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

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

Audience publique

Public Hearing

Commissaire

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

Commissioner

Tenue à:

Held at:

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

Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario

le jeudi 25 août 2005

Thursday, August 25, 2005

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Mr. Steven Shrybman	Canadian Labour Congress/Council of Canadians and the Polaris Institute
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 1                     Ottawa, Ontario / Ottawa (Ontario)

 2      --- Upon commencing on Thursday, August 25, 2005

 3          at 9:16 a.m. / L'audience débute le jeudi

 4          25 août 2005 à 9 h 16

 5                     THE REGISTRAR:  Please be seated.

 6      Veuillez vous asseoir.

 7                     THE COMMISSIONER:  Good morning.

 8                     MR. CAVALLUZZO:  Good morning.

 9      --- Pause

10                     THE COMMISSIONER:  Mr. Cavalluzzo?

11                     MR. CAVALLUZZO:  Thank you,

12      Commissioner.

13                     Commissioner, this morning we have

14      Mr. Jack Hooper from CSIS.  As you know,

15      Mr. Hooper has testified earlier last year in

16      respect of some contextual evidence relating to

17      CSIS, and he has also testified in camera.  As a

18      result of that, he will not need to be sworn

19      again.

20                     THE COMMISSIONER:  Okay.

21                     MR. CAVALLUZZO:  However, just to

22      give some context for some background in respect

23      of Mr. Hooper, he did, as I say, testify over a

24      year ago, so let us just give a brief background

25      in terms of his experience.
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 1      PREVIOUSLY SWORN:  WILLIAM JOHN HOOPER
 2      EXAMINATION
 3                      MR. CAVALLUZZO:  Mr. Hooper, you
 4      joined CSIS upon its creation in 1984?
 5                      MR. HOOPER:  That's correct.
 6                      MR. CAVALLUZZO:  Before that time,
 7      you were with the RCMP security services in
 8      Vancouver?
 9                      MR. HOOPER:  That's right.
10                      MR. CAVALLUZZO:  And you joined
11      the RCMP in 1974?
12                      MR. HOOPER:  Correct.
13                      MR. CAVALLUZZO:  Now, when you
14      came to CSIS, I understand in 1985, you were
15      transferred to national headquarters?
16                      MR. HOOPER:  That's right.
17                      MR. CAVALLUZZO:  And what did you
18      do there in 1985?
19                      MR. HOOPER:  Initially I was in
20      charge of the Service's Emergency Planning
21      Program, and later, when the offices of SIRC and
22      the Inspector General were constituted, I was
23      responsible for liaison of those two bodies.
24                      MR. CAVALLUZZO:  Now, from 1988
25      until 2000, I understand that your career was
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1   devoted exclusively to counterterrorism

2   operations?

3   MR. HOOPER: That is correct.

4   MR. CAVALLUZZO: What did you do

5   between 2000 and 2002 when you came back to

6   headquarters?

7   MR. HOOPER: I was in charge of

8   our Toronto Regional Office, the Director General

9   of Toronto Region, which was responsible for the

10   Greater Toronto Metropolitan area and southwestern

11   Ontario.

12   MR. CAVALLUZZO: In June of 2002

13   you were transferred back to Headquarters?

14   MR. HOOPER: That is correct.

15   MR. CAVALLUZZO: Was that the time

16   at which you assumed your current duties?

17   MR. HOOPER: There has been a

18   little bit of a change since then. I came to

19   headquarters in 2002 as the Assistant Director

20   Operations. Since that time I have taken on the

21   job of Deputy Director Operations.

22   MR. CAVALLUZZO: So you are now

23   the Deputy Director of Operations?

24   MR. HOOPER: That is correct.

25   MR. CAVALLUZZO: If you could

1   briefly tell us what your duties and

2   responsibilities are in respect of that current

3   position?

4   MR. HOOPER: Basically it is

5   managing the Service's operational programs:

6   Counterterrorism, counterproliferation,

7   counterintelligence, the analysis and production

8   branch, foreign liaison, everything to do with

9   direct-line operations.

10   MR. CAVALLUZZO: So clearly in

11   respect of that responsibility, you oversee

12   counterterrorism?

13   MR. HOOPER: That is correct.

14   MR. CAVALLUZZO: Okay.

15   Commissioner, Mr. Hooper is both a

16   contextual witness for CSIS at this point in time,

17   as well as an adjudicative fact witness. He will

18   be testifying to certain things within his direct

19   knowledge, but much of the information he will be

20   sharing with us is public information of a

21   contextual nature which is now available to the

22   public and I will ask Mr. Hooper certain questions

23   about that.

24   THE COMMISSIONER: Thank you.

25   MR. CAVALLUZZO: I would like to

1   start, Mr. Hooper, in about October of 2001. At

2   that time we understand that within a month of

3   September 11, that CSIS extensively transferred to

4   the RCMP primary responsibility for a number of

5   files?

6   Is that correct?

7   MR. HOOPER: That is correct.

8   MR. CAVALLUZZO: Okay. I

9   understand, according to a redacted summary which

10   we have, the transfer allowed CSIS to focus its

11   resources on threats that were less clear than the

12   files that you had transferred to the RCMP?

13   MR. HOOPER: Correct.

14   MR. CAVALLUZZO: Do you recall

15   how many files, or how many persons were

16   transferred in terms of their responsibility to

17   the RCMP from CSIS?

18   MR. HOOPER: I do recall,

19   Mr. Cavalluzzo, but I won't go into details in

20   public testimony.

21   MR. CAVALLUZZO: Okay. You are

22   aware that as a result of that transfer of

23   responsibility that there was the creation of a

24   number of projects within the RCMP?

25   MR. HOOPER: Yes.

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 1                    MR. CAVALLUZZO:  There was

 2      something called Project OCanada, which no doubt

 3      you were aware of?

 4                    MR. HOOPER:  Yes.

 5                    MR. CAVALLUZZO:  That was located

 6      in and around Toronto, your former jurisdiction

 7      before 2002?

 8                    MR. HOOPER:  Correct.

 9                    MR. CAVALLUZZO:  Also we have

10      heard of something called Project A-OCANADA, which

11      was located in Ottawa?

12                    MR. HOOPER:  That's correct.

13                    MR. CAVALLUZZO:  Now, when you --

14      not you, obviously, but when CSIS transferred

15      responsibility for these files, I understand that

16      the RCMP was told that when dealing with foreign

17      security intelligence agencies the RCMP should

18      protect the integrity of the CSIS information that

19      had been given to the RCMP.

20                    Is that correct?

21                    MR. HOOPER:  I know I made those

22      comments myself to RCMP officers.  I specifically

23      recall making that comment after my return to

24      Headquarters in 2002.  If there were previous

25      admonitions given out of Headquarters, I am not
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1   specifically aware of them.

2   Thematically that is correct.

3   MR. CAVALLUZZO: In terms of that

4   that you refer as an admonition, or guidance, or

5   whatever one wants to call it, obviously that is

6   to ensure that any CSIS information that was

7   contained in the RCMP databases would be protected

8   appropriately?

9   MR. HOOPER: Precisely.

10   MR. CAVALLUZZO: We are not going

11   to get into operational detail now, but I

12   understand that after the transfer of

13   responsibility in respect of these persons that

14   CSIS continued to play a role in the sense that it

15   would share information with the RCMP if it was

16   relevant to their responsibility?

17   MR. HOOPER: That's correct.

18   MR. CAVALLUZZO: I wonder if you

19   might help us now in terms of after the transfer

20   as to the nature of the relationship between CSIS,

21   and in particular if we could focus in on Project

22   A-OCANADA in the Ottawa area?

23   MR. HOOPER: Okay. You are asking

24   me what the quality of the relationships were?

25   MR. CAVALLUZZO: No, the nature of

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 1       it.  Not the quality, the nature of it.  That is,

 2       what were you doing, if anything, to assist

 3       Project A-OCANADA?

 4                     MR. HOOPER:  At some point after

 5       A-OCANADA was established, we assigned an officer

 6       with some knowledge of the substantive area of

 7       interest to the RCMP to the project.

 8                     MR. CAVALLUZZO:  Once again, we

 9       are not going to get into specific ongoing

10       operational detail, but were there ongoing

11       meetings between both entities to ensure that the

12       file was being progressed as appropriately as it

13       should?

14                     MR. HOOPER:  I know there were a

15       number of meetings between our Ottawa region

16       personnel and Project A-OCANADA, so there were

17       frequent interactions between our officers in

18       Ottawa and the project.

19                     MR. CAVALLUZZO:  So that the

20       public is aware, in Ottawa we have an Ottawa

21       regional office for CSIS, but at the same time,

22       obviously, the national Headquarters of CSIS is in

23       Ottawa.

24                     Is that correct?

25                     MR. HOOPER:  That is correct, yes.
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 1                    MR. CAVALLUZZO:  In terms of the

 2       relationship with Project A-OCANADA, the

 3       relationship was at the regional level, that is,

 4       between Project A-OCANADA and the regional office

 5       of CSIS?

 6                    MR. HOOPER:  That's correct.

 7                    And if I may bring more precision,

 8       Project A-OCANADA was operating out of RCMP "A"

 9       Division and they are structured similarly.  They

10       have the national Headquarters here in Ottawa and

11       they have a division, "A" Division, which has

12       broader responsibilities in the National Capital

13       Region and Eastern Quebec -- Western Quebec

14       rather.

15                    MR. CAVALLUZZO:  Now I would like

16       to move into an area of the sharing of information

17       after 9/11 because we have heard a great deal of

18       information about that particular process, and I

19       would ask the Clerk to give you Exhibit P-85,

20       volume 1.

21       --- Pause

22                    MR. CAVALLUZZO:  Mr. Hooper, if

23       you would refer to tab 21.

24                    For those who do not have it, this

25       is a Briefing Note to the Commissioner of the RCMP
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 1   and it os dated January 29, 2004.

 2   I'm just reading to you -- and I

 3   will ask some questions about it -- the unredacted

 4   portion of the note, wherein it states that:

 5   "Following the events of

 6   9-11, a new era of openness

 7   and an environment of sharing

 8   was necessitated by the need

 9   to prevent further terrorist

10   acts from happening. In

11   particular, the RCMP, --"

12   And you will see that there is a

13   redacted portion there.

14   "-- agreed that all

15   information would be shared

16   between agencies as a matter

17   of course. Further, it was

18   agreed at Senior levels that

19   it would be the exception

20   rather than the rule to seek

21   permission prior to utilizing

22   or sharing the information

23   between the parties to the

24   agreement."

25   A redacted portion:

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1   "... met periodically and

2   shared information of

3   relevance to ongoing

4   investigations."

5   Now, obviously that is an RCMP

6   document and the RCMP impression as what occurred

7   shortly after 9/11 and I have some questions for

8   you relating to CSIS.

9   The first question is whether

10   there were any suggestions at CSIS that because of

11   the exigencies created by 9/11 that caveats were

12   down, that information could be shared with

13   partner agencies without the imposition of

14   caveats?

15   MR. HOOPER: That was never our

16   understanding, nor was the Canadian Security

17   Intelligence Service party to that understanding.

18   To the contrary, our understanding

19   was that information we provided with anybody

20   would contain caveats and that those caveats would

21   be respected accordingly.

22   MR. CAVALLUZZO: In regard to

23   that, even if a partner agency -- and I can't be

24   specific in terms of that, but even if a partner

25   agency wanted to use CSIS information which was

1   caveated, your view was that after 9/11 the rules

2   applied in that they would have to come back to

3   you for CSIS's approval or consent?

4   MR. HOOPER: That was our

5   expectation.

6   MR. CAVALLUZZO: Was there any

7   change whatever in CSIS policies concerning the

8   sharing of information as a result of 9/11?

9   MR. HOOPER: No.

10   MR. CAVALLUZZO: Did CSIS have

11   difficulty sharing information on a timely basis

12   because of the problems created by 9/11 while

13   adhering to its own policies?

14   MR. HOOPER: No.

15   MR. CAVALLUZZO: Okay.

16   Mr. Hooper, I would now like to turn to what we

17   are calling the Arar chronology or the Arar time

18   line.

19   The first question I have for you

20   is: When and how did CSIS first learn that

21   Mr. Arar was detained in the United States?

22   MR. HOOPER: That would have been

23   on October 2, 2002 as a consequence of a telephone

24   call our communications branch received from, I

25   think their counterpart entity in the Department

1   of Foreign Affairs.

2   MR. CAVALLUZZO: Were you advised

3   at that point in time yourself that a Canadian

4   citizen had been detained in the United States?

5   MR. HOOPER: Yes, I was.

6   MR. CAVALLUZZO: Okay. As a

7   result of getting that information on October 2,

8   2002, did you do anything to seek clarification or

9   get more information in respect of Mr. Arar's

10   detention?

11   MR. HOOPER: Yes, we did.

12   MR. CAVALLUZZO: Could you tell us

13   what you did.

14   MR. HOOPER: Yes.

15   The first thing we did was --

16   personally, I didn't know who this person was so I

17   asked for some briefing on who the individual was

18   and what he meant to us. I asked an officer of

19   our Counterterrorism Branch to get hold of our

20   Washington office and see if they could ascertain

21   information that led to this occurrence.

22   MR. CAVALLUZZO: Was that on or

23   about October 2nd?

24   MR. HOOPER: That was on

25   October 2nd.

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 1                    MR. CAVALLUZZO:  Okay.  You

 2      don't have to tell us what information you got

 3      back, but do you recall when you received any

 4      information back in respect of Mr. Arar from the

 5      American contact?

 6                    MR. HOOPER:  I don't believe we

 7      ever did.

 8                    MR. CAVALLUZZO:  Okay.  Now, did

 9      CSIS get any advance notice from the Americans

10      that Mr. Arar was going to be landing at JFK

11      Airport in New York and was going to be detained

12      prior to his arrival?

13                    MR. HOOPER:  No.

14                    MR. CAVALLUZZO:  So that the first

15      occasion upon which CSIS became aware of his

16      detention was October 2nd?

17                    MR. HOOPER:  That's correct.

18                    MR. CAVALLUZZO:  Now, at this

19      point in time, while Mr. Arar was being detained

20      in the United States, did you become aware that

21      the RCMP was attempting, at points in time, to

22      have an interview with Mr. Arar while he was

23      detained in the United States?

24                    MR. HOOPER:  At that time I wasn't

25      personally aware of that, but I do know -- in
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 1      preparation for these proceedings, I know my

 2      officials were.

 3                     MR. CAVALLUZZO:  Okay.  Did CSIS

 4      seek to have an interview with Mr. Arar in the

 5      United States while he was detained?

 6                     MR. HOOPER:  No, we did not.

 7                     MR. CAVALLUZZO:  While Mr. Arar

 8      was in the United States, other than the contact

 9      that you refer to on October 2nd attempting to

10      seek clarification or further information, other

11      than that contact, while Mr. Arar was in the

12      United States, did CSIS have any contact whatever

13      with American agencies in respect of Mr. Arar?

14                     MR. HOOPER:  After the initial

15      phone call on October 2nd I believe there were a

16      number of what we call chasers, again trying to

17      elicit information around his detention.  I know

18      that on October 9, 2002 we sent a written request

19      to American authorities eliciting that

20      information.

21                     MR. CAVALLUZZO:  Okay.  So that

22      written request was on or about October 9th?

23                     MR. HOOPER:  I believe it was

24      October 9th, yes.

25                     MR. CAVALLUZZO:  Okay.  Now,
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 1        between September 26, 2002 and October 8, 2002,

 2        when Mr. Arar was deported or removed from the

 3        United States, did CSIS give any American agency

 4        any information relating to Mr. Arar?

 5                         MR. HOOPER:  No.

 6                         MR. CAVALLUZZO:  Could you tell us

 7        when and how CSIS learned of Mr. Arar's

 8        deportation or removal from the United States?

 9                         MR. HOOPER:  I would have to think

10        for a moment on this.

11        --- Pause

12                         MR. HOOPER:  I would be assisted

13        by the time line, but by my recollection,

14        Mr. Cavalluzzo, it was on October -- I'm guessing

15        here.  I think it was October 9th.

16                         MR. CAVALLUZZO:  Yes.  The SIRC

17        report and the redacted summary both confirm that

18        it was October 9th that CSIS first learned of his

19        deportation.

20                         Do you know how CSIS learned of

21        Mr. Arar's deportation from the United States?

22                         MR. HOOPER:  I believe we learned

23        of that through two channels, one at Foreign

24        Affairs and one through the RCMP.

25                         MR. CAVALLUZZO:  Now, at this
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 1   point in time, and we are talking about October 8,

 2   2002, we have heard about a policy in the United

 3   States called extraordinary rendition whereby

 4   individuals may involuntarily be removed from

 5   either a third country or whatever to another

 6   country where the human rights record is not as

 7   good as in Canada or the United States.

 8   I'm asking you, at that point in

 9   time, back in October 2002, were you aware of this

10   policy of extraordinary rendition?

11   MR. HOOPER: I was personally

12   aware of the U.S. engaging in rendition

13   operations, yes.

14   MR. CAVALLUZZO: When Mr. Arar was

15   deported, did you view that to be an example of

16   the rendition policy of the United States?

17   MR. HOOPER: That was a

18   difficult one. We had never seen -- in most

19   rendition operations that we had seen to that

20   point, I think in all of them, the rendition

21   involved bringing somebody from a third country

22   back to the United States. This is the first

23   time, and I believe it is the only time, to my

24   personal knowledge, that somebody in the United

25   States was sent somewhere else.

 1   MR. CAVALLUZZO: In terms of

 2   Mr. Arar being detained in the United States, the

 3   fact that they deported him to Syria, initially to

 4   Jordan and then to Syria, did that surprise you?

 5   MR. HOOPER: Yes.

 6   MR. CAVALLUZZO: What was your

 7   expectation in respect of what was going to happen

 8   to Mr. Arar?

 9   MR. HOOPER: That he was going to

10   come back to Canada. He was a Canadian citizen.

11   He was 90 minutes from Canada.

12   MR. CAVALLUZZO: So that you were

13   surprised by the actions of the United States?

14   MR. HOOPER: Yes.

15   MR. CAVALLUZZO: Just a final

16   question in that regard: At any time during this

17   period did you have any discussions with the RCMP

18   advising them or exchanging views of the American

19   policy of rendition?

20   MR. HOOPER: No, I did not, nor

21   did the Service, to my knowledge.

22   MR. CAVALLUZZO: Now, as you know,

23   there was a period of time when there was some

24   confusion as to where Mr. Arar was after his

25   deportation on October 8th and 9th.

           1   MR. HOOPER: Yes.

           2   MR. CAVALLUZZO: Did CSIS expend

           3   any of its resources trying to find out where

           4   Mr. Arar was?

           5   MR. HOOPER: I do know that the

           6   principal resource expenditure around Mr. Arar's

           7   whereabouts was being conducted out of Foreign

           8   Affairs. I do know that there were occasional

           9   discussions between officials of the Service, the

          10   RCMP, and Foreign Affairs on where he might be and

          11   there was some early speculation, given that he

          12   was a dual Syrian-Canadian national, that he may

          13   have ended up in Syria.

          14   MR. CAVALLUZZO: So if he

          15   wasn't coming back to Canada, it wouldn't be a

          16   surprise that he ended up in Syria because he was

          17   a dual national?

          18   MR. HOOPER: It was a logical

          19   conclusion at the time.

          20   MR. CAVALLUZZO: Okay. Now I

          21   would like to move on a wee bit in time to

          22   October 15th and perhaps ask if the Clerk can give

          23   you Exhibit P-83.

          24   --- Pause

          25   MR. CAVALLUZZO: What I would like

1　　　to do at this point in time, Mr. Hooper, is just

2　　　to lay the context for what was happening in

3　　　Canada at that point in time on October 15th,

4　　　particularly in regard to the Americans' reaction

5　　　to our concern about Mr. Arar.

6　　　　　　　　　　　I would ask you to go behind tab 3

7　　　of that book and go to page 106.

8　　　　　　　　　　　What we have here, we have a

9　　　number of statements that were given by RCMP and

10　　　DFAIT people to Mr. Garvie, who you may recall was

11　　　conducting a review of the RCMP's conduct, and I

12　　　just want to set the stage for some questions.

13　　　　　　　　　　　In particular, this is Mr. Pardy's

14　　　interview given with Mr. Garvie on December 12,

15　　　2003. If you look to around line 16 I am going to

16　　　pick up under where he says that Mr. Graham and

17　　　the Ambassador was present.

18　　　　　　　　　　　Let me just pick up the sentence:

19　　　　　　　　　　　　"I'm not certain, but I know

20　　　　　　　　　　　　that one of the results out

21　　　　　　　　　　　　of the meeting was the

22　　　　　　　　　　　　American Ambassador was

23　　　　　　　　　　　　telling Mr. Graham, 'Look, go

24　　　　　　　　　　　　talk to your own people about

25　　　　　　　　　　　　all of this because they are

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 1                              the ones that have the

 2                              information about this'.

 3                              That is the Americans were

 4                              acting on information -- on

 5                              Canadian information and

 6                              almost to the point where he

 7                              was saying act exclusively on

 8                              Canadian information."

 9                              (As read)

10                    Then if you go down to the next

11        statement of Mr. Pardy at line 28, about halfway

12        through that paragraph it states:

13                              "But the whole impression we

14                              had during this period of

15                              what the Americans were doing

16                              when we were complaining to

17                              them about their actions,

18                              that they were pushing back

19                              and saying, 'No, look, go

20                              talk to your own people here.

21                              We were acting on this

22                              information that came from

23                              Canada.'  That was a

24                              consistent message by

25                              Ambassador Cellucci right up
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1   to the present day. When

2   Secretary Powell came to

3   Ottawa in mid-November, he

4   repeated that information or

5   that position."

6   Now, with that context in mind, do

7   you recall in or about October and November of

8   2002 that that was the position the Americans were

9   taking, and that was, "Listen, Canadians, go and

10   talk to your own people. We are acting on their

11   information and they know what went down."

12   MR. HOOPER: I was acutely aware

13   of that.

14   MR. CAVALLUZZO: Okay. Now, we

15   heard that as a result of this meeting DFAIT, and

16   in particular Mr. Pardy, immediately conducted an

17   interagency meeting the next day, on October 16th,

18   both with the RCMP and CSIS, basically saying,

19   "What did you guys do in respect of Mr. Arar?"

20   Do you recall that particular

21   meeting?

22   MR. HOOPER: I know the meeting

23   happened. I wasn't at the meeting.

24   MR. CAVALLUZZO: Okay. Did you

25   get a report as to what occurred at the meeting?

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 1                   MR. HOOPER:  I didn't, but I know
 2      what my people were saying at that meeting, and
 3      that is that we provided no information that would
 4      have led to the arrest and the detention of
 5      Mr. Arar.
 6                   MR. CAVALLUZZO:  I assume there is
 7      no memorandum back to DFAIT from CSIS concerning
 8      that meeting.  There is one from the RCMP, but I
 9      assume there is none from CSIS.
10                   MR. HOOPER:  I haven't seen one.
11      I don't believe there was.
12                   MR. CAVALLUZZO:  Okay.  Now, there
13      was another meeting on October 21st, and I wonder
14      if the witness might be shown DFAIT tab 547?
15      --- Pause
16                   MR. CAVALLUZZO:  Yes, tab 547.  It
17      is a memorandum within DFAIT dated September 8,
18      2003 to Mr. Saunders -- excuse me, to Mr. Jim
19      Wright from Mr. Saunders.
20                   In the third paragraph, it states
21      in the second sentence, it says:
22                        "We shared most of the
23                        information we had on this
24                        case with our RCMP Liaison
25                        Officer who passed it on to
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StenoTran

1   his headquarters."

2   Then it goes on:

3   "We also met with a group of

4   RCMP and CSIS officers on

5   October 21 to discuss the

6   case."

7   He is referring to October 21,

8   2002, and I'm wondering whether you are aware of

9   this interagency meeting between DFAIT ISI, RCMP,

10   and CSIS to discuss Mr. Arar's case?

11   MR. HOOPER: I know there were a

12   number of meetings going on around that time. I

13   don't recall specifically October 21st, but I

14   presume there was one.

15   I wasn't at that meeting. Again,

16   like the previous meeting, I know what our

17   Service's line was throughout this whole dialogue.

18   MR. CAVALLUZZO: And it was ...?

19   MR. HOOPER: That we had provided

20   no information to any American entity that would

21   have resulted in the arrest and detention and

22   ultimately the removal of Mr. Arar from the U.S.

23   MR. CAVALLUZZO: Now, how did

24   CSIS become aware that Mr. Arar was

25   authoritatively determined to be in Syria after

1   that period of confusion?

2   MR. HOOPER: We learned of that

3   through DFAIT sources on October 22, 2002.

4   MR. CAVALLUZZO: What, if any,

5   information did CSIS receive from DFAIT relating

6   to Mr. Arar at that time in October 2002?

7   MR. HOOPER: I think we received a

8   message from ISI. My memory is not clear on that.

9   I wouldn't have seen it at the time, but I believe

10   there was some written record of advice coming

11   from Foreign Affairs on that.

12   MR. CAVALLUZZO: Do you know if

13   there was anything in writing?

14   I'm talking about October now, not

15   November. October 2002?

16   MR. HOOPER: I'm not clear on

17   that, Mr. Cavalluzzo. If there was something in

18   writing, I wouldn't have seen it. I thought there

19   may have been.

20   I know initially we were advised

21   by phone call, is my understanding.

22   MR. CAVALLUZZO: Right. Perhaps

23   just to facilitate this I could read into the

24   record a portion of the redacted summary at

25   paragraph 27, and I would ask for the witness'

```
 1        comments on this.  It says:

 2                             "After Mr. Arar's deportation

 3                             CSIS continued to receive

 4                             information about Mr. Arar.

 5                             On October 24 CSIS received

 6                             information from DFAIT about

 7                             Mr. Arar from sources in

 8                             Syria.  A DFAIT report was

 9                             generated, which included

10                             statements --"

11                  Then we are going to come to a

12        statement in early November.

13                  Would you agree with that

14        description?

15                  MR. HOOPER:  Yes, sir.

16                  MR. CAVALLUZZO:  Okay.  Now, we

17        are going to see in the evidence that CSIS did

18        receive at least two consular reports relating to

19        Mr. Arar, one on January 8, 2003 and one relating

20        to April 22, 2003.  Just at this point in time I

21        wonder if you might share with us, what is the

22        practice between DFAIT and CSIS in respect of CSIS

23        receiving consular reports?

24                  MR. HOOPER:  We don't get them as

25        a matter of course.  We get them occasionally when
```

1   there is a national security dimension to the

2   consular case. Typically, we will receive them in

3   the Headquarters branch that is concerned with the

4   individual or the particular case, and typically

5   we receive them from the Department of Foreign

6   Affairs so that we might provide them with some

7   assistance in executing their consular mandate.

8   It is the exception rather than

9   the rule that we will get these.

10   MR. CAVALLUZZO: Would you get the

11   consular reports from Consular Affairs or from ISI

12   of DFAIT?

13   MR. HOOPER: Always ISI.

14   MR. CAVALLUZZO: I'm wondering if

15   the witness might be shown Exhibit P-98?

16   --- Pause

17   MR. CAVALLUZZO: Now, P-98 is an

18   e-mail from Mr. Gar Pardy.

19   I assume you know Mr. Gar Pardy?

20   MR. HOOPER: Yes.

21   MR. CAVALLUZZO: You have known

22   Mr. Pardy for a number of years?

23   MR. HOOPER: Yes.

24   MR. CAVALLUZZO: You know that he

25   was the head of the Consular Division --

1   MR. HOOPER: Yes.

2   MR. CAVALLUZZO: -- and viewed

3   within the Government of Canada as being the most

4   knowledgeable person about consular affairs?

5   MR. HOOPER: He had been doing it

6   a long time, so yes.

7   MR. CAVALLUZZO: Okay. This is an

8   e-mail from Mr. Pardy to Damascus Head of Mission,

9   as well as Mr. Martel. In the fourth paragraph,

10   once again dated October 28th, he states:

11   "Would appreciate if you

12   could report if you obtain

13   any information on possible

14   visits by RCMP and CSIS

15   officials, either to meet

16   Maher or Syrian officials.

17   Many thanks,

18   Gar." (As read)

19   At this point in time, were you

20   aware of any possible visits to Syria by CSIS?

21   MR. HOOPER: I was aware that one

22   was under discussion.

23   MR. CAVALLUZZO: Okay. Then if

24   you go to the previous tab, at tab 97, you will

25   see this is another e-mail.

           1   MR. HOOPER: I'm sorry, I gave my

           2   book back.

           3   MR. CAVALLUZZO: Oh, I'm sorry.

           4   Exhibit P-97, yes.

           5   --- Pause

           6   MR. CAVALLUZZO: Exhibit P-97.

           7   Sorry, it's another 97.

           8   --- Pause

           9   MR. CAVALLUZZO: You will see that

          10   this is another e-mail from Mr. Pardy. You see

          11   that "JPD", that is Mr. Pardy's acronym.

          12   MR. HOOPER: Yes.

          13   MR. CAVALLUZZO: Then, once again

          14   in paragraph 2, it says:

          15   "With respect to paragraph 6

          16   of referenced message would

          17   appreciate if Ambassador

          18   could report if there has

          19   been any contact with RCMP

          20   and CSIS liaison officials."

          21   (As read

          22   Obviously that is a few days

          23   later.

          24   So Mr. Pardy seems to be concerned

          25   that there may be possible visits by the RCMP and

                              StenoTran

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 1      CSIS to Syria, and you are saying at this point in
 2      time there was discussion of one.
 3                      MR. HOOPER:  That's correct.
 4                      MR. CAVALLUZZO:  But one had not
 5      happened by that point in time?
 6                      MR. HOOPER:  That is correct.
 7                      MR. CAVALLUZZO:  Now, if we move
 8      into early November -- do you know Ambassador
 9      Pillarella, who was the Ambassador to Syria?
10                      MR. HOOPER:  I have known
11      Mr. Pillarella for some years, yes.
12                      MR. CAVALLUZZO:  Okay.  Are you
13      aware that in early November 2002 that
14      Mr. Pillarella brought back a statement to Canada
15      from Syrian authorities?
16                      MR. HOOPER:  Yes.
17                      MR. CAVALLUZZO:  I wonder if the
18      witness might be given Exhibit P-134?
19      --- Pause
20                      MR. CAVALLUZZO:  Just to give some
21      context, if we initially look at tab 8 of Exhibit
22      P-134, you will see that although this is an
23      e-mail from Jonathan Solomon, who, as you know, is
24      in ISI at DFAIT, dated November 19th, he makes
25      reference in the fifth line down, stating:
```

```
 1                              "You will remember that at

 2                              an interdepartmental meeting

 3                              held on Wednesday,

 4                              November 6, it was agreed

 5                              that it would be useful if

 6                              CSIS were to travel to Syria

 7                              to speak to Syrian

 8                              authorities on international

 9                              terrorism."

10              Then it goes on:

11                              "We have consulted with CSIS

12                              ....  We have been informed

13                              that --"

14              Then there is a redaction.  It

15      says:

16                              "The purpose of the visit is

17                              to consult with Syrian

18                              intelligence and to take

19                              advantage of their knowledge

20                              of Al-Qaida and terrorist

21                              threats.  CSIS is not

22                              visiting Maher Arar, but

23                              given the high profile of

24                              this issue in Canada, we

25                              suggest below press lines in
```

StenoTran

1   the unlikely event that there

2   will be press coverage of the

3   visit."

4   Now, were you aware that there was

5   this interdepartmental meeting on November 6th in

6   which CSIS participated?

7   MR. HOOPER: Yes.

8   MR. CAVALLUZZO: Did you attend

9   this meeting?

10   MR. HOOPER: No, I did not.

11   Officers from the Counterterrorism Branch did.

12   MR. CAVALLUZZO: From

13   Headquarters?

14   MR. HOOPER: That's correct.

15   MR. CAVALLUZZO: At this meeting

16   there was discussion that it would be a good idea

17   for CSIS to take a trip to Syria?

18   MR. HOOPER: Yes.

19   MR. CAVALLUZZO: Do you know that

20   at this particular meeting that it was discussed

21   that it would be preferable for CSIS to do it

22   rather than the RCMP, because the Syrian Military

23   Intelligence preferred to deal with security

24   agencies rather than police forces?

25   MR. HOOPER: That is my

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 1       understanding.
 2                         MR. CAVALLUZZO:  If you stay in
 3       Exhibit P-134 and we go back to tab 6, we see in
 4       this particular entry -- which is once again a
 5       DFAIT document -- it says:
 6                              "On November 3, 2002, the
 7                              Canadian Ambassador to Syria
 8                              received a document (written
 9                              in Arabic) from Syrian
10                              Military Intelligence ....
11                              The Ambassador brought the
12                              document to Canada personally
13                              and gave it to ISI on
14                              November 6.  ISI sent it to
15                              CSIS for translation.  The
16                              document, an undated
17                              three-paragraph bout de
18                              papier, was translated on
19                              November 7.  The document
20                              alleges that Arar spent time
21                              in Afghanistan in Mujaheddin
22                              camps and that he knew --"
23                         Somebody, which is redacted.
24                              "The document was sent to
25                              CSIS for translation by the
```

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1   CSIS Liaison Officer in ISI.

2   The translated document was

3   returned to ISI and the

4   information was shared with

5   JPD, the RCMP and CSIS."

6   Then, finally, if you go to tab 9

7   you will see that CSIS expresses its view as far

8   as this document is concerned. You will see in

9   the second paragraph reference is made to that

10   meeting between ISI, the Ambassador, CSIS and RCMP

11   on November 6th. Then it says:

12   "CSIS made no comments about

13   the credibility of the

14   document, but said that even

15   if true, it was not

16   necessarily damning evidence

17   against him."

18   Okay? So that was the position of

19   CSIS at that point in time, that even if it's

20   true, there is nothing there?

21   MR. HOOPER: That is essentially

22   correct, yes.

23   MR. CAVALLUZZO: Okay. Were you

24   apprised of this information from the people from

25   headquarters who attended these meetings?

```
 1                    MR. HOOPER:  You are referring to
 2      the information in the "bout de papier"?
 3                    MR. CAVALLUZZO:  Yes, the
 4      information in the "bout de papier"?
 5                    MR. HOOPER:  Yes.
 6                    MR. CAVALLUZZO:  And CSIS's view
 7      that there was nothing there?
 8                    MR. HOOPER:  Yes.
 9                    MR. CAVALLUZZO:  Okay.
10                    I would like to move to
11      November 12, 2002 and refer to Mr. Solomon's
12      notes.
13                    If Mr. Hooper might be given
14      Exhibit P-85, volume 4?
15      --- Pause
16                    MR. CAVALLUZZO:  And if you would
17      go, Mr. Hooper, to tab 126 at page 30?
18                    MR. HOOPER:  Three zero?
19                    MR. CAVALLUZZO:  Three zero.
20                    MR. HOOPER:  I have it.
21                    MR. CAVALLUZZO:  Okay.  This,
22      although being a note of Jonathan Solomon who,
23      once again, is a member of ISI in DFAIT, this is
24      an entry for, as you will see in the middle of the
25      page, November 12, 2002.  Then there is a
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 1   reference there that says, "Hooper interpretation

 2   of meeting." Then there is a slash "with Gar." I

 3   think it's "exchange with Gar."

 4   So "Hooper interpretation of

 5   meeting/exchange with Gar."

 6   Do you have any idea of what this

 7   is about?

 8   Were you speaking to Mr. Solomon

 9   on or around this day?

10   MR. HOOPER: I don't have a

11   recollection of speaking with Mr. Solomon on that

12   date.

13   MR. CAVALLUZZO: Do you have any

14   idea? Do you recall discussing with him your

15   interpretation of that interagency meeting on

16   November 6th?

17   MR. HOOPER: I can't say with

18   certainty. I don't even know that this note

19   refers to a meeting of November 6th, and I will

20   explain that.

21   When I see the reference to

22   meeting with Gar Pardy, when I see the reference

23   to Peter Boehm, who was in our Washington Embassy

24   at that time, when I see the reference to

25   Ambassador Kergin from Washington, all of this

```
 1        leads me to believe that this was in relation to a

 2        matter having nothing to do with Mr. Arar.

 3                        That is the interpretation I take

 4        from this.

 5                        MR. CAVALLUZZO:  Now, we know from

 6        the evidence that there was a meeting with

 7        Mr. Powell, Colin Powell, the Secretary of State

 8        at that time, on or about November 14th?

 9                        MR. HOOPER:  Yes.

10                        MR. CAVALLUZZO:  Is that possible

11        what was discussed?

12                        MR. HOOPER:  It's possible.

13                        MR. CAVALLUZZO:  But nothing to do

14        with Mr. Arar?

15                        MR. HOOPER:  That is the

16        interpretation I draw from this.

17                        MR. CAVALLUZZO:  Okay.

18                        Now, I wonder if the witness might

19        be given Exhibit P-137?

20        --- Pause

21                        MR. CAVALLUZZO:  Just give me a

22        second here.

23        --- Pause

24                        MR. CAVALLUZZO:  Actually, I'm

25        sorry, it's Exhibit P-134.
```

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 1                    This line of questioning,

 2      Mr. Hooper, relates to a conference call -- once

 3      again, another interagency meeting, this time

 4      through conference call between DFAIT, the

 5      Solicitor General, CSIS and the PCO concerning the

 6      Arar case.

 7                    If we look initially at tab 7.  As

 8      you can see, the title is "Trip to Syria," and

 9      it's drafted by Jonathan Solomon, approved by

10      Livermore, and it states:

11                              "For your personal

12                              information, following a

13                              meeting with DMA of

14                              18 November, senior DFAIT

15                              representatives asked CSIS to

16                              delay their visit to Syria.

17                              While CSIS indicated that

18                              they would not attempt to

19                              visit Arar, they still

20                              intended to continue with

21                              their planned visit to --"

22                    The redacted agency.

23                              "PCO chose not to intervene

24                              on this debate, so unless the

25                              Minister attempts to block
```

```
 1                           this visit, CSIS will arrive

 2                           in Damascus on schedule.

 3                           Updates to follow."

 4                  I'm wondering if you participated

 5       in this particular conference call concerning

 6       whether CSIS should delay its visit?

 7                  MR. HOOPER:  I did not.  I

 8       believe that was the Director General of the

 9       Counterterrorism Branch that participated in

10       that call.

11                  MR. CAVALLUZZO:  Let me show you

12       Jim Gould's notes.  This would be Exhibit P-236,

13       Mr. Gould's notes, personal notes?

14       --- Pause

15                  MR. CAVALLUZZO:  If we pick it up

16       initially at page 4 of 16, which you are at, you

17       will see there, halfway down -- well, about a

18       third of the way down, it says:

19                           "Arar - 9:30 conference call

20                           with PCO/GMR".

21                  Then it says "Conf call", and then

22       it says:

23                           "Really & only issue is `you

24                           don't deport a CDN to

25                           Syria.'"
```

```
 1                        Then it goes on and it says:

 2                             "Jack Hooper..."

 3                        There is a redacted name or agency

 4      and then it goes on:

 5                             "... re:  trip to Syria to

 6                             meet with Arar.

 7                             - Optics are very bad this

 8                             week -- should not plan on

 9                             immediate visit."

10                        Then at the bottom Mr. Gould's

11      notes state:  "Jack H" and then it says "not

12      meeting with," and then it appears to be an "N" or

13      a question mark, and then it says, "meeting with,"

14      and it is a blank, and then you can see "Arar" in

15      the right.  I think that says, "was," or "N.B.

16      Arar," or something like that.  Then it says:

17                             "- have window of a few days

18                             - will raise with War..."

19                        I assume that is Ward Elcock:

20                             "... and it will be his

21                             call."

22                        Then, for the continuation of

23      November 18th, if you go behind tab 2 at page 5

24      of 6, it states, and I'm reading:

25                             "- they talk to these people
```

```
 1                        all the time so should be no

 2                        problem ...

 3                        - they hope to leave tomorrow

 4                        - I suggested that the optics

 5                        not good for this week at

 6                        least

 7                        - he said he had read article

 8                        in press and understood."

 9              Does that refresh your memory as

10    to a conference call or a call you may have had

11    with Mr. Gould concerning the delay of the CSIS

12    trip because of the optics?

13                   MR. HOOPER:  No, I understand the

14    messages that are conveyed in these notes, but

15    whether they are attributed to comments that I may

16    have made at a conference call I don't see the

17    necessary linkage though.

18              Certainly some of the things that

19    are attributed in here are things that I would

20    have said.  Whether they were said in the context

21    of a November 18th conference call or whether they

22    were said by others attributing them to me, I

23    don't know.

24                   MR. CAVALLUZZO:  But you do recall

25    that CSIS was not prepared to delay the visit,
```

1   that the PCO chose not to intervene, that the

2   Minister of Foreign Affairs was approached and he

3   said, "Let it go ahead so long as they give me a

4   report so that I will have that when I phone the

5   Minister of Foreign Affairs in Syria"?

6   MR. HOOPER: I do want to bring

7   some precision to that, Mr. Cavalluzzo, because we

8   weren't prepared to delay the visit based on the

9   rationale provided by Foreign Affairs for delaying

10   the visit. I thought at that time, in weighing

11   our interests versus the Foreign Affairs concerns,

12   that there was a more compelling case to be made

13   for going then than for not going then.

14   Specifically, as I recall, it

15   was related to me the Foreign Affairs concern

16   related around the media coverage, the high

17   profile that the Arar case had at that time, and

18   in my estimation -- and we discussed this among

19   officials at CSIS -- the Arar case was going to

20   have a high media profile for a long time and the

21   terrorists weren't downing tools waiting for us to

22   deal with Arar.

23   So that was basically the

24   balancing act that we were performing there.

25   MR. CAVALLUZZO: So that the trip

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 1   did go on the next day, as the note indicates, on

 2   November 19th?

 3   MR. HOOPER: That's correct.

 4   MR. CAVALLUZZO: Okay. We have to

 5   be very circumspect here but, from your knowledge,

 6   what was the purpose of the trip?

 7   MR. HOOPER: The purpose of the

 8   trip was fundamentally to receive information from

 9   the Syrian side that may have relevance to threats

10   to the security of Canada that we were mandated to

11   investigate.

12   MR. CAVALLUZZO: We understand

13   from the Solomon note that there was a prospect of

14   some kind of a relationship. What I would like to

15   do is read into the record from the redacted

16   summary.

17   We have to be very circumspect,

18   here, Mr. Commissioner, and so just let me read

19   into the record for the public paragraphs 28 and

20   29 of the summary.

21   It states:

22   "For national security

23   reasons, CSIS may have to

24   enter into relationships with

25   a foreign agency of a country

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1   that has a poor human rights

2   record. In such cases CSIS

3   exercises caution by closely

4   scrutinizing the content of

5   information provided to or

6   obtained from the foreign

7   agency and by instituting

8   checks and balances to ensure

9   that none of the security

10   intelligence information

11   exchanged with the foreign

12   agency is used in the

13   commission of human rights

14   violations. Generally

15   speaking, CSIS only discloses

16   information to a foreign

17   agency of a country in which

18   there are human rights

19   concerns after considering

20   various issues. These issues

21   include the potential use to

22   which the foreign agency may

23   put the information,

24   especially if it concerns

25   Canadians, and the degree of

1   a threat that an affected

2   individual poses to national

3   security. Further, CSIS

4   considers the ability and

5   willingness of the foreign

6   agency to respect caveats and

7   protect the information from

8   public disclosure."

9   (As read)

10   MS McISAAC: Mr. Commissioner, if

11   I could just point out, it was not my

12   understanding that those two paragraphs related to

13   Syria per se, but rather to the general position

14   that the CSIS may find itself with respect to

15   relationships with various countries.

16   MR. CAVALLUZZO: That is

17   correct, it is a general statement that the

18   summary refers to.

19   First of all, just as a general

20   matter -- and there are many, many foreign nations

21   out there that we are aware of with poor human

22   rights records -- but in terms of the

23   considerations that I read to you from the

24   summary, would you agree with those statements?

25   MR. HOOPER: Yes.

StenoTran

```
 1                      MR. CAVALLUZZO:  Okay.

 2                      Now, as far as the particular

 3      consideration of the degree of threat that an

 4      affected individual poses to national security,

 5      I guess you have to be circumspect here as far

 6      as Mr. Arar is concerned, but certainly the view

 7      of CSIS, at least at that point in time, would

 8      appear to be that the statement that came back

 9      with Pillarella was really not worth the paper

10      it is written on as far as whether he was a threat

11      or not?

12                      MR. HOOPER:  It didn't

13      particularly inform our assessment of the threat.

14      It wasn't a particularly useful document in that

15      regard.

16                      MR. CAVALLUZZO:  But in any event,

17      obviously one of the key considerations that CSIS

18      would take into account in sharing information

19      with a country with a poor human rights record is

20      that:  Is the guy a threat?  What is the level of

21      the threat?  That goes into the balance --

22                      MR. HOOPER:  Yes.

23                      MR. CAVALLUZZO:  -- in terms of

24      this very, very crucial balance regarding the

25      exchange of such information?
```

1   MR. HOOPER: I agree with that.

2   MR. CAVALLUZZO: Now, as far as

3 the trip is concerned, and we have heard some

4 evidence yesterday apparently -- from I believe it

5 was Mr. Gould or Mr. Livermore -- that some

6 information came back to Canada, and I won't ask

7 you about that.

8   But what I would like to ask you

9 about is that we do have evidence before us,

10 indeed from Mr. Pillarella, where he expressed a

11 great deal of dissatisfaction with CSIS.

12   I would ask you now to refer to

13 tab 10 of Exhibit P-134.

14 --- Pause

15   MR. CAVALLUZZO: And this is where

16 Mr. Pillarella states that:

17   "Following my meeting with

18   [redacted] it was agreed that

19   they would come back to the

20   Embassy ... for a debrief on

21   their meetings with Syrian

22   counterparts which would be

23   held .... Parallel to this

24   I, informed them that I was

25   trying to arrange a meeting

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1   with General Khalil for

2   [whoever]. However, I could

3   not guarantee that the

4   meeting would take place

5   given the last minute

6   request. In the end, meeting

7   with General Khalil could not

8   be arranged and I never saw

9   [these people] again, as they

10   did not come back to the

11   Embassy on ... as previously

12   agreed. Several messages

13   left at their hotel on Sunday

14   to call me went unanswered

15   and I found out ... that they

16   had checked out of the hotel

17   and presumably had left

18   Damascus.

19   2. Maybe there is a good

20   explanation for this bizarre

21   behaviour but I confess that

22   I cannot think of one at the

23   moment. All I can say is

24   that in terms of co-operation

25   this is less than

StenoTran

1   satisfactory to say the

2   least."

3   It goes on for a couple of

4 sentences. I'm going to ask you -- and I'm not

5 going to ask you whether it was bizarre behaviour,

6 but ask you whether you were aware that CSIS

7 representatives left Damascus without briefing

8 Mr. Pillarella?

9   MR. HOOPER: Yes.

10   MR. CAVALLUZZO: Were they

11 admonished or disciplined for not having briefed

12 Mr. Pillarella?

13   MR. HOOPER: No. I became aware

14 of Mr. Pillarella's discontent around this issue

15 and made inquiries to find out why this had

16 happened and I received what I considered to be a

17 reasonable explanation as to why they never hooked

18 up with the Ambassador. I think a lot of that had

19 to do, if you read through Mr. Pillarella's memo

20 here, he had been trying to arrange a meeting with

21 his Syrian counterpart but couldn't nail it down

22 to a date, time and place.

23   What was provided to me was that

24 we had an understanding that it was to take place

25 Saturday, it never took place on Saturday.

1   Mr. Pillarella tried to get a hold of the CSIS

2   delegation. He couldn't contact us. We couldn't

3   contact him. It was just a case of, we never did

4   hook up. But there was certainly no intent on the

5   part of the Service personnel to avoid Ambassador

6   Pillarella.

7   MR. CAVALLUZZO: Right. What is

8   interesting for me, after seeing the evidence in

9   respect of other agencies, is that it is

10   interesting to see that CSIS is establishing a

11   direct relationship with an entity of another --

12   in a foreign country without the intercession of

13   the Ambassador, which is not the case of other

14   Canadian organizations.

15   Is that common?

16   MR. HOOPER: Certainly when we are

17   embarking down the road towards establishing a

18   relationship with a foreign entity, there is

19   consultation. There has to be consultation.

20   There has to be concurrence with the department.

21   My expectation is, and my

22   understanding is, is there was exchanges between

23   Foreign Affairs and the Ambassador responsible for

24   the region or the area where we are considering a

25   relationship, so there is that consultative

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1   process.

2   If there are pre-established

3   relationships between the Ambassador and the

4   entity that we are establishing a relationship

5   with, yes, occasionally the Ambassador will engage

6   or occasionally he will not, he or she will not.

7   So it is not a hard and fast rule in that regard.

8   MR. CAVALLUZZO: Once again we are

9   talking here generally.

10   What about a situation where you

11   establish a relationship with a foreign entity,

12   wherever that country might be, and you have a

13   relationship with that entity. Now, do you

14   normally go through the Ambassador when you want

15   to meet with that entity or want to have

16   discussions with that entity or is it just a

17   direct relationship?

18   MR. HOOPER: Where there is an

19   established relationship?

20   MR. CAVALLUZZO: Yes.

21   MR. HOOPER: Normally we just do

22   it directly.

23   MR. CAVALLUZZO: Okay. Now, I

24   would like to --

25   THE COMMISSIONER: I will just

1 make a point about the evidence in this area,

2 really for the public.

3   This is one of those areas where

4 we have heard a good deal of evidence about the

5 visit and any issues that may surround it in

6 camera. It' has been thoroughly canvassed and

7 several witnesses have been called.

8   The evidence here in public today

9 is being called for the purpose of informing the

10 public to the extent we can, but because of claims

11 of National Security Confidentiality obviously a

12 great deal of the detail of the evidence that we

13 have heard cannot be dealt with in public. Like

14 many other -- or several other areas in the

15 investigation, those are matters that I have heard

16 in camera.

17   I will be reporting on and giving

18 my views as to how much of that information, in my

19 opinion, can be made public, but that will all

20 occur in the report.

21   MR. CAVALLUZZO: Thank you.

22   Okay. Mr. Hooper, I would now

23 like to move into 2003. We understand from the

24 evidence that one of the consular reports that

25 CSIS received was the one in early January,

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1        January 8, 2003.  There is nothing special about

2        that report, it just said that Mr. Arar appeared

3        to be in good health and the Syrians were thinking

4        of charging him, thought that he was involved in

5        the Muslim Brotherhood, which is an organization

6        that we have heard some evidence about, and would

7        be detained for a lengthy period and would be

8        prosecuted.

9                         I can show you the report, but it

10       would appear that at this point in time that

11       things are becoming focused as far as Mr. Arar is

12       concerned, and that is that the Syrians are

13       treating this in a very serious way.  They are

14       going to be considering very serious charges.

15                        As I assume you know from your

16       experience, the Syrians treat the Muslim

17       Brotherhood in a very, very severe way.

18                        MR. HOOPER:  Yes, they do.

19                        MR. CAVALLUZZO:  Now, if we go

20       back to the Pillarella book, because an important

21       event occurs in the middle of January.  This is

22       Exhibit P-134.

23       --- Pause

24                        MR. CAVALLUZZO:  At tab 14, if you

25       go to the second page you will see that there is
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1        an e-mail from Mr. Pillarella, which is dated

2        January 15, 2003 to different offices within

3        DFAIT, and the subject is "Arar meeting".  You

4        will see that he "met this morning with" -- there

5        is a redacted name there, but it is Mr. Khalil.

6                            But if you go to the second

7        paragraph it says:

8                                "During the conversation,

9                                [somebody] made two points

10                               which I thought were rather

11                               curious."

12                           The first point relates to

13       Mr. Arar and is not relevant for our purposes.

14                           Then the second point is.  He

15       says:

16                               "The second, again according

17                               to his information, was that

18                               CSIS would have indicated to

19                               [this redacted person] that

20                               they have no wish to see Arar

21                               return to Canada and they

22                               were quite content with the

23                               way things were."

24                           That statement there.

25                           We will go on to another
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1   document, but at this point in time did you become

2   aware that the SMI, the Syrian Military

3   Intelligence, was saying to the Canadian

4   government through Pillarella, "CSIS told us they

5   don't want this guy back? They are quite happy

6   with the way things are."

7   Did you discover that?

8   MR. HOOPER: Very quickly, yes.

9   MR. CAVALLUZZO: How did you

10   discover that the Syrians were giving this

11   impression?

12   MR. HOOPER: I don't know the

13   precise mechanism or path, but I believe I heard

14   it initially from the Department of Foreign

15   Affairs.

16   MR. CAVALLUZZO: As a result of

17   this did you or someone under your supervision

18   have a meeting or telephone call with anybody in

19   Foreign Affairs?

20   MR. HOOPER: I know what I did. I

21   asked to meet with the CSIS delegation that had

22   been in Syria.

23   First of all, I found this

24   allegation quite surprising to me because I had a

25   great awareness and some involvement in the

1   tasking around the initial visit to Syria in

2   November and there were strict admonitions as to

3   what we would do and what we wouldn't do over

4   there, and this was not in accord with those

5   instructions.

6   So I made inquiries, and I

7   determined that the Service gave nothing to the

8   Syrian side that to my mind would logically lead

9   to this conclusion and that was conveyed back to

10   Foreign Affairs. We did not say those words to

11   the Syrians.

12   I would also point out, if I have

13   the opportunity, with this memo in front of me, if

14   you put the first thing that Ambassador

15   Pillarella's interlocutor says against the second

16   thing, (a) Mr. Arar doesn't want to come back to

17   Canada, and CSIS is happy with him staying in

18   jail, I think you have to assign the same

19   credibility to both of those statements, in my

20   mind.

21   But in any event, I was satisfied,

22   after making inquiries around this, that we didn't

23   say anything to the Syrians that would lead to

24   that conclusion on their part.

25   MR. CAVALLUZZO: Now, did you

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 1    yourself or did you instruct anybody under your

 2    supervision to contact the Syrian Military

 3    Intelligence and say, "Listen, if you have this

 4    impression it is wrong.  Clearly wrong"?

 5                    Did you do that?

 6                    MR. HOOPER:  I did not.

 7                    MR. CAVALLUZZO:  Could you tell us

 8    why not?

 9                    MR. HOOPER:  At that time there

10    was a couple of things that happened.

11                    First of all, on January 16, 2003

12    I was aware that there was a telephone call made

13    by the Minister of Foreign Affairs to his Syrian

14    counterpart.

15                    MR. CAVALLUZZO:  If you go to

16    tab 15 you will see reference to that.

17                    You will see this is a

18    briefing note for the Minister, who would be

19    making a telephone call to the Syrian Foreign

20    Minister.  You will see on the second page, the

21    last bullet, it says:

22                            "I understand from recent

23                            reports that the Syrian

24                            authorities may have the

25                            impression that Canada has no
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 1                          wish to see Mr. Arar return

 2                          to Canada.  I would like to

 3                          make it very clear that the

 4                          Canadian government would

 5                          like Mr. Arar to be returned

 6                          to Canada."

 7                 Then on the next page, you will

 8        see in the last bullet it says:

 9                          "CSIS has had discussions

10                          with the Syrian authorities

11                          concerning Arar.  The

12                          [Whoever] informed the

13                          Ambassador that, according to

14                          his information, CSIS had

15                          indicated to Syrian military

16                          intelligence they have no

17                          wish to see Arar return to

18                          Canada and are quite content

19                          with the way things are."

20                 Then it goes on:

21                          "CSIS has informed the

22                          Department that this is not

23                          the case, that they only told

24                          the Syrians that Arar was not

25                          an active target or priority
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1   for them."

2   MR. HOOPER: Correct.

3   MR. CAVALLUZZO: So this is the

4   phone call that you are referring to?

5   MR. HOOPER: That is the phone

6   call that I'm making direct reference to.

7   There are a couple of other

8   points, if I may, Mr. Cavalluzzo?

9   MR. CAVALLUZZO: Yes.

10   MR. HOOPER: So you have the phone

11   call from Minister Graham to his Syrian

12   counterpart where effectively it is pre-emptive in

13   terms of what the Service might do, because he has

14   clearly conveyed the message that the Government

15   of Canada wants Mr. Arar back.

16   Second, and I believe it was the

17   same day following that telephone call, there was

18   either a meeting or a telephone call by

19   representatives of the Geographic Division at

20   Foreign Affairs Headquarters with the Syrian

21   Ambassador.

22   MR. CAVALLUZZO: Look at tab 16,

23   in the second bottom paragraph.

24   Just let me read it for the public

25   here. It says:

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 1              "GMR informed Syrian

 2              Ambassador Arnous of the

 3              phone call.  ...  Ambassador

 4              Arnous was well aware of the

 5              discussions regarding the

 6              possible visit by Mrs. Arar

 7              including the request of a

 8              note verbale, which we

 9              informed him had already been

10              sent.  Ambassador Arnous also

11              was pleased to hear that

12              Minister Graham had informed

13              his Minister that it was the

14              position of the Canadian

15              Government that the preferred

16              option is the return of Arar

17              to Canada.  Arnous

18              volunteered that he had also

19              been informed that the Syrian

20              security services had been

21              told by their Canadian

22              counterparts that Canada did

23              not wish to see Arar return

24              to Canada."

25         So that we have another person
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1   now, we have Khalil saying it, now we have Arnous

2   saying, "I was told the same thing, that CSIS said

3   they don't want Arar back."

4   So is this the conversation or

5   meeting you are talking about the next day, or the

6   same day?

7   MR. HOOPER: That's correct.

8   Perhaps I am preempting your walking me through

9   this evidence, Mr. Cavalluzzo, but what I would

10   also say in this regard at the same tab, tab 16,

11   there was a comment.

12   "Ambassador Arnous also was

13   pleased to hear that Minister

14   Graham had informed his

15   Minister that it was the

16   position of the Canadian

17   Government that the preferred

18   option is the return of Arar

19   to Canada."

20   I take that to mean that by the

21   time Ambassador Graham has contacted his

22   counterpart, by the time GMR has contacted

23   Ambassador Arnous, everybody is on the same page.

24   There is a third element to this

25   and I would be prepared to speak to it in camera,

1   but I would say in public testimony that quite

2   independent of our learning these facts from the

3   Department of Foreign Affairs we had information

4   from an independent source that satisfied the

5   Service that notwithstanding what may have been

6   said, by the time these calls were made, the

7   discussions were held, there was no

8   misunderstanding on the part of any Syrian entity

9   as to what the position of the Government of

10 Canada was relative to Mr. Arar.

11   So all of this to say, by

12 January 16, 2003 the Service's understanding is

13 that there is no misunderstanding by the

14 Syrian side.

15   MR. CAVALLUZZO: You told us

16 that in terms of checking out your end that you

17 talked to the people that visited Syria in

18 November 2002?

19   MR. HOOPER: Yes.

20   MR. CAVALLUZZO: Did you talk to

21 anybody else in the Service that may have had

22 contact with the SMI?

23   MR. HOOPER: No, I did not.

24   MR. CAVALLUZZO: Okay. Once

25 again, I guess an objective observer may say, you

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 1   know, "Hooper's making good points there. But you

 2   know what? This SMI, they like to deal with

 3   intelligence agencies and all it would have taken

 4   is a pick up the phone and say, "Listen, Khalil,

 5   get it through your head, CSIS wants Mr. Arar's

 6   return."

 7   I guess that wasn't done and I

 8   guess your answer would be, "Well, I thought it

 9   had resolved itself," through these three points

10   you are making?

11   MR. HOOPER: That's correct.

12   MR. CAVALLUZZO: Now, we

13   understand from the evidence, and I won't show it

14   to you, but it's in the redacted summary at

15   page 8, and that is that in mid-January of 2003,

16   that CSIS and other Canadian agencies became aware

17   that Mr. Arar could be imprisoned in Syria for a

18   long time and indeed could be sentenced to death?

19   You will have to say "Yes, I agree

20   with that."

21   MR. HOOPER: Yes.

22   MR. CAVALLUZZO: Now, March 21,

23   2003 -- if the witness can be shown Exhibit P-99?

24   --- Pause

25   MR. CAVALLUZZO: Now, this is, as

1   you can see, a note dated March 24th. It relates

2   to a phone call that Myra Pastyr-Lupul, who is a

3   person engaged in consular services in DFAIT, she

4   had a telephone call with Madam Catterall, whom

5   you know is a politician who eventually went to

6   Syria.

7   For those who don't have it,

8   it says:

9   "Catterall and

10   Assadourian --"

11   That is the other parliamentarian.

12   "-- met with the Syrian

13   Ambassador last Wednesday,

14   March 21. They discussed the

15   case of Maher Arar and made a

16   personal and humanitarian

17   pitch for the release of

18   Mr. Arar and asked what the

19   Syrians need for this to

20   happen."

21   Then it goes on:

22   "They learned that initially

23   during this case that CSIS

24   officials told the Syrians

25   that they have no interest in

 1   Arar. The Syrians took this

 2   to mean that CSIS have no

 3   interest in having Arar back.

 4   They may have meant that they

 5   have no security reasons to

 6   investigate Arar in Canada.

 7   Due to the miscommunication,

 8   the Syrians believed that

 9   CSIS did not want Arar back

10   in Canada and therefore

11   decided to detain him, keep

12   him in Syria."

13   Then, after that description of

14   the phone call, Ms Pastyr-Lupul goes on:

15   "What we need to do now is

16   send a clear message in

17   writing to the Syrians from

18   CSIS that outlines clearly

19   that we have no information

20   which has led us to believe

21   that Arar poses a security

22   threat to Canada.

23   Furthermore, the Syrians need

24   to hear from security people

25   in DFAIT in writing and if we

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1   do have any information that

2   shows any involvement in

3   terrorist activity that we

4   will charge him in Canada and

5   deal with his case through

6   the usual law enforcement

7   channels."

8   So that it would appear that a

9   little over two months after January 15th, when

10   you and others thought that the misimpression that

11   the Syrians had about CSIS's position regarding

12   Mr. Arar was still prevailing on March 21st and I

13   would ask you whether you were aware that on March

14   21st, or March 24th, or anytime thereafter that

15   this information had been received from the Syrian

16   Ambassador to Canada?

17   MR. HOOPER: I wasn't aware of

18   this memo.

19   I would like to go back a little

20   bit, Mr. Cavalluzzo, because if I understand the

21   genesis of this memorandum correctly -- and I

22   would ask you to correct me if I'm wrong -- first

23   of all, the Service never became aware of this

24   memorandum until after the commencement of these

25   proceedings and we all embarked on a disclosure

1   exercise. So these sentiments were never

2   articulated to the Service.

3   Second, my understanding is this

4   memo was generated as a consequence of a call that

5   Ms Catterall made to Ms Pastyr-Lupul after her

6   lunch with Ambassador Arnous. When I go back to

7   the testimony of Ms Catterall, I don't know that

8   the contents of this memo directly flow from

9   Ms Catterall's testimony around that lunch meeting

10   because, as I recall, Ms Catterall testified to

11   the effect that Ambassador Arnous made a statement

12   that initially there was an understanding by the

13   Syrians that CSIS didn't want Mr. Arar back in

14   Canada, and also from my understanding of that

15   testimony, that's past tense. That's initially;

16   that's then.

17   Whether Ms Catterall came back

18   with the impression that that misunderstanding

19   still existed and that was communicated to Ms

20   Pastyr-Lupul, I don't know.

21   MR. CAVALLUZZO: We will review

22   the evidence of Ms Catterall, but certainly DFAIT,

23   certainly DFAIT as of March 24th, were of the view

24   that this misimpression that the Syrians had is

25   persisting, is that this is still going on a

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 1          couple of months after January 15th.
 2                    MR. HOOPER:  I would agree with
 3          that.  And the disclosure exercise has been
 4          instructive to a lot of us, and I'm -- I guess I'm
 5          surprised and a little bit troubled by the
 6          longevity of this impression within certain
 7          sectors of Foreign Affairs, after we thought that
 8          it had been put to rest.
 9                    MR. CAVALLUZZO:  So that no one
10          from Foreign Affairs contacted CSIS and said,
11          "This misimpression is still on," so to speak?
12                    MR. HOOPER:  Nobody said that to
13          us, nobody said, "Do something to fix it."  As far
14          as we were concerned, after January 16th this was
15          a non-issue.
16                    MR. CAVALLUZZO:  Okay.
17                    THE COMMISSIONER:  If somebody had
18          said to fix it, let's assume they had contacted
19          you and said "This is continuing.  Can you pick up
20          the phone?  It may not be that simple.  Talk to
21          General Khalil and tell him once and for all CSIS
22          wants him back."  I know nobody did that, but is
23          that not something that could have been done?
24                    MR. HOOPER:  I think if you bring
25          it back to the circumstances, Mr. Commissioner, if
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1   we became aware of this -- and again bearing in

2   mind that we were in an assistance mode to Foreign

3   Affairs around the whole consular process, we

4   might say to them, "Would it be helpful?" and

5   there would have to be a dialogue between

6   ourselves and Foreign Affairs, but certainly we

7   would not unilaterally, without consultation with

8   Foreign Affairs, zip something over to the Syrian

9   side. It would be the subject of consultation.

10   But I can tell you that if it were

11   of assistance, I don't believe there would be any

12   hesitation on the part of our Service to fix this.

13   MR. CAVALLUZZO: I guess in terms

14   of going through Foreign Affairs and doing it on

15   your own, it would seem to me that this is a

16   statement or an allegation that is being made

17   about the Service, it is being made by another

18   security intelligence service that you have had

19   some contact with, and it would seem to me that

20   there could be a direct contact with that entity

21   that is making these statements about you without

22   going through Foreign Affairs because the

23   allegation, once again, is being made against you.

24   You know these guys. You know that they like to

25   deal with you guys.

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 1                    I guess my point would be, if you

 2        are aware of this, I guess, you could have dealt

 3        with them directly and shut it down?

 4                    MR. HOOPER:  I think, in most

 5        instances generally speaking that's true.  But I

 6        think there is evidence before the Commission that

 7        while Syrian military intelligence apparatus might

 8        have had a preference to deal with us rather than

 9        a police service, there is evidence that there was

10        a much stronger relationship on the ground in

11        Damascus between Ambassador Pillarella and the

12        Syrian Military Intelligence service.

13                    So all things weighed equally,

14        Ambassador Pillarella probably had a better in

15        than we did, given the state of our relationship

16        with the Syrians at the time.

17                    MR. CAVALLUZZO:  I am in a

18        position where I know of in-camera evidence that

19        would raise serious questions with that statement

20        and I will deal with that in camera.

21                    MR. HOOPER:  Okay.  I would be

22        pleased to.

23                    MR. CAVALLUZZO:  Just a couple of

24        final questions before the break, because I want

25        to move on to the Pardy letters.
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 1                      As I said before, the

 2   parliamentarians, Assadourian and Catterall, went

 3   to Damascus on April 22nd and CSIS received a

 4   consular report relating to that visit.

 5                      you will agree with that?

 6                      MR. HOOPER:  Yes, some time in

 7   early May, first week of May.

 8                      MR. CAVALLUZZO:  That is the other

 9   document or consular report which CSIS received

10   relating to Mr. Arar.

11                      Finally, before the break, if you

12   could have the witness see Exhibit P-67?

13   --- Pause

14                      MR. CAVALLUZZO:  Do you have that?

15                      MR. HOOPER:  I have that.

16                      Is there an attachment to that,

17   Mr. Cavalluzzo?

18                      MR. CAVALLUZZO:  No.  This is the

19   exhibit.  And what it is, it is a facsimile, and

20   this was obtained through Access, and it is dated

21   May 21, 2003, and it states:

22                              "Please find attached

23                              information that was provided

24                              to the ADM as he visited

25                              Syria.
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 1                          I have also been advised that

 2                          DFAIT ISI [something] re

 3                          ARAR."

 4                  Then it goes:

 5                          "Along this line, do you have

 6                          any questions you would like

 7                          posed to ARAR."

 8                  I'm wondering if you have any

 9      information whatever relating to ISI asking CSIS

10      if they had any questions that they would like to

11      pose to Mr. Arar, who obviously at this point in

12      time is in Syria?

13                  MR. HOOPER:  I think this may be

14      the first time I'm seeing this, so the short

15      answer to your question is no.

16                  MR. CAVALLUZZO:  So that you have

17      no information whatever concerning CSIS giving

18      questions to be posed to Mr. Arar from DFAIT, or

19      any other entity for that matter?

20                  MR. HOOPER:  That is correct.

21                  MR. CAVALLUZZO:  Why don't we just

22      deal with this at this time?

23                  At no time during Mr. Arar's stay

24      in Syria did CSIS visit or interview Mr. Arar?

25                  MR. HOOPER:  That's correct.
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 1                    MR. CAVALLUZZO:  Commissioner,
 2      it's about 20 to 11:00.  It may be an appropriate
 3      time to take the break.
 4                    THE COMMISSIONER:  We will take
 5      the morning break for 15 minutes.
 6                    THE REGISTRAR:  Please stand.
 7      --- Upon recessing at 10:40 a.m. /
 8          Suspension à 10 h 40
 9      --- Upon resuming at 10:58 a.m. /
10          Reprise à 10 h 58
11                    THE REGISTRAR:  Please be seated.
12                    MR. CAVALLUZZO:  Okay.
13      Mr. Hooper, we are really into the early part of
14      2003, and we went through that note that
15      Pastyr-Lupul made that, at least from her
16      perspective, the Syrians were still under the
17      impression that CSIS was of the view that they
18      didn't want Mr. Arar back.  You told us that you
19      were unaware of that note until the commencement
20      of these proceedings.
21                    I would like to move on from there
22      into May of 2003, and ask if the witness can be
23      given Exhibit P-117, volume 1 -- I'm sorry, it's
24      volume 2.  It's the Easter book, volume 2.
25                    If you go behind tab 75,
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     1   sub tab 3?

     2   MR. HOOPER: I have it.

     3   MR. CAVALLUZZO: Okay. We have

     4   heard a great deal of evidence about this

     5   memorandum which was drafted by Mr. Gar Pardy who,

     6   as you know, was head of Consular Affairs in

     7   DFAIT. It is dated May 5, 2003.

     8   Just let me highlight certain

     9   portions of the memorandum and ask you questions

    10   about it.

    11   Once again, this is an action

    12   memorandum for the Minister of Foreign Affairs.

    13   The first page, under "Recommendations," just

    14   referring to the first and last bullet points.

    15   First one -- "Recommendations":

    16   "Efforts continue to

    17   establish a common

    18   understanding within the

    19   government of Canada on this

    20   case with the objective of

    21   the issuance of a statement

    22   signed by the Solicitor

    23   General and the Minister of

    24   Foreign Affairs that could be

    25   used with Syrian

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1   authorities."

2   Then in the last bullet:

3   "If necessary that you meet

4   with the Solicitor General

5   and Deputy Prime Minister to

6   arrive at a common

7   understanding on the case."

8   Then on the third page, page 3, in

9   paragraph 8 it states that:

10   "CSIS officials visited Syria

11   earlier this year and

12   discussed Mr. Arar with their

13   counterparts. They did not

14   meet Mr. Arar. Subsequent to

15   these discussions Syrian

16   officials informed us that

17   they were informed by CSIS

18   officials that Canada did not

19   want to have Mr. Arar

20   returned. The CSIS officials

21   denied that they had said

22   this to the Syrians."

23   Then if you go on to the next

24   paragraph, wherein it is stated:

25   "It remains our view that the

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 1                            following elements need to be

 2                            in place if there can be any

 3                            expectation that the Syrians

 4                            might be prepared to release

 5                            Mr. Arar and permit him to

 6                            return to Canada".

 7                   The top bullet there on page 4:

 8                            "there is a need for an

 9                            unambiguous statement by the

10                            government of Canada,

11                            preferably signed by the

12                            Solicitor General and the

13                            Foreign Minister, to the

14                            effect that we have no

15                            evidence in Canada, or from

16                            foreign sources, that

17                            Mr. Arar is or was a member

18                            of al-Qaida, that we do not

19                            believe that such information

20                            exists and that Mr. Arar

21                            should be permitted to return

22                            to Canada."

23                   Then, finally, in the next

24          paragraph, paragraph 10, it says:

25                            "In the days ahead, our
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 1                              efforts will concentrate on:
 2                              - convening a meeting of
 3                              Canadian officials
 4                              representing CSIS, RCMP, PCO,
 5                              and office of the Deputy
 6                              Prime Minister to develop a
 7                              common Canadian approach that
 8                              could be sufficiently clear
 9                              to communicate to the Syrian
10                              authorities."
11                   I would ask whether you ever saw
12      this memorandum from Mr. Pardy?
13                   MR. HOOPER:  No, sir.
14                   MR. CAVALLUZZO:  You never saw
15      this memorandum?
16                   MR. HOOPER:  I saw it in
17      preparation for my testimony, but I did not see it
18      before that.
19                   MR. CAVALLUZZO:  Okay.  Now, we
20      understand that there were meetings at which CSIS
21      representatives attended on May 8th and 12th,
22      wherein this memorandum was discussed.
23                   Are you aware of that?
24                   MR. HOOPER:  I know there were
25      meetings about that time.  I accept that they
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1   probably were the 8th and the 12th. We did have

2   officers attending these meetings, yes.

3   MR. CAVALLUZZO: Did you get

4   reports back from those officers as to what

5   occurred at these meetings?

6   MR. HOOPER: In general terms,

7   yes.

8   MR. CAVALLUZZO: Did these

9   officers tell you -- did these officers tell you

10   that this May 5th memo -- this May 5th memo is

11   saying that there is still ambiguity in the

12   Syrians' minds as to whether Canada wants Arar

13   returned home?

14   Did they point that out to you?

15   MR. HOOPER: No. The quality of

16   discussions I had with the people who were

17   attending these meetings were around the wisdom of

18   having the Minister of Foreign Affairs and the

19   Solicitor General being co-signatories to a letter

20   and the language that would be acceptable, in our

21   view, to the Service and to the Solicitor General.

22   But I was, in general terms, aware

23   of the tenor of the discussions and certainly

24   aware the Department of Foreign Affairs was on

25   this issue.

1   MR. CAVALLUZZO: Leaving aside the

2   discussion on language, were you aware that the

3   tenor of this memo was that the Syrians still had

4   this ambiguity in their mind as to whether the

5   Canadian government wanted Arar back or not?

6   MR. HOOPER: I know that there

7   was, within the Government of Canada, a perception

8   that the Syrians had some ambiguity around what

9   the message was.

10   MR. CAVALLUZZO: Right. And I

11   guess the question would be: If you were advised

12   of -- so if you had read this memo of May 5th, you

13   would have said, "Holy God, they still think that

14   we don't want this guy back. I had better phone

15   Khalil immediately"?

16   MR. HOOPER: If I had seen this

17   at the time that it was written, at the time that

18   these discussions were ongoing, my initial

19   reaction would be to question Mr. Pardy and say,

20   "Where is this ambiguity coming from?" Because,

21   to my knowledge, the ambiguity had been dispensed

22   with.

23   MR. CAVALLUZZO: Right. But

24   surely to God at this point in time there was only

25   one ambiguity that we are aware of, that you are

1   aware of.

2   MR. HOOPER: Yes.

3   MR. CAVALLUZZO: Surely the

4   ambiguity was coming from CSIS, and I put it to

5   you that if you had read this memo, or if you had

6   been -- if you had been advised of the contents of

7   this memo, that you would have picked up the phone

8   and called Khalil, or had somebody call Khalil,

9   and say, "Correct any ambiguity you have in your

10   mind: CSIS, along with every other entity in

11   Canada, wants Arar's return to Canada"?

12   Do you agree with that?

13   MR. HOOPER: That is the easy

14   answer, but the truth of the matter is that if I

15   saw that statement my first call would be to Gar

16   Pardy, saying, "Where is this coming from, Gar?"

17   Because, again, I don't have any information to

18   hand at the beginning of May 2003 that suggests

19   there is ambiguity. And if Mr. Pardy came back to

20   me and said, you know, "Here is the reason for

21   this," then I would say, "Well, then we have to

22   clear it up."

23   MR. CAVALLUZZO: Okay. So what

24   you are saying is that if somebody from CSIS

25   called Gar Pardy and said, "Gar, you are talking

1   about ambiguity and let's clear it up in the

2   Syrians' mind," and if Gar Pardy said, "It's you

3   guys," you would have picked up the phone, or had

4   someone contact Mr. Khalil and say, "We are on

5   board with the other entities in Canada. We want

6   him home"?

7   MR. HOOPER: Not without some

8   further consultation with ISI, Dan Livermore and

9   Jim Wright, we wouldn't do that.

10   MR. CAVALLUZZO: Okay. But

11   whatever the consultations would be, the fact is

12   that that process would have been put in place?

13   MR. HOOPER: If that was the

14   result of the consultations, yes.

15   MR. CAVALLUZZO: Do you feel that

16   you should have been advised of this very

17   important fact that we see in this May 5th memo,

18   that there is still ambiguity in the Syrians' mind

19   according to the drafter of this memo?

20   MR. HOOPER: I wish I had been.

21   MR. CAVALLUZZO: So that just to

22   be clear in my own mind, that in these meetings

23   took place wherein this memo was discussed, no one

24   from CSIS who attended these meetings came back to

25   you and said, "Mr. Hooper, there is still

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 1      ambiguity in the Syrians' minds"?
 2                      MR. HOOPER:  No.
 3      --- Pause
 4                      MR. CAVALLUZZO:  Now we come back
 5      to what you said before, and that is, should there
 6      be a letter co-signed by your Minister, the
 7      Solicitor General, and the Minister of DFAIT, with
 8      the appropriate language respecting Mr. Arar, that
 9      is to use the language of the memo that there is
10      no evidence in Canada or from foreign sources that
11      Mr. Arar is or was a member of al-Qaeda and so on,
12      so that that process gets into play, and I
13      understand that as a result of this that a
14      briefing note was prepared by CSIS for the
15      Solicitor General.
16                      Would you go to tab 4, sub 4.
17      Much of this is redacted, but let me read you the
18      portions that are not redacted.  This relates,
19      obviously, to the issue of:
20                          "DFAIT is requesting that the
21                          Solicitor General and the
22                          Minister of Foreign Affairs
23                          co-sign a letter to the
24                          Syrian government to secure
25                          the release of Maher ARAR
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 1   from Syria, where he has been

 2   detained since 2002 10 21."

 3   Then in terms of the discussion it

 4   states:

 5   "DFAIT officials hope that

 6   their DM may secure ARAR's

 7   release by presenting Syrian

 8   authorities a letter

 9   co-signed by the Solicitor

10   General and Minister Graham.

11   DFAIT officials have also

12   suggested that the Service

13   and the RCMP interview ARAR

14   while in Syrian custody. As

15   to the Syrians intent to

16   bring ARAR to trial, they may

17   view such efforts as an

18   affront to their

19   sovereignty."

20   Then we have a redacted portion,

21   and then it goes on with another consideration and

22   says:

23   "Furthermore, the US

24   Government may also question

25   Canada's motives and resolve,

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 1                                  given that they had deported
 2                                  ARAR to Syria because of
 3                                  concerns about alleged
 4                                  terrorist connections."
 5                    Then, finally, in terms of the
 6          assessment, it says:
 7                                  "As a Canadian, ARAR is
 8                                  entitled to expect consular
 9                                  assistance from the
10                                  Government.  DFAIT has
11                                  provided such assistance and
12                                  has arguably fulfilled
13                                  Canada's obligations;
14                                  therefore, if Mr. Graham were
15                                  to raise the issue with the
16                                  Syrians this could be
17                                  characterized as simply an
18                                  extension of these efforts.
19                                  However, as noted above, it
20                                  would be problematic for
21                                  either the Solicitor General
22                                  or the Service to be a party
23                                  to the initiative.  We would
24                                  therefore advise very
25                                  strongly that you decline the
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1   request to sign a joint

2   letter with Mr. Graham."

3   Now, did you participate in the

4   drafting of this briefing note for Solicitor

5   General Easter?

6   MR. HOOPER: I likely would have

7   been consulted. I wouldn't have participated in

8   the drafting, although maybe that is a play on

9   words.

10   If I can explain this? This is a

11   briefing note for the Solicitor General,

12   ministerial bilateral. At that time, Mr. Elcock

13   had fairly regular bilateral meetings with the

14   Solicitor General. The purpose of these notes was

15   to inform the Department of issues that would be

16   brought to the Minister by the Director. These

17   are prepared usually within our Director's

18   Secretariat, but they would have consulted with

19   OPS personnel, operational personnel, and myself.

20   MR. CAVALLUZZO: But in amy event,

21   it had the approval of CSIS?

22   MR. HOOPER: Yes.

23   MR. CAVALLUZZO: Now, if we look

24   at the considerations that we can see in public as

25   to whether Mr. Easter should co-sign the letter,

 1   the one consideration we see, it says:

 2   "... the US government may

 3   also question Canada's

 4   motives and resolve, given

 5   that they had deported ARAR

 6   to Syria because of concerns

 7   about alleged terrorist

 8   connections."

 9   Now, I call this the American

10   resolve effect; that is, if we get this guy back

11   lo and behold the Americans are going to be angry

12   with us because they will question our resolve in

13   the global war against terrorism.

14   Now, that particular

15   consideration, you would agree with me, that that

16   goes beyond having the Minister co-sign a letter.

17   That argues against Mr. Arar's return to Canada.

18   You would agree with that?

19   MR. HOOPER: No, I wouldn't,

20   Mr. Cavalluzzo.

21   If I can explain?

22   MR. CAVALLUZZO: Yes.

23   MR. HOOPER: And I think you would

24   appreciate -- you know that there was a large

25   political dimension around the Arar case. Quite

1   apart from the consular and whatever operational

2   dimensions there may have been to the case. There

3   was that political dimension.

4   We have an obligation I think, as

5   senior bureaucrats, to inform our Minister of the

6   political considerations, and that was the point

7   of that statement, to let him know that if you are

8   a co-signatory to this letter, you know, it may

9   impact upon your capacity to deal with U.S.

10   counterparts.

11   MR. CAVALLUZZO: Right. But my

12   point is -- and I agree with that, and there is

13   absolutely nothing wrong, indeed it is your duty

14   to bring forward the relevant considerations to

15   your Minister, but my point is that that

16   particular consideration once again would argue

17   against bringing Mr. Arar back at all, because if

18   we did the Americans, lo and behold, who had

19   illegally sent him in the first place, might

20   question our motives in terms of the war against

21   terrorism?

22   You must agree with that?

23   MR. HOOPER: It would probably

24   bring into question the motives of the Government

25   of Canada, but it would, in our parlance, look

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 1          after our Minister in terms of the process.

 2                          MR. CAVALLUZZO:  But once again

 3          you would agree with me that that argues against

 4          bringing Arar back, because if we bring him back

 5          we could perturb the Americans, which is a

 6          legitimate consideration.  But that is the effect

 7          of this argument?

 8                          MR. HOOPER:  You could argue that.

 9          That wasn't the intent of the advice.

10                          MR. CAVALLUZZO:  What other

11          interpretation could there be?

12                          MR. HOOPER:  To tell him that

13          there was some political jeopardy in doing this.

14          Leave it to your colleague, the Minister of

15          Foreign Affairs.  It's his responsibility.

16                          MR. CAVALLUZZO:  I understand

17          that, and I understand the political

18          considerations and I understand the responsibility

19          of CSIS, the responsibility of Mr. Easter, but

20          what I'm putting to you once again is there is no

21          other inference that can be drawn that this says,

22          if you bring him back, you are going to create a

23          political hot potato because the Americans are

24          going to question our resolve?

25                          MR. HOOPER:  I think we were
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1   reconciled to that very early on when the

2   Government of Canada spoke with one voice and

3   said. Our position is we want him back. We knew

4   that if he came back there was going to be a

5   political hot potato with the Americans.

6   MR. CAVALLUZZO: With the

7   Americans?

8   MR. HOOPER: Absolutely, yes.

9   MR. CAVALLUZZO: Okay. Okay. I'm

10   satisfied with that now.

11   There is another effect. We will

12   call that the American resolve effect.

13   There is another effect that I

14   refer to as the Khadr effect. If we look to

15   tab 49 of volume 1 --

16   MR. HOOPER: I'm sorry, tab 49?

17   MR. CAVALLUZZO: Forty-nine of

18   this Book of Documents, 117. It would be volume 1

19   of 117.

20   --- Pause

21   MR. CAVALLUZZO: This is, once

22   again, a Briefing Note to the Commissioner of the

23   RCMP, which is dated April 30, 2003, which is

24   around the same time.

25   On page 2, it states:

1   "The Members of Parliament

2   are seeking the intervention

3   at the Prime Ministerial

4   level for the release of ARAR

5   and his return to Canada.

6   The lobbyists are pressuring

7   for quick intervention in an

8   attempt to effect a return

9   prior to ARAR being charged

10   by the Syrians.

11   The potential

12   embarrassment exists should

13   the Prime Minister become

14   involved in a similar fashion

15   to the incident the Egyptian

16   Embassy bombing in 1995 in

17   Pakistan. In that situation,

18   the Prime Minister intervened

19   on behalf of Ahmed Said

20   KHADR, an Egyptian-Canadian,

21   who was subsequently released

22   from Pakistani custody.

23   KHADR is now recognized

24   internationally as a

25   high-ranking Al Qaeda member

1   and wanted by the Egyptians

2   for the bombing. The

3   intervention of the PM has

4   been raised on a number of

5   occasions in an attempt to

6   embarrass the government."

7   Now, I am putting it to you that

8   it was not just the RCMP that was using the Khadr

9   effect argument in respect of the Minister --

10   Solicitor General.

11   Isn't that correct?

12   MR. HOOPER: I know there was

13   a broad awareness of what you term the Khadr

14   effect, yes.

15   MR. CAVALLUZZO: And CSIS, in

16   fulfilling its duties, would have raised the Khadr

17   effect with the Solicitor General if Mr. Arar

18   returned?

19   MR. HOOPER: I don't know

20   categorically that we did, but it wouldn't be

21   unusual.

22   MR. CAVALLUZZO: Wouldn't be

23   unusual. In fact, it is not unusual, for example,

24   if we saw documents within CSIS where the Khadr

25   effect is discussed?

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1                    MR. HOOPER:  Probably not.

2                    MR. CAVALLUZZO:  Now, I have

3     looked at this Briefing Note and I see negatives,

4     to the point of, "Let's not even bring him back

5     because of the political considerations."

6                    I don't see any positives in here

7     arguing on behalf of Mr. Arar's return.

8                    I'm wondering why that is?

9                    MR. HOOPER:  In which briefing

10    note, sir, or both of them?

11                   MR. CAVALLUZZO:  This is the

12    Briefing Note to the Solicitor General.  We will

13    leave the RCMP to defend their own position.

14                   MR. HOOPER:  We do talk about

15    the assistance that has been provided by the

16    Department of Foreign Affairs in fulfilling its

17    obligation and the sentiment that when we talk

18    about the DM or the Minister signing off on the

19    letter by himself, that is an extension of the

20    efforts that have already been made by the

21    department that had the responsibility for these

22    issues.

23                   I think the sentiment would be

24    there is an apparatus of government that deals

25    with this, let that apparatus deal with it.
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1   MR. CAVALLUZZO: Well, let me give

2   you what I would have considered to be relevant

3   considerations that CSIS should have given their

4   Minister. I am referring actually to that

5   document that we read before when CSIS deals with

6   foreign countries with poor human rights records.

7   What you might have said, "You

8   know what, Minister, on the other hand, these guys

9   over there have a propensity to torture people.

10   You know what, Minister? If we look at our level

11   of interest in Mr. Arar, it is not that great.

12   You know what, Minister, he has been there a long

13   time. He has a couple of kids, he has a wife, he

14   is a Canadian citizen. Finally, you know what,

15   Minister, the Americans had no right whatever to

16   do what they did in rendering him to Syria. You

17   should consider those things, Minister, in terms

18   of making your decision."

19   Could you tell us why those

20   considerations weren't put in this Briefing Note?

21   MR. HOOPER: Those are the

22   considerations that I am absolutely positive would

23   have been put forward by the Department of Foreign

24   Affairs to its Minister, yes.

25   MR. CAVALLUZZO: Right. Which the

1   Solicitor General would never have seen.

2   Isn't that correct?

3   MR. HOOPER: I don't know whether

4   he would have seen them or not. They would have

5   gone to the Minister of Foreign Affairs.

6   MR. CAVALLUZZO: Right. But

7   wouldn't it have been better for CSIS to have

8   brought forward these considerations to the

9   Minister that was being asked to co-sign a letter

10   for a Canadian, that from an international law

11   perspective was illegally rendered by the United

12   States and was being held for months in conditions

13   that no human being could tolerate? Don't you

14   think the Solicitor General should have heard that

15   from CSIS and/or the RCMP?

16   MR. HOOPER: We have, I think -- I

17   don't want to give a lecture on our system of

18   governance, but there is a process and there is a

19   structure that allows people to provide Ministers

20   with advice that they have expertise on.

21   Our expertise came back to, in our

22   case, matters of security intelligence.

23   MR. CAVALLUZZO: I'm sorry.

24   MR. HOOPER: In Foreign Affairs,

25   their expertise comes back to consular issues as

1   it specifically related to Mr. Arar.

2   That is how the system works.

3   MR. CAVALLUZZO: But I'm putting

4   it to you, Mr. Hooper, that to the objective

5   observer it would appear that as of May 12, 2003

6   that CSIS was negative on Mr. Arar's return to

7   Canada?

8   MR. HOOPER: No, I -- well, the

9   objective observer? I don't know. I can speak

10   for myself. I consider myself an objective

11   observer.

12   We were putting the facts as we

13   saw them before our Minister that related to his

14   responsibilities as the Solicitor General. That's

15   our obligation.

16   Would it have been better? I

17   think that is a judgment that others can make.

18   MR. CAVALLUZZO: But I don't see

19   any positives here, and I see -- and maybe, you

20   know, I think the objective observer would see

21   from this note that CSIS is negative, and perhaps

22   rightfully so. Perhaps because of CSIS's mandate,

23   CSIS would be negative on this. There is the

24   Khadr effect, which is a political consideration;

25   there is the American resolve effect; there are

1   the resource issues, if somebody comes back you

2   have to worry about another person, you already

3   have depleted resources. There may be myriad

4   reasons why CSIS would not want Mr. Arar back,

5   which are all legitimate from your perspective

6   because of your mandate.

7   I am putting it to you the

8   objective observer would see that at least at this

9   point in time CSIS is negative on his return?

10   MR. HOOPER: I can say that we did

11   nothing as a Service to dissuade any element of

12   government to get in the way of Mr. Arar's lawful

13   return to Canada. We never said, "We don't want

14   him back." We never said, "Keep him there." We

15   provided this advice to our Minister and --

16   MR. CAVALLUZZO: I think the point

17   is, Mr. Hooper, you don't have to say, "We don't

18   want him back," if the relevant considerations you

19   give to your Minister are the American resolve

20   effect, the Khadr effect, and whatever is in

21   behind these redacted volumes that we will share

22   with you tomorrow. I'm putting it to you, you

23   don't have to say you want him back. It's clear.

24   There is no other inference.

25   MR. HOOPER: My Minister is not

 1   going to make that decision. That is a decision

 2   of the Government of Canada, and the Government of

 3   Canada had been clear on where it stood on the

 4   return of Mr. Arar to Canada.

 5   We wanted him back. We were not

 6   in disaccord with the position of the Government

 7   of Canada. We can't be.

 8   MR. CAVALLUZZO: I understand

 9   that. But once again I'm putting it to you that

10   there is no other inference that can be drawn that

11   at this point in time CSIS is negative upon his

12   return because of your mandate and likely because

13   of the political considerations?

14   MR. HOOPER: Well, I can't accept

15   that, Mr. Cavalluzzo.

16   MR. CAVALLUZZO: Okay, then let us

17   move on.

18   The next matter in the piece is a

19   June 3rd memorandum, and perhaps the witness can

20   be shown Exhibit P-102.

21   --- Pause

22   MR. CAVALLUZZO: We have here,

23   Mr. Hooper, actually Exhibit P-102 and Exhibit

24   P-103. Exhibit P-102 is a June 3rd memo and then

25   Exhibit P-103 is a June 5th memo, which is

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 1    finally -- I'm sorry, I didn't realize you didn't
 2    have it.
 3                    Exhibit P-103, is the final draft,
 4    or the final memorandum, excuse me, that goes to
 5    the Minister of Foreign Affairs.  Okay?
 6                    So June 3 is the memo leading up
 7    to it, which is very similar to May 3rd -- the
 8    May 5th memo, excuse me, and June 5th is the final
 9    document which will be going to the Minister.
10    Okay?
11                    I would ask whether you saw, read,
12    or were apprised of the June 3rd memo, the draft?
13                    MR. HOOPER:  Not at the material
14    time, sir, no.
15                    MR. CAVALLUZZO:  Were you apprised
16    of the June 5th final memorandum that went to the
17    Minister?
18                    MR. HOOPER:  No, sir.
19                    MR. CAVALLUZZO:  You never saw
20    that?
21                    MR. HOOPER:  Not until the
22    commencement of these proceedings.
23                    MR. CAVALLUZZO:  Were you apprised
24    that there was a memorandum that Pardy had worked
25    out, after months of preparation, that was
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1   co-signed by the Deputy Minister and that was

2   going to recommend that the Minister of Foreign

3   Affairs sign a letter to the Syrian Foreign

4   Minister with language to which neither CSIS nor

5   the RCMP had any objections to?

6   MR. HOOPER: I knew that, yes.

7   MR. CAVALLUZZO: You knew that.

8   Okay.

9   But you didn't read, once again,

10   either Exhibit P-102, which is the June 3rd, or

11   Exhibit P-103, which is the June 5th memorandum?

12   MR. HOOPER: No, sir.

13   MR. CAVALLUZZO: Okay. Well, let

14   me just share with you its content, other than

15   ultimately there is going to be a letter going to

16   the Minister. Just, if we can just save some

17   time. For example, if you refer to page 3, there

18   is a great deal of background that is set out

19   there --

20   THE COMMISSIONER: Is this the

21   June 3rd one?

22   MR. CAVALLUZZO: No, the June 5th.

23   Let's work with the final document.

24   At page 3, you will see in

25   paragraph 9, for example, it says:

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 1                              "From the early days of this

 2                               case, Canadian police

 3                               officials ... (CSIS)

 4                               initially indicated it had no

 5                               interest in Mr. Arar), stated

 6                               that their interest in Arar

 7                               was based on his contacts

 8                               with persons in Ottawa who

 9                               were of interest to them."

10              Then it refers to the RCMP's

11    interests, which we have reviewed extensively with

12    other witnesses.

13              Then it goes on in the next

14    paragraph to talk about what the Americans are

15    saying and so on.

16              And then in paragraph 11, it goes

17    on and talks about:

18                               "CSIS officials visited Syria

19                               earlier this year and

20                               discussed Mr. Arar with their

21                               counterparts.  They did not

22                               meet Mr. Arar.  Subsequent to

23                               these discussions, Syrian

24                               officials informed us that

25                               they were informed by CSIS
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1   officials that Canada did not

2   want to have Mr. Arar

3   returned. The CSIS officials

4   denied that ..."

5   And in 12:

6   "It is evident that we have

7   little or no leverage with

8   the Syrian authorities on

9   this ...."

10   Okay? This is DFAIT talking,

11   which probably would include Mr. Pillarella. But

12   in any event, this is DFAIT talking.

13   "It is evident that we have

14   little or no leverage with

15   the Syrian authorities on

16   this case. Our

17   representations, including

18   your telephone conversation

19   with the Foreign Minister and

20   your subsequent letter to

21   him, have not elicited formal

22   responses. Rather in the

23   intervening months, the

24   Syrians have hardened their

25   position and, as indicated

1   above, threaten to formally

2   charge Mr. Arar and conduct

3   some sort of a trial, most

4   likely a military one held in

5   secret."

6   And so on and so forth.

7   Finally, in paragraph 13, it says:

8   "In recent days, we have

9   discussed the case with both

10   CSIS and the RCMP. They have

11   maintained their position

12   that Mr. Arar, while not

13   under investigation in

14   Canada, is a person of

15   interest to them because of

16   the evidence of his

17   connection with others who

18   are. In these circumstances,

19   they will not provide any

20   direct support in having

21   Mr. Arar returned to Canada.

22   Should Mr. Arar return to

23   Canada, CSIS and the RCMP

24   have both indicated that they

25   want to interrogate him. As

1   such, the best we can do in

2   these circumstances is to

3   again raise the matter with

4   the Syrian Foreign Minister

5   and to that end we have

6   attached a letter for your

7   signature. We would also

8   recommend that you call in

9   the Syrian Ambassador..."

10   So what we see from this letter is

11   that DFAIT has really thrown their hands up and

12   said, "We have no leverage with the Syrians,

13   Syrian authorities. CSIS and the RCMP will not

14   provide us with direct support. And I guess all

15   we can do is send this letter again to the

16   Minister of Foreign Affairs, with language that

17   says, 'there is no Canadian government impediment

18   to his return.'" And that is, in effect, where

19   the process ended up.

20   Now, the question that I would

21   have for you is: In this light, seeing that DFAIT

22   is getting nowhere, got no leverage -- were you

23   aware of that, by the way?

24   MR. HOOPER: Aware of...?

25   MR. CAVALLUZZO: That DFAIT's

1   position in June, early June, is they have no

2   leverage -- or excuse me, "little or no leverage

3   with the Syrian authorities"?

4   MR. HOOPER: I didn't know that

5   was DFAIT's position, but I would certainly agree

6   with it. I don't think anybody at that point in

7   the Government of Canada had any leverage with the

8   Syrian government.

9   MR. CAVALLUZZO: Now, I come back.

10   I have given you some, what I view to be, relevant

11   considerations that your Minister may have had,

12   because it was clear -- you would agree with me

13   that a letter signed by the Solicitor General and

14   the Minister of Foreign Affairs would have more

15   impact than a letter coming from Foreign Affairs?

16   MR. HOOPER: I don't agree with

17   that, Mr. Cavalluzzo.

18   MR. CAVALLUZZO: You don't?

19   MR. HOOPER: No. In my

20   experience, if you want to have greater impact,

21   you don't push it sideways, you push it up. You

22   can roll in any number of Ministers of the Crown;

23   I don't think it would have a broader impact than

24   if it came from the Minister of Foreign Affairs.

25   That is my view on it.

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 1                    MR. CAVALLUZZO:  I am putting it
 2       to you, if you are dealing with Syrian Military
 3       Intelligence who like to deal with security
 4       intelligence agencies, that a letter that was
 5       signed by their Minister, the Minister responsible
 6       for them, would have far more impact than a letter
 7       solely signed by the Minister of Foreign Affairs?
 8                    MR. HOOPER:  I think I need to
 9       point out the context of the Syrian Military
10       Intelligence Service liking to deal with
11       intelligence services.  They have a preference for
12       dealing with intelligence services more than law
13       enforcement services.  So that is really the
14       context that that comes from.
15                    I don't know that the Syrians
16       understand our system of governance, our system
17       of Cabinet and political accountability.  I
18       just don't think that it would have made a
19       difference, period.
20                    MR. CAVALLUZZO:  They don't like
21       dealing with politicians, they like dealing with
22       security agencies.
23                    Let me just give you -- you have
24       read the evidence.  Let me give you some of the
25       evidence here about how intelligence agency in
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 1          Syria viewed the Minister of Foreign Affairs.

 2                         We have evidence from Minister

 3          Bill Graham, who testified that in October of this

 4          year, 2003 he met the Syrian Foreign Minister at

 5          the U.N. and he said to the Syrian Foreign

 6          Minister, "Listen, if you guys want us to

 7          cooperate in business, industry, trade, and so on,

 8          you are going to have to cooperate with us and get

 9          Arar back to Canada."  And the Syrian Foreign

10          Minister says, "Yes, we are working on it, Bill.

11          We are working on it."  And right beside him was a

12          member of the intelligence agency of Syria, and

13          they said, "Arar is not coming back."

14                         MS McISAAC:  Excuse me, sir, I'm

15          not sure we know who the gentleman was beside the

16          Foreign Minister.  I think Mr. Graham was

17          speculating as to who he might be.

18                         MR. CAVALLUZZO:  I will accept

19          Mr. Graham's testimony as speculation on that.  I

20          wasn't there.  I would assume that a person in the

21          Minister's position would likely know who was

22          there.

23                         In any event, assume Mr. Graham

24          was correct.  This intelligence guy says -- the

25          Syrian Foreign Minister is standing right beside
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 1      him -- he says, "Arar is not coming back to
 2      Canada.  His wife has caused so much trouble.
 3      It's not going to happen."  Here is Mr. Graham
 4      taken aback, saying, "Here is an intelligence guy
 5      basically overriding the Syrian Foreign Minister
 6      right in front of me."
 7                      That gives you some flavour, at
 8      least in the evidence we have, as to the role of
 9      the Syrian Military Intelligence and the Foreign
10      Minister over there.
11                      Let me give you some more
12      evidence.
13                      MR. HOOPER:  I wasn't aware of
14      that evidence, by the way.
15                      MR. CAVALLUZZO:  You weren't?
16                      MR. HOOPER:  Not at the time.
17                      MS McISAAC:  Did Mr. Cavalluzzo
18      make that clear, that that was merely a month
19      before Mr. Arar did, in fact, return.
20                      THE COMMISSIONER:  I thought
21      he did, yes.
22                      MR. CAVALLUZZO:  I thought he did.
23                      Let me give you some more evidence
24      we have.  We had evidence from the DFAIT
25      officials, saying that the Syrian Military
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1   Intelligence told us that if you want to see Arar

2   again you are going to have to go through the

3   Syrian Foreign Minister. The DFAIT officials

4   said, "Oh, God, whenever we deal with them we

5   never hear back. We have sent them five

6   diplomatic notes. We don't have an answer on any

7   of them."

8   Does that not indicate to you that

9   the Syrian Military Intelligence are the guys to

10   be dealing with on this file?

11   MR. HOOPER: It indicates to me

12   that the Syrians are a tough gang to deal with, no

13   matter how you cut them.

14   MR. CAVALLUZZO: Now, I come back.

15   I come back.

16   In terms of your Minister once

17   again, and I am not going to spend any more time

18   as to whether it would have made a difference if

19   CSIS or the Solicitor General co-signed a letter

20   for the Syrian Military Intelligence or for the

21   Syrian Foreign Minister, whoever.

22   But a couple of other relevant

23   considerations that I think CSIS should have

24   brought before the Solicitor General in terms of

25   whether he should co-sign.

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 1                    One would be, "You know,
 2    Minister, this poor guy was illegally removed
 3    from the United States through whatever policy
 4    they had.  And you know what else, Minister, we
 5    have information that it was because of
 6    Canadian information that he was detained in
 7    the United States.  So, Minister, I think the
 8    Canadian government has some responsibility,
 9    quite apart from the human rights record, torture,
10    unbelievably poor living conditions, but it
11    was --"
12                    MS McISAAC:  I'm going to have to
13    object, Mr. Commissioner.  This is a quite unfair
14    characterization.  We do not know why the
15    Americans detained Mr. Arar.
16                    MR. WALDMAN:  Mr. Commissioner,
17    there is in evidence the letter that was addressed
18    from the Assistant Deputy Minister.
19                    THE COMMISSIONER:  I think it's
20    okay.  I think Mr. Cavalluzzo can answer.
21                    MR. WALDMAN:  I'm sorry.
22                    THE COMMISSIONER:  Go ahead, if
23    you would like to answer it, Mr. Cavalluzzo.
24                    MR. CAVALLUZZO:  Mr. Hooper,
25    let me tell you what evidence we do have from
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1   the Americans.

2   We have evidence from the second

3   highest person in the American government, at that

4   time his name was Colin Powell, Secretary of

5   State, who advised Minister Graham on December 1,

6   2003 that Mr. Arar would not have been on the

7   American radar screen if it wasn't for Canadians.

8   Did you know that?

9   MR. HOOPER: There was, I think,

10   considerable media reporting around that, so, yes,

11   I was aware of that.

12   MR. CAVALLUZZO: I come back then.

13   Don't you think a relevant consideration in terms

14   of CSIS's participation or the Solicitor General's

15   participation in this letter, are those two

16   important facts as well, illegally removed from

17   the United States, perhaps based on Canadian

18   information and Canadian interest, to a place that

19   no one would want to go to? Do you think that

20   might be a relevant consideration that should have

21   been brought before the Minister?

22   MR. HOOPER: Mr. Arar has been

23   known to have been in Syria for about seven months

24   to this point. There has been considerable media

25   reporting around his circumstances of arrest,

1   removal, and what he's confronting in Syria.

2   My understanding is that virtually

3   everybody in government knows the facts that

4   you're putting forward to me now.

5   The note that we put to our

6   Solicitor General was around the specific issue of

7   a letter that was under consideration to be sent

8   by the Government of Canada to the Government of

9   Syria, right? So ...

10   MR. CAVALLUZZO: Okay, okay. Now,

11   we're at June 5th, and on this day we've heard

12   evidence that you made a telephone call --

13   MR. HOOPER: Yes.

14   MR. CAVALLUZZO: -- to Ms

15   McCallion?

16   MR. HOOPER: Yes.

17   MR. CAVALLUZZO: Do you admit that

18   you made a telephone call?

19   MR. HOOPER: I acknowledge I made

20   a telephone call around that time. I don't have a

21   specific date, but June the 5th, I wouldn't argue

22   against.

23   MR. CAVALLUZZO: Do you have any

24   notes of that telephone call?

25   MR. HOOPER: No, I do not.

 1   MR. CAVALLUZZO: Do you have any

 2   record of that telephone call?

 3   MR. HOOPER: No.

 4   MR. CAVALLUZZO: Either from

 5   yourself or from your assistant?

 6   MR. HOOPER: No.

 7   MR. CAVALLUZZO: Okay. Now --

 8   okay. It's around this time. We've heard

 9   evidence yesterday that it was on or around June

10   5th.

11   Now, could you tell us why you

12   called Ms McCallion?

13   MR. HOOPER: There's a few

14   things -- I know what my agenda was in calling Ms

15   McCallion, and I had one, and there were basically

16   three points -- three or four points that needed

17   to be made, and I think it's relevant for you to

18   know that I didn't know Ms McCallion. I have no

19   recollection of having any previous interaction

20   with her. But before I made the phone call, I

21   know that she has ADM line responsibility for

22   consular affairs.

23   MR. CAVALLUZZO: Okay.

24   MR. HOOPER: It's also in the

25   context of the negotiations around the letter that

1   was being presented to the Minister, as we

2   understood it.

3   First point I wanted to make to

4   Ms McCallion, apart from telling her who I was and

5   what I did, was I wanted to make sure that she

6   understood where my Service was coming from when

7   it made the points that (a) we did not want our

8   Minister or we would prefer that our Minister did

9   not sign that letter, and why we wanted certain

10   language or certain things said the way we wanted

11   it.

12   My concern, coming back to that

13   point, was that I know that the officials involved

14   in that discussion -- I wouldn't call them

15   relatively junior, but they were mid-manager up to

16   the DG level, if Mr. Pardy was involved in those

17   discussions, as I'm sure he was. I wanted to make

18   sure that she was not under any misapprehension

19   whatsoever as to why we were coming from a

20   particular point of view.

21   That was important to me, and it

22   was important to me because of the second point I

23   wanted to make with her, and that came back to

24   Mr. Arar is not the last case that you and I are

25   going to have to talk about because there were, to

1   my mind, I won't specify the number, but --

2   MR. CAVALLUZZO: Eleven.

3   MR. HOOPER: There was a lot of

4   Canadians detained abroad that had some kind of

5   security intelligence linkage to them. A lot of

6   them dual nationals. So Mr. Arar was a complex

7   case. We had a number of others coming down the

8   pipe at us. And I wanted to assure, or assure

9   myself, that she was aware that she hadn't seen

10   the end of any of these.

11   The third was I wanted to make a

12   point that we had to work out a way, not just

13   myself and Ms McCallion, but the Government of

14   Canada had to have a process that worked better in

15   terms of engaging interested parties at the

16   appropriate times and at the appropriate levels.

17   So those were effectively the three points that I

18   needed to make with -- or I felt I needed to make

19   with Ms McCallion.

20   MR. CAVALLUZZO: Now, was there

21   any discussion at all about Arar?

22   MR. HOOPER: Only insofar as the

23   Arar case kind of being the platform for the

24   discussion. It wasn't in terms of, you know, how

25   are we going to manage Arar, it was, "Here's my

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 1        Service's point of view in providing advice

 2        relative to the letter that Mr. Graham was going

 3        to send over."

 4                    MR. CAVALLUZZO:  Now, why would

 5        you have called McCallion, and not who I refer to

 6        as Mr. Consular Affairs, Gar Pardy?

 7                    MR. HOOPER:  Actually, my first

 8        call wasn't to Mr. Pardy.  I tried to get a hold

 9        of Jim Wright, who was the ADM that I had more

10        regular interaction with.

11                    MR. CAVALLUZZO:  Right.

12                    MR. HOOPER:  And Mr. Wright was

13        not available.  I wanted to go through Jim,

14        Mr. Wright, in the first instance because I knew

15        he and I were on the same page.  I knew there was

16        no misunderstanding in Mr. Wright's mind as to

17        where the Service was coming from.

18                    My point was to have him do some

19        what I call missionary work with his colleagues

20        over at the Foreign Affairs department, to kind of

21        sell our case and make sure that people at senior

22        levels understood, if there was any

23        misunderstanding coming from lower levels, that we

24        didn't object to Mr. Arar coming back, that the

25        objections we had were around language used in the
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1   letter.

2   When he wasn't available, I

3   decided to do the missionary work myself.

4   MR. CAVALLUZZO: You still haven't

5   answered the question: Why wouldn't you call

6   Mr. Pardy who, of course, knows consular affairs

7   like no one else in the country, let alone the

8   government? Why didn't you call him?

9   MR. HOOPER: Ms McCallion would

10   have been my ADM counterpart over there, and she

11   had responsibility for the program so --

12   MR. CAVALLUZZO: Did you know that

13   Ms McCallion had very limited knowledge of this

14   issue?

15   MR. HOOPER: No, I didn't know

16   that. I understand that now. I perhaps made the

17   mistake of putting our bureaucratic governance

18   model over Foreign Affairs, but I presume the ADM

19   responsible for the program would be engaged.

20   MR. CAVALLUZZO: But you told us

21   before that you had known Pardy for a number of

22   years?

23   MR. HOOPER: Yes.

24   MR. CAVALLUZZO: And the evidence

25   from McCallion yesterday would appear to be that

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1          Pardy gave her a heads-up that you would be

2          calling her.  Do you know how Pardy got that

3          impression?

4                          MR. HOOPER:  I have no idea.

5                          MR. CAVALLUZZO:  You have no idea

6          how that -- did he suspect that you might call, or

7          is there --

8                          MR. HOOPER:  I don't know, because

9          I hadn't had a lot of direct interactions with

10         Mr. Pardy on the Arar case.  I don't recall if I

11         spoke to him once.  It certainly wouldn't have

12         been more than that.

13                          MR. CAVALLUZZO:  Now, how long did

14         the phone call last?

15                          MR. HOOPER:  I don't know.

16         It's -- I don't like to talk a lot on the phone.

17         Just knowing what I wanted to get out to Ms

18         McCallion, I would figure -- my estimation would

19         be around ten minutes.

20                          MR. CAVALLUZZO:  Okay.  Now, you

21         said that Mr. Arar would be the first of a trail

22         of possible cases that CSIS would have to deal

23         with.  I assume what you meant by that is that if

24         all of these guys -- I assume they're all guys.  I

25         don't know.  We'll look at that --
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 1                    MR. HOOPER:  Yeah.

 2                    MR. CAVALLUZZO:  -- all of these

 3        guys come back to Canada, that if they're threats

 4        to the security of Canada, then CSIS, under its

 5        statute, has to do whatever it has to to ensure

 6        that they aren't a threat to the security of

 7        Canada i.e., to conduct some kind of operation in

 8        respect of them.

 9                    Isn't that correct?

10                    MR. HOOPER:  That may have been a

11        feature of the conversation.  When I said,

12        indicated, to her that Mr. Arar's case would not

13        be the last, it was not that we would have to

14        manage, I meant we, Foreign Affairs, the RCMP, the

15        Government of Canada.  But I take your point.

16                    MR. CAVALLUZZO:  You take my

17        point.

18                    MR. HOOPER:  Yeah.

19                    MR. CAVALLUZZO:  And that is, from

20        her perspective, if I was sitting in her shoes,

21        what I would see, I would say, "You know what,

22        he's talking about a person power issue.  Like

23        every other department, their resources are being

24        depleted and lo and behold, they could have

25        another 11 guys back on their plate and they need
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 1          that like a hole in the head --"
 2                          MS McISAAC:  Commissioner, again
 3          I'm having some trouble here.  Ms McCallion
 4          testified yesterday as to what her side of the
 5          conversation was.  So I don't think it's fair for
 6          Mr. Cavalluzzo to now say, well, you can see how
 7          she could have taken this when, as I recall her
 8          evidence, she didn't take that from the
 9          conversation.
10                          MR. CAVALLUZZO:  Well, you know,
11          if you want me to put it another way, okay, I
12          think you understood where I was coming from, but
13          in any event --
14                          MR. HOOPER:  I know your point,
15          and I'd go back to your earlier comment, where I
16          think you said in the previous question CSIS will
17          do what CSIS has to do, and at the end of the day,
18          if we're confronted with 11 or 15 or 25 new
19          targets on the ground in Canada, we're going to do
20          what we have to do.  We might not like it --
21                          MR. CAVALLUZZO:  Absolutely.
22                          MR. HOOPER:  But we're going to do
23          what we have to do.
24                          MR. CAVALLUZZO:  You don't like it
25          for a number of reasons, there are political
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     1   considerations that we talked about. But you

     2   would also agree with me that there are resource

     3   issues.

     4   MR. HOOPER: There's always

     5   resource issues. Always.

     6   MR. CAVALLUZZO: But you've got 11

     7   added resource issues if these guys come back to

     8   Canada, right?

     9   MR. HOOPER: Absolutely.

    10   MR. CAVALLUZZO: Now, let's move

    11   on in terms of this conversation.

    12   You would also agree with me that

    13   one of the concerns that CSIS had in this

    14   situation was that if Arar returned to Canada and

    15   he had stated that "I was mistreated in Syria, I

    16   was tortured in Syria," or whatever, "I had a

    17   small prison cell in Syria," that that could

    18   contact on CSIS's mandate in respect of security

    19   certificate cases.

    20   Isn't that correct?

    21   MR. HOOPER: It's certainly a

    22   consideration. If he comes back and makes those

    23   allegations, it would make it very difficult for

    24   us to engage the full process considered under a

    25   certificate.

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 1                    MR. CAVALLUZZO:  That's right.

 2      Because, of course, what you're going to have is

 3      every time you try to ship somebody to Syria under

 4      a security certificate, they're going to raise the

 5      issue of mistreatment and torture and that's going

 6      to cause a problem for CSIS, and I assume that was

 7      discussed with McCallion as well --

 8                    MR. HOOPER:  No.

 9                    MR. CAVALLUZZO:  -- that

10      ramification down the line?

11                    MR. HOOPER:  No.

12                    MR. CAVALLUZZO:  You didn't

13      discuss that?

14                    MR. HOOPER:  No.

15                    MR. CAVALLUZZO:  But it is a

16      consideration in your mind?

17                    MR. HOOPER:  Absolutely.

18                    MR. CAVALLUZZO:  Now, the other

19      thing you said you wanted to discuss with her is

20      that there's a need for a mechanism in government

21      to ensure that in the future these kinds of cases

22      are better dealt with, presumably from a

23      coordination kind of basis, from a consultation

24      kind of basis.

25                    Is that fair?
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 1                    MR. HOOPER:  Yes.

 2                    MR. CAVALLUZZO:  Okay.  Were you

 3      aware that Gar Pardy had prepared such a document?

 4                    MR. HOOPER:  I wasn't, but I think

 5      that speaks to the acute pain we were all feeling.

 6                    MR. CAVALLUZZO:  Let me just show

 7      you a document, which is dated April 7th of 2003.

 8                    THE COMMISSIONER:  238.

 9                    EXHIBIT NO. 238:  Memorandum

10                         prepared by Mr. Pardy,

11                         co-signed by the Deputy

12                         Minister of Foreign Affairs,

13                         regarding "Improving

14                         coordination across

15                         government on

16                         security-related consular

17                         cases"

18                    MR. CAVALLUZZO:  Now, this is a

19      memorandum that was prepared by Mr. Pardy,

20      co-signed by the Deputy Minister of Foreign

21      Affairs, and the issue is "Improving coordination

22      across government on security-related consular

23      cases."

24                    And, one, the background is 9/11

25      and so on, and I won't read that to you, but it
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 1        goes on in terms of paragraph 3 in

 2        "Considerations."  It says that:

 3                          "You will recall on February

 4                          24th officials briefed you

 5                          and several members of your

 6                          staff on this matter and

 7                          distributed a deck detailing

 8                          the background and

 9                          initiatives the department

10                          would be undertaking.  Since

11                          then we have consulted with

12                          the Director of CSIS, the

13                          Deputy Solicitor General, the

14                          Commissioner of the RCMP, and

15                          senior officials at PCO and

16                          Justice.  There was a

17                          consensus on the need for

18                          closer consultation and

19                          cooperation to achieve a more

20                          coherent systematic approach

21                          to security-related consular

22                          cases.  It was further agreed

23                          that when such cases arise in

24                          the future, when necessary

25                          deputies will consult with
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 1                          each other, exchange

 2                          information ..."  (As read)

 3                     And so on and so forth.

 4                     I guess I'm asking you:  At the

 5      point in time when you made the telephone call to

 6      McCallion, were you aware that Mr. Pardy had

 7      already addressed the issues that you wanted to

 8      deal with McCallion?

 9                     MR. HOOPER:  I had a vague recall.

10      There's a reference here to a meeting of deputies,

11      and I do recall, in general terms, a deck having

12      been presented.

13                     So I know the issues had been

14      floated.  I personally didn't see any tangible

15      difference resulting as a consequence of those

16      February 24th discussions.

17                     MR. CAVALLUZZO:  Did McCallion say

18      to you, "Well, you know what, Jack?  Gar Pardy has

19      already produced a memorandum on this"?

20                     MR. HOOPER:  I don't recall her

21      saying that.

22                     MR. CAVALLUZZO:  She probably

23      didn't know about it.  She clearly didn't say

24      anything about it?

25                     MR. HOOPER:  No.
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 1                    MR. CAVALLUZZO:  Okay.  If you go

 2          to the page behind -- it's not numbered, but maybe

 3          if we look at the bottom, 4 of 7, it's got

 4          supplemental information on security-related

 5          consular cases, and you'll see it says:

 6                               "At this time there are 11

 7                               cases of Canadian citizens

 8                               detained abroad in connection

 9                               with the war on terrorism or

10                               the war in Afghanistan.  And

11                               these include:  One in

12                               Algeria, two in Egypt, one in

13                               France, one in Israel, one in

14                               Libya, two in Syria, one in

15                               the United States and one in

16                               the United

17                               States/Guantanamo."  (As

18                               read)

19                    So at the point in time when you

20          called McCallion, we're talking about 11 Canadians

21          detainees abroad related to the war on terrorism,

22          and Mr. Arar is really the first.  As you put it,

23          the first of many possible problems?

24                    MR. HOOPER:  Yes.

25                    MR. CAVALLUZZO:  Now, in light of
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 1          your conversation with McCallion, is it fair to

 2          say that the other participant to this

 3          conversation would have left this conversation

 4          thinking that these cases could pose a resource

 5          problem for CSIS?

 6                         MR. HOOPER:  That wasn't the point

 7          of my discussion.

 8                         MR. CAVALLUZZO:  That's not the

 9          question.  Is it fair to say that they could have

10          walked away with that impression?

11                         MR. HOOPER:  Sure.

12                         MR. CAVALLUZZO:  Okay.  Is it also

13          fair to say that the other participant to this

14          conversation may have gotten the message that CSIS

15          did not want Arar back, for all of the reasons

16          we've discussed to this point in time -- listen to

17          the question.  The political considerations that

18          we talked about, Khadr effect, U.S. resolve issue,

19          resource problems, and whatever other reasons that

20          CSIS may not want him back?  Do you think that

21          that, even though it wasn't said expressly, that

22          it's possible that a participant walking away from

23          that said, "You know what?  I get the clear

24          impression that CSIS doesn't want this guy back"?

25                         MR. HOOPER:  No, to the contrary.
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 1          I mean, one of the very clear messages that I

 2     wanted to get to Ms McCallion at the outset of our

 3     conversation was, (a) we never told the Syrian

 4     that we didn't want him back, and (b) we accept

 5     the position of the Government of Canada that he's

 6     got to come back.  That's it.  I can't take any

 7     other position, Mr. Cavalluzzo.

 8               MR. CAVALLUZZO:  Let me put it to

 9     you, then.  You're saying that this

10     miscommunication problem was discussed with

11     McCallion?

12               MR. HOOPER:  I think it comes back

13     to the consultations around the language that was

14     to be used in the letter, and there were various

15     iterations of -- there was basically one line in

16     there that had various iterations, and I think

17     there was some -- certainly there was a lot of

18     speculation around January that we, nudge-nudged,

19     wink-winked at somebody has said, "We don't want

20     him back."  And I needed her to know that was

21     never our position.  Never.  (a) we never said we

22     didn't want him back, (b) we never said we didn't

23     want a letter to go.  Our concern was the accuracy

24     of the statements contained in the letter.

25               MR. CAVALLUZZO:  But, Mr. Hooper,
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 1   you would agree with me that you don't have to say

 2   you don't want him back. If you're only bringing

 3   forward to your Minister negative considerations,

 4   without bringing forward all of those positive

 5   aspects that I reviewed with you, you would agree

 6   with that?

 7   MR. HOOPER: We've -- I guess

 8   we've had that discussion. But as it relates to

 9   the telephone call with Ms McCallion, I don't

10   think she had any way of knowing what went forward

11   by way of advice to our Minister apart from the

12   fact that our position had always been a

13   preference for the Minister of Foreign Affairs to

14   send a letter and that the language in the letter

15   be accurate.

16   MR. CAVALLUZZO: And you probably

17   were of the view that the letter was a done deal?

18   MR. HOOPER: As far as I was

19   concerned --

20   MR. CAVALLUZZO: As far as the

21   bureaucracy is concerned, it's gone too far down

22   the line.

23   MR. HOOPER: Just -- the

24   negotiations around the language, by my reckoning,

25   would have finished sometime around the middle of

 1   May.

 2   MR. CAVALLUZZO: Right.

 3   MR. HOOPER: If I'm phoning

 4   Kathryn McCallion on June the 5th, my

 5   conclusion -- and it's hard for me to cast my mind

 6   back there, because I wasn't concerned about where

 7   the letter was.

 8   MR. CAVALLUZZO: But don't you --

 9   MR. HOOPER: I have to presume it

10   was on, it was done.

11   MR. CAVALLUZZO: But don't you

12   agree with me that at this point in time that you

13   thought that consular affairs had gone too far in

14   the case of Arar?

15   MR. HOOPER: Too far in what

16   respect?

17   MR. CAVALLUZZO: Asserting his

18   case, asserting his case, getting the politicians

19   involved?

20   MR. HOOPER: I don't think too

21   far. I think out ahead of the rest of government

22   might be a more apt description, and it comes back

23   to coordination.

24   We have a bunch of departments and

25   agencies of government that have different vested

 1   interests in the Arar case, and I think absent

 2   strong, high-level central direction, everybody

 3   was proceeding down parallel tracks and they

 4   weren't intersecting enough.

 5   And I think from where I sat, a

 6   more optimal situation would have been clear

 7   direction, "You do this," "You do that," "You guys

 8   are responsible for that." That was, you know, my

 9   discontent with the way the case had been managed

10   to that point.

11   MR. CAVALLUZZO: So you were

12   dissatisfied with the way consular affairs had

13   pursued its mandate in the sense that, as you put

14   it, they had gotten too far ahead of the rest of

15   government?

16   MR. HOOPER: By that I mean

17   probably the consultative mechanisms that should

18   have applied to the case, when you have different

19   departments and agencies interested, ought to be

20   engaged more frequently at the right times.

21   MR. CAVALLUZZO: Right.

22   MR. HOOPER: The first point of

23   discontent comes back to our not even knowing

24   about Mr. Arar's detention until he had been in

25   New York for six days. From my point, I don't

1   know that that's an optimal scenario.

2   MR. CAVALLUZZO: It certainly

3   isn't. And of course DFAIT found out about it

4   through a phone call on, I guess, September 29th

5   or October 1st or whatever. The RCMP knew before

6   the guy landed. Now, obviously the RCMP did not

7   notify CSIS of this. But in any event, that's --

8   you know, that's another problem.

9   Anyway, let us then move on from

10   the phone call. We understand that you had a

11   briefing on June 13th through Mr. Peter Harder,

12   who became the Deputy Minister of DFAIT?

13   MR. HOOPER: Yes.

14   MR. CAVALLUZZO: And in terms of

15   this letter that was going to go, what happens,

16   and if I can just tell you what the evidence is

17   and then ask you a question about it. What

18   happens is that Mr. Pardy sends the letter up to

19   the Minister's office, and the Minister's office

20   says, "Pardy, the language isn't strong enough.

21   What's this 'no Canadian impediment'? That and a

22   dime won't get you cup of coffee in Damascus."

23   MS McISAAC: Mr. Commissioner,

24   he's editorializing the question, and that is

25   unfair to the witness, and it's unfair to the

1   process, and it's unhelpful, both to you and to

2   the public.

3   An e-mail was sent back with very

4   specific wording. What the discussions in the

5   Minister's office were that led to that e-mail,

6   how they characterize it, is not a matter before

7   you. Mr. Cavalluzzo is simply editorializing and

8   speculating.

9   THE COMMISSIONER: As I recall the

10   evidence, it was that they thought the language

11   wasn't robust enough. I know somebody used the

12   word "robust."

13   MS McISAAC: That, "and a dime

14   won't get you a cup of coffee," and all that sort

15   of stuff is completely unhelpful and unnecessary.

16   MR. CAVALLUZZO: That's just

17   Mr. Cavalluzzo's way of asking a question. I

18   withdraw the coffee point, and if I offended you,

19   Mr. Hooper, I apologize.

20   MR. HOOPER: No need to apologize.

21   I'm hard to offend.

22   MR. CAVALLUZZO: So am I.

23   Now, what happens is that there is

24   a process that goes on. The Minister meets

25   Dr. Mazigh, who, as you know, is Maher Arar's

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 1        wife, there's a meeting, and then when the letter

 2        goes to the Minister's office, the Minister's

 3        office goes back to Pardy and says the language is

 4        not strong enough -- robust enough, excuse me, not

 5        robust enough.  And they say why don't you try the

 6        language of: "There is no evidence that Mr. Arar

 7        is engaged in terrorist activities," words to that

 8        effect.  And the Minister's office said, "Could

 9        you please check this out with the RCMP, CSIS, and

10        the Solicitor General's Department?"

11                        And what happened there is that

12        wording was worked out between CSIS and the RCMP,

13        and just so I get the exact wording for you, let

14        me refer to the exhibit.

15                        Just let me read it to you.  This

16        is the language that was proposed from the

17        Minister's office:

18                                "I assure you that there is

19                                no evidence he is involved in

20                                terrorist activity, nor is

21                                there any Canadian government

22                                impediment to Mr. Arar's

23                                return to Canada."  (As read)

24                        So that's the language that was in

25        play in respect of CSIS and the RCMP.
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 1                        And then language was worked out,

 2        and this is sent to Gar from Scott Heatherington.

 3        Do you know who he is?

 4                        MR. HOOPER:  Yes.

 5                        MR. CAVALLUZZO:  And it says:

 6                             "Gar, you will recall our

 7                             meeting of May 8 and 12.  The

 8                             situation has not changed

 9                             since that time and as a

10                             result the RCMP and CSIS have

11                             concerns with the wording

12                             proposed by some of the

13                             Minister's advisors for your

14                             draft letter.  Both the Force

15                             and the Service agree that

16                             the following would be

17                             accurate:  'Mr. Arar is

18                             currently the subject of a

19                             national security

20                             investigation in Canada.

21                             Although there is not

22                             sufficient evidence at this

23                             time to warrant Criminal Code

24                             charges, he remains a subject

25                             of interest.  There is no
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1                        Canadian government

2                        impediment to Mr. Arar's

3                        return to Canada.'"  (As

4                        read)

5                   Now, did you have any

6    participation in coming up with that language?

7                   MR. HOOPER:  No, sir.

8                   MR. CAVALLUZZO:  You would agree

9    with me that if General Khalil saw that language,

10   that Mr. Arar would still be in Syria?

11                  MR. HOOPER:  That's hard for me

12   to --

13                  MR. CAVALLUZZO:  They're tough

14   boys, as you said.

15                  MR. HOOPER:  Yeah, and it's hard

16   for me to know what goes through their minds at

17   any given time, so I really can't comment.

18                  MR. CAVALLUZZO:  But you would

19   agree with me that it really wouldn't be helpful

20   language to get Mr. Arar returned to Canada?

21                  MR. HOOPER:  There's one of two

22   ways -- this would be highly speculative, so I

23   perhaps shouldn't answer.

24   --- Pause

25                  MR. CAVALLUZZO:  Now I would like
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 1   to just refer finally, before we move on in this

 2   area, to Mr. Pardy's evidence in public.

 3   Mr. Pardy's evidence was really threefold: First,

 4   that language was not helpful, was not helpful --

 5   MR. HOOPER: Which language? The

 6   end language?

 7   MR. CAVALLUZZO: The "subject to

 8   national security investigation."

 9   MR. HOOPER: Okay.

10   MR. CAVALLUZZO: That language.

11   First of all, he said, it wouldn't

12   be helpful in getting his return to Canada.

13   Secondly, he said, by this time

14   RCMP and CSIS had hardened their position, and he

15   said the reason why -- one of the reasons, in his

16   view, why they hardened their position is because

17   of all the media attention that Mr. Arar's case

18   was getting, and I give you the opportunity to

19   comment on his views.

20   MR. HOOPER: First of all, I

21   wouldn't characterize our position as having

22   hardened. If trying to ensure that the language

23   that does go over is accurate, if that constitutes

24   hardening that's -- I just can't agree with that.

25   In terms of the media attention, I

1   can't really situate what was going on around that

2   time, but I do recall that virtually from the time

3   that Mr. Arar was found in Syria, found to be in

4   Syria, the profile that it had in the media was

5   high, so I don't know, to my mind, that I can make

6   a distinction between the quality of the media

7   attention the case was receiving around that time

8   versus, say, January of 2003. So I don't know

9   that I can agree with any of those statements.

10   MR. CAVALLUZZO: Now, did you

11   become aware that the Prime Minister was going to

12   get involved in the Arar situation by sending an

13   envoy over to Damascus with a Prime Ministerial

14   letter in July?

15   MR. HOOPER: No, I was not aware

16   of that.

17   MR. CAVALLUZZO: You weren't aware

18   of it?

19   MR. HOOPER: Not during July, no,

20   or not leading up to that.

21   MR. CAVALLUZZO: So that no one

22   sought CSIS's advice as to whether that was a good

23   idea?

24   MR. HOOPER: Not to my knowledge.

25   MR. CAVALLUZZO: Now, I'd like to

1   then move on. Maybe just one final question

2   relating to the phone call, and that is that you

3   raise, in my view, a very important policy issue,

4   and that is the conflicting -- perhaps conflicting

5   mandates between RCMP and perhaps CSIS on the one

6   hand, DFAIT on the other hand, in terms of

7   consular access rights that Canadian detainees

8   have.

9   I think you would agree with me

10   that how Canada approaches that issue, taking into

11   account human rights, on the one hand, national

12   security concerns on the other hand, is a policy

13   decision --

14   MR. HOOPER: Yes.

15   MR. CAVALLUZZO: -- you would

16   agree with that?

17   MR. HOOPER: Yes.

18   MR. CAVALLUZZO: I think you would

19   also agree with me it's such an important policy

20   decision that that decision should be made by

21   politicians who are accountable to the people

22   after a full public debate?

23   MR. HOOPER: Yes.

24   MR. CAVALLUZZO: Thank you. I

25   wonder if you might give the witness exhibit

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1   P-117, volume 1, unless you have it?

2   MR. HOOPER: I have it.

3   --- Pause

4   MR. CAVALLUZZO: And I'd ask you,

5   Mr. Hooper, to refer to tab 23. We are still in

6   the month of June of '03. And you've seen this,

7   no doubt, before. This is a memorandum, a draft

8   memorandum, of Mr. Gould, who testified yesterday

9   as to this memorandum. Once again, it's a draft

10   memorandum that was only shared with a few of his

11   colleagues, but I'd like to read a portion of it

12   to you, and that is the last paragraph on the

13   first page. It states:

14   "There is not sufficient

15   evidence against Arar for him

16   to be charged with anything

17   in Canada. CSIS has made it

18   clear to the Department that

19   they would prefer to have him

20   remain in Syria, rather than

21   return to Canada."

22   And then it goes on.

23   Now, Mr. Gould testified that he

24   didn't talk to you; however, he said he made this

25   statement in writing as a result of his impression

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1   of the telephone call between you and McCallion,

2   and what he was told about that telephone call, as

3   well as conversations he had with CSIS people at

4   meetings, as well as in-camera evidence that he

5   could not refer to publicly yesterday.

6   And I'm wondering, does that

7   surprise you, that Mr. Gould would get the

8   impression from discussions with CSIS people that

9   the preferred option for CSIS is that Mr. Arar

10   remain in Syria?

11   MR. HOOPER: Yes.

12   MR. CAVALLUZZO: That surprises

13   you?

14   MR. HOOPER: Yes.

15   MR. CAVALLUZZO: Now, once again,

16   if we look at all the considerations, we've talked

17   about, the Khadr effect, the American resolve

18   effect, resource issues, don't you think that

19   that's discussed that someone walking away would

20   say maybe legitimate? They've got their mandate.

21   But you know what? It appears that CSIS prefers

22   that this guy remains in Syria. Do you think

23   that's reasonable?

24   MR. HOOPER: I can say

25   categorically, that this was never the position of

1   the Canadian Security Intelligence Service.

2   Never. So how Mr. Gould arrived at this

3   conclusion, I don't know.

4   MR. CAVALLUZZO: Well, perhaps he

5   arrived at that position from listening to CSIS

6   people that said, "I just read that briefing note

7   to the Solicitor General, and this is what we've

8   told him. We've told him American resolve, we've

9   got to be concerned with the Americans if this guy

10   comes back, and you know what happened four or

11   five years ago with Mr. Khadr, we get the guy back

12   and lo, four or five months later, we find out

13   he's the second in command to Osama bin Laden. We

14   can't have that happen. We would be embarrassed,

15   we would be embarrassed in the international

16   community with respect to the war against

17   terrorism."

18   So those are the kinds of

19   considerations that may have been discussed and

20   someone walking away from the table said, "well,

21   you know what, I think that they would prefer that

22   he stay there?"

23   MR. HOOPER: Do you remember,

24   Mr. Cavalluzzo, when I started talking around my

25   agenda for calling Ms McCallion, it's for

 1   precisely those reasons. Somebody coming away

 2   from a discussion with that conclusion and from

 3   that imputing an institutional position on the

 4   part of the Canadian Security Intelligence Service

 5   I think is a huge leap, and an unfair leap, and

 6   part of my conversation with Ms McCallion was to

 7   ensure that she understood where the Service was

 8   coming from. Not from discussion around the pit

 9   when people are having coffee, but

10   institutionally, this is where we're coming from.

11   MR. CAVALLUZZO: That indicates to

12   me, Mr. Hooper, that you were attempting to

13   correct an impression that CSIS may not want

14   Mr. Arar back. Is that what you're saying?

15   That's why you called, and one of the reasons why

16   you called was that you were trying to correct

17   that impression?

18   MR. HOOPER: There's a whole --

19   well, there's a number of things going on --

20   MR. CAVALLUZZO: Before you get

21   into the number, was that one of them?

22   MR. HOOPER: Any mistaken

23   impression?

24   MR. CAVALLUZZO: Yes.

25   MR. HOOPER: I was concerned that

1 coming out of the negotiations around the language

2 of the proposed letter -- I've been in discussions

3 like that before on a whole bunch of issues, and I

4 know the things that get said, and how they get

5 said in those meetings. And I had a concern that

6 there may have been some inaccuracies put up out

7 of briefings because the discussions were -- they

8 were difficult.

9   MR. CAVALLUZZO: And I guess I

10 come back to what I said earlier, and this is the

11 last time I'm going to ask you about it, and that

12 is, it seems to me that the best way -- the best

13 way in this instance of resolving that

14 misimpression, misunderstanding and so on, is for

15 CSIS to pick up the phone and call Khalil and say,

16 "General, you got it wrong." And you never did

17 that?

18   MR. HOOPER: If I conclude that

19 there is any misunderstanding on the part of the

20 Syrians. I was more concerned that there was

21 misunderstanding in the messaging that was going

22 up to Ms McCallion from people at middle levels of

23 the Department of Foreign Affairs. That's where

24 the misunderstanding might have resided in my

25 mind.

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 1                    MR. CAVALLUZZO:  Is that why you

 2       didn't call Mr. Pardy?

 3                    MR. HOOPER:  No.

 4                    MR. CAVALLUZZO:  Did you think

 5       that Mr. Pardy had done a number and you were

 6       going to go around Mr. Pardy and go to McCallion?

 7                    MR. HOOPER:  No, not at all.  I've

 8       known Gar, Mr. Pardy, for a long time.  I wanted

 9       to talk to a colleague at the ADM level, not to

10       Mr. Pardy.  I wanted to talk to his boss.

11                    MR. CAVALLUZZO:  Why?  Why would

12       you want to talk to Pardy's boss?

13                    MR. HOOPER:  Because it comes back

14       to the point, Mr. Cavalluzzo, when we're talking

15       about strong, high-level central coordination of

16       these cases, it's not Mr. Pardy that's going to

17       apply that.  It's going to be ADMs providing

18       advice to DMs.

19                    MR. CAVALLUZZO:  You see, the

20       problem with that, at least I'm having trouble

21       understanding, is that here we have -- and I'm not

22       being disrespectful.  Here we have Mr. -- in fact,

23       I think it was Bill Graham, the Minister at the

24       time, call him Mr. Consular Affairs.  Here we have

25       Mr. Consular Affairs.  He's the guy that's written
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1   the book on most things relating to consular

2   affairs, including the very issue you wanted to

3   raise with McCallion on more coordination across

4   government. You've known the guy for many years.

5   You've never spoken to McCallion before. You have

6   no idea what she knows about it. And I just have

7   that question in my mind: Well, why would he do

8   that?

9   MR. HOOPER: I would take offence,

10 if you put the shoe on the other foot, if Ms

11 McCallion picked up the phone and phoned one of my

12 Directors General. She has a level of interaction

13 that's at my level. Same with me.

14   MR. CAVALLUZZO: Surely we're not

15 coming down to a bureaucratic issue --

16   MR. HOOPER: That's where the

17 issue was. So, yes, we are.

18   MR. CAVALLUZZO: We are? We've

19 got a man that's been in Syria for nine months

20 now, subject to inhumane conditions, and we're

21 worried about dealing across a bureaucratic line?

22 Is that what we're saying?

23   MR. HOOPER: No. I'm not saying,

24 and I think it would be wrong to conclude, that

25 we've reduced Mr. Arar's case to a bureaucratic

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 1     exercise.
 2                    I think a lot of us thought we
 3     could do better and there had to be a way of doing
 4     better, and I chose to engage the person at
 5     Foreign Affairs that had ADM responsibility and
 6     could have some influence in effecting policy.
 7                    MR. CAVALLUZZO:  I have,
 8     Mr. Hooper, a couple of final questions, and this
 9     can be very quick.
10                    As you know, in the fall of '03,
11     there was an alleged leak to CTV News on
12     October 24th; there was another alleged leak to
13     the Ottawa Citizen on or about November 8th of
14     2003; and I understand, in accordance with its
15     policies, that CSIS conducted an internal review
16     in order to assess, first of all, the damage the
17     leaks may have caused as well as trying to
18     determine what happened?
19                    Is that correct?
20                    MR. HOOPER:  That's correct.
21                    MR. CAVALLUZZO:  Okay.  And I
22     understand that as far as those administrative --
23     excuse me, administrative reviews are concerned,
24     that that was overtaken by criminal charges laid
25     in respect of particularly the November 8th leak?
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1   MR. HOOPER: I think the criminal

2   investigation kind of overtook the administrative

3   review that was being conducted.

4   MR. CAVALLUZZO: Okay.

5   Commissioner, it's almost

6   lunchtime. I think I've completed my direct

7   examination, subject to one question concerning

8   leaks that I would like to speak to my friend

9   about.

10   THE COMMISSIONER: Okay.

11   MR. CAVALLUZZO: And perhaps I

12   have another question for Mr. Hooper after the

13   break.

14   THE COMMISSIONER: Okay. Should

15   we take --

16   MR. CAVALLUZZO: I think it would

17   be appropriate to take the break at this time.

18   THE COMMISSIONER: -- the lunch

19   break? For an hour and fifteen is okay for today?

20   MS McISAAC: Just one housekeeping

21   matter. Sorry. I don't think we marked the April

22   memorandum as an exhibit.

23   THE COMMISSIONER: Oh, thank you.

24   MR. CAVALLUZZO: Thank you.

25   THE COMMISSIONER: What number

1   would that be then, Monsieur le Greffier?

2   THE REGISTRAR: 239.

3   THE COMMISSIONER: 239.

4   --- Off microphone / Sans microphone

5   THE COMMISSIONER: Oh, it was?

6   --- Off microphone / Sans microphone

7   THE COMMISSIONER: I have this one

8   as 238. Is that the same one?

9   MS McISAAC: I don't recall -- I'm

10   sorry. I missed when it was marked.

11   THE COMMISSIONER: Okay? So we

12   will break till a quarter to two.

13   THE REGISTRAR: Please stand.

14   --- Upon recessing at 12:23 p.m. /

15   Suspension à 12 h 43

16   --- Upon resuming at 1:50 p.m. /

17   Reprise à 13 h 50

18   THE REGISTRAR: Please be seated.

19   MR. CAVALLUZZO: Mr. Commissioner,

20   just in closing, I've spoken to my friend

21   Ms McIsaac, and it relates to an allegation or a

22   complaint made by Mr. Waldman regarding a Toronto

23   Star article written by James Travers, and was

24   published in The Toronto Star I think on June 9th

25   of 2005. Mr. Waldman alleged that there had been

          1   a breach of security as a result of the press

          2   report.

          3   As a result of his complaint, I

          4   asked CSIS to conduct an inquiry in respect of

          5   that allegation, and yesterday I received a letter

          6   from CSIS, from the Assistant Director Corporate,

          7   who advises after a review of the matter that CSIS

          8   stated that there has been a breach of security.

          9   However --

         10   THE COMMISSIONER: A leak of

         11   confidential information?

         12   MR. CAVALLUZZO: Yes, that's

         13   correct. And as a result, the view is that

         14   because the information is such that hundreds of

         15   people would have access to that information, that

         16   an investigation into it would not be feasible

         17   because we would be dealing with hundreds of

         18   people, hundreds of interviews, and as a result of

         19   resource issues and so on, it was felt not

         20   practical to proceed with that investigation.

         21   I will file that letter with the

         22   Commission as an exhibit. I do not have it with

         23   me today, but I will forward a copy to my friend.

         24   Thank you.

         25   THE COMMISSIONER: Thank you,

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1   Mr. Cavalluzzo.

2   Mr. Waldman?

3   MR. WALDMAN: That was one area I

4   was going to cover, so thank you. That shortens

5   my cross-examination a little bit.

6   THE COMMISSIONER: How much?

7   --- Laughter / Rires

8   THE COMMISSIONER: How long do you

9   expect to be?

10   MR. WALDMAN: I don't know. I'm

11   not even going to try and guess.

12   THE COMMISSIONER: Well, no --

13   MR. WALDMAN: A few hours.

14   THE COMMISSIONER: I beg your

15   pardon?

16   MR. WALDMAN: A few hours.

17   THE COMMISSIONER: You are going

18   to be two hours?

19   MR. WALDMAN: A few hours, yes.

20   THE COMMISSIONER: Well...

21   MR. WALDMAN: Mr. Cavalluzzo

22   usually covers almost all of the areas that I want

23   to cover but today he left quite a few, so I think

24   I will be a bit. I don't think there is anything

25   I'm going to cover that isn't relevant.

1   THE COMMISSIONER: Okay.

2   MR. WALDMAN: We will see.

3 EXAMINATION

4   MR. WALDMAN: I just want to start

5 with some questions about the period when the file

6 was transferred.

7   We know from the CSIS summary that

8 is public that it was about a month or within a

9 month of September 11th that the CSIS files were

10 transferred to the RCMP and they started the

11 OCanada and A-OCANADA investigations?

12   MR. HOOPER: That's correct.

13   MR. WALDMAN: And we know from

14 other information that at least with respect to

15 the A-OCANADA investigations, now on the public

16 record, that there were two targets, Mr. Almalki

17 and Mr. El Maati, and that Mr. Arar was not a

18 target at that time?

19   MR. HOOPER: I won't go into

20 public testimony around who was or was not a

21 target, if the inference is that they were

22 targeted by our Service.

23   MR. WALDMAN: Well, I think the

24 evidence was that the -- at least the documents

25 suggested that they were targets and they were

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 1    transferred from CSIS to the RCMP.

 2                        MR. HOOPER:  That's correct.

 3                        MR. WALDMAN:  Right.  And the

 4    evidence was that Mr. Arar was not a target.

 5                        MR. HOOPER:  Do you have -- I'm

 6    sorry.  Do you have a document that you are

 7    referring to there, sir?

 8                        MR. WALDMAN:  Well, you just said

 9    in evidence that when you went to Syria, you told

10    the Syrians Mr. Arar wasn't a target and he wasn't

11    a priority?  Isn't that what you said just a few

12    minutes ago?

13                        MR. HOOPER:  I think we said that

14    Mr. Arar was known to our Service.  Perhaps if

15    you --

16                        MR. WALDMAN:  Well, if I'm not

17    mistaken, this morning you said Mr. Arar was not a

18    target, nor a priority.  And there are documents

19    to that effect as well.

20                        MR. HOOPER:  Perhaps I'm

21    misunderstanding the question.

22                        MS McISAAC:  Mr. Commissioner, if

23    I could just put some parameters around what my

24    understanding is we are prepared to have

25    Mr. Hooper say.
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           1   Mr. Hooper is prepared to say, as

           2   he just did, that Mr. Arar was known to the

           3   Service, but he is not going into any details as

           4   to whether Mr. Arar, or any other individual, was

           5   or was not a target of the Service, either before

           6   September, after September, or at any period of

           7   time. Those are matters we are simply not

           8   prepared to confirm or deny or give any further

           9   information on in the public record.

          10   THE COMMISSIONER: Thank you.

          11   MR. WALDMAN: I guess I'm just a

          12   bit surprised because my understanding was that

          13   Mr. Arar was not known to the Service until

          14   October 12th, when he was seen at the Mango Cafe.

          15   You are not prepared to confirm or

          16   deny that. Is that the position?

          17   MR. HOOPER: I won't make any

          18   comment on any meeting at any Mango Cafe, sir.

          19   MR. WALDMAN: Well, let's go on

          20   then and deal with -- it gets a bit frustrating

          21   trying to ask questions when everything is "I

          22   can't answer that", but we will try our best.

          23   So we know that the information

          24   was transferred, and at least as far as the RCMP

          25   has told us, they have told us that the two main

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 1       targets were Mr. Almalki and Mr. El Maati.  That's

 2       on the public record.  Whether they were your

 3       targets or not, I don't care.

 4                    And we also know that files were

 5       transferred, and that the first time the RCMP

 6       became aware Mr. Arar was on October 12th.  That's

 7       also on the public record.  Okay.

 8                    So I know that you are not going

 9       to tell us anything about the pre-transfer period

10       in terms of your investigation, because it will

11       all be subject to an NSC claim, but I want to go

12       back to the evidence you gave last year --

13                    MR. HOOPER:  Yes.

14                    MR. WALDMAN:   -- about the

15       difference between an intelligence, CSIS work and

16       the RCMP work.

17                    MR. HOOPER:  Yes.

18                    MR. WALDMAN:  And I just wanted to

19       ascertain whether -- I'm going to try and

20       summarize -- I read your evidence.  If you

21       disagree with what I'm saying, then you will let

22       me know; right?

23                    CSIS gathers intelligence for the

24       purpose of advising its partners; right?

25                    MR. HOOPER:  Correct.  Advising
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1   government.

2   MR. WALDMAN: The different

3   partners in government?

4   MR. HOOPER: Yes.

5   MR. WALDMAN: And the RCMP gathers

6   intelligence mostly for the purposes of gathering

7   evidence for a criminal prosecution?

8   MR. HOOPER: Correct.

9   MR. WALDMAN: And generally

10   speaking CSIS gets involved much earlier in the

11   game, and the RCMP will get involved later on when

12   it's moving towards prosecution and there is some

13   overlap.

14   Is that a fair --

15   MR. HOOPER: That's typically the

16   case, and I recall that being my evidence.

17   MR. WALDMAN: So in the period up

18   until the transfer of the information by the RCMP,

19   the status of the file was an

20   intelligence-gathering operation?

21   MR. HOOPER: That's correct.

22   MR. WALDMAN: So up until 9/11,

23   the view of CSIS was that this was an intelligence

24   operation; correct?

25   MR. HOOPER: Correct.

 1   MR. WALDMAN: There was no talk of

 2   transferring the files to the RCMP prior to 9/11;

 3   correct?

 4   MR. HOOPER: That's correct.

 5   MR. WALDMAN: Is it not also

 6   correct that it was only after 9/11 that the

 7   decision was made to transfer these files to the

 8   RCMP?

 9   MR. HOOPER: That's correct.

10   MR. WALDMAN: And is it also true

11   that the decision to transfer the files was made

12   in the aftermath of 9/11, as a result of 9/11 and

13   the upheaval that was caused by that?

14   MR. HOOPER: That's largely

15   correct, yes.

16   MR. WALDMAN: So that it's fair to

17   say that the decision to transfer the files was

18   made in the context of the very strong post-9/11

19   period?

20   MR. HOOPER: The post-9/11 period

21   and the threat environment at the time, yes.

22   MR. WALDMAN: Right. And there

23   was no decision prior to 9/11 to transfer these

24   files; correct?

25   MR. HOOPER: That's correct.

 1   MR. WALDMAN: Or discussion of

 2   that?

 3   MR. HOOPER: Discussion of the

 4   transfer of files?

 5   MR. WALDMAN: Of these files.

 6   MR. HOOPER: No, no.

 7   MR. WALDMAN: And we know that the

 8   threshold for intelligence is lower than criminal

 9   investigation, or you told us that?

10   MR. HOOPER: Yes.

11   MR. WALDMAN: And we know that

12   once the file was transferred the RCMP created

13   A-OCANADA for the purposes of gathering evidence

14   for criminal prosecution; correct?

15   MR. HOOPER: As it relates

16   specifically to A-OCANADA. You will recall that

17   O-Canada was a precursor to A-OCANADA.

18   MR. WALDMAN: I only care

19   A-OCANADA. A-OCANADA was formed, and its purpose

20   was to gather evidence. The RCMP has told us

21   their two main targets were Mr. Almalki and Mr. El

22   Maati. You don't have to comment on that.

23   The RCMP has also told us that

24   they didn't know Mr. Arar at all until they saw

25   him at the Mango Cafe.

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 1                      MR. HOOPER:  Fine.

 2                      MR. WALDMAN:  We also know that a

 3     great deal of investigative resources have been

 4     expended on the A-OCANADA investigation.  There

 5     has been a lot of evidence to that effect as well.

 6                      And we also know that Mr. Almalki

 7     and Mr. El Maati were both detained in Syria and

 8     subject to interrogation there.  I gather you are

 9     aware of that fact?

10                      MR. HOOPER:  Yes.

11                      MR. WALDMAN:  And we also know

12     that Mr. Almalki and Mr. El Maati are both back in

13     Canada now?

14                      MR. HOOPER:  Yes.

15                      MR. WALDMAN:  And that no charges

16     have been laid against them or Mr. Arar as of this

17     point.  Is that correct?

18                      MR. HOOPER:  That's correct.

19                      MR. WALDMAN:  Now if we go back to

20     the difference between an intelligence

21     investigation and one involving the RCMP, I think

22     we agree that the main difference is

23     intelligence-gathering versus intelligence for

24     prosecution; correct?

25                      MR. HOOPER:  It's probably more
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1   complex than that but I accept that that is the

2   basic theme.

3   MR. WALDMAN: And I think you

4   testified last year that intelligence operators

5   need a different type of expertise when they are

6   engaging in pure intelligence exercises as opposed

7   to criminal investigators dealing with criminal

8   prosecutions?

9   MR. HOOPER: I think that's

10   correct.

11   You were speaking rather

12   quickly --

13   MR. WALDMAN: People who are

14   working for CSIS have a different expertise and a

15   different set of skill-sets than RCMP

16   investigators?

17   MR. HOOPER: And vice versa, yes.

18   MR. WALDMAN: You would agree with

19   that?

20   MR. HOOPER: Yes.

21   MR. WALDMAN: And you have told us

22   that there is a great deal of training that a CSIS

23   operator requires before he can become a skilled

24   operative?

25   MR. HOOPER: We talked extensively

  1   about that, yes.

  2   MR. WALDMAN: I don't know if you

  3   are aware of this evidence, but I think it's fair

  4   to say that we received evidence -- and I'm

  5   speaking of Sergeant Flewelling, for example --

  6   that after 9/11, the RCMP was overwhelmed with the

  7   amounts of tips they got through Project Shock and

  8   they had to reallocate resources, and indeed

  9   Sergeant Flewelling told us that at the CID

 10   intelligence centre that there were constant

 11   complaints about the lack of resources and people

 12   were being reallocated. In fact, he told us that

 13   at one point he had to supervise a whole bunch of

 14   inexperienced officers that were brought in.

 15   So that at the CID level there was

 16   a constant concern about getting qualified people

 17   to oversee A-OCANADA.

 18   Were you aware of that evidence?

 19   MR. HOOPER: I wasn't aware of the

 20   evidence. The facts of the matter wouldn't

 21   surprise me.

 22   MR. WALDMAN: Right. And indeed

 23   you told us that you sent one CSIS person to

 24   assist A-OCANADA?

 25   MR. HOOPER: That's correct.

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 1                    MR. WALDMAN:  I think the Garvie

 2     report talked about a lack of experienced

 3     investigators in national security matters from

 4     the RCMP.  That's what is in the Garvie report?

 5                    MR. HOOPER:  Yes.

 6                    MR. WALDMAN:  Right.  And would

 7     you not agree with me that after 9/11 there was a

 8     great deal of pressure to act quickly as a result

 9     of the perceived threats?

10                    MR. HOOPER:  Absolutely.

11                    MR. WALDMAN:  I would ask you

12     this, sir.  Given four years have past without any

13     charges being laid against the two principal

14     targets of the A-OCANADA investigation, would you

15     not agree with me that if there were enough

16     evidence to sustain charges, charges would in all

17     likelihood have been laid?

18                    MR. HOOPER:  Typically that's what

19     happens, yes.

20                    MR. WALDMAN:  So that four years

21     into the A-OCANADA investigation, there still

22     isn't enough evidence to sustain charges, correct,

23     or they would have been charged?

24                    MR. HOOPER:  A reasonable person

25     would conclude.
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 1                    MR. WALDMAN:  Right.  So wouldn't
 2      you agree with me then, sir, that given four years
 3      have passed since the decision to transfer, no
 4      charges have been laid, in light of what we have
 5      just gone through, the fact that the A-OCANADA
 6      team didn't have the experienced investigators,
 7      they had a different skill-set, wouldn't you agree
 8      with me that the decision to transfer the files
 9      was premature?  It was a wrong decision made in
10      the light -- made in the height of 9/11?
11                    MR. HOOPER:  I can see why you
12      would make that conclusion, but I think the
13      conclusion ignores the context of the immediate
14      post-9/11 environment, which I have testified to
15      extensively.
16                    MR. WALDMAN:  Right.  So in the
17      context of the post-9/11 environment and the
18      pressures, that was why the decision was made, but
19      clearly, in retrospect, it probably wasn't the
20      right decision?
21                    MR. HOOPER:  No.  I think from
22      where I sit, one of the fundamental considerations
23      around engaging law enforcement on these targets
24      which were the principles of OCanada and A-OCANADA
25      revolved around what we could do with an
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 1          intelligence-led investigation.  We knew the

 2          principals.  We knew about them.  We knew what

 3          their inter-associations were.  We had beliefs

 4          around what they were up to, and continued

 5          surveillance in the pure context of a security

 6          intelligence investigation was unlikely to lead to

 7          any more information that would advance the case.

 8          We had taken it about as far as we could.

 9                          In consultation with law

10          enforcement, I think there was a mutual agreement

11          that what these individuals were doing fit better

12          within the law enforcement model than a security

13          intelligence kind of investigation.

14                          MR. WALDMAN:  But by transferring

15          the files, you transferred the files to an

16          organization that was overwhelmed, didn't have the

17          skill-sets that were required, didn't have the

18          proper supervisory controls in place.  I would

19          suggest to you that, as a result, a whole series

20          of serious problems occurred, and I want to take

21          you to them.

22                          For example, I would suggest to

23          you that what we have been calling the data dump

24          of April 2002, where all this information was

25          handed over by the RCMP to American partners
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1   without caveats, including evidence presumably

2   that might have come from CSIS in breach of your

3   understanding, wouldn't have happened if you had

4   been running the operation.

5   Wouldn't you agree with me that

6   you would never have sanctioned or authorized or

7   permitted the kind of data dump that occurred?

8   MR. HOOPER: That's not something

9   we do as an organization.

10   MR. WALDMAN: And you wouldn't

11   have allowed it to happen if it had been on your

12   watch; correct?

13   MR. HOOPER: No.

14   MR. WALDMAN: Now, another point

15   that I want to deal with is the whole question of

16   the targeting.

17   You are not going to tell us in

18   specifics, but you would agree with me -- I mean,

19   in the context of this investigation, the RCMP

20   investigation, Mr. Arar has been referred to as a

21   peripheral person of interest, a person of

22   interest, a target of a national security

23   investigation, and a potential witness.

24   In fact, when RCMP operators have

25   been asked, they haven't really been able to

                  1   explain the difference and it has created, in our

                  2   minds at least, a great deal of confusion.

                  3   Is it not true that in the CSIS

                  4   process there is a process that you described in

                  5   great detail last year about creating targets that

                  6   go through a very careful screening process, and

                  7   that if it were a CSIS investigation, that kind of

                  8   targeting procedure would have been in place;

                  9   correct?

                 10   MR. HOOPER: We have what I

                 11   consider to be a very rigorous process, yes.

                 12   MR. WALDMAN: And it's very

                 13   rigorous and leads to clearly defined targets?

                 14   MR. HOOPER: Clearly defined

                 15   targets, and clearly defined investigative

                 16   techniques that can be used in the

                 17   investigation --

                 18   MR. WALDMAN: With respect to

                 19   those targets?

                 20   MR. HOOPER: Yes.

                 21   MR. WALDMAN: Right. And not this

                 22   kind of fuzzy situation that we see in the

                 23   different references that were made to Mr. Arar;

                 24   correct?

                 25   I mean, you wouldn't call someone

1   in the same investigation a potential target, a

2   possible target, a peripheral target, and a

3   target; right? He is either a target or he is

4   not?

5   MR. HOOPER: In our terminology

6   you are a target or you are not.

7   MR. WALDMAN: If this had been a

8   CSIS investigation, the confusion about the status

9   of the parties of the investigation that exists

10   here wouldn't have existed; correct?

11   MR. HOOPER: The process tries to

12   avoid that kind of confusion, yes.

13   MR. WALDMAN: Thank you very much.

14   The second area I wanted to cover

15   was this -- and Mr. Commissioner, things are going

16   a lot faster than I thought, so maybe I overstated

17   my time. Mr. Hooper and I don't seem to be

18   disagreeing on too many things so far.

19   MR. HOOPER: Well, we will see.

20   --- Laughter / Rires

21   MR. WALDMAN: After the

22   investigation was transferred, it was my

23   understanding that CSIS was less involved in the

24   investigation of the targets, but continued to

25   pass on evidence from time to time.

1   Is that correct?

2   MR. HOOPER: Correct.

3   MR. WALDMAN: Or information, not

4   evidence. We had this whole debate last year.

5   You pass on information; right?

6   MR. HOOPER: Correct.

7   MR. WALDMAN: I just want to

8   clarify one point on this matter, because some of

9   us were discussing this during the break and we

10   are a bit confused.

11   The evidence is you had a CSIS

12   person go and was sent to be part of the A-OCANADA

13   team; right?

14   MR. HOOPER: Correct.

15   MR. WALDMAN: Did he report back

16   to CSIS from time to time about the investigation?

17   MR. HOOPER: No.

18   MR. WALDMAN: That was not his

19   role at all?

20   MR. HOOPER: That was not his job,

21   no. Those weren't his terms of reference. He was

22   there as a secondee to the RCMP, so he effectively

23   came under the administrative and operational

24   ambit of the RCMP.

25   MR. WALDMAN: I think I remember

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 1      asking you last year, and you said that if he
 2      would have come back to CSIS and gone into your
 3      database, he would have been fired because that
 4      wasn't what his role was?
 5                  MR. HOOPER:  I don't think I said
 6      he would be fired, but I would deal with it.
 7                  MR. WALDMAN:  You would deal with
 8      it, okay.  So that if he heard on September 26th
 9      that Mr. Arar was about to be detained, it wasn't
10      his role to call you up, or to call someone at
11      CSIS up and say, "Hey, one of the peripheral
12      persons of interest in the A-OCANADA investigation
13      is about to be detained"?  You wouldn't expect --
14                  MR. HOOPER:  Again, he was an
15      employee of the RCMP at that time.
16                  MR. WALDMAN:  Thank you.
17                  So the information that you
18      provided to the RCMP from time to time would have
19      been subject to caveats; right?
20                  MR. HOOPER:  They were, yes.
21                  MR. WALDMAN:  That's right.  And
22      the information provided was not information that
23      would be admissible in a court of law; correct?
24                  MR. HOOPER:  Typically it's not,
25      no.  That's not what -- I mean, it's not passed
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 1   with that intent.

 2   MR. WALDMAN: So I take it from

 3   this that the RCMP never objected to receiving

 4   documents, or information, or intelligence from

 5   CSIS because it wasn't admissible?

 6   MR. HOOPER: Not to -- well, let

 7   me be careful on that. With specific reference to

 8   the material that was passed during the life of

 9   A-OCANADA, not to my knowledge.

10   But I do have to acknowledge that

11   it's a debate that we have all of the time with

12   law enforcement as to whether or not they actually

13   want to receive information from us if it could

14   impact on a criminal prosecution.

15   MR. WALDMAN: Right. But with

16   respect to the A-OCANADA investigation, you are

17   not aware of them complaining to you, "Don't give

18   us this information, it's not going to be

19   admissible." Rather, they would take the

20   intelligence and use it as they saw fit, as far as

21   you are aware?

22   MR. HOOPER: As far as I'm aware,

23   yes.

24   MR. WALDMAN: So that if CSIS

25   operatives got information that they thought might

1   be relevant to the A-OCANADA investigation that

2   was not admissible, you will still tell your

3   operatives to pass it on to A-OCANADA, I assume.

4   There would be no reason not to?

5   MR. HOOPER: Sometimes it comes

6   both ways. If we develop information that we

7   think may be useful to the RCMP, there is a

8   process of disclosure that I talked about. In

9   other cases, the RCMP may actively elicit from us

10   information that may bear on their targeting, on

11   their investigations.

12   MR. WALDMAN: Part of the evidence

13   before us also indicated that one of the mandates

14   of the RCMP with respect to the A-OCANADA

15   investigation was criminal prosecution, and the

16   other mandate was prevention.

17   That was your understanding as

18   well?

19   MR. HOOPER: Correct.

20   MR. WALDMAN: And indeed the

21   primary one, I think we were told, was prevention?

22   MR. HOOPER: That's correct.

23   MR. WALDMAN: So that intelligence

24   that would shed light on potential terrorist

25   threats to the A-OCANADA investigation would be

1   important to them?

2   MR. HOOPER: Correct.

3   MR. WALDMAN: So that evidence

4   that was received only for -- that couldn't be

5   used in a criminal intelligence would not be

6   useless information to A-OCANADA if it was useful

7   intelligence; correct?

8   MR. HOOPER: I think I lost you

9   there, Mr. Waldman.

10   First of all, I just want to

11   clarify, we don't pass evidence --

12   MR. WALDMAN: No, I'm sorry. I

13   said it backwards.

14   Information that you got would

15   still be useful to you -- would still be useful to

16   A-OCANADA even if it wasn't admissible

17   information?

18   MR. HOOPER: I would hope, yes.

19   MR. WALDMAN: So what would you

20   say to Inspector Cabana's evidence that he chose

21   not to interview Mr. Arar because the intelligence

22   that he might -- or the information he might have

23   received, due to the conditions imposed by the

24   lawyer, wouldn't have been admissible? That was

25   the only reason why he rejected the evidence?

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 1                    Would it not have still been

 2      useful intelligence?

 3                    MR. HOOPER:  I really can't

 4      comment on Mr. Cabana's position on that.  He was

 5      the lead of A-OCANADA.  If he said that, I'm sure

 6      he had good reasons for it.

 7                    MR. WALDMAN:  But in your view,

 8      information that may not be admissible but is

 9      relevant to the investigation is still useful;

10      correct?

11                    MR. HOOPER:  That's my view

12      sitting from my side of the fence.  It's easy for

13      me to make that call.

14                    MR. WALDMAN:  Well, you are the

15      one we are cross-examining today, not Inspector

16      Cabana.

17                    I think this is a simple question,

18      but there is a difference between a foreign

19      intelligence agency and a foreign law enforcement

20      agency; correct?

21                    MR. HOOPER:  You can actually cut

22      it more than two ways but I accept your point, yes

23      there is.

24                    MR. WALDMAN:  The CIA is an

25      intelligence agency in the United States, and the
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 1          FBI would be the enforcement agency; correct?

 2                         MR. HOOPER:  Yes.

 3                         MR. WALDMAN:  And as the foreign

 4      intelligence agency, according to the ministerial

 5      directive, CSIS is to be the primary contact with

 6      the CIA; correct?

 7                         MR. HOOPER:  On foreign

 8      intelligence matters, yes.

 9                         MR. WALDMAN:  And this was the

10      understanding even before the new ministerial

11      directives.  We saw there were some --

12                         MR. HOOPER:  Yes.

13                         MR. WALDMAN:  So would it surprise

14      you that a member of the RCMP testified that he

15      considered the CIA to be a foreign law enforcement

16      agency within the meaning of the RCMP policy on

17      disclosure?

18                         MR. HOOPER:  Would it surprise me?

19                         MR. WALDMAN:  Yes, would it

20      surprise you?

21                         MR. HOOPER:  Well, I think it's

22      incorrect.

23                         MR. WALDMAN:  If it were incorrect

24      and a senior inspector -- superintendent in the

25      RCMP had that belief, you would find that
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1   surprising, wouldn't you?

2   MR. HOOPER: Somewhat, yes.

3   MR. WALDMAN: Well, I can tell you

4   that that was Inspector Cabana's evidence, and

5   it's found at page 7803 of the transcript, for

6   those of you that are curious.

7   But this would be significant,

8   wouldn't it, because am I not correct in stating

9   that if the CIA was characterized as a law

10   enforcement agency by the RCMP, they wouldn't have

11   to go through CSIS to exchange information as the

12   primary contact.

13   Is that correct?

14   MR. HOOPER: I don't know what the

15   direction -- I don't know if there even was

16   direction to the RCMP at that time. But as far as

17   I was concerned, if there was to be any

18   interaction between the RCMP and the CIA, it ought

19   to have come through us.

20   MR. WALDMAN: Right. I'm

21   interested in the protocols that were put in place

22   regarding the information that was passed on to

23   the RCMP.

24   My understanding is that if the

25   RCMP wanted to share information obtained from

     1   CSIS with other foreign law agencies it would have

     2   to seek approval, is that correct, from CSIS?

     3   MR. HOOPER: That's our

     4   expectation of every agency with whom we share

     5   information.

     6   MR. WALDMAN: And if

     7   information -- now, are you aware of whether the

     8   RCMP obtained CSIS' consent on every occasion

     9   prior to the sharing of information with the

    10   foreign partners?

    11   MR. HOOPER: I always have to

    12   qualify my answers around the material time and

    13   afterwards. At the material time, I wasn't, but I

    14   became aware of it afterwards.

    15   MR. WALDMAN: What did you become

    16   aware of?

    17   MR. HOOPER: Well, you referred to

    18   the data dump.

    19   MR. WALDMAN: Right.

    20   MS McISAAC: Again, there has been

    21   no confirmation as to whether, in fact, CSIS

    22   information was contained in the data dump, but

    23   I'm quite content that the witness could answer it

    24   on the basis that if there was CSIS information in

    25   there, what the consequence would be.

StenoTran

1   MR. WALDMAN: I think the Garvie

2   report does make reference to breaches of caveats

3   between the RCMP and CSIS with respect to sharing

4   with --

5   MS McISAAC: I just want the

6   witness to be very careful about how far he goes

7   in terms of the kind of information that might or

8   might not have been shared, please.

9   MR. CAVALLUZZO: Exhibit C-85 and

10   Exhibit P-85 are the exhibits which indicate which

11   information was in the -- if we call it the data

12   dump.

13   However, if the Government is

14   taking an NSC position in respect to whether there

15   was CSIS information as part of the data dump,

16   then that's as far as we can go.

17   MS McISAAC: Give me a moment to

18   look at P-85, please, sir?

19   --- Pause

20   THE COMMISSIONER: What is the tab

21   in P-85? Do you have it?

22   MS McISAAC: I'm sorry, I don't

23   want to be making a claim if it's not a legitimate

24   claim, but I'm quite frankly at a loss, not having

25   been here for all of the RCMP evidence.

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 1                    So if someone can show me where
 2         this information is on the public record, then of
 3         course -- but I just want to be sure I've got it
 4         right, sir.
 5                    MR. WALDMAN:  P-227, that was the
 6         e-mail we dealt with with Sergeant Flewelling, and
 7         in the context of that e-mail, it was indicated
 8         that Sergeant Flewelling expressed concern about
 9         CSIS information being sent to the United States.
10                    MR. CAVALLUZZO:  In respect of
11         that particular question that I posed, I
12         subsequently received a letter indicating that the
13         Government takes the position that as far as that
14         question to Mr. Flewelling is concerned that CSIS
15         will neither confirm nor deny that any of its
16         information was part of that transfer which
17         occurred on October the 4th, which is different,
18         of course, than the data dump.
19                    The question I asked of
20         Mr. Flewelling related to the information that was
21         sent on October 4th, but we're referring to
22         something different --
23                    MR. WALDMAN:  I understand that.
24         But I referred to that because my understanding
25         was that it was clear from your question that CSIS
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 1    information was contained.  Now I'm just learning
 2    for the first time that that's no longer clear
 3    so ...
 4                    THE COMMISSIONER:  Well, it may
 5    not be -- what Ms McIsaac is saying that whether
 6    it happened or not is not part of the public
 7    record.
 8                    MR. WALDMAN:  Right.  I understand
 9    that.  But I thought --
10                    THE COMMISSIONER:  It's in volume
11    1 of P-85 at tab 24.
12                    MS McISAAC:  Thank you, sir.
13                    THE COMMISSIONER:  And I think --
14    just take a quick look at it, Ms McIsaac, but I
15    think your point is well-taken.
16    --- Pause
17                    THE COMMISSIONER:  So I think it's
18    not part of the public record, so one can only
19    say -- I guess you'd have to put it in as a
20    hypothetical.
21                    MR. WALDMAN:  Maybe I can ask a
22    more generic question.
23                    Without going into details about
24    what specific evidence might have been shared with
25    the Americans, are you aware of whether or not the
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 1          RCMP breached any CSIS caveats at any time in the

 2          sharing of information in the A-OCANADA

 3          investigation?

 4                        MR. HOOPER:  There's been so much

 5          NSC water under the bridge since I was up here

 6          last time, I'm really on shaky ground.  If I

 7          answer that question, it has to be in reference, I

 8          think, to Deputy Commissioner Loeppky's testimony

 9          before the Commission.

10                        If memory serves me correctly, I

11          think he made that point.  So if he did indeed

12          make that point, I would go by what Deputy

13          Commissioner Loeppky said.

14                        MR. WALDMAN:  Now you testified

15          that you had no knowledge of caveats being down.

16                        MR. HOOPER:  No.

17                        MR. WALDMAN:  Right.  And the

18          evidence of Inspector Cabana was that his

19          understanding was that caveats were down.

20                        MR. HOOPER:  That's my

21          understanding.

22                        MR. WALDMAN:  Right.  So given

23          that that was Inspector Cabana's understanding, it

24          wouldn't be surprising to you that if he thought

25          that may, it might have happened that there might
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StenoTran

      1   have been sharing of CSIS information without

      2   authorization?

      3   MR. HOOPER: In the hypothetical

      4   sense.

      5   MR. WALDMAN: Right. So doesn't

      6   it concern you that a senior inspector in the

      7   RCMP, in charge of the A-OCANADA investigation,

      8   was under the clearly mistaken impression that he

      9   could share information -- CSIS information with

     10   the Americans without obtaining consent?

     11   MR. HOOPER: It bothers me when I

     12   put that up against the caveats that accompany

     13   information that we release, and the expectations

     14   by my Service that they be respected by the

     15   receiving party.

     16   MR. WALDMAN: So it's problematic?

     17   MR. HOOPER: For me it is, yes.

     18   MR. WALDMAN: Right. Because the

     19   purpose of the caveats is to protect -- we've

     20   already gone through that. I won't go through it

     21   again.

     22   MR. HOOPER: Yes.

     23   MR. WALDMAN: But it's very

     24   important to the credibility of your Service that

     25   the caveats be respected?

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 1                    MR. HOOPER:  Yes.

 2                    MR. WALDMAN:  For all the reasons,

 3      and I think you explained them last time.

 4                    Now, we have to introduce a new

 5      exhibit.  This is one I thought was going to be

 6      introduced, but because the order was switched,

 7      this is something that were in the Dickenson

 8      documents that were sent to us, so I'm just going

 9      to ask that it be ...

10                    THE COMMISSIONER:  239.

11                        EXHIBIT NO. P-239:  Undated

12                        draft memo from the Dickenson

13                        documents

14      --- Pause

15                    MS McISAAC:  I just wish to put on

16      the record that when Mr. Dickenson testifies, I

17      believe he'll indicate that this was a draft

18      document, not a final version.

19                    THE COMMISSIONER:  Thank you.

20                    MR. WALDMAN:  If Mr. Dickenson had

21      testified, he would have given us a date.  There's

22      no date to the memo, I don't know if anyone knows

23      the date.  That might be of assistance.

24                    MS McISAAC:  I gather it's

25      probably October 22nd, but I'm also informed that
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          1   there's probably the final version that's in the

          2   Dickenson documents as well.

          3   MR. WALDMAN: Well ...

          4   Could I ask you to go to the last

          5   bullet on the first page, please? It says:

          6   "I learned about 1700 hours

          7   on Thursday that Director

          8   Elcock, CSIS, had spoken with

          9   Mr. Bilodeau regarding Arar.

         10   A meeting was scheduled

         11   between DP Manley and US

         12   Homeland Secretary Tom Ridge

         13   on a number of matters and it

         14   was understood the DPM Manley

         15   would raise the Arar case

         16   with Governor Ridge. I was

         17   informed that the Director

         18   had encouraged the DPA

         19   against raising the Arar

         20   case." (As read)

         21   So this is the first example of a

         22   message. I just want to ask you some questions.

         23   Is this not your view that it is

         24   the role of CSIS to advise the government of

         25   potential threats to the security of Canada, and

1   not to advise the government as to how it should

2   be conducting its affairs with other governments?

3   MR. HOOPER: I think there's an

4   expectation that the Director of the Service is a

5   Deputy Minister in the federal bureaucracy and

6   provides advice to his Minister. It's up to the

7   Minister as to whether he takes it or not.

8   MR. WALDMAN: Would you not agree

9   with me though that it would be highly unusual --

10 Mr. Arar case was already getting publicized, and

11 it was clearly a political case by this point, for

12 the Director to get involved in a political case

13 and interfere with government policy in this way?

14   MR. HOOPER: I don't view this as

15 interfering with government -- I don't see any

16 government policy here, Mr. Waldman, not to be

17 argumentative.

18   MR. WALDMAN: Well, there were

19 representations made by various people to have the

20 deputy Prime Minister raise Mr. Arar's case with

21 Mr. Ridge, and the Director of CSIS is encouraging

22 him against raising it?

23   MR. HOOPER: I think that would

24 constitute advice by my Director as a Deputy

25 Minister of this government providing advice.

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 1          Again, it comes down to whether or not the

 2     Minister chooses to accept that advice.

 3                    MR. WALDMAN:  Okay.  Let's just

 4     look at the situation.  As I understand it, there

 5     might have been several reasons why the matter

 6     might have been raised with Mr. Ridge -- perhaps

 7     before I do that, I want to clarify one point that

 8     just occurred to me.

 9                    Is it not correct that the

10     Director of CSIS would report directly to the

11     Solicitor General and not to the Deputy Prime

12     Minister?

13                    MR. HOOPER:  If you'll recall, I

14     think it's correct at this time, the Deputy Prime

15     Minister was also the chair of a -- there was an

16     ad hoc group on public security and

17     anti-terrorism.

18                    So I think as it regarded matters

19     related to terrorism, there was probably a

20     bifurcated reporting relationship.  Actually, if

21     you roll in the security intelligence coordinators

22     role, Mr. Bilodeau, I think there's -- there

23     really is one line of authority, it's the

24     Solicitor General, but there is also

25     contemporaneous reporting requirements for the
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1   Director to go to the coordinator and to the DPM

2   who had that public security mandate.

3   MR. WALDMAN: My recollection of

4   Mr. Manley's evidence was that he didn't remember

5   anything, and he certainly didn't have the view

6   that he had any kind of operational responsibility

7   with respect to national security matters.

8   MR. HOOPER: I don't think that

9   this speaks to an operational responsibility, I

10   think this is a clinical responsibility.

11   MR. WALDMAN: His view -- I think

12   he described it that his view was to try and keep

13   the borders open. That was his major concern in

14   his negotiations with Mr. Ridge. He didn't

15   recall -- I mean he had a very limited

16   recollection of anything having anything to do

17   with Mr. Arar's case at all.

18   MR. HOOPER: Fine.

19   MR. WALDMAN: If you go back to

20   the questions here, I could see that there would

21   be several reasons why the Deputy Prime Minister

22   might want to raise the matter with Mr. Ridge.

23   One might be to protest the

24   conduct of the United States government in

25   deporting a Canadian citizen to a country -- not

1   to Canada, and presumably to a country with a

2   deplorable human rights record.

3   And, on the other hand, a second

4   reason why, and this is a theme that came up on

5   numerous occasions through the evidence, was that

6   there was a suggestion that maybe if we went to

7   the Americans they might be able to assist Canada

8   in getting Mr. Arar back, that they made a mistake

9   and this is a theme that came up on numerous

10   occasions later on. Ms Catterall made suggestions

11   that the American Ambassador be approached.

12   So there were two reasons why

13   Mr. Manley might raise the matter with Mr. Ridge.

14   One was to protest, and the other was to get the

15   American assistance.

16   Would you agree with that?

17   MR. HOOPER: I think you

18   characterize those as speculative, so I accept

19   them as speculation around what the reasons might

20   have been. I don't know what the reasons were.

21   MR. WALDMAN: So if the purpose

22   was to seek the protection of Canadians, and to

23   ensure that there were no previous deportations,

24   I'm sure you're aware that after Mr. Arar came

25   back and the case received a great deal of

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 1          publicity, the Canadian government attempted to
 2          negotiate a protocol that didn't really achieve
 3          the desired result, but the intent of the Canadian
 4          government was to try and make the Americans agree
 5          that this not happen again.
 6                          So one of the legitimate concerns
 7          was to not -- to make sure that no other Canadians
 8          were deported.
 9                          Correct?  You're aware of that?
10                          MR. HOOPER:  Yes.
11                          MR. WALDMAN:  So there would be
12          nothing wrong with Mr. Manley protesting to
13          Mr. Ridge and saying, you know, "We don't want
14          this to happen again," because that's government
15          policy now, right?
16                          MR. HOOPER:  The only -- if your
17          point is, is there anything wrong with doing it or
18          trying to rationalize why the advice was that he
19          not do it, I would suggest that it might not be
20          the most appropriate channel.
21                          To go back to the example around
22          the negotiation of a protocol with the U.S.
23          government, that's not be something that would be
24          negotiated through the Homeland Security Office so
25          ...
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1   I mean, this is pure speculation

2   on my part as to why it might have been a good

3   idea, why it might not have been a good idea.

4   MR. WALDMAN: Well, even if the

5   purpose at this point wasn't to negotiate a formal

6   protocol, clearly there are a lot of Canadians who

7   are outraged and incensed about a Canadian citizen

8   being deported, and a protest by the Deputy Prime

9   Minister to his counterpart was something that was

10   highly desirable so that the Americans would be

11   put on notice that we don't want it to happen

12   again.

13   Wouldn't you agree?

14   MR. HOOPER: I think that's a call

15   to be made at the political level.

16   MR. WALDMAN: Okay. But there

17   wouldn't be anything that would be problematic

18   about that being the issue.

19   Right?

20   Protesting the deportation of

21   Mr. Arar so that it wouldn't happen to other

22   Canadians?

23   Or would CSIS like to see other

24   Canadians deported to countries where they're

25   subject to torture?

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 1   MR. HOOPER: No.

 2   MR. WALDMAN: Now, with respect to

 3   the second possible reason -- well, can you think

 4   of any other reason why Mr. Manley might have

 5   protested -- or spoken to Mr. Ridge other than to

 6   trying to seek it wouldn't happen, or trying to

 7   get American assistance?

 8   MR. HOOPER: I'm having a hard

 9   time situating the political dynamic of the time

10   outside of my specific area of responsibility. I

11   can speak to the threat environment, I can speak a

12   little bit around the politics of the threat

13   environment, but between Mr. Manley and Mr. Ridge,

14   I don't know what other time --

15   MR. WALDMAN: So the threat

16   environment would be paramount in Mr. Elcock's

17   mind too --

18   MR. HOOPER: That's his job.

19   MR. WALDMAN: His concern wouldn't

20   be protecting Canadians and it wouldn't be trying

21   to help Mr. Arar, his main concern would be the

22   threat environment.

23   So would you agree with me then

24   that the reason why Mr. Elcock -- the only reason

25   why he would give this advice is because he didn't

 1   care about protecting Canadians, and he didn't

 2   care about getting Mr. Arar back, but he wanted to

 3   make sure that Mr. Manley was aware of the threat

 4   environment and the implications from the threat

 5   point of view?

 6   MR. HOOPER: No, I think

 7   Mr. Elcock was acutely interested in protecting

 8   Canadians. I don't see getting Mr. Arar back and

 9   protecting Canada as being, you know, inimical to

10   one another.

11   MR. WALDMAN: What possible reason

12   could Mr. Elcock have had of giving Mr. Ridge this

13   advice? I mean clearly the purpose of the

14   intervention was to get American help in getting

15   Mr. Arar back into Canada, and to make sure that

16   the Americans understood that Canada didn't want

17   this to happen again?

18   What possible reason could there

19   have been given, other than worried about the

20   implications in U.S.-Canadian security

21   intelligence relations to encourage Mr. Manley not

22   to speak to Mr. Ridge?

23   MR. HOOPER: Mr. Waldman, this is

24   a discussion that I wasn't party to. I don't --

25   MR. WALDMAN: I'm asking you to

1   speculate then, sir.

2   MR. HOOPER: I'm not going to

3   speculate, Mr. Waldman.

4   MR. WALDMAN: Well, I'm going to

5   suggest to you that the fact of the matter was

6   that this is just another example of the same

7   points that Mr. Cavalluzzo took you to, that CSIS,

8   in its mandate, was prioritizing its national

9   security interests over the human rights of a

10   Canadian citizen?

11   MR. HOOPER: I think without

12   knowing the full facts of the matter you can't

13   come to that conclusion. I certainly wouldn't

14   agree with that conclusion.

15   MR. WALDMAN: Well, can you

16   provide me then with any reason why Mr. Elcock

17   would have discouraged Mr. Manley from raising

18   this, other than -- other than the one I've just

19   posed to you?

20   MR. HOOPER: I won't speculate,

21   Mr. Waldman.

22   MR. WALDMAN: You can't come up

23   with any other reasons then?

24   MR. HOOPER: Oh, I can, but they

25   have no merit whatsoever other than being pure

1   conjecture and speculation.

2   MR. WALDMAN: So they don't have

3   any merit. I would agree with that. Thank you.

4   If I can take you to P-117,

5   volume 2, tab 75. We've already gone through this

6   this morning.

7   MR. HOOPER: That was tab 75, sir?

8   MR. WALDMAN: Tab 75, tab 4, page

9   2. Mr. Cavalluzzo has already gone through this

10   extensively this morning, but I just want to point

11   out to you, sir, that this first arose in October

12   of 2002, and in May of 2003, Mr. Elcock is taking

13   exactly the same position.

14   "Furthermore, the US

15   Government may also question

16   Canada's motives and resolve,

17   given they deported ARAR to

18   Syria because of concerns

19   about alleged terrorist

20   investigations."

21   So I would suggest to you that

22   this is just another example of how the U.S.

23   Government -- that Mr. Elcock and CSIS were more

24   concerned about the U.S. perception than they were

25   about protecting the rights of Canadian citizens?

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 1                    MR. HOOPER:  No, I think, as I
 2       indicated to Mr. Cavalluzzo, that's reflective of
 3       the Director's responsibility to inform his
 4       Minister of the political dimensions of the issue.
 5       That's all.  Nothing more, nothing less.
 6                    MR. WALDMAN:  Well, I guess we'll
 7       leave it at that.
 8                    How would you describe CSIS'
 9       relationship with the ISI and DFAIT?  Was it a
10       good relationship?
11                    MR. HOOPER:  It was a very engaged
12       relationship.  I would say it was a good
13       relationship.
14                    MR. WALDMAN:  And you respect the
15       individuals who work at ISI?
16                    MR. HOOPER:  Absolutely.  I
17       consider Mr. Livermore to be a very close
18       colleague and a valued colleague.
19                    MR. WALDMAN:  Would you say the
20       same about Mr. Gould as well then?
21                    MR. HOOPER:  Mr. Gould and I go
22       back to the mid '90s, when he worked in GMR and
23       had responsibility for Middle East and Saudi
24       Arabia.  We were very active interlocutors at that
25       time.
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 1                    MR. WALDMAN:  So I'd like to take

 2      you through a few documents.  Perhaps if we could

 3      go through P-134 in the Pillarella documents.

 4                    On page 3 --

 5                    MR. HOOPER:  Tab 3, sir?

 6                    MR. WALDMAN:  Tab 15, page 3.

 7                    THE COMMISSIONER:  Tab 15?

 8                    MR. WALDMAN:  Tab 15, page 3.

 9                    So this is a briefing note in

10      January of 2003, and the last paragraph -- the

11      second last paragraph.

12                                "The Syrian Vice Foreign

13                                Minister informed Ambassador

14                                Pillarella that according to

15                                their information, Arar does

16                                not wish to return to Canada

17                                ...

18                                  CSIS had discussions with

19                                the Syrian authorities

20                                concerning Arar.  The ...

21                                informed the Ambassador that,

22                                according to his information,

23                                CSIS had indicated to Syrian

24                                military intelligence that

25                                they have no wish to see
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 1                          Mr. Arar return ..."
 2                     MR. HOOPER:  Yes.
 3                     MR. WALDMAN:  So we've already
 4      taken you to P-99 -- I just want to ask you -- I'm
 5      just going to take you through the body of
 6      evidence and then I'm going to ask you for some
 7      comments.
 8                          That was the Catterall
 9      conversation with the Syrian Ambassador that
10      occurred in March of 2003.  You've already looked
11      at that document?
12                     MR. HOOPER:  Yes.
13                     MR. WALDMAN:  So you're aware that
14      in March of 2003, the indication was that the
15      Ambassador raised with Ms Catterall this belief
16      that CSIS did not want Mr. Arar back.
17                     MR. HOOPER:  That initially he had
18      formed that belief.
19                     MR. WALDMAN:  Well, I think there
20      is several interpretations to that document, but
21      we'll leave that one.
22                          If I could ask you to go to P-117
23      in the Easter documents, volume 1, tab 23.
24      --- Pause
25                     MR. HOOPER:  P-17?
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 1                    MR. WALDMAN:  Tab 23.

 2      Mr. Cavalluzzo took you to this.

 3                    MR. HOOPER:  I'll need volume 1.

 4                    THE COMMISSIONER:  Yes, volume 1.

 5                    MR. WALDMAN:  There's only one

 6      Volume.  P-117 -- oh, volume 1, tab 23.

 7                    MR. HOOPER:  Could you repeat the

 8      reference, please, Mr. Waldman.

 9                    MR. WALDMAN:  P-117, tab 23.

10      Volume 1, tab 23.

11                    MR. HOOPER:  I have it.

12                    MR. WALDMAN:  Last paragraph:

13                         "There is not sufficient

14                         evidence against Arar for him

15                         to be charged him with

16                         anything in Canada.  CSIS has

17                         made it clear to the

18                         Department that they would

19                         prefer to have him remain in

20                         Syria, rather than return to

21                         Canada.  CSIS officials do

22                         not seem to understand that,

23                         guilty or innocent,

24                         Maher Arar has the right to

25                         consular assistance ..."
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 1                         Then I would like you to go to
 2      Senator De Bané's notes, P-229.
 3                         MR. HOOPER:  Will I be expected,
 4      Mr. Waldman, to comment on these individually,
 5      because I would rather do this one at a time
 6      rather than remember all the references I'm
 7      getting right now.
 8                         MR. WALDMAN:  You have already
 9      commented on most of these.  The ones you haven't
10      commented on, if you want to comment on them, you
11      will.  But I think these have already been taken
12      to you.
13                         MR. HOOPER:  Then, if I may, my
14      comments made in examination-in-chief to
15      Mr. Cavalluzzo in respect of these references, I
16      stand by them.
17                         THE COMMISSIONER:  I think, in
18      fairness, I take that to be the case.
19                         MR. WALDMAN:  Yes, I assumed that.
20                         If you could go to P-229, this is
21      Senator De Bané's notes.
22                         THE COMMISSIONER:  229?
23                         MR. WALDMAN:  Right.  Page 19.
24                         This is a briefing that took place
25      in July of 2003.
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 1                        I know that Mr. Pardy was there.

 2       I can't remember Mr. Pardy's evidence.  I know

 3       that there were quite a few people there.  I don't

 4       remember if there was anyone from CSIS or not at

 5       the briefing.

 6                        MR. HOOPER:  Do you mind -- it's

 7       difficult reading other people's notes.  These are

 8       in French, so I might want to take a little bit

 9       more time.

10                        MR. WALDMAN:  It's the second

11       reference.  It's the only one that mentions CSIS.

12                        "aurait dit aux Syriens : «

13       Gardez-le. »

14                        MR. HOOPER:  Yes.

15                        MR. WALDMAN:  CSIS had said to the

16       Syrians, "Keep him."

17                        So at a briefing in July of 2003,

18       Senator De Bané, who is on his way to go to Syria,

19       as the Prime Ministerial envoy with a letter, is

20       being briefed by DFAIT and he Is being told that

21       CSIS told the Syrians, "Keep him."

22                        You weren't taken to this.  I

23       don't know if you have anything you want to say on

24       this.

25                        MR. HOOPER:  I've never seen this
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 1   document before. This was in July of 2003, prior

 2   to the visit by Mr. De Bané?

 3   MR. WALDMAN: Senator De Bané.

 4   What I'm trying to suggest to you,

 5   sir, is that, in July of 2003, at a briefing

 6   Senator De Bané is being told that that is the

 7   CSIS position.

 8   MR. HOOPER: From the notes, yes.

 9   MR. WALDMAN: Now, if I could ask

10   you to go to P-237 --

11   MS McISAAC: I think the witness

12   was going to ask if Senator De Bané had explained

13   what his notes meant because it's not clear. I

14   mean, the notes are, as we know, not always

15   reflective completely of what the evidence might

16   have been.

17   THE COMMISSIONER: What was the

18   tab number?

19   MR. WALDMAN: No, it's --

20   THE COMMISSIONER: I've got it.

21   MR. WALDMAN: P-229. I think if

22   one looks at Senator De Bané's evidence, that is

23   what he said that is what he was told.

24   THE COMMISSIONER: I can't recall

25   what the Senator said about that.

            1   MR. WALDMAN: I'm pretty sure. He

            2   took us to page 19 of his notes, and he said that

            3   the two things on page 19 that struck him were

            4   that the statement about the RCMP and the

            5   statement about CSIS.

            6   THE COMMISSIONER: Okay.

            7   MR. WALDMAN: I'm pretty sure of

            8   that.

            9   THE COMMISSIONER: Carry on.

           10   MR. WALDMAN: Now, if we could go

           11   to P-237, tab 3, this is a July 30th, 2003 memo,

           12   sir.

           13   MR. HOOPER: I don't think

           14   Mr. Cavalluzzo took me to this one, so I may have

           15   comments with respect to it.

           16   MR. WALDMAN: The relevant section

           17   is paragraph 5, and this is signed by the Director

           18   of the Foreign Intelligence Division of ISI.

           19   "It is curious in the media

           20   today that none of the

           21   approbium for passing

           22   intelligence about Arar to

           23   the Americans has fallen on

           24   CSIS. The Syrians have

           25   maintained that a senior CSIS

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 1                          officer told them we did not

 2                          want Arar back in Canada -

 3                          although the CSIS officer

 4                          denies he said that.  Another

 5                          senior CSIS officer told MKM

 6                          that DFAIT should curtail its

 7                          efforts to have Arar

 8                          released, as it was CSIS's

 9                          preference that Arar not

10                          return."

11              I don't want to go into the

12      particulars.  I just wanted to point out to you,

13      sir, that as of July 30th, 2003, the prevailing

14      view by senior officials in DFAIT was that CSIS

15      did not want Mr. Arar back.

16              MR. HOOPER:  That wasn't the

17      position of the Service.

18              MR. WALDMAN:  Well, I just find it

19      a bit strange, sir.  I just took you to a large

20      number of documents, starting in October of 2002,

21      and going right through to July 30th, 2003, just a

22      month and a half before -- well, two and a half

23      months before Mr. Arar gets back, and they come

24      from a whole variety of sources, Syrian Military

25      Intelligence.  And, you know, we must not forget
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1   Mr. Gould's evidence of yesterday --

2   Mr. Cavalluzzo took us to that -- that his

3   impression was not only from a telephone call but

4   was from conversations he had with colleagues in

5   CSIS.

6   So we have General Khalil, we have

7   the Syrian Ambassador to Canada, we have Members

8   of Parliament, we have officials in ISI, officials

9   in the consular bureau, all telling us, as late as

10   July 30th, 2003, that they understood that the

11   message from CSIS was that CSIS didn't want

12   Mr. Arar back and that their preference was that

13   he stay in Syria.

14   So wouldn't you agree to me that,

15   somehow or other, this was the message that CSIS

16   managed to convey, intentionally or not?

17   MR. HOOPER: I don't want this to

18   sound flippant, but I think maybe it speaks to the

19   power of rumour over fact. Again, I testified

20   earlier this morning that as far as the Service

21   was concerned, the whole issue around whether or

22   not we wanted Mr. Arar back in Canada was dealt

23   with, and it was a case closed on January the

24   16th, 2003.

25   I was not aware, nor was the

1   Service aware, of any of these memoranda, any of

2   these comments until after the disclosure exercise

3   after the commencement of these proceedings. I

4   find it very troubling.

5   MR. WALDMAN: You told us, sir,

6   the purpose of your phone call was to clarify any

7   misunderstandings about this, so you must have

8   been aware that there were misunderstandings going

9   on, because you just testified that this phone

10   call was to clarify those misunderstandings.

11   MR. HOOPER: I think I

12   contextualized my answer. There are always hurt

13   feelings and misunderstandings where there are

14   difficult discussions, complex discussions,

15   protracted discussions going around an issue where

16   different departments have conflicting mandates.

17   MR. WALDMAN: Right.

18   MR. HOOPER: The purpose of my

19   phone call to Ms McCallion, an element of that was

20   to make sure she was getting the message straight

21   from the Service; the institutional position, not

22   the position that may have been conveyed in any

23   heated discussion among lower-level officials.

24   MR. WALDMAN: But there obviously

25   were lower-level officials that were conveying

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 1          this message to Mr. Gould --
 2                      MR. HOOPER:  I don't think that's
 3          obvious at all.
 4                      MR. WALDMAN:  Well, Mr. Gould
 5          testified to that.
 6                      MR. HOOPER:  Fine.  Right.
 7                      MR. WALDMAN:  So I want to put to
 8          you something else.
 9                      If it's your position now that
10          this wasn't CSIS' position, can you explain to me
11          why there are so many indications in so many
12          documents that this was CSIS's position?
13                      MR. HOOPER:  No, I can't, and I
14          find it very troubling, actually.
15                      MR. WALDMAN:  Right.  And can you
16          explain to me, sir, why it is that, having
17          reviewed all of the numerous documents and looking
18          very hard, I haven't been able to find one single
19          document, at least not in the public record, that
20          clearly shows the opposite to be true?  There is
21          not one document anywhere that suggests to me that
22          CSIS had any interest in bringing Mr. Arar back.
23                      Can you explain to me why, if that
24          was CSIS' position, there is nothing in the
25          record, not an e-mail, not a single document, to
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1   show that?

2   MR. HOOPER: Yes, I can. Because

3   we have an institutional responsibility for

4   advising government on threats to the security of

5   Canada. We do not have an institutional view,

6   independent of the Department of Foreign Affairs,

7   as it relates to consular issues. That is the job

8   of the Department of Foreign Affairs.

9   To expect that there is going to

10 be a body of information floating around CSIS that

11 speaks to our institutional position on a consular

12 matter, you are not likely going to find it.

13   MR. WALDMAN: But there is a body

14 of evidence that speaks to CSIS' institutional

15 position on a consular matter suggesting the

16 opposite to be the case, a body of evidence that

17 strongly suggests that CSIS didn't want Mr. Arar

18 back.

19   And Mr. Cavalluzzo -- I'm not

20 going to repeat it -- clearly put to you all the

21 reasons why CSIS wouldn't want Mr. Arar back as an

22 institution.

23   MR. HOOPER: I think there is a

24 body of evidence that suggests the Director of

25 this Service was doing his job in providing advice

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 1          to his Minister.

 2                        MR. WALDMAN:  Right, and the

 3          advice that he provided to his Minister was that

 4          if Mr. Arar comes back it creates problems for us

 5          with the Americans; correct?

 6                        That is what that memo said?

 7                        MR. HOOPER:  I think the memo said

 8          that if Mr. Arar comes back, there is an American

 9          dimension to the political issue around Mr. Arar.

10                        MR. WALDMAN:  Exactly.  So if

11          Mr. Arar comes back -- the advice would be, if

12          Mr. Arar comes back, there are going to be

13          political problems with our relations with the

14          U.S. intelligence service.

15                        That's his advice; correct?

16                        MR. HOOPER:  No.  There is going

17          to be a political issue around it.

18                        MR. WALDMAN:  Around what?

19                        MR. HOOPER:  Around the return of

20          Mr. Arar to Canada.

21                        MR. WALDMAN:  Right.  It's going

22          to create problems for our relationship with the

23          Americans.  and indeed we know from other

24          documents that the concerns about calling the

25          inquiry was around the concerns about political
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 1          problems with the Americans.
 2                         So the Director's advice to the
 3          Minister was if Mr. Arar comes back, it's going to
 4          create political problems for us; correct?
 5                         MR. HOOPER:  Sure.  And we were
 6          prepared to live with them.  As a government, we
 7          were prepared to live with those problems, as we
 8          are now.
 9                         MR. WALDMAN:  Yes, but you are
10          talking to us -- we are now, Mr. Arar is back.
11                         But you are telling us that the
12          Minister's advice would be that there would be
13          political problems if Mr. Arar came back -- I
14          mean, the Director's advice to the Minister?
15                         MR. HOOPER:  Certainly.
16                         MR. WALDMAN:  Right.  And you
17          already told Mr. Cavalluzzo that there would have
18          been operational problems that would arise?
19                         MR. HOOPER:  Did I say that?
20                         MR. WALDMAN:  Well, if the 11
21          people came back and --
22                         MR. HOOPER:  That's not a problem;
23          that's a fact.
24                         MR. WALDMAN:  That's a fact.
25                         MR. HOOPER:  That's a reality --
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 1   MR. WALDMAN: There would be

 2   resource implications, I believe.

 3   MR. HOOPER: Of course there would

 4   be.

 5   MR. WALDMAN: One other point. It

 6   seems to me very, very strange, sir, and I just

 7   want to confirm that it's your evidence today that

 8   the Syrians -- the Syrian Ambassador, DFAIT,

 9   Mr. Gould, other members of ISI,

10   Mr. Heatherington, all of these people just simply

11   misunderstood CSIS' message, all of them?

12   This was just a matter of all of

13   these different people from all these different

14   departments and all these different -- indeed,

15   foreign officials, it was just a simple

16   misunderstanding that all these different separate

17   entities had with respect to your position?

18   That is your evidence?

19   MR. HOOPER: That's my evidence,

20   and further, that I certainly wish somebody would

21   have asked us to clarify that. But none of these

22   people ever came over and said, "We understand

23   this to be the institutional position of CSIS.

24   There it is. It's out there. This is what we

25   believe. What is your position?"

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 1                    There is no reference to that ever
 2      being asked of my organization.
 3                    MR. WALDMAN:  Can I just have one
 4      second, Mr. Commissioner?
 5      --- Pause
 6                    MR. WALDMAN:  We have gone about
 7      an hour and a quarter and I'm about halfway done.
 8      We want to find this one document.  Would it be
 9      all right if we took a break now and I continued?
10                    THE COMMISSIONER:  Could we make
11      it -- you are going to be another hour and 15
12      minutes?
13                    MR. WALDMAN:  I'm halfway through
14      my notes.
15                    Oh, we found it.
16                    THE COMMISSIONER:  Why don't we
17      carry on if you have what you need.
18                    MR. WALDMAN:  Could I ask you to
19      go to P-117, volume 2.
20                    I just want to be clear before we
21      go there.  Your evidence is, "boy, I wish somebody
22      would have told me"; right?
23                    MR. HOOPER:  Yes.
24                    MR. WALDMAN:  Why don't we look at
25      P-117, volume 2, tab 75, tab 5.  Then I'm going to
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1   put to you, sir, that somebody told you. It was

2   right there in front of you in black and white.

3   If I could ask you to go to the

4   transmittal slip, sir, this is a June 5th Pardy

5   memo, where Mr. Pardy is talking about CSIS' role

6   and their lack of cooperation, and it's clearly

7   stated on this transmittal slip that the June 5th

8   memo went to CSIS. Consultation?

9   MR. HOOPER: No. No, sir. If I

10   might? I can't speak for how things are

11   transmitted in the Department of Foreign Affairs,

12   but they work the same as in CSIS, from what I can

13   see.

14   There are people that get this

15   memo, and there are people who are consulted in

16   the development of this memo. We were consulted

17   in the preparation of this memorandum, from what I

18   can see, or with the letter that was attached to

19   the memorandum.

20   MR. WALDMAN: All right. Well, we

21   will come back to that, sir, because I would

22   suggest to you that there is evidence on the

23   record that CSIS had that memo, and we will have

24   to come back to it.

25   On October 7th, the Service

 1   learned about A-OCANADA's request to interview

 2   Mr. Arar in the United States.

 3   Is that correct?

 4   MR. HOOPER: Run that by me again,

 5   please, Mr. Waldman.

 6   MR. WALDMAN: On October 7th, the

 7   Service learned about A-OCANADA's request to allow

 8   investigators access to Mr. Arar. That's the

 9   evidence, I think.

10   MR. HOOPER: Could you bring me to

11   a document that speaks to that? I just want to be

12   careful before I answer.

13   MR. WALDMAN: It's the CSIS

14   summary, paragraph 17.

15   "October 7th. The RCMP

16   provided CSIS with a report

17   that stated that Project

18   A-OCANADA submitted a request

19   through channels to allow

20   investigators access to Maher

21   Arar to conduct an

22   interview."

23   MR. HOOPER: Agreed.

24   MR. WALDMAN: So that's in the

25   CSIS summary.

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 1                      MR. HOOPER:  Yes.

 2                      MR. WALDMAN:  Okay.  Did CSIS have

 3      any concerns about this request?

 4                      MR. HOOPER:  About the RCMP

 5      request to interview Mr. Arar --

 6                      MR. WALDMAN:  Mr. Arar while he

 7      was in the United States?

 8                      MR. HOOPER:  In New York?

 9                      MR. WALDMAN:  Yes.

10                      MR. HOOPER:  We didn't have a

11      position on it.

12                      MR. WALDMAN:  And you are aware

13      that the RCMP had sought to interview Mr. Arar in

14      January of 2002, and he wanted to have a lawyer

15      present and that's why the interview didn't take

16      place?

17                      MR. HOOPER:  I wasn't aware of

18      that at the time.  I'm aware of it now.

19                      MR. WALDMAN:  So do you have any

20      concerns about the -- CSIS -- the RCMP requesting

21      an interview with Mr. Arar while he was in New

22      York given what had happened in Canada previously?

23                      MR. HOOPER:  No.  Didn't have a

24      position on it.

25                      MR. WALDMAN:  I want to go on to
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 1      Mr. Arar's statement.

 2                        We've heard a lot of evidence

 3      about the need to conduct reliability assessments

 4      on documents; right?

 5                        MR. HOOPER:  Yes.

 6                        MR. WALDMAN:  And Ambassador

 7      Pillarella brought back the document in Arabic,

 8      ISI gave it to CSIS, the CSIS liaison to DFAIT.

 9      It was translated and it was brought back and it

10      was discussed at a meeting.

11                        MR. HOOPER:  That's right.

12                        MR. WALDMAN:  Right.  You are

13      aware of that?

14                        MR. HOOPER:  Yes.

15                        MR. WALDMAN:  And then there is

16      the memo that I think you have been taken to -- if

17      not, it's P-134, tab 9, if you want to look at it

18      if necessary -- in which they say:

19                            "CSIS made no comments about

20                            the credibility of the

21                            document that said even if

22                            true was not necessarily

23                            damning evidence against

24                            him."

25                        MR. HOOPER:  Correct.
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 1                    MR. WALDMAN:  And that's an

 2    accurate reflection of what CSIS' position is with

 3    respect to that first statement; correct?

 4                    MR. HOOPER:  That's correct.

 5                    MR. WALDMAN:  So that would mean

 6    that CSIS viewed the document with suspicion, and

 7    also that there wasn't enough evidence to reach

 8    any conclusions.  Is that fair?

 9                    MR. HOOPER:  That's our position,

10    yes.

11                    MR. WALDMAN:  So would it be fair

12    to say that CSIS viewed the document with

13    suspicion because it came from a country with a

14    poor human rights record and possibly could have

15    been extracted as a result of abuse?

16                    MR. HOOPER:  That's a thing that

17    you have to have in the back of your mind when you

18    are assessing the reliability of a document.

19                    MR. WALDMAN:  And at this point

20    you would also have been privy to some of the

21    consular reports on Mr. Arar.  I believe there is

22    evidence that the first consular visit, P-134, tab

23    3 --

24                    MR. HOOPER:  I think we had access

25    to one consular report by that time.
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 1                        MR. WALDMAN:  We didn't have

 2        access.  Perhaps I could ask you to...

 3                        Could you see if you recall seeing

 4        this document, P-134, tab 3.

 5                        MR. HOOPER:  Tab number,

 6        Mr. Waldman?

 7                        MR. WALDMAN:  Three.

 8        --- Pause

 9                        MR. WALDMAN:  Is that one of the

10        consular documents you had access to?

11                        MR. HOOPER:  If I may take a

12        moment, please?

13                        MR. WALDMAN:  Please.

14        --- Pause

15                        MR. HOOPER:  Could I consult with

16        counsel?  I'm more familiar with -- if there

17        were --

18                        MS McISAAC:  I believe the

19        information is that this one was not provided, but

20        I'm not --

21                        MR. CAVALLUZZO:  To be fair to the

22        witness, our information is that CSIS had two

23        consular reports, one January the 7th of 2003, the

24        other being April 22nd, which was the

25        Assadourian-Catterall report.
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 1                    I didn't bring the witness to

 2       those documents; I just summarized them for him.

 3       So the fact that he is looking at this document

 4       now with some question, you know, doesn't cast any

 5       doubt on his testimony.  It's just that I didn't

 6       bring him to them.

 7                    It is our information there are

 8       only two, January 7th of 2003 and April 22nd of

 9       2003.

10                    MR. HOOPER:  The reason I asked

11       the question, Mr. Commissioner, is that this one

12       is not familiar to me, its contents, so I have to

13       conclude that it's not one that the Service

14       received.

15                    MR. WALDMAN:  If you haven't seen

16       it, then I'm going to move on to another area.

17                    MR. HOOPER:  Okay.

18                    MR. WALDMAN:  So I think you would

19       agree with me, Mr. Hooper, that it is important

20       for CSIS to have an understanding of how foreign

21       intelligence agencies work; correct?

22                    MR. HOOPER:  Yes.

23                    MR. WALDMAN:  And you have to have

24       an understanding of who is in charge of the

25       agency, the structure of the agency as well,
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 1   correct, in order to be able to evaluate the

 2   reliability of the information obtained,

 3   et cetera?

 4   MR. HOOPER: Not so much the

 5   reliability of the information; the ability to

 6   interact effectively. It is nice to know how they

 7   are organized and it's good to know who is in

 8   charge. I don't know that that's particularly

 9   helpful in assessing the information that comes

10   from that agency.

11   MR. WALDMAN: Right. And that you

12   need to have some understanding of the

13   relationship between the intelligence agency and

14   the government as well. That would be important

15   for you to be able to establish a working

16   relationship?

17   MR. HOOPER: That's one of the

18   elements.

19   MR. WALDMAN: And you would also

20   want to know about the methods of the foreign

21   intelligence agency in terms of how they obtain

22   information, gather information, before you make a

23   decision of how you are going to work with them;

24   correct?

25   MR. HOOPER: Absolutely.

 1   MR. WALDMAN: And one of the

 2   things you would want to know is whether or not a

 3   foreign intelligence agency engages in abuses and

 4   torture and things like that before you engage

 5   them; correct?

 6   MR. HOOPER: I think I've

 7   testified that that is an essential ingredient in

 8   assessing before we ever engage in a relationship.

 9   MR. WALDMAN: And I would suggest

10   to you that it's important for at least two

11   reasons, and you might be able to think of

12   others -- I'm sure you will. But the two reasons

13   that come to my mind is it would be important in

14   terms of your ability to assess the reliability of

15   the information that you got, and it would also be

16   very important in terms of assessing the extent to

17   which you could share information?

18   MR. HOOPER: Those are very good

19   reasons, yes.

20   MR. WALDMAN: I would like to take

21   you to -- I'm just going to read to you a very

22   brief bit of Mr. Elcock's evidence. It's at page

23   289 of the transcript.

24   In response to a question that I

25   raised, which was as follows -- I just want to see

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 1        if you are in agreement.  I assume you are.

 2                          "In a regime that there was a

 3                          reasonable suspicion of

 4                          torture, if I understand you

 5                          correctly, you told us that

 6                          if there was a very high

 7                          national security risk, you

 8                          would share information with

 9                          a regime that you suspect of

10                          torture because the balance

11                          would be in favour of sharing

12                          the information in a very

13                          exceptional case?"

14                      And Mr. Elcock answers:

15                          "It would have to be an

16                          absolutely extraordinary

17                          case.  As an example,

18                          conceivably if information

19                          that tomorrow a bomb was

20                          going off in a major capital

21                          of a country that uses

22                          torture and I had information

23                          about the identity of the

24                          bomber or we as a service had

25                          information about the
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 1                               identity of the bomber, the

 2                               likelihood that the operation

 3                               would take place should we

 4                               not provide the information

 5                               to that service."

 6                    So Mr. Elcock's evidence was that

 7          when it comes to sharing information with a

 8          foreign intelligence agency that engages in

 9          torture, it would only happen in exceptional

10          circumstances.

11                    Do you agree with that?

12                    MR. HOOPER:  Yes, sir.

13                    MR. WALDMAN:  Right.  And that

14          would be even more true if we were talking about

15          sharing of information with respect to Canadians

16          that are in detention in that foreign agency where

17          there might be a risk of torture?

18                    MR. HOOPER:  Yes, sir.

19                    MR. WALDMAN:  So if we go to

20          November 2002, CSIS is about to meet with military

21          intelligence; correct?

22                    MR. HOOPER:  Yes.

23                    MR. WALDMAN:  And we know that

24          they had some kind of prior relationship.  You may

25          not want to confirm that, but whatever.
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 1                         Are you claiming National Security
 2          Confidentiality over the fact that you might have
 3          had contacts with the Syrians before?
 4                         MR. HOOPER:  Yes.
 5                         MR. WALDMAN:  So we don't know
 6          that.
 7                         And I would suggest to you that
 8          you would have expected that CSIS agents would
 9          have done their homework and would have a thorough
10          understanding of how Syrian Military Intelligence
11          operates before they went there; correct?
12                         MR. HOOPER:  I was confident that
13          the CSIS delegation knew those features, yes.
14                         MR. WALDMAN:  And you would know
15          that the Syrian Military Intelligence prefers to
16          deal with intelligence agencies and not with law
17          enforcement agencies; correct?
18                         MR. HOOPER:  They have that
19          preference, yes.
20                         MR. WALDMAN:  And you know that
21          the military intelligence is second-in-command to
22          the President when it comes to detaining prisoners
23          and that they are very much involved in decisions
24          around what people get detained and when they get
25          released?
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 1                    MR. HOOPER:  The intelligence

 2      services?

 3                    MR. WALDMAN:  Yes.

 4                    MR. HOOPER:  Yes.

 5                    MR. WALDMAN:  And your agents

 6      would have, I assume, had an understanding of the

 7      methods used by the military intelligence,

 8      including the fact they use coercive methods,

 9      interrogations, et cetera?

10                    MR. HOOPER:  We had read that.

11                    MR. WALDMAN:  Yes.  Perhaps I

12      could ask you to go to P-192.

13      --- Pause

14                    MR. WALDMAN:  In the third

15      paragraph, the one that starts "Subject advised",

16      this is the El Maati consular note.  Have you ever

17      had the occasion of seeing this?

18                    MR. HOOPER:  No.

19                    MR. WALDMAN:  Well, we know it was

20      discussed at a meeting involving Department of

21      Justice, RCMP, A-OCANADA, DFAIT, and CSIS, so some

22      of your officials were aware of this.

23                    MR. HOOPER:  Yes.

24                    MR. WALDMAN:  And in the

25      information it says:
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 1                    "During his 2-1/2 months of

 2                     detention in Syria, subject

 3                     advises that he was beaten

 4                     (feet/legs) and tortured

 5                     (electric shock) and forced

 6                     to give false information.

 7                     When asked what false

 8                     information, subject advised

 9                     that he would only discuss

10                     with ... CSIS."

11              So it's fair to say that your

12      operatives would have been aware of this

13      allegation, of the statement by Mr. El Maati that

14      when he was detained in Syria he had been beaten

15      and tortured with electric shocks because this

16      note had been provided to CSIS?

17                    MR. HOOPER:  I have to make that

18      presumption.

19                    MS McISAAC:  I think the witness

20      can confirm what he knew about Mr. El Maati's

21      circumstances, but I don't know that we are

22      confirming the extent to which information such as

23      this might have been received by the Service in

24      respect of Mr. El Maati from Foreign Affairs.

25                    MR. WALDMAN:  Well, I think, with
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 1          all respect, Mr. Commissioner, the evidence is

 2          that this memo was distributed at a meeting, and

 3          CSIS officials were -- no?  It was discussed at a

 4          meeting where CSIS officials and RCMP and

 5          A-OCANADA were present.

 6                          Were you aware of the allegations,

 7          the statements that Mr. El Maati made that he had

 8          been tortured in Syria?

 9                          MR. HOOPER:  I'm aware of them

10          now.  I can't recall when I was made aware of

11          them.

12                          MR. WALDMAN:  Now, if some

13          official in CSIS had attended this August meeting

14          and had seen and discussed this memo that dealt

15          with treatment in Syria, would you not have

16          expected that your officials and your delegation

17          would have been apprised of this before they went?

18          Wouldn't that have been normal protocol?

19                          MR. HOOPER:  Can you just give me

20          a moment, Mr. Waldman?

21                          MR. WALDMAN:  Sure.

22          --- Pause

23                          MR. HOOPER:  I'm trying to find a

24          reference where this was discussed at a meeting

25          involving CSIS and A-OCANADA personnel.
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 1                    MR. WALDMAN:  Well, we can give

 2        you the reference.  It has come out in the

 3        evidence that the memo was received, it was

 4        forwarded to the RCMP -- no, the RCMP was advised

 5        about it and an urgent meeting was convoked in

 6        which representatives from DOJ, CSIS, A-OCANADA

 7        all attended and there are references to that and

 8        there are reference to that effect.

 9                    MR. HOOPER:  Could you bring it to

10        me, please, or refer me to it?

11                    MS McISAAC:  I think if

12        Mr. Waldman could do that, we could bring some

13        precision to what the witness can and can't say.

14                    MR. WALDMAN:  P-211, redacted

15        personal notes of Rick Flewelling, page 28.

16                    THE COMMISSIONER:  Page 20?

17                    MR. WALDMAN:  Twenty-eight.  I

18        think Ms Pastyr-Lupul also testified to that

19        effect, but it is here in black and white.

20                    Here it says under the heading

21        "10:30:"

22                         "Meeting with PCO, DFAIT,

23                         CSIS, and RCMP, Myra,

24                         consular affairs, DFAIT."

25                    Now there is the reference to the
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1   meeting and who was present, and Ms Pastyr-Lupul

2   testified that it was at this meeting that she

3   discussed this memorandum.

4   THE COMMISSIONER: And that was at

5   the August 15th meeting.

6   MR. WALDMAN: Right.

7   THE COMMISSIONER: Yes.

8   MR. WALDMAN: So the evidence

9   before you is that there was a meeting that the

10   RCMP, Sergeant Flewelling -- or at that time

11   Corporal Flewelling attended, and the

12   representatives of CSIS and DFAIT there, and Ms

13   Lupul's evidence was with respect to that meeting,

14   she mentioned that when she was there this memo

15   was present. She saw that RCMP had it, and it was

16   discussed.

17   MR. HOOPER: I'm not trying to be

18   difficult here; I'm trying to be helpful. But if

19   there's testimony of Ms Lupul that I can be taken

20   to because I'm not making the connection. I think

21   for me to make the connection between Sergeant

22   Flewelling's notes, this memorandum and the

23   testimony, I really do need to see the testimony.

24   MR. WALDMAN: I can get it. It's

25   going to take me five minutes to find it.

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 1                         THE COMMISSIONER:  Why don't we

 2       take the break?  How long?  Is ten minutes

 3       sufficient for you?

 4                         MR. WALDMAN:  Yes.  I'm almost

 5       two-thirds done.

 6                         THE COMMISSIONER:  All right.  We

 7       will break for ten minutes.

 8                         THE REGISTRAR:  Please stand.

 9       --- Upon recessing at 3:12 p.m. /

10            Suspension à 15 h 12

11       --- Upon resuming at 3:24 p.m. /

12            Reprise à 15 h 24

13                         MR. WALDMAN:  Mr. Commissioner, at

14       the break, Ms McIsaac was very kind to say to me

15       that, if the issue was whether CSIS was aware of

16       Mr. El Maati's allegations set out in August

17       of 2002, the answer is yes.  So we don't have to

18       go -- we saved ourselves a lot of time.

19                         THE COMMISSIONER:  Great.  Okay.

20       Thank you.

21                         MR. WALDMAN:  I understand that

22       that's the case.

23                         I just want to -- I was sort of in

24       the middle -- I'm going to go back and just set --

25       take us to that.
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 1                      I just want to confirm that the

 2        position that Mr. Elcock took that you agree with

 3        is that CSIS would only share information in the

 4        case of a -- with a regime that violates human

 5        rights, especially if there are Canadian citizens

 6        detained there, about those same Canadian

 7        citizens, if they were an imminent threat?

 8                      MR. HOOPER:  I think he said

 9        "under extraordinary circumstances."

10                      MR. WALDMAN:  Under

11        extraordinary -- like, the example he gave, if a

12        bomb was about to blow up and they knew the

13        identity of the bomber.

14                      Is that fair?

15                      MR. HOOPER:  Yes.

16                      MR. WALDMAN:  And you would

17        agree --

18                      MR. HOOPER:  I agree with

19        Mr. Elcock.

20                      MR. WALDMAN:  I'm glad to hear

21        that.

22                      MR. HOOPER:  Even though he's no

23        longer the Director.

24                      MR. WALDMAN:  You still agree with

25        him?
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 1   MR. HOOPER: I still agree with

 2   him.

 3   MR. WALDMAN: So the CSIS agents

 4   knew about the -- how the Syrian Military

 5   Intelligence operated, they knew about the

 6   structure and they also knew about the human

 7   rights situation, and they were aware of this

 8   allegation of Mr. El Maati?

 9   MR. HOOPER: Yes.

10   MR. WALDMAN: Could I ask you to

11   go to P-237, tab 5, page 7? This is the new

12   chronology, and if I could ask you to go to

13   16/12/02 on page 7 of tab 5? Have you found that?

14   MR. HOOPER: Yes. Just for

15   precision, this is the Foreign Affairs chronology?

16   MR. WALDMAN: Right. And there's

17   other references, but Mr. Gould was taken to this

18   reference yesterday and confirmed that the

19   information here was correct, and it says:

20   "In response to a request for

21   a debriefing on CSIS' visit

22   to Damascus, CSIS provides a

23   report summarizing what

24   appears to be information

25   provided to Syrian Military

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 1                        Intelligence by Arar under

 2                        interrogation."  (As read)

 3                 And Mr. Gould was asked

 4    specifically about this yesterday, and he said, to

 5    his knowledge, this was accurate.

 6                 MR. HOOPER:  Let me just quickly

 7    read this, please.

 8    --- Pause

 9                 MR. HOOPER:  That's correct.

10                 MR. WALDMAN:  So that we know,

11    then, that information was obtained by CSIS and

12    the debriefing was given.

13                 MR. HOOPER:  And the debriefing

14    of ...

15                 MR. WALDMAN:  Of the information

16    obtained was given to DFAIT?

17                 MR. HOOPER:  That's correct.

18                 MR. WALDMAN:  Now, I just want to

19    take you to a few documents.  Can I ask you to go

20    to exhibit P-134, tab 8.

21    --- Pause

22                 MR. HOOPER:  Tab 8?

23                 MR. WALDMAN:  Right.

24                 So if you go to the bottom, it

25    says "SECRET", the very last:
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1   "For your personal

2   information, following a

3   meeting with DMA of 18

4   November, senior DFAIT

5   representatives asked CSIS to

6   delay their visit to Syria.

7   While CSIS indicated that

8   they would not attempt to

9   visit Mr. Arar, they still

10   intended to continue with the

11   planned visit ... PCO chose

12   not to intervene in the

13   debate, so unless the

14   Minister intends to block

15   this visit, CSIS will arrive

16   in Damascus on schedule."

17   Now, this is sent by ISI to

18   Mr. Pillarella, Head of Mission.

19   MR. HOOPER: Yes.

20   MR. WALDMAN: Then if you go up,

21   it says:

22   "You will remember that at an

23   interdepartmental meeting

24   held on Wednesday, November

25   6, it was agreed that it

1   would be useful if CSIS were

2   to travel to Syria to speak

3   to Syrian authorities ..."

4   MR. HOOPER: Yes.

5   MR. WALDMAN:

6   "In light of recent media

7   reporting on Arar, we had

8   doubts about the timeliness

9   of the CSIS visit, although

10   not about its substance."

11   Okay. And then in the next

12   paragraph:

13   "We have consulted with

14   CSIS ... We have been

15   informed that the (blank).

16   The purpose of the visit is

17   to consult with Syrian

18   intelligence and take

19   advantage of their knowledge

20   on Al-Qaida and terrorist

21   threats. CSIS is not

22   visiting Arar, but given the

23   high profile of the issue in

24   Canada, we suggest below

25   press lines in the unlikely

1   event that there will be

2   press coverage ..."

3   And then they suggest press lines.

4   MR. HOOPER: Yes.

5   MR. WALDMAN: So would you agree

6   with me that based upon this e-mail, the purpose

7   of the trip to Syria was to exchange information

8   and there was no indication of any imminent

9   threat?

10   MR. HOOPER: We were there to

11   elicit information, not to exchange information.

12   MR. WALDMAN: Elicit, right.

13   Elicit information. But there's no indication of

14   any imminent threat in any of this?

15   MR. HOOPER: In the e-mail?

16   MR. WALDMAN: Right.

17   MR. HOOPER: The e-mail does not

18   speak to an imminent threat.

19   MR. WALDMAN: Right. And the

20   suggestion is that the purpose of the trip is to

21   consult and to elicit information from the

22   Syrians.

23   MR. HOOPER: Yes.

24   MR. WALDMAN: Well, I think they

25   use the word "exchange," but ...

1   And we also know that the two

2   targets of the investigation, A-OCANADA

3   investigation, Mr. Almalki and Mr. El Maati, were

4   both in detention in November of 2002, as was

5   Mr. Arar. Mr. Almalki and Mr. Arar were in Syria

6   at the time and Mr. El Maati was in Egypt.

7   MR. HOOPER: That's correct.

8   MR. WALDMAN: So in terms of these

9   three individuals, I think you would agree with

10   me, they weren't an imminent threat to Canada's

11   national security or to anybody's national

12   security if they're sitting in 3-by-6-by-7 cells

13   in Syria or Egypt?

14   MR. HOOPER: I think I have to

15   bring clarity to that.

16   The purpose of our visit, and I

17   think it -- let me just find the reference here.

18   "The purpose of the visit is

19   to consult with Syrian

20   intelligence and take

21   advantage of their knowledge

22   on Al-Qaida and terrorist

23   threats."

24   This was quite apart from anything

25   to do with Mr. Arar and Mr. Almalki and Mr. El

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 1       Maati --
 2                       MR. WALDMAN:  Yes, I understand
 3       that.  But there was no imminent threats.  You
 4       were getting general information.  It wasn't that
 5       there was -- you knew about a bomber, you wanted
 6       to find out about a bomber that was about to set a
 7       bomb up in Canada.
 8                       What I'm trying to suggest to you,
 9       sir, is that there was nothing about the visit
10       that was dealing with imminent threats.  There was
11       no suggestion that there was some bomber who was
12       about to put a bomb -- blow up a bomb in Ottawa
13       because the two main targets of the A-OCANADA
14       sleeper cell were sitting in jail in Syria and
15       Egypt and -- so that there was no -- this was a
16       visit to get information.  But there was no
17       evidence of an imminent threat at that time.
18                       MR. HOOPER:  I think I need to
19       speak to that, because if you put that around the
20       context of the times and certainly the
21       geopolitical situation of Syria, I mean, it was
22       evident that there was going to be an incursion
23       into Iraq; and given Syria's situation, we
24       expected that it would be used as an infiltration
25       and exfiltration route for jihadis.
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 1   At that time, we also in Canada

 2   had -- and OCanada and A-OCANADA were

 3   manifestations of that -- we had a number of

 4   targets of interest who we believed were serious

 5   and imminent threats to the security of Canada.

 6   So to say that there was no

 7   imminent or serious threat at play around the time

 8   of this visit isn't strictly correct. But if you

 9   bring it -- I do take your point, that if you take

10   it back to Mr. Elcock's comment about -- there's

11   nothing of the quality of a bomb that's going to

12   go off at the Union Station at five o'clock on

13   Friday afternoon on November 27th. I think that's

14   a qualitative difference.

15   MR. WALDMAN: Right. So there

16   would be nothing in the information that you had

17   at that time that would have justified you, CSIS,

18   sharing information with a regime that you had

19   reasonable grounds to believe in torture,

20   especially in light of Mr. El

21   Maati's allegations --

22   MR. HOOPER: Again, we weren't

23   sharing information, they were receiving

24   information --

25   MR. WALDMAN: I'm understanding

1   that.

2   MR. HOOPER: Yes.

3   MR. WALDMAN: But there would have

4   been nothing that would have justified sharing

5   information based upon Mr. Elcock's definition of

6   "imminent threat"?

7   MS McISAAC: I think perhaps if we

8   established that we didn't share any information,

9   I would prefer, for national security grounds, we

10 don't keep talking about whether there was some

11 threat out there or not or some reason why it

12 might be appropriate to share information.

13   I think he's testified they did

14 not share information. Couldn't we leave it at

15 that?

16   THE COMMISSIONER: Does that -- is

17 that the point you wish to make?

18   MR. WALDMAN: So that the evidence

19 is that no evidence was shared with the Syrian

20 Military Intelligence?

21   MR. HOOPER: You used the word

22 "evidence" again, Mr. Waldman. No information was

23 shared --

24   MR. WALDMAN: Now we're at a

25 hearing. The evidence that you're giving today,

1   sir, is --

2   MR. HOOPER: Yes.

3   No. We were there in receive

4   mode. We were there to receive information, not

5   to exchange it.

6   MR. WALDMAN: Right. Would you

7   agree with me that -- so that -- this is dealing

8   with the November visit.

9   MR. HOOPER: Yes.

10   MR. WALDMAN: So I don't take it

11   that the admission in the statement goes beyond

12   the November visit then in terms of, you never

13   shared -- did you ever share information about

14   Mr. Arar with Syria?

15   MR. HOOPER: I won't answer that

16   question in public testimony.

17   MR. WALDMAN: Am I right to say

18   that if you -- based upon what Mr. Elcock said, if

19   you were to have shared information about Mr. El

20   Maati, Mr. Almalki, or Mr. Arar, given

21   Mr. Elcock's definition, it would have had to have

22   come in the context of an imminent threat.

23   Correct?

24   MR. HOOPER: Mr. Elcock gave a

25   description of one imminent threat.

 1   MR. WALDMAN: Right.

 2   MR. HOOPER: Of a hypothetical

 3   event.

 4   MR. WALDMAN: Right. But if, at

 5   any point, CSIS -- and I know we're not going to

 6   find out here in the public hearings today --

 7   whether CSIS did or did not, but I want it clearly

 8   stated on the record. The only circumstance in

 9   which CSIS would have properly shared information

10   about any Canadian citizen detained in Syria would

11   have been if there was an assessment that there

12   was an imminent threat?

13   MR. HOOPER: Yes. "Imminent

14   threat" could take a number of different forms.

15   MR. WALDMAN: That's fine.

16   So the evidence with respect to

17   Inspector Cabana and the evidence that was given

18   by -- I'm trying to remember -- Sergeant

19   Lauzon? -- was that in the furtherance -- that

20   they would have had no difficulty in sharing

21   information with Syria about their investigation.

22   I take it that, from CSIS's point of view, that

23   would have been -- that's problematic?

24   MR. HOOPER: What the RCMP does or

25   intends to do is the RCMP's business. It's not

1   what we would do. So it's not a question of

2   problematic or not. It's just they have --

3   MR. WALDMAN: The RCMP would not

4   share information with a regime that engages in

5   torture unless there was an imminent threat --

6   CSIS, sorry. I'm sorry. I meant to say CSIS and

7   I said the RCMP. Sorry, I'm tired. It's a long

8   day.

9   CSIS would not share information

10   with a regime that engages in torture except in an

11   imminent threat?

12   MR. HOOPER: In the context of an

13   imminent threat, yes, a serious threat.

14   MR. WALDMAN: Okay. Thank you.

15   Just give me one second. I just

16   want to check my notes.

17   --- Pause

18   MR. WALDMAN: Sorry, given his

19   evidence, I'm just trying to go through my notes

20   and see what I can skip.

21   THE COMMISSIONER: Take your time.

22   --- Pause

23   MR. WALDMAN: Now, we're now at

24   the CSIS officers going to Syria. They're in

25   Syria. We have two Canadians sitting in jail,

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 1        Mr. Almalki and Mr. El Maati -- Mr. Almalki and

 2        Mr. Arar, sorry.  And I would posit that you must

 3        have expected that Mr. Arar's and Mr. Almalki's

 4        names would have come up during the course of

 5        conversations?  It's reasonable to assume.

 6                        Correct?

 7                        MR. HOOPER:  Yes.  It's reasonable

 8        to assume.

 9                        MR. WALDMAN:  That it would have

10        come up.

11                        And indeed, considering the stated

12        purpose of the visit was al-Qaeda and discussing

13        Arar, and considering that Mr. Arar was deported

14        by the Americans based upon the allegation that he

15        was al-Qaeda, it was very likely that you must

16        have anticipated that his name was going to come

17        up during the course of your conversations with --

18        your officials' conversations with the Syrian

19        Military Intelligence?

20                        MR. HOOPER:  Mr. Arar's name?

21                        MR. WALDMAN:  Right.

22                        MR. HOOPER:  Yes.

23                        MR. WALDMAN:  And we, in fact,

24        know that Mr. Arar was discussed.

25                        Correct?
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1   MR. HOOPER: Yes.

2   MR. WALDMAN: We know that. You

3   got information.

4   So could you tell us whether it

5   was CSIS that brought up Mr. Arar's name or Syria?

6   MR. HOOPER: I don't know that. I

7   know what instructions my people were given. If

8   the Syrians offered information, we were going to

9   receive it.

10   MR. WALDMAN: Did CSIS reveal to

11   the Syrians that Mr. Arar was part of, in some way

12   or other, a national security investigation?

13   MR. HOOPER: Not to my knowledge,

14   no.

15   MR. WALDMAN: So can you tell me,

16   did CSIS provide the Syrians with any additional

17   information concerning Mr. Arar in their

18   conversations with them?

19   MR. HOOPER: We didn't provide

20   them any information.

21   MR. WALDMAN: None at all?

22   MR. HOOPER: Any additional

23   information.

24   MR. WALDMAN: So if you didn't

25   provide any information, what kind of discussion

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 1          could you have had about Mr. Arar?  He was

 2          discussed.  That is what the evidence says,

 3          Mr. Arar was discussed.

 4                    MR. HOOPER:  Which evidence is

 5          that, sir?  If I made that statement, I qualified

 6          it by saying that we were there to receive

 7          information, not to elicit it or to offer it.

 8                    MR. WALDMAN:  But you did bring

 9          back information on Mr. Arar, we know that and you

10          have just confirmed that?

11                    MR. HOOPER:  Yes.

12                    MR. WALDMAN:  All right.  And

13          would you not agree with me, by accepting this

14          information, the message you were giving the

15          Syrians was that you had an interest in receiving

16          information on Mr. Arar?

17                    MR. HOOPER:  That we had an

18          interest ...?

19                    MR. WALDMAN:  In receiving

20          information on Mr. Arar.

21                    MR. HOOPER:  If they offer it and

22          we take it.  You can draw a conclusion, I don't

23          know what conclusion.

24                    MR. WALDMAN:  Would you think it

25          would have been a reasonable conclusion for the
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 1   Syrian Military Intelligence to come to, that

 2   CSIS --

 3   MR. HOOPER: I think the Syrian

 4   Military Intelligence service by this time had a

 5   pretty strong indication from other sectors that

 6   the Canadian government was interested in

 7   Mr. Arar.

 8   MR. WALDMAN: Right.

 9   MR. HOOPER: So the long way

10   around your question, I think it is reasonable.

11   MR. WALDMAN: Reasonable that the

12   Syrian Military Intelligence would think that the

13   Canadian Intelligence Services had an interest in

14   obtaining information on Mr. Arar?

15   MR. HOOPER: That is a conclusion

16   they could have drawn, yes.

17   MR. WALDMAN: And it would be a

18   reasonable conclusion?

19   MR. HOOPER: I'm at the point

20   where I'm not sure what is reasonable in the mind

21   of the Syrian Military Intelligence Service any

22   more.

23   MR. WALDMAN: Did not concern you,

24   sir, that in light of Syria's abysmal human rights

25   record, and Mr. El-Maati's allegations of torture,

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1   that by even signalling an interest in obtaining

2   information about Mr. Arar you might be putting

3   him at risk?

4   MR. HOOPER: Did we run that

5   danger in accepting the information?

6   MR. WALDMAN: Yes.

7   MR. HOOPER: I don't think so, no.

8   MR. WALDMAN: You don't think so?

9   MR. HOOPER: No.

10   MR. WALDMAN: You don't think that

11   by signalling to the Syrians that you would like

12   to receive information from Mr. Arar you might be

13   encouraging them to please you by giving you

14   further information?

15   MR. HOOPER: There are a lot of

16   words in there. "That we would like to receive."

17   They offered information and we received it and

18   that was kind of the beginning and end. Whatever

19   went on in the minds of the Syrian Military

20   Intelligence officials I really can't speak to.

21   MR. WALDMAN: So you don't think

22   it is a reasonable inference that a reasonable

23   person might draw that by receiving information

24   you were encouraging the Syrians to try and get

25   more information?

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 1                    MR. HOOPER:  Not in the least.

 2                    MR. WALDMAN:  Now, I just want to

 3    clarify one issue.  Remember it was your evidence

 4    before that you had absolutely no idea that these

 5    kind of memos were going around from DFAIT?

 6                    MR. HOOPER:  Yes.

 7                    MR. WALDMAN:  Perhaps I could ask

 8    you to go to Exhibit P-185.

 9    --- Pause

10                    MR. WALDMAN:  So this is a

11    briefing note to the Commissioner, the RCMP

12    Commissioner, that talks about a meeting that was

13    held, and the meeting discussed a draft of the

14    Pardy memo on May 12th.  CSIS representatives were

15    there, and I would suggest to you that what this

16    Briefing Note clearly indicates is that CSIS

17    representatives had a copy of an earlier draft of

18    Mr. Pardy's memo, because that is what it says.

19                             "A meeting was held on 2003

20                              May 12th with DFAIT, SolGen,

21                              RCMP, CSIS and PCO present.

22                              Discussions surrounded the

23                              current state of Arar's RCMP

24                              interest."  (As read)

25                    And:
```

1   "RCMP agreed that at this

2   point RCMP has the lead in

3   terms of investigating Arar.

4   Both RCMP and [so and so] are

5   aware of the opinion that

6   while there is a suspicion

7   surrounding the historical

8   activities of Arar there is

9   insufficient evidence to

10   claim he is a member of

11   al-Qaeda." (As read)

12   Then it goes on in the

13   next-to-last paragraph, it starts off:

14   "H.G. Pardy, Director

15   General, Consular Affairs,

16   DFAIT, had prepared a memo

17   for Minister addressing Arar.

18   CSIS, the RCMP and SolGen

19   expressed concern over some

20   of the wording in the memo."

21   (As read)

22   So I would suggest to you, sir,

23   that what this briefing note clearly indicates is

24   that CSIS had a copy of the memo.

25   Perhaps I could take you to that

1   memo, because it is the one that would be most

2   contemporaneous in time because there are a whole

3   series of different incarnations. This is at

4   tab 75, tab 3. This is the May 5th draft of

5   Mr. Pardy's memo, which is the one -- okay, P-117,

6   tab 75, tab 3. Volume 2. P-117, volume 2, tab

7   75, tab 3.

8   --- Pause

9   MR. WALDMAN: I take you to this,

10   sir, because of your evidence that you said,

11   "Well, if CSIS would have had -- if you would have

12   had any understanding that there was still this

13   communication problem, you know, so long after

14   January 18th, you would have taken steps to

15   clarify it.

16   What I'm suggesting to you, sir,

17   is that at least someone from CSIS attended at a

18   meeting where this draft was discussed and there

19   were requests about changes in the wording. This

20   meeting, in my submission, clearly suggests that

21   as of May 5, 2003 there is clearly indications

22   that there are people who thought that CSIS didn't

23   want Mr. Arar back.

24   Perhaps we could go to that.

25   Paragraph 8.

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 1              MR. HOOPER:  Yes.

 2              MR. WALDMAN:  Paragraph 8.

 3                 "CSIS officials visited Syria

 4                  earlier this year and

 5                  discussed Mr. Arar with their

 6                  counterparts.  They did not

 7                  meet Mr. Arar.  Subsequent to

 8                  these discussions Syrian

 9                  officials informed us that

10                  they were informed by CSIS

11                  officials that Canada did not

12                  want to have Mr. Arar

13                  returned.  The CSIS officials

14                  denied that they had said

15                  this to the Syrians."

16              MR. HOOPER:  Yes.

17              MR. WALDMAN:  The next page.

18                 "there is [urgent} need for

19                  an unambiguous statement by

20                  the government of Canada,

21                  preferably signed by the

22                  Solicitor General and the

23                  Foreign Minister, to the

24                  effect that we have no

25                  evidence in Canada, or from
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 1                            foreign sources, that
 2                            Mr. Arar is or was a member
 3                            of al-Qaida, that we do not
 4                            believe that such information
 5                            exists and that Mr. Arar
 6                            should be permitted to return
 7                            to Canada."
 8                  MR. HOOPER:  Yes.
 9                  MR. WALDMAN:  Then it goes on to
10      say:
11                            "While we will continue to
12                            engage the Syrians on the
13                            case, there can be little
14                            expectation that they will
15                            respond positively as long as
16                            the American claims remain
17                            unchallenged and there is a
18                            denial that Canadian security
19                            and police officials do not
20                            want to see Mr. Arar returned
21                            to Canada."
22                  So what I'm putting to you, sir,
23      is that your officials had a clear indication from
24      this memo that there was still a belief that
25      Canadian security and police officials do not want
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1   to see Mr. Arar returned to Canada.

2   So maybe it didn't come up the

3   train to you, but someone in CSIS was aware in May

4   of 2003, and you already told us, sir, that if you

5   had only known you would have clarified it, but

6   you didn't know.

7   So is this a communication problem

8   with CSIS?

9   MR. HOOPER: I'm looking for the

10   clear indication that there is a continued

11   misperception on the part of the Syrian

12   government -- or a clear understanding by the

13   Syrian government that we don't want Arar back in

14   Canada. I don't see that in the memo, unless I'm

15   misreading something. Perhaps you could direct me

16   to --

17   MR. WALDMAN: I think your

18   evidence was -- and unfortunately we have had to

19   come back to this because I didn't have this

20   evidence before. Your evidence was that you were

21   completely unaware that there was this

22   communications problem and that there was this

23   misconception in terms of what was believed about

24   CSIS's position and that you would have cleared it

25   up?

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 1                         MR. HOOPER:  Yes, if somebody had

 2          signalled that to us.

 3                         MR. WALDMAN:  Right.  What I'm

 4          suggesting to you is that the signal is here.

 5                         MR. HOOPER:  Where, Mr. Waldman?

 6                         MR. WALDMAN:

 7                              "While we will continue to

 8                              engage the Syrians on the

 9                              case, there can be little

10                              expectation that they will

11                              respond positively as long as

12                              the American claims remain

13                              unchallenged and there is a

14                              denial that Canadian security

15                              and police officials do not

16                              want to see Mr. Arar returned

17                              to Canada."

18                         So the clear statement here is

19          that the "Canadian security and police officials

20          do not want to see Mr. Arar returned to Canada."

21                         MR. HOOPER:  Maybe it is the

22          double negative that is throwing me off here, but

23          I don't see that there is a signal to us here that

24          there is still a misunderstanding by the Syrian

25          government as to whether or not we want to see
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 1   Mr. Arar back in Canada. I'm not trying to be

 2   obtuse, but I'm just having difficulty situating

 3   your thesis against what is in that sentence

 4   there.

 5   MR. WALDMAN: Well, the way I read

 6   the sentence, and I suppose we will have to leave

 7   it up to the Commissioner to decide, is is there a

 8   clear signal here in this sentence, that was

 9   attended by your CSIS representative, that there

10   was still big confusion about what was the

11   position of CSIS. And Mr. Pardy says there has to

12   be an unambiguous statement by the Government of

13   Canada and there has to be a denial from the

14   security services that they don't want Mr. Arar

15   back.

16   MR. HOOPER: I'm sorry,

17   Mr. Waldman, I don't -- I don't read as much into

18   that -- I don't see that as a cry for help or a

19   cry for the --

20   MR. WALDMAN: "A request for a

21   clear an unambiguous statement from the security

22   services" --

23   MR. HOOPER: From the Government

24   of Canada.

25   MR. WALDMAN: It says from SolGen,

1   if I'm not mistaken?

2   MR. HOOPER: "By the government of

3   Canada, preferably signed by the Solicitor General

4   and Foreign Minister."

5   MR. WALDMAN: Well, we will leave

6   it up to ...

7   Now I would like to move on to

8   another area. You have already told us -- and I

9   am getting towards the end.

10   You have told us that CSIS has an

11   elaborate targeting process.

12   MR. HOOPER: Yes.

13   MR. WALDMAN: I think it is also

14   fair to say that -- at least the evidence that we

15   have is -- we are not going to ask you what your

16   view is, but A-OCANADA told us that Mr. Arar was

17   not a target at the beginning, that it was

18   Mr. Almalki and Mr. El-Maati. Indeed, if you look

19   at the Garvie report -- and I won't take you it to

20   due to time -- but all of the investigators that

21   were investigated said he wasn't a target, he was

22   peripheral to the investigation, that he was a

23   potential witness. That was the evidence in the

24   Garvie report.

25   MR. HOOPER: Yes.

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 1                    MR. WALDMAN:  Indeed, Inspector

 2    Cabana testified that their wish was to interview

 3    Mr. Arar as a potential witness.  You were aware

 4    of that as well?

 5                    MR. HOOPER:  Yes.

 6                    MR. WALDMAN:  So that was, I

 7    think, a common understanding with respect to

 8    Mr. Arar's status?

 9                    MR. HOOPER:  Within the RCMP.

10                    MR. WALDMAN:  Right.  Okay.

11                    If we go on to the discussion

12    around the letter, I think it was agreed that the

13    purpose of the letter was to pressure the Syrians

14    to release Mr. Arar.

15                    Correct?

16                    MR. HOOPER:  Correct.

17                    MR. WALDMAN:  This Ministerial

18    letter?

19                    MR. HOOPER:  Correct.

20                    MR. WALDMAN:  We already know that

21    the proposal put forward by the Ministers was no

22    evidence and CSIS was concerned about that

23    phrasing.

24                    Correct, because you --

25                    MR. HOOPER:  The no evidence
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 1      phrase?

 2                      MR. WALDMAN:  Yes?

 3                      MR. HOOPER:  I think that was more

 4      a preoccupation of the RCMP, because that means

 5      something special to the RCMP.  We have no concern

 6      about evidence.

 7                      MR. WALDMAN:  So what was CSIS's

 8      concern about the wording proposed by the

 9      Minister, because I thought this was a joint

10      CSIS-RCMP concern.

11                      MR. HOOPER:  Can you take me to

12      that, Mr. Waldman?

13                      MR. WALDMAN:  I will have to

14      find it.

15                      MR. CAVALLUZZO:  Exhibit P-117,

16      tab 75, sub tab 9.

17                      MR. WALDMAN:  I have that one.

18      that is the first wording.  I was looking for

19      the --

20                      MR. CAVALLUZZO: Sub tab 10.

21                      MR. WALDMAN:  Here, this is it.

22      Sub tab --

23                      MR. CAVALLUZZO:  Sub tab 8, the

24      last page.

25                      MR. WALDMAN:  No.  No, I was
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 1          worried about the draft wording that CSIS had but

 2          that is at sub tab 9.  This is the proposed

 3          letter.

 4                          MR. CAVALLUZZO:  Sub tab 8 is the

 5          "RCMP/CSIS have concerns" --

 6          --- Off microphone / Sans microphone

 7                          MR. WALDMAN:  Right.  But I wanted

 8          to take him back to sub tab 8, because he said he

 9          didn't have the -- sub tab 9 -- the original

10          wording.  Because I thought there was agreement

11          between RCMP and CSIS about the concerns, but

12          Mr. Hooper is saying he didn't have concerns.  So

13          I just want to take him to the wording, and it is

14          found at tab 9, the proposed letter that the

15          Minister wanted to sign?

16                          MR. HOOPER:  So we are at tab 9?

17                          MR. WALDMAN:  Tab 9, third page

18          in.

19                          MR. HOOPER:  This is the --

20                          MR. WALDMAN:  Proposed letter that

21          was rejected?

22                          MR. HOOPER:  -- proposed letter,

23          yes.

24                          MR. WALDMAN:  And it says, in the

25          second paragraph:
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 1                              "I [would] assure you that

 2                              the Government of Canada has

 3                              no evidence Mr. Arar was

 4                              involved in any terrorist

 5                              activity ..."

 6                    That was the objectionable phrase?

 7                    MR. HOOPER:  Yes.

 8                    MR. WALDMAN:  So CSIS didn't

 9      have any objection to that phrase, it was the RCMP

10      that did?

11                    MR. HOOPER:  I don't know how

12      they -- this was floated during a consultation and

13      I don't know who said what in respect to that, but

14      I do know that this would probably be more

15      provocative to the RCMP than it would be to us.

16                    MR. WALDMAN:  But I'm asking,

17      because at tab 8 we have the proposed wording that

18      both you and CSIS accepted, which is --

19                    MR. HOOPER:  Both we and the RCMP?

20                    MR. WALDMAN:  Both you and the

21      RCMP accepted?

22                    MR. HOOPER:  That is on page 1?

23                    MR. WALDMAN:  Page 3 of 3 of tab

24      8.

25                              "Mr. Arar is currently the
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 1                              subject of a National

 2                              Security Investigation in

 3                              Canada.  Although there is

 4                              not sufficient evidence at

 5                              this time to warrant Criminal

 6                              code charges, he remains a

 7                              subject of interest."

 8                    That was the proposed wording and

 9         Mr. Cavalluzzo already took you to that and

10         suggested it wouldn't have been particularly

11         helpful?

12                         MR. HOOPER:  Okay.

13                         MR. WALDMAN:  So I just want to

14         clarify, then, your evidence.

15                         CSIS was prepared to sign off on:

16                              "I [would] assure you that

17                              the Government of Canada has

18                              no evidence Mr. Arar was

19                              involved ..."

20                    And this was just the RCMP that

21         was objecting, or CSIS objected too?

22                         MR. HOOPER:  I can't say, not

23         having been there.  We probably would have

24         supported the RCMP.  But I can tell you that words

25         like "evidence" -- "subject of interest" has no
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1   meaning in our lexicon. That is why I'm drawing

2   that conclusion, but it is a conclusion.

3   MR. CAVALLUZZO: Mr. Commissioner

4   there is in-camera evidence dealing with that

5   particular point.

6   MR. WALDMAN: I just wanted to go

7   on and cover one last area.

8   Your evidence was that the primary

9   concern with respect to the other phraseology was

10   that the letter be accurate.

11   Correct?

12   MR. HOOPER: Yes.

13   MR. WALDMAN: I just want to take

14   you to the wording.

15   We know that Mr. Arar wasn't a

16   target.

17   Right? From the RCMP point of

18   view.

19   MR. HOOPER: From the RCMP point

20   of view? I can't speak to that.

21   MR. WALDMAN: So the wording

22   "subject of a National Security Investigation",

23   what did that mean to you?

24   MR. HOOPER: Where are you,

25   Mr. Waldman? You are on --

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 1                    MR. WALDMAN:  The wording that was
 2          proposed by CSIS and the RCMP.
 3                    MR. HOOPER:  Okay.  Yes?
 4                    MR. WALDMAN:  I mean, if this is
 5          an effort to be helpful, what does it mean when
 6          you say someone is the "subject of a National
 7          Security Investigation"?
 8                    I mean, I know from CSIS' point of
 9          view it is meaningless, right, because you don't
10          have subjects, you have targets.
11                    Correct?
12                    MR. HOOPER:  That's correct.
13                    MR. WALDMAN:  So to you "subject"
14          is a meaningless concept.
15                    Right?
16                    MR. HOOPER:  Where this is going
17          at some point I'm going to have to indicate that
18          I -- I can't get into a complete discussion around
19          all of this without invoking national security
20          confidence.  I have a sense of where this
21          discussion is going.
22                    MR. WALDMAN:  Well, I guess the
23          difficulty I have --
24                    MR. HOOPER:  I think it puts me in
25          a position of having to say whether or not
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 1      Mr. Arar was a target of the Service --

 2                     MR. WALDMAN;  No, that is not --

 3                     MR. HOOPER:  -- to make any sense

 4      of any answer I might give.

 5                     MR. WALDMAN:  Well, you just told

 6      us that "target" has one meaning and "subject"

 7      doesn't have a meaning to you.

 8                     Is that correct?

 9                     MR. HOOPER:  It has no meaning in

10      our lexicon.

11                     MR. WALDMAN:  Right.  So to

12      say someone was a "subject" doesn't mean anything

13      to you?

14                     MR. HOOPER:  "A person of

15      interest" means nothing to us.  A person is a

16      "target" or he' is not.

17                     MR. WALDMAN:  A person of

18      interest, a peripheral person of interest, target,

19      none of those things mean any -- nothing to you?

20                     MR. HOOPER:  Those are not words

21      we use in our targeting regime.

22                     MR. WALDMAN:  So I suppose what

23      I'm trying to understand is, why would CSIS

24      propose a wording that was particularly unhelpful

25      to Mr. Arar?  I think we have all acknowledged
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 1         that.  That was particularly -- it was completely
 2         meaningless to CSIS?
 3                         MR. HOOPER:  I don't know that we
 4         proposed this language.  I know that this was --
 5         let me read this here.
 6                         I think this was proposed in
 7         consultation between the Department of Foreign
 8         Affairs, ourselves and the RCMP.  Whether this was
 9         our proposal or the RCMP's, I can't say.
10                         MR. WALDMAN:  Okay.
11         Mr. Cavalluzzo covered the area of the leak.
12                         Thank you.  Those are my
13         questions.
14                         THE COMMISSIONER:  Thank you very
15         much, Mr. Waldman.
16                         Ms McIsaac, I guess you are ...
17         --- Pause
18                         MS McISAAC:  I don't have any
19         questions, sir.
20                         THE COMMISSIONER:  Thank you.
21                         Mr. Shore?
22                         MR. SHORE:  Yes.  Thank you, sir.
23         EXAMINATION
24                         MR. SHORE:  Just a couple of
25         matters, Mr. Hooper.
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 1                              You indicated, sir, that you have
 2       known Gar Pardy for many years.
 3                         MR. HOOPER:  That's correct.
 4                         MR. SHORE:  During the period,
 5       say, from the middle of January to the middle of
 6       May 2003, did he ever call you and ask you to
 7       clarify the CSIS position with regard to Arar's
 8       return --
 9                         MR. HOOPER:  No.
10                         MR. SHORE:   -- from Syria?
11                         MR. HOOPER:  No.
12                         MR. SHORE:  Or anybody else --
13                         MR. HOOPER:  Not that I recall.
14                         MR. SHORE:  -- from his department
15       call you?
16                         MR. HOOPER:  No.
17                         MR. SHORE:  If there had been such
18       a call or such a request, what would you have done
19       with it?
20                         MR. HOOPER:  I probably would have
21       asked at a senior level within Foreign Affairs,
22       what are we going to do about it?  Is there
23       something we can do in collaboration with you or
24       independently of you?
25                              We would not take a unilateral
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1 action, I can say that. We wouldn't take action

2 without consulting with the Department of Foreign

3 Affairs.

4   MR. SHORE: But if they are asking

5 you for your help, would you have been reluctant

6 to provide it?

7   MR. HOOPER: No.

8   MR. SHORE: Was there ever an

9 official CSIS position that they didn't want Arar

10 back in Canada?

11   MR. HOOPER: No.

12   MR. SHORE: Was there ever an

13 official CSIS position that they didn't want a

14 letter to go from the Canadian Foreign Minister to

15 his counterpart in Syria requesting his return?

16   MR. HOOPER: No.

17   MR. SHORE: Leading up to the

18 conversation that you had with Ms McCallion in

19 early June of 2003, let's take it a week or two

20 before that, what was your understanding with

21 regard to the proposed letter that had been

22 discussed with the various agencies that the

23 Foreign Minister was to sign?

24   MR. HOOPER: I didn't have an

25 acute awareness of the general state of play on

1   any given day, but as far as I was concerned,

2   towards the middle of May, the issue around the

3   language that was going to be used in the letter

4   from Mr. Graham, as it related to Mr. Arar's

5   status had been negotiated and was settled.

6   MR. SHORE: Where did you get that

7   information?

8   MR. HOOPER: Where did I get it?

9   MR. SHORE: Yes.

10   MR. HOOPER: There are two

11   officials, at least two officials of the Service

12   that had been involved in discussions on an

13   ongoing basis and I learned from one of them.

14   MR. SHORE: Were you content with

15   that position?

16   MR. HOOPER: With the position

17   that had been negotiated?

18   MR. SHORE: Yes.

19   MR. HOOPER: Yes.

20   MR. SHORE: In your call to

21   Ms McCallion, was there any intention on your part

22   to have that languaging changed --

23   MR. HOOPER: No.

24   MR. SHORE: -- or not changed?

25   MR. HOOPER: No.

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 1                      MR. SHORE:  Was there any

 2    discussion with Ms McCallion with regard to

 3    whether or not CSIS wanted Arar to stay in Syria

 4    because of resource issues?

 5                      MR. HOOPER:  No.

 6                      MR. SHORE:  Were resource issues

 7    in fact even discussed with Ms McCallion?

 8                      MR. HOOPER:  Not to the best of my

 9    recollection, no.

10                      MR. SHORE:  I'm talking about

11    resources from the human perspective, human

12    resources, or financial perspective?

13                      MR. HOOPER:  No.  No.

14                      MR. SHORE:  Was the discussion

15    of resources part of your purpose in calling

16    Ms McCallion?

17                      MR. HOOPER:  No.

18                      MR. SHORE:  All right, sir.

19                      Those are my questions.  Thank

20    you.

21                      THE COMMISSIONER:  Mr. Cavalluzzo?

22                      MR. CAVALLUZZO:  No questions.

23                      THE COMMISSIONER:  Okay.  Well,

24    thank you very much, Mr. Hooper.  You are, as you

25    know, going to be giving evidence, tomorrow
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 1    morning it will be now, in camera, at 10 o'clock.

 2                    MR. HOOPER:  Yes.

 3                    THE COMMISSIONER:  So that we will

 4    see you again in the morning, but thank you for

 5    your evidence here today.  It has been helpful.  I

 6    appreciate the time and effort you have put in to

 7    preparing.

 8                    MR. WALDMAN:  Can we just clarify

 9    what's happening next week?

10                    Is Mr. Dickenson on Monday?

11                    THE COMMISSIONER:  Yes,

12    Mr. Dickenson is on at 9 o'clock Monday morning.

13                    MR. WALDMAN:  Do we need to start

14    at 9:00?  It is the only witness tomorrow.  I

15    guess it's up to you.

16                    MR. CAVALLUZZO:  Yes, we do,

17    because Mr. Dickenson has a personal engagement.

18    --- Off microphone / Sans microphone

19                    MR. WALDMAN:  Okay.  Thank you.

20                    THE COMMISSIONER:  Okay.  Then it

21    is Mr. Martel on Tuesday --

22                    MR. WALDMAN:  Tuesday and

23    Wednesday.

24                    THE COMMISSIONER:  -- and

25    Wednesday, and that will complete the evidence for
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 1      this inquiry.

 2                      MR. WALDMAN:  Thank you.

 3                      THE COMMISSIONER:  We will rise

 4      now and resume public hearings at 9 o'clock Monday

 5      morning.

 6                      THE REGISTRAR:  Please stand.

 7      --- Whereupon the hearing adjourned at 4:07 p.m.,

 8          to resume on Monday, August 29, 2005, at

 9          9:00 a.m. / L'audience est ajournèe à 16 h 07,

10          pour reprendre le lundi 29 août 2005 à 9 h 00

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24          Lynda Johansson,

25          C.S.R., R.P.R.
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Lynda Johansson

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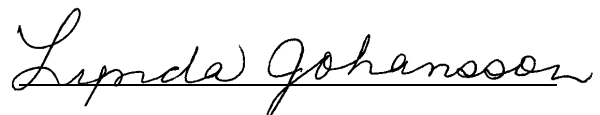
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