

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



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

Audience publique

Public Hearing

Commissaire

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

Commissioner

Tenue à:

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

le vendredi 3 juin 2005

Held at:

Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario

Friday, June 3, 2005

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Friday, June 3, 2005 at

3 9:35 a.m. / L'audience débute le vendredi

4 3 juin 2005 à 9 h 35

5 THE REGISTRAR: Please be seated.

6 Veuillez vous asseoir.

7 MR. CAVALLUZZO: Good morning,

8 Commissioner.

9 THE COMMISSIONER: Good morning,

10 Mr. Cavalluzzo.

11 MR. CAVALLUZZO: We have new

12 lawyers here, and in terms of the documents,

13 apparently there has been some problem getting

14 documents. I just raise that at the outset.

15 We are now reproducing a huge

16 number of copies of documents, and if it takes a

17 little longer than it should, please be aware of

18 the limited resources that we are working with.

19 THE COMMISSIONER: Let me just

20 respond.

21 I have noted that there is a

22 number of lawyers here, and without going into

23 whom they act for, they are here throughout the

24 proceedings and of course are entitled to be here.

25 It is a public hearing.

1 Given the nature of the evidence
2 that has been called at this point at least, I
3 must say I don't totally understand why many
4 counsel would sit here not participating. But
5 they are certainly free to do that.

6 I think the point you raise,
7 Mr. Cavalluzzo, is a good one. We have produced a
8 huge amount of documents, both during the
9 in-camera proceedings and the public proceedings.
10 If counsel who are appearing want to have a full
11 set of those documents, yes, we can do it. This
12 inquiry, though, and although it's not charged --
13 I guess the cost of producing documents is charged
14 to the inquiry. So it costs us a good deal of
15 money.

16 But counsel's attendance, sitting
17 through day after day after day of the inquiry, if
18 the matters aren't directly affecting their
19 client's interest, is being paid for by the public
20 purse, albeit not by the inquiry.

21 I think it is a comment that, as
22 the Commissioner of this inquiry, I should make.

23 The second part, more directly
24 related, is making copies of literally thousands
25 and thousands and thousands of documents for a

1 counsel whose interest is relatively narrow, whose
2 participation for the most part in the public
3 hearings -- we will perhaps come to a part -- is
4 zero, is very expensive. That, too, comes from
5 the public purse.

6 So what I am saying to those
7 counsel, some of whom are here, some of whom
8 aren't at this point, is that you are perfectly
9 welcome to be here. Those who are paying for
10 it -- I assume it's the public purse -- should
11 perhaps take into account the observations I have
12 made.

13 And more pertinent to the inquiry,
14 if there is any way that you can sit down with the
15 agency with whom your client is involved, with the
16 other counsel who are involved, and share
17 documents -- we actually have staff working nights
18 and weekends to produce all of the documents, most
19 of which, it seems to me, will never be used by
20 those lawyers representing those clients'
21 interests -- I think it would be a good thing to
22 do.

23 I say nothing more than to make
24 the observation to encourage everybody, in
25 committing services to this inquiry and making

1 requests for documents, to remember that at the
2 end of the day the taxpayers are paying for it,
3 either directly or indirectly. I think with an
4 inquiry like this, anything we can do collectively
5 to try to control the expense is a healthy thing.
6 I say no more.

7 Mr. Cavalluzzo.

8 MR. CAVALLUZZO: Thank you.

9 Mr. Commissioner, this morning we
10 have Mr. Wayne Easter.

11 THE COMMISSIONER: Good morning,
12 Mr. Easter.

13 HON. WAYNE EASTER: Good morning.

14 THE COMMISSIONER: Do you wish to
15 be sworn or affirmed?

16 HON. WAYNE EASTER: Sworn.

17 SWORN: ARNOLD WAYNE EASTER

18 THE COMMISSIONER: And your full
19 name?

20 HON. WAYNE EASTER: Arnold Wayne
21 Easter.

22 THE COMMISSIONER: Thank you. You
23 may be seated.

24 MR. CAVALLUZZO: At the
25 commencement of Mr. Easter's evidence, I would

1 like to file two volumes of relevant documents
2 which have been produced relating to Mr. Easter's
3 evidence.

4 THE COMMISSIONER: Those will be
5 P-117.

6 EXHIBIT NO. P-117: Two
7 volumes: Wayne Easter
8 Relevant Documents

9 MR. CAVALLUZZO: And I would also,
10 at the outset, like to file Mr. Easter's
11 biography, which we have a copy of.

12 THE COMMISSIONER: P-118.

13 EXHIBIT NO. P-118: Biography
14 of Wayne Easter Member of
15 Parliament for Malpeque

16 MR. CAVALLUZZO: To give some
17 context to Mr. Easter's evidence, I will be
18 initially reviewing with Mr. Easter his education
19 and parliamentary background. Then we will be
20 dealing with a number of contextual issues, such
21 as the role of the Solicitor General. Mr. Easter
22 was the Solicitor General at the material time,
23 from October of 2002. And then we will move on to
24 what we are calling the Arar time line, and as I
25 say, that will commence in about October of 2002,

1 when Mr. Easter became the Solicitor General.

2 EXAMINATION

3 MR. CAVALLUZZO: Mr. Easter, just
4 a couple of initial questions relating to your
5 background.

6 You are presently a Member of
7 Parliament?

8 HON. WAYNE EASTER: I am.

9 MR. CAVALLUZZO: And could you
10 tell us what riding is your constituency?

11 HON. WAYNE EASTER: The riding of
12 Malpeque, Prince Edward Island.

13 MR. CAVALLUZZO: In terms of your
14 background, I understand you attended the
15 Charlottetown Rural High School?

16 HON. WAYNE EASTER: Yes, I did.

17 MR. CAVALLUZZO: You received a
18 diploma from the Nova Scotia Agricultural College?

19 HON. WAYNE EASTER: That is
20 correct.

21 MR. CAVALLUZZO: For a number of
22 years, indeed 11 years, you were the national
23 President and the Chief Executive Officer of the
24 National Farmers Union?

25 HON. WAYNE EASTER: That is

1 correct.

2 MR. CAVALLUZZO: Prior to your
3 entry into Parliament, you acted as a policy
4 advisor in various capacities on international
5 agriculture and trade issues?

6 HON. WAYNE EASTER: Also correct,
7 yes.

8 MR. CAVALLUZZO: Those aspects of
9 your career are set out in your biography, and I
10 leave counsel to read those.

11 You were initially elected into
12 Parliament in 1993?

13 HON. WAYNE EASTER: Yes.

14 MR. CAVALLUZZO: And you have
15 maintained your seat since that time?

16 HON. WAYNE EASTER: That is
17 correct.

18 MR. CAVALLUZZO: In October of
19 2002 you were appointed to the cabinet to serve as
20 Solicitor General?

21 HON. WAYNE EASTER: That is
22 correct.

23 MR. CAVALLUZZO: And you
24 maintained that position between October of 2002
25 and December of 2003?

1 HON. WAYNE EASTER: Yes.

2 MR. CAVALLUZZO: And at the
3 present time, quite apart from your seat as a
4 Member of Parliament, you have also been appointed
5 as the Parliamentary Secretary to Agriculture and
6 Agrifood?

7 HON. WAYNE EASTER: Yes, with
8 responsibilities for rural development.

9 MR. CAVALLUZZO: I would like to
10 come then to some contextual issues, Mr. Easter,
11 that we will discuss prior to discussing the Arar
12 events.

13 First of all, I want to talk about
14 your responsibilities and duties and functions
15 relating to your role as Solicitor General.

16 In reviewing the Department of the
17 Solicitor General Act, basically there are four
18 aspects to your position. Let me read them to
19 you.

20 It basically says your:

21 "... powers, duties and
22 functions of the Solicitor
23 General extend to and include
24 all matters over which
25 Parliament has jurisdiction,

1 not by law assigned to any
2 other department, board, or
3 agency of the Government of
4 Canada, relating to..."

5 Four things:

6 "(a) reformatories, prisons,
7 and penitentiaries;
8 (b) parole, remission,
9 statutory release and
10 long-term supervision within
11 the meaning of subsection
12 2(1) of the Corrections and
13 Conditional Release Act;
14 (c) the Royal Canadian
15 Mounted Police; and
16 (d) the Canadian Security
17 Intelligence Service."

18 Obviously, we are going to focus
19 on those last two aspects of your duties; that is
20 the RCMP and CSIS.

21 Before we get specific, just to
22 give the statutory context in respect of CSIS, the
23 material provision would be Section 6, and I read
24 it to you, Section 6 of the Canadian Security
25 Intelligence Service Act.

1 It says:

2 "The Director..."

3 At the material time was Mr. Ward
4 Elcock.

5 "The Director, under the
6 direction of the Minister,
7 has the control and
8 management of the Service and
9 all matters concerned
10 therewith."

11 And then subsection 2 states:

12 "In providing the direction
13 referred to in subsection
14 (1), the Minister may issue
15 to the Director written
16 directions with respect to
17 the Service and a copy of any
18 such direction shall,
19 forthwith after it is issued,
20 be given to the Review
21 Committee."

22 And as far as your statutory
23 responsibilities relating to the RCMP, I would
24 refer to the Royal Canadian Mounted Police Act.
25 It has a very similar provision, which can be

1 found in section 5 of the legislation, and it
2 provides that:

3 "The Governor in Council may
4 appoint an officer, to be
5 known as the Commissioner of
6 the Royal Canadian Mounted
7 Police, who, under the
8 direction of the Minister,
9 has the control and
10 management of the Force and
11 all matters connected
12 therewith."

13 And we will be looking at some
14 directives relating to those two services.

15 The first issue that I would like
16 to discuss with you is quite apart from the RCMP
17 and CSIS, the reporting structure within the
18 Solicitor General's department.

19 Initially I would assume there is
20 a Deputy Solicitor General, whom we have seen in
21 the documents, and I would like you, if you could,
22 to take it from there.

23 HON. WAYNE EASTER: If I could, I
24 would make a correction in your initial
25 observations on Solicitor General.

1 I believe you did mention that I
2 was in charge of border agencies. That was not
3 the case in my time. It is now under the
4 Department of Public Security. I think you are
5 meaning the border agencies that are now under
6 Minister McLellan's purview.

7 MR. CAVALLUZZO: No, I did not
8 mention border --

9 HON. WAYNE EASTER: Oh, I thought
10 that was what you mentioned.

11 In any event, on your review of
12 the Solicitor General's department, I would
13 suggest that it is probably one of the most
14 misunderstood departments in the government. It
15 is an extremely complex relationship between the
16 Solicitor General and especially the RCMP.

17 You are correct in the agencies
18 you outlined. There is the RCMP, there is CSIS,
19 there is Correction Services of Canada, the
20 National Parole Board, and added midway through
21 was the Firearms Centre.

22 But the relationship with the
23 RCMP, as I indicated, is complex, and it's not all
24 black and white.

25 On the one hand, because the RCMP

1 is a policing agency as such, there can be no
2 political interference, or the perception of
3 political interference, in terms of its work. On
4 the other hand, you have ministerial
5 responsibility and accountability for basically
6 the policy, the mandate, and the conduct of the
7 RCMP, as well as overall direction in terms of
8 policy.

9 As such, the Minister does not get
10 into specific investigations by the RCMP, but
11 there are instances -- and this is where the line
12 gets really blurry. There are instances, whether
13 it's something that is going to have an impact on
14 the political agenda -- I don't mean partisan, I
15 mean the general political agenda or prominent
16 people, where you would expect the Commissioner of
17 the RCMP would inform you of that so that you
18 could deal with that issue.

19 I am just saying that to point out
20 that it is a very complex area, and it's not as
21 black and white as perhaps one would like to have
22 it. But I don't know how you could do it
23 differently, because you do have to, under our
24 parliamentary system the way we operate in this
25 country, that break between the political aspect

1 and having to answer questions in Parliament and
2 the policing aspect, which you do not want
3 political interference in terms of investigations.

4 So I just point that out in the
5 beginning.

6 The reporting relationship is that
7 certainly the way I operated -- and to be honest
8 with you, I don't know whether all Solicitors
9 General operate the same way -- is on a weekly
10 basis I would usually have meetings with the
11 Deputy Minister.

12 MR. CAVALLUZZO: And who was the
13 Deputy Minister at the material time in 2002-2003?

14 HON. WAYNE EASTER: Nicole Jauvin.

15 As well, I would try to have
16 meetings -- and it wouldn't be on a weekly basis,
17 sometimes it would be a monthly basis -- with the
18 Commissioner of the RCMP or Assistant Commissioner
19 and some of their senior management people.

20 MR. CAVALLUZZO: I am going to
21 deal specifically with the RCMP and then with
22 CSIS, but I would like to stay within the
23 bureaucratic structure itself of the Solicitor
24 General's department.

25 So we have, obviously, a Deputy

1 Minister who reports directly to you, and then
2 presumably you have Assistant Deputy Ministers
3 within the organization.

4 Is that correct?

5 HON. WAYNE EASTER: That is
6 correct.

7 MR. CAVALLUZZO: Would we have an
8 Assistant Deputy Minister for the RCMP, one
9 responsible for CSIS, and so on and so forth?

10 HON. WAYNE EASTER: This is where
11 the Department of the Solicitor General is so
12 different than many of your line departments.

13 In the case of the Solicitor
14 General, you are dealing with -- I don't know if
15 organizations is the right word, but that are in
16 their own right, agencies. The RCMP has a
17 Commissioner; CSIS has a Director; the Corrections
18 Services of Canada has a Commissioner.

19 So those are the body heads that
20 you tend to meet with and their management teams,
21 rather than an Assistant Deputy Minister.

22 MR. CAVALLUZZO: I would like to
23 deal with the RCMP, and before we talk about
24 reporting to you from the RCMP, you have already
25 discussed the complex relationship between a

1 member of cabinet, such as the Solicitor General,
2 and a police institution such as the RCMP.

3 And you have told us you described
4 it as a complex relationship because of the nature
5 of our political and legal system. I just want to
6 ask you whether you believe that that relationship
7 became even more complicated as a result of the
8 enactment of Bill C-36, the anti-terrorism
9 legislation, in December of 2002, which of course
10 was nine months before your admission to the
11 cabinet.

12 But, still, do you have any views
13 on whether the relationship became even more
14 complicated when the RCMP was given national
15 security investigation functions in an expanded
16 way?

17 HON. WAYNE EASTER: I don't
18 believe it became more complicated per se, based
19 to a certain extent on my own personal experience
20 as the RCMP moved into more security areas. Then
21 in fact -- which I suspect you will likely get to
22 later -- I outlined in a directive to the
23 Commissioner my views on what I expected as
24 Minister in terms of the RCMP becoming more
25 involved in that particular area in the context of

1 these times.

2 MR. CAVALLUZZO: And we will come
3 to those directives in November of 2003, but I
4 think at the outset just as a matter of context I
5 think we might say that national security issues
6 have political ramifications or implications, and
7 as a result of that, I think a decision was made
8 by the government that there should be more
9 accountability in respect of those kinds of
10 investigations, and as a result of that the
11 introduction of the directive in November of 2003,
12 which we will come to.

13 Would you agree with that?

14 HON. WAYNE EASTER: I don't know
15 whether you would -- I don't think you could have
16 more accountability. I think we have that
17 accountability. But I would say it maybe adds to
18 the complexity.

19 As I indicated in the opening
20 statement, the Minister is ultimately accountable
21 and responsible, and the Commissioner is charged
22 with the management of the Force and how it
23 conducts itself.

24 MR. CAVALLUZZO: We will come to
25 the specifics of that directive, and I will ask

1 you certain questions in which, in my view, is
2 increased accountability. But we will come to
3 that.

4 In terms of the reporting of the
5 RCMP, you said briefly earlier that you would meet
6 on a periodic basis with either the Commissioner
7 or Deputy Commissioner.

8 Is that correct?

9 HON. WAYNE EASTER: Yes.

10 MR. CAVALLUZZO: And the
11 Commissioner at the material time was
12 Mr. Zaccardelli?

13 HON. WAYNE EASTER: That is
14 correct.

15 MR. CAVALLUZZO: And the Deputy
16 Commissioner that you might meet with was
17 Mr. Loepky?

18 HON. WAYNE EASTER: Correct.

19 MR. CAVALLUZZO: And is there a
20 time that you can give us, just generally
21 speaking? For example, was it on a weekly basis,
22 was it on a monthly basis, or more ad hoc than
23 that kind of frequency?

24 HON. WAYNE EASTER: More ad hoc.
25 We tried to do it, I believe, on a minimum of a

1 monthly basis.

2 MR. CAVALLUZZO: And at these
3 meetings at which the reporting was done, would
4 the Deputy Minister accompany you at these
5 meetings?

6 HON. WAYNE EASTER: Not always but
7 mostly.

8 MR. CAVALLUZZO: In respect of
9 these meetings, can you give us a general idea of
10 what the Commissioner or Deputy Commissioner would
11 be reporting to you about in regard to your role
12 as Solicitor General?

13 HON. WAYNE EASTER: Well, just to
14 give you an example, certainly the overall
15 resourcing issues, fingerprint agreement that we
16 were working out with the United States; sex
17 offender registry, which we were talking about and
18 the capability of the Force to be able to provide
19 that.

20 Certainly reported to me was the
21 intent to close, I believe it was nine offices in
22 the outlying areas of Quebec; the overall view in
23 terms of how they were being successful, or
24 not-so-successful, in terms of reducing crime and
25 those kinds of areas.

1 So in the general, broad policy
2 area, not specific investigations.

3 MR. CAVALLUZZO: Would a specific
4 investigation reach the point of importance where
5 it may be discussed within the context of one of
6 these briefings? And in particular I am referring
7 to Mr. Arar's file.

8 HON. WAYNE EASTER: Not into the
9 detail until quite late in 2003.

10 MR. CAVALLUZZO: Okay. We will
11 come to that.

12 Once again, we are talking about
13 October of 2002 when you became Solicitor General
14 and thereafter. Were you ever briefed on
15 something called Project OCanada or something
16 called Project A-OCANADA?

17 HON. WAYNE EASTER: To the best of
18 my knowledge, no. I just don't recall.

19 MR. CAVALLUZZO: Okay. I would
20 like to move on to CSIS, over which you also had
21 responsibility, and ask you similarly about the
22 reporting relationship.

23 Would you meet periodically with
24 the Director of CSIS, Mr. Elcock?

25 HON. WAYNE EASTER: Basically the

1 same type of relationship. We would meet as a
2 management team on an ad hoc basis.

3 MR. CAVALLUZZO: Okay. And it
4 would seem to me that CSIS doesn't have the same
5 kinds of restraints that a police agency may have
6 in terms of the relationship between a Minister of
7 the Crown and a police investigation, and as a
8 result of that, I am wondering if CSIS would
9 provide you with information about ongoing
10 investigations, with operational detail, or any
11 other kind of detail relating to investigations?

12 HON. WAYNE EASTER: It is very
13 much a different relationship because it is a
14 civilian security agency, as you are well aware,
15 responsible for the security of the nation to a
16 great extent from an intelligence point of view
17 and does not have policing powers in terms of
18 their work.

19 Although the Solicitor General
20 couldn't initiate investigations as such, you were
21 responsible on the most intrusive of
22 investigations to sign off on them. So there is
23 that check and balance there.

24 MR. CAVALLUZZO: Well, just let me
25 get a little bit more specific. For example,

1 would the Director discuss with you investigations
2 they may have in Toronto, or Montreal or Ottawa
3 relating to threats to the security of Canada?

4 HON. WAYNE EASTER: Yes.

5 MR. CAVALLUZZO: Would they also
6 discuss with you legal applications they would
7 make in terms of initiating investigations or, as
8 you said, intrusive methods that they may use,
9 judicial warrants, things like that? Would that
10 kind of issue be discussed with you?

11 HON. WAYNE EASTER: Yes. In fact,
12 you would have to sign off on certain sections of
13 those, and also the Federal Court has to sign off
14 in some instances as well, Federal Court officer.

15 MR. CAVALLUZZO: The only other
16 aspect of CSIS that I would refer to is section 17
17 of the legislation. That provides that CSIS may
18 enter into arrangements with foreign agencies,
19 with the approval of the Solicitor General and in
20 consultation with the Minister of Foreign Affairs.

21 So you may be engaged in that kind
22 of, if we can call it, operational detail as well?

23 HON. WAYNE EASTER: That is
24 correct. The Solicitor General had to sign off,
25 after reviewing all relevant documentation.

1 MR. CAVALLUZZO: Now, a couple of
2 final questions.

3 As you may know, we are spending a
4 lot of time in the last couple of weeks in regard
5 to the Department of Foreign Affairs, in their
6 consular division, and attempts to get Mr. Arar
7 back from Syria. I am wondering whether you have
8 a comment on the relationship between the
9 Solicitor General and the Minister of Foreign
10 Affairs in respect of these consular functions
11 that Mr. Graham was performing in 2002 and 2003?

12 HON. WAYNE EASTER: Well, I think
13 the job of the -- or the relationship is certainly
14 Foreign Affairs has the consular responsibilities.
15 The Solicitor General, Department of the Solicitor
16 General, should provide accurate and relatively
17 prompt information as required, but without
18 getting into specific areas of investigation.

19 MR. CAVALLUZZO: We will be coming
20 to specific areas where the mandates may conflict
21 somewhat, and we will get very specific in that
22 regard.

23 Now, a couple of final questions
24 regarding the contextual background.

25 In October of 2002 when you

1 assumed the position, were you aware of what we
2 have been calling the American practice of
3 extraordinary rendition, where an individual may
4 be transferred to another country, either from the
5 United States or elsewhere, for the purposes of
6 having that individual interrogated or questioned,
7 or in order to get information from that
8 individual?

9 Were you aware of that practice in
10 2002?

11 HON. WAYNE EASTER: No, I wasn't.
12 I didn't know what extraordinary rendition meant
13 until relatively recent times.

14 MR. CAVALLUZZO: Okay. And the
15 final question, Mr. Easter, is when you assumed
16 the position in October of 2002, whether you had
17 any idea of the human rights record of Syria
18 relating to the treatment of detainees in their
19 detention centres?

20 HON. WAYNE EASTER: Not
21 specifically, other than in the general sense, as
22 I think any other Member of Parliament who is
23 concerned about human rights, as I am; that I
24 don't believe their record is very stellar.

25 MR. CAVALLUZZO: With that

1 contextual background in mind, I would like to
2 come to the document books and come to Mr. Arar's
3 situation.

4 If we move initially to Volume 1,
5 let us start at tab 7.

6 This is a briefing note to the
7 Commissioner. It is dated October 17th and
8 approved October 18th, or thereabouts.

9 Once again for context, you became
10 the Solicitor General on what day in October? Do
11 you recall?

12 HON. WAYNE EASTER: I won't say
13 specifically the date, but somewhere around
14 October 22nd, 23rd, in that range I believe.

15 MR. CAVALLUZZO: The question that
16 I would have -- I will just take you through this
17 very briefly.

18 In the top paragraph, for example,
19 it says that:

20 "Minister Graham met with the
21 U.S. Ambassador to Canada,
22 Mr. Paul Cellucci, to voice
23 his concerns over the
24 deportation of Maher Arar to
25 Syria.

1 Following the meeting, the
2 Minister of Foreign Affairs
3 voiced concern to his staff
4 that he was not aware of
5 information that the
6 Americans had regarding Arar
7 and felt that he should be
8 briefed in more detail on
9 this matter."

10 And then the final paragraph in
11 the introductory part states that:

12 "DFAIT also advised that they
13 are pursuing an option to
14 request, through the
15 Solicitor General, a thorough
16 briefing to the Minister of
17 Foreign Affairs regarding
18 Arar and any other
19 individuals of interest to
20 DFAIT that may be subject to
21 investigations by the RCMP
22 and ... and of interest to
23 foreign agencies."

24 And just a couple of questions.
25 Could you tell us, for example,

1 when you first became aware of Mr. Arar's
2 situation and how you became aware of his
3 situation?

4 HON. WAYNE EASTER: I became
5 aware -- I think the first instance of Mr. Arar's
6 situation would have been in what you call our
7 Question Period briefing books for any number of
8 issues that may arise in Question Period.
9 Certainly you review those daily, prior to
10 Question Period, because they are all the areas
11 that you have some responsibility for.

12 MR. CAVALLUZZO: Right.

13 HON. WAYNE EASTER: And what drew
14 it specifically to mind was a question was raised
15 in the House of Commons.

16 MR. CAVALLUZZO: Now, the evidence
17 that we have is a result Mr. Graham's meeting with
18 Cellucci, that the day after, on October the 16th,
19 the DFAIT people called in RCMP, CSIS, and others,
20 and basically said, "We want more information on
21 this." And as a result of that -- and we will
22 come to this -- on October the 18th there was a
23 memorandum from Wayne Pilgrim to DFAIT, setting
24 out information with regard to Mr. Arar's
25 situation.

1 Since you took over on October
2 22nd, I don't know if you are aware of that, and
3 we will come back to that.

4 HON. WAYNE EASTER: I was not.

5 MR. CAVALLUZZO: Now, were you
6 aware that on October the 15th, or shortly
7 thereafter this meeting between Cellucci and
8 Graham, that Mr. Cellucci was taking the public
9 position that Canada knows what happened to
10 Mr. Arar, and indeed he went to the point of
11 saying you should ask the local boys or the local
12 people as to what happened?

13 Were you aware of that public
14 position of Mr. Cellucci at that time?

15 HON. WAYNE EASTER: I am not sure
16 if on that specific date, but within a short time
17 thereafter, I was. And I disagreed strenuously
18 with it.

19 MR. CAVALLUZZO: The only other
20 question I have relating to tab 7, does, as I said
21 before, state in the bottom paragraph that DFAIT
22 would be pursuing an option through the Solicitor
23 General for a thorough briefing on Arar about the
24 RCMP and another, and ask whether you are aware of
25 whether your department, or whether you gave

1 directives to the RCMP and/or CSIS as to whether
2 they should give a thorough briefing to Mr. Graham
3 on the Arar situation?

4 HON. WAYNE EASTER: No, I am not
5 on this specific memo for sure.

6 MR. CAVALLUZZO: So you are not
7 aware around this time of instructing that a
8 thorough briefing be given to the Minister?

9 HON. WAYNE EASTER: No. This was
10 about the time I was being briefed myself. I
11 mean, this memo is I think around the same time as
12 I became Solicitor General.

13 MR. CAVALLUZZO: Okay. Let's look
14 at your first briefing, and that can be found
15 behind tab 8?

16 HON. WAYNE EASTER: Tab 8?

17 MR. CAVALLUZZO: Yes. This is
18 dated October 25th of 2002. It's a House of
19 Commons book aide-memoire. And I understand that
20 this is the first time that you were, if we can
21 call it that, briefed concerning Mr. Arar?

22 HON. WAYNE EASTER: Yes. I
23 wouldn't necessarily say it would be the -- I
24 would have read the total Question Period book a
25 few days prior to this.

1 MR. CAVALLUZZO: Right.

2 HON. WAYNE EASTER: But this was
3 the first day, I believe, that it was raised as a
4 question, so that brings it specifically to mind.

5 MR. CAVALLUZZO: If we look at tab
6 8, it's a two-page document. There is background
7 on page 2. I don't know if you can see that after
8 the potential questions?

9 HON. WAYNE EASTER: Yes.

10 MR. CAVALLUZZO: And there are
11 maybe three or four very short paragraphs.

12 It says that:

13 "Since September 11, 2001,
14 the RCMP continues to work
15 with its counterparts...
16 As is standard practice, the
17 RCMP does not confirm or deny
18 investigations, nor do we
19 provide details regarding
20 operational police matters...
21 The RCMP does share
22 intelligence and information
23 and provides police
24 assistance in Canada as is
25 appropriate and deemed

1 necessary under Canadian law.
2 The RCMP will not provide
3 details on any cooperation or
4 shared information with
5 international law
6 enforcement. To do so may
7 jeopardize ongoing
8 investigations, domestically
9 and internationally."

10 And then finally:

11 "In this particular instance,
12 the RCMP had no input into
13 any decision made by U.S.
14 authorities. In addition,
15 DFAIT is presently working
16 with U.S. and Syrian
17 authorities regarding the
18 circumstances surrounding
19 this matter, and it would be
20 inappropriate to comment
21 further."

22 Would it be fair to say that that
23 was the extent of your knowledge about the Arar
24 file as of October 25th?

25 HON. WAYNE EASTER: Yes.

1 MR. CAVALLUZZO: So that by this
2 time -- and I am going to come back to this -- the
3 RCMP had not shared with you the October 18th memo
4 of Mr. Pilgrim that gave DFAIT information in
5 response to the questions that were posed?

6 HON. WAYNE EASTER: No, I do not
7 believe so.

8 MR. CAVALLUZZO: I guess I can ask
9 you this at this point in time: Were you ever
10 given a specific briefing on Mr. Arar by the
11 Commissioner or Deputy Commissioner of the RCMP
12 throughout the whole period?

13 HON. WAYNE EASTER: Yes, in about
14 November of 2003.

15 MR. CAVALLUZZO: Okay. If we
16 could move on to tab 9, as you can see in tab 9
17 there is an e-mail dated November 14 of 2002. It
18 is about Mr. Arar, but the title is "Issue: Visit
19 of CSIS Representatives to Syria to Discuss Maher
20 Arar".

21 And then there are two or three
22 paragraphs about Mr. Arar's detention in Syria.

23 The evidence that we have is that
24 in or about the third week of November of 2002,
25 CSIS visited Syria. They didn't speak to

1 Mr. Arar, but they got information about Mr. Arar.

2 I am wondering if you were aware
3 at that point in time whether CSIS was taking a
4 visit to see Mr. Arar?

5 --- Pause

6 HON. WAYNE EASTER: Not
7 specifically on Mr. Arar, if I could answer that
8 way.

9 MR. CAVALLUZZO: But were you
10 aware that they were going to Syria?

11 HON. WAYNE EASTER: I think that
12 is better an answer given in secret testimony,
13 Mr. Commissioner.

14 MR. CAVALLUZZO: Well, we do have
15 information on the record that in November CSIS
16 did go to Syria. They didn't meet Mr. Arar.

17 The only question I am asking is
18 whether you were aware of that, not what they
19 said --

20 HON. WAYNE EASTER: No.

21 MR. CAVALLUZZO: Pardon me?

22 HON. WAYNE EASTER: No; not
23 specifically, no.

24 MR. CAVALLUZZO: When did you
25 become aware, if at all, that CSIS went to Syria

1 in November 2002?

2 HON. WAYNE EASTER: I don't recall
3 when it would be, later in 2003.

4 MR. CAVALLUZZO: Now, in terms of
5 the context, we have also heard evidence that on
6 November the 14th of 2002, which is the same date
7 as that e-mail, that Mr. Graham met Mr. Powell,
8 who was, as you know, the Secretary of State at
9 the time, in Ottawa, and shortly thereafter that
10 Mr. Powell made public statements similar to the
11 kind of public statements that Mr. Cellucci was
12 making.

13 Were you aware of those public
14 statements of Mr. Powell?

15 HON. WAYNE EASTER: Yes, I was.
16 And I disagreed with them, I might say.

17 MR. CAVALLUZZO: Okay. If you go
18 to tab 10, we have another House of Commons
19 aide-memoire, which is dated the next month,
20 November 15th of 2002 -- the next month from the
21 previous one of October 25th -- and that
22 aide-memoire is virtually identical to the
23 previous one.

24 So it would appear between those
25 dates, those three weeks, that you are not given

1 any further information on Mr. Arar.

2 Is that fair?

3 HON. WAYNE EASTER: That is fair.

4 MR. CAVALLUZZO: Then if we go to
5 tab 11, we see that there is a public reference to
6 the Arar situation.

7 First of all, if we could deal
8 with tab 11, this is an Ottawa Citizen article,
9 which is dated November 18th. Just reading the
10 title, for example, it says, "FBI told RCMP Ottawa
11 man had terror link. Embarrassed officials admit
12 U.S. sent evidence about Arar".

13 And it opens with the paragraph:

14 "After denying for nearly two
15 months that U.S. officials
16 had provided evidence to
17 Canada linking an Ottawa man
18 deported to Syria to the
19 terrorist network al-Qaeda,
20 Foreign Affairs officials
21 were embarrassed to learn
22 during last week's visit by
23 Secretary of State Colin
24 Powell the RCMP received the
25 information from the FBI

1 weeks ago.
2 Officials from Foreign
3 Affairs, the Solicitor
4 General's Department and the
5 Privy Council will meet today
6 to discuss the information
7 provided by the U.S. about
8 Maher Arar, a Canadian
9 citizen who was deported..."

10 The next paragraph talks about:
11 "The officials will also
12 discuss how to handle the
13 return to Canada today of
14 Mr. Arar's wife..."

15 Do you recall at that point in
16 time, on Monday November 18th, that there was an
17 article about the FBI having given the RCMP this
18 information and DFAIT officials being embarrassed
19 as a result of learning that in meeting
20 Mr. Powell?

21 HON. WAYNE EASTER: I recall that
22 it was an issue. As I said a moment ago I
23 disagreed strenuously with Mr. Cellucci's and
24 Mr. Powell's statements.

25 Yes, indeed, I think it needs to

1 be pointed out that in the normal operation of
2 police work, information is exchanged.

3 MR. CAVALLUZZO: But the question
4 that I have is: Did you become part of the loop,
5 so to speak? In other words, at this point in
6 time it becomes clear that one agency of the
7 government doesn't know what information another
8 agency of government has, and as a result of this,
9 this article says that officials from Foreign
10 Affairs, the Solicitor General's department and
11 the Privy Council were going to meet about that.

12 I am just wondering if you were
13 aware of that meeting?

14 HON. WAYNE EASTER: And I am
15 pretty confident that that meeting would have been
16 a meeting of officials, and I am pretty confident
17 that would have been reported to me.

18 My position, though, would remain
19 the same, not to confirm or deny any investigation
20 on any individual, Mr. Arar or any other, because
21 it could I think jeopardize investigations and
22 also jeopardize the integrity of the individual.

23 MR. CAVALLUZZO: So you wouldn't
24 have attended the meeting, nor would you have
25 received information as to what took place at the

1 meeting because of your concerns about that
2 relationship?

3 HON. WAYNE EASTER: I didn't
4 attend the meeting.

5 MR. CAVALLUZZO: Were you briefed
6 on what took place at the meeting?

7 HON. WAYNE EASTER: I don't recall
8 the specific briefing. I could have been, but it
9 becomes more a Foreign Affairs issue in terms
10 of --I mean, there is no question that when a
11 Canadian is held abroad, you want to get that
12 Canadian back to Canada. So it would be from that
13 light.

14 My concern was that I do nothing
15 as Solicitor General that would jeopardize either
16 the investigation or the individual.

17 MR. CAVALLUZZO: Right. But isn't
18 this somewhat of a political problem, though, in
19 the sense that what has happened here is that two
20 agencies of government do not know what either has
21 in terms of information, and doesn't that become a
22 political problem outside the realm of an
23 investigation, and therefore it requires the
24 intervention of the Minister?

25 HON. WAYNE EASTER: What I

1 think -- and I have thought this throughout the
2 whole piece.

3 What I think becomes the political
4 problem is when, for whatever reason, people want
5 to believe Secretary of State Powell and what he
6 said versus what I, as Solicitor General, said
7 based on my raising questions with the
8 Commissioner of the RCMP; and that was that they
9 were not involved in the decision to deport.

10 MR. CAVALLUZZO: Right. But it
11 would appear to me, Mr. Easter, when you are
12 saying that you disagreed at this point in time
13 with what Mr. Powell was saying, that you had very
14 limited information, and all that information came
15 from the RCMP?

16 HON. WAYNE EASTER: That is
17 correct.

18 MR. CAVALLUZZO: If we move in
19 terms of time, this is a little out of order, but
20 if you go to Volume 2 at tab 66, this appears to
21 be a briefing note for your meeting with
22 Mr. Cellucci that was going to take place on
23 December 2nd of 2002.

24 Do you see that? Do you have that
25 in front of you?

1 HON. WAYNE EASTER: Yes.

2 MR. CAVALLUZZO: And it says:

3 "Paul K. briefed the Minister
4 this morning. J."

5 Could you just tell us who Paul K.
6 is and who J. is?

7 HON. WAYNE EASTER: Paul Kennedy
8 would be the -- and I am not sure who J. is. It
9 might be -- I had better not say might be. So I
10 am not sure who J. is.

11 Paul K. would be Paul Kennedy.

12 MR. CAVALLUZZO: And what position
13 did Paul Kennedy have?

14 HON. WAYNE EASTER: He was
15 Assistant Deputy Minister.

16 MR. CAVALLUZZO: And is it
17 possible that J. was Jauvin, the Deputy Minister?

18 HON. WAYNE EASTER: It might be.

19 MR. CAVALLUZZO: As we can see,
20 there is a briefing note that sets out some
21 general information concerning Mr. Arar. As you
22 can see, the issue of the briefing note, it is a
23 memorandum for the Deputy Solicitor General;
24 however, you were briefed on it.

25 It says the issue is the U.S.

1 deportation of Arar to Syria. And then it sets
2 out very general points about Mr. Arar's
3 situation: how he got there.

4 As we can see, on October the
5 21st, Syrian authorities advised the Canadian
6 ambassador that he was in Syria.

7 It goes on:

8 "Syrian authorities are
9 conducting an investigation."

10 And:

11 "The Human Rights group
12 Amnesty International has
13 encouraged its members to
14 write to U.S. Attorney
15 General, John Ashcroft..."

16 And so on. It talks about
17 November the 14th, a meeting between Powell and
18 Graham, and it goes on.

19 So do you recall this meeting with
20 Mr. Cellucci which took place on December 2nd?

21 HON. WAYNE EASTER: I recall the
22 meeting on December 2nd with Mr. Cellucci, yes.

23 MR. CAVALLUZZO: And in this
24 meeting with Mr. Cellucci, did you raise
25 Mr. Arar's situation?

1 HON. WAYNE EASTER: I am not
2 entirely positive whether I did or not. It was
3 mainly -- I had been in the position for 6 weeks.
4 It was mainly a get-to-know-you, talk about some
5 of the generalities between the two countries.

6 MR. CAVALLUZZO: The next date is
7 December 17th, if you stay in Volume 2, and if we
8 go to tab 82.

9 This is just to give context. As
10 you can see at the top, it's called a Media
11 Analysis. Is this something that would be
12 produced that you would see?

13 It appears to be Anthony Ritchie's
14 computer. He is in the Privy Council. So I don't
15 know if you would have seen a document like this.

16 HON. WAYNE EASTER: I don't
17 believe I did.

18 MR. CAVALLUZZO: Okay. However,
19 what it does say -- and this will give us some
20 context for the facts of the chronology. In the
21 middle paragraph under "Security", it states:

22 "Solicitor General Wayne
23 Easter and Attorney General
24 John Ashcroft will sign an
25 agreement today ..."

1 And that is December 17th, 2002.

2 "...that will allow law
3 enforcement agencies to
4 access to records in the
5 other country."

6 And the question I have for you:
7 Is this the first occasion upon which you met
8 Attorney General Ashcroft?

9 HON. WAYNE EASTER: Yes, it is.

10 MR. CAVALLUZZO: And at this
11 meeting on December 17th with Attorney General
12 Ashcroft, did you raise Mr. Arar's situation?

13 HON. WAYNE EASTER: No, I don't --
14 I am pretty confident I did not.

15 MR. CAVALLUZZO: Okay.

16 HON. WAYNE EASTER: It again was
17 the initial meeting.

18 MR. CAVALLUZZO: Then if we could
19 move to tab 17, although it's dated March 3rd, the
20 date of the e-mail is February 27.

21 What I am referring to is the
22 bottom e-mail for Mr. Gar Pardy, who we have heard
23 from in evidence in the last couple of days.

24 He states that as of February
25 27th, he states:

1 "I spoke to Ms Marlene
2 Catterall last evening.
3 Following points were
4 covered:
5 (a) in her conversation with
6 Mr. Easter, he checked with
7 both the RCMP and CSIS before
8 providing her with a green
9 light for the visit. Neither
10 organization objected to Ms
11 Catterall's visit.
12 Mr. Easter cryptically seemed
13 to remark that Arar's
14 problems were caused by this
15 department! I will follow up
16 further on this issue."

17 The first question I have: Do you
18 recall having a discussion around this time with
19 Ms Catterall as to whether the RCMP and/or CSIS
20 would object to her visit to Syria to see
21 Mr. Arar?

22 HON. WAYNE EASTER: Yes, I would
23 have had a discussion, I do recall.

24 MR. CAVALLUZZO: And do you recall
25 seeking confirmation from the RCMP and CSIS that

1 this wouldn't be a problem?

2 HON. WAYNE EASTER: Yes.

3 MR. CAVALLUZZO: Okay. And then I
4 would ask you if you can help us as to what you
5 allegedly stated, and that is that:

6 "Easter cryptically seemed to
7 remark that Arar's problems
8 were caused by this
9 department!"

10 Which would be DFAIT. And I am
11 wondering if you can help us on that "cryptic"
12 comment?

13 HON. WAYNE EASTER: I do not
14 recall any such cryptic comment, and I don't know
15 what could have been said in that regard.

16 So, no, I really can't help you
17 there, other than it may have been a statement --
18 and I say "may have been a statement" -- that it's
19 important for DFAIT through their services to get
20 Mr. Arar back to Canada.

21 MR. CAVALLUZZO: Okay. In terms
22 of that statement, at this point in time, did you
23 feel that the Solicitor General's department,
24 through RCMP and CSIS, had no role to play in
25 terms of getting Mr. Arar back from Syria to

1 Canada?

2 HON. WAYNE EASTER: Well, the role
3 of Solicitor General's department is in fact law
4 enforcement, public security, national security.
5 Our role, and I think my role as Solicitor
6 General, is the presumption of innocence of
7 individuals.

8 I tried to maintain that
9 throughout this whole time, as I said earlier, not
10 to jeopardize either the individual or any
11 investigations that might or might not be ongoing.

12 It's the role of basically Foreign
13 Affairs to represent the Government of Canada
14 internationally as well as the Prime Minister and
15 any others he may designate on the international
16 stage.

17 MR. CAVALLUZZO: I just want to
18 understand clearly, because we are going to be
19 coming to some letters.

20 What you have just told me is
21 that, in your view, what was important at this
22 point in time was the presumption of innocence.
23 And I assume you meant by that that Mr. Arar would
24 be presumed innocent until he was proven guilty in
25 some court of law?

1 HON. WAYNE EASTER: That is
2 correct.

3 MR. CAVALLUZZO: So that at this
4 point in time Mr. Arar is innocent, is what we are
5 talking about here? Okay.

6 HON. WAYNE EASTER: From my
7 perspective, yes.

8 MR. CAVALLUZZO: Okay. Then in
9 terms of time, the next day, February --

10 HON. WAYNE EASTER: I might say on
11 that, it is one of the difficulties that you have
12 as a Minister and as a Solicitor General on these
13 kind of issues. You usually go to the words, you
14 can "neither confirm nor deny", because you do
15 not -- I mean, you cannot say.

16 As I said in the very beginning --
17 and I will go back to that -- the complexity, on
18 the one hand, that you cannot either have
19 political interference or the perception of
20 political interference in terms of policing; on
21 the other, you are responsible and accountable for
22 the mandate of the RCMP, and you have to certainly
23 operate on the presumption of innocence.

24 If you go beyond the confirming
25 and denying, then you know what's going to come at

1 you. If you say there is no evidence, then your
2 political opponents or the media is going to
3 say -- they are going to come at you on that
4 angle, and you can jeopardize either an
5 investigation or the individual.

6 MR. CAVALLUZZO: In terms of the
7 political opponents, do you recall around this
8 point in time in time that your political
9 opponents were saying that this Mr. Arar is a bad
10 guy; the Americans have all the goods on him, and
11 that the Canadian government once again should
12 defer to the Americans on this particular issue?

13 Do you recall statements like that
14 that you were getting from your political
15 opponents?

16 HON. WAYNE EASTER: In terms of
17 the politics, if I can call it that, of the thing,
18 there was statements both ways. You know, "Why
19 don't you" -- anyway, there were statements both
20 ways.

21 MR. CAVALLUZZO: At this time was
22 there any suggestion, quite apart from Catterall
23 and Assadourian's visit to Syria, was there any
24 suggestion from Catterall that it would be good to
25 have a letter from the Solicitor General to the

1 Syrians so that it would carry some weight with
2 the Syrians, particularly in light of the fact
3 that Mr. Arar was being held by the Syrian
4 Military Intelligence?

5 Do you recall a discussion with
6 Catterall at this time?

7 HON. WAYNE EASTER: Yes, I believe
8 several people, and I believe -- I can't
9 unequivocally state that one was Marlene
10 Catterall. But there was pressure for the
11 Solicitor General to write a letter.

12 MR. CAVALLUZZO: Okay. And we
13 will come specifically to that.

14 For example, if you look at tab 18
15 now, staying in Volume 1, let's go to the second
16 page. We can see an e-mail from Tim Martin --
17 this is within DFAIT -- to the Head of Mission in
18 Damascus, and it's dated March 11, 2003.

19 The reference I would have is to
20 the second paragraph from the bottom, because it
21 does mention you.

22 It says:

23 "Mrs. Catterall noted that
24 the issue of coordination
25 between DFAIT and the

1 Solicitor General is an
2 important one and indicated
3 that she would consult
4 further with the Solicitor
5 General and seek a letter
6 from him on the Arar case."

7 Do you see that?

8 HON. WAYNE EASTER: On page what?

9 MR. CAVALLUZZO: Page 2?

10 HON. WAYNE EASTER: I am sorry.

11 MR. CAVALLUZZO: Page 2, the
12 second paragraph from the bottom, where it says
13 "Mrs. Catterall"?

14 HON. WAYNE EASTER: Yes.

15 MR. CAVALLUZZO: So this seems to
16 suggest that Mrs. Catterall would consult further
17 with you and seek a letter from you on the Arar
18 case, and presumably this would be for the visit
19 to Syria, which was going to take place that month
20 but was deferred because of the war in Iraq and
21 took place on April 22nd.

22 So do you recall Catterall or
23 Assadourian coming to you and saying, "Can you
24 give us a letter so that we can bring it to the
25 Syrians"?

1 HON. WAYNE EASTER: I don't think
2 that there is any question that the request for
3 the letter was made.

4 MR. CAVALLUZZO: And this would
5 have been a letter from you. And since she didn't
6 go to Syria with a letter from you, I assume you
7 refused her request for the letter?

8 HON. WAYNE EASTER: Yes. I talked
9 about the -- I discussed the letter with officials
10 and felt in the first instance myself that a
11 letter from the Solicitor General would not be a
12 wise idea.

13 MR. CAVALLUZZO: And you said you
14 discussed it with officials. Which officials did
15 you discuss it with?

16 HON. WAYNE EASTER: Oh, it would
17 have been at a -- I expect I would have said to my
18 executive assistant, or to the Deputy Minister,
19 the request for a letter has come in; that my
20 initial observation would be this would not be a
21 proper thing for the Solicitor General to do. And
22 it was decided after discussion, no, it would not
23 be, because my authority, my area was law
24 enforcement and national security, not
25 representing Canada abroad.

1 MR. CAVALLUZZO: Now, did you
2 discuss it with the RCMP and/or CSIS, apart from
3 the Deputy Minister or your executive assistant?

4 HON. WAYNE EASTER: I can't
5 unequivocally say.

6 MR. CAVALLUZZO: You could have,
7 but you can't recall?

8 HON. WAYNE EASTER: I could have,
9 but I can't -- no.

10 MR. CAVALLUZZO: The question that
11 I would have is a very simple one: Since you
12 talked about the importance of the presumption of
13 innocence, what about a one-liner to the Syrians
14 saying, "I am the Solicitor General of Canada, and
15 under our law, Mr. Arar is innocent", something
16 like that, something very simple, not operational.

17 HON. WAYNE EASTER: I think under
18 our system of government, the Prime Minister and
19 indeed the Minister of Foreign Affairs are the
20 ones that I think have -- it's their role to deal
21 in those international matters and not mine.

22 I have a very strong personal
23 belief that I think it would be wrong for any
24 Solicitor General to get into writing letters on
25 innocence or not of any individuals. I think it

1 goes against our system.

2 MR. CAVALLUZZO: The problem with
3 that response, Mr. Easter, is that yesterday and
4 the day before I had Mr. Graham here, and I said
5 "Mr. Graham, why didn't you send a letter?" And
6 he eventually went through a whole process and I
7 said to him, "Listen, Mr. Graham, under section 10
8 of the Department of Foreign Affairs Act, you are
9 the final person to speak as the official
10 communicator between Canada and foreign
11 governments." And he basically said, "Yes, that
12 is true, but when we are getting into areas within
13 the mandate of other Ministers, I have to have
14 them along with me." Okay?

15 So it seems to me it's not such a
16 simple answer to say let the Foreign Affairs
17 Minister send a letter, or let the Foreign Affairs
18 Minister get him back from Syria. What the
19 Foreign Affairs Minister is saying is, "I need the
20 cooperation of my fellow cabinet Ministers in
21 this."

22 I don't know if you want to
23 comment on that?

24 HON. WAYNE EASTER: I think, in
25 the final analysis, what was done was the best

1 thing to do, and that was that it was the Prime
2 Minister's letter, and there is nobody with higher
3 authority in terms of the Government of Canada
4 than the Prime Minister.

5 MR. CAVALLUZZO: But if I am
6 wasting away in a Syrian jail, that doesn't happen
7 until three or four months later. It seems to me
8 if in February or March, if we could have gotten
9 our act together, we may have gotten Mr. Arar back
10 earlier.

11 HON. WAYNE EASTER: As you are
12 well aware, Mr. Arar was call it a person of
13 interest, and for me to write a letter
14 unequivocally -- under our system of justice, he's
15 innocent until proven guilty. And I have a very
16 strong fundamental belief that a Solicitor
17 General, who is in charge of law enforcement or
18 overall responsibility for it, and national
19 security, that it would be an absolute no-no to
20 start down that road of writing letters; that that
21 is somebody else's responsibility and not mine.

22 MR. CAVALLUZZO: By the way, I
23 understand from Mr. Graham's evidence that he sat
24 right next to you in Parliament in the House of
25 Commons during that session.

1 Do you recall that?

2 HON. WAYNE EASTER: Practically
3 next to me. I believe John McCallum was between
4 us, and sometimes when John wasn't there we were
5 next to each other, yes.

6 MR. CAVALLUZZO: And do you recall
7 during this period of time Mr. Graham turning to
8 you and saying, "Wayne, why can't we get together
9 and send a letter and get this guy out of Syria?"

10 Do you recall any discussions in
11 the House on that?

12 HON. WAYNE EASTER: Mr. Graham was
13 frustrated, as was I. But as I have stated a
14 number of times -- and Mr. Graham and I in the
15 initial instances had very different opinions on
16 it. He had talked to Secretary of State Powell.
17 I did not. I disagreed with Secretary of State
18 Powell and Cellucci in terms of their statement of
19 RCMP involvement to deport. And I think the
20 record now shows that they have said that we were
21 not involved in the decision to deport. They have
22 finally come out and clarified that.

23 Bill was frustrated because Powell
24 had told him one thing and I was saying another.
25 I was proved to be correct.

1 MR. CAVALLUZZO: Okay. And we
2 will come exactly to what Mr. Powell said.

3 I would like to move now since we
4 are in the area of letters, could we give the
5 witness Exhibit P-99, which is a memorandum dated
6 March 24th of 2003.

7 We have heard evidence that this
8 is a memorandum from an official in DFAIT, Myra
9 Pastyr-Lupul, and what she recounts is a meeting
10 she had with the Syrian ambassador, Mr. Arnous, in
11 Ottawa.

12 Just reading it to you, it says:

13 "Marlene Catterall and Sarkis
14 Assadourian met with the
15 Syrian Ambassador last
16 Wednesday, March 21."

17 Of course, this is 2003.

18 "They discussed the case of
19 Maher Arar and made a
20 personal and humanitarian
21 pitch for the release of Arar
22 and asked what the Syrians
23 need for this to happen.
24 They learned that initially
25 during this case that CSIS

1 officials told the Syrians
2 that they have no interest in
3 Arar. The Syrians took this
4 to mean that CSIS took no
5 interest in having Arar back.
6 They may have meant that they
7 have no security reasons to
8 investigate Arar in Canada.
9 Due to this miscommunication
10 the Syrians believe that CSIS
11 did not want Arar back in
12 Canada and therefore decided
13 to detain him, keep him in
14 Syria."

15 And then some recommendations are
16 made concerning a letter which should be
17 forwarded.

18 Did you become aware of this
19 communication that Catterall and Assadourian had
20 from the Syrian ambassador?

21 HON. WAYNE EASTER: I don't know
22 whether I was aware of this specific
23 communication, but I was aware that that was the
24 position that the Syrians had indicated. But one
25 way or another, whether it was this communication

1 or not.

2 MR. CAVALLUZZO: As a result of
3 learning this, whether it was through this
4 communication or any other memorandum, did you
5 direct CSIS to send a letter to the Syrians
6 saying, "If there is some miscommunication, you
7 are wrong. Canada, as a government, wants
8 Mr. Arar's release and return to Canada"?

9 Did you do that?

10 HON. WAYNE EASTER: No, I did not.

11 MR. CAVALLUZZO: Why didn't you do
12 that?

13 HON. WAYNE EASTER: Because it is
14 not either CSIS' responsibility or my own in the
15 international arena to speak for the Government of
16 Canada. That is for the others under the various
17 responsibilities to do. We can't have 20
18 different voices out there in the international
19 community.

20 MR. CAVALLUZZO: Were you aware
21 that the Syrian Military Intelligence preferred to
22 deal with security agencies rather than police
23 agencies or politicians?

24 HON. WAYNE EASTER: No, but
25 security agencies do not speak as a whole for the

1 Government of Canada. The Prime Minister does,
2 and the Minister of Foreign Affairs.

3 MR. CAVALLUZZO: I understand
4 that, Mr. Easter. However, we do have a Canadian
5 who is in jail in Syria, has been in jail in Syria
6 since October the 8th. You know the kind of
7 treatment that one gets in Syrian detention
8 centres from torture, through very poor prison
9 conditions, without charge, and being held in a
10 state of limbo. And we have a clear statement, in
11 March of 2003, that the Syrians believe that an
12 agency under your supervision have led them to a
13 misunderstanding as to the position of Canada.

14 Surely in those circumstances CSIS
15 could have sent a letter to their counterparts in
16 Syria, the Syrian military agency, which was
17 holding Mr. Arar at the time, and say something
18 very simple like, "You have misunderstood us. We
19 want him back."

20 HON. WAYNE EASTER: I don't think
21 it's that simple. As I indicated, there is no
22 question from where I sat -- and I said that
23 publicly a number of times -- that we wanted to do
24 everything we could to get Mr. Arar back to
25 Canada, and tried to do everything that we could

1 to in fact gain that.

2 However, the voice for the
3 Government of Canada on the international stage is
4 not mine, is not CSIS, is in fact the Prime
5 Minister, the Minister of Foreign Affairs, or in
6 this instance the Ambassador in Syria. And under
7 our system of government, that is the voice that
8 should be, in my view, heard.

9 MR. CAVALLUZZO: Just one final
10 question in that regard: Did you at least discuss
11 the appropriateness of having CSIS give that
12 letter to the Syrians, whether it be the Syrian
13 Military Intelligence or whatever, either with
14 CSIS, Bill Graham, or the Prime Minister of this
15 country?

16 HON. WAYNE EASTER: What we
17 discussed would be the best approach to get
18 Mr. Arar back to Canada, and I don't recall
19 whether a letter from CSIS was in that discussion
20 or not.

21 MR. CAVALLUZZO: This is the final
22 question on this. You say that Canada, in terms
23 of international relations, speaks through the
24 voice of either the Minister of Foreign Affairs or
25 the Prime Minister.

1 Isn't that correct?

2 This is a situation, Mr. Easter,
3 where somehow CSIS has spoken to their
4 counterparts in Syria and have somehow left the
5 message that Canada doesn't want him back.

6 Don't you see a difference in that
7 kind of situation, where a Canadian agency itself
8 has given an indication to their counterparts in
9 Syria that Canada doesn't want him back; that that
10 would call for some kind of correction on their
11 part?

12 HON. WAYNE EASTER: Again, I come
13 back to who the proper authorities are to make
14 that point, and that was a point that the Syrians
15 were expressing.

16 MR. CAVALLUZZO: Okay. Then let
17 us move on to April.

18 If we could go to tab 19, we see
19 an e-mail. This is just prior to the visit of
20 Catterall and Assadourian to Syria in April, and
21 this is an e-mail dated April 17th.

22 If you go to the bottom of the
23 e-mail, in paragraph 2 -- this is an e-mail from
24 Mr. Pardy to a number of individuals.

25 It says in paragraph 2:

1 "Robert..."

2 And just to apprise you, that is
3 Robert Fry who was an official in Minister
4 Graham's office.

5 "Robert, Ms Catterall was
6 hopeful of obtaining a letter
7 from Mr. Easter. Have you
8 heard if she was successful?
9 Gar."

10 And then on the next page, we have
11 a proposed letter of Mr. Graham.

12 I would ask if you ever saw that
13 proposed letter that was going to come from
14 Mr. Graham?

15 And the focus should be on the
16 second paragraph in this draft letter. It says in
17 the second paragraph, second sentence:

18 "Canadian officials have
19 determined that Mr. Arar has
20 not contravened any Canadian
21 law, and since arriving in
22 Canada with his family many
23 years ago has been a good
24 citizen of this country."

25 I am wondering if you saw a draft

1 of that proposed letter that Minister Graham would
2 sign and would be transported by Catterall and
3 Assadourian to Syria?

4 HON. WAYNE EASTER: I am not sure
5 on the specific letter, but there was a fair bit
6 of discussion around this letter and how was the
7 best way to proceed. And as I think you will
8 likely get to later, we felt the best way to
9 proceed was with the Prime Minister's.

10 MR. CAVALLUZZO: Okay. As to the
11 visit itself, if we go to tab 20, this of course
12 is the Catterall-Assadourian visit. If you go to
13 page 2 of the report, in the paragraph numbered 6,
14 in the third or fourth sentence it refers to Mrs.
15 Catterall, and it says:

16 "Mrs. Catterall again
17 explained that the Solicitor
18 General had indicated that
19 Mr. Arar was not wanted in
20 Canada for criminal activity
21 and that his young family was
22 suffering tremendously
23 because of his detention."

24 Now, this is what Catterall is
25 telling the Syrian Military Intelligence on April

1 22nd of 2003. And this statement that she
2 "explained that the Solicitor General had
3 indicated that Mr. Arar was not wanted in Canada
4 for criminal activity", that is a fact, obviously,
5 I would have thought.

6 I am wondering if you were aware
7 that Ms Catterall would be advising the Syrian
8 Military Intelligence that this was the case?

9 HON. WAYNE EASTER: What I would
10 have said probably to Ms Catterall would have been
11 that Mr. Arar is -- we operate under the
12 presumption of innocence.

13 MR. CAVALLUZZO: Mm-hmm. So you
14 would have given her some kind of okay that she
15 could have said that to --

16 HON. WAYNE EASTER: Not -- well,
17 it's expressed a little differently in here. I
18 mean, I would have basically said "the presumption
19 of innocence".

20 MR. CAVALLUZZO: So you think she
21 may have gone a bit far?

22 HON. WAYNE EASTER: He was not
23 wanted for criminal activity in Canada. He was a
24 person of interest, which we now know.

25 MR. CAVALLUZZO: So she didn't go

1 too far? She is just asserting a fact?

2 HON. WAYNE EASTER: I guess there
3 are different slants on that fact, yes. I would
4 use the words "presumption of innocence" rather
5 than ...

6 MR. CAVALLUZZO: Okay. Now, on
7 April the 29th, if you go to tab 28, Mr. Cellucci
8 makes another public statement.

9 If you go to --

10 HON. WAYNE EASTER: Tab twenty ...

11 MR. CAVALLUZZO: Tab 28. This is
12 a letter dated July 18th, 2003, but it relates to
13 what Cellucci said earlier on.

14 And if you go to page 2 -- and
15 there are press statements which support the
16 statement that Dr. Mazigh makes in her letter to
17 you.

18 On October the 16th, you will see
19 it states that:

20 "...while at an awards
21 luncheon in Toronto, US
22 Ambassador Cellucci was asked
23 by reporters why the US
24 deported my husband. He
25 replied, 'I think you may

1 want to check with your local
2 people on that.'"

3 And we talked about that. That is
4 his statement on October 16th, the day after the
5 meeting with Mr. Graham.

6 And then this is the point here:
7 "On April 29, 2003, the US
8 Ambassador was again asked
9 about my husband while
10 speaking at the Harvard Club
11 in Ottawa. He replied that
12 it was Canadian elements that
13 did not want Maher Arar
14 returned to Canada, which is
15 why the US deported him to
16 Syria."

17 Once again around this time, did
18 you become aware that now Mr. Cellucci was saying
19 this: that Canadian elements didn't want Arar
20 returned to Canada, which is why the Americans
21 deported him to Syria?

22 HON. WAYNE EASTER: I would have
23 been aware of that, and I think you would see
24 statements in the press where I refuted that.

25 MR. CAVALLUZZO: And, once again,

1 you were refuting that on the limited information
2 you had from the RCMP?

3 HON. WAYNE EASTER: I was refuting
4 that on the basis of trust and confidence that I
5 had in the RCMP, yes.

6 MR. CAVALLUZZO: Now, we are
7 moving to a very important memorandum, which is
8 dated May 5, 2003.

9 Mr. Commissioner, it's now eleven
10 o'clock. I don't know if you want to take the
11 morning break now.

12 THE COMMISSIONER: All right. We
13 will rise for 15 minutes.

14 THE REGISTRAR: Please stand.

15 --- Upon recessing at 11:00 a.m. /

16 Suspension à 11 h 00

17 --- Upon resuming at 11:17 a.m. /

18 Reprise à 11 h 17

19 THE REGISTRAR: Veuillez vous
20 asseoir. Please be seated.

21 MR. CAVALLUZZO: I may have done a
22 brilliant thing, Mr. Commissioner, and left my
23 notebook in the office, so my partner is getting
24 it. Let us move on.

25 THE COMMISSIONER: Okay.

1 MR. CAVALLUZZO: Let us go to tab
2 75.

3 THE COMMISSIONER: Seven-five?

4 MR. CAVALLUZZO: Correct. At part
5 3.

6 This, as I said earlier, is a
7 memorandum dated May 5th of 2003, which the
8 evidence is was drafted by Mr. Gar Pardy,
9 Mr. Easter.

10 I just want to take you through it
11 and ask you some questions about it.

12 First of all, did you ever see a
13 copy of this draft memorandum prior to these
14 proceedings; in other words, around that time, in
15 May of 2003?

16 HON. WAYNE EASTER: No, I don't --
17 I am pretty sure not.

18 MR. CAVALLUZZO: Let us look at
19 it. You can see the recommendations on the first
20 page, and you can see that Mr. Pardy states:

21 "Efforts continue to
22 establish a common
23 understanding within the
24 Government of Canada on this
25 case with the objective of

1 the issuance of a statement
2 signed by the Solicitor
3 General and the Minister of
4 Foreign Affairs that could be
5 used with the Syrian
6 authorities."

7 And in the final bullet on that
8 first page:

9 "If necessary that you
10 meet..."

11 This would be the Minister of
12 Foreign Affairs.

13 "...that you meet with the
14 Solicitor General and the
15 Deputy Prime Minister to
16 arrive at a common
17 understanding on the case."

18 And you can see at that point in
19 time what DFAIT is contemplating is a letter or a
20 statement signed both by yourself and him.

21 And if you go to the body of the
22 document itself, under "Considerations", which is
23 the third page in, you will see at paragraph 6
24 that Mr. Pardy states:

25 "The central issue in our

1 dealing with the case is the
2 fact that there are
3 inconsistencies in what we
4 are being told by the
5 American authorities and what
6 the Canadian police and
7 security officials have
8 reported."

9 And then he goes on in the body of
10 this paragraph and talks about what interests both
11 the RCMP and CSIS had in Mr. Arar at that point in
12 time.

13 As you said before, he was a
14 person of interest; he was related to a number of
15 contacts in the Ottawa area.

16 And it goes on in paragraph 7, and
17 the only portion of that that I would read to you
18 is the last two sentences, and you will see he
19 says:

20 "It is clear, however, that
21 the RCMP was consulted by the
22 Americans prior to their
23 decision to deport Mr. Arar
24 but again we have no complete
25 understanding of what was

1 discussed. We have again
2 raised the matter with the
3 Americans but so far do not
4 have any clarification on the
5 matter."

6 I am going to ask you at this
7 point in time, in May of 2003, were you aware that
8 the RCMP was consulted by the Americans prior to
9 their decision to deport Mr. Arar?

10 HON. WAYNE EASTER: No.

11 MR. CAVALLUZZO: Let us move on in
12 paragraph 8, and this deals with CSIS.

13 It states that:

14 "CSIS officials visited Syria
15 earlier..."

16 HON. WAYNE EASTER: This was what
17 number?

18 MR. CAVALLUZZO: Paragraph 8 at
19 the bottom of the page:

20 "CSIS officials visited Syria
21 earlier this year and
22 discussed Mr. Arar with their
23 counterparts. They did not
24 meet Mr. Arar. Subsequent to
25 these discussions Syrian

1 officials informed us that
2 they were informed by CSIS
3 officials that Canada did not
4 want to have Mr. Arar
5 returned. The CSIS officials
6 denied that they had said
7 this to the Syrians."

8 Now, at this point in time were
9 you aware, first of all, that CSIS had visited
10 Syria? This is in May of 2003.

11 HON. WAYNE EASTER: No, I don't
12 believe so.

13 MR. CAVALLUZZO: So that if you
14 weren't aware that they had visited Syria, you
15 wouldn't have been aware that subsequent to that
16 visit that Syrians officials told Canada that CSIS
17 had said that Canada did not want Mr. Arar
18 returned to Canada?

19 HON. WAYNE EASTER: Unless it
20 was -- I mean, I think as I said earlier, there
21 was a view from somewhere that the Syrians were
22 suggesting that. Whether that was true or not is
23 another thing.

24 MR. CAVALLUZZO: But were you
25 aware that CSIS had visited Syria and were you

1 also aware that as a result of that visit, Syrian
2 officials informed DFAIT that CSIS told them that
3 they didn't want Arar --

4 HON. WAYNE EASTER: No.

5 MR. CAVALLUZZO: -- or Canada
6 didn't want Arar returned to Canada?

7 HON. WAYNE EASTER: No, I don't
8 believe so.

9 MR. CAVALLUZZO: You weren't aware
10 of that.

11 And then on the next page, page 4
12 of 5, at the top it states:

13 "...there is need for an
14 unambiguous statement by the
15 Government of Canada,
16 preferably signed by the
17 Solicitor General and Foreign
18 Minister, to the effect that
19 we have no evidence in
20 Canada, or from foreign
21 sources, that Mr. Arar is or
22 was a member of al-Qaeda,
23 that we do not believe that
24 such information exists and
25 that Mr. Arar should be

1 permitted to return to
2 Canada."

3 And we will come back to that
4 language.

5 But what I would like to refer to
6 is paragraph 10, just that first bullet point,
7 where it states that:

8 "In the days ahead our
9 efforts will concentrate on:
10 - convening a meeting of
11 Canadian officials
12 representing CSIS, RCMP, PCO
13 and the Office of the Deputy
14 Prime Minister to develop a
15 common Canadian approach that
16 would be sufficiently clear
17 to communicate to the Syrian
18 authorities."

19 We were told that meetings took
20 place on May 8th and May 12th of 2003 between
21 these officials, and I will ask you whether you
22 were aware that these meetings took place?

23 HON. WAYNE EASTER: I am not
24 specifically sure if these were the meetings, but
25 I certainly was aware that my officials, and

1 ourselves actually as Ministers, wanted to find
2 some way of communicating. And it was eventually
3 decided that would be through the Prime Minister.

4 MR. CAVALLUZZO: Okay. Let us
5 look then at the next tab 75, because we do have a
6 briefing note for you from CSIS, which is dated
7 May 12, 2003 -- although it's dated May 9th, 2003,
8 up in the right-hand corner, so it's unclear.

9 But in any event, the subject
10 matter is the one we are talking about.

11 It says:

12 "DFAIT is requesting that the
13 Solicitor General and the
14 Minister of Foreign Affairs
15 co-sign a letter to the
16 Syrian government to secure
17 the release of Maher Arar
18 from Syria, where he has been
19 detained since October 21.
20 Arar's wife has solicited the
21 assistance of several MPs,
22 including Minister Manley."

23 Where it says that he has been
24 detained in Syria since October 21, we need not go
25 there, but let us assume there is other evidence

1 that suggests he has been detained actually since
2 October 8th in Syria.

3 In any event, I won't ask you
4 about that. What I will ask you about is the
5 second page.

6 In terms of CSIS' analysis,
7 unfortunately that portion is redacted, but the
8 next line says -- this is at the top of page 2
9 after the redaction:

10 "Furthermore, the US
11 Government may also question
12 Canada's motives and resolve,
13 given that they had deported
14 Arar to Syria because of
15 concerns about terrorist
16 connections."

17 And then in terms of their
18 assessment and recommendation, the second-last
19 sentence of the memo states:

20 "However, as noted above, it
21 would be problematic for
22 either the Solicitor General
23 or the Service to be party to
24 this initiative. We would
25 therefore advise very

1 strongly that you decline the
2 request to sign a joint
3 letter with Mr. Graham."

4 I assume you saw this particular
5 briefing note from CSIS?

6 HON. WAYNE EASTER: Yes.

7 MR. CAVALLUZZO: And you accepted
8 their recommendation that it would be problematic
9 for you to co-sign such a letter?

10 HON. WAYNE EASTER: Yes.

11 MR. CAVALLUZZO: And the question
12 that I would ask to you is with respect to this
13 statement that they make at the top, where they
14 say:

15 "...the US government may
16 also question Canada's
17 motives and resolve given
18 that they had deported Arar
19 to Syria because of concerns
20 about alleged terrorist
21 connections."

22 And what this seems to be saying
23 is that a Canadian agency is advising its Minister
24 that in the circumstances of Mr. Arar where the
25 United States deported him without, apparently,

1 giving advance notice to Canada and sent him to a
2 country at which he could be tortured -- in effect
3 the evidence was, is tortured. In those
4 circumstances, CSIS is saying to you that we
5 should be concerned about the Americans
6 questioning our motives and resolve in the war
7 against terrorism.

8 I assume you thought that that was
9 an inappropriate comment?

10 HON. WAYNE EASTER: I outlined
11 earlier a number of reasons why I believe it would
12 be inappropriate for a Solicitor General to sign
13 such a letter. From my point of view, if a
14 Canadian citizen is detained abroad and we want
15 him back in Canada, then I quite honestly don't
16 give a damn what the Americans think. We want
17 that citizen back to Canada. This is where he
18 should be.

19 MR. CAVALLUZZO: And I assume that
20 is what you told CSIS, "Don't give me any of this
21 stuff. These are the guys that sent this Canadian
22 to Syria where he was tortured. Don't tell me
23 that I should be concerned about what the
24 Americans think of our resolve."

25 HON. WAYNE EASTER: Well, I know

1 what I have said throughout the piece: that we
2 have to do everything we can to get Mr. Arar back
3 to Canada.

4 And, as I have said, I do not
5 believe a letter from the Solicitor General,
6 co-signed with the Minister of Foreign Affairs or
7 from CSIS, was the answer.

8 MR. CAVALLUZZO: Okay. Leave that
9 open there because we are going to come back to
10 that tab. But if you go back to Volume 1, tab 1,
11 I want to refer to another message which I think
12 you were getting from CSIS and the RCMP in this
13 time in terms of Mr. Arar's return.

14 This is called "Case of Maher
15 Arar". It's a backgrounder and it once again sets
16 out a very general history concerning Mr. Arar. I
17 am not going to take you through it.

18 But you will see in the second
19 bullet from the bottom -- well, first of all,
20 start with the current status. In the second
21 bullet, it says:

22 "DFAIT has proposed that the
23 Minister and the Solicitor
24 General co-sign a letter..."

25 Which we have talked about.

1 "Departmental officials have
2 indicated that our Minister
3 will not sign such a letter
4 as Arar is deemed to be a
5 person of interest to both
6 CSIS and the RCMP."

7 And then it goes on to state:

8 "Given the case of [blank]
9 departmental officials have
10 urged DFAIT to be cautious."

11 And in terms of who "blank" is
12 likely to be, if we go to tab 49 --

13 MR. FOTHERGILL: I expect it's
14 redacted in the earlier document for reasons of
15 privacy as opposed to national security
16 confidentiality. So if Mr. Cavalluzzo wants to
17 name the individual, there is no objection from
18 me.

19 MR. CAVALLUZZO: Okay. We are
20 going to name him now at page 2 of this document.
21 This is a briefing note to the Commissioner of the
22 RCMP, and this is dated April 30th, which is a few
23 days before this memorandum. It says "Concern" at
24 the top:

25 "Members of Parliament are

1 seeking intervention at the
2 Prime Ministerial level for
3 the release of Arar and his
4 return to Canada. The
5 lobbyists are pressing for
6 quick intervention in an
7 attempt to effect a return
8 prior to Arar being charged
9 by the Syrians. The
10 potential for embarrassment
11 exists should the Prime
12 Minister become involved in a
13 similar fashion to the
14 incident following the
15 Egyptian embassy bombing in
16 1995 in Pakistan. In that
17 situation the Prime Minister
18 intervened on behalf of Ahmed
19 Said Khadr, an
20 Egyptian-Canadian who was
21 subsequently released from
22 Pakistani custody. Khadr is
23 now recognized
24 internationally as a high
25 ranking al-Qaeda member, and

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1 wanted by the Egyptians for
2 the bombing. The
3 intervention of the Prime
4 Minister has been raised on a
5 number of occasions in an
6 attempt to embarrass the
7 government."

8 And then Mr. Loepky -- I won't
9 read it to you. But Mr. Loepky said that,
10 through these interdepartmental meetings:

11 "...that we should assess
12 whether we need to provide a
13 briefing on Arar so that
14 Canada is not put in an
15 embarrassing position of
16 having the highest level of
17 political lobby only to find
18 out, as happened with Khadr,
19 that he is clearly involved
20 in terrorist activity."

21 Now, do you recall around this
22 time that both CSIS and the RCMP were warning
23 against you signing a letter, or indeed the Prime
24 Minister signing a letter, to get Mr. Arar's
25 release on the basis that, "Don't forget what

1 happened with Mr. Khadr back in 1996 where the
2 Prime Minister became embarrassed"?

3 Do you recall messages like that
4 coming from both agencies?

5 HON. WAYNE EASTER: It came up in
6 some of the discussions, yes.

7 MR. CAVALLUZZO: From both CSIS
8 and the RCMP?

9 HON. WAYNE EASTER: I can't answer
10 that question unequivocally.

11 MR. CAVALLUZZO: We will come back
12 to that.

13 Just moving on in terms of time,
14 on May the 21st of 2003, if you go now to tab 21,
15 we see there is a letter to the Prime Minister
16 from Dr. Mazigh, a copy going to both you and
17 Mr. Graham, and Manley and so on.

18 Do you recall reviewing or reading
19 this particular letter?

20 HON. WAYNE EASTER: Yes.

21 MR. CAVALLUZZO: And in that
22 letter, you will see that Dr. Mazigh makes a plea.
23 She talks about her Member of Parliament,
24 Ms Catterall, and she talks about -- this is about
25 ten lines up.

1 She says:

2 "I really appreciate the
3 efforts being done so far by
4 my MP, Marlene Catterall, but
5 her efforts must be supported
6 by other agencies in the
7 government."

8 And then she goes on:

9 "Arar is not a member of any
10 terrorist organization. I
11 challenge anyone here in
12 Canada or elsewhere to
13 provide me with evidence to
14 prove the inverse. He is a
15 victim of conspiracy of
16 intelligence service who
17 decided to get rid of him
18 because his ethnic and
19 religions background."

20 And then she goes on.

21 Was there any discussion at this
22 point in time, after having read this letter to
23 the Prime Minister, either with the Prime Minister
24 or the Minister of Foreign Affairs concerning this
25 letter and concerning your reference to get

1 Mr. Arar returned?

2 HON. WAYNE EASTER: As I indicated
3 earlier, there was ongoing discussions on how to
4 deal with the request for a letter and how it
5 could be written in such a way as to add pressure
6 to get Mr. Arar back.

7 MR. CAVALLUZZO: And what we do
8 know from the evidence is that after this
9 interdepartmental meeting that we talked about on
10 May the 12th, DFAIT agreed not to recommend a
11 co-signed letter but there would be a letter
12 coming from the Minister.

13 I would like to move now to June,
14 to June 5th, if you could stay in tab 75 at part
15 5. And this is, once again, a memo which is
16 drafted and signed by Mr. Pardy and the
17 departmental Deputy Minister and it is somewhat
18 similar to the May 5th memorandum.

19 I am wondering whether you
20 received a copy of this memorandum.

21 If you go on the first page it
22 sets out who the recipients of the memorandum are.

23 HON. WAYNE EASTER: I don't
24 believe so. There are tons of memorandums, but I
25 don't believe so.

1 MR. CAVALLUZZO: Now, I note that
2 the RCMP and CSIS did receive copies. But you
3 don't remember either of those agencies discussing
4 the matter with you?

5 HON. WAYNE EASTER: The matter may
6 have been discussed, but I don't believe I have
7 seen this memorandum.

8 MR. CAVALLUZZO: Okay.

9 HON. WAYNE EASTER: Because this
10 relates to the letter as well; right?

11 MR. CAVALLUZZO: Okay. And once
12 again this memorandum, as the earlier memorandum
13 does, makes mention that CSIS visited Syria and
14 once again the Syrians are saying, anyway, that
15 CSIS told them that Canada didn't want him back.

16 That is in paragraph 11 of this
17 memorandum.

18 HON. WAYNE EASTER: I see it.

19 MR. CAVALLUZZO: And I assume
20 that, even with this memorandum, no one told you
21 that this was being discussed in government,
22 amongst a number agencies now, and other
23 departments, that this is the message we got from
24 the Syrians: that CSIS has told them Canada does
25 not want him back.

1 So by June 5th no one has shared
2 that with you?

3 HON. WAYNE EASTER: No, I don't
4 believe so.

5 MR. CAVALLUZZO: In terms of the
6 draft letter that was appended to this memorandum
7 of June 5th, could you have the witness refer to
8 tab 439 of Volume 5 of the DFAIT documents?

9 HON. WAYNE EASTER: Which tab?

10 MR. CAVALLUZZO: Tab 439.

11 This is the draft letter from
12 Mr. Graham which was appended to the June 5th
13 memorandum. You will see in the middle paragraph
14 the important words. After making reference to
15 humanitarian and compassionate grounds, it states:

16 "I assure you there is no
17 Canadian Government
18 impediment for Mr. Arar's
19 return to Canada."

20 Do you recall seeing a copy of
21 that proposed letter that Mr. Graham was proposing
22 to send to the Syrians?

23 HON. WAYNE EASTER: I don't recall
24 seeing the letter, but that is not to say I
25 haven't. I mean, the letter was a matter of

1 discussion for a considerable period of time.

2 MR. CAVALLUZZO: Okay.

3 HON. WAYNE EASTER: There were
4 lots of drafts.

5 MR. CAVALLUZZO: Now, in terms of
6 the evolution of that letter then, if you go to
7 the next tab, tab 6, if you can just discard
8 Volume 5. Just discard that and give that to the
9 clerk. We won't refer to that again.

10 HON. WAYNE EASTER: Tab 5?

11 MR. CAVALLUZZO: Tab 6.

12 You will see that in terms of what
13 is happening in the Ministry of Foreign Affairs,
14 the Minister has met with Dr. Mazigh and an e-mail
15 is sent to Mr. Pardy, which is dated Tuesday, June
16 17th.

17 It states:

18 "Gar..."

19 Of course, Gar Pardy.

20 "Minister's advisors have
21 reviewed your memo and draft
22 letter to Minister Graham to
23 Syrian Foreign Minister
24 Shara'a ..."

25 And that is at tab 439 that we

1 looked at.

2 "...and would like to see the
3 following change (below in
4 italics) made in the body of
5 the letter. Could you speak
6 as early as possible to
7 receive concurrence from the
8 Solicitor General, the RCMP
9 and CSIS if at all possible
10 on the text and report. The
11 proposed language is: 'I
12 assure you there is no
13 evidence he is involved in
14 terrorist activity nor is
15 there any Canadian Government
16 impediment to Mr. Arar's
17 return to Canada.'"

18 Do you recall language like that
19 being proposed around this time?

20 HON. WAYNE EASTER: Yes, and this
21 is similar to one in earlier drafts.

22 MR. CAVALLUZZO: You do recall
23 that this was raised, this kind of language was
24 raised by a letter by Dr. Mazigh that you
25 received?

1 HON. WAYNE EASTER: Yes.

2 MR. CAVALLUZZO: We need not take
3 you to that letter then.

4 But in terms of advice you got
5 from your agencies regarding this wording, let's
6 go to tab 9 of the same tab 75? And this is a
7 memorandum from Mr. Michel D'Avignon.

8 Could you tell us who Michel
9 D'Avignon was, if you can recall?

10 HON. WAYNE EASTER: Yes, I believe
11 he was a Director General within my department.

12 MR. CAVALLUZZO: This is a
13 memorandum dated June 24, and he says:

14 "This memo is to request your
15 views as to the
16 appropriateness of the
17 content of the attached draft
18 letter. Specifically, do you
19 support sending this letter
20 as it is currently drafted?
21 Are there any changes you
22 would recommend?
23 Alternatively, if your
24 recommendation would be to
25 not send the letter, please

1 provide the rationale for
2 that position."

3 And this memorandum goes to both
4 CSIS, and you will see the next page, Mr. Loepky
5 at the RCMP.

6 The third page in is the draft
7 letter with the new language, the "no-evidence"
8 language, as you can see in the second paragraph,
9 second sentence, which is highlighted.

10 HON. WAYNE EASTER: Yes, I see it.

11 MR. CAVALLUZZO: Then at tab 10,
12 we see a response from Mr. Loepky from the RCMP,
13 who obviously is very much against sending that
14 letter.

15 Do you recall seeing that letter
16 that Mr. Loepky sent Mr. D'Avignon?

17 HON. WAYNE EASTER: I don't. The
18 letter is not copied to me. I don't recall seeing
19 the letter.

20 MR. CAVALLUZZO: Do you recall
21 whether Mr. Loepky would have come up and briefed
22 you on the response that he was going to give
23 Mr. D'Avignon in respect of the language that was
24 being proposed?

25 HON. WAYNE EASTER: It would have

1 been discussed, I believe, in the more general
2 sense as they tried to find wording.

3 MR. CAVALLUZZO: But do you recall
4 Loeppky talking to you, saying, "The no-evidence
5 language is no good because Mr. Arar is a person
6 of interest," and so on and so forth, whatever
7 language that they were using at that particular
8 point in time?

9 HON. WAYNE EASTER: I don't recall
10 specifically. I do know at some point in time
11 over the course of 2003, we did get into the
12 person of interest.

13 MR. CAVALLUZZO: And you do recall
14 as well that CSIS would not sign on to that
15 language?

16 HON. WAYNE EASTER: Yes. Neither
17 CSIS nor the RCMP were willing to sign on to
18 language which could be construed as somewhat
19 misleading.

20 MR. CAVALLUZZO: Okay. And I
21 guess the question that I would have for you is:
22 Before you told us that it was up to the Minister
23 of Foreign Affairs to speak for Canada, and here
24 the Minister of Foreign Affairs wants to send a
25 letter speaking for Canada in respect of Mr. Arar.

1 And you would agree with me that because of the
2 intervention of CSIS and the RCMP, who you are
3 responsible for, this letter from the Foreign
4 Minister never went to the Syrians?

5 HON. WAYNE EASTER: The letter
6 from the Foreign Affairs Minister never went to
7 the Syrians. Keep in mind that it is a letter
8 representative of -- he is the voice of Canada in
9 Foreign Affairs, and the letter, I would think,
10 has to be -- has to be factual. In a letter of
11 that nature that involves multiple departments, it
12 would make sense that they be involved.

13 MR. CAVALLUZZO: That is my point
14 earlier. You threw up your hands when I said,
15 "Couldn't you get CSIS to send a letter?" You
16 said, "Well, it's for the Foreign Affairs Minister
17 to send letters."

18 So it is much more complicated
19 than that, isn't it, in the sense that other
20 departments have a say?

21 HON. WAYNE EASTER: What I said
22 earlier was that in terms of the international
23 arena, the Minister of Foreign Affairs is the
24 voice of Canada, unless of course the Prime
25 Minister is. And if he is the voice of Canada,

1 then he is certainly representing Canada's
2 position as a whole.

3 I could not do that as Solicitor
4 General.

5 MR. CAVALLUZZO: When you said
6 that the letter was not factually correct, I
7 assume that in making that statement that you were
8 relying on the limited information which you had
9 from the RCMP and CSIS in respect of Mr. Arar?

10 HON. WAYNE EASTER: I was relying
11 on the information as provided to me under --
12 let's go back to the beginning.

13 The role of the Solicitor General
14 is to not get into the operational detail. I did
15 mention some instances where, when an issue
16 becomes very public or prominent or has political
17 consequences, then you expect the Commissioner,
18 which eventually happened in this case.

19 But the RCMP was providing me with
20 advice under the laws of the land, and I had trust
21 and confidence in the Commissioner in that regard.

22 MR. CAVALLUZZO: Okay. And I
23 assume you were also relying upon information you
24 had from CSIS?

25 HON. WAYNE EASTER: Yes.

1 MR. CAVALLUZZO: Now, if you go
2 back to Volume 1 at tab 23, this is a draft
3 memorandum which was prepared by somebody in
4 security intelligence at DFAIT, one James Gould,
5 and we have gone through this draft with other
6 witnesses.

7 You will see in the first
8 paragraph it says:

9 "It is very clear that there
10 has not been on an
11 institutional level a meeting
12 of the minds between DFAIT on
13 the one hand and CSIS and the
14 RCMP on the other with regard
15 to Maher Arar."

16 And then he talks about recent
17 exchanges have been testy, and so on and so forth.

18 If you go to the bottom paragraph
19 on this page, he states:

20 "There is not sufficient
21 evidence against Arar for him
22 to be charged with anything
23 in Canada."

24 And then he makes this statement:

25 "CSIS has made it clear to

1 the Department that they
2 would prefer to have him
3 remain in Syria rather than
4 return to Canada."

5 Do you see that statement there,
6 that:

7 "CSIS has made it clear to
8 the Department that they
9 would prefer to have him
10 remain in Syria rather than
11 return to Canada"?

12 HON. WAYNE EASTER: I see that
13 statement, yes.

14 MR. CAVALLUZZO: This is obviously
15 an assertion by Mr. Gould.

16 Were you aware of that?

17 HON. WAYNE EASTER: I would
18 question whether that is an accurate assessment
19 by --

20 MR. CAVALLUZZO: It was drafted by
21 Mr. Gould, and it was going to be signed by
22 Heatherington. It is a draft.

23 But what I want to know is whether
24 you were aware or not whether CSIS had made it
25 clear to the department that they would prefer to

1 have him remain in Syria rather than returned to
2 Canada?

3 HON. WAYNE EASTER: I don't know
4 whether they have. I don't know whether that is
5 an accurate statement. So I can't answer in that
6 regard.

7 I don't know whether they have
8 made that statement or they have not. I would
9 question that statement.

10 MR. CAVALLUZZO: Okay. Were you
11 aware as to whether anybody in CSIS, in the month
12 of June, made a call to anybody in DFAIT
13 concerning whether the Minister should send that
14 letter that we have been talking about to the
15 Syrians, attempting to secure Mr. Arar's release
16 to Canada?

17 HON. WAYNE EASTER: As I indicated
18 earlier, there was a lot of discussion around this
19 letter. A lot of officials were involved in
20 trying to get a letter correct.

21 So I can't say whether I was
22 specifically aware of one specific call, but I
23 know there was a lot of discussion between
24 individuals, between ourselves, in terms of trying
25 to get a letter that would assist in terms of

1 getting Mr. Arar back to Canada but not compromise
2 the integrity of either the RCMP or CSIS as well.

3 MR. CAVALLUZZO: But this is a
4 very specific question, Mr. Easter, and that is:
5 Were you aware that anybody in CSIS called anybody
6 in DFAIT discouraging the Minister's attempts to
7 secure the release of Mr. Arar from Syria?

8 HON. WAYNE EASTER: No, absolutely
9 not.

10 MR. CAVALLUZZO: Second question
11 is: If such a call was made by somebody in CSIS
12 to that effect, would you not agree with me that
13 the Solicitor General should have known about that
14 call?

15 HON. WAYNE EASTER: Yes. The
16 position of the Solicitor General, and I think the
17 government as a whole, was to do everything that
18 we could to get Mr. Arar back to Canada and, as I
19 said a moment ago, not in any way compromise other
20 police or intelligence agency in terms of doing
21 so.

22 MR. CAVALLUZZO: So that the only
23 concern that the Solicitor General of this country
24 had, in terms of whether attempts or efforts
25 should be made to secure Mr. Arar's release, was

1 the kind of thing you are talking about:
2 compromising an investigation or compromising an
3 ongoing investigation?

4 HON. WAYNE EASTER: I think you
5 are -- I think a little beyond that in that you
6 have to be careful not to compromise your
7 integrity as an organization, be it CSIS or the
8 RCMP, if you are going to write in a letter what
9 is less than truthful.

10 MR. CAVALLUZZO: I am not talking
11 about a letter. I want to be very precise. I am
12 not talking about a letter. I am talking about
13 the Minister of Foreign Affairs' attempts to
14 secure the release of Mr. Arar from Syria, whether
15 it be by a letter or otherwise, the question is
16 whether you are aware that somebody from CSIS
17 contacted DFAIT and discouraged those attempts?

18 HON. WAYNE EASTER: No.

19 MR. CAVALLUZZO: Thank you. And
20 you would agree with me that because we are
21 dealing with a number of departments, right up to
22 the Prime Minister's Office, that an agency like
23 CSIS shouldn't be making those attempts without
24 political knowledge or control from their
25 Minister?

1 HON. WAYNE EASTER: The polit --
2 the Ministers, and the government as a whole, make
3 a decision to do whatever. Then no one within a
4 department should try to undermine or compromise
5 that position that has been collectively made by
6 either the cabinet or the government as a whole.

7 MR. CAVALLUZZO: Okay. If we can
8 move on now in terms of time to June 27th and go
9 now to tab 25.

10 You will see that this is an
11 e-mail to Richard Proulx who, as we know, is the
12 Assistant Commissioner of the RCMP, the head of
13 CID at that time, from Francoise Lang and the
14 subject matter is: "Request for Solicitor General
15 briefing note, Arar".

16 And then it says:

17 "We have been asked to
18 prepare a Solicitor General
19 BN to forward to the
20 Minister's executive
21 assistant which would provide
22 the Minister with background
23 on the circumstances
24 surrounding the deportation
25 to Syria of Maher Arar and in

1 particular the RCMP's
2 perspective. Today's article
3 in The Globe and Mail reports
4 that the PM has indicated to
5 Mr. Arar's wife that "We are
6 continuing to investigate how
7 this could have happened..."

8 And so on and so forth.

9 Do you recall receiving such a
10 briefing note?

11 HON. WAYNE EASTER: I can't say it
12 was this specific briefing note but, yes, I was
13 given a briefing note.

14 MR. CAVALLUZZO: That e-mail was
15 tab 24, but the briefing note is tab 25.

16 Is this the first briefing note on
17 Arar that you have received in your role as
18 Solicitor General?

19 HON. WAYNE EASTER: It's the first
20 briefing note as such. As I indicated earlier,
21 there was a Question Period book note which has
22 some background and a little bit of similarity.

23 MR. CAVALLUZZO: Okay. In any
24 event, the issue of this briefing note to the
25 Solicitor General is circumstances surrounding the

1 deportation to Syria of Maher Arar, and it goes on
2 in background:

3 "Mr. Arar was one of the
4 subjects investigated by the
5 RCMP in a large national
6 security investigation in
7 partnership with other
8 Canadian agencies following
9 September 11 incidents. Arar
10 was a peripheral subject of
11 investigation."

12 I see that before this time, and
13 elsewhere, that Mr. Arar is referred to as a
14 "person of interest". Here he is referred to as a
15 "subject of investigation".

16 Is there a difference in your mind
17 between a "person of interest" and a "subject of
18 investigation", even if peripheral?

19 HON. WAYNE EASTER: Not in my
20 mind, I don't believe so.

21 MR. CAVALLUZZO: So that is the
22 same. A "person of interest" could be a
23 peripheral "subject of investigation"?

24 HON. WAYNE EASTER: I would say
25 so. That would be my interpretation.

1 MR. CAVALLUZZO: It goes on. This
2 is after the redaction:

3 "As a result any information
4 that was being developed
5 concerning U.S. linkages was
6 shared with American
7 authorities."

8 Was that the first time you were
9 aware of that, that they were sharing information
10 about Mr. Arar because he was part of this
11 investigation?

12 HON. WAYNE EASTER: I would -- in
13 terms of information, I guess as it directly
14 relates to Arar, this is the first that Mr. Arar
15 and information to the Americans is mentioned
16 specifically.

17 But in the normal work of doing
18 police work, then I expect police agencies to
19 share information. In fact, we did set up a
20 number of joint --

21 MR. CAVALLUZZO: But I am
22 concerned about Mr. Arar. Is this the first time
23 you were aware --

24 HON. WAYNE EASTER: Okay. But in
25 the normal sense of the word, I would expect that

1 this information would be shared. But this is the
2 first briefing note that specifically mentions
3 Mr. Arar in the information.

4 MR. CAVALLUZZO: It goes on and it
5 says:

6 "As part of the ongoing
7 investigation, an attempt was
8 made to interview Arar, and
9 he declined."

10 Now, were you aware that Mr. Arar
11 declined to be interviewed because he wanted a
12 lawyer to be with him at the interview?

13 HON. WAYNE EASTER: I believe
14 that -- I am aware that there were conditions
15 attached, I believe, to the interview.

16 MR. CAVALLUZZO: Okay. You are
17 aware of that.

18 HON. WAYNE EASTER: But not just a
19 straight decline. There were conditions attached.

20 MR. CAVALLUZZO: It goes on and it
21 says:

22 "Shortly after this approach,
23 Arar and his family left the
24 country for Tunisia."

25 Do you know how long there was

1 between this attempt to interview Mr. Arar and
2 leaving for Tunisia?

3 HON. WAYNE EASTER: No, I do not.

4 MR. CAVALLUZZO: It was a period
5 of about six months. So in my mind it doesn't
6 seem shortly after. Would you agree with that?

7 HON. WAYNE EASTER: Six months is
8 not quite shortly after.

9 MR. CAVALLUZZO: Okay. It goes
10 on:

11 "The RCMP was under the
12 impression that this was a
13 permanent move."

14 And then it goes on:

15 "Arar flew to New York on
16 September 26th from Geneva."

17 We all know it's Zurich, not
18 Geneva. You are aware of that?

19 HON. WAYNE EASTER: Yes.

20 MR. CAVALLUZZO: And it talks:

21 "He was detained by INS upon
22 his arrival, held on possible
23 immigration charges."

24 And then it states:

25 "The RCMP was notified by a

1 U.S. Embassy representative
2 on the same date that Arar
3 was not going to be granted
4 entry into the U.S. On
5 October 3rd, both the CIA and
6 FBI requested RCMP assistance
7 in acquiring any information
8 to support criminal charges
9 in the U.S. against Arar."

10 Now, was that the first time that
11 you became aware that during Mr. Arar's detention
12 in the United States that the CIA and the FBI
13 requested RCMP assistance in acquiring information
14 to support criminal charges?

15 HON. WAYNE EASTER: Yes.

16 MR. CAVALLUZZO: And it goes on
17 and it says:

18 "We confirmed information
19 that previously had been
20 provided relative to Arar's
21 activity in Canada and
22 linkages to suspected
23 terrorists in Canada and
24 abroad."

25 Now, what they don't tell you here

1 is they don't tell you, for example, that before
2 Mr. Arar landed in New York that they were
3 notified he was going to be landing in New York an
4 hour later.

5 Were you aware of that?

6 HON. WAYNE EASTER: I would be
7 aware of what is in this memo.

8 MR. CAVALLUZZO: Were you aware
9 that they supplied questions for the Americans to
10 ask Mr. Arar?

11 HON. WAYNE EASTER: No. That
12 would be getting into the investigation itself, so
13 I wouldn't expect to be.

14 MR. CAVALLUZZO: Okay. And it
15 goes on in the next paragraph and it says:

16 "On October 5th, RCMP..."

17 Then there is a redaction and then
18 it says:

19 "...US INS would be seeking
20 deportation."

21 So would that be the first time
22 that you are aware that something happened on
23 October the 5th with respect to the RCMP, and then
24 the U.S. INS would be seeking deportation?

25 HON. WAYNE EASTER: Yes.

1 MR. CAVALLUZZO: Okay. It was the
2 first time you were aware of that.

3 "FBI advised that Arar asked
4 to be deported to Canada."

5 There is a redaction.

6 "As well as the possibility
7 of Arar being refused into
8 Canada the FBI was advised
9 that the RCMP did something."

10 And then it goes on.

11 "Arar and ... were informed
12 that as Arar was a Canadian
13 citizen, there would be no
14 reason to refuse his entry
15 into Canada."

16 So is this the first time that you
17 were aware that there was a discussion between
18 American agencies and the RCMP on or about October
19 the 5th concerning whether Mr. Arar, as the words
20 are put here, would be refused entry into Canada?

21 HON. WAYNE EASTER: Yes.

22 MR. CAVALLUZZO: Then it goes on,
23 on October the 8th, that:

24 "...the RCMP, Arar, that he
25 had been deported to

1 Syria..."

2 And so on and so forth.

3 On the next page, in terms of his
4 current status, it says:

5 "Arar is currently subject of
6 a national security
7 investigation in Canada."

8 And then it goes on in the bottom
9 paragraph of the text:

10 "Due to the war on terrorism,
11 the U.S. authorities differ
12 in their approach and tactics
13 from Canadian authorities."

14 Were you aware of that, that the
15 Americans take a different approach and use
16 different tactics in respect of terrorism than
17 Canadian authorities?

18 HON. WAYNE EASTER: Yes, and they
19 do on many things.

20 MR. CAVALLUZZO: And then it goes
21 on, and it says:

22 "The action undertaken by the
23 U.S. in this situation was
24 unilateral..."

25 That is the first time we see that

1 word, and we will come back to it.

2 "...and the RCMP had little
3 or no influence in this
4 matter."

5 In the suggested response they
6 say:

7 "At no time did the RCMP
8 suggest to U.S. authorities
9 that Arar should be deported
10 to Syria."

11 And then it says:

12 "The RCMP does not comment on
13 ongoing investigation."

14 Wouldn't you agree with me that
15 that statement "at no time did the RCMP suggest to
16 U.S. authorities that Arar should be deported to
17 Syria" is an operational detail?

18 HON. WAYNE EASTER: No.

19 MR. CAVALLUZZO: No?

20 HON. WAYNE EASTER: No.

21 MR. CAVALLUZZO: It's not an
22 operational detail? Why?

23 HON. WAYNE EASTER: Well,
24 considering the fact that there is -- whether it
25 is or whether it isn't I think is beside the

1 point.

2 As I said earlier, there is -- the
3 line between when you are given operational --
4 when the Commissioner needs to report certain
5 things to you is -- it is a public -- could affect
6 the nation as a whole.

7 The fact that some people were
8 saying that the RCMP was involved in the decision
9 to deport is indeed something, I think, given the
10 situation surrounding this issue, that I as
11 Solicitor General should have known. And in fact
12 this was reported to me.

13 As we talked about earlier,
14 Mr. Commissioner, you had Powell out there saying
15 one thing --

16 MR. CAVALLUZZO: I am not
17 concerned about whether they should have told you
18 this. I think they should have.

19 My only concern is it would appear
20 that they are suggesting to you that publicly you
21 can say, "At no time did the RCMP suggest to the
22 U.S. authorities that Arar should be deported to
23 Syria."

24 And what it looks like to me is
25 that they are prepared to let you publicly

1 disclose an operational detail if it supports
2 their position. That is what it appears to me --
3 unless this isn't an operational detail.

4 HON. WAYNE EASTER: The fact of
5 the matter is that as the Minister responsible,
6 that you have Ministerial responsibility and
7 accountability, then at this time I certainly had
8 to know that detail.

9 MR. CAVALLUZZO: Tabs 26 and 27
10 relate to an upcoming meeting you are going to
11 have with Mr. Ashcroft in July of 2003. This
12 would have been your second meeting with Ashcroft?

13 HON. WAYNE EASTER: This is
14 correct.

15 MR. CAVALLUZZO: If you go to 26,
16 you will see there is a briefing note for you.

17 The Issue is:

18 "To provide the Minister with
19 a recommended response for
20 his meeting with Mr. Ashcroft
21 on July 14, 2003 in relation
22 to issues surrounding the
23 deportation of Maher Arar to
24 Syria."

25 And it gives you the current

1 status and a short background, and the Strategic
2 Advice is that:

3 "The RCMP continues to
4 maintain a high degree of
5 cooperation with both the
6 [something] and [something
7 else] on terrorist-related
8 matters."

9 There are redactions.

10 And then the next tab, tab 27, is
11 another briefing note for your meeting with
12 Mr. Ashcroft, which is dated July 10th.

13 The question that I would have is
14 in the middle paragraph where it says:

15 "In April 2003, Member of
16 Parliament, Ms Marlene
17 Catterall visited Arar in
18 Syria."

19 And it says:

20 "At that time, the Syrian
21 authorities indicated to Ms
22 Catterall that they had
23 intended to lay charges
24 against Arar for belonging to
25 al Qaeda and for having

1 received training in an
2 al Qaeda training camp in
3 Afghanistan."

4 And I want to know whether anyone
5 indicated to you that Mr. Arar had made a
6 statement, for example, respecting an al-Qaeda
7 training camp in Afghanistan, but there was
8 certainly reason to believe that that statement
9 was the product of torture.

10 I am wondering whether anyone had
11 advised you of that, at least by that point in
12 time?

13 HON. WAYNE EASTER: No, I don't
14 believe so.

15 MR. CAVALLUZZO: Had anyone
16 advised you by this point in time that Mr. Arar
17 was likely tortured in the first two weeks that he
18 had spent in Syria?

19 HON. WAYNE EASTER: No.

20 MR. CAVALLUZZO: And in the final
21 paragraph of this briefing note, in terms of the
22 recommended position your officials are
23 suggesting, it states:

24 "Should Mr. Ashcroft raise
25 this case, you may wish to

1 emphasize that Canada is
2 working diligently to ensure
3 Mr. Arar's consular rights
4 are protected. However, from
5 a national security
6 perspective, he does remain a
7 person of interest to
8 Canadian security and law
9 enforcement agencies."

10 So what this seems to suggest is
11 that Arar will be discussed should Mr. Ashcroft
12 raise the case.

13 Now, did Mr. Ashcroft raise the
14 case on July 14th?

15 HON. WAYNE EASTER: No, I don't
16 believe he did.

17 MR. CAVALLUZZO: Did you raise
18 Mr. Arar's case with Mr. Ashcroft?

19 HON. WAYNE EASTER: No, I did not.

20 MR. CAVALLUZZO: Now, Dr. Mazigh
21 writes you at tab 28, on July 18th of 2003.

22 Do you recall receiving that
23 letter?

24 HON. WAYNE EASTER: Yes.

25 MR. CAVALLUZZO: And ultimately

1 you did not respond to that letter, likely because
2 in the interim the Prime Minister sent a letter
3 with his envoy, Senator de Bané, on July 22nd.

4 Is that correct?

5 HON. WAYNE EASTER: That is
6 correct.

7 MR. CAVALLUZZO: If we go to tab
8 30, this is an e-mail dated July 29th, 2003, and
9 it states:

10 "SolGen (Helen)..."

11 Do you know who Helen is in
12 SolGen?

13 HON. WAYNE EASTER: Tab 30?

14 MR. CAVALLUZZO: Yes, tab 30.

15 HON. WAYNE EASTER: No, I do not.

16 MR. CAVALLUZZO: In any event,
17 whoever Helen is in SolGen:

18 "... warns that Madame

19 Jauvin..."

20 That is the Deputy Minister, or
21 the Deputy Solicitor General.

22 HON. WAYNE EASTER: That is
23 correct.

24 MR. CAVALLUZZO: "...Madame Jauvin
25 has not seen the wording of

1 the PM's letter and may be
2 concerned. She may call
3 Rob."

4 And that is I think Rob Wright?

5 HON. WAYNE EASTER: Rob Wright.

6 MR. CAVALLUZZO: In the PCO.

7 "The wording (no impediment)
8 should satisfy SolGen: their
9 concern was that the letter
10 might have said 'no
11 evidence.'"

12 And we have dealt with that, the
13 "no-evidence" letter, and so on and so forth.

14 And then it says:

15 "On the detention of Arar in
16 New York, SolGen says:
17 contacted RCMP after the
18 arrest..."

19 I assume that is an American
20 agency. We have already seen who they are in
21 another letter.

22 And I assume, Mr Fothergill, I can
23 say who the agencies are since it was released in
24 other documents?

25 MR. FOTHERGILL: I believe you are

1 right, it has been released in other documents.

2 MR. CAVALLUZZO: The FBI and the
3 CIA -- or it would be:

4 "...the FBI contacted RCMP
5 after the arrest..."

6 Do you know that that is
7 incorrect; that in fact they contacted them before
8 the arrest, once again, an hour before he even
9 landed?

10 HON. WAYNE EASTER: No, I don't.

11 MR. CAVALLUZZO: Okay. It goes
12 on:

13 "...but he had been deported
14 by the time the RCMP got back
15 to them with the results of
16 the inquiry."

17 Do you know that that is
18 incorrect? That there were questions submitted on
19 September the 26th and information given on
20 October the 4th?

21 HON. WAYNE EASTER: No.

22 MR. CAVALLUZZO: You didn't know
23 that. Okay.

24 And then it says:

25 "Neither RCMP nor CSIS tipped

1 off U.S. authorities."

2 And that is signed Glenn
3 Patterson(sic), who is in the PCO.

4 I would like to move to July 30th,
5 Exhibit P-38.

6 HON. WAYNE EASTER: Exhibit...?

7 MR. CAVALLUZZO: P-38. The clerk
8 will get that for you. It's an article in the
9 National Post of that date, July 30th, 2003.

10 You have seen this article before?
11 We will call this the "rogue elements" article?

12 HON. WAYNE EASTER: I believe I
13 have.

14 MR. CAVALLUZZO: I just want to
15 read portions to you and give you the opportunity
16 either to say you didn't say it, or you did say
17 it, or qualify it.

18 First paragraph:

19 "Canada's Solicitor General
20 would not discount the
21 possibility yesterday that
22 rogue elements in the RCMP
23 passed on intelligence
24 information to U.S.
25 authorities leading to the

1 arrest and deportation of an
2 Arab-Canadian to Syria over
3 allegations of links to
4 al-Qaeda."

5 Do you recall making that
6 statement to the reporter, Mr. Fife?

7 HON. WAYNE EASTER: No, I did -- I
8 would say there is a lot of liberty with the pen
9 here, if I might put it that way.

10 MR. CAVALLUZZO: Right.

11 HON. WAYNE EASTER: What I would
12 have -- my points would have been along the lines
13 that the RCMP was not involved in the decision to
14 deport; that, yes, information is shared in the
15 normal sense of police and intelligence agencies
16 sharing information.

17 At no point -- and you will see
18 where I raised this later on. At no point did I
19 use the word "rogue", although that took on a life
20 of its own. I will tell you the context.

21 I think I said that no one in an
22 official capacity had given any indication to the
23 Americans that it would be okay to deport. And
24 then I basically made the statement, of which he
25 drew "rogue elements" out of, that that is not to

1 say that -- you know, I don't know what goes on.
2 I have been given assurance now officially, but
3 somebody who is having a coffee with somebody else
4 who is farther down the ranks, a discussion out
5 behind the barn, could have said something, for
6 that matter, in jest.

7 He drew out of that that there was
8 rogue elements which, when I read the article, I
9 can tell you this, that I had my communications
10 person call Mr. Fife and tell him that that was
11 blatantly wrong, which he admitted to.

12 MR. CAVALLUZZO: Okay. It goes on
13 in the second paragraph and it states:

14 "Wayne Easter said he is
15 aware the Americans are
16 claiming the RCMP quietly
17 asked the U.S. government to
18 pick up Maher Arar whom Paul
19 Cellucci, the U.S. Ambassador
20 to Canada, says was the
21 target of a joint Canada-U.S.
22 security investigation long
23 before he was arrested in New
24 York last September."

25 This statement, that you are aware

1 that Americans are claiming the RCMP quietly asked
2 the U.S. government to pick up Arar, do you recall
3 saying that to Mr. Fife?

4 It's not your saying it. What you
5 are saying is that you are aware Americans are
6 saying that.

7 HON. WAYNE EASTER: Yes, I was
8 clearly aware of comments by Mr. Cellucci and
9 Mr. Powell.

10 MR. CAVALLUZZO: Okay. If we jump
11 a paragraph, it says:

12 "Mr. Easter said senior
13 Mounties insist there was no
14 official decision to provide
15 the United States with
16 information that led to
17 Mr. Arar being placed on a
18 watch list used to screen
19 passengers arriving in the
20 country."

21 You said that? That is what you
22 are being told?

23 HON. WAYNE EASTER: Yes, that is
24 what I said a moment ago.

25 MR. CAVALLUZZO: That is what you

1 said and that is what you were being told.

2 HON. WAYNE EASTER: That is what I
3 believed, yes.

4 MR. CAVALLUZZO: Then you are
5 quoted in the next paragraph:

6 "The Americans had indicated
7 that it was the RCMP and it
8 was the RCMP who indicated to
9 me that there was no official
10 discussions."

11 What do you mean by "official
12 discussions"? On what?

13 HON. WAYNE EASTER: That would be
14 in reference to deportation, I believe.

15 MR. CAVALLUZZO: Okay. But were
16 you aware that just prior to the deportation there
17 was a discussion that we just referred to on
18 October the 5th, wherein, for example, the
19 Americans asked, "Can you refuse entry to Mr. Arar
20 if we send him up to Canada?"

21 You were aware of that?

22 HON. WAYNE EASTER: Well, the
23 point I am making here is I am talking in
24 reference to official discussions to deport, and
25 that is what I am referring to. In terms of the

1 normal exchange of information, that is normal.
2 As I responded earlier, I said no to that previous
3 question.

4 MR. CAVALLUZZO: Then a couple of
5 other references I will give you a chance to
6 comment on:

7 "However, Mr. Easter did not
8 rule out the possibility RCMP
9 officers working the Arar
10 case alerted U.S. law
11 enforcement without the
12 official approval of their
13 superiors at RCMP
14 headquarters."

15 Is that what you were referring to
16 before, about "having a coffee behind the barn"
17 sort of thing?

18 HON. WAYNE EASTER: That is
19 correct, but I do believe Mr. Fife is taking a lot
20 of journalistic liberty there.

21 MR. CAVALLUZZO: Finally the next
22 quote I will give you a chance to comment on is it
23 says:

24 "I would hope that when an
25 American authority is dealing

1 with Canada, that they only
2 do it on the basis of on
3 official clearance. He said,
4 'You could have a number of
5 individuals claiming to speak
6 on behalf of an agency, and
7 that is certainly not what we
8 want.' So the information
9 that I have been provided
10 with is there is no official
11 clearance or discussion on
12 that issue with American
13 authorities."

14 And I would ask whether you made
15 that statement?

16 HON. WAYNE EASTER: I would --
17 yes.

18 MR. CAVALLUZZO: Now, that article
19 gave rise to a great deal of reaction -- you are
20 smiling. I guess you recall that reaction?

21 HON. WAYNE EASTER: I do very
22 vividly.

23 MR. CAVALLUZZO: Then let's turn
24 once again to tab 30, at page 2 of tab 30, for
25 July 30th, the same day.

1 This is an exhibit that has
2 already been introduced from the Privy Council
3 Office, but it gives background facts, and I would
4 ask you about them.

5 It states:

6 "With respect to the article
7 itself..."

8 And they are talking about, as I
9 call it, the rogue elements article.

10 It says:

11 "- the Citizen article uses
12 inflammatory language ('rogue
13 elements') which was not used
14 in briefing the Solicitor
15 General
16 - Deputy Commissioner Loeppky
17 briefed the Minister that 'at
18 no time did RCMP suggest to
19 US authorities that Arar
20 should be deported to Syria
21 nor was any information
22 provided that would have
23 supported this course of
24 action.'"

25 Do you agree with that, that that

1 is what Loeppky would have told you in the
2 briefing?

3 HON. WAYNE EASTER: Absolutely.

4 MR. CAVALLUZZO: And then it goes
5 on as to what is going to happen or what will
6 happen.

7 It says:

8 "Next Steps
9 Commissioner Zaccardelli and
10 Deputy Solicitor General
11 Jauvin are meeting with the
12 Solicitor General this
13 afternoon in Prince Edward
14 Island. CSIS Director Elcock
15 will also be there. The
16 matter will be a subject of
17 discussion. SolGen officials
18 suggest that Madame Jauvin
19 should be best informed after
20 these meetings and could be
21 contacted around 4 p.m.
22 Ottawa time."

23 So that we have the Commissioner
24 of the RCMP, the Director of CSIS and the Deputy
25 Minister flying down to Prince Edward Island. Is

1 that just to talk about the rogue elements article
2 or --

3 HON. WAYNE EASTER: No, absolutely
4 not. As I indicated earlier, we did try to have
5 meetings on at least a monthly basis, sometimes
6 more often, with all agencies.

7 As well, the Commissioner, the
8 Corrections Services of Canada, the National
9 Parole Board were there.

10 So that was a regular planned
11 meeting, is what I am saying.

12 MR. CAVALLUZZO: Obviously you
13 discussed the rogue elements article?

14 HON. WAYNE EASTER: Absolutely.

15 MR. CAVALLUZZO: Then it goes on:
16 "Assistant Commissioner
17 Proulx, head of RCMP CID,
18 responsible for national
19 security investigations, will
20 meet with [certain] reps this
21 morning to discuss what
22 information was shared and
23 ... statements. He suggested
24 that he may ask them to
25 publicly acknowledge that the

1 RCMP did not ask for
2 deportation and that this
3 action was taken in response
4 to an RCMP request."

5 HON. WAYNE EASTER: That "was not
6 taken".

7 MR. CAVALLUZZO: "That was not
8 taken"; okay.

9 So that is what Mr. Proulx is
10 going to do.

11 And what Mr. Zaccardelli is going
12 to do we find at the next page.

13 "Commissioner Zaccardelli is
14 expected to meet with US
15 Ambassador on this issue."

16 And then the S&I, that is Security
17 and Intelligence of the PCO, says that:

18 "- the incident points to the
19 need to centralize control
20 over RCMP national security
21 investigations, and ensure
22 better accountability and
23 information flow.

24 You may wish to ask RCMP what
25 they are prepared to say

1 publicly with respect to
2 their interest in Arar."

3 Now, the next thing that happens
4 is that in the next day or two -- on the next day,
5 excuse me, there is a press release, or a public
6 statement from the American Embassy in Ottawa
7 indicating that the Americans had made a
8 unilateral decision to deport Mr. Arar.

9 I am referring now to Exhibit
10 P-44.

11 This is an article in the Ottawa
12 Citizen by Mr. Fife, and the title of the
13 article -- it's dated August 1, 2003: "RCMP
14 didn't turn in Arar, U.S. says. Embassy statement
15 conflicts with claims by Powell and Cellucci".

16 And then it goes on in the first
17 paragraph:

18 "The U.S. Embassy says the
19 RCMP had no direct role in
20 the U.S. arrest and
21 deportation to Syria of an
22 Arab-Canadian on suspicion of
23 being linked to al-Qaeda.

24 The denial yesterday..."

25 Which would have been July 31.

1 "...comes after the RCMP
2 faced allegations of helping
3 the U.S. to deport a Canadian
4 citizen to a country known
5 for torture and calls for a
6 parliamentary inquiry from
7 Amnesty International and the
8 American Islamic Relations
9 Council."

10 And then it says:

11 "Beth Poisson, a U.S. embassy
12 official told CanWest news
13 yesterday that while U.S. law
14 enforcement had excellent
15 relations with the RCMP
16 authorities, the United
17 States did not talk to the
18 Mounties before Maher Arar
19 was arrested last September
20 at New York's Kennedy
21 airport..."

22 Well, we will have to deal with
23 the evidence on that.

24 Then it is quoted:

25 "The U.S. and Canadian law

1 enforcement agencies consult
2 and exchange information all
3 the time. However, in the
4 case of the detention of
5 Arar, the U.S. did not
6 consult with any Canadian law
7 enforcement organization."

8 And then in terms of the
9 inconsistency, it says:

10 "The official denial of any
11 Canadian participation in the
12 deportation of Arar was made
13 under pressure from the RCMP,
14 sources say, and conflicts
15 with statements made by
16 Mr. Cellucci and Mr. Powell."

17 Now, that statement that "the
18 official denial was made under pressure from the
19 RCMP, sources said", are you aware as to whether
20 the RCMP put pressure on the American Embassy to
21 come out with this statement the next day after
22 your rogue elements article?

23 HON. WAYNE EASTER: I don't
24 believe the RCMP -- no, I am not.

25 But the fact of the matter is that

1 the discussions -- two things here.

2 We have consistently said, myself
3 and others, that Mr. Powell and Mr. Cellucci were
4 misinformed. This would be correcting the record,
5 and especially so after the liberty that Mr. Fife
6 took in using "rogue elements".

7 There were several implications
8 there: one, to me; two, to the RCMP; and I think
9 three, to Mr. Arar himself. There is no doubt --
10 and that is why I was really upset over this
11 particular article, because it can have
12 wide-ranging implications, that there is
13 suggestions that we would want Mr. Arar deported.

14 So I think this article had
15 several implications that we had to deal with,
16 that were wrong, that were wrong.

17 MR. CAVALLUZZO: That is correct.
18 But that wasn't the question.

19 The question that I put to you is:
20 Are you aware as to whether the RCMP put pressure
21 on the American Embassy to make the statement that
22 they did, whether to correct the record or not?

23 HON. WAYNE EASTER: I am aware
24 that the RCMP, as many of us had, said to the
25 Americans get the facts straight.

1 MR. CAVALLUZZO: But was it at
2 this point in time when they did that?

3 HON. WAYNE EASTER: I think we did
4 it at many points in time, trying to set the
5 record straight. But this was coming out of
6 the -- this was dated --

7 MR. CAVALLUZZO: The "rogue
8 elements" article is July 30th. The Americans
9 come out with a statement July 31st, after we see
10 in the previous document that Mr. Proulx was going
11 to be doing certain things and Mr. Zaccardelli is
12 going to be speaking to Cellucci.

13 HON. WAYNE EASTER: I think, yes,
14 we tried to set the record straight, and I believe
15 that in fact is what happened. The Americans were
16 misinformed.

17 MR. CAVALLUZZO: If you go to tab
18 31, there is a very redacted document from DFAIT
19 ISI. You will see that this is dated August 1,
20 2003, which is the very same date as the article
21 with the change in the American position.

22 THE COMMISSIONER: What tab,
23 sorry, Mr. Cavalluzzo?

24 MR. CAVALLUZZO: Tab 31. It talks
25 about an upcoming meeting with somebody. It's

1 redacted. But it says:

2 "On the Arar case [whoever
3 that person is or institution
4 is] is concerned about the
5 recent comment by the
6 Solicitor General about
7 'rogue elements' in the RCMP
8 passing intelligence to the
9 Americans about Arar, which
10 led to his arrest in New York
11 and deportation to Syria.
12 The RCMP has worked closely
13 with [somebody] since
14 September 11, 2001 to detect
15 and deter further terrorist
16 operations in North America.
17 To that end, there is full
18 sharing of information about
19 suspected terrorists. The
20 Solicitor General's comments,
21 [somebody said], will lead to
22 reluctance on the part of
23 RCMP investigators to share
24 information with the
25 Americans in a timely

1 manner."

2 And then:

3 "On this point, you can
4 reassure [whoever] that we
5 understand the value of
6 information-sharing..."

7 Do you understand that was raised
8 with the Americans, that our whole
9 information-sharing arrangement may be jeopardized
10 if this issue keeps festering in the public?

11 Do you recall that kind of
12 conversation taking place with the Americans
13 around this time?

14 HON. WAYNE EASTER: No, I do not.

15 MR. CAVALLUZZO: You had those
16 conversations with the Americans? Do you recall
17 having those kinds of conversations with the
18 Director of CSIS or the Commissioner of the RCMP?

19 HON. WAYNE EASTER: We certainly
20 talked about the "rogue element" statements and
21 the implications of that, and that was why I had
22 my communications director call Mr. Fife.

23 MR. CAVALLUZZO: In terms of time,
24 at tab 32 we are moving along now to August the
25 7th. You are getting Q&A's for, I guess,

1 preparation of -- excuse me, this is DFAIT, and
2 this just gives us some context.

3 I note that at the fourth page in,
4 page 4 of 16, that the question is given to the
5 Minister in DFAIT.

6 "What does the Canadian
7 government know about the
8 reports that the RCMP shared
9 information with the U.S.
10 regarding Mr. Arar?"

11 And it says:

12 "Questions regarding this
13 matter should be directed to
14 the Solicitor General."

15 So that this obviously was an
16 important issue at that point in time.

17 HON. WAYNE EASTER: Yes, it was.

18 MR. CAVALLUZZO: Thank you.

19 Tab 35 is a briefing note --

20 HON. WAYNE EASTER: Did you say
21 35?

22 MR. CAVALLUZZO: Yes, three-five.

23 It's a briefing note from
24 Mr. Himelfarb, who was the Clerk of the Privy
25 Council, concerning particular responses to

1 Dr. Mazigh.

2 For example, if you go to the
3 second page, it says:

4 "Dr. Mazigh has written a
5 second letter to you..."

6 This is to the Prime Minister.

7 "...dated July 23, 2003
8 concerning her husband Maher
9 Arar. She has also written
10 to the Solicitor General
11 because she believes that the
12 government has not been
13 consistent in its messages
14 with respect to her husband."

15 And we saw that letter that we
16 talked about earlier.

17 Then it goes on:

18 "Mr. Arar is a 'person of
19 interest' to CSIS and
20 RCMP..."

21 And then it goes on:

22 "... but neither agency has
23 interfered with his consular
24 rights or his return. U.S.
25 authorities have indicated

1 publicly that the RCMP has
2 had no role in Mr. Arar's
3 deportation."

4 That statement "that neither
5 agency", neither CSIS nor the RCMP has interfered
6 with his consular rights, but more importantly
7 with his return to Canada, had you seen this
8 memorandum that was going to the Prime Minister of
9 this country?

10 HON. WAYNE EASTER: To be honest,
11 I am not sure if I have seen this particular
12 memorandum.

13 MR. CAVALLUZZO: Would you agree
14 with that statement, that neither CSIS nor the
15 RCMP interfered with Mr. Arar's return to Canada?

16 HON. WAYNE EASTER: On what I
17 know, yes.

18 MR. CAVALLUZZO: You would agree
19 with that statement, that they did interfere?

20 HON. WAYNE EASTER: No. That they
21 didn't.

22 MR. CAVALLUZZO: They didn't
23 interfere?

24 HON. WAYNE EASTER: They didn't
25 interfere.

1 MR. CAVALLUZZO: Okay. So that
2 you -- okay.

3 HON. WAYNE EASTER: You questioned
4 earlier what the Syrians were saying, but my
5 information would be that they did not.

6 MR. CAVALLUZZO: Oh, I understand
7 that.

8 But with everything you know
9 now -- the letters, the process of trying to get a
10 letter, trying to get a joint letter, then an
11 individual letter, then what the Syrians are
12 saying -- just a simple question: Do you think
13 now, in retrospect, that neither agency interfered
14 with his return?

15 Do you still think that they
16 didn't interfere with his return?

17 HON. WAYNE EASTER: Yes, I don't
18 think they did. I do not believe they did.

19 MR. CAVALLUZZO: Okay.

20 At tab 37 we are now into
21 September, late September, the 26th.

22 And we have to be very careful
23 here. We are starting to get into your
24 appearances before legislative committees.

25 For example, at tab 37, this is

1 dated September 26th, we can see that the RCMP is
2 getting into some problems in terms of the
3 information that they will provide this committee.

4 And, of course, this is the
5 Standing Committee on Foreign Affairs and
6 International Trade.

7 It says three paragraphs up:

8 "Based on the blues,
9 Assistant Commissioner Proulx
10 stressed to the members that
11 the RCMP had no role in the
12 U.S. decision to deport
13 Mr. Arar to Syria.
14 Apparently, he was asked to
15 appear in front of the
16 committee to discuss about
17 RCMP sharing of information
18 with allies, not about Arar,
19 but knew in advance that the
20 members were interested in
21 Arar.

22 In light of the lack of
23 forthcoming information from
24 the RCMP, the Committee
25 membership recommended as a

1 next step that the Solicitor
2 General and the Minister of
3 Foreign Affairs be asked to
4 appear in front of the
5 Committee."

6 And the recommendation was taken
7 up under advisement.

8 Do you recall that, that the
9 RCMP -- at least this particular legislative
10 committee thought that the RCMP was not being
11 forthright enough with information, and as a
12 result of that, suggested that you appear before
13 the committee?

14 HON. WAYNE EASTER: I, in fact,
15 did appear before the committee.

16 I might add that sometimes when
17 Members of Parliament are not getting the answers
18 they want, they say you are not being forthright,
19 but they may really just disagree with your
20 answer.

21 MR. CAVALLUZZO: Or they may not
22 be getting the information they are asking for.

23 HON. WAYNE EASTER: By the same
24 token. Or they may disagree with your answer.

25 MR. FOTHERGILL: Commissioner, if

1 I may, it's not really my issue to raise, but I
2 note the Parliamentary Law Clerk is not
3 represented at the moment.

4 I think the exchange we have just
5 had perhaps underlines some of the points you made
6 in your recent ruling about the importance of not
7 impugning parliamentary proceedings in this
8 process.

9 THE COMMISSIONER: Thank you,
10 Mr. Fothergill.

11 MR. CAVALLUZZO: I appreciate
12 that. I will call Bill Graham as my counsel to
13 defend that objection. We will leave that for
14 another day.

15 --- Laughter / Rires

16 THE COMMISSIONER: He didn't agree
17 with the ruling.

18 MR. CAVALLUZZO: At tab 38 -- and
19 I will just take you quickly through some of this
20 stuff now.

21 Tab 38 is a briefing note to you,
22 Solicitor General.

23 HON. WAYNE EASTER: Yes.

24 MR. CAVALLUZZO: Much of it is
25 redacted but this is basically what the Service,

1 the CSIS, is telling you at this point in time.

2 In effect they are saying that if
3 you are asked about the extent of CSIS'
4 involvement in the detention and deportation of
5 Mr. Arar, you can state that the Service was not
6 involved, et cetera.

7 They are just giving you a
8 briefing note, and we are not going to get into
9 what you said at the committee, but these are just
10 briefing notes you would have received prior to
11 the appearance before the committee.

12 Tab 39 is a key message that
13 Mr. Loepky would have for the committee.

14 Just to refresh my memory, was
15 Loepky going to appear with you at the committee?

16 HON. WAYNE EASTER: We were there
17 jointly, yes.

18 MR. CAVALLUZZO: Okay. And I
19 leave counsel to read that, other than an
20 interesting comment at page 6, in terms of a draft
21 question. I think we can look at that, the draft
22 questions that might be asked.

23 And one of the suggested questions
24 for Mr. Loepky would be:

25 "Did the RCMP provide the

1 Minister with details
2 regarding the Arar case?"

3 And the answer is:

4 "The RCMP does brief the
5 Minister about
6 investigations/sensitive
7 matters which pertain to
8 national security. I am not
9 prepared to comment
10 specifically on this case."

11 And whether that question came up
12 or not, we cannot ask you for those reasons that
13 are raised.

14 If we move on, we understand that
15 later in October -- and it's tab 72, and I need
16 not take you to it. But Shirley Heafy, the
17 Commissioner of the CPC, announces that she has
18 initiated a complaint.

19 If you want to take a look at
20 that, it's at tab 72, page 2.

21 Do you see that at page 2 at the
22 top, October 23rd, et cetera?

23 I won't take you into that. I am
24 just giving facts as to what occurred.

25 Also on October 23rd, if we look

1 at Exhibit P-39, we see that there was a leak
2 about Mr. Arar.

3 This is the CTV leak: "The case
4 of Mr. Arar takes more twists and turns", and this
5 is a report in a newspaper concerning the CTV
6 leak.

7 Do you recall that particular
8 leak?

9 HON. WAYNE EASTER: Yes, I do.

10 MR. CAVALLUZZO: You may recall
11 the PCO initiated an investigation into that leak?
12 In other words, they would have written to you
13 saying --

14 HON. WAYNE EASTER: As well as
15 myself, I was concerned about the leak and asked
16 that this has to be looked at. Is there any
17 substance to this leak, that it could have come
18 out of our office?

19 MR. CAVALLUZZO: In terms of
20 apprising counsel of that, tab 47 is the request
21 from the Privy Council to investigate into the CTV
22 leak that was reported in The Globe and Mail that
23 we just looked at.

24 Do you see that? That is the
25 request.

1 HON. WAYNE EASTER: Yes.

2 MR. CAVALLUZZO: And then tab 56
3 is the response from SOLGEN and the RCMP, which is
4 dated October the 7th.

5 Now in timing, November the 4th,
6 do you recall that Mr. Arar had a press
7 conference?

8 HON. WAYNE EASTER: Yes, I do.

9 MR. CAVALLUZZO: And at tab 51
10 there is another memorandum for the Prime Minister
11 from Mr. Himelfarb, which is dated November the
12 5th. The reference I would make is to the last
13 page -- or, excuse me, the second-last page of the
14 tab, which is the last page of the memorandum.

15 HON. WAYNE EASTER: Page 4 of 5?

16 MR. CAVALLUZZO: Correct. And in
17 the last paragraph, Mr. Himelfarb states:

18 "It is further recommended
19 that Canadian Ministers,
20 including the Minister of
21 Foreign Affairs and
22 International Trade, the
23 Solicitor General and the
24 Deputy Prime Minister, press
25 their American counterparts

1 to put in place appropriate
2 arrangements with the U.S. to
3 ensure that never again will
4 a Canadian citizen be
5 deported by the Americans to
6 a third country without
7 appropriate formal
8 consultations with Canada."

9 Do you remember that particular
10 push from the Privy Council Office?

11 HON. WAYNE EASTER: Yes, I do.

12 MR. CAVALLUZZO: You did
13 participate in some of those discussions, which we
14 will come to?

15 HON. WAYNE EASTER: Yes, I did.

16 MR. CAVALLUZZO: Just to identify
17 some of these documents, tab 54 is a press scrum
18 that you gave outside the House on November 6th
19 after Question Period.

20 Do you recall that?

21 HON. WAYNE EASTER: Yes.

22 MR. CAVALLUZZO: And basically
23 what these questions have to do with was
24 Mr. Arar's lease.

25 For example, the question eight

1 lines up from the bottom says:

2 "But you are saying that this
3 lease could have been
4 obtained by other foreign
5 agencies."

6 And your response was:

7 "I don't know how that lease
8 was obtained."

9 Which created another particular
10 furore. Is that correct?

11 In other words, where did this
12 lease come from?

13 HON. WAYNE EASTER: That is
14 correct. And I didn't know how that lease was
15 obtained.

16 MR. CAVALLUZZO: Okay. The final
17 tab of Volume 1 is an e-mail of the same date,
18 November 7th. The subject matter is "CSIS lines
19 re: information-sharing"?

20 HON. WAYNE EASTER: Yes.

21 MR. CAVALLUZZO: And these CSIS
22 lines, is this the kind of e-mail that would come
23 to you, or is this the kind of e-mail that would
24 stay within CSIS so they could handle their own
25 lines with the media concerning

1 information-sharing, questions which were being
2 raised at this time?

3 HON. WAYNE EASTER: It would be
4 similar to coming forward to me in a briefing
5 note. Amy was, at that time, my communications
6 person, who would have been with me in the United
7 States for meetings with Ashcroft.

8 MR. CAVALLUZZO: If we go to
9 Volume 2, we have covered much of it now, but
10 there are a few other documents that we should
11 look at.

12 The first is tab 58. And this,
13 once again, is dated November 7th of 2003.

14 HON. WAYNE EASTER: Did you say
15 58?

16 MR. CAVALLUZZO: Yes, 58, the
17 first tab within the volume.

18 HON. WAYNE EASTER: Okay.

19 MR. CAVALLUZZO: It is a highly
20 redacted document from the Service, or from CSIS,
21 and the only point is that, on the first couple of
22 pages, they are setting out what their knowledge
23 of Mr. Arar's case is; that is, when they first
24 learned about his detention and when they first
25 learned about his deportation.

1 And presumably because of
2 Mr. Arar's press conference on November the 4th,
3 the agencies are briefing you on some of the facts
4 that he has publicly stated.

5 Is that correct?

6 HON. WAYNE EASTER: Yes.

7 MR. CAVALLUZZO: The next tab, at
8 tab 59, is a briefing note to the Commissioner of
9 the RCMP.

10 Do you see that?

11 HON. WAYNE EASTER: Yes.

12 MR. CAVALLUZZO: Once again dated
13 November 7th, and the Issue is:

14 "Media reports quoting
15 Solicitor General Easter as
16 having said that the lease
17 agreement Maher Arar claimed
18 was shown to him by U.S.
19 authorities in New York did
20 not come from the RCMP and
21 may have been obtained by
22 'foreign intelligence
23 agencies operating in
24 Canada.' "

25 I don't know whether you would

1 have received this particular briefing note as to
2 how the lease was obtained by the RCMP, or whether
3 this stayed within the confines of the RCMP.

4 HON. WAYNE EASTER: No, I did not
5 receive this briefing note.

6 MR. CAVALLUZZO: Okay. Was it
7 ever resolved in your mind, or were you ever
8 briefed as to how that lease got to the Americans?

9 HON. WAYNE EASTER: It was never
10 resolved entirely. I was briefed about the lease
11 sometime later on in a general briefing, yes.

12 MR. CAVALLUZZO: So that when you
13 were asked those questions about the lease in that
14 press scrum, you were blind-sided, so to speak?

15 HON. WAYNE EASTER: There is no
16 question about it. I was blind-sided very much on
17 that one.

18 MR. CAVALLUZZO: Tab 60 relates to
19 another leak relating to Mr. Arar. This is the
20 leak in the Ottawa Citizen on November the 8th of
21 2003. You are aware of that leak?

22 HON. WAYNE EASTER: What tab?

23 MR. CAVALLUZZO: Tab 60.

24 HON. WAYNE EASTER: Tab 60; okay.

25 MR. CAVALLUZZO: And this is the

1 Juliet O'Neill article which can be found three
2 pages in from the tab.

3 HON. WAYNE EASTER: Yes, I would
4 have been aware of that. I would have been aware
5 of the article.

6 MR. CAVALLUZZO: Okay. And there
7 was once again another administrative inquiry
8 started. Just to save some time, the RCMP
9 initiated a criminal investigation into this. And
10 as a result of that, the administrative inquiry
11 was deferred or adjourned until such time as the
12 criminal investigation is completed.

13 Is that correct?

14 HON. WAYNE EASTER: That is
15 correct.

16 MR. CAVALLUZZO: Okay. Tab 61, I
17 guess this would be your final meeting with
18 Mr. Ashcroft. Is that correct?

19 This is November 18th of 2003?

20 HON. WAYNE EASTER: Yes.

21 MR. CAVALLUZZO: This is, I guess,
22 a briefing note or talking points, or whatever you
23 call it, as to the kinds of points or issues that
24 you would be raising with Mr. Ashcroft on November
25 14th -- or, excuse me, November 18th of 2003?

1 HON. WAYNE EASTER: Yes.

2 MR. CAVALLUZZO: Did you raise
3 Mr. Arar's situation with Mr. Ashcroft on November
4 18th?

5 HON. WAYNE EASTER: Yes, I did,
6 very strenuously.

7 MR. CAVALLUZZO: And this, of
8 course, was after Mr. Arar's return. You can't
9 tell us what Mr. Ashcroft told you, but could you
10 give us an idea of the kinds of points you were
11 trying to make with Mr. Ashcroft, and what the
12 purpose of your representations were?

13 HON. WAYNE EASTER: Well, the
14 purposes of the -- it was a general meeting
15 between the Attorney General of the United States
16 and the Solicitor General of Canada.

17 But specifically related to Arar,
18 there was a number of points that I wanted to
19 raise. One was my great displeasure at the idea
20 that the Americans would deport a Canadian citizen
21 not back to Canada but to elsewhere in the world;
22 secondly, that the impression was left, not by
23 Attorney General Ashcroft but by others in the
24 United States administration, that the RCMP was
25 somehow involved in the decision to deport, which

1 I maintained they were not and was since
2 corrected; and thirdly, the need to put in place a
3 protocol so that if we are going to be involved in
4 information-sharing with the United States -- and
5 we have to be to protect both our countries -- but
6 that we need to put in place some kind of protocol
7 that will ensure, whether the information comes
8 from Canada or elsewhere, that Canadian citizens
9 are in fact sent back to Canada, not elsewhere in
10 the world.

11 MR. CAVALLUZZO: I guess the
12 question that I would have is: Why did it take
13 you a year to make these strong protests with
14 Ashcroft?

15 You know, he was a person,
16 obviously, that may have been part of the decision
17 to deport Mr. Arar. Why would it take you a year,
18 indeed after Mr. Arar returned back to Canada, for
19 you to strongly make protests with Mr. Ashcroft?

20 HON. WAYNE EASTER: Well, I think
21 the -- I will come back to my earlier position
22 that the Prime Minister and Foreign Affairs, that
23 is more generally their area.

24 I think part of it was that by
25 November, a lot more information had become

1 available. So therefore at that point in time I
2 felt I absolutely must outline my dissatisfaction
3 to the Attorney General of the United States in
4 terms of the decision itself, as Solicitor General
5 to Attorney General of the United States, and I
6 expressed that very vividly.

7 MR. CAVALLUZZO: And at the same
8 time we have heard evidence earlier that around
9 that time, on November the 5th, that the Prime
10 Minister was making statements about if the
11 Americans know which Canadian was involved in
12 this, give us his name. We had Mr. Graham talking
13 to Mr. Powell saying we want information on this.

14 So that there seemed to be a
15 concerted effort on behalf of the government at
16 this point in time to get more information from
17 the Americans.

18 HON. WAYNE EASTER: The Prime
19 Minister's position -- my position all along,
20 consistently so, had been that the RCMP was not
21 involved in the decision to report. I based that
22 decision on my trust and confidence and the high
23 respect I had for the RCMP.

24 Colin Powell, Cellucci, and others
25 were saying that they were involved, and they

1 continued to say so. The Prime Minister's
2 position was clearly, "If you have a source, then
3 name it." Because we believed, and I believed
4 fully, they didn't have a Canadian source. And as
5 since has been unequivocally stated, they did not
6 have that source.

7 MR. CAVALLUZZO: However, for the
8 first time -- on the day after your meeting with
9 Mr. Ashcroft was the first time that you stated
10 publicly that the Americans had information on
11 Mr. Arar.

12 And I am referring now to tab 64,
13 which is a report by Dana Priest in the Washington
14 Post. Do you see that?

15 It's dated November 20th.

16 And just out of interest for
17 counsel, we have the views of President Bush on
18 whether Syria engages in torture.

19 In the third paragraph up, it
20 says:

21 "In a November 7th speech,
22 President Bush said Syria has
23 left its people 'a legacy of
24 torture, oppression, misery
25 and ruin.'"

1 So that may be noted in respect of
2 other matters.

3 But it says at the bottom line:

4 "Canadian Solicitor General
5 Wayne Easter said publicly
6 for the first time yesterday
7 that Canada contributed
8 information that led to
9 Arar's arrest. Easter
10 discussed the case yesterday
11 in a meeting in Washington
12 with Attorney General
13 Ashcroft. After the meeting,
14 Easter told reporters: 'This
15 information didn't just come
16 from Canada alone. This
17 information comes from
18 sources globally.'

19 And I am wondering, would you
20 agree with that reporter's statement that for the
21 first time publicly you stated that the Americans
22 had information from Canada which led to Arar's
23 arrest?

24 HON. WAYNE EASTER: They had
25 information from Canada, but as Mr. Ashcroft I

1 believe in another -- it's also on the public
2 record that Mr. Ashcroft told me, and told me
3 clearly in a private meeting, that --

4 MR. CAVALLUZZO: Is this on the
5 public record?

6 HON. WAYNE EASTER: Yes, it is.

7 MR. CAVALLUZZO: Okay. Go ahead.

8 HON. WAYNE EASTER: That the
9 information from the RCMP was part of the
10 information. And that is where the statement in
11 this article really says "from sources globally."

12 MR. CAVALLUZZO: In the same
13 article, on the second page -- there is only one
14 other reference I would ask you about -- it refers
15 to Mr. Moustafa, who is the charge d'affaires at
16 the Syrian Embassy in Washington.

17 This is the Priest article --

18 HON. WAYNE EASTER: This is at
19 page 2 of 3?

20 MR. CAVALLUZZO: Yes, page 2 of 3.
21 This is the Priest article in The Washington Post
22 for November 19.

23 HON. WAYNE EASTER: Yes.

24 MR. CAVALLUZZO: It says:

25 "Imad Moustafa, the charge

1 d'affaires at the Syrian
2 Embassy in Washington, has
3 denied Arar was tortured.
4 But he said Syria had no
5 reason to imprison Arar. He
6 said U.S. intelligence
7 officials told their Syrian
8 counterparts that Arar was an
9 al-Qaeda member. Syria
10 agreed to take him as a
11 favour and to win goodwill of
12 the United States, he said."

13 Were you aware of that, or was
14 that news to you, when what was stated --

15 HON. WAYNE EASTER: Just from the
16 news article.

17 MR. CAVALLUZZO: Now, just a few
18 other documents.

19 At tab 65, it would appear that
20 when you were in the United States on the 19th and
21 20th of November that you met with Ashcroft along
22 with a number of Members of Congress, as well as
23 Ashcroft?

24 HON. WAYNE EASTER: Yes. Those
25 were not related to my responsibilities

1 necessarily as Solicitor General: Chuck Grassley,
2 who happens to be a friend and is Chair of the
3 Senate Finance Committee, and a number of others.

4 MR. CAVALLUZZO: Tab 85, this is
5 dated December 2 of 2003.

6 It says:

7 "Memorandum for the Solicitor
8 General. Meeting between
9 Solicitor General and the
10 RCMP - December 2, 2003."

11 Do you know what this is all
12 about?

13 On page 2 it says:

14 "RCMP's internal
15 investigation into Arar case"

16 Is this concerning the internal
17 investigation relating to the leak?

18 HON. WAYNE EASTER: I think it --

19 MR. CAVALLUZZO: Actually, if you
20 look at the last page in the tab, it's really the
21 internal investigation relating to the CPC
22 complaint.

23 HON. WAYNE EASTER: Yes, it is.

24 MR. CAVALLUZZO: Would this be a
25 normal course, where the RCMP would meet with the

1 Solicitor General concerning internal CPC
2 complaints, or was this unusual because it was
3 such a visible or notorious case?

4 HON. WAYNE EASTER: I would say
5 this is unusual. I mean, usually CPC cases are
6 into a little more -- somebody's complaining about
7 their treatment by the RCMP or whatever.

8 MR. CAVALLUZZO: Right. Now, in
9 terms of --

10 HON. WAYNE EASTER: But I would
11 say that in a high-profile case -- and again I
12 come back to the Solicitor General and RCMP, the
13 interconnect in the various responsibilities -- I
14 would think they had an obligation.

15 MR. CAVALLUZZO: Okay.

16 Commissioner, it's now five after
17 one. I am going to be about another probably five
18 to ten minutes. We can break now.

19 THE COMMISSIONER: Yes, why don't
20 we break now.

21 Do you have any idea how long you
22 will be, Mr. Waldman? Should I ask you after
23 lunch?

24 MR. WALDMAN: How late can we stay
25 today? I know people are flying. So I may have

1 to know if I should push my reservation back.

2 I don't think I will be more than
3 two hours -- hopefully less.

4 THE COMMISSIONER: Why don't you
5 look at it over the lunch hour and let us know,
6 because I think, it being Friday afternoon --
7 whatever it is it's going to be. But we can make
8 our arrangements accordingly.

9 Mr. Fothergill, do you have at
10 this point any idea how long you will be?

11 MR. FOTHERGILL: Until I heard
12 Mr. Waldman's estimate of two hours, I would have
13 said 15 minutes. It may grow.

14 MR. WALDMAN: I don't know. I
15 will look at my notes over lunch hour and see what
16 I can do.

17 THE COMMISSIONER: That is good.
18 We will break until 2:15.

19 THE REGISTRAR: Please stand.

20 --- Upon recessing at 1:07 p.m. /

21 Suspension à 13 h 07

22 --- Upon resuming at 2:15 p.m. /

23 Reprise à 14 h 15

24 THE REGISTRAR: Please be seated.

25 Veuillez vous asseoir.

1 MR. CAVALLUZZO: We are coming to
2 the end of your testimony in-chief, Mr. Easter,
3 and there are a couple of final questions that I
4 have, noting that, you left the Solicitor
5 General's Office on December 12th of 2003.

6 I would like to bring you to an
7 e-mail which is dated December 2nd of 2003, at tab
8 67.

9 Now, this is an e-mail which
10 captures a phone call from Secretary of State
11 Powell to Minister Graham concerning four
12 questions which had been posed to Mr. Powell by
13 Minister Graham. I would ask whether or not you
14 have seen a copy of this e-mail.

15 HON. WAYNE EASTER: No, I have
16 not.

17 MR. CAVALLUZZO: You had not? So
18 no one showed you the answers that Mr. Powell had
19 in respect of the questions put by Mr. Graham?

20 HON. WAYNE EASTER: No, I do not
21 believe so.

22 MR. CAVALLUZZO: If you go to
23 Exhibit P-106, we have a chronology which captures
24 or summarizes that e-mail. And although you
25 haven't seen the e-mail, I would like to ask you

1 whether you are aware of this information.

2 And if you go to page 2 --

3 HON. WAYNE EASTER: I will shut
4 off the cell phone. Sorry.

5 Page 2? Yes?

6 MR. CAVALLUZZO: Under I guess
7 it's December 1 of 2003, it states:

8 "MINA..."

9 And that is the Minister of
10 Foreign Affairs.

11 "MINA and US Secretary of
12 State Powell speak on the
13 telephone. Powell informs
14 that (1) the Arar affair was
15 triggered by enquiries made
16 by Canadian sources and that
17 Arar would not have been on
18 the US radar screen had he
19 not been the subject of
20 attention by Canadian
21 agencies."

22 Were you ever given information
23 that that is what Mr. Powell told to Minister
24 Graham in early December of 2003?

25 HON. WAYNE EASTER: No, I was not.

1 MR. CAVALLUZZO: Secondly it says:
2 "(2) contrary to what he had
3 alleged, Arar had not been
4 inoculated with any substance
5 while in US custody."

6 Were you given any information
7 concerning that?

8 HON. WAYNE EASTER: No.

9 MR. CAVALLUZZO: Thirdly:
10 "(3) US law enforcement
11 officials had informed RCMP
12 about Arar's detention and
13 RCMP had informed the
14 Consulate General in New
15 York."

16 Were you informed of that?

17 HON. WAYNE EASTER: What page are
18 you on?

19 MR. CAVALLUZZO: This is page 2,
20 at the top of the page, number 3.

21 HON. WAYNE EASTER: Yes.

22 MR. CAVALLUZZO: We are at number
23 3 now, and I would ask whether you were advised
24 that this was Mr. Powell's response regarding
25 question 3?

1 HON. WAYNE EASTER: No.

2 MR. CAVALLUZZO: Finally, number
3 4:

4 "(4) no Canadian officials
5 were consulted prior to the
6 US decision to deport Arar."

7 Were you advised that this was
8 Mr. Powell's information or advice to Graham in
9 early December?

10 HON. WAYNE EASTER: No.

11 MR. CAVALLUZZO: Then it guess on
12 to state:

13 "MINA..."

14 That is, once again, Minister
15 Graham.

16 "... refers to a meeting of
17 the previous week of
18 Solicitor General Easter and
19 Attorney General Ashcroft
20 when Easter raised the
21 possibility of a bilateral
22 protocol to deal with such
23 cases in future."

24 And we have dealt with that
25 meeting on November 18th.

1 HON. WAYNE EASTER: Yes.

2 MR. CAVALLUZZO: Finally,
3 Mr. Easter, I would like to deal with the three
4 directives that were issued as a result of your --
5 I assume it's because of your efforts.

6 But in any event, let us have the
7 clerk file these directives.

8 These are already part of Exhibit
9 P-12, Mr. Commissioner. However, for convenience
10 purposes, I have asked that they be distributed
11 freestanding to counsel.

12 THE COMMISSIONER: Good.

13 MR. CAVALLUZZO: Mr. Easter, we
14 have three directives. It's enclosed in an
15 unclassified memorandum dated October 31, 2003.
16 It's a memorandum for the Solicitor General and it
17 states: "Ministerial direction to the RCMP
18 regarding national security investigations".

19 Appended to this are three
20 ministerial directives. The first -- and they are
21 all dated November the 4th of 2003, all signed by
22 you.

23 The first deals with national
24 security responsibility and accountability. The
25 second deals with national security-related

1 arrangements and cooperation. And the third deals
2 with sensitive factors. And I will take you
3 through each.

4 I will take you through them, but
5 prior to doing that, were these directives passed
6 as a result of your request that something be done
7 related to these kinds of national security
8 investigations?

9 HON. WAYNE EASTER: I believe it's
10 a little broader than that. The previous
11 Solicitor General had also given directives, and
12 as I had indicated earlier, the lines are not
13 altogether clear between the RCMP and the
14 Solicitor General. These directives, in the
15 normal sense, would be to spell that out.

16 I believe you will see in this
17 directive where there is a little more emphasis on
18 security information than was previously the case.

19 MR. CAVALLUZZO: Okay. Let's take
20 you through the first one then, dealing with
21 national security responsibility and
22 accountability.

23 You will see the purpose is set
24 out in paragraph (a). It states:

25 "This directive outlines the

1 responsibilities and
2 accountabilities of the
3 Solicitor General of Canada
4 and the Commissioner of the
5 Royal Canadian Mounted Police
6 in matters relating ..."

7 If we just short form it by saying
8 "RCMP national security investigations".

9 I won't take you through all of
10 it, but in terms of responsibilities, for example,
11 in paragraph (d) on the second page, it states:

12 "It is the responsibility of
13 the Commissioner of the RCMP
14 to ensure that operational
15 policies are in place to
16 guide members."

17 It goes on:

18 "It is also the
19 responsibility of the
20 Commissioner to ensure that
21 all investigations or all
22 national security
23 investigations be centrally
24 coordinated at RCMP
25 headquarters."

1 What this does is twofold: one,
2 that there must be operational policies or
3 guidelines to direct national security
4 investigations; and the second thing it does is it
5 requires that such investigations are centrally
6 coordinated at RCMP headquarters.

7 Is that correct?

8 HON. WAYNE EASTER: That is
9 correct.

10 MR. CAVALLUZZO: We saw a notice
11 of that earlier from the PCO memorandum which said
12 that the Arar situation shows that there should be
13 central coordination of these kinds of
14 investigations.

15 Do you recall that memo?

16 HON. WAYNE EASTER: Yes.

17 MR. CAVALLUZZO: And then it goes
18 on:

19 "Such central coordination
20 will enhance the
21 Commissioner's operational
22 accountability and, in turn,
23 enhance ministerial
24 accountability."

25 And then in terms of

1 accountability, it just provides, in terms of our
2 parliamentary system:

3 "The Minister is accountable
4 to the Parliament of Canada
5 for the RCMP and the
6 Commissioner in turn reports
7 and is accountable to the
8 Minister."

9 And then in paragraph (f), it
10 relates to visible or controversial
11 investigations, and it provides that:

12 "As part of the
13 accountability process, the
14 Minister will be advised or
15 informed regarding certain
16 RCMP national security
17 investigations ..."

18 And then it goes on:

19 "The Commissioner of the RCMP
20 shall exercise his judgment
21 to inform the Minister of
22 high-profile RCMP
23 investigations or those that
24 give rise to controversy."

25 So this is obviously new. There

1 are going to be briefings on national security
2 investigations that are high-profile or that give
3 rise to controversy.

4 So that bridges the problem you
5 were talking about before; that is, what is the
6 Solicitor General to do in terms of being a
7 Minister of the Crown in terms of police
8 investigations? This gives some direction at
9 least to these kinds of national security
10 investigations.

11 HON. WAYNE EASTER: Yes, it does.
12 It makes, as I talked about in the very beginning,
13 that line at least a little more clear, I believe.

14 MR. CAVALLUZZO: The second
15 ministerial directive relates to arrangements that
16 the RCMP may enter with foreign security or
17 intelligence organizations.

18 Is that correct?

19 HON. WAYNE EASTER: That is
20 correct.

21 MR. CAVALLUZZO: This directive
22 doesn't apply to arrangements or agreements with
23 foreign law enforcement agencies but only with
24 foreign security or intelligence organizations?

25 HON. WAYNE EASTER: That is

1 correct.

2 MR. CAVALLUZZO: And there are
3 certain requirements, such as in paragraph (b),
4 that:

5 "The Commissioner will manage
6 such arrangements or
7 cooperation subject to any
8 conditions imposed by the
9 Minister."

10 Which is an important
11 accountability issue.

12 HON. WAYNE EASTER: Correct.

13 MR. CAVALLUZZO: What is also
14 important as well, when the RCMP is to engage an
15 arrangement with a foreign security agency, is in
16 paragraph (d), because these guidelines are
17 application when the RCMP contemplate such
18 arrangements.

19 First of all, they must be
20 compatible with Canada's foreign policy and
21 towards the country or international organization
22 in question, including:

23 "... consideration of a
24 country organizations's
25 respect for democratic or

1 human rights as determined in
2 ongoing consultations with
3 DFAIT."

4 So that what we see is it has to
5 be consistent with foreign policy and, as well,
6 there has to be input or consultation with DFAIT.

7 HON. WAYNE EASTER: Correct.

8 MR. CAVALLUZZO: And then there
9 are other requirements, such as that it must be in
10 writing, records must be kept, and importantly, in
11 paragraph (e):

12 "Despite these arrangements
13 with foreign intelligence
14 agencies, CSIS is the lead
15 agency for liaison and
16 cooperation with foreign
17 security and intelligence
18 organizations."

19 That just restates the MOU between
20 CSIS and the RCMP that CSIS is the lead agency.

21 "And all exchanges between
22 the RCMP and a foreign
23 security intelligence agency
24 must be given notice to CSIS
25 of that unless the foreign

1 party precludes such
2 notification."

3 So that CSIS is kept in the loop
4 on that.

5 And then finally:

6 "The RCMP must report
7 annually to the Minister on
8 these arrangements."

9 And then the final ministerial
10 direction relates to national security
11 investigations in sensitive sectors, and the
12 sensitive sectors are described as:

13 "Fundamental institutions of
14 Canadian society. Primary
15 among these institutions are
16 those sectors of academia,
17 politics, religion, the media
18 and trade unions."

19 And then:

20 "The purpose of this
21 directive is to guide the
22 investigations of the RCMP
23 with respect to national
24 security investigations as
25 they relate to these

1 sensitive sectors."

2 HON. WAYNE EASTER: That is
3 correct.

4 MR. CAVALLUZZO: And there are
5 certain guidelines and directions which are
6 imposed as far as these are concerned.

7 The final question, Mr. Easter, is
8 to give you the responsibility -- not the
9 responsibility, but the opportunity to respond to
10 certain evidence we heard from Ms Alexa McDonough,
11 who testified here a few weeks earlier and stated
12 that, in her dealings in and out of Parliament on
13 behalf of Mr. Arar, she had spoken to you on some
14 occasions asking for information relating to
15 Mr. Arar, and she stated that at times you
16 expressed frustration because you felt you weren't
17 getting enough information. You didn't have
18 enough information from the two agencies under
19 your supervision and control.

20 I ask whether you recall those
21 conversations, and if you do, can you give us some
22 context to them?

23 HON. WAYNE EASTER: Yes, I do
24 recall those conversations with Alexa, as with
25 others.

1 I would say my frustration was
2 more with the fact that, at least in the public
3 domain, and even with Alexa and others, even in my
4 own caucus, that the word of Secretary of State
5 Powell seemed to being listened to more than mine
6 or the Commissioner of the RCMP. I was really
7 frustrated with that because I felt strongly that
8 there was no involvement based on the information
9 I had been given in terms of the decision to
10 deport. And that is where the frustration really
11 was.

12 In terms of information, as has
13 been explained several times today, that line is
14 relatively blurred, and I didn't expect to be
15 briefed on specific investigations.

16 MR. CAVALLUZZO: But do you recall
17 saying to Ms McDonough that you couldn't get the
18 information either in respect of Mr. Arar?

19 HON. WAYNE EASTER: It would have
20 been expressed in the context that under our
21 parliamentary system, I wouldn't be expected to
22 get that information on specific investigations.

23 MR. CAVALLUZZO: But you do recall
24 those conversations with her?

25 HON. WAYNE EASTER: Yes, I do.

1 MR. CAVALLUZZO: Thank you. I
2 have no further questions.

3 THE COMMISSIONER: Mr. Waldman?
4 EXAMINATION

5 MR. WALDMAN: Just taking up on
6 that last point, you did tell us though, sir, if I
7 understood you correctly, that there were
8 high-profile cases where you expected to be
9 briefed, even before the directive.

10 Is it not fair to say that
11 Mr. Arar's case was a high-profile case and yet
12 you didn't get a briefing on it until July of
13 2003?

14 HON. WAYNE EASTER: You still
15 wouldn't be into the specific details of an
16 investigation, with all the nuts and bolts, so to
17 speak.

18 MR. WALDMAN: But you didn't even
19 get a very general briefing on the file until July
20 of 2003. You weren't aware until July of 2003
21 that the RCMP had shared information with the
22 American authorities when Mr. Arar arrived in the
23 United States and prior to his deportation. You
24 didn't even have an awareness of the basic facts,
25 and you didn't seek a briefing until July.

1 I am asking why you didn't, given
2 how high-profile the case was and all the concern
3 that was expressed?

4 HON. WAYNE EASTER: As I had
5 indicated previously, in the normal sense of
6 police work you do expect information will be
7 exchanged, and that is normal.

8 It didn't become a high-profile
9 case for the RCMP or for myself until really after
10 that point when I believe false allegations were
11 made by Secretary Powell and others.

12 MR. WALDMAN: But that was very
13 early on in the process. Now, you say that these
14 were false allegations, but I suggest to you that
15 these were very serious allegations; that someone
16 had acquiesced to the deportation of a Canadian
17 citizen to Syria, a country which you acknowledge
18 has a very poor human rights record.

19 This was a very serious allegation
20 made by two very senior members of the U.S.
21 administration.

22 I am asking you why you didn't
23 take these more seriously and ask very early on
24 for a more fulsome briefing and investigation?

25 You waited until July, sir. That

1 was many months after the allegations were made.

2 Why you didn't act sooner, is what I am asking.

3 HON. WAYNE EASTER: You look at
4 the record and you will see that I spoke out, that
5 those allegations were in fact wrong, which was --

6 MR. WALDMAN: But what was your --

7 HON. WAYNE EASTER: -- at the
8 moment all that I needed to know.

9 MR. WALDMAN: But what was your
10 basis for knowing that they were wrong?

11 Your basis for knowing that they
12 were wrong wasn't a briefing note, it wasn't
13 getting a more detailed briefing, it was a simple
14 assurance from the Commissioner of the RCMP that
15 there was no involvement.

16 Is that correct?

17 HON. WAYNE EASTER: If I might say
18 so, sir, there is not a simple assurance from the
19 Commissioner of the RCMP. As Solicitor General,
20 you would hope that you would have confidence in
21 the Commissioner of the RCMP to be honest and
22 straightforward with you when you ask a specific
23 question, of which I did. And I had trust and
24 confidence that that information by the
25 Commissioner of our national police force was in

1 fact accurate.

2 If I thought it to be otherwise, I
3 would have been making other decisions.

4 MR. WALDMAN: But you yourself
5 told us this morning, in the context of the rogue
6 elements statement in the newspaper, that it was
7 possible that someone went behind the barn and
8 talked to some official in the United States.

9 So even if the Commissioner was
10 honestly telling you his belief, this was still a
11 very serious allegation, and you have acknowledged
12 that it might have been possible that there might
13 have been some officer who acted without
14 authority.

15 Why didn't you ask the
16 Commissioner to investigate that? These are very
17 serious allegations.

18 HON. WAYNE EASTER: I didn't --
19 what I basically said is I don't know every
20 conversation that took place with every
21 individual, whether it is in uniform or on a golf
22 course for that matter.

23 What I said in terms of the rogue
24 elements, as well, is that that was
25 misrepresentation of what I said by the reporter

1 involved. I did not use the words "rogue
2 elements".

3 MR. WALDMAN: Right. But you have
4 just acknowledged -- and it's consistent with what
5 you said this morning -- that you couldn't know,
6 and neither could the Commissioner know, what
7 every member of the RCMP had done. And it might
8 have been possible that some person -- and indeed
9 we have seen in some of the documents that were
10 released other members and other officials
11 speculating that maybe there was some loose cannon
12 who agreed to it.

13 My question to you is: Given that
14 reality and given what you just acknowledged, that
15 you couldn't possibly know what every official of
16 the RCMP was doing, why you didn't take the
17 allegations from Mr. Powell more seriously, and
18 Mr. Cellucci, and ask for an investigation?

19 HON. WAYNE EASTER: I did take
20 them very seriously. As I indicated, I talked to
21 the Commissioner and, as well -- I guess it wasn't
22 mentioned earlier this morning -- I did ask that
23 there be an internal review with people who were
24 involved in New York to make sure that no
25 statements were in fact made. And that was, I

1 believe, found out to be correct.

2 MR. WALDMAN: When was this
3 request for the internal review made?

4 HON. WAYNE EASTER: It would have
5 been done in early fall, I believe.

6 MR. WALDMAN: Fall of what year?
7 2003?

8 HON. WAYNE EASTER: 2003.

9 MR. WALDMAN: Well, that is my
10 whole point. Why did you wait to the fall of
11 2003, after Mr. Arar had come back and this had
12 become a major cause --

13 HON. WAYNE EASTER: This was not
14 after Mr. Arar came back in terms of when I had
15 asked. It was at the time of the rogue element
16 statements -- that wasn't my statement, but the
17 rogue element story, if I can put it that way.

18 MR. WALDMAN: But this was still
19 eight months after he left.

20 I would like to go on to another
21 area, sir. I want to talk to you about briefing
22 notes, and I want to see if you agree with me that
23 briefing notes are important for you in your
24 function as a cabinet Minister to carry out your
25 functions; that the purpose of the notes are to

1 inform you and provide you with the necessary
2 information that you are going to need in order to
3 be able to make decisions with respect to your
4 responsibilities.

5 Is that correct?

6 HON. WAYNE EASTER: Yes, to a
7 great extent. They are a little more than that.
8 They are not only involved in decision-making, but
9 they are involved in responding to issues as well.

10 MR. WALDMAN: Providing
11 information, giving you a backdrop for current
12 topics of interest and assisting you in making
13 decisions.

14 Is that correct?

15 HON. WAYNE EASTER: Yes.

16 MR. WALDMAN: So would you not
17 agree with me that it's extremely important that
18 the information you get in these briefing notes is
19 accurate for you to be able to properly carry out
20 your functions?

21 HON. WAYNE EASTER: Absolutely.

22 MR. WALDMAN: And if you didn't
23 have accurate briefing notes, it would be very
24 difficult for you to make proper decisions.

25 Is that correct?

1 HON. WAYNE EASTER: Yes.

2 MR. WALDMAN: Can I ask you to go
3 to Tab 25, sir.

4 Mr. Cavalluzzo took you to this
5 before, and he already pointed out to you that
6 there were several inaccuracies in this briefing
7 note.

8 This is the first briefing note
9 you received.

10 HON. WAYNE EASTER: That is
11 correct.

12 MR. WALDMAN: There are several
13 inaccuracies in this briefing note. The first one
14 is -- it says in the briefing note he declined to
15 be interviewed.

16 You, yourself, acknowledged that
17 that is not correct. He didn't decline to be
18 interviewed. He said he wanted to have a lawyer
19 present. That is correct?

20 So this is not correct, what the
21 briefing note says. He didn't decline?

22 HON. WAYNE EASTER: I believe he
23 wanted a lawyer present, with conditions.

24 MR. WALDMAN: So that is not the
25 same as declining. Is it not true in our society

1 that people have a right to have a lawyer present
2 when they are being investigated?

3 HON. WAYNE EASTER: It is indeed.

4 MR. WALDMAN: So it's one thing to
5 say someone refused to be interviewed, and it's
6 another thing to say they said, "No, I want to
7 have my lawyer present," and then the RCMP decided
8 that those conditions weren't acceptable.

9 Is it fair that this is very
10 misleading?

11 Obviously, is it not also fair to
12 say, sir, that the person who drafted the briefing
13 note thought it was -- it's a very short note --
14 but thought that the fact that he declined to be
15 interviewed was a significant fact, significant
16 enough to be put in a one-page briefing note?

17 HON. WAYNE EASTER: You would have
18 to ask the individual involved on that question.
19 I don't know why he made it a short briefing note.

20 MR. WALDMAN: But he thought it
21 significant enough to put in the briefing note
22 that Mr. Arar had declined when in fact he had
23 not; correct?

24 HON. WAYNE EASTER: He put in the
25 briefing note that he declined, that is obvious.

1 MR. WALDMAN: And it's not true?

2 HON. WAYNE EASTER: As I said, it
3 was with conditions, and so it could be how you
4 interpreted those conditions.

5 MR. WALDMAN: Well, is it -- well,
6 when someone is asked to be interviewed and
7 declines, what does that mean? I refuse? Is that
8 not fair?

9 HON. WAYNE EASTER: No. It may
10 mean that it's a matter of negotiation.

11 MR. WALDMAN: Declining is a
12 matter of negotiation?

13 HON. WAYNE EASTER: Well, in this
14 case he said he declined. Obviously the interview
15 didn't take place, but --

16 MR. WALDMAN: Is it not true -- is
17 it not fair to say, sir, that if one says "I will
18 do an interview, but I want my lawyer to be
19 present", he is not declining to be interviewed?

20 MR. FOTHERGILL: Mr. Commissioner,
21 if this witness is going to be asked for his
22 opinion on the reasonableness of the conditions, I
23 think Mr. Waldman owes it to him to state clearly
24 what those conditions in fact were.

25 THE COMMISSIONER: That is a fair

1 comment.

2 MR. WALDMAN: I am not asking
3 about the reasonableness of the conditions. I am
4 just asking you whether, if a person says "I will
5 be interviewed with my lawyer", is that the same
6 as declining? It seems to me --

7 THE COMMISSIONER: In this case,
8 was was there more said than just "I will only be
9 interviewed with my lawyer"?

10 As I recall the evidence, there
11 were further conditions.

12 MR. WALDMAN: Yes, there were
13 conditions. At this point I don't recall all of
14 the conditions. But I don't really think it's
15 significant.

16 THE COMMISSIONER: Well, the
17 question would be more helpful to me, actually, if
18 it related to the actual situation being referred
19 to in this memorandum rather than a debate in the
20 abstract as to what "declining" means.

21 MR. WALDMAN: The closest I can
22 assist you with, because Mr. Edelson is not
23 testifying until next week, so we don't have his
24 evidence on the conditions.

25 But on page 8 of the Garvie

1 report, it says:

2 "Edelson was willing to allow
3 the interview, however he
4 indicated(sic) a number of
5 criteria that that would have
6 to be met."

7 THE COMMISSIONER: I think
8 somebody can indicate what the conditions were, if
9 you want to --

10 MR. WALDMAN: I don't recall the
11 conditions at this point, I am sorry.

12 THE COMMISSIONER: Either
13 Mr. Cavalluzzo or --

14 MR. CAVALLUZZO: I think the most
15 important condition was that any information that
16 Mr. Arar gave in the interview could not be used
17 as evidence or information in respect of any
18 proceeding that may flow from it.

19 So I think that that was one key
20 piece of information or condition that was in
21 concern to the RCMP.

22 THE COMMISSIONER: So I think it's
23 a fair comment. The question should be taken, if
24 the witness can answer it: If the condition that
25 was put is, "I don't want to be interviewed

1 without my lawyer and also on the condition that
2 any information obtained could not be used in any
3 proceeding whatsoever", I think that --

4 MR. WALDMAN: Right. Is that the
5 same as declining?

6 HON. WAYNE EASTER: Again, I don't
7 think I can give you any other answer: that it is
8 not being interviewed unless certain conditions
9 are met. It is not the same as declining.

10 But I will tell you how I would
11 look at this memo, which is the declining or not
12 declining is not the substance of the memo in
13 terms of the issues, circumstances surrounding the
14 deportation to Syria for Maher Arar.

15 That is not the substance of the
16 memo --

17 MR. WALDMAN: Perhaps we will get
18 to that in a second, sir.

19 But you do acknowledge that
20 "decline" is not an accurate word. That is all I
21 am trying to point out.

22 If we move on then, Mr. Cavalluzzo
23 also pointed out to you, and you didn't disagree
24 with the fact, that "shortly after this
25 approach" -- he left six months later. And this

1 wasn't accurate as well.

2 Is that fair to say?

3 HON. WAYNE EASTER: Six months is
4 not shortly after.

5 MR. WALDMAN: Right. So is it not
6 fair to say that, in my view, the purpose of
7 including these facts was to suggest that -- and
8 obviously they were put there because the drafter
9 of the memo thought they were important -- was to
10 give you impression as the reader that we
11 approached Mr. Arar for an interview but he got
12 nervous and he took off, leaving one with the
13 impression that he was afraid to be interviewed
14 and had something to hide when the more
15 appropriate comment would have been: We
16 approached Mr. Arar for an interview. He was
17 willing to be interviewed subject to conditions.
18 Five months later, he left the country for
19 Tunisia.

20 So the impression that was given
21 by the drafter of the interview, I would suggest
22 to you, is that Mr. Arar took off and was trying
23 to hide when that was not accurate.

24 How can you make proper decisions
25 if you are getting inaccurate information. You

1 have acknowledged that it's not accurate. How can
2 you make proper decisions?

3 HON. WAYNE EASTER: That is not
4 the impression that I certainly drew out of the
5 memo. I think that is periphery to the
6 circumstances surrounding the deportation.

7 MR. WALDMAN: Well, this is part
8 of the background that the person who drafted a
9 one and a half page memo -- this is the whole
10 first paragraph -- one and a third page memo put
11 in. You may think it's periphery, but I am
12 suggesting to you that it's inaccurate.

13 And I am asking you how you could
14 make proper decisions based upon inaccurate
15 information?

16 HON. WAYNE EASTER: And I am
17 suggesting to you that in terms of my reading of
18 the document, that is not what I read into it.

19 MR. WALDMAN: Perhaps I could take
20 you to Volume 1, tab 38, sir. Most of --

21 HON. WAYNE EASTER: Volume 1, tab
22 38?

23 THE COMMISSIONER: This is of
24 P-117. Is that right?

25 MR. WALDMAN: Yes, the same

1 volume.

2 THE COMMISSIONER: Thank you.

3 HON. WAYNE EASTER: Okay.

4 MR. WALDMAN: If I could ask you
5 to go to the second page, there is not much that
6 is not black, but they are giving you advice.
7 This is a memo to you just after Mr. Arar has come
8 back.

9 The sentence I want to take you to
10 is just after the black, at the bottom:

11 "If you are asked about the
12 extent of CSIS involvement in
13 the detention and deportation
14 of ARAR, you could state that
15 the Service was not involved
16 in this case."

17 Now, sir, we know now -- we have
18 just learned this week, in fact -- that the
19 Service was very much involved in the case; that
20 CSIS went to Syria; that CSIS met with
21 intelligence officials in Syria and discussed
22 Mr. Arar with them; that according to
23 Ms Catterall, she was told by the Syrian
24 ambassador that CSIS had left the Syrian officials
25 with the impression that they didn't want Mr. Arar

1 back.

2 So would you not agree with me
3 that it's not accurate to say that the Service was
4 not involved in this case when they were very much
5 involved in the case?

6 HON. WAYNE EASTER: I believe this
7 statement here is an accurate depiction that they
8 were not involved. As I said earlier under
9 Mr. Cavalluzzo's questioning, I question the
10 accuracy of the previous statement based on what I
11 was assured from CSIS.

12 MR. WALDMAN: But the Government
13 of Canada has already admitted that CSIS went to
14 Syria in November of 2002. You may not be aware
15 of it, but they were there.

16 HON. WAYNE EASTER: They have
17 admitted that they went to Syria in 2002.

18 MR. WALDMAN: And discussed
19 Mr. Arar's case --

20 HON. WAYNE EASTER: But the
21 implication here is involvement in the detention
22 and deportation of Arar, which is very much
23 different than what you are alleging.

24 MR. WALDMAN: Well, sir, it says
25 here:

1 "... you could state that the
2 Service was not involved in
3 this case."

4 I am asking you whether this is an
5 accurate reflection of the facts that we know them
6 now. Was the service involved in the case or not?
7 Did they go to Syria or not?

8 HON. WAYNE EASTER: If I could
9 quote directly from, Mr. Commissioner, the
10 briefing note to the Solicitor General, 6 October,
11 2003, it says:

12 "... the extent of CSIS
13 involvement in the detention
14 and deportation of ARAR, you
15 could state that the Service
16 was not involved in this
17 case."

18 And I believe that to be an
19 accurate statement. The key words are "in the
20 detention and deportation of Arar".

21 MR. WALDMAN: Well, Mr. Arar was
22 detained in Syria for 11 months, from October of
23 2002 -- actually 12 months almost -- until October
24 of 2003.

25 Is that correct?

1 HON. WAYNE EASTER: That is
2 correct.

3 MR. WALDMAN: And we know that
4 CSIS went to Syria in November of 2002. Is that
5 correct?

6 And we know that in November of
7 2002 they spoke with the Syrians about Mr. Arar.
8 Is that correct?

9 HON. WAYNE EASTER: That is what I
10 have been informed, yes.

11 MR. WALDMAN: So is it then not
12 correct to assert that CSIS was not involved in
13 the detention of Mr. Arar if they went and spoke
14 to his jailers while he was in detention?

15 HON. WAYNE EASTER: I would read
16 it this way: They were not involved in the
17 deportation that led to his detention. They could
18 have been in fact involved in trying to assist in
19 terms of getting Arar out of Syria.

20 MR. WALDMAN: Do you have any --

21 HON. WAYNE EASTER: The way I read
22 this, and let me re-emphasize, the statement says:

23 "... the extent of CSIS
24 involvement in the detention
25 and deportation of ARAR, you

1 could state that the Service
2 was not involved."

3 And I believe that to be accurate.
4 They were not involved in terms of the deportation
5 that led to Mr. Arar's detention and that was the
6 way --

7 MR. WALDMAN: That is not what it
8 says --

9 HON. WAYNE EASTER: That is what
10 it says to me. You are reading it differently
11 than me.

12 MR. WALDMAN: Okay. I guess we
13 will have to let the public decide whether your
14 reading is a reasonable one.

15 Perhaps we could go on to tab 49,
16 sir.

17 You told us that you are aware of
18 the human rights situation in Syria and that it
19 wasn't a good one; correct?

20 HON. WAYNE EASTER: Yes, I believe
21 I said that their human rights record I believed
22 not to be stellar.

23 MR. WALDMAN: Right. And
24 Mr. Cavalluzzo advised you that Mr. Pardy, the
25 head of consular affairs, indicated that he

1 assumed early on that Mr. Arar had been tortured,
2 and that he had communicated this to many
3 officials.

4 I believe he asked you, and you
5 advised that you had not heard of that. Is that
6 correct?

7 HON. WAYNE EASTER: Well, nor --
8 no, I had not heard of that, no.

9 MR. WALDMAN: I would like you to
10 comment on -- it says "Current Status". This is
11 not a briefing note to you; it is to the
12 Commissioner. But I think the point that I am
13 trying to make is the same.

14 "ARAR remains in Syrian
15 custody. He was interviewed
16 by the Syrians and
17 volunteered he had received
18 training at the ... camp in
19 Afghanistan."

20 Do you think it's a fair thing to
21 express in a briefing note to the Commissioner
22 that Mr. Arar was interviewed and volunteered
23 information, knowing what you knew about Syria?

24 Would you think that that was an
25 accurate reflection of what happened to Mr. Arar?

1 HON. WAYNE EASTER: I can't -- I
2 really, in effect, can't answer that because I
3 don't know.

4 MR. WALDMAN: But doesn't it cause
5 you concern that in a briefing note to the
6 Commissioner from the Assistant Commissioner in
7 charge of Criminal Intelligence, he is advising
8 the Commissioner, who briefs you, that Mr. Arar
9 was interviewed and volunteered a statement, given
10 what we know of the human rights situation in
11 Syria?

12 HON. WAYNE EASTER: Given what we
13 know about the human rights situation and the
14 alleged torture. Alleged.

15 MR. WALDMAN: Right. So doesn't
16 it concern you that at least it wasn't put into a
17 context, "Well, Mr. Commissioner, we have this
18 information that came from Syria, but you should
19 be aware that the human rights situation in Syria
20 is not good and we have to take with a grain of
21 salt and this may not have been a voluntary
22 statement"?

23 HON. WAYNE EASTER: I would
24 expect -- and keep in mind this is not a briefing
25 note to me. But I would expect that the

1 Commissioner knows full well the human rights
2 record in Syria.

3 MR. WALDMAN: What concerns me
4 more is how one of his subordinates is expressing
5 that Mr. Arar volunteered the information.

6 Let's move on to another area,
7 sir.

8 I would like to deal with the
9 issue of CSIS and its role.

10 This morning you told us that you
11 weren't aware that CSIS had gone to Syria;
12 correct?

13 HON. WAYNE EASTER: That is
14 correct.

15 MR. WALDMAN: And we know that
16 they went and they discussed Mr. Arar's case with
17 the Syrian intelligence. That is what we have
18 been told. There are briefing notes, and that is
19 been conceded by the government.

20 You also told us this morning,
21 sir, that you are aware of what Ms Catterall said
22 about the Syrian ambassador being told by him that
23 the Syrians have been led to believe by CSIS that
24 they didn't want Mr. Arar back?

25 She told you that? And you are

1 aware of that?

2 HON. WAYNE EASTER: I don't know
3 whether specifically Ms Catterall told me that.
4 But as I said this morning, I do not believe that
5 to be an accurate statement on the part of the
6 Syrians.

7 MR. WALDMAN: Okay. Let me just
8 clarify this, because maybe I misunderstood your
9 testimony this morning.

10 Were you told by someone,
11 Ms Catterall or someone else, that the Syrian
12 ambassador had said that Syria believed that CSIS
13 did not want Mr. Arar to come back?

14 HON. WAYNE EASTER: Yes, and I am
15 not sure whether that was in a conversation or
16 whether it was picked up on the periphery through
17 media reports or whatever, but I am aware of --

18 MR. WALDMAN: I don't recall --
19 perhaps someone could correct me if I am wrong --
20 that that was ever reported in the media?

21 Mr. Cavalluzzo or my friend? No.

22 I don't think it could have been
23 in the media. So it must have been --

24 HON. WAYNE EASTER: I am aware of
25 it, but I am not specifically -- I can't pinpoint

1 who specifically said it.

2 MR. WALDMAN: When you heard that
3 the Syrians believed that CSIS didn't want
4 Mr. Arar back, given your stated concern that you
5 wanted Mr. Arar to get back as quickly as
6 possible, what action did you take to make efforts
7 to correct this misapprehension on the part of the
8 Syrian government?

9 HON. WAYNE EASTER: You seem to
10 be, sir, putting a lot more trust and faith in the
11 word of the Syrians than I do. As I said, I
12 certainly went to my people, I raised the
13 questions and I believe I trust their word better
14 than I do the Syrians'.

15 MR. WALDMAN: But I think you are
16 missing the point, sir. The point isn't whether
17 CSIS said it. The point is Syria believed it, and
18 this was the problem that we had.

19 And Mr. Pardy, in the briefing
20 note that Mr. Cavalluzzo took you to this morning,
21 made it clear that as long as this misapprehension
22 existed, we were going to have a very hard time in
23 having Mr. Arar back.

24 So whether it was true or not that
25 CSIS said this, you were told that the Syrians

1 believed it. And I am asking what steps you took
2 to clarify with the Syrians that CSIS didn't
3 oppose Mr. Arar's coming back?

4 HON. WAYNE EASTER: The steps that
5 we took were coming back to the various efforts
6 made to get a letter from -- eventually ending up
7 with the Prime Minister, to convince the Syrians
8 to send Mr. Arar back to Canada. Those were the
9 efforts that were made. And many of my officials
10 were involved in that, as well as CSIS and the
11 RCMP.

12 MR. WALDMAN: But Mr. Pardy, in
13 his memo, said that what was vital was clarifying
14 this misapprehension.

15 Did you take any steps at any
16 time, or instruct any of your officials at any
17 time, to take any steps to clarify the
18 misapprehension that the Syrian government was
19 under?

20 HON. WAYNE EASTER: I made it
21 known to my officials to make every effort that we
22 could to get Mr. Arar back to Canada.

23 MR. WALDMAN: Well, we know --

24 HON. WAYNE EASTER: Because, as a
25 Canadian citizen, he should be here.

1 MR. WALDMAN: Did you ever tell
2 your officials to speak to Syrian intelligence and
3 clarify this matter up?

4 We know or we can assume -- I
5 don't want to breach any national security
6 confidentiality here. But I think it wouldn't
7 be unreasonable for us to assume that CSIS would
8 be in conversation with their Syrian counterparts
9 from time to time. Why couldn't you have
10 instructed them at one point to say: "Look, I
11 have heard there is this misunderstanding. It is
12 clear that this is holding up getting Mr. Arar
13 back. Clarify this with your counterparts in
14 Syria."

15 Did you ever take that up --

16 HON. WAYNE EASTER: I did not.

17 MR. WALDMAN: I just wanted to
18 take you to tab 23 of Volume 1 again, just for a
19 second.

20 This is the Scott Heatherington
21 memo.

22 Mr. Heatherington, according to
23 this memo, and it's also from my own knowledge, at
24 the time he wrote the memo was the Director of the
25 Foreign Intelligence Division of DFAIT.

1 Are you aware that --

2 MR. CAVALLUZZO: If I could just
3 interject at this point in time, the evidence is
4 not that Scott Heatherington wrote it, but that
5 James Gould wrote it.

6 MR. WALDMAN: Sorry. Mr. Gould is
7 an official working under Scott Heatherington.

8 So an official working in the
9 Security Intelligence Division of Foreign Affairs
10 wrote this memo.

11 He says in the memo that CSIS has
12 made it clear to the department they would prefer
13 to have him remain in Syria rather than to Canada.

14 Now, you have told us that you
15 weren't aware that CSIS went to Syria. So what
16 was your awareness of the involvement of CSIS in
17 Mr. Arar's case?

18 HON. WAYNE EASTER: Well, just to
19 come back to the original statement, that my
20 awareness was that they were not involved in the
21 deportation and detention --

22 MR. WALDMAN: Right.

23 HON. WAYNE EASTER: No, I was not
24 aware they went to Syria.

25 And I believe in a response this

1 morning I indicated that I would consider that --
2 I don't know if those were the exact words I used,
3 but their opinion versus the information I was
4 certainly given.

5 MR. WALDMAN: Well, you said that
6 you trusted your bureaucrats to be honest. Why
7 would you expect that Mr. Gould wasn't being
8 honest in his rendition of what obviously he had
9 been told by CSIS officials?

10 HON. WAYNE EASTER: I guess he's
11 entitled to his opinion. I am not saying -- I
12 guess it's -- eventually maybe it will be found
13 whose opinion is accurate here, but --

14 MR. WALDMAN: So aside from your
15 impression and your trust in CSIS, do you have any
16 other basis upon which to doubt what Mr. Gould was
17 saying, any other information that was provided --

18 HON. WAYNE EASTER: Well, I would
19 expect that, certainly as Solicitor General, as
20 Minister who is really responsible for and
21 accountable for, that the various agencies' heads
22 would be very forthcoming or very accurate in the
23 statements that they give you.

24 MR. WALDMAN: Right. But the only
25 statement that you told me that you were given

1 about Mr. Arar was that they were not involved in
2 the detention and deportation --

3 HON. WAYNE EASTER: That is
4 correct.

5 MR. WALDMAN: Well, that has
6 nothing to do with their position with respect to
7 whether they wanted Mr. Arar back.

8 HON. WAYNE EASTER: Well, again, I
9 come back to what I indicated this morning; that
10 all efforts were being made by the government in
11 general to get Mr. Arar back to Canada, and I do
12 not believe, from my experience with CSIS, that
13 they would undermine that effort.

14 MR. WALDMAN: But you would agree
15 that they certainly put a lot of roadblocks in the
16 way of getting the letter that Mr. Edelson asked
17 for in November of 2002, and they went through
18 numerous drafts and objections time after time to
19 the wording by CSIS and the RCMP. So ultimately
20 the letter wasn't sent until July.

21 So I don't know how that is
22 cooperating?

23 HON. WAYNE EASTER: No, I would
24 not agree that they were putting roadblocks in the
25 way. They were trying to be accurate in terms of

1 the statements that whoever wrote the letter would
2 make.

3 MR. WALDMAN: Now, this memo goes
4 on to say:

5 "CSIS officials do not
6 seem..."

7 Because it's more than not wanting
8 him to return.

9 "CSIS officials do not seem
10 to not understand that,
11 guilty or innocent, Maher
12 Arar has the right to
13 consular assistance from the
14 Department..."

15 HON. WAYNE EASTER: Where are you
16 at?

17 MR. WALDMAN: The same page.

18 HON. WAYNE EASTER: Okay, I have
19 found it.

20 MR. WALDMAN: What do you make of
21 that, that they didn't seem to understand?

22 Do you find that hard to believe
23 too, that CSIS would find it hard to understand?

24 HON. WAYNE EASTER: I think I have
25 basically -- my comments refer to this whole

1 paragraph.

2 MR. WALDMAN: Okay. Well, would
3 it surprise you, sir, if I told you that we have
4 in the evidence before us a considerable amount of
5 documentation that says that there was a major
6 dispute between CSIS and DFAIT about the provision
7 of consular services to persons who are alleged to
8 be members of terrorist groups, and indeed there
9 were meetings that had to be convened between PCO,
10 DFAIT, the Solicitor General and the RCMP, if I am
11 not mistaken, to try and resolve the issue as to
12 how consulate services would be issued. And, in
13 fact, it was a very serious issue.

14 Were you aware of that fact?

15 HON. WAYNE EASTER: I couldn't say
16 that I am aware of all the detail that you are
17 portraying there, but I do know in terms of the
18 involvement of trying to put together the letter
19 to get Arar back that we all worked diligently to
20 make sure that that letter was accurate. And that
21 is not roadblocks, as you seem to suggest; that is
22 accuracy in terms of representation Canada's
23 security services and the nation as a whole.

24 MR. WALDMAN: But I was making
25 reference to another point at this point.

1 What I was suggesting to you is --
2 you said you had difficulty with the entire
3 paragraph. And what I am suggesting to you is
4 that we have information elsewhere, not with
5 respect to Mr. Arar alone but with respect to a
6 whole number of people who were subjected to
7 terrorism charges and who are involved abroad,
8 that there was a whole dispute between CSIS, the
9 RCMP and DFAIT about the provision of consular
10 services, and there were a whole series of
11 meetings and debates about whether they should be
12 and the types of services that should be provided.

13 So in fact the second sentence --

14 HON. WAYNE EASTER: If I could
15 raise I guess a point of clarification, are you
16 saying as that specifically relates to Mr. Arar
17 only, or to others?

18 MR. WALDMAN: There was a general
19 discussion about Mr. Arar, and other similar cases
20 involving people detained abroad --

21 HON. WAYNE EASTER: And I am
22 saying specifically with respect to Mr. Arar.

23 MR. WALDMAN: But the same issue
24 arose with respect to Mr. Arar as with respect to
25 the other people, and I am suggesting to you that

1 in fact there is a good deal of documentation
2 before the Commissioner to support what is said in
3 this second sentence of the letter.

4 I would like to move on to another
5 area.

6 You said that the rogue element
7 quote was a misquote. Is that fair?

8 HON. WAYNE EASTER: I said
9 Mr. Fife took a lot of liberty with his pen, that
10 I never specifically stated "rogue elements".

11 MR. WALDMAN: So you don't believe
12 there are rogue elements in the RCMP or CSIS?

13 HON. WAYNE EASTER: If you go back
14 to the record, you will see that I said that very
15 specifically at several points in time. I do not
16 believe there to be rogue elements within the
17 RCMP.

18 MR. WALDMAN: Well, how would you
19 explain the fact that some person from one of
20 those organizations leaked classified national
21 security documents to Juliet O'Neill that made it
22 onto the front page of the Ottawa Citizen on
23 November 8th, 2003?

24 Would you not say that someone who
25 leaked such a document would be a rogue element?

1 HON. WAYNE EASTER: Is there
2 evidence to the effect that that in fact was
3 leaked by the people you have purported to leak,
4 conclusive evidence?

5 MR. WALDMAN: Well, sir, I would
6 suggest to you that it's the only -- given the
7 fact that these documents, as we are now well
8 aware, are all virtually classified and we are
9 only getting very limited redactions, and the
10 information suggests that there is very limited
11 access to the documents, that it is I think a
12 reasonable hypothesis that the only people who had
13 access to the documents were probably people who
14 worked in that organization?

15 HON. WAYNE EASTER: I will not
16 speculate in that regard.

17 MR. WALDMAN: Okay. I would like
18 to deal with the whole question of your
19 information about the case and some of the public
20 comments that you made.

21 I just want to make sure I
22 understood your testimony with respect to what you
23 said so far.

24 You have told us that you
25 didn't -- aside from the House of Commons book,

1 which was very general, and a few times where you
2 made some questions and asked for general
3 assurances that the RCMP didn't acquiesce in
4 Mr. Arar's deportation, your first briefing was
5 the one we saw in October -- in July that I took
6 you to --

7 HON. WAYNE EASTER: That was the
8 first briefing, the Question Period. I think, as
9 you are well aware, there is a question book
10 binder that all Ministers with their respective
11 departments operate from.

12 My first indication of Mr. Arar
13 would have been in my initial reading of that, and
14 the first time that it was triggered specifically
15 when I responded to a question in the House on
16 that matter, which was I believe in early
17 November. It might have even been October. Very
18 shortly after I became Solicitor General.

19 MR. WALDMAN: So do you recall,
20 after Mr. Arar gave his press conference, you were
21 asked about the lease and you speculated at the
22 time that it might have been foreign agencies who
23 obtained the lease?

24 Do you recall making that
25 statement?

1 HON. WAYNE EASTER: Yes, I recall
2 the interview, and I believe as I was -- I did not
3 have any idea where the lease came from or how it
4 became into the public domain at that time, and it
5 could have, in my view -- I basically said it
6 could have came from anywhere. Anyone could have
7 been involved.

8 MR. WALDMAN: And you did say
9 foreign intelligence agencies, unless you are
10 misquoted in the paper.

11 HON. WAYNE EASTER: I may have.

12 THE COMMISSIONER: Just a second,
13 Mr. Easter.

14 MR. FOTHERGILL: Commissioner, if
15 it assists Mr. Waldman, we have transcripts of
16 both scrums relating to the lease. The November
17 4th scrum can be found at tab 77, and the November
18 6th scrum can be found at tab 54.

19 So we can see the precise words
20 that Mr. Easter used, if necessary.

21 MR. WALDMAN: If it's in issue, I
22 know that we have them. I am just trying to save
23 some time.

24 If he wants to look at them, that
25 is fine.

1 HON. WAYNE EASTER: 54 and --

2 THE COMMISSIONER: 54 and 77.

3 MR. FOTHERGILL: Tab 77 is the
4 earlier one, and 54 is the later one.

5 MR. WALDMAN: Fifty-four is the
6 one.

7 HON. WAYNE EASTER: Where I say
8 "there's multi intelligence agencies involved" in
9 these matters, is that --

10 MR. CAVALLUZZO: Five lines from
11 the bottom.

12 HON. WAYNE EASTER: Yes, that is
13 what the question was.

14 But you are saying I said "multi
15 intelligence agencies", and the questioner said:

16 "But you are saying that this
17 lease could have been
18 obtained by other foreign
19 agencies."

20 I then say:

21 "I don't know how that lease
22 was obtained."

23 Which is the facts. I didn't know
24 how that lease was obtained at the time.

25 MR. WALDMAN: But if you go up a

1 little bit higher, Mr. Easter, you say:

2 "There is information flow,
3 yes, between the two
4 countries. But that
5 information, that particular
6 document there's multi
7 intelligence agencies
8 involved in these matters.
9 Just because it happens to be
10 a lease does not necessarily
11 mean it came from Canadian
12 sources."

13 So you are the one who suggested
14 is might have come from another source.

15 That is not correct, right? You
16 are now aware that the lease was sent by Canada to
17 the Americans?

18 HON. WAYNE EASTER: I think you
19 have to consider that this was a scam, and the
20 absolute proper answer would have been that I
21 just -- I don't know how this lease was obtained.
22 That is the facts -- at that time.

23 MR. WALDMAN: So why would you
24 speculate about it possibly -- I mean, this was a
25 bit of disinformation, don't you think?

1 HON. WAYNE EASTER: It goes to
2 show one should never speculate.

3 MR. WALDMAN: So you acknowledge
4 it wasn't appropriate for you to speculate?

5 HON. WAYNE EASTER: That is right.

6 MR. WALDMAN: According to the
7 RCMP chronology -- it's Volume 2, page 38.

8 THE COMMISSIONER: Volume 2 of...?

9 HON. WAYNE EASTER: Volume 2, page
10 38?

11 THE COMMISSIONER: It would be
12 another exhibit, Mr. Easter. We will just get it.

13 MR. WALDMAN: No, that is the
14 RCMP. I don't have it.

15 I will have to come back to that
16 because it looks like I didn't bring it down. I
17 left it up in the room.

18 I will just ask you the question
19 and, if it is necessary, we will find it.

20 We have records -- and I just want
21 to confirm whether you acknowledge that it's
22 true -- that as late as September of 2003, you
23 stated that the RCMP had not given information
24 about Mr. Arar to the Americans.

25 Do you recall that?

1 HON. WAYNE EASTER: Yes, but let
2 me expand on that a little bit. That was in
3 September 2003.

4 MR. WALDMAN: Correct.

5 HON. WAYNE EASTER: Those remarks
6 would be in the context of not providing
7 information -- of not being involved in the
8 decision to deport. There is a normal exchange of
9 information between police agencies that is
10 assumed.

11 MR. WALDMAN: But in this -- well,
12 first of all, you made a statement that they
13 didn't give information, and that was incorrect
14 because, in fact, as you acknowledged in November
15 after meeting with Mr. Ashcroft, they did.

16 So my first question would be:
17 Why would you make a statement that was
18 misleading, suggesting that the RCMP had not given
19 information when in fact they had?

20 HON. WAYNE EASTER: It wasn't a
21 misleading statement on my part. The fact of the
22 matter is that it is well-known that information
23 is exchanged between police agencies in the normal
24 sense, and I think the context I was talking about
25 it in was that basically the decision to deport,

1 they were not involved in.

2 As I have said many, many times,
3 if police agencies are going to do their job, they
4 have to exchange information. And we certainly
5 don't want to run the risk of not providing
6 information.

7 MR. WALDMAN: But it seems to me
8 that in this case, sir, the RCMP involvement in
9 Mr. Arar's deportation was not just the fact that
10 they sent information down in advance.

11 First of all, you should know that
12 according to a letter that was filed before the
13 committee that was addressed to a U.S. congressman
14 from an official in the United States, from the
15 Department of State, they stated in the letter
16 that Mr. Arar was placed on the watch list by the
17 United States based on Canadian information.

18 So clearly Mr. Arar's problems in
19 the United States arose out of the Canadian
20 information that was shared. So it wasn't just
21 the matter of sharing information. Mr. Arar was
22 put on the watch list as a result of the Canadian
23 information.

24 Were you aware of that?

25 HON. WAYNE EASTER: That again

1 comes back to whoever you are quoting, to their
2 opinion. I do know unequivocally what Attorney
3 General Ashcroft told me, and that was that the
4 RCMP information was part of the information that
5 they had.

6 MR. WALDMAN: Right. Well, that
7 was part of the information according to
8 Mr. Ashcroft with respect to the deportation.

9 But this letter is written by an
10 official from the U.S. government and says that
11 the decision to put Mr. Arar on the watch list was
12 made based on Canadian information. That is a
13 different issue. Not the decision to deport, the
14 decision to put him on the list, which led to him
15 being arrested.

16 HON. WAYNE EASTER: Are you
17 suggesting that the police forces should not
18 exchange information?

19 MR. WALDMAN: Well --

20 HON. WAYNE EASTER: I am saying
21 that whether or not that was the reason that
22 Mr. Arar was put on their watch list, the fact is
23 the RCMP, in terms of doing their job in
24 exchanging information with foreign police
25 services, was in fact doing their job.

1 MR. WALDMAN: The question I
2 have -- you asked about my question about sharing
3 information. I am not a cabinet Minister, but I
4 suppose my concern, now that you have asked the
5 question, is when we see the consequences of
6 information-sharing as they emerged in this case,
7 where a Canadian citizen, based upon information
8 that came from Canada, is put on a watch list and
9 then deported by the United States who, according
10 to your own Deputy Commissioner, uses different
11 tactics, it causes me a lot of concerns about how
12 we are sharing information.

13 I am not saying we don't share
14 information, but I am suggesting to you that when
15 we share information we have to make sure that we
16 protect Canadian citizens.

17 Wouldn't you agree with that?

18 HON. WAYNE EASTER: I would worry
19 about the consequences if we didn't share
20 information. In fact, one of my reasons for being
21 fairly aggressive with Attorney General Ashcroft
22 on putting in place a protocol is in fact to cover
23 off the danger that your point makes.

24 MR. WALDMAN: Which point?

25 HON. WAYNE EASTER: That we need

1 to, as nations, share information. There is no
2 question about that. The consequences are too
3 great if we don't, between both our police and our
4 security agencies.

5 But there is a great concern for
6 Canadians if whatever, even if it's only a part of
7 the information, that what happens in Mr. Arar's
8 case happens, and we need a protocol in place to
9 ensure that a Canadian citizen is sent back to
10 Canada.

11 MR. WALDMAN: Well, did we obtain
12 such a protocol? Would you not agree that what we
13 obtained falls far short of that; that the
14 understanding is not legally binding, and it
15 doesn't guarantee that Canadian citizens will not
16 be deported in the future? It only guarantees a
17 level of consultation.

18 Is that not correct?

19 HON. WAYNE EASTER: That is
20 correct.

21 MR. CAVALLUZZO: Didn't you
22 yourself say at different times in the media that
23 what we needed was an accord that guaranteed that
24 Canadians wouldn't be deported? And we didn't
25 achieve that.

1 Is that not correct?

2 HON. WAYNE EASTER: "Guarantee" is
3 a strong word when you are dealing with our
4 neighbours to the south on many issues.

5 MR. WALDMAN: Thank you.

6 --- Pause

7 MR. WALDMAN: I should be able to
8 finish in about 20 minutes, I think.

9 THE COMMISSIONER: That is fine.
10 Thank you, Mr. Waldman.

11 MR. WALDMAN: I am just trying to
12 sift through what I want to eliminate.

13 --- Pause

14 MR. WALDMAN: I would ask you to
15 go to tab 75, part 4.

16 THE COMMISSIONER: Seventy-four or
17 five?

18 MR. WALDMAN: Seventy-five. That
19 is got several tabs in it. And it is tab 4.

20 THE COMMISSIONER: Tab 4. I have
21 it.

22 MR. WALDMAN: So this is a
23 briefing from CSIS to the Solicitor General.

24 Is that correct?

25 HON. WAYNE EASTER: That is

1 correct.

2 MR. WALDMAN: Was this the first
3 briefing note you got from CSIS on Mr. Arar, May
4 of 2003?

5 HON. WAYNE EASTER: I can't be
6 sure.

7 MR. WALDMAN: So this memo
8 suggests that DFAIT has suggested that, in the
9 third paragraph:

10 "DFAIT officials hope that
11 their DM may secure Arar's
12 release... DFAIT officials
13 have suggested that the
14 Service and the RCMP
15 interview Arar while in
16 Syrian custody. As the
17 Syrians intend to bring Arar
18 to trial, they may view such
19 efforts as an affront to
20 their sovereignty."

21 So the first message conveyed by
22 them, the memo, is that there is the possibility
23 of an interview by the RCMP or CSIS of Mr. Arar.

24 Is that correct?

25 And the second message is that the

1 Services don't think it's a good idea because they
2 don't want to offend the Syrians.

3 And the third message, which is on
4 the next page, is that the United States might
5 question the resolve of Canada if you sign a
6 letter after they deported Mr. Arar.

7 Is that fair? Those are the three
8 messages that were sent in the letter?

9 HON. WAYNE EASTER: They are the
10 three messages that were sent in the letter, yes,
11 but I read into that that they are indeed the
12 facts. The key point is that may be the facts;
13 that maybe it upsets somebody. And as a Minister,
14 you need to know it might upset somebody. But as
15 a government, you may not care if it upsets them,
16 because your interest is in getting Mr. Arar back
17 here.

18 So I think you are reading a
19 little too much in it. Those are the facts.

20 MR. WALDMAN: I agree with you.
21 Those are the facts. I just wanted to see whether
22 you agreed.

23 And then they go on to say that we
24 don't want you to sign any letter or be part of
25 any initiative because it would be problematic.

1 Can you show me where in this
2 letter there is any concern expressed about
3 getting Mr. Arar back or helping him get back?

4 I make this point especially in
5 light of the May 5th memo which Mr. Pardy wrote,
6 which Mr. Cavalluzzo took you to earlier, which
7 said that they weren't going to make any progress
8 in getting Mr. Arar out until there was
9 clarification with respect to the government
10 position.

11 HON. WAYNE EASTER: The fact of
12 the matter is CSIS did not need to convince me to
13 get Mr. Arar back because I, along with my
14 colleagues, wanted him back in this country.

15 MR. WALDMAN: Well, what did you
16 do to get him back?

17 HON. WAYNE EASTER: Pardon?

18 MR. WALDMAN: What did you do to
19 get him back? Did you sign any letters?

20 HON. WAYNE EASTER: No, and I
21 explained my reasons why I wouldn't do that this
22 morning.

23 MR. WALDMAN: So tell us what you
24 did. You were concerned. You told us he thought
25 he should get back. Tell us, sir, what you did to

1 help Mr. Arar to get back into Canada. Tell us.

2 HON. WAYNE EASTER: I was involved
3 in the discussions, trying to provide information
4 to others. It's the Minister of Foreign Affairs
5 who is the lead on behalf of the government in
6 that regard, and ultimately it ended up being the
7 Prime Minister.

8 I have always said, up until I
9 believe Mr. Arar was back in Canada, that I, as
10 Solicitor General, would not confirm or deny
11 whether or not there was anything happening, that
12 I, as Solicitor General, operated on the
13 presumption of innocence, which I did.

14 So I did my best, strenuously,
15 against a lot of questions raised by the
16 opposition, to defend the integrity of Mr. Arar
17 and tried not to slip in that regard.

18 MR. WALDMAN: But we know that the
19 discussions about the letter dragged on over
20 months and months and months.

21 Is that not correct?

22 HON. WAYNE EASTER: The
23 discussions on the letter went on for some time.

24 MR. WALDMAN: Yes. If I recall
25 correctly, Mr. Pardy raised it with Mr. Edelson in

1 November. Deputy Commissioner Loeppky, I believe,
2 wrote to Mr. Livermore protesting early in the New
3 Year, and the negotiations dragged on for months
4 and months about the wording of a letter that
5 didn't get written until July; right?

6 Given your concern --

7 HON. WAYNE EASTER: And when the
8 letter was written, it was accurate.

9 MR. WALDMAN: Right. But given
10 your concern about getting Mr. Arar back, why
11 didn't you intervene earlier and try to make sure
12 that letter got out earlier?

13 HON. WAYNE EASTER: The
14 discussions -- there was a lot of -- there was
15 pressure coming from Foreign Affairs using wording
16 that we felt in our department that was
17 unacceptable. It was not accurate from our point
18 of view, and so eventually, as you are well aware,
19 the wording that the Prime Minister used was in
20 fact used, and at that time it was accurate.

21 MR. WALDMAN: I think I might be
22 done.

23 --- Pause

24 MR. WALDMAN: I will ask you about
25 one last area.

1 Given what we know about Mr. Pardy
2 and his efforts to get back and the wording, I
3 would like to take you to the wording that was
4 proposed by CSIS and the RCMP, and ask you to tell
5 me what you think of this wording.

6 I would ask you to go to tab 75,
7 and then sub-tab 8.

8 DFAIT wanted something along the
9 lines that there is no evidence that Mr. Arar is
10 wanted in Canada in any criminal --

11 HON. WAYNE EASTER: What page?

12 MR. WALDMAN: Well, tab 75.

13 HON. WAYNE EASTER: Tab 8.

14 MR. WALDMAN: The first page.

15 There is only one page, I think.

16 HON. WAYNE EASTER: Under tab 8?

17 MR. WALDMAN: It's two pages --
18 sorry, it's three pages, sorry. I am on the third
19 page.

20 HON. WAYNE EASTER: Okay.

21 MR. WALDMAN: So this is the
22 wording that your colleagues who were trying to be
23 helpful to Mr. Arar, proposed.

24 So they suggested that the letter
25 be signed by the Minister say:

1 "Mr. Arar is currently the
2 subject of a national
3 security investigation in
4 Canada. Although there is
5 not sufficient evidence at
6 this time to warrant Criminal
7 code charges, he remains a
8 subject of interest. There
9 is no Canadian government
10 impediment to Mr. Arar's
11 return to Canada."

12 Do you actually think if that
13 letter would have been written, it would have been
14 of any assistance to Mr. Arar at all, given what
15 was going on in Syria at the time?

16 And this is what your officials
17 are suggesting trying to be helpful to Mr. Arar?

18 HON. WAYNE EASTER: This is
19 written by Heatherington; correct?

20 MR. WALDMAN: No, this is --
21 Heatherington is writing a letter. In his
22 conversations with CSIS, he says:

23 "Both the Force and the
24 Service agree that the
25 following would be more

1 accurate."

2 And this is the wording that the
3 Force and the Service have proposed to DFAIT.

4 So I am asking you whether you
5 think such a letter would have assisted Mr. Arar
6 if it had been written in that way?

7 HON. WAYNE EASTER: It is not --
8 you have to keep in mind that, yes, the RCMP,
9 Foreign Affairs and CSIS have input into the
10 letter, as well as, at the end of the day, the
11 individual who signed it, which is the Prime
12 Minister. And this wording was not used; it was
13 rejected.

14 MR. WALDMAN: Right. I am just
15 asking you whether the wording proposed by your
16 officials you thought was particularly helpful to
17 Mr. Arar?

18 HON. WAYNE EASTER: Well, this is
19 what this individual is saying, officials
20 proposed --

21 MR. WALDMAN: Well, if you assume
22 for a second -- I mean, at a certain point, sir,
23 you are telling us we have to believe everything
24 that the RCMP and CSIS says, and then every time
25 we put to you something that someone else says,

1 you say we have to assume.

2 I am asking you, let's just assume
3 he is --

4 MR. CAVALLUZZO: May I interject,
5 to make it much easier. If you refer to tab 10,
6 you will see it isn't an assumption.

7 THE COMMISSIONER: It is a fact.
8 This was the proposed language.

9 MR. CAVALLUZZO: Tab 10, just in
10 front of the redaction.

11 HON. WAYNE EASTER: All right. On
12 page -- on tab 10?

13 MR. FOTHERGILL: To be absolutely
14 clear, sir, it not is suggested that this is
15 language that should go into a letter to a foreign
16 government. This is just the RCMP expressing its
17 position.

18 HON. WAYNE EASTER: Okay. I mean,
19 if this is the RCMP expressing their position
20 versus the wording for a letter, that is an
21 entirely different matter.

22 MR. WALDMAN: I think I have made
23 my point.

24 Thank you, sir.

25 THE COMMISSIONER: Mr. Fothergill?

1 EXAMINATION

2 MR. FOTHERGILL: Mr. Easter, could
3 I ask you to turn, as others have done, to tab 23.
4 This is the draft Foreign Affairs memorandum.

5 Mr. Cavalluzzo very fairly
6 identified this as a draft memorandum.

7 And, Commissioner, if you will
8 permit me, because neither Mr. Cavalluzzo nor
9 Mr. Waldman mentioned this, the memorandum did not
10 go forward because Mr. Livermore who was
11 Mr. Gould's and Mr. Heatherington's superior,
12 believed it did not fairly represent the
13 situation.

14 So I think before anybody places
15 too much emphasis on this document, that is
16 important contextual information.

17 MR. WALDMAN: I don't know how my
18 friend can give evidence.

19 THE COMMISSIONER: I think we
20 heard that evidence.

21 MR. FOTHERGILL: I am referring to
22 the transcript of Mr. Cavalluzzo's questioning of
23 Mr. Livermore in public.

24 And I feel that clarification is
25 important, although I understand it's not

1 something that the witness can himself comment on.

2 THE COMMISSIONER: That is a fair
3 comment.

4 MR. FOTHERGILL: I would like you,
5 sir, to look at the precise words that Mr. Gould
6 wrote at the bottom of that page, and that is that
7 CSIS had apparently made it clear to the
8 department that they would prefer to have Mr. Arar
9 remain in Syria.

10 Now, you have told us that you had
11 a number of discussions with officials in CSIS
12 about the best way of dealing with Mr. Arar's
13 situation.

14 Is that correct?

15 HON. WAYNE EASTER: That is
16 correct.

17 MR. FOTHERGILL: And did these
18 officials include the director of CSIS?

19 HON. WAYNE EASTER: Yes.

20 MR. FOTHERGILL: And other
21 officials in CSIS?

22 HON. WAYNE EASTER: Yes, there
23 would be more than Mr. Elcock there.

24 MR. FOTHERGILL: At any time did
25 anybody in CSIS say to you that CSIS would prefer

1 Mr. Arar to remain in Syria?

2 HON. WAYNE EASTER: Never.

3 MR. FOTHERGILL: Did they say
4 anything that suggested to you, even indirectly,
5 that that was their preferred outcome?

6 HON. WAYNE EASTER: No, they did
7 not.

8 MR. FOTHERGILL: Based on your
9 discussions with CSIS, what was CSIS' view about
10 the outcome they desired in relation to Mr. Arar?

11 HON. WAYNE EASTER: Their view was
12 that, based on those discussions, I believe CSIS
13 wanted that Mr. Arar be brought back to Canada and
14 be treated fairly under Canadian law.

15 MR. FOTHERGILL: If I can ask you
16 to turn to the next document at tab 24, this is an
17 e-mail message from Francoise Lang to Richard
18 Proulx.

19 Am I right in thinking that
20 Francoise Lang worked in your office?

21 HON. WAYNE EASTER: I believe,
22 yes.

23 MR. FOTHERGILL: And this is, I
24 think, an e-mail communication to the RCMP asking
25 for a more detailed briefing note to be provided

1 to you concerning the Arar case.

2 And I am wondering if you recall
3 what it was particularly that resulted in this
4 request by your office for a more detailed
5 briefing note at this time?

6 HON. WAYNE EASTER: Well,
7 certainly it was an issue -- this was on June
8 26th, 2003. It was becoming a fairly substantial
9 public issue.

10 MR. FOTHERGILL: If we turn to the
11 next tab, tab 25 --

12 HON. WAYNE EASTER: And I think
13 just further, there was concern about Mr. Arar as
14 well.

15 MR. FOTHERGILL: Thank you. The
16 next document at tab 25 is the briefing note that
17 both Mr. Cavalluzzo and Mr. Waldman referred you
18 to, dated June 27th, 2003.

19 I think you have identified this
20 as the more detailed briefing note you received as
21 a result of the request.

22 Is that right?

23 HON. WAYNE EASTER: You are at tab
24 26, I believe.

25 MR. FOTHERGILL: I believe I am at

1 tab 25. There is one at tab 26 as well, you are
2 right, but I am referring to the one at tab 25.

3 HON. WAYNE EASTER: Yes.

4 MR. FOTHERGILL: In this briefing
5 note, you were told in the first paragraph that:

6 "...any information that was
7 being developed concerning US
8 linkages was shared with
9 American authorities."

10 So do you agree with me that at
11 this time at least you had a clear indication of
12 that?

13 HON. WAYNE EASTER: Yes.

14 MR. FOTHERGILL: It was suggested
15 to you by both Mr. Cavalluzzo and Mr. Waldman that
16 this was the first indication you had about
17 information-sharing in the context of Mr. Arar's
18 case.

19 I would like to refer you now to
20 the House of Commons briefing note, the very first
21 briefing you received, at tab 8.

22 HON. WAYNE EASTER: Yes.

23 MR. FOTHERGILL: And you will see
24 that there is a date of October 25th of 2002?

25 HON. WAYNE EASTER: Yes.

1 MR. FOTHERGILL: It was in
2 response to the anticipated question:

3 "What role did the RCMP play
4 in having Mr. Arar arrested
5 and deported?"

6 Do you see that under "Anticipated
7 Question?"

8 HON. WAYNE EASTER: Yes.

9 MR. FOTHERGILL: One of the
10 recommended replies, if you were pressed, is:

11 "...if the RCMP is approached
12 by a foreign agency to
13 provide operational police
14 assistance or information,
15 the RCMP works with its
16 counterparts in law
17 enforcement internationally
18 as is appropriate under
19 Canadian law."

20 Did you infer anything from this
21 suggested answer about what the history of the
22 Force's involvement with Mr. Arar might be?

23 HON. WAYNE EASTER: Well,
24 certainly, as I have said a number of times,
25 police agencies are going to exchange information

1 in the normal course of their duties. In fact,
2 while I was Solicitor General we did strongly
3 encourage at even more local levels, whether it
4 was New York Police or whatever, that they worked
5 closer than they had been in the past, and that
6 means exchanging information and having
7 discussions.

8 MR. FOTHERGILL: And did you infer
9 anything specifically in relation to Mr. Arar
10 concerning information-sharing?

11 HON. WAYNE EASTER: I don't -- I
12 mean, the information would be shared on Mr. Arar
13 as it would on any other.

14 MR. FOTHERGILL: If you turn the
15 page, which is a part of the background, I think
16 it was suggested to you by Mr. Waldman that you
17 didn't receive a briefing about the RCMP
18 involvement until June of 2003.

19 But can I direct your attention to
20 the last paragraph, under the title "Assessment".
21 It's the very last paragraph on the page.

22 Would you read to us, please, the
23 first line of that briefing?

24 HON. WAYNE EASTER: Under
25 "Assessment"?

1 MR. FOTHERGILL: That is right,
2 the fourth paragraph and the first line.

3 HON. WAYNE EASTER: "Since
4 September 11th, 2001..."

5 MR. FOTHERGILL: No, I am sorry.
6 The fourth paragraph, the one that begins "In this
7 particular instance".

8 HON. WAYNE EASTER: Okay.
9 "In this particular instance,
10 the RCMP had no input into
11 any decision made by US
12 authorities."

13 MR. FOTHERGILL: That is fine.
14 That is the briefing that you
15 received October 25th of 2002. Is that correct?

16 HON. WAYNE EASTER: Yes, in the QP
17 binder.

18 MR. FOTHERGILL: I wonder if you
19 could clarify for us something that Robert Fife
20 attributed to you in the so-called "rogue element"
21 article.

22 That is at page 38 -- I beg your
23 pardon, Exhibit P-38, which is a separate
24 document.

25 You will recall that just a moment

1 ago we discussed the document at tab 25 of P-117,
2 which was dated June 27th, 2003. That was the
3 briefing note where you were told about the
4 history of information-sharing.

5 Do you recall that?

6 HON. WAYNE EASTER: Yes.

7 MR. FOTHERGILL: First of all, can
8 you confirm for me that this discussion or that
9 the words that Mr. Fife attributed to you took
10 place after you had received that briefing?

11 HON. WAYNE EASTER: Yes.

12 MR. FOTHERGILL: The date of the
13 article, in fact, is July 30th of 2003.

14 Is that right?

15 HON. WAYNE EASTER: Yes.

16 MR. FOTHERGILL: Approximately a
17 month later?

18 HON. WAYNE EASTER: Yes, the date
19 here is July 30, 2003.

20 MR. FOTHERGILL: The paragraph I
21 was hoping you could clarify for us is the fourth
22 one.

23 HON. WAYNE EASTER: Yes.

24 MR. FOTHERGILL: And it's the one
25 that reads:

1 "Mr. Easter says senior
2 Mounties insist there was no
3 official decision to provide
4 the United States with
5 information that led to
6 Mr. Arar being placed on a
7 watch list used to screen
8 passengers arriving in that
9 country."

10 In light of your briefing note of
11 approximately a month earlier, are you able to say
12 whether Mr. Fife correctly attributed that remark
13 to you or not?

14 HON. WAYNE EASTER: No. I think,
15 as I tried to explain earlier, the point I was
16 making here was there was no official decision, no
17 official involvement in the decision to deport.

18 MR. FOTHERGILL: Thank you. Those
19 are my questions.

20 THE COMMISSIONER: Mr. Cavalluzzo?

21 EXAMINATION

22 MR. CAVALLUZZO: Mr. Easter, I
23 have one question for you, and it relates to a
24 response you gave Mr. Fothergill in regard to the
25 efforts that CSIS made in respect of getting

1 Mr. Arar released.

2 I want to give you the evidence
3 that we have before us today and ask you a
4 question at the end of that. Okay?

5 HON. WAYNE EASTER: Fine.

6 MR. CAVALLUZZO: We have evidence
7 from Minister Graham who stated that he phoned the
8 Syrian Foreign Minister on January 16th of 2003 to
9 tell the Syrians that Canada speaks with one voice
10 and if they are getting the wrong message, they
11 are wrong.

12 Minister Graham told us that he
13 made that call because he heard from several
14 people that numerous, at least three Syrian
15 officers or officials, told his own officials that
16 CSIS stated they didn't want Mr. Arar back.

17 Second fact: On March 21st,
18 Parliamentarians Catterall and Assadourian were
19 told by the Syrian Ambassador to Canada,
20 Mr. Arnous, that he understood CSIS didn't want
21 Mr. Arar back.

22 Third is the May 3rd memo, May
23 3rd, 2003 memo, of Gar Pardy, draft memo, which
24 specifically stated -- and let me refer to it for
25 you.

1 This is in Volume 2, tab 3. This
2 is the memorandum dated May 5, and it specifically
3 stated -- this is tab 75, tab 3.

4 HON. WAYNE EASTER: Yes.

5 MR. CAVALLUZZO: Let's look at
6 paragraph 8 in this memorandum of May 5th.

7 Paragraph 8:

8 "CSIS officials visited Syria
9 earlier this year and
10 discussed Mr. Arar with their
11 counterparts. They did not
12 meet Mr. Arar. Subsequent to
13 these discussions Syrian
14 officials informed us that
15 they were informed by CSIS
16 officials that Canada did not
17 want to have Mr. Arar
18 returned. The CSIS officials
19 denied that they had said
20 this to the Syrians."

21 Next fact: May 12 and May 8,
22 DFAIT meets with CSIS, RCMP and PCO. As a result
23 of that meeting, Mr. Pardy testified that he
24 concluded that a joint letter between yourself and
25 the Minister of Foreign Affairs was not in the

1 cards; okay?

2 And what that leads to, once
3 again, we have two further memos of June 3rd and
4 5th -- if we just look at June 5th, which is the
5 final memo at tab 5.

6 HON. WAYNE EASTER: What --

7 MR. CAVALLUZZO: Same tab, 75, tab
8 5.

9 If we look at paragraph 11, same
10 message: page 4, paragraph 11:

11 "CSIS officials visited Syria
12 earlier this year and
13 discussed Mr. Arar with their
14 counterparts. They did not
15 meet Mr. Arar..."

16 HON. WAYNE EASTER: Just hold on.

17 MR. CAVALLUZZO: I am sorry. Tab
18 5 of 75, page 4, paragraph 11.

19 HON. WAYNE EASTER: Thank you. Go
20 ahead.

21 MR. CAVALLUZZO: "CSIS officials
22 visited Syria earlier this
23 year and discussed Mr. Arar
24 with their counterparts.
25 They did not meet Mr. Arar.

1 Subsequent to these
2 discussions, Syrian officials
3 informed us that they were
4 informed by CSIS officials
5 that Canada did not want to
6 have Mr. Arar returned. The
7 CSIS officials denied that
8 they had said this to the
9 Syrians."

10 Okay?

11 Next fact: May 9th, in your
12 briefing note. May 9th. Just turn to tab 4 of
13 75. Second page. This is a briefing note from
14 CSIS to you.

15 Top of the page:

16 "Furthermore, the U.S.
17 Government may also question
18 Canada's motives and resolve,
19 given that they had deported
20 Arar to Syria because of
21 concerns about alleged
22 terrorist connections."

23 HON. WAYNE EASTER: Okay.

24 MR. CAVALLUZZO: Next fact: In
25 the process of the letter that Mr. Graham was

1 trying to send to the Syrians, if we go to tab 8
2 we see what Mr. Scott Heatherington, who is the
3 head of foreign intelligence of DFAIT, says --
4 this hasn't been contradicted -- but says:

5 "Both the Force..."

6 That is the RCMP.

7 "...and the Service agree
8 that the following would be
9 more accurate."

10 And once again it says:

11 "Mr. Arar is currently the
12 subject of a National
13 Security Investigation in
14 Canada. Although there is
15 not sufficient evidence at
16 this time to warrant Criminal
17 Code charges, he remains a
18 subject of interest. There
19 is no Canadian impediment to
20 Mr. Arar's return to Canada."

21 Finally, both your colleague in
22 the cabinet, Mr. Graham, and Mr. Pardy, a
23 respected member of DFAIT for 35 years, both
24 testified that that language that was suggested by
25 CSIS and the RCMP would have done absolutely

1 nothing for Mr. Arar but in fact would have hurt
2 him if that had gone to the Syrians.

3 Now I ask you, in conclusion: In
4 light of all of that evidence, do you still
5 believe that CSIS used their best efforts to have
6 Mr. Arar returned to Canada?

7 HON. WAYNE EASTER: Yes, I do.

8 MR. CAVALLUZZO: Thank you.

9 HON. WAYNE EASTER: I think you
10 will see in here where CSIS has denied at several
11 points that particular charge. On the --

12 MR. CAVALLUZZO: Let's just -- one
13 at a time.

14 MR. FOTHERGILL: Well, indeed one
15 at a time. That was a long question, and perhaps
16 the witness could be permitted to answer?

17 MR. CAVALLUZZO: Please.

18 HON. WAYNE EASTER: On the point.
19 So I am saying in a number of points, as you refer
20 in the documents, CSIS has denied that they had
21 indicated that to the Syrians; that the
22 information coming back, in my view, coming back
23 to DFAIT is in fact coming from the Syrians, which
24 I think would be questionable.

25 The point you raise -- and I think

1 it's a good one, and I understand why you would
2 raise it -- on the briefing note to me of May
3 12th, in which the Canadian Security Intelligence
4 Service says to me in the briefing note:

5 "Furthermore, the U.S.
6 Government may also question
7 Canada's motives and resolve,
8 given that they had deported
9 Arar to Syria because of
10 concerns about alleged
11 terrorist connections."

12 I would expect them to give me
13 that fact because that I would expect to be a true
14 statement of fact. If we were, then we could
15 maybe expect a reaction from the Americans.

16 That doesn't concern me because
17 what concerned me is the fact that the Americans,
18 in my view, deported a Canadian to Syria and they
19 should not have done so.

20 I think it's the responsibility of
21 CSIS in this briefing note to give you both the
22 positive and the negative consequences of any
23 given decision, and I think they are doing that.

24 MR. CAVALLUZZO: Now, in regard to
25 your first statement, that CSIS has denied

1 creating the confusion, giving the information to
2 the Syrians, how much trouble would it have been
3 for them, or for you to order them, to let their
4 counterparts in Syria know, i.e. the Syrian
5 Military Intelligence, that they have
6 misunderstood any message CSIS may have given to
7 them?

8 How much trouble would that have
9 been?

10 HON. WAYNE EASTER: I guess,
11 looking back on the whole situation and what we
12 now know, it could have been, maybe even should
13 have been, done.

14 But the Privy Council Office, the
15 Prime Minister's Office, it is at that level, in
16 terms of this particular discussion with the
17 Syrians, or in terms of getting Mr. Arar back,
18 where I think the information had to come from.

19 MR. CAVALLUZZO: I don't
20 understand that. We see that CSIS went to Syria
21 in November of 2002 without -- indeed, it may have
22 been without your knowledge. But the fact is that
23 they went there. They made contact with the
24 Syrians.

25 Presumably they could have picked

1 up the phone, sent a letter, a myriad of ways that
2 they could have erased that confusion, if there
3 was this confusion.

4 HON. WAYNE EASTER: I guess the
5 question that I can't answer is: Did they not?

6 I expect you probably raised that
7 question with CSIS when they were there and I
8 never heard that testimony or read it. Did they
9 not? I don't know.

10 MR. CAVALLUZZO: Well, we
11 certainly have no evidence that they did.

12 HON. WAYNE EASTER: Okay.

13 MR. CAVALLUZZO: Does that
14 surprise you?

15 HON. WAYNE EASTER: I am not -- I
16 neither am or am not surprised on that.

17 MR. CAVALLUZZO: But in
18 conclusion, does it at least raise some question
19 as to the degree of effort that CSIS expended in
20 getting Mr. Arar returned to Canada?

21 HON. WAYNE EASTER: I believe that
22 within the Department of the Solicitor General and
23 all levels of government that were involved, we
24 made the best efforts, given the circumstances, to
25 get Mr. Arar back.

1 There are always things that you
2 can improve upon, looking back, and that in fact
3 is part of the purpose of this inquiry.

4 MR. CAVALLUZZO: That is right.

5 HON. WAYNE EASTER: There are
6 always lessons to be learned, if I can put it that
7 way.

8 MR. CAVALLUZZO: Thank you,
9 Mr. Easter. I have no further questions.

10 THE COMMISSIONER: That completes
11 your evidence, Mr. Easter, and let me thank you
12 for coming and the time that you spent in
13 preparing and in coming to give your evidence.
14 It's been very helpful to me in fulfilling my
15 role. I appreciate it very much.

16 HON. WAYNE EASTER: Thank you very
17 much, Mr. Commissioner. I wish you well in
18 gaining your results. All the best. Thank you.

19 THE COMMISSIONER: Thank you very
20 much.

21 We will break for the week.

22 Are we scheduled to start Monday
23 morning at...?

24 MR. CAVALLUZZO: We are scheduled
25 to start Monday morning at ten o'clock.

1 THE COMMISSIONER: Ten o'clock?

2 MR. CAVALLUZZO: With the issue of
3 dual nationality.

4 THE COMMISSIONER: All right. We
5 will rise until then. Everybody have a good
6 weekend.

7 THE REGISTRAR: Please stand.

8 --- Whereupon the hearing adjourned at 3:59 p.m.,
9 to resume on Monday, June 6, 2005, at 10 a.m./
10 L'audience est ajournée à 15 h 59, pour
11 reprendre le lundi 6 juin 2005 à 10 h 00

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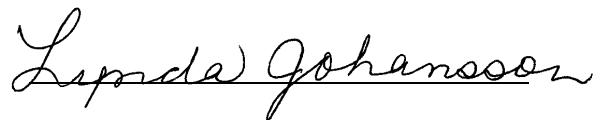
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Lynda Johansson,

C.S.R., R.P.R.

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