceded</b> 7311:14	<b>pressure</b> 7376:8
7249:16,21	7504:13	7446:6 7452:22	7415:1 7498:9	7377:13,16,16,25
7250:2,9 7254:16	<b>police</b> 7220:4	7453:20 7467:2	<b>precedes</b> 7215:4	<b>presumably</b> 7324:4
7261:21 7264:2	7222:9,22 7223:5	7498:24 7500:7	<b>precipitous</b> 7471:4	7459:19 7533:6
7267:20 7269:10	7223:7,9 7224:15	7503:25 7504:9	<b>precise</b> 7281:23	<b>pretext</b> 7364:13
7272:8 7273:7	7224:17 7226:16	<b>positive</b> 7251:20	<b>precisely</b> 7268:3	<b>pretty</b> 7254:2

7329:25 7419:16 7440:1 <b>previous</b> 7240:15 7266:9 7299:21 7322:23,25 7355:2 7359:14 7361:23 7376:1 <b>previously</b> 7364:15 7465:14 <b>pre-sales</b> 7246:15 <b>prided</b> 7442:16 <b>primarily</b> 7381:21 <b>Prime</b> 7367:6 7369:25 7370:6 7441:6 <b>principal</b> 7417:12 <b>principle</b> 7220:3 <b>printed</b> 7375:23 7376:24 <b>prior</b> 7258:16 7301:2 7521:18 <b>privacy</b> 7226:21 7433:25 <b>private</b> 7467:17 <b>privilege</b> 7212:15 7216:11 7267:7,8 7267:17 7434:2 7453:10 7454:18 7506:17,20 <b>privileged</b> 7241:20 <b>pro</b> 7394:7 7439:1 <b>probability</b> 7468:8 <b>probable</b> 7421:19 7421:25 7422:2,3 7487:5 7488:5,10 7488:18 <b>probably</b> 7228:17 7231:12 7239:16 7243:12 7257:22 7278:7 7279:12 7289:2 7344:2 7366:12 7390:17 7433:5 7439:22 7446:5 7467:12 7469:20,20,21 7472:11 7506:19 7529:18 <b>problem</b> 7249:21 7277:9 7337:11	7364:19 7414:23 7426:5 7499:13 7513:4 <b>problematic</b> 7317:21 <b>problems</b> 7334:6 7427:11 <b>procedures</b> 7300:15 7320:8 <b>proceed</b> 7227:25 7236:25 7514:8 <b>proceeding</b> 7214:16 7220:25 7430:17 7475:5 7493:22 7495:7 7499:15,21 7506:22 <b>proceedings</b> 7292:13 7409:18 7481:1 7492:7 7493:9 7494:9 7499:4 7504:12 7504:14 <b>Proceeds</b> 7280:21 <b>process</b> 7240:7 7248:23 7285:19 7377:7,8 7393:2 7397:7,15 7452:3 7452:13,16,17 7455:21 <b>produce</b> 7213:18 7355:10 <b>produced</b> 7243:7 <b>product</b> 7246:1 <b>professional</b> 7285:2,5 7473:22 7527:20 <b>proffered</b> 7428:2 <b>project</b> 7226:19 7227:12 7237:4 7248:1 7267:10 7270:11 7273:25 7317:17 7319:17 7320:25 7382:18 7387:14,25 7529:25 <b>prompting</b> 7247:4 7247:5 <b>promulgate</b>	7343:17 <b>prop</b> 7398:20 <b>proper</b> 7399:25 7475:1,2 <b>properly</b> 7225:2,13 7433:11 <b>property</b> 7239:23 <b>proposed</b> 7259:11 7259:15 <b>proposition</b> 7268:11 7516:2 7521:25 <b>prosecution</b> 7385:20 <b>prosecutor</b> 7312:6 <b>prospective</b> 7430:22 <b>prospectively</b> 7469:19 <b>protect</b> 7412:18 <b>protection</b> 7389:17 7412:21 7416:13 <b>protections</b> 7486:6 <b>Proulx</b> 7319:7 7320:12 7480:18 7506:18 <b>prove</b> 7441:19 <b>provide</b> 7232:18 7252:12 7270:21 7319:19 7329:17 7351:19 7372:14 7385:19 7392:5 7457:14 7458:4 7532:6 <b>provided</b> 7231:8 7371:14,19 7373:15 7407:14 7415:21 7423:2 7436:2 <b>provides</b> 7327:3 7409:1 <b>Provincial</b> 7227:8 7227:11,17 <b>provisions</b> 7408:21 <b>proxy</b> 7296:1 7298:2,22 7300:9 7425:1 <b>Proxying</b> 7520:3 <b>public</b> 7212:14	7220:25 7225:9 7225:11 7271:7 7272:11 7273:11 7273:15 7278:24 7349:25 7353:22 7359:7,9 7369:19 7375:24 7376:11 7376:15 7378:1 7395:11,13 7407:23 7430:11 7446:15 7451:9 7453:14 7455:5,9 7455:18 7458:9 7459:11,14 7461:18 7463:18 <b>publicity</b> 7359:17 7359:20 7410:5 7485:7 <b>publicize</b> 7221:17 <b>publicized</b> 7222:20 7223:6 <b>publicizing</b> 7269:5 <b>publicly</b> 7224:2 7278:2 7452:24 <b>public's</b> 7397:6 <b>publish</b> 7456:7 <b>published</b> 7453:10 <b>pulled</b> 7409:5 <b>purpose</b> 7230:2 7247:19 7282:2 7330:13 7454:10 7483:13 7492:7 7493:9 7494:9 7497:22 7498:6 7499:4,17,18 7519:5,7 <b>purposefully</b> 7418:18 <b>purposes</b> 7219:9 7220:7,19 7229:22 7297:13 7355:23 7412:25 7454:11,18 7463:17 7481:11 7493:15 7495:10 7498:3 7499:20 <b>pursuant</b> 7217:2 <b>pursue</b> 7247:22 7254:25 7270:24	7307:24 7329:12 7330:6 7448:7 <b>pursued</b> 7344:3 7382:1 7387:9 7440:16 7442:5 <b>pursuing</b> 7342:4 7448:6 <b>put</b> 7242:23 7245:12 7246:10 7246:20 7253:15 7284:25 7309:6 7311:9,21 7335:16 7376:7 7377:25 7394:23 7403:1 7407:21 7411:18 7413:3 7437:3,8 7439:8 7439:13 7461:18 7462:18 7465:9 7483:10 7493:3,8 7507:16 7521:22 7527:9 7528:22 7537:4 <b>puts</b> 7313:18 7459:18 <b>putting</b> 7246:20 <b>P-I-T-H-E-R</b> 7374:12 <b>P-103</b> 7369:10 <b>P-117</b> 7371:21 <b>P-131</b> 7213:20 <b>P-139</b> 7214:6,7,9 <b>P-140</b> 7214:21,24 7232:9 7237:12 7522:25 <b>P-141</b> 7218:1,2,11 7228:8 7230:13 7230:23 7240:10 7241:2 <b>P-142</b> 7229:2,3 7431:18 <b>P-143</b> 7242:10,11 7242:12 7332:21 <b>P-144</b> 7261:22,24 7262:8 <b>P-145</b> 7271:8,11 <b>P-146</b> 7289:15,17 7289:19,21 <b>P-147</b> 7289:24
--	--	--	---	--

7290:2  
**P-148** 7289:15  
 7290:5,8 7293:5  
**P-149** 7316:19,20  
 7316:22  
**P-15** 7370:25  
**P-150** 7327:11,12  
 7443:9 7478:9  
**P-151** 7355:12,13  
**P-152** 7368:1,3  
**P-153** 7371:3  
**P-154** 7374:17,19  
**P-155** 7396:13,14  
**P-156** 7396:21,23  
**P-19** 7232:17,18  
 7265:16  
**P-83** 7314:4,7  
 7320:13 7342:25  
 7343:1 7395:20  
 7445:2,3  
**P-88** 7301:13  
 7312:5 7365:10  
**p.m** 7360:8,10  
 7368:7 7371:7  
 7398:13,15  
 7461:11,13  
 7537:15

---

## Q

---

**qua** 7413:2  
**qualification**  
 7221:13  
**qualify** 7380:13  
**quarter** 7329:23  
**queried** 7470:22  
**question** 7221:7  
 7224:15 7237:2  
 7237:17 7240:9  
 7252:15 7253:2  
 7254:21 7277:3  
 7283:8 7289:9  
 7296:2 7297:23  
 7315:24 7322:17  
 7324:14 7325:23  
 7329:19 7363:3  
 7378:3,9 7406:25  
 7411:3,18 7416:2  
 7425:17 7434:5  
 7434:24 7435:3

7437:8 7445:20  
 7445:20 7446:1,5  
 7446:17 7449:18  
 7459:8,12,18  
 7464:6,21  
 7466:11,23  
 7467:10,10  
 7468:3,23 7479:2  
 7482:4 7484:12  
 7485:10 7486:23  
 7487:11 7490:20  
 7501:4 7503:13  
 7504:10 7507:15  
 7511:11 7513:4  
 7513:12,18  
 7515:15 7533:2  
 7533:15,22  
 7535:12 7536:2  
**questionable**  
 7451:23  
**questioned** 7248:14  
 7253:19 7334:16  
 7403:10 7501:19  
**QUESTIONER**  
 7367:3  
**questioning** 7248:7  
 7254:25 7450:13  
**questions** 7223:18  
 7247:4 7248:6  
 7249:1,3,7,9  
 7292:3 7324:6  
 7342:4 7351:18  
 7371:6 7373:1,4  
 7373:15,18,24  
 7374:1 7376:1  
 7378:3 7398:1  
 7415:12 7460:13  
 7460:24 7461:5  
 7462:16 7468:11  
 7472:3 7476:13  
 7490:11 7491:1  
 7506:13 7507:6  
 7509:17,19  
 7510:3,13 7512:1  
 7532:18 7535:8  
**quickest** 7283:6  
**quickly** 7289:8  
 7335:25 7460:2  
**quiet** 7380:25

**quit** 7476:18  
**quite** 7220:1  
 7221:16 7222:19  
 7224:9 7225:2  
 7251:4 7257:14  
 7264:7 7278:5  
 7285:16 7297:8  
 7306:3 7323:11  
 7326:3 7336:11  
 7339:14,14  
 7376:23 7377:11  
 7379:19 7380:21  
 7409:25 7417:8  
 7422:20 7451:12  
 7460:2 7468:15  
 7474:4 7501:15  
 7516:10 7527:10  
 7528:13 7530:17  
 7532:4  
**quizzical** 7405:7  
**quote** 7283:24  
 7284:5  
**quoted** 7284:5,5  
**quotes** 7479:23

---

## R

---

**R** 7499:2  
**Radio** 7297:3  
**Radioscape**  
 7246:10  
**raise** 7303:13  
 7324:25 7325:17  
 7347:24 7502:10  
**raised** 7252:14  
 7278:21 7325:10  
 7325:25 7348:1  
 7363:4 7373:14  
 7481:16 7522:14  
 7522:17,21  
 7526:2  
**raising** 7269:8  
 7331:21  
**Randy** 7218:21,23  
 7219:24 7230:23  
**ranks** 7528:12  
**rapport** 7428:11,20  
 7526:21  
**rare** 7475:20  
**rationale** 7530:19

**rationalize** 7316:6  
**RCMP** 7217:1,3,16  
 7238:13 7239:10  
 7240:13 7251:21  
 7253:4,9 7254:12  
 7255:14 7256:6  
 7256:11 7259:16  
 7259:24 7261:3,4  
 7266:7,24  
 7267:23 7269:23  
 7270:1 7274:4,16  
 7275:22,25  
 7276:16,25  
 7280:19 7281:9  
 7282:13 7283:16  
 7284:11 7286:18  
 7288:3 7303:8  
 7304:2,14 7305:1  
 7305:4,18,20  
 7306:22 7307:3  
 7307:14 7308:3  
 7310:20 7312:13  
 7314:22 7317:6  
 7317:24 7320:1  
 7328:15,25  
 7329:3 7330:23  
 7331:25 7332:6  
 7332:12 7337:25  
 7340:1 7341:16  
 7344:1,7,22  
 7345:13 7347:11  
 7348:6 7355:2  
 7356:4,7 7359:16  
 7359:21 7364:20  
 7364:24 7365:13  
 7366:8 7372:14  
 7372:23,25  
 7373:15,18  
 7374:1 7376:16  
 7376:20 7382:18  
 7391:25 7395:14  
 7395:15 7396:16  
 7397:1,7 7402:17  
 7403:8 7404:10  
 7404:22 7405:9  
 7406:8 7419:4  
 7421:18 7425:14  
 7428:5 7429:8  
 7431:3 7436:16

7441:15 7442:23  
 7442:24 7444:16  
 7445:12,15  
 7446:11,18  
 7449:20 7450:9  
 7450:16 7451:4,5  
 7452:21 7456:10  
 7456:19 7472:16  
 7477:24 7478:13  
 7478:16 7480:8  
 7480:20 7481:19  
 7482:1 7484:10  
 7485:12,24  
 7486:3 7503:8  
 7509:6,17  
 7510:12 7522:17  
 7522:23 7532:6  
 7533:14,17  
 7535:15,17  
**RCMP's** 7255:16  
 7256:2  
**reach** 7422:17  
 7462:23  
**reached** 7257:16  
 7264:5 7388:14  
**reaction** 7235:24  
 7298:23 7299:1  
 7329:21 7485:7  
**read** 7256:6  
 7260:24 7284:17  
 7287:14 7298:12  
 7317:15 7321:16  
 7331:7 7333:8  
 7334:9 7341:13  
 7364:6 7365:11  
 7384:20 7393:7  
 7414:17 7426:2  
 7432:10 7459:10  
 7500:22 7523:14  
 7531:18  
**readily** 7324:20  
**reading** 7299:24  
 7411:4 7500:12  
**reads** 7233:4  
 7382:23 7385:6  
**ready** 7250:4  
**real** 7390:21  
 7393:18 7414:23  
 7420:14 7442:23

<b>reality</b> 7278:7	7286:2,24 7296:3	<b>recess</b> 7404:2	7455:18 7461:18	7481:19 7506:18
<b>really</b> 7216:18	7299:2 7303:12	<b>recessed</b> 7381:1	7462:18 7480:25	7506:21 7518:4
7237:15,25	7305:5,19	<b>recessing</b> 7279:24	7482:5 7496:15	7536:7
7265:14 7285:13	7306:16 7325:4	7360:8 7398:13	7496:18 7507:17	<b>references</b> 7293:9
7287:23 7298:6,6	7325:25 7341:20	7461:11	7534:23	7431:25 7434:18
7298:25 7306:4	7344:14 7356:6,8	<b>reclaim</b> 7250:3	<b>recorded</b> 7252:21	<b>referred</b> 7240:22
7313:12 7326:18	7357:11 7358:11	<b>recognize</b> 7528:22	7290:19 7536:11	7243:19 7283:23
7364:12 7368:14	7358:15 7367:6	<b>recognized</b> 7215:19	<b>recording</b> 7405:13	7293:17 7298:8,9
7371:11 7381:22	7373:25 7381:17	7335:25	<b>records</b> 7439:4	7299:4 7363:1
7381:23 7404:14	7392:3 7419:7	<b>recollect</b> 7343:20	<b>red</b> 7243:24 7244:9	7447:7
7407:19 7410:19	7420:9 7427:21	7392:5	7244:13 7333:4	<b>referring</b> 7232:22
7411:17 7412:13	7430:24 7431:15	<b>recollection</b>	7337:15	7237:8,10
7418:11 7425:3	7437:23 7444:20	7259:17 7270:1	<b>redacted</b> 7214:3,25	7309:18 7312:3
7430:17 7433:17	7450:11,16	7288:25 7303:15	7333:10 7335:8	7312:11 7374:20
7437:8 7441:8,12	7470:17 7484:6	7344:21 7356:14	7387:21 7394:15	7381:18 7394:11
7442:8 7448:22	7491:21 7511:16	7356:17 7369:2	7394:17 7433:11	7444:4 7520:23
7470:9 7486:8	7520:11,12,16	7373:20 7403:16	7477:5 7523:3	7531:5
7502:23 7519:3	7521:15 7522:16	7405:1 7419:21	<b>redaction</b> 7433:22	<b>refers</b> 7230:7,12
7531:17 7534:9	7524:24 7525:1,6	7435:14 7471:20	7433:25,25	7231:16 7244:6
<b>reason</b> 7251:6	7536:5,14,17	7502:1 7509:22	<b>redactions-Afgh...</b>	7251:12 7273:24
7267:2 7297:17	<b>receipt</b> 7329:20	7509:24 7510:9	7434:7	7298:13 7321:13
7307:5 7313:19	7330:21 7394:13	7536:8	<b>reduced</b> 7250:14	7330:1 7361:23
7335:16 7340:9	7447:6	<b>recollections</b>	<b>refer</b> 7228:23	7367:24 7375:5
7414:21 7426:8	<b>receipts</b> 7337:6	7357:2	7233:2 7235:2	<b>reflect</b> 7229:12
7426:18 7428:22	<b>receive</b> 7500:25	<b>recommend</b>	7241:5 7273:23	7230:12 7244:1
7497:14 7517:10	7505:2 7510:16	7329:12	7277:1 7304:8	7254:3 7464:3
<b>reasonable</b> 7223:4	7529:13	<b>recommendation</b>	7320:21 7366:14	<b>reflected</b> 7350:16
7421:19,25	<b>received</b> 7219:4	7416:18	7427:5 7455:17	7404:1 7452:19
7422:2,3,15	7228:13 7233:25	<b>recommended</b>	7522:25	<b>reflects</b> 7230:10
7461:19 7487:5	7259:4 7264:5	7306:25	<b>reference</b> 7218:7	7271:6
7488:4,10,18	7272:6,18 7288:4	<b>recommending</b>	7230:23 7237:3	<b>refresh</b> 7404:25
<b>reasonably</b> 7509:4	7304:16,18	7307:23	7240:15 7242:3	<b>refreshed</b> 7510:24
<b>reasons</b> 7229:24	7322:8 7327:7,19	<b>reconsider</b> 7455:3	7244:14 7260:5	<b>refreshes</b> 7403:16
7278:9 7351:24	7338:1 7342:1	<b>reconstructing</b>	7287:24 7288:10	<b>refreshing</b> 7403:2
7414:8 7454:12	7343:18 7349:17	7228:24	7291:15 7297:1	7509:12
7498:4 7504:2	7365:7 7368:24	<b>record</b> 7212:14	7299:22 7301:15	<b>refusal</b> 7418:24
7515:7 7517:12	7373:18 7383:9	7228:2,14	7309:23 7313:2	<b>refused</b> 7372:23
7530:6	7384:7 7394:20	7242:23 7254:3,5	7316:11 7322:6	7418:18
<b>reassured</b> 7221:9	7423:24 7424:20	7255:15 7256:1,7	7322:22 7333:15	<b>refuting</b> 7525:13
<b>Rebecca</b> 7289:12	7425:17 7438:17	7263:10 7279:2	7333:17 7338:11	<b>regard</b> 7213:13
7289:20,22	7455:20 7465:18	7280:11 7289:9	7343:4 7354:17	7216:12,15
7290:13	7476:20 7481:5	7301:12,24	7364:1 7365:17	7217:6 7228:4
<b>recall</b> 7230:24	7482:6 7484:22	7307:11 7311:1,4	7367:9 7368:19	7243:9 7259:18
7231:4 7239:6	7502:3 7505:5	7312:2 7315:3	7369:9 7403:25	7273:24 7277:1
7261:4 7263:22	7509:25 7510:14	7317:3,15 7329:8	7430:14 7431:10	7293:4 7294:7
7264:4 7266:12	7510:15 7523:16	7395:19 7399:14	7431:17 7432:9	7298:11 7325:21
7268:9 7272:17	7523:20 7531:14	7411:5 7421:16	7432:23 7434:6,8	7333:9 7384:25
7280:24 7281:18	7532:19 7534:4	7422:5 7433:22	7444:1 7448:17	7392:21 7420:1
7282:19 7283:9	<b>reception</b> 7341:4	7451:10 7455:5	7469:8 7477:8	7467:24 7495:5

<b>regarded</b> 7534:10	7473:22 7527:14	<b>remarkable</b>	7292:4	7529:22
<b>regarding</b> 7334:17	7527:20,21	7409:25	<b>reprend</b> 7212:3	<b>requested</b> 7258:24
7366:24	<b>relative</b> 7328:22	<b>remarks</b> 7464:5	<b>reprendre</b> 7537:18	7292:8 7364:21
<b>regardless</b> 7500:9	7329:2 7444:10	<b>remember</b> 7245:25	<b>represent</b> 7386:22	7364:23 7418:16
<b>regards</b> 7342:8	7444:13,17	7253:14 7264:8	7398:24 7409:17	7478:1 7479:20
7382:20	7445:17 7478:14	7294:1 7296:6	<b>representation</b>	7479:21 7510:1
<b>regime</b> 7300:17	7478:24,25	7313:12,15	7383:15 7390:23	7510:12
7362:18 7432:12	7479:15 7531:24	7325:2 7339:22	7397:11,24	<b>requesting</b> 7269:14
<b>regimes</b> 7300:15	7533:23	7340:10 7345:5	7512:8	7472:16 7475:10
<b>Registrar</b> 7212:5	<b>relatively</b> 7427:19	7357:10 7377:1	<b>representations</b>	7497:21
7214:6 7242:10	7496:18	7379:19,19	7347:9 7441:5,18	<b>requests</b> 7329:24
7279:23 7280:3	<b>relatives</b> 7293:2	7381:3,12	<b>represented</b>	7378:1 7447:9
7360:7,12 7371:1	7532:19	7388:15 7390:9	7212:17 7220:22	<b>required</b> 7530:7,7
7374:25 7398:12	<b>relaxed</b> 7419:16	7391:16 7411:10	7387:2 7430:5	7530:12
7398:17 7461:10	<b>release</b> 7293:1	7438:12 7447:5	7513:2	<b>requirement</b>
7537:14	7303:4,11	7448:14,15	<b>representing</b>	7488:9,18
<b>regular</b> 7260:3	7305:14 7310:18	7467:19 7480:17	7238:14 7286:14	<b>research</b> 7520:19
<b>regularly</b> 7475:13	7328:11 7330:2	7494:23 7509:15	7384:12 7388:20	<b>reserve</b> 7461:6
<b>reinforce</b> 7359:6	7330:20 7347:3	7511:1 7521:12	7391:1 7397:18	<b>residence</b> 7226:2
<b>reinforces</b> 7359:14	7353:22,25	7525:17	7454:15 7480:23	7233:14 7234:5
<b>reiterated</b> 7362:21	7354:2 7369:21	<b>reminds</b> 7263:19	7512:13 7514:8	7240:21 7257:13
7465:13	7383:13 7399:1	7313:2	7515:8 7517:11	7258:3,15
<b>reiterating</b> 7359:20	7425:15 7429:23	<b>removal</b> 7409:22	<b>represents</b> 7262:8	7404:21 7471:14
<b>relate</b> 7331:18	7441:8 7442:17	<b>remove</b> 7400:18	7347:10 7355:19	7488:19,22
<b>related</b> 7235:17,25	7447:4 7448:6	7453:9	7355:21 7385:12	<b>residences</b> 7217:4
7261:8 7264:12	7449:11 7484:9	<b>removed</b> 7521:7	7386:11	7512:21
7282:3 7347:18	7484:11 7485:13	<b>removes</b> 7453:11	<b>Reprise</b> 7280:2	<b>resist</b> 7439:16
7347:18 7348:23	7485:18 7522:19	<b>rendition</b> 7300:7	7360:11 7398:16	<b>resort</b> 7354:10
7352:25 7358:1	7526:9 7527:1	7519:24	7461:14	<b>resorting</b> 7358:20
7364:14 7391:14	<b>released</b> 7343:23	<b>renew</b> 7322:13	<b>reputation</b> 7215:4	<b>resource</b> 7486:8,11
7508:25 7509:2	7354:11 7377:15	7333:23	7222:7 7300:2	<b>resources</b> 7377:17
7524:9	7378:11 7513:10	<b>renewed</b> 7357:7	<b>request</b> 7274:15	<b>respect</b> 7212:15
<b>relates</b> 7259:20	<b>relevance</b> 7350:5	<b>repeated</b> 7308:18	7308:25 7309:3,6	7221:16 7222:18
7292:1 7297:20	7451:23	<b>repeating</b> 7278:23	7309:25 7311:23	7223:8 7225:7,24
7333:15 7337:12	<b>relevancy</b> 7350:4	7463:18	7314:22 7317:6	7226:15,24
7364:10 7433:19	<b>relevant</b> 7349:21	<b>replied</b> 7256:15,18	7318:7 7328:13	7267:14 7290:22
<b>relating</b> 7230:1	7350:19 7450:10	<b>reply</b> 7476:5	7351:21 7368:21	7315:8 7319:20
7245:10 7292:14	7457:4,11	7477:23 7478:21	7382:16 7383:20	7347:21 7356:23
7292:24 7293:10	<b>reliability</b> 7437:4	7482:6,10	7397:19 7433:23	7356:23 7390:18
7303:3 7333:18	7534:11	<b>report</b> 7232:16	7441:10 7445:13	7395:14 7422:10
7347:12 7365:6	<b>reliable</b> 7345:7,11	7235:3,4 7265:16	7445:21 7477:24	7427:1 7428:24
7373:23 7392:10	<b>religious</b> 7403:11	7275:8 7284:4	7478:4,23,25	7431:17 7433:8
7435:7 7463:12	<b>rely</b> 7227:12	7289:3 7358:3	7479:5,9,10,22	7434:8 7443:9
<b>relation</b> 7274:21	7377:9,10	7427:10 7466:3	7480:3,5,8,10,14	7454:24 7455:13
7384:8 7508:24	7526:24	7534:16	7482:1 7483:19	7455:14 7464:20
7518:2	<b>relying</b> 7509:8	<b>reported</b> 7276:4	7483:23 7496:2	7464:22 7473:1,4
<b>relationship</b> 7285:2	<b>remain</b> 7414:18,19	7355:1	7497:17 7505:13	7482:8 7490:3,13
7285:5 7319:25	7416:19 7417:13	<b>reporting</b> 7363:20	7516:11,12	7490:14,15
7353:4 7418:6	<b>remark</b> 7435:23	<b>reports</b> 7284:19	7522:22 7526:14	7494:2 7495:16

7496:1,2,5 7497:1	<b>resuming</b> 7212:2	<b>revved</b> 7376:25	7484:21 7487:12	7492:22 7527:6
7497:17 7501:14	7280:1 7360:10	<b>Richard</b> 7308:19	7488:3,25	7532:3 7537:1
7501:18 7503:4	7398:15 7461:13	7320:11	7489:16 7490:6	<b>roles</b> 7479:4,9
7504:6 7508:1,16	<b>retail</b> 7249:24	<b>rider</b> 7492:5,15	7492:2 7494:5	<b>room</b> 7508:12
7510:17 7517:23	<b>retain</b> 7275:1	7495:12	7500:6,14	<b>roots</b> 7439:9
7529:22 7530:25	7276:11 7409:10	<b>right</b> 7218:20	7503:14 7504:11	<b>route</b> 7344:2
<b>respects</b> 7442:12	<b>retained</b> 7217:11	7224:22 7226:4	7504:19 7505:16	<b>routine</b> 7248:10
7530:21	7245:1 7282:25	7230:22 7232:21	7509:18,20	<b>Roxborough</b>
<b>respond</b> 7309:1	7285:8 7299:15	7232:24 7239:2	7510:22 7511:25	7263:16 7265:3
7368:22	7382:4 7397:14	7255:17 7260:2,7	7512:16 7514:6	<b>Roy</b> 7308:19
<b>response</b> 7261:7	7397:15 7502:12	7269:9,18 7294:9	7516:10 7517:1	<b>rude</b> 7248:7
7266:3 7318:6,24	7503:1,4	7294:12,19,23	7517:17 7518:13	<b>rule</b> 7269:11
7320:23 7327:2	<b>retainer</b> 7245:12	7296:10 7297:2	7519:20 7526:18	7278:18 7349:18
7371:13,19	7502:15	7301:4 7302:2	7526:19 7527:24	7452:10,15
7396:20,23	<b>reticent</b> 7380:25	7304:7 7307:18	7528:16 7530:18	<b>ruled</b> 7480:24
7438:11,13	<b>return</b> 7234:11	7309:20 7310:8	7531:11,12	<b>rules</b> 7268:5
7445:14 7453:17	7239:13 7240:17	7311:20 7325:15	7532:15 7534:1,2	<b>ruling</b> 7507:8,12
7453:25 7478:8	7251:11 7258:6	7325:22 7327:8	7534:21	<b>rumour</b> 7364:12
7478:11 7479:19	7259:1,21	7333:1 7338:9,14	<b>rights</b> 7221:10	<b>rumoured</b> 7438:1
7481:20 7530:3	7291:14 7303:4	7338:21 7340:15	7290:16 7291:2	<b>rumours</b> 7352:19
<b>responsibilities</b>	7322:13 7328:11	7340:20 7341:2,5	7291:10 7292:11	<b>run</b> 7271:18 7311:1
7320:1	7393:10 7426:24	7342:2 7348:15	7292:12	7311:2,3 7330:19
<b>responsibility</b>	7429:9 7447:13	7349:13 7353:25	<b>right-hand</b> 7218:24	7462:21
7317:22 7486:22	7483:17 7490:3	7354:4 7357:15	7229:8	<b>running</b> 7352:23
7487:1	7526:9	7364:25 7366:17	<b>Rires</b> 7214:17	7353:11
<b>responsible</b>	<b>returned</b> 7246:5	7366:23 7367:16	7221:14 7263:6	<b>Ryan</b> 7272:4
7329:16	7248:24 7249:6	7368:15 7374:2	7346:12,17	<b>R.P.R</b> 7537:25
<b>responsive</b> 7446:1	7333:25 7363:25	7375:8 7376:9	7375:1 7376:13	
7531:14	7404:19 7448:3	7378:8,24 7380:2	7463:7 7472:9	<b>S</b>
<b>rest</b> 7387:21	7448:11 7469:3	7380:6 7381:2	7481:2 7529:19	<b>Safa</b> 7252:17,19,22
7438:2	7485:24	7382:19 7386:8	<b>rise</b> 7279:22	7253:2,3,6,10,18
<b>restate</b> 7277:10	<b>returning</b> 7231:18	7392:22 7395:4,7	7326:23 7360:5	7403:5,8,8,9
<b>restaurant</b> 7302:12	7233:19 7263:24	7395:21 7402:15	7418:24 7461:8	7424:15,16
7525:4	7324:24 7420:3	7402:15 7404:16	7515:25 7537:13	7502:2
<b>restriction</b> 7222:3	7425:16 7426:20	7405:5 7406:20	<b>risk</b> 7437:6	<b>salient</b> 7508:22
<b>restrictive</b> 7236:23	<b>returns</b> 7378:11	7414:18 7416:19	<b>road</b> 7280:20	<b>salt</b> 7410:20
7497:1,5	<b>reveal</b> 7220:17	7416:23,25	7362:2	<b>Sans</b> 7507:19
<b>restricts</b> 7415:8	7482:11	7417:2,13,14	<b>roadblocks</b> 7330:3	<b>sat</b> 7302:20
<b>result</b> 7221:18	<b>review</b> 7279:18	7424:2,10 7429:2	<b>Robert</b> 7385:24	7508:11
7245:6 7252:2	7289:8 7311:25	7432:7 7433:7	<b>robust</b> 7521:22	<b>satisfactorily</b>
7283:10 7288:5	7332:22 7360:23	7434:1 7435:16	<b>rock</b> 7513:15	7507:15
7331:24 7376:5	7371:16 7403:19	7436:18 7438:25	<b>role</b> 7282:13	<b>satisfactory</b>
7394:21 7408:2	7414:12 7427:17	7440:12 7443:7	7283:16 7318:8	7287:22 7531:16
7408:21 7423:24	7427:18	7449:21 7457:24	7318:15 7319:21	<b>satisfied</b> 7274:17
7481:5 7506:22	<b>reviewed</b> 7239:11	7467:25 7469:20	7329:1 7381:22	7276:5,16
7514:10,11	7243:11 7359:1	7470:1 7473:18	7383:15 7444:17	7283:25 7284:7
7520:19	7427:13	7473:25 7474:3	7445:16,21	7284:10 7286:3
<b>resulted</b> 7407:14	<b>reviewing</b> 7450:5	7475:8,25 7477:2	7478:14,24,25	7409:16 7458:14
<b>resume</b> 7537:16	7465:17	7478:6,10	7479:15 7480:20	<b>satisfy</b> 7459:3



<b>Saturday</b> 7259:11	7367:17 7369:16	7355:25 7365:24	7310:11 7313:21	<b>segued</b> 7332:10
<b>save</b> 7355:3	7372:10 7374:5	7376:16 7383:7	7316:1,8,10	<b>seize</b> 7249:13
<b>savings</b> 7333:15	7378:6 7383:8,23	7388:24 7521:8	7322:25 7324:8	<b>seized</b> 7236:6
<b>saw</b> 7235:23	7384:6,19	<b>secondary</b> 7236:7	7324:10,17,20	7240:19 7250:17
7248:12 7335:21	7385:23 7386:20	<b>seconded</b> 7281:9	7327:18 7330:25	7254:13 7313:8
7335:24 7378:19	7404:11 7442:7	7474:12	7338:10 7340:7	7357:4 7490:3
7380:8,24	7456:9 7470:2	<b>secretary</b> 7264:6	7345:4 7346:24	<b>seizure</b> 7251:7
7428:22 7443:19	<b>scenario</b> 7282:24	7264:13 7290:19	7350:5 7358:13	7401:10
7526:25 7527:5	7300:22 7373:14	7325:2	7361:2 7373:6,23	<b>self</b> 7380:16
<b>saying</b> 7225:8	7498:20	<b>secretary's</b> 7219:7	7375:7,22	<b>send</b> 7306:14
7267:7 7284:6	<b>scenes</b> 7353:24	<b>section</b> 7280:21	7377:18 7379:4	7313:20 7510:2
7306:8 7322:23	<b>scepticism</b> 7410:24	7281:4 7323:2	7388:13,24	<b>sending</b> 7312:11
7337:2 7345:5	7449:3 7525:15	7441:6 7474:13	7389:12 7394:9	7315:16 7368:9
7346:24 7361:9	7534:11	<b>secure</b> 7330:1	7399:22 7410:8	<b>senior</b> 7407:17
7361:14,18	<b>schedule</b> 7463:1	7399:1 7441:7	7410:23 7423:9	7409:13 7473:5
7368:10 7377:1	<b>scheduled</b> 7258:6	7447:13 7448:6	7439:6 7444:2	7475:4
7381:12 7391:4	<b>school</b> 7367:7	7449:10	7445:11 7446:3,4	<b>sense</b> 7246:24,25
7410:9,12	7424:19	<b>securing</b> 7328:10	7465:1 7481:12	7264:20 7268:14
7420:13 7426:20	<b>se</b> 7237:21 7271:2	<b>security</b> 7217:3	7497:10 7500:16	7305:8 7332:16
7426:23 7437:19	7282:25 7305:23	7218:23 7220:9	7506:4 7533:14	7349:1 7370:17
7438:7 7463:17	7334:10 7439:25	7220:11 7221:5	<b>seeing</b> 7332:3	7418:12 7419:14
7465:1 7466:6	<b>seal</b> 7513:15	7221:19 7226:1	7373:25 7426:6	7419:22 7456:1
7476:10 7490:19	<b>sealed</b> 7250:9	7252:16 7257:9	<b>seek</b> 7247:8 7279:9	7474:5 7479:7,22
7517:25 7519:14	7504:6 7513:6	7267:13 7268:16	7307:23 7317:21	7480:16 7485:19
7520:11,12,16	<b>sealing</b> 7514:4	7268:18 7269:7	7377:25 7455:10	7495:4 7523:14
7525:17 7529:3	<b>search</b> 7217:16	7272:9 7277:15	7458:12,19	7530:15
7531:2	7233:7 7236:7	7281:4 7292:15	7484:9 7485:18	<b>sensitive</b> 7354:1,6
<b>says</b> 7218:17	7240:17,24	7292:20 7299:22	<b>seeking</b> 7217:4	7454:10 7532:22
7235:8 7238:14	7248:4,5,12	7302:25 7334:14	7236:9 7245:4	<b>sensitivity</b> 7513:18
7239:5 7244:10	7337:8 7401:15	7348:8 7349:24	7264:10 7304:2	<b>sensitize</b> 7354:12
7246:18 7247:25	7402:3 7422:10	7411:14 7451:22	7314:19 7324:2	<b>sensitized</b> 7318:1
7251:18 7256:7	7422:21 7423:5	7452:8,23,24	7351:4 7371:9	7319:12
7259:2 7262:17	7488:19 7513:6	7453:3,8,15	7452:1 7458:21	<b>sent</b> 7293:7 7313:8
7262:19 7263:14	<b>searched</b> 7217:1	7454:3,16,24	7484:8 7505:22	7330:10,12
7263:16 7265:22	7240:21 7248:14	7474:10 7504:4	7505:25 7522:18	7393:23 7395:1,1
7271:21 7274:5	7336:22 7488:22	7516:16	<b>Seemalynk</b>	7445:21 7448:25
7275:12 7283:24	7490:5 7512:21	<b>see</b> 7214:14	7246:14	7479:23 7509:19
7287:14,16	7514:4,20	7219:16 7225:14	<b>seen</b> 7239:21	7521:11
7294:25 7302:8	<b>searches</b> 7257:19	7226:11 7227:25	7241:1 7309:15	<b>sentence</b> 7444:5,13
7304:15,24	7410:10 7514:10	7228:5 7229:16	7309:18 7332:1	<b>sentences</b> 7304:24
7308:3 7312:15	7514:12 7515:25	7237:18 7239:3	7338:16 7361:7	<b>separate</b> 7244:16
7319:8,11	<b>seated</b> 7212:5	7241:14 7244:9	7367:9 7393:4,5	7498:18
7320:22 7327:17	7213:8 7280:4	7245:16,22	7418:20 7456:7	<b>separately</b> 7220:21
7327:19 7331:23	7360:12 7398:17	7252:23 7265:20	7467:2 7480:3	<b>September</b> 7245:23
7334:8 7339:16	<b>second</b> 7215:14	7271:3 7272:25	7483:16 7499:10	7261:16 7262:4
7339:21 7341:21	7231:11 7268:4	7273:3,17	7500:20 7501:20	7262:12 7263:21
7342:9 7356:3	7293:17 7319:11	7275:11 7282:4	7530:16	7265:22 7269:23
7358:21 7361:21	7341:7 7345:20	7287:15 7291:13	<b>segment</b> 7253:11	7333:25 7352:17
7365:12 7366:22	7349:23 7352:14	7296:25 7306:12	<b>segue</b> 7408:6	7520:10

<b>Sergeant</b> 7281:6 7434:16,16	7354:17 7355:6,8 7360:17 7363:16 7366:19 7367:15 7374:3 7378:23 7394:2,6 7431:18 7463:25	7529:22	7320:6 7328:8,21 7329:3 7349:20 7420:15 7430:1 7444:9,19 7445:18,23 7446:14 7470:7 7478:15 7479:16	7532:22
<b>series</b> 7244:11 7377:3 7382:15 7419:16	<b>shift</b> 7317:22	<b>similarly</b> 7525:20	<b>son</b> 7334:2	<b>son</b> 7334:2
<b>serious</b> 7299:3	<b>Shirley</b> 7376:20 7396:12,15,25	<b>simple</b> 7224:9 7267:20 7414:21 7427:20 7445:20 7536:2	<b>sons</b> 7296:7	<b>son's</b> 7333:19
<b>seriously</b> 7461:17	<b>shoes</b> 7466:17	<b>simply</b> 7213:20 7216:17 7228:9 7228:22 7240:9 7241:23 7245:15 7247:12 7255:25 7257:25 7267:7 7288:10 7301:12 7301:25 7302:6 7311:18 7312:2 7315:13 7317:5 7319:2 7320:20 7333:11 7343:19 7359:14,20 7395:19 7400:11 7416:7 7457:24 7459:8 7470:25 7482:14 7507:6 7507:16 7513:19 7517:7,8	<b>soon</b> 7239:15 7240:7 7257:5 7324:24	<b>sorry</b> 7214:19 7242:20 7253:22 7262:23 7263:5 7272:1 7273:20 7281:13 7288:19 7291:17 7316:20 7337:18 7342:14 7342:15 7349:7 7349:12 7355:7 7365:18 7381:5 7383:22 7404:7 7421:11 7427:14 7431:21 7434:24 7445:7 7462:20 7469:16 7480:21 7516:10 7522:4 7535:3
<b>served</b> 7297:16 7377:12	<b>shook</b> 7253:16	<b>simulate</b> 7400:2	<b>six</b> 7288:2	<b>sort</b> 7250:9 7253:15 7270:25 7285:9,18 7300:21 7303:18 7305:19 7307:21 7311:5 7330:19 7334:19 7346:23 7349:5 7354:9 7357:25 7377:23 7380:15 7381:1 7381:10,16 7408:10 7410:5 7413:6 7440:3 7449:7 7466:3 7467:11 7470:23 7471:19 7474:11 7474:13 7520:4 7533:17
<b>services</b> 7226:20,23 7227:5 7257:10 7266:21 7295:17 7297:14,22	<b>short</b> 7291:23 7334:11 7460:17 7460:20 7461:17 7461:21 7479:5	<b>Simulynk</b> 7399:25	<b>ski-raced</b> 7296:7	<b>sought</b> 7373:24 7425:7,8 7459:6 7466:1
<b>services</b> 7526:20 7528:1	<b>shortly</b> 7217:7 7232:3 7273:18 7314:7 7333:22	<b>sincere</b> 7285:25 7428:13	<b>slack</b> 7252:6	<b>sound</b> 7425:4 7527:25
<b>set</b> 7238:23 7303:8 7320:16 7330:23 7343:8 7351:19 7376:22 7419:6 7449:23 7489:20 7490:22 7491:9	<b>show</b> 7439:8 7457:15 7458:5	<b>sir</b> 7224:9 7227:1,4 7277:17 7279:6 7402:2 7404:14 7405:10 7418:5 7418:23 7434:5 7436:4 7438:22 7443:18 7478:7 7478:20 7480:2 7487:6 7488:3 7489:6 7508:1 7511:23	<b>slip</b> 7218:17 7230:24	<b>source</b> 7306:6
<b>sets</b> 7314:18 7489:14	<b>showed</b> 7365:14 7404:11 7431:10 7457:7	<b>SIRC</b> 7376:17	<b>small</b> 7394:24	
<b>setting</b> 7309:24	<b>showing</b> 7366:10	<b>sit</b> 7371:14 7413:23 7506:15	<b>smudge</b> 7271:21	
<b>settings</b> 7215:24	<b>shown</b> 7234:4 7331:20 7456:13 7508:24 7509:9	<b>site</b> 7271:19	<b>social</b> 7370:1 7375:17	
<b>setup</b> 7466:16	<b>shows</b> 7366:25 7534:23	<b>sitting</b> 7381:2,2	<b>Societies</b> 7215:25	
<b>Seven</b> 7385:2,3	<b>shut</b> 7450:19	<b>situate</b> 7276:24	<b>Society</b> 7215:20 7271:20 7272:5	
<b>shadow</b> 7380:16	<b>side</b> 7218:24 7297:4 7377:10	<b>situation</b> 7224:25 7225:6 7273:13 7277:24 7303:2	<b>soft</b> 7324:15 7449:12,15 7466:11	
<b>share</b> 7348:21 7349:15 7454:14 7467:15 7501:12	<b>sidebar</b> 7346:8,9		<b>software</b> 7246:1 7399:22 7400:1 <b>software-oriented</b> 7246:12	
<b>shared</b> 7254:1 7465:4	<b>sides</b> 7486:2		<b>soles</b> 7324:19	
<b>sharing</b> 7255:8	<b>sideways</b> 7427:14		<b>Solicitor</b> 7372:7	
<b>sheepishly</b> 7474:11	<b>signed</b> 7238:12 7317:8 7372:7		<b>solicitor-client</b> 7212:15 7434:2 7453:10	
<b>sheet</b> 7228:11 7261:21 7293:16 7298:11 7302:4 7309:13 7340:14 7340:21 7341:11 7358:8 7379:15 7394:10,12	<b>significant</b> 7400:9 7407:15 7435:17 7454:14 7526:2 7530:24 7531:20		<b>solid</b> 7311:6 7410:25	
<b>sheets</b> 7228:22 7229:4,12 7241:6 7260:4,21 7287:11 7309:10 7318:18 7321:10 7331:4 7337:21	<b>silent</b> 7414:18,19 7416:19 7417:14		<b>Solidarity</b> 7375:18	

7347:4 7363:9,14 7465:22 7501:22 7502:5 7532:23 <b>sources</b> 7363:13 7412:15 7504:25 <b>space</b> 7264:3 <b>spaces</b> 7400:19 <b>speak</b> 7231:14,22 7235:13 7248:25 7256:12 7259:7 7269:22 7291:23 7299:3 7305:24 7308:4 7345:15 7349:25 7369:6,6 7370:7 7384:3 7385:15 7391:6 7411:3 7412:2 7417:14 7447:14 7467:21 7473:13 7506:7 7520:21 <b>speaking</b> 7219:14 7222:25 7229:25 7234:21 7270:18 7296:3 7312:6 7334:10 7355:20 7383:2 7391:20 7412:6 7413:20 7469:19 <b>speaks</b> 7240:17 <b>special</b> 7527:14,17 7528:1 <b>specialist</b> 7215:18 <b>specific</b> 7357:2,12 7371:13 7406:18 7411:6 7430:14 7438:13 7468:21 7475:11 7476:1 7478:3,5 7492:5 <b>specifically</b> 7249:9 7302:22 7391:25 7420:10 7421:24 7429:12 7465:10 7468:15 7490:20 7492:9 7495:3 7511:16 7520:18 7522:17,21 7525:2 7526:13 <b>specifics</b> 7234:8 7358:16	<b>specify</b> 7363:9 <b>specifying</b> 7363:11 <b>spectre</b> 7424:25 <b>speculating</b> 7314:1 <b>speculative</b> 7269:16 <b>spellings</b> 7399:17 <b>spend</b> 7215:4 7421:1 <b>spent</b> 7451:5 7470:5 <b>split</b> 7357:25 <b>spoke</b> 7231:7 7258:22 7266:13 7266:18 7287:23 7291:13 7301:17 7308:7 7358:25 7449:20 7464:11 7520:13 7525:3 7527:8 <b>spoken</b> 7236:13 7258:10 7363:21 7364:1 7475:9 <b>spouse</b> 7265:2 7382:1 <b>Squad</b> 7285:12 <b>squarely</b> 7317:24 <b>staff</b> 7229:18 7281:5 7370:9 7434:16 7524:3 7527:3 <b>stage</b> 7318:16 7319:1 7344:3,22 7358:2 7359:18 7397:13,24 7410:16 7452:11 7454:23 7455:5 7458:12 7517:15 <b>stages</b> 7465:7 <b>stamp</b> 7327:22 <b>stand</b> 7278:8 7279:23 7360:7 7398:12 7458:16 7461:10 7480:22 7537:14 <b>standard</b> 7422:7 <b>standing</b> 7226:11 7267:4 7420:13 7426:24	<b>start</b> 7377:13,25 7388:13 7414:4 7537:8 <b>started</b> 7245:20 7247:20 7248:25 7273:1 7327:23 7376:10 7403:4 <b>starting</b> 7246:6 7301:8 7432:10 <b>starts</b> 7245:22 7262:5 <b>state</b> 7221:13 7271:13 7325:2 7413:6 7433:21 7454:8,21 <b>stated</b> 7256:13,20 7256:23 7257:1 7258:10 7259:6 <b>statement</b> 7236:20 7237:25 7344:18 7344:19 7345:6,7 7345:8 7396:4 7412:9,24,25 7413:18 7414:5,7 7414:9,15 7416:10 7435:6 7436:1,13,14 7437:17,19,20,21 7438:17 7447:3 7482:18 7492:10 7492:24 7493:3,5 7493:10 7494:2 7495:2,3,13 7497:7,11,25 7498:1,4,6,9,11 7498:24 7499:6 7499:14 7500:1 7502:20 7503:5 7505:23,25 7518:7 <b>statements</b> 7324:3 7416:8 7493:21 7507:10 <b>states</b> 7253:5 7263:8,11 7292:12 7301:11 7312:24 7313:2,6 7318:12 7352:17 7408:12,19	7409:18 7444:5 7520:25 7521:1,4 7521:7,14,20 <b>stating</b> 7372:15 <b>status</b> 7289:3 7317:18,23 7319:21 7342:5 7342:23 7466:9 <b>stay</b> 7426:10 <b>steno</b> 7262:11 <b>step</b> 7223:13 7413:16 <b>steps</b> 7387:24 7406:1 7408:2 7441:21 <b>Steve</b> 7289:12,18 7289:24 7290:3,6 7290:10 7291:6,8 <b>Stewart</b> 7290:20 7498:19 <b>Stewart's</b> 7262:18 7262:21 7263:12 <b>Stinchcombe</b> 7327:23 <b>stipulated</b> 7351:20 <b>stonewalled</b> 7313:15 <b>stonewalling</b> 7442:20 <b>stood</b> 7313:12 7318:22 <b>stop</b> 7248:3 7404:14,14 7529:7 <b>stopped</b> 7248:2 7520:9 <b>stores</b> 7249:22 <b>stories</b> 7296:21 7297:5 <b>storm</b> 7530:16 <b>story</b> 7296:18 7297:4,20 7408:4 <b>straight</b> 7428:14 <b>strange</b> 7353:18 <b>stranger</b> 7353:18 <b>strategy</b> 7377:23 7446:13 <b>street</b> 7265:4 7302:13 7370:19	<b>streets</b> 7221:3,8 <b>strike</b> 7427:23 7509:4 <b>stringent</b> 7420:12 <b>strong</b> 7332:17 <b>struck</b> 7440:13 7506:24 <b>Studies</b> 7292:20 <b>stuff</b> 7438:3 7439:13 <b>subject</b> 7221:4 7278:18 7282:8 7299:13 7303:2 7324:5 7326:5 7347:22 7349:23 7350:22 7403:22 7408:8 7410:4 7443:23,25 7451:21 7452:22 7453:3 7466:2 7481:14 7504:3 7513:5 7519:22 <b>subjects</b> 7328:17 <b>submissions</b> 7226:15 7277:11 7278:17 <b>subsequent</b> 7283:1 7286:25 7318:10 7348:3 7465:16 7490:23 <b>subsequently</b> 7236:11 7250:4 7379:7 7410:11 7498:14 7499:11 7531:13 <b>substance</b> 7251:1 7254:8 7283:20 7289:9 7310:16 7355:1 7363:6 7393:8,17 7407:19 7409:16 7498:25 <b>substantively</b> 7525:3 <b>succeed</b> 7409:24 <b>success</b> 7441:11 <b>successfully</b> 7450:20 <b>Sue</b> 7263:16
--	--	--	---	---

<b>suggest</b> 7221:18 7361:22 7399:24 7403:3 7404:18 7412:16 7416:21 7434:5 7450:21 7455:6,15 7463:10 7465:3 7478:7,21 7518:14	7269:17 7288:14 7295:9 7297:8 7310:14 7332:14 7339:15 7348:7 7349:5 7385:11 7386:18 7388:19 7390:25 7395:8 7398:5,9 7434:16 7436:20 7437:2 7451:19 7456:14 7457:3 7458:24 7462:1,22 7463:3 7467:7 7487:14 7495:11 7501:16 7534:4	7488:2 7502:17 <b>suspicious</b> 7352:13 <b>swearing</b> 7423:4 <b>Switch</b> 7463:22 <b>sworn</b> 7213:1 7412:24 7414:7 7498:2,5,13,24 7499:6 7518:6 <b>symbol</b> 7331:20 <b>sympathise</b> 7328:7 <b>Syria</b> 7274:11 7275:19 7282:7 7283:19 7287:9 7288:5,7,9 7296:8 7296:16 7297:12 7297:22 7300:11 7300:12 7312:23 7313:20 7314:24 7323:5 7326:6,10 7329:5 7334:20 7336:13 7338:24 7342:24 7344:13 7344:17,20 7345:9,11,13 7361:8 7362:4,10 7362:13,19 7363:14,22 7364:6,10,14 7365:1 7377:19 7392:14 7393:1 7393:13,20,23 7424:4,20 7432:24 7435:18 7439:16 7440:10 7445:14,22,24 7446:21 7447:18 7449:6,21 7450:17 7477:25 7478:17 7479:17 7479:24 7482:2 7483:14 7485:22 7501:20 7520:18 7525:24 7532:21 7534:13,24	7372:21 7393:11 7424:6 7425:21 7432:24 7435:20 7437:18 7441:13 7464:7 7467:6,22 7525:14 <b>Syrians</b> 7295:25 7298:2,21 7306:11 7323:19 7361:10 7364:12 7436:15 7438:4,8 7440:21 7441:18 7442:21 7448:22 7449:10 7500:3 7524:7 <b>Syria's</b> 7300:2 <b>system</b> 7229:21 7362:6 7400:21 7408:11,15,16 7412:7 7448:23 7449:4,12 <b>systems</b> 7246:10,15 7400:2	<b>tag</b> 7291:22 <b>tailed</b> 7419:20 <b>take</b> 7249:17 7267:16,17 7277:22 7279:4,8 7286:6,10 7292:19,21 7294:5 7306:13 7307:7 7312:24 7330:18 7332:2 7350:17 7376:6 7381:6,7 7382:15 7383:16 7399:20 7400:13 7401:9 7413:13 7415:18 7419:2,21 7421:16 7423:13 7423:21 7424:23 7426:11 7429:13 7431:8 7432:23 7434:11 7443:8 7446:9 7450:3 7453:21 7458:15 7459:22 7464:5 7464:21,25 7468:3 7476:25 7478:7 7491:15 7502:20 7503:9 7506:6 7520:23 <b>taken</b> 7236:4 7242:13 7290:18 7334:16 7337:4 7408:2 7414:20 7429:11 7436:13 7437:18,20 7441:21 7465:24 7466:7 7469:2 7509:2 7518:7 <b>takes</b> 7412:18 7452:22 <b>tale</b> 7420:21 <b>talk</b> 7254:12 7349:2,6 7385:10 7420:16 7434:11 7447:25 7448:1,3 <b>talked</b> 7386:21 7387:1 7471:2 <b>talking</b> 7224:4,6,6 7251:18,21
<b>suggested</b> 7423:14 7526:3 <b>suggesting</b> 7310:17 7479:18 7515:21 7521:17,18 7531:20 7534:9 <b>suggestion</b> 7301:6 7403:1 <b>suggestions</b> 7303:19 7317:19 7319:14 <b>suitcase</b> 7322:9,9 <b>sum</b> 7394:14 <b>summarize</b> 7281:25 <b>summary</b> 7311:6 <b>summer</b> 7451:4 <b>Superintendent</b> 7395:5 <b>superior</b> 7319:5 <b>super-intelligent</b> 7380:21 <b>supply</b> 7372:23 7497:7 <b>support</b> 7246:16 7277:25 7279:2 7329:17 7369:20 7408:18 7441:20 <b>supporters</b> 7220:2 <b>suppose</b> 7417:5 7441:19 7479:24 7515:13 7527:12 7529:9 <b>supposed</b> 7417:2 7417:19 <b>sure</b> 7221:22 7228:15,25 7237:19,25 7242:20 7246:13 7260:10 7268:2	<b>surely</b> 7419:10 7441:19 7476:13 7478:24 <b>surface</b> 7510:6 <b>surmising</b> 7335:15 <b>surprise</b> 7500:15 7518:20 <b>surprised</b> 7418:5 7418:12 7444:2 <b>surreptitious</b> 7457:20 <b>surround</b> 7317:6 <b>surrounding</b> 7283:18 <b>surviving</b> 7333:14 <b>Susan</b> 7417:4 <b>suspect</b> 7289:4 7310:4,21,23 7315:7 7351:25 7352:1 7358:7 7413:5 7430:17 7431:9 7440:15 7462:10 7482:9 7482:15 7483:10 7483:11,15 7505:7,9,10,23 7529:5,10 <b>suspects</b> 7414:17 7492:11 <b>Suspension</b> 7279:25 7360:9 7398:14 7461:12 <b>suspicion</b> 7418:13 7487:22,25	7488:2 7502:17 <b>suspicious</b> 7352:13 <b>swearing</b> 7423:4 <b>Switch</b> 7463:22 <b>sworn</b> 7213:1 7412:24 7414:7 7498:2,5,13,24 7499:6 7518:6 <b>symbol</b> 7331:20 <b>sympathise</b> 7328:7 <b>Syria</b> 7274:11 7275:19 7282:7 7283:19 7287:9 7288:5,7,9 7296:8 7296:16 7297:12 7297:22 7300:11 7300:12 7312:23 7313:20 7314:24 7323:5 7326:6,10 7329:5 7334:20 7336:13 7338:24 7342:24 7344:13 7344:17,20 7345:9,11,13 7361:8 7362:4,10 7362:13,19 7363:14,22 7364:6,10,14 7365:1 7377:19 7392:14 7393:1 7393:13,20,23 7424:4,20 7432:24 7435:18 7439:16 7440:10 7445:14,22,24 7446:21 7447:18 7449:6,21 7450:17 7477:25 7478:17 7479:17 7479:24 7482:2 7483:14 7485:22 7501:20 7520:18 7525:24 7532:21 7534:13,24 <b>Syrian</b> 7292:5 7295:8 7297:9,16 7297:19 7338:22 7362:16,25 7363:2 7369:23	<b>T</b> <b>tab</b> 7232:12 7233:3 7237:11 7238:7 7255:20 7274:3 7294:17 7301:23 7304:8 7309:19 7312:10 7314:10 7314:12 7316:9 7317:1,9 7319:4 7320:14 7327:1 7342:8,15 7343:1 7358:18,21 7365:19,20,21 7368:17 7371:21 7371:23,24 7382:9,10,11 7384:22,24 7388:13 7395:23 7429:14 7445:4,6 7477:1,14 7489:12 7522:25 7523:4,5 <b>table</b> 7213:19 7419:22 <b>tabs</b> 7429:12	

7312:17 7404:10	7331:8 7343:12	7535:18,25	7353:19 7423:19	7345:17 7346:1
7422:23 7431:11	7346:6 7348:14	7536:3,15	7440:2 7447:16	7350:1,18
7443:14 7497:11	7348:19 7351:13	<b>terribly</b> 7442:18	7449:24 7454:1	7354:21,23
7528:14	7352:4 7353:8	<b>terrorist</b> 7295:19	7458:18 7463:11	7356:19 7357:5
<b>taped</b> 7414:10	7363:14 7375:2	7295:21 7297:24	7470:3 7474:22	7357:25 7359:24
7491:22,25	7375:12 7381:13	7310:23 7372:17	7520:5	7361:23 7363:3
<b>tapped</b> 7251:17	7388:9 7408:4	<b>terrorist-related</b>	<b>things</b> 7218:25	7364:10,11,25
7336:9 7404:10	7413:7 7419:11	7315:9	7266:6 7267:25	7365:4 7366:6
<b>target</b> 7415:23	7420:14,17,18	<b>testified</b> 7434:23	7301:8 7303:19	7367:6,11
7431:9 7468:16	7426:25 7427:5	7435:2 7443:16	7310:10,16	7373:19 7374:11
7468:20 7505:4,8	7431:25 7437:14	7465:5	7318:22 7343:15	7375:17 7377:11
7505:10,23	7446:18 7451:19	<b>testify</b> 7451:13	7343:18 7353:7	7377:22 7379:7
<b>targets</b> 7401:23	7480:15 7482:13	7480:18	7376:11 7377:13	7388:15,22
<b>taxes</b> 7249:9,15	7485:14 7502:7	<b>testifying</b> 7213:16	7381:13,25	7389:14 7391:17
<b>TC</b> 7262:12	7503:19 7513:1	7508:4	7382:3 7397:9	7392:8,9 7393:8
<b>teaching</b> 7215:23	7517:18	<b>testimony</b> 7213:12	7437:25 7439:8	7397:14 7401:13
<b>team</b> 7429:21	<b>telling</b> 7286:2	7213:17 7476:4	7446:12 7451:25	7402:8 7406:3
7473:9,13 7506:6	7297:21 7309:16	<b>thank</b> 7212:18,20	7454:17 7467:17	7407:20 7409:7
<b>telecommunicati...</b>	7323:15 7328:6	7213:7 7214:7,21	7476:8 7479:12	7411:10 7413:24
7246:17	7331:15 7339:25	7214:23 7227:2	7529:10	7414:23 7416:16
<b>telephone</b> 7225:23	7348:17 7353:25	7227:23 7242:4	<b>think</b> 7218:16	7421:12 7422:18
7230:8 7242:1	7361:10 7426:19	7242:11 7243:4,9	7221:8,15	7423:19 7427:6
7244:15 7261:1,6	7437:25 7510:8	7261:23 7271:9	7222:17 7223:19	7427:15 7434:15
7261:25 7262:13	7517:8 7526:7,12	7271:10 7280:12	7224:8,10,12,14	7434:21 7435:8
7288:22 7291:15	7535:19	7295:22 7301:22	7224:18 7225:7	7439:5 7440:1
7291:22 7310:6	<b>ten</b> 7373:10 7461:9	7313:25 7314:8	7225:19 7227:14	7441:3 7442:3,7,9
7311:24 7318:21	<b>tend</b> 7499:11	7316:16 7333:1	7231:15 7254:21	7442:11,15,18
7318:24 7321:25	7513:12,25	7351:6,9,10	7259:19 7264:3,9	7443:5 7445:5
7326:1 7330:11	7514:2	7355:12,16	7264:20 7266:18	7450:6 7451:23
7331:10 7337:24	<b>term</b> 7300:8	7360:6 7365:23	7268:20 7269:3	7453:11 7454:2,5
7339:9,12	7310:22 7313:13	7368:1 7369:14	7269:17,20	7454:7,19 7455:3
7354:15,22	7400:14 7519:25	7371:2,25 7382:7	7270:5 7272:23	7455:12 7457:1
7358:9,16	<b>terms</b> 7213:13	7396:22 7397:25	7277:9,21 7281:5	7458:8 7459:11
7360:19 7365:6	7227:13 7228:5	7398:11,19,25	7281:7 7282:23	7459:18 7460:8
7367:18 7390:10	7228:11,23	7399:2 7434:10	7283:14 7288:3	7461:6,24 7462:1
7404:20,23	7229:11 7238:1,4	7443:15 7445:10	7290:24 7293:8	7462:6,16
7510:20	7238:21 7239:3	7463:22 7472:4	7293:10 7295:10	7464:15 7466:3
<b>telephoned</b> 7266:6	7247:5,6,6,8	7477:16 7499:22	7296:19,25	7467:9,11
<b>television</b> 7378:20	7253:25 7254:1	7512:2 7519:20	7297:10,16,19	7468:24 7469:5
7481:9	7255:8 7263:19	7523:6 7526:18	7300:1,10	7469:15,19
<b>tell</b> 7222:2 7223:20	7276:25 7283:16	7529:20 7532:16	7303:23 7307:16	7470:22,24
7223:24 7224:24	7300:3 7329:23	7535:8 7536:19	7313:8,18	7471:1 7476:7
7229:10 7230:10	7350:4 7351:13	7536:22 7537:6	7321:19 7322:11	7479:6 7480:5,18
7244:18 7260:25	7357:25 7390:8	<b>theme</b> 7366:16	7322:13 7329:24	7480:24 7484:18
7263:18 7266:3	7419:6 7447:21	<b>theory</b> 7417:18	7330:10 7333:14	7485:9 7487:17
7266:17 7271:16	7448:5 7449:12	<b>they'd</b> 7528:11	7333:19,20	7491:16,25
7278:14 7280:15	7466:8 7497:11	<b>thin</b> 7381:1	7334:7 7335:8,15	7493:23 7494:16
7287:19 7290:12	7501:11 7512:7	<b>thing</b> 7221:16	7336:2 7340:8	7495:18 7497:7,9
7302:17 7309:11	7520:22 7532:3	7331:17 7346:6	7341:24 7345:14	7501:5 7502:8

7504:8 7507:12	7395:24 7406:3	7402:3 7407:7	7336:6,10	7394:22
7507:14 7508:7	7409:22 7420:5	7408:22 7414:22	7340:16 7345:19	<b>torture</b> 7296:1
7510:1,3,10,11	7421:5 7425:24	7415:14 7420:2,3	7348:20 7349:2	7298:2,23
7511:11,16	7465:25	7421:1,15,17	7352:6,14,19	7300:18 7324:18
7517:2 7519:24	<b>three-party</b>	7427:7 7430:9,13	7353:6 7359:21	7325:11,20
7520:1 7523:10	7214:15	7430:19 7431:12	7362:17 7363:25	7326:5 7424:4
7525:15 7530:15	<b>threshold</b> 7422:17	7431:13,18	7375:20 7378:18	7425:20 7437:6
7532:17 7533:15	7487:4,8	7439:5 7440:9	7390:16 7391:11	7437:21 7464:23
7534:7,8,22	<b>Thursday</b> 7240:5	7450:4 7451:5	7392:20 7395:12	7465:6 7466:20
<b>thinking</b> 7299:7	7336:16	7453:5 7456:18	7397:16 7402:11	7522:8
7414:2 7437:7	<b>time</b> 7212:17	7458:22,24	7403:14 7409:14	<b>tortured</b> 7301:7
7462:6 7531:13	7214:4 7215:4	7461:20,21	7413:17 7421:24	7324:7 7326:20
<b>third</b> 7216:23	7216:25 7217:8	7463:25 7470:1,5	7423:16 7426:3,7	7345:6,8 7381:11
7350:1 7355:25	7218:16 7223:4	7470:12 7474:7	7427:24 7428:9	7381:14 7393:1
7372:9 7383:21	7228:22 7229:3	7474:12 7484:15	7430:20,25	7393:21 7464:7
7384:5 7444:14	7229:11 7230:21	7484:20,23	7435:25 7451:14	7468:9 7524:6
7490:11 7498:4	7241:3,6 7245:7	7500:7 7506:7	7452:20 7461:20	<b>Total</b> 7329:22
7521:21	7247:7 7248:3,8	7515:6 7524:23	7467:19 7470:17	7473:23
<b>Thirty-five</b>	7255:15 7256:8	7527:7 7529:12	7470:24 7491:21	<b>totally</b> 7255:10
7371:25	7256:10 7257:23	7529:14,24	7499:9 7501:6	7308:9
<b>Thirty-two</b> 7396:2	7260:3,4,21	7530:3,18,20	7505:3 7508:9	<b>touch</b> 7359:5
<b>Thornton</b> 7289:12	7261:3,12,14	7533:5,8,9,12,13	7509:17 7510:10	7421:6
7289:20,22	7264:8 7276:7,15	7534:5 7537:2	7510:11,13	<b>touched</b> 7423:19
7290:13	7279:8 7281:8	<b>times</b> 7244:17	7511:3,4,5	<b>townhouse</b> 7471:5
<b>thorough</b> 7384:22	7284:10 7285:15	7247:3 7262:21	7512:19 7515:23	<b>track</b> 7271:4
7385:1	7286:3 7287:11	7302:15 7406:4	7517:2 7519:18	7272:11 7410:3
<b>thought</b> 7212:12	7288:17 7289:4	7418:20 7442:12	7519:25 7524:2,9	7421:14
7251:18 7278:16	7291:24 7292:14	7463:9 7473:12	7525:2 7527:9	<b>Trade</b> 7329:16
7283:5 7285:24	7293:16 7298:11	<b>tissue</b> 7324:15	7530:8	7352:18
7287:5 7288:6,17	7299:7 7302:4,20	7466:12	<b>toll</b> 7323:3 7324:10	<b>trading</b> 7498:21
7296:9 7299:5	7309:10,13	<b>title</b> 7375:23	7466:7	<b>traditional</b> 7411:12
7313:20 7336:1,3	7318:13,18	<b>titled</b> 7271:12	<b>Tom</b> 7281:8,13	7502:15
7371:17 7380:15	7321:9 7324:24	<b>today</b> 7325:1	<b>tomorrow</b> 7461:24	<b>training</b> 7352:20
7394:19 7397:23	7325:4,13,14	7374:25 7383:12	7537:8	7361:13 7438:2
7399:12 7428:11	7328:14 7331:4	7503:22 7537:8	<b>tonight</b> 7322:21	<b>transactional</b>
7428:12,13	7333:16 7337:20	<b>told</b> 7222:1 7232:2	<b>tools</b> 7422:13,24,25	7389:18
7440:9 7445:19	7340:19 7341:11	7234:6 7235:11	7423:1	<b>transactions</b>
7450:8 7471:24	7344:1,5 7348:18	7248:11 7249:12	<b>top</b> 7218:19	7409:2
7476:5 7484:24	7348:18 7353:10	7249:14 7250:1,3	7229:17 7244:10	<b>transcended</b>
7485:2,23	7354:1,6,16	7250:7,11,16	7245:16 7262:12	7527:20
7508:22 7522:18	7355:6,7 7358:1	7252:4 7253:2,3	7265:21 7275:12	<b>transcribed</b>
7527:7 7528:10	7359:10,23	7259:22 7265:23	7298:18 7365:25	7242:14 7243:10
7528:11 7531:18	7360:17 7363:16	7276:8 7283:13	7375:8 7388:14	<b>transcript</b> 7344:19
<b>thoughts</b> 7464:9	7366:19 7367:6	7286:6 7292:10	7427:7	7414:10,12,14
<b>three</b> 7217:13,14	7367:15 7372:13	7292:21 7307:5	<b>topic</b> 7332:10	7436:16 7439:10
7256:21,24	7373:8 7374:3	7307:25 7308:23	<b>topics</b> 7463:23	<b>transfer</b> 7329:5
7289:7,14	7376:6 7378:22	7322:25 7323:25	<b>top-secret</b> 7453:2	7408:13 7478:17
7299:13 7303:19	7379:14 7380:4	7331:14,17	<b>Toronto</b> 7387:6	7479:17
7323:4,7 7371:1	7382:2 7393:3	7334:18 7335:4	7390:16 7394:22	<b>transformed</b>

7380:11  
**transpired** 7245:5  
**transported** 7365:1  
**transposition**  
 7355:21  
**travel** 7264:18  
 7322:10,15,17  
 7333:21 7334:1  
 7334:15 7336:19  
 7450:18  
**travelled** 7322:3  
 7352:22 7458:7  
**travelling** 7264:14  
 7264:22  
**treated** 7248:11  
 7482:14 7524:7  
**treating** 7347:1  
 7508:10  
**trial** 7362:1,4,7  
 7364:6,10 7449:1  
 7449:14 7529:16  
**tried** 7266:7 7376:4  
 7421:22 7516:20  
 7529:18  
**triggered** 7219:22  
**trip** 7458:17  
**trips** 7471:21  
**troubling** 7467:15  
**true** 7268:11  
 7324:1 7381:14  
 7406:9 7426:21  
 7439:3 7452:5,5  
 7479:13 7482:7  
 7485:15  
**trust** 7440:22  
 7448:22,23  
**truth** 7451:20  
**try** 7250:2 7265:6  
 7299:17 7306:17  
 7313:22 7330:19  
 7330:23 7343:22  
 7354:10 7363:4  
 7376:25 7409:21  
 7409:23 7412:23  
 7432:4 7439:3  
 7446:24 7461:19  
 7486:8 7504:9  
**trying** 7223:1  
 7247:8,12 7251:6

7254:9,11  
 7267:21,21  
 7285:19 7286:23  
 7287:7 7291:3  
 7335:5 7341:1  
 7347:2 7364:13  
 7375:20 7399:1  
 7420:11 7425:13  
 7433:18 7434:3  
 7440:3 7443:17  
 7465:21 7481:13  
 7486:1 7490:19  
 7490:22 7502:19  
 7531:24 7533:11  
 7533:15  
**Trynacity** 7297:3  
**Tuesday** 7322:24  
 7332:2 7384:13  
 7466:4  
**Tuesdays** 7332:3  
**Tunis** 7287:16,17  
**Tunisia** 7233:18  
 7234:1 7251:11  
 7251:22,24  
 7252:5,9 7257:1  
 7257:15 7258:7  
 7258:12 7262:19  
 7263:24 7264:2  
 7264:18 7270:6  
 7288:11,22  
 7333:18 7334:6  
 7335:17 7336:8  
 7336:21 7352:22  
 7404:12 7470:9  
 7470:16 7471:18  
**Tunisian** 7334:3  
 7335:22 7337:4  
**turf** 7518:10  
**turn** 7303:9  
 7341:11 7382:9  
 7399:7 7400:11  
 7432:8 7438:4,19  
 7483:24 7524:9  
**turned** 7251:10  
 7303:1 7324:5  
 7332:18 7394:18  
**turning** 7381:3  
**two** 7218:13 7228:9  
 7229:23 7232:14

7232:25 7242:24  
 7242:25 7244:16  
 7267:25 7273:23  
 7277:7 7282:4  
 7285:20 7286:5,8  
 7293:8,9 7297:25  
 7315:12,15  
 7316:22 7317:7  
 7317:14 7319:10  
 7321:21 7322:2  
 7351:8,16  
 7360:21 7396:11  
 7397:8 7400:13  
 7406:3 7409:19  
 7412:20 7425:24  
 7451:5 7456:11  
 7460:8 7462:16  
 7474:2 7476:8  
 7482:4 7498:2,10  
 7504:2 7508:21  
 7532:2  
**twofold** 7282:3  
**two-thirds** 7343:5  
**type** 7292:15  
 7475:13,17  
 7496:15  
**typed** 7243:10,10  
 7243:12  
**types** 7318:2  
 7412:20 7415:15  
 7532:7  
**typewritten** 7496:7  
**typical** 7214:15  
 7218:15 7245:9  
 7414:16  
**typically** 7229:16  
 7229:22,24  
 7244:25 7389:15  
 7413:7

---

## U

---

**ultimate** 7408:2  
**ultimately** 7261:12  
 7382:4 7513:2  
 7525:22  
**unannounced**  
 7234:6  
**unauthorized**  
 7454:7

**unavailable**  
 7340:10,12  
**unbeknownst**  
 7309:14  
**unclear** 7494:12  
**uncomfortable**  
 7533:2  
**undergo** 7521:7  
**undermines**  
 7224:12  
**underneath**  
 7358:12  
**understand** 7217:9  
 7221:23,24  
 7226:8 7227:17  
 7253:17 7268:1  
 7269:15 7282:23  
 7293:20 7310:22  
 7328:15 7349:20  
 7365:8 7394:6  
 7400:22 7404:1  
 7406:1 7426:4  
 7456:24 7459:13  
 7469:17 7497:4  
 7500:8,24  
 7513:17 7524:14  
**understandable**  
 7443:21  
**understanding**  
 7216:6 7242:24  
 7243:6 7271:2  
 7293:22 7300:25  
 7306:10 7323:6  
 7348:5 7362:2  
 7389:6 7397:17  
 7401:6 7411:4  
 7413:16 7440:8  
 7455:9 7481:24  
**understood**  
 7222:24 7223:15  
 7245:24 7246:10  
 7251:1 7253:12  
 7322:1 7330:17  
 7335:11 7436:12  
 7436:16 7470:24  
 7528:21  
**undertake** 7439:20  
**undertaken** 7353:8  
 7399:16

**underway** 7376:17  
**undoubtedly**  
 7259:21 7399:14  
**unduly** 7445:19  
 7471:4  
**unfold** 7245:20  
 7247:21  
**unfolded** 7303:23  
 7412:4  
**unfortunately**  
 7300:2  
**United** 7253:5  
 7263:7,11  
 7292:12 7301:11  
 7312:24 7313:2,6  
 7318:11 7352:16  
 7408:12,19  
 7409:17 7520:25  
 7521:1,4,7,13,20  
**university** 7215:11  
 7215:23 7361:15  
 7424:19  
**unreasonable**  
 7318:17  
**unsure** 7383:14  
**unsworn** 7491:19  
 7497:23  
**unusual** 7224:25  
 7249:10 7282:24  
 7415:25 7417:25  
 7418:3 7532:3,10  
 7532:11  
**update** 7318:21  
 7429:23  
**updated** 7213:18  
 7213:20  
**urge** 7411:22  
**urgency** 7264:13  
 7419:23  
**urgent** 7419:15  
**usable** 7493:21  
**use** 7229:13,23  
 7312:22 7330:16  
 7343:20 7345:5  
 7351:25 7422:19  
 7431:2 7437:3  
 7484:9 7486:2,11  
 7486:13 7494:3  
 7498:11 7499:14

7518:22 7529:18  
**useful** 7277:22  
 7442:3 7476:11  
 7526:16  
**usefully** 7529:15  
**uses** 7444:12  
**usual** 7532:4  
**usually** 7231:13  
 7414:25 7420:2  
**utilize** 7303:10  
 7330:20  
**utilized** 7287:7  
 7354:9  
**U.K** 7246:9,11  
**U.N** 7299:14  
 7408:23  
**U.S** 7298:3 7299:14  
 7299:16 7300:13  
 7313:17,22  
 7315:16,17,23  
 7408:23 7448:12  
 7449:19  
**U.S.A** 7253:20  
 7377:19

---

**V**


---

**vacation** 7252:5  
 7352:24 7470:25  
 7471:13  
**vacationing**  
 7470:10  
**vacuum** 7411:18  
 7412:12 7498:1  
**vague** 7293:23  
 7440:6 7445:19  
 7471:20 7476:6  
**valid** 7481:25  
**valuable** 7247:7  
**value** 7249:20,23  
 7249:24 7493:4  
 7493:12 7500:3  
 7525:16  
**Vanier** 7280:19,20  
**various** 7295:2  
 7377:16 7378:1  
 7381:25 7408:22  
 7420:6 7429:4  
**vast** 7416:15  
**vendredi** 7537:18

**verbal** 7490:8  
**verbally** 7264:12  
 7316:13  
**verifications**  
 7466:1  
**verify** 7323:24  
**version** 7213:18,21  
 7243:10,10,12,13  
 7243:20 7263:5  
 7327:6,7  
**versus** 7338:17  
**Veullez** 7212:6  
 7280:3 7360:13  
 7398:18  
**video** 7413:2  
 7492:1 7497:2,7  
**videotape** 7413:18  
 7456:14 7458:25  
**videotaped**  
 7412:24 7414:7  
 7491:19 7518:7  
**view** 7250:10  
 7326:8 7343:25  
 7350:17 7353:16  
 7354:13 7400:8  
 7403:13 7441:8  
 7448:9 7459:1  
 7481:6 7495:5  
 7530:24 7531:15  
**viewed** 7369:4  
 7409:15 7412:22  
 7414:13 7421:18  
 7481:18 7495:3  
 7530:14  
**views** 7253:4,19  
 7403:11  
**vigorously** 7353:24  
**Virtually** 7419:1  
**visible** 7324:11  
**visibly** 7324:17  
**visit** 7247:19  
 7295:5 7322:24  
 7323:1 7451:3  
 7466:2 7467:16  
**visited** 7524:4  
**visits** 7296:17  
 7324:8 7332:2  
 7466:4  
**visually** 7497:10

**vis-à-vis** 7286:20  
 7315:18 7402:13  
 7425:9 7490:8  
 7494:18 7496:20  
**vitae** 7213:24  
 7214:10  
**vividly** 7253:14  
 7379:19  
**voice** 7238:16  
 7259:4 7340:23  
 7383:5,9,22  
**voluntariness**  
 7414:24  
**voluntary** 7415:13  
 7495:4  
**volunteered**  
 7402:17 7526:20  
**vous** 7212:6 7280:3  
 7360:13 7398:18  
**vulnerabilities**  
 7224:11  
**vulnerability**  
 7268:21

---

**W**


---

**wait** 7225:14  
**waiting** 7339:3  
**waived** 7454:18  
**waiver** 7216:11  
 7220:6,19  
**waives** 7212:14  
**waiving** 7267:7,22  
**Waldman** 7382:5  
 7397:13,18,20  
**walk** 7221:3,7  
 7225:3 7346:6  
**wallet** 7248:15,18  
**want** 7221:22  
 7226:3 7228:22  
 7238:24 7239:21  
 7242:23 7247:10  
 7254:12 7278:2  
 7304:8 7307:8,10  
 7307:21 7348:13  
 7350:20 7363:24  
 7364:20 7372:8  
 7373:22 7381:7  
 7388:3 7402:24  
 7403:19 7404:14

7405:22 7412:23  
 7416:9,10,14  
 7420:19,25  
 7421:14 7426:9,9  
 7426:22 7429:3  
 7429:12 7430:12  
 7431:16 7434:4  
 7434:11,22  
 7436:19 7437:8  
 7438:19,22  
 7443:8,11 7446:9  
 7450:1 7457:24  
 7462:25 7463:21  
 7464:2 7480:24  
 7497:24 7498:5  
 7500:25 7501:6  
**wanted** 7231:10  
 7249:17 7251:14  
 7256:6 7265:6  
 7283:8 7304:25  
 7305:23 7306:4  
 7306:12 7309:25  
 7310:24 7313:19  
 7315:4 7330:24  
 7345:4 7390:4  
 7393:12 7394:23  
 7398:3 7399:7  
 7412:1 7413:18  
 7425:4,6 7428:18  
 7431:24 7436:6  
 7436:16 7443:24  
 7450:16 7466:25  
 7469:23 7483:10  
 7483:14 7485:20  
 7486:2 7501:7  
 7507:16 7529:5  
**wants** 7463:3  
**warnings** 7498:10  
 7498:11  
**warrant** 7217:2  
 7315:5 7422:4,10  
 7422:22 7423:5  
 7488:24 7489:1,2  
**warrants** 7217:17  
 7233:8 7310:25  
 7513:6  
**Warren** 7356:14  
 7356:19 7424:21  
 7425:8 7426:3,19

**Washington**  
 7293:10  
**wasn't** 7237:24  
 7267:21,23  
 7334:10 7335:1  
 7338:4 7348:25  
 7369:4 7388:8  
 7401:14 7418:3  
 7425:3 7435:10  
 7436:13 7441:8  
 7444:2 7446:1  
 7466:10 7467:10  
 7483:15 7488:14  
 7488:22 7494:21  
 7495:9 7500:22  
 7501:15 7502:15  
 7514:19 7519:1  
**watched** 7480:17  
 7481:8  
**Watt** 7289:12,18  
 7289:25 7290:3,6  
 7290:10 7291:7,8  
 7291:15,24  
 7292:4 7294:15  
**way** 7216:16  
 7225:4 7248:10  
 7283:6 7294:6  
 7299:6,9 7306:18  
 7306:19 7318:21  
 7318:24 7330:4  
 7336:21 7343:5  
 7355:25 7373:21  
 7377:14,21,24  
 7391:3,8 7394:25  
 7402:18 7412:3,7  
 7417:3 7424:8  
 7426:24 7436:21  
 7449:2 7457:20  
 7462:12 7463:21  
 7465:2,10  
 7466:13 7475:5  
 7480:16 7481:18  
 7481:23 7483:16  
 7506:15 7507:3  
 7521:22 7527:15  
**Wayne** 7372:6  
**website** 7292:16,22  
**Wednesday** 7212:2  
 7239:8,9 7316:2



7462:4,8  
**week** 7215:14  
 7216:23 7239:17  
 7240:6 7254:17  
 7254:17 7361:8  
 7407:8  
**weeks** 7256:22  
 7419:21 7531:4  
**Weight** 7501:4  
**weighty** 7529:15  
**welcome** 7472:5  
 7535:9 7536:20  
 7537:3  
**went** 7251:4  
 7297:12 7324:22  
 7369:10 7407:17  
 7409:13 7410:2  
 7441:2,3 7446:12  
 7447:7 7449:20  
 7465:4 7474:14  
 7504:5  
**weren't** 7305:22  
 7415:25 7437:2  
 7443:22 7484:10  
 7511:19  
**Western** 7424:19  
**Westwick** 7226:11  
 7226:12,25  
 7227:10 7267:3,5  
**we'll** 7461:8  
 7463:20 7537:12  
**we're** 7365:5  
 7370:13,20  
 7378:10 7413:10  
 7454:6 7462:23  
**we've** 7452:13  
 7463:14  
**whereabouts**  
 7272:12  
**Whichever**  
 7511:14  
**whip** 7324:19  
**whisper** 7507:21  
**Whitehall** 7409:12  
**widely** 7220:1,13  
 7222:19 7223:6  
**wide-ranging**  
 7302:23  
**wife** 7231:9

7233:16 7245:19  
 7251:13 7256:9  
 7258:4,17,22  
 7266:10 7270:3  
 7283:3 7343:8,16  
 7377:12 7381:2  
 7441:20  
**wife's** 7252:8  
**willing** 7236:14  
 7385:17 7386:14  
 7456:25  
**will-say** 7350:17,22  
 7350:25  
**will-state** 7508:8  
**wiped** 7440:10  
**wiretap** 7335:12,18  
 7335:19 7403:22  
 7423:6,7  
**wiretaps** 7336:6,8  
 7405:12  
**wish** 7240:6  
 7277:18 7371:20  
 7433:21 7434:24  
 7457:18 7459:7  
**wished** 7259:6  
 7345:13 7477:23  
 7516:25  
**withdraw** 7455:11  
**withdrawn**  
 7380:25  
**witness** 7375:3  
 7389:8,8 7397:10  
 7412:22 7413:2  
 7415:23 7430:10  
 7430:16,22  
 7431:9 7444:1  
 7452:1,20 7453:1  
 7454:19 7458:22  
 7459:8 7462:11  
 7462:15,22  
 7463:6 7481:4  
 7482:15 7498:3  
 7506:24 7534:23  
**witnesses** 7462:12  
 7492:13  
**witness's** 7453:24  
**woman** 7377:24  
**wonder** 7212:10  
 7219:21 7279:7

7428:3 7523:13  
**wondering** 7216:16  
 7319:2 7340:24  
**Woodridge**  
 7233:14  
**word** 7246:12  
 7251:12 7286:6  
 7286:10,12  
 7331:25 7332:17  
 7351:25 7395:9  
 7444:13 7449:16  
 7449:16 7473:24  
**worded** 7330:5  
 7481:24  
**wording** 7422:19  
 7494:6 7530:13  
**words** 7245:22  
 7248:10 7252:1  
 7267:11 7306:7  
 7310:24 7311:7  
 7311:12 7324:15  
 7335:1 7336:7  
 7344:7 7364:22  
 7402:11 7415:1  
 7448:21,24  
 7450:18 7474:8  
 7486:1 7536:12  
**work** 7219:15  
 7247:14 7249:17  
 7252:5 7265:7  
 7351:8 7376:8  
 7405:25 7408:18  
 7419:11 7423:10  
 7525:23  
**worked** 7246:3  
 7291:1 7376:5  
 7418:7  
**working** 7246:21  
 7249:18 7353:24  
 7439:10 7440:25  
 7441:1,6 7457:6  
 7465:6 7468:1,5  
 7473:8  
**works** 7412:7  
**world** 7300:2  
 7302:24 7352:18  
 7534:14  
**worthless** 7493:10  
**worthwhile** 7394:5

**wouldn't** 7221:4  
 7397:22 7400:3  
 7422:9 7462:24  
 7475:22 7500:15  
 7506:19 7511:22  
 7514:2 7521:24  
**write** 7304:1  
 7308:10 7367:21  
 7371:13 7528:12  
**writing** 7218:17,19  
 7218:19,20,21  
 7240:12 7243:23  
 7243:24 7244:4  
 7262:8 7263:13  
 7304:5,6 7305:8  
 7305:10 7306:8  
 7310:21 7311:9  
 7311:14,21  
 7317:10 7404:7  
 7483:10 7523:18  
 7527:9 7528:23  
**written** 7219:12,14  
 7229:16 7231:12  
 7232:1 7262:21  
 7318:23 7355:21  
 7368:24 7369:22  
 7371:13,18  
 7373:23 7401:3  
 7469:11,20  
 7475:9 7489:18  
 7528:19  
**wrong** 7321:20  
 7348:5 7387:16  
 7389:16,21  
 7448:12 7498:15  
**wrongfully** 7387:8  
 7390:19  
**wrote** 7232:2  
 7368:11 7377:18  
 7397:15 7441:7  
 7444:21 7476:1  
 7489:12 7491:3  
 7507:4 7509:15  
 7509:16 7528:17  
 7529:2

---

**X**

---

**X** 7225:1,4,11,13  
 7335:10,18

7336:4

---

**Y**


---

**Y** 7225:1,4,11,13  
**year** 7217:17  
 7301:2 7380:4  
 7407:12 7417:7  
**years** 7285:3,6  
 7313:14 7361:18  
 7528:5  
**yellow** 7244:4  
**yesterday** 7383:11  
**York** 7261:18  
 7262:20 7263:14  
 7263:25 7264:18  
 7264:22,23  
 7270:7 7271:7,13  
 7271:20 7272:14  
 7272:15 7273:3,4  
 7273:5 7274:12  
 7275:20 7282:10  
 7283:17 7286:16  
 7287:8 7290:16  
 7290:25 7291:2,4  
 7293:25 7294:11  
 7342:22 7516:18  
 7520:9  
**young** 7299:12  
 7440:8  
**Yousef** 7424:18  
**youthful** 7297:15

---

**Z**


---

**Zurich** 7262:19  
 7263:25 7264:18  
 7270:7

---

**À**


---

**à** 7212:4 7279:25  
 7280:2 7360:9,11  
 7398:14,16  
 7461:12,14  
 7537:18,19

---

**0**


---

**0-1-1** 7262:23  
**00** 7537:19  
**01** 7212:4 7398:16  
**01/12/20** 7236:9

**02** 7410:9 7535:16  
**03-10-06** 7429:20  
**03-10-28** 7384:14  
**04/01/12** 7235:17  
**05** 7374:6  
**09:00** 7342:10

---

**1**

---

**1** 7229:6 7247:17  
 7304:8 7309:19  
 7314:10,12,22  
 7316:9,24  
 7320:14 7342:8  
 7342:16 7343:1  
 7365:20,21  
 7444:6 7445:6  
 7476:5 7477:23  
 7522:25 7523:5  
**1st** 7262:5 7271:17  
 7315:13  
**1:57** 7368:7  
**10** 7212:4 7238:7,9  
 7258:1 7312:5  
 7317:1,9 7319:4  
 7327:1 7359:1  
 7372:3 7383:16  
 7461:12 7477:1  
 7477:14 7489:12  
**10th** 7287:11  
 7288:2 7358:22  
 7360:15  
**10:01** 7212:3  
**10:30** 7230:18  
**100** 7250:12,15  
**1002** 7237:19  
**11** 7279:25 7280:2  
 7382:9,10,11  
 7429:14  
**11th** 7352:17  
**11:13** 7279:24  
**11:15** 7279:7  
**11:28** 7280:1  
**12** 7255:20 7360:9  
 7396:6 7409:7  
**12:58** 7360:8  
**13** 7272:2 7279:25  
 7374:23 7409:7  
**13th** 7336:16  
 7360:16 7374:3

7375:8,9,11  
 7431:17,19  
 7469:7,10,16,22  
**14** 7245:23 7360:11  
 7371:6 7398:14  
**14th** 7288:19  
 7321:11,20  
 7325:8 7370:23  
 7378:23 7463:25  
 7464:17  
**15** 7279:22 7285:3  
 7360:11 7398:16  
 7460:21  
**15th** 7367:15  
**1540** 7257:6  
**16** 7212:2,4  
 7250:14 7265:17  
 7265:19 7327:14  
 7461:12,14  
 7531:7  
**16th** 7326:25  
 7327:4,18 7328:3  
 7379:10,11,15,18  
 7478:9  
**16:15** 7386:4  
**17** 7247:24 7289:23  
 7537:16,18,19  
**17th** 7289:10  
 7290:12 7363:16  
 7382:8,23  
**18** 7244:10 7290:4  
**18th** 7244:15  
 7289:10 7291:6  
 7291:12 7331:5,9  
 7332:7 7333:6,12  
 7371:22 7372:6  
 7468:25 7469:12  
**18:50** 7387:22  
**19** 7461:14  
**19th** 7337:18  
**1977** 7213:12  
 7215:7  
**1980s** 7440:10,11  
**1989** 7215:20  
**1993** 7361:12  
 7438:20  
**1999** 7245:23

---

**2**

---

**2** 7239:4 7241:5  
 7260:4 7308:3  
 7315:2 7384:22  
 7384:24 7388:13  
 7404:3 7477:15  
 7477:16  
**2nd** 7354:17  
 7364:4,9  
**2:15** 7360:2,3,5,10  
**2:30** 7219:10  
**2:53** 7398:13  
**20** 7275:8 7368:7  
**20th** 7250:17  
 7338:7 7367:25  
 7368:9,22  
 7435:19  
**2000** 7380:19  
**2001** 7246:4  
**2002** 7216:23  
 7217:17 7236:2  
 7244:10,16  
 7246:19 7261:17  
 7262:12 7265:22  
 7271:17 7289:23  
 7290:4,10  
 7306:20 7309:24  
 7310:6 7316:24  
 7327:14,19  
 7333:12,19  
 7356:1 7372:11  
 7373:12 7380:1  
 7421:13 7431:20  
 7451:4 7456:16  
 7458:17 7465:11  
 7465:12 7472:16  
 7477:9,20 7489:9  
 7491:3 7502:13  
 7508:3 7512:22  
 7520:10 7524:15  
 7531:8  
**2003** 7307:16  
 7365:12 7368:7  
 7371:7 7372:6  
 7374:23 7375:8  
 7375:11 7388:25  
 7392:1 7395:3  
 7431:22 7533:19  
**2004** 7396:7,13,19  
 7397:3

**2005** 7212:2,4  
 7537:16,19  
**202** 7320:18  
**203** 7320:18,21  
**21** 7247:24 7396:13  
 7396:19  
**21st** 7250:21,24  
 7337:19,20  
 7338:5,7 7397:5  
 7477:12  
**210** 7343:1  
**211** 7477:1  
**22** 7290:9 7397:3  
**22nd** 7217:17  
 7233:6 7240:24  
 7255:19 7256:3  
 7289:10 7291:14  
 7291:18,19,24  
 7293:16 7339:6  
 7397:16 7410:9  
**228** 7314:13 7445:9  
**229** 7314:13  
**23** 7237:19  
**23rd** 7234:18  
 7235:5 7237:4  
 7239:9 7296:25  
 7383:8,23  
**24** 7395:3 7465:11  
**24th** 7294:17  
 7298:11 7301:16  
 7326:2 7464:15  
 7520:15  
**24.X.02** 7295:1  
**25** 7365:10,22  
**25th** 7239:18  
 7257:25 7259:15  
 7333:25 7340:4  
 7340:14  
**26** 7230:7  
**26th** 7228:17  
 7230:18 7231:17  
 7231:22 7232:3  
 7340:21  
**27** 7262:12 7327:19  
**27th** 7262:4  
 7263:21 7265:21  
 7269:23 7328:4  
 7329:20 7330:22  
 7341:4 7384:6

**28** 7280:2 7356:1  
 7388:25 7477:9  
 7491:3  
**28th** 7238:12  
 7240:10,12  
 7340:7 7341:7  
 7355:7 7384:16  
 7384:25 7385:6  
 7386:3 7388:22  
 7420:22 7421:8  
 7434:13 7446:8  
 7450:6 7468:13  
 7468:13 7491:10  
**286** 7358:18,21  
**29** 7465:12  
**29th** 7301:20  
 7302:1,4 7304:4  
 7304:12 7326:6  
 7326:13

---

**3**

---

**3** 7255:23 7260:22  
 7271:25 7272:1  
 7274:3 7315:4  
 7369:16 7371:2  
 7395:23 7427:6  
**3:01** 7398:15  
**3:19** 7371:7  
**30** 7435:13 7524:15  
 7528:5  
**30th** 7219:10,17,19  
 7232:3,4,5  
 7237:24 7240:11  
 7241:1,10,22  
 7244:8,19  
 7246:19 7304:15  
 7399:9  
**31** 7309:24 7310:6  
 7429:17 7477:19  
**31st** 7260:22  
 7261:15 7309:10  
 7333:24 7351:20  
 7364:23 7444:21  
**32** 7395:25 7537:18  
**34** 7382:9,23  
**35** 7371:21,24  
 7384:17 7396:1  
 7429:17  
**398** 7368:17

---

**4**


---

**4** 7232:12,20,21  
 7233:3 7237:11  
 7294:17 7315:7  
 7317:2,9  
**4th** 7273:23 7274:5  
 7275:9 7280:15  
 7318:19 7421:12  
**4:10** 7461:11  
**4:15** 7390:2  
**4:19** 7461:13  
**45** 7241:24 7248:22  
 7254:5

---

**5**


---

**5** 7301:23 7371:23  
**5th** 7369:12  
**5:32** 7537:15  
**53** 7398:14  
**58** 7360:9

---

**6**


---

**6** 7312:10 7319:4  
**6th** 7319:8

---

**7**


---

**7** 7232:21 7291:17  
 7327:2 7342:8,15  
 7365:12 7369:16  
 7372:3,3 7384:25  
 7388:13 7392:1  
 7533:18  
**7th** 7365:25  
 7366:19 7367:1  
**7:30** 7251:22  
 7404:11

---

**8**


---

**8** 7235:4 7238:8,15  
 7274:3 7372:9  
 7384:25 7385:3

---

**9**


---

**9** 7232:12 7233:3  
 7237:11 7388:13  
 7537:19  
**9:00** 7537:17  
**9:30** 7262:12  
 7385:7