

**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**

Requête

Motion

Commissaire

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

Commissioner

Tenue à:

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

le jeudi 16 juin 2005

Held at:

Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario

Thursday, June 16, 2005

APPEARANCES / COMPARUTIONS

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Ms Barbara A. McIsaac, Q.C. Mr. Colin Baxter Mr. Simon Fothergill Mr. Gregory S. Tzemenakis Ms Helen J. Gray	Attorney General of Canada
Ms Lori Sterling Mr. Darrell Kloeze Ms Leslie McIntosh	Ministry of the Attorney General/ Ontario Provincial Police
Mr. Faisal Joseph	Canadian Islamic Congress
Ms Marie Henein Mr. Hussein Amery	National Council on Canada-Arab Relations
Mr. Steven Shrybman	Canadian Labour Congress/Council of Canadians and the Polaris Institute
Mr. Emelio Binavince	Minority Advocacy and Rights Council
Mr. Joe Arvay	The British Columbia Civil Liberties Association

APPEARANCES / COMPARUTIONS

Mr. Kevin Woodall	The International Commission for Jurists, The Redress Trust, The Association for the Prevention of Torture, World Organization Against Torture
Colonel M ^e Michel W. Drapeau	The Muslim Community Council of Ottawa-Gatineau
Mr. David Matas	International Campaign Against Torture
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Mr. Riad Saloojee Mr. Khalid Baksh	Canadian Council on American-Islamic Relations
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Mr. Norman Boxall	Counsel for Inspector Michael Cabana
Mr. Richard Bell	

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Thursday, June 16, 2005

3 at 8:29 a.m. / L'audience débute le jeudi

4 16 juin 2005 à 8 h 29

5 THE REGISTRAR: Please be seated.

6 Veuillez vous asseoir.

7 THE COMMISSIONER: Good morning.

8 This is the motion.

9 MR. CAVALLUZZO: Yes,

10 Commissioner. This is a motion which is being

11 brought on behalf of Mr. Cabana. It relates to a

12 request that you, as Commissioner, make NSC

13 rulings prior to the public testimony of

14 Mr. Cabana.

15 Yesterday you directed certain

16 time limits. I have spoken to counsel this

17 morning about those time limits and no doubt they

18 will be respected.

19 Mr. Boxall is here this morning.

20 He will be speaking to the motion.

21 THE COMMISSIONER: Okay.

22 Mr. Boxall...?

23 MOTION

24 MR. BOXALL: Thank you,

25 Mr. Commissioner.

1 I did speak briefly with
2 Mr. Cavalluzzo, and I don't think there will be
3 any concern about time limit.

4 THE COMMISSIONER: Okay.

5 MR. BOXALL: He has properly
6 characterized the motion as a request, and I
7 recognize that that is all it is. It is a request
8 both of you and also of the Government of Canada.

9 As you are well aware, you made a
10 prior ruling on May 12th. At the outset I can
11 indicate that I have read, as Mr. Bayne has read,
12 that judgment many, many times.

13 Clearly in the judgment you did
14 recognize many of the concerns, and you set out a
15 number of steps to try and address those concerns
16 and we recognize and appreciate the thought and
17 care that went into the judgment.

18 As you are aware, at that time our
19 concern was that the inability of Inspector Cabana
20 to testify in full would result in incomplete
21 evidence, that would be, as a result, inaccurate,
22 it could be unfair, it would be prejudicial, and
23 it could result in the public being misled.

24 As I indicated, you did release
25 your ruling on May 12th and addressed many of

1 those concerns with the procedures you set out.

2 Nevertheless, after a very
3 extensive review of the ruling, and seeking input
4 both from the government and also from
5 Mr. Cavalluzzo as to the areas he intends to
6 canvass, and from the government with respect to
7 areas that they are putting forth national
8 security claims, our opinion on behalf of
9 Inspector Cabana remains that his evidence must
10 be complete.

11 We respect your ruling. We are
12 not trying to reargue it in any way. We respect
13 the spirit of it.

14 So at this stage, in order to
15 address the concerns that we have, that the
16 evidence must be full and complete and tell the
17 complete and full truth, our opinion is that the
18 only way that can be done at this stage is to
19 eliminate, effectively, these national security
20 claims, and the only basis on which we can see
21 towards that is to request of you,
22 Mr. Commissioner, that you make a prior ruling,
23 prior to his testimony, rather than attempting to
24 do it question-by-question.

25 In your ruling you anticipated

1 that question-by-question could be difficult and
2 you are obviously alive to the issue.
3 Nevertheless, on review of the areas, as I say,
4 that are to be examined and the government is
5 putting forth national security claims, we remain
6 very concerned that it will be impossible for
7 Mr. Cabana to testify in a manner that sets out
8 the full and complete truth.

9 He would like to testify and give
10 the full story on behalf of himself and his
11 investigative team.

12 THE COMMISSIONER: Is it not the
13 case, though, Mr. Boxall, that there is some of
14 the information to which Mr. Cabana could testify
15 that is subject of NSC claims? I mean, for
16 example, if he would refer to sources or
17 information that was received in confidence from
18 other countries; are you suggesting that I rule
19 and lift that?

20 MR. BOXALL: All I can request
21 is that --

22 THE COMMISSIONER: Or that would
23 damage a national security investigation.

24 I have been listening for a year
25 now for pleas from, whether Mr. Cabana directly,

1 from the government and the police, the RCMP, that
2 there is this enormous injury to national security
3 that will result if I release all of this. I
4 listened to it in camera almost daily.

5 Is what you are suggesting now
6 that I should disregard all of that?

7 MR. BOXALL: What I am suggesting,
8 Mr. Commissioner, is that you obviously have a
9 responsibility, but my recollection -- I could be
10 corrected if I'm wrong -- neither Mr. Bayne nor
11 myself have taken any position with respect to
12 national security previously. We haven't appeared
13 on the rulings or sought input on it --

14 THE COMMISSIONER: Inspector
15 Cabana is a senior RCMP police officer.

16 MR. BOXALL: Right. But when
17 I'm speaking today, I am speaking on behalf of
18 him personally. The RCMP has their own
19 representation.

20 THE COMMISSIONER: But I just want
21 to know what your position is.

22 Is it Inspector Cabana's position
23 that at this stage we should simply disregard
24 injury to Canada's national security in order to
25 fulfil the request you are making?

1 MR. BOXALL: Inspector Cabana's
2 position is that in order for him to testify fully
3 with respect to him as a person that he needs to
4 tell everything. Obviously that makes for hard
5 decisions for other people who have that
6 responsibility, including yourself and the
7 government.

8 THE COMMISSIONER: But isn't
9 the ruling that you have referred to -- and I
10 appreciate you referred to it fairly -- isn't
11 the ruling that I have already addressed at this
12 point. I have said I recognize that Inspector
13 Cabana will not be able to testify about
14 everything and we will have to manage his public
15 testimony in such a way as to avoid the
16 unfairness.

17 Isn't that is what I have
18 already ruled?

19 MR. BOXALL: Oh, I think you have
20 already ruled that, and I hope I have acknowledged
21 the steps you have taken in that regard, because
22 we do recognize them.

23 Perhaps there will be further
24 meetings. I'm hoping to meet with Commission
25 counsel later today, and also government counsel,

1 in recognition of what you describe in your ruling
2 as a spirit of cooperation, to try to continue to
3 work towards this.

4 But it appears either the
5 areas that you envisaged in your judgment being
6 testified to, or that Mr. Cavalluzzo does,
7 which may or may not be the same, there seems to
8 be quite a conflict or a logjam between that
9 which Mr. Cavalluzzo envisages and that which
10 the government does. That is a major, major
11 problem to start addressing it on a
12 question-by-question basis.

13 It may be that if we had a prior
14 ruling that would assist us in preparation, then
15 with that ruling and reasons for it we would be in
16 a position to make a more informed decision and to
17 understand the aspects that you are indicating,
18 because there are obviously national security
19 concerns for the government.

20 THE COMMISSIONER: But you are not
21 asking me to rule that everything over which there
22 is a claim of national security be lifted?

23 MR. BOXALL: I don't think you
24 could do that.

25 THE COMMISSIONER: No, I don't

1 think I could.

2 So then we come back to the
3 situation: Okay, well, what is it that you are
4 asking that NSC be lifted on? That will depend,
5 it seems to me, in part, on the questions that
6 are asked.

7 What you seem to be saying, as I
8 listen to your reasoning, is that if an answer to
9 a particular question requires reference to
10 matters over which national security is claimed,
11 then it would be unfair to require Inspector
12 Cabana to answer the question, which ultimately,
13 if one adopts that thinking, drives one to the
14 point of saying: Well, let's hear the questions
15 and let's just have to deal with it as we go,
16 which is really the spirit of my earlier ruling.

17 MR. BOXALL: Yes, I understand it,
18 but I don't think it is restricted to reference in
19 the questions. I think it also deals with
20 context, which could be important in a number of
21 cases. In that regard, no, I am not asking you to
22 eliminate national security for all the matters
23 you have heard. You have a responsibility.

24 But, in my submission, it seems
25 there may well be a difference, and perhaps -- I

1 recognize that you are obviously in a different
2 seat than Commission counsel, but there seems to
3 be quite a difference at first blush between
4 Commission counsel and the government here, and it
5 would seem to me, at least in preparation and in
6 the interests of fairness, if we had a ruling from
7 you as to what, in your opinion, amounted to it,
8 that that may even be of assistance to the
9 government in determining whether they are seeking
10 to maintain that.

11 We see this request as a
12 possibility that it could eliminate what we see as
13 a logjam between Commission counsel and the
14 government where Inspector Cabana is the person in
15 the middle and we are attempting to prepare him to
16 testify and to be able to give full and complete
17 and accurate evidence.

18 I recognize that our request of
19 you does not solve the issue. In and of itself it
20 couldn't because of your responsibility, and the
21 government has its own responsibility and own
22 decisions to make. However --

23 THE COMMISSIONER: It is important
24 in this discussion, too, that people understand --
25 and correct me if I'm wrong -- that Inspector

1 Cabana, who testified at length in camera, was
2 given an opportunity to, first of all, answer all
3 of the questions fully and completely to his
4 satisfaction in camera.

5 MR. BOXALL: I agree.

6 THE COMMISSIONER: His counsel was
7 given an opportunity in camera to question him as
8 thoroughly as he saw fit.

9 MR. BOXALL: I agree with that.

10 THE COMMISSIONER: And his
11 counsel has been given an opportunity in camera
12 to question any other witnesses who gave any
13 evidence that in any way touched on Inspector
14 Cabana's interests.

15 MR. BOXALL: In camera.

16 THE COMMISSIONER: Yes. So that
17 in preparing my report and the conclusions that I
18 reach, if there are any with respect to Inspector
19 Cabana, I will have had the benefit of the full
20 record and the benefit of a record in which
21 Inspector Cabana has fully and completely
22 participated in developing.

23 Is that a fair statement?

24 MR. BOXALL: I agree that you will
25 have, and I appreciate that.

1 The difficulty in this case, and
2 it is been said many times throughout and it keeps
3 getting repeated, it is a unique and difficult
4 inquiry. We are in a public inquiry where so much
5 of it, either by position of any of the parties or
6 by operation of law, is not being heard in public.
7 That creates difficulties for everyone.

8 THE COMMISSIONER: But I think
9 at the end of the day it is fair to assume that
10 my conclusions -- whether or not all the details
11 that lead to them, my conclusions, at least I
12 would hope, will find the light of day and be
13 made public.

14 MR. BOXALL: There is that
15 proviso. I can't be certain as to what position
16 parties that have a say in it would take on
17 that, but --

18 THE COMMISSIONER: But it seems
19 to me what we are involved in here is simply the
20 calling of the evidence publicly, and I guess the
21 concern that somehow the public is not going to
22 be able to understand the admonition that I will
23 be giving, repeatedly if necessary, that not all
24 of the evidence that Inspector Cabana could give
25 can be given publicly and, therefore, in some

1 areas the public will have to understand, perhaps
2 be patient until the report, but some areas they
3 will not have heard information over which NSC
4 is claimed.

5 Now, I actually think that if I
6 give that instruction and make it clear that the
7 public will be able to understand that.

8 MR. BOXALL: I would certainly
9 hope so, and I recognize that your report, at the
10 end, will address all the evidence, and you fairly
11 characterized that Inspector Cabana and, through
12 his counsel, had a fair opportunity in camera.

13 However, the public
14 participation in the inquiry is an ongoing process
15 on a daily basis through what goes out in the
16 media, and your report is -- I will say months --
17 months away hopefully.

18 THE COMMISSIONER: I'm glad you
19 didn't say more.

20 --- Laughter / Rires

21 MR. BOXALL: I will say
22 months away, and at that time it may be months
23 after Inspector Cabana has testified and been
24 seen on television, through those that watch
25 this channel, and it may be difficult or late then

1 to address it.

2 I recognize that through your
3 judgment you have attempted to address our
4 concerns. I do. We are not --

5 THE COMMISSIONER: I'm not
6 attempting to quarrel with you at all, Mr. Boxall.
7 I am very sensitive to the issue of fairness and
8 the potential for unfairness that can result from
9 an unfair process, if you will, in the witness box
10 in a public inquiry. It is something that I am
11 very alive to.

12 MR. BOXALL: So simply given that,
13 I think there is a recognition of that, both in
14 your comments today and in your judgment, and we
15 do appreciate that.

16 In order to be able to assist with
17 the preparation, to maximize the disclosure, to
18 work with a spirit of cooperation, we thought --
19 you may disagree and other counsel may disagree --
20 we thought it would be of assistance in that
21 process if we could have a ruling on the National
22 Security Claims. We thought that it may open up
23 disclosure.

24 Others may disagree, but that is
25 the position that we took. We thought that that

1 may be of assistance or persuasive value also for
2 the government to address their concerns so that
3 we would be in a position to have Inspector Cabana
4 to testify in the most complete and full and
5 accurate way in public, as he did in camera.

6 THE COMMISSIONER: Thank you very
7 much, Mr. Boxall.

8 Mr. Bell, you were going to speak
9 to it?

10 SUBMISSIONS

11 MR. BELL: Mr. Commissioner, thank
12 you very much.

13 This is the first time I have been
14 able to address you since arriving, so I will give
15 a brief history of my role and give my name. It
16 is Richard Bell. I'm pleased to be here, and
17 thank you very much for the opportunity to address
18 this motion.

19 My client's circumstances are a
20 bit different than the circumstances of
21 Mr. Boxall's client. My client received a
22 section 13 notice on the 8th of April. It was
23 titled "Secret", and therefore my client's name to
24 this point in time will remain secret given that
25 his testimony was heard in camera.

1 However, that notice that was
2 given on April the 8th came several months after
3 he had testified. It came several months after he
4 appeared, without his own counsel, and the notice
5 clearly addressed issues that had been raised with
6 him and other witnesses prior to his having
7 testified.

8 THE COMMISSIONER: Right.

9 MR. BELL: That puts my client in
10 a most difficult situation in trying to get up to
11 speed, if I can use that expression, with respect
12 to all of the evidence that has been heard. My
13 security clearance arrived on May 30th, and since
14 then I have read about 1,500 to 2,000 pages of, I
15 think, about 8,000 pages of transcript.

16 Therefore, for my client to
17 participate fully and exercise his rights under
18 section 13, that is the right to have full
19 opportunity to present his case, he cannot be
20 expected to cross-examine Mr. Cabana with
21 interruptions based upon National Security
22 Confidentiality.

23 The free flow of the
24 cross-examination of Inspector Cabana is totally
25 lost, if counsel, who is trying to get up to

1 speed, has to be concerned about whether or not
2 he is, in fact, violating National Security
3 Confidentiality or if he is going to be
4 interrupted because Commission counsel, or
5 counsel for the Government of Canada, chooses to
6 make an objection.

7 We saw some evidence of that
8 yesterday when Mr. Pillarella was on the stand,
9 where there were delays and discussions with
10 respect to National Security Confidentiality.

11 I believe that I will be faced
12 with the same problems when I try to cross-examine
13 Cabana or any of the other public witnesses in
14 this forum.

15 THE COMMISSIONER: But let's
16 assume you are to cross-examine Inspector Cabana.
17 Surely your cross-examination will be limited to
18 those areas in which your client's interest is
19 engaged?

20 MR. BELL: That is correct.

21 THE COMMISSIONER: Let's make this
22 point clear to see if it is understood, that your
23 participation in this inquiry is limited to those
24 matters and those areas of the evidence which
25 engage your client's interests, as you have now

1 mentioned, set out in the section 13 notice you
2 mentioned.

3 MR. BELL: That is correct,
4 Mr. Commissioner.

5 However, I don't understand
6 the extent of my client's engagement from reading
7 that letter.

8 THE COMMISSIONER: Okay.
9 Go ahead.

10 That is a different issue,
11 it seems to me, than the one you were just
12 speaking to.

13 MR. BELL: That letter contains
14 four allegations, one of which has three or four
15 subsets, and they are all in very general terms.
16 Therefore, it is very difficult for me to suggest
17 to you that I can limit myself to those matters
18 when, quite frankly, I'm not certain as to what
19 those matters are from reading the notice.

20 So I need to prod, I need to ask
21 questions, I need to develop some themes, and that
22 is very difficult if the National Security
23 Confidentiality is not lifted, as Mr. Boxall
24 pleads, at this stage, so that we can all know --

25 THE COMMISSIONER: Well, the

1 alternative to the situation you raise -- and I'm
2 not saying it is necessarily the way to go -- is
3 for you, having got the section 13 notice when you
4 did, if you deem it necessary once you inform
5 yourself, to ask to have Inspector Cabana
6 recalled. He can be recalled if it is going to
7 deal with -- if it requires it with national
8 security information. If you have to do that,
9 then he would be recalled in camera, so that you
10 have an opportunity, as acting for someone who
11 received a section 13 notice, to fully answer the
12 allegations that are made against your client.
13 That is your recourse.

14 It would seem to me, though, if
15 the points you need to make involve listening to
16 NSC evidence, the solution isn't to lift the NSC
17 claims in public, if they are otherwise valid, it
18 is to simply give you the opportunity to respond
19 in camera.

20 You will be, I can assure you,
21 provided with procedural fairness -- your client
22 will be, whatever form that needs to take.

23 MR. BELL: I understand that
24 fully, Mr. Commissioner.

25 The problem is that the

1 opportunity to present evidence or call evidence
2 in camera does not change the headline the next
3 day after the testimony is given.

4 THE COMMISSIONER: But wouldn't
5 your interest, in terms of the headline and the
6 testimony -- first of all, your client's name is
7 not disclosed.

8 MR. BELL: To this point.

9 THE COMMISSIONER: To this point.
10 Second, what if the evidence in
11 public didn't deal with your client? Would you,
12 as your client's counsel, say, "Well, that is not
13 good enough." First of all, you are complaining
14 on one hand that it may be adverse publicity, and
15 then you get up and start cross-examining about
16 your client. That to me doesn't make sense.

17 MR. BELL: That would not be
18 happening, not in the public forum.

19 THE COMMISSIONER: No, but what
20 I'm saying is, in the public forum, to
21 cross-examine, the concern that you are raising
22 would seem to me to only arise if there was
23 evidence in the public forum which was adverse to
24 your client's interest that you considered needed
25 cross-examination in the public forum.

1 MR. BELL: Well, with respect,
2 Mr. Chairman, the allegations made against my
3 client must be responded to by my client, whether
4 it be in camera or in public.

5 THE COMMISSIONER: I understand.

6 MR. BELL: The extent to
7 which Mr. Cabana will testify to some of
8 those allegations in his direct, which I expect
9 he will --

10 THE COMMISSIONER: Right.

11 MR. BELL: -- based upon the line
12 of questioning I have seen so far I expect he
13 will, and that is from where this argument arises.

14 THE COMMISSIONER: What I suggest
15 we do, Mr. Bell, is, first of all let's see if a
16 problem develops. If it does, when it is your
17 turn to cross-examine, if your client's interest
18 has been engaged by the evidence, you ask your
19 questions. If they are questions that can't be
20 answered in public, then we will deal with it at
21 that time.

22 But you will be given an
23 opportunity, if it is warranted -- and I emphasize
24 that part of it -- in order to fairly answer any
25 allegations against your client, to participate in

1 an in-camera hearing, if necessary.

2 MR. BELL: Mr. Chairman, if I
3 might just address that in camera aspect of
4 this whole public inquiry, because you put the
5 question to Mr. Boxall, and the question was: Do
6 you suggest that we should lift all National
7 Security Confidentiality claims? That was the
8 question. Mr. Boxall suggested, no, that would
9 not be appropriate.

10 I am not so certain that would not
11 be appropriate in this case. The reason I say
12 that is the Inquiries Act provides for two sorts
13 of inquiries: Departmental inquiries and public
14 inquiries. The government has chosen to institute
15 a public inquiry. With respect, the government
16 had to know when it did that that there would be
17 matters of national security and international
18 cooperation raised.

19 In their terms of reference the
20 Governor in Council has clearly given you the
21 mandate to hold in-camera sessions. I question
22 whether the Governor in Council has the right to
23 do that, given the fairly clear language of the
24 Inquiries Act.

25 THE COMMISSIONER: Have you read

1 my ruling of April 7th on summaries?

2 MR. BELL: I did.

3 THE COMMISSIONER: Without
4 commenting on what you have just said, what I have
5 decided for practical purposes, and to deal with
6 this inquiry in an efficient way, so that this
7 inquiry actually gets completed within a course
8 of, say, two years from when it began, not five
9 years from when it began, I decided for those
10 reasons in that ruling that I would rule on
11 questions of National Security Confidentiality in
12 the context of a report -- it needs to be an
13 interim report --

14 MR. BELL: Yes.

15 THE COMMISSIONER: -- rather than
16 on the basis of summaries or on the basis of
17 questions-as-we-go, it being my assessment that if
18 I were to do the latter, that given what had
19 happened so far in this inquiry --

20 MR. BELL: Yes?

21 THE COMMISSIONER: -- that we
22 would be here litigating issues of national
23 security for years.

24 I simply think that my
25 responsibility as Commissioner is such that I

1 would like to, I think as everybody knows, have
2 had as much information as possible made public as
3 soon as possible.

4 That didn't work out. So that in
5 my judgment the effective way of dealing with the
6 issue you are now raising is to deal with that in
7 the context of an interim report.

8 I don't know what the
9 government's reaction will be when I give them
10 that report and give them my views on what should
11 be made public. Hopefully they will agree and
12 that will be the end of it.

13 If they don't, and if there are
14 disputes that arise, the position you are now
15 taking is something that would certainly be open
16 to you and it would be interesting to hear that
17 argument coming from a client such as yours.

18 MR. BELL: Thank you, sir.

19 THE COMMISSIONER: Okay. Thank
20 you, Mr. Bell.

21 Who is next? I think in the order
22 of things, Ms Edwardh, Mr. Fothergill,
23 Mr. Cameron, in that order.

24 SUBMISSIONS

25 MS EDWARDH: Thank you,

1 Mr. Commissioner.

2 It won't surprise you that while
3 as a matter of principle it is obvious that
4 Mr. Arar has fought for both a public inquiry and
5 also to ensure that as much information goes into
6 the public domain as possible.

7 I harken back to the April 7th
8 ruling that you made, and obviously do not have to
9 read it to you, but it does make a very powerful
10 observation that you have just reiterated, that
11 the conclusion to not produce summaries in order
12 to avoid lengthy, prolonged litigation with the
13 government, allows us to proceed.

14 Having struggled with the issue of
15 an isolated ruling on the CSIS summary, I ask you
16 on behalf of Mr. Arar to not let this get
17 derailed. Because, quite frankly, we believe that
18 should you involve yourself in a ruling -- and it
19 is unclear what my friend is asking for. Is it
20 just NSC with respect to Mr. Cabana or is it with
21 the whole RCMP investigation? I mean, to
22 entertain that ruling now will mean that we stop,
23 and when the Supreme Court of Canada is finished
24 in two or three years we may or may not resume.

25 So I, for one, have been quite

1 heartened by the responsibility that all counsel
2 have exercised around NSC issues. The witnesses
3 have felt free from time to time to make the
4 objection. Counsel have responded to that, with
5 your guidance, and I think we have heard a great
6 deal of information in camera without an unduly
7 interrupted proceeding.

8 So I have some confidence in all
9 of our abilities to continue going. Yes, there
10 may be questions that cannot be answered, and
11 counsel have quite appropriately responded and
12 moved on, and you have made a note of those areas.

13 So I invite you -- I guess the
14 only thing that Mr. Arar's counsel would really
15 want to end with is, if you don't make a ruling,
16 and I don't invite you to do that, is to turn to
17 the government. If there is a need for more
18 openness, then the government is behind the
19 driver's wheel. They can always say, in respect
20 of this area: The public interest in having this
21 matter disclosed certainly is overwhelming and we
22 accede to the suggestion that this information go
23 into the public domain.

24 If the government wants to do
25 that, we are more than supportive of that process,

1 but that would be the only alternative that I
2 think we would urge upon you to invite the
3 government to consider.

4 THE COMMISSIONER: Thank you,
5 Ms Edwardh. I appreciate that. That, you can
6 tell from my question, echoes certainly my
7 earlier rulings.

8 The only comment I would make on
9 your last observation is, I would want the
10 government, if it was agreeing to lift NSC claims,
11 to do so -- and I don't suggest they wouldn't --
12 in a balanced way. So that if an NSC claim is to
13 be lifted it presents the accurate picture with
14 respect to that matter and not one that would tend
15 to -- not that people have sides in this -- but
16 would tend to favour one position or another.

17 MS EDWARDH: I think that, at a
18 minimum, is appropriate, Mr. Commissioner.

19 We certainly have seen in the last
20 few weeks the importance of the release of
21 Mr. Pardy's memo of May 5th. It has added a
22 significant -- or June 5th. It has added a
23 significant dimension to what is in the public
24 domain. It is heartening to realize that the
25 government can, when it sees fit, make a decision,

1 that in the public interest certain things can
2 come forward.

3 So obviously elementary
4 fairness is an important factor, but we would
5 ask the government to kind of reconsider this
6 RCMP section and do their very best to make as
7 much of it -- or put as much of it in the public
8 domain as possible.

9 THE COMMISSIONER: Thank you very
10 much, Ms Edwardh.

11 Mr. Fothergill...? Good morning.

12 SUBMISSIONS

13 MR. FOTHERGILL: Good morning.

14 Commissioner, in light of some of
15 the comments that have been made I think it might
16 be important for me to restate some of the aspects
17 of the terms of reference and reiterate how the
18 government approaches NSC.

19 THE COMMISSIONER: Sure.

20 MR. FOTHERGILL: In my submission,
21 the tension that is being referred to today is
22 something that has always been with us in this
23 inquiry and, indeed, I would say it is built right
24 into your terms of reference, because there is an
25 explicit requirement in your terms of reference

1 that you, as Commissioner, take all steps
2 necessary to prevent the disclosure of information
3 that would be injurious to national security,
4 international relations, or that would harm an
5 ongoing criminal investigation.

6 So while there is a tendency in
7 the inquiry to refer to government claims, and
8 while reasonable people may disagree about the
9 government's assessment of what is injurious,
10 ultimately the responsibility, with the greatest
11 of respect, lies with you. We, together with
12 other participants, will provide you with
13 information and our position, but ultimately it is
14 for you to rule whether the information would in
15 fact be injurious.

16 THE COMMISSIONER: Subject, of
17 course, then to the government going to court and
18 ending in the delays to which Ms Edwardh and I
19 referred to.

20 MR. FOTHERGILL: Obviously. And I
21 don't dispute that.

22 THE COMMISSIONER: Right. So that
23 the word "ultimately" may be somewhat misplaced.

24 MR. FOTHERGILL: What I want to
25 make clear is that when we speak of National

1 Security Confidentiality -- and others have
2 alluded to this -- we are speaking about an issue
3 that transcends the individual interests at play
4 in this inquiry.

5 So that is why, although some
6 people find it ironic that a member of the RCMP
7 would be asking the government to be more open and
8 the government would resist, I would say in
9 response that it really doesn't matter who is
10 asking. It doesn't matter whether it is
11 Commission counsel, or Mr. Atkey, or counsel for
12 Mr. Arar or counsel for an individual public
13 servant who feels that he or she may be in
14 jeopardy, the answer is always the same. The
15 reason the answer is always the same is because
16 the injury to these important interests transcends
17 all partisan interests in this inquiry.

18 So there is, in fact, no irony.
19 It is consistent with the nature of National
20 Security Confidentiality. I align myself with
21 Ms Edwardh's remarks that it is a shared
22 responsibility and the best way to deal with it is
23 the way that generally we have dealt with it,
24 which means that if a witness feels reluctant to
25 answer, that is listened to carefully and counsel

1 conduct themselves accordingly, as do you.

2 So I do think it is important to
3 understand the interests that we are dealing with.

4 Now let me turn to the individual
5 request here.

6 You have already made the point
7 that Superintendent Cabana has given his complete
8 testimony in camera. I think that is an important
9 consideration. I also think that it is important,
10 from Mr. Bell's perspective, to reinforce the
11 point that he also has the option of participating
12 in the in-camera proceedings by virtue of his
13 security clearance. So to the extent that he
14 feels it necessary to engage with national
15 security information in defence of his client, he
16 can do so. There is a mechanism for doing that.

17 It is a challenge to determine
18 how we deal with the evidence in camera and
19 publicly, and you have issued, if I may say so,
20 some very deft rulings on the subject and it
21 continues to be a challenge as we move forward.

22 But I think there is a way to deal
23 with it, and the way to deal with is the one that
24 you alluded to: If it is necessary for newly
25 retained counsel to challenge evidence in secret,

1 they can do so. There is a mechanism.

2 Having said all of that, I want to
3 make it clear that if you feel it is advantageous
4 to resolve NSC issues at this stage, we are quite
5 prepared to do that, but I want to leave people
6 with no illusions about what that entails.

7 You have said in your recent
8 ruling on procedural matters that you will not
9 rule on NSC matters in a public hearing. From the
10 government's perspective, that is very important.
11 These are not rulings that can be entertained
12 lightly.

13 Because of the importance of some
14 of the issues I have referred to, before you were
15 to reach a ruling that either a claim was not
16 valid or, what I think is possibly more likely,
17 despite the claim being valid you feel that there
18 is an overriding public interest, we would want
19 the opportunity to lead evidence, likely in
20 camera, in defence of the claim that we have made,
21 and we would likely want the opportunity, again in
22 camera, to make submissions, and your counsel, in
23 particular Mr. Atkey and Mr. Cameron, might want
24 to do the same.

25 It could be a very lengthy

1 process. Not because I think anybody is being
2 particularly difficult but because it is actually
3 a difficult subject and the interests at stake are
4 very important for all Canadians, because we are
5 talking about preserving the integrity of ongoing
6 criminal investigations, which have, as their
7 purpose, the protection of the Canadian public.
8 We have an issue, the protection of relationships
9 with our intelligence allies.

10 So again, it is important to all
11 Canadians. These are not things that we
12 jeopardize in a haphazard way. It will be a
13 serious process if we engage in it.

14 You also referred to the prospect
15 of further litigation. We can't rule that out.

16 Your terms of reference allow you
17 to disagree with the government about its claims
18 of National Security Confidentiality on the
19 merits, in which case you have the power to order
20 disclosure. If, however, you agree with us that
21 disclosure will be harmful, under your terms of
22 reference the most you can do is notify the
23 government of that opinion. That opinion carries
24 weight, but you do not, in fact, have the power to
25 order disclosure of information that you believe

1 would actually be harmful.

2 An opinion, notification of your
3 views, engages the section 38 process. The
4 Attorney General must then decide whether to
5 authorize disclosure or have the matter resolved
6 in a Federal Court. Again, it is a potentially
7 complicated process.

8 So I just think in the spirit of
9 fairness I need to say that. We are prepared to
10 engage in that process at any time, but I am under
11 no illusion that it would be resolved by Wednesday
12 of next week, which is when --

13 THE COMMISSIONER: Or Wednesday in
14 the middle of September.

15 MR. FOTHERGILL: That is another
16 possibility.

17 The other thing that I think in
18 the spirit of fairness I need to be absolutely
19 candid about is, it is not for me to prejudge your
20 recommendation and it is not for me to prejudge
21 the Attorney General's response, but I anticipate
22 that the government will fight strenuously to
23 protect against the disclosure of information that
24 would harm an ongoing criminal investigation, and
25 would also fight strenuously to prevent disclosure

1 of information that would jeopardize our relations
2 with our intelligence allies, just from all we
3 have seen in this proceeding and from the way the
4 government generally approaches these views.

5 THE COMMISSIONER: Nothing I have
6 said -- I don't minimize those interests at all.
7 I think quite on the contrary, if one actually
8 reads the one ruling I have made on NSC one would
9 see that I am very alive to the need to protect
10 the national security interests.

11 So that when you start out making
12 the point that it doesn't matter who is asking me
13 to lift it, ultimately the responsibility is to
14 look at the claim and to form an opinion. I have
15 no question about that.

16 My responsibility here is a very
17 serious one, and I take it very seriously, that I
18 must protect the national security interests,
19 those that I think are proper, and I will do so on
20 the basis of evidence and of arguments, and do it
21 on the basis of the submissions that are made to
22 me. I will consider them very carefully.

23 So I don't in any way minimize
24 that responsibility.

25 I also agree with you, and I

1 appreciate the candour, Mr. Fothergill, that -- I
2 mean, it really is reiterating the point I made in
3 the April 7th ruling, that if I was to embark upon
4 ruling on national security claims at this stage,
5 even if it was just with respect to one, two, or
6 three pieces of evidence, it would involve a great
7 deal of time, if there was a dispute.

8 That is simply the nature of it.
9 That is why I am repeating now I decided to
10 collect, if there are going to be disputes, to let
11 them be resolved in the context of a report rather
12 than on a question-by-question basis or
13 summary-by-summary basis.

14 MR. FOTHERGILL: I wonder, then,
15 if we can look at some alternate ways of
16 proceeding?

17 As I said, we are pleased to
18 participate in an NSC process, if that is your
19 decision, but I think in the interests of
20 efficiency we should look at what some of the
21 alternatives are.

22 I think the most obvious
23 alternative, and one that I think has also been
24 alluded to, is a careful implementation of the
25 ruling that you made on May 12th concerning the

1 RCMP testimony. I think it is worth perhaps
2 referring in particular to a statement you made on
3 page 10 of that ruling.

4 This is where you have already
5 noted that the problem is more likely to arise in
6 cross-examination than examination-in-chief
7 because Commission counsel obviously are under the
8 same responsibilities as anybody else to prevent
9 the disclosure of injurious information.

10 You state in the first paragraph
11 on page 10:

12 "The witnesses will not be
13 able to answer some questions
14 if those questions are
15 directed towards the
16 propriety of certain actions
17 or the reasons why certain
18 decisions were taken. If the
19 answers to those questions
20 require reference to
21 information of which the
22 government claims NSC, it
23 would be unfair to require
24 witnesses to answer the
25 questions if they are unable

1 to give a complete answer or
2 in some cases the context
3 within which an action or
4 decision was taken."

5 In my submission, that is a very,
6 very important principle that you enunciate there.
7 If we carefully implement that we should be able
8 to adduce the evidence of RCMP witnesses in a way
9 that still respects their right to be treated
10 fairly in these proceedings.

11 I can tell you what we, as the
12 government, have done to try to facilitate that
13 process. I have provided yesterday to
14 Mr. Cavalluzzo a summary of what we anticipate
15 Superintendent Cabana may want to say in relation
16 to different subject areas.

17 I should explain that the subject
18 areas were identified by Mr. Cavalluzzo in terms
19 of very broad outline of what the public
20 examination of Superintendent Cabana might entail.
21 In response to that, we have summarized the things
22 that Superintendent Cabana might wish to say in
23 respect of each of the subject areas based on what
24 he said in camera.

25 This is, of course, a classified

1 document which is why it is not generally
2 available. But we then divided that expected
3 testimony into two categories: Either testimony
4 in respect of which there is no NSC claim or,
5 alternatively, subject matters in which we
6 anticipate there will be an NSC objection.

7 So that is available to
8 Mr. Cavalluzzo and any security-cleared counsel
9 who wishes to inspect it, and of course it is also
10 available to Mr. Atkey and Mr. Cameron.

11 So we want to be as upfront as
12 possible with your counsel, and with the amicus
13 and with counsel for individual police officers
14 about where we think the line will be drawn. That
15 should enable your counsel to present the evidence
16 accordingly or, alternatively, to ask us to
17 reconsider some of these claims. The invitation
18 is also open to Mr. Atkey, Mr. Cameron, any
19 other counsel.

20 We have done our best not to
21 overextend our reach in matters of National
22 Security Confidentiality, and where it is in issue
23 we are trying to be very transparent with your
24 counsel and with the amicus about where we think
25 our objections lie. So if they wish to ask us to

1 reconsider, we will do so, but of course --

2 THE COMMISSIONER: It would be
3 important as part of that that the matters over
4 which NSC are claimed do not result in an
5 inaccurate picture for those for which there is
6 not claims. Just thinking about other examples,
7 having seen what you are talking to, that there
8 not be any -- and I don't mean this in a negative
9 way -- selective claiming so that part of the
10 picture comes out but the part that is arguably
11 not favourable to someone or some institution not
12 be disclosed.

13 MR. FOTHERGILL: Well, if I may
14 say so, that is another value of the exercise that
15 we are presently engaged in. Nobody is going to
16 be surprised. And if Commission counsel believes
17 that there is selective redaction or selective
18 objection, they are certainly at liberty to
19 challenge us on it.

20 THE COMMISSIONER: But your
21 selection, as I understand what you are saying
22 in any event, is on the basis of NSC, not on
23 the basis --

24 MR. FOTHERGILL: Wholly.

25 THE COMMISSIONER: -- of other

1 parties' interests.

2 MR. FOTHERGILL: Absolutely. This
3 is purely an NSC exercise.

4 THE COMMISSIONER: I understand.

5 MR. FOTHERGILL: It actually works
6 against us frequently. I don't know if I'm at
7 liberty to say that and I don't want to cast
8 aspersions on anybody.

9 But when I say the answer is the
10 same to everybody, that includes us.

11 THE COMMISSIONER: Right, okay.

12 MR. FOTHERGILL: There are things
13 that no doubt the government would like to make
14 public and cannot because of this overriding
15 public interest.

16 But as I have said, we have
17 explained to Commission counsel our approach, we
18 have identified what we think can be said publicly
19 and what cannot, if Commission counsel or the
20 amicus feels that we are being in any way less
21 than even-handed in that approach, they can
22 certainly tell us, and I have every expectation
23 that they would in no uncertain terms, because
24 that is not our approach.

25 It is a bright line and it tends

1 to revolve around information that, in our view,
2 would jeopardize an ongoing criminal
3 investigation, and most especially -- and I think
4 this is probably where the hardest decisions are
5 made -- information we received in confidence from
6 foreign States which we do not feel at liberty to
7 disclose.

8 And that cuts both ways. It is
9 frustrating for Mr. Arar, it is frustrating for
10 individual public servants, and it is even
11 frustrating for us, but that is the nature of this
12 inquiry and that is the nature of the
13 responsibility that we have to deal with.

14 I think that is really all I
15 have to say.

16 Just to reiterate, we will
17 cooperate with an NSC process if that is what you
18 want but, equally, we are ready to assist
19 Commission counsel, the amicus and other
20 security-cleared counsel, to examine where we
21 think the NSC issues will arise and to present the
22 RCMP evidence fairly in that context.

23 If I can just end with an
24 observation about your concern about the effect of
25 objections creating an unfair picture for any

1 party -- and I think if that were to occur it
2 would be unintentional -- I think that is
3 something that all counsel, in particular
4 Commission counsel, need to look at carefully,
5 because it may be that in certain instances,
6 despite the fact that there is no NSC claim, the
7 disclosure out of context would cast unfair
8 aspersions on any individual, possibly a public
9 servant, possibly Mr. Arar.

10 The government would not be
11 opposed to a submission by Commission counsel not
12 to make that public, although I appreciate that
13 Mr. Arar's counsel is advocating for maximum
14 disclosure.

15 But I think the fairness
16 considerations to all parties, both Mr. Arar and
17 public servants, also has to be part of this
18 analysis, and I think that we can look to
19 Commission counsel to take the lead on that as we
20 prepare for Superintendent Cabana's testimony.

21 THE COMMISSIONER: Okay. Thank
22 you, Mr. Fothergill.

23 Mr. Cameron...?

24 SUBMISSIONS

25 MR. CAMERON: Thank you,

1 Mr. Commissioner. Mr. Atkey and I have relatively
2 little to add.

3 I will begin, though, by picking
4 up on the point to which Mr. Fothergill just made
5 reference, because I did review yesterday the
6 document that was prepared with the
7 can-say/can't-say division of the evidence of
8 Mr. Cabana based on his ex parte evidence, and it
9 I think is a very helpful document and can be the
10 starting point for a very useful exchange between
11 the government, Commission counsel, and the
12 amicus.

13 I will say this from my review of
14 it, that it does appear to result, I think
15 explicably by the types of National Security
16 Claims being made, that is not for ulterior
17 motives, but it does result in incomplete
18 disclosure that sometimes leaves an unfair
19 impression and we are just going to have to work
20 our way through that.

21 We also agree that some of what is
22 in what the government has classified as can't-say
23 evidence that Inspector Cabana might give based on
24 his ex parte evidence, it does raise a legitimate
25 National Security Confidentiality concern in the

1 view of Mr. Atkey and I, and we haven't concluded
2 that the public interest outweighs that
3 confidentiality concern.

4 So we believe that the process
5 suggested by Mr. Boxall would, in fact, to use
6 Ms Edwardh's word, derail the proceeding, because
7 it would lead us inevitably into a debate, an
8 invocation of section 38 of the Evidence Act, and
9 a trip to Federal Court that would encounter
10 exactly the problem you have avoided by the
11 approach you have taken on National Security
12 Confidentiality issues to date.

13 I just conclude by observing one
14 thing that is, to some extent, encouraging to the
15 amicus, which is that a person of Inspector
16 Cabana's great experience and indepth knowledge of
17 the matters in this proceeding, believes, to use
18 Mr. Boxall's words, that a National Security
19 Confidentiality review by you at this time would
20 open up disclosure, that is that he believes that
21 your addressing your mind to National Security
22 Confidentiality issues would in fact increase the
23 amount of information that would be disclosed.

24 I think coming from a person of
25 his experience that is an important indication

1 that to date perhaps too much has been put under
2 the mantle of National Security Confidentiality.

3 Finally, with respect to the
4 comment that Mr. Fothergill made about this being
5 ultimately your responsibility, I would simply, I
6 think, echo the point you made in response to
7 that, but perhaps with a little more
8 particularity, that is, at the initial stage the
9 Attorney General can waive concerns invoked by a
10 witness with respect to National Security
11 Confidentiality and allow the witness to speak to
12 the issue, and then, subsequently, if you rule on
13 a disputed point of National Security
14 Confidentiality, the government cannot challenge
15 your ruling.

16 So that in fact at the initial
17 stage they can avoid a problem, and at the
18 ultimate stage they can avoid a debate.

19 So, though you do have the obvious
20 role imposed on you by your terms of reference,
21 the government can both avoid a debate about the
22 issue in the first place and avoid litigation
23 about the issue in the second place, depending on
24 their view of National Security Confidentiality.

25 Thank you.

1 THE COMMISSIONER: Thank you,
2 Mr. Cameron. That is very helpful.

3 I understand from what you say
4 that in any discussions that ensue between now and
5 Mr. Cabana testifying, and indeed during
6 Mr. Cabana's testimony, either you or Mr. Atkey
7 will be available to assist the Commission?

8 MR. CAMERON: Yes, indeed. And I
9 will take up Mr. Fothergill's invitation to talk
10 through the document that has been created with
11 respect to the will-say and can't-say to see if we
12 can come up with a picture of the evidence that
13 avoids unfair selective disclosure.

14 THE COMMISSIONER: Thank you
15 very much.

16 Mr. Cavalluzzo, do you have
17 anything to add?

18 SUBMISSIONS

19 MR. CAVALLUZZO: Yes, I do,
20 Commissioner.

21 Just in response to some comments
22 made by Mr. Fothergill in respect of the role of
23 Commission counsel, Commission counsel is
24 obviously in a very challenging position at the
25 present time because every lawyer in this room,

1 other than Mr. Arar's counsel, will have access to
2 this will-say/won't-say statement which was
3 delivered to Commission counsel and amicus
4 yesterday afternoon.

5 Obviously Mr. Arar's counsel
6 at this present time are not security-cleared. As
7 a result of that, they do not have access.
8 Indeed, even if they did have security clearance
9 they wouldn't have access to this document in any
10 event because of investigation concerns and so on
11 and so forth.

12 So Commission counsel is very
13 sensitive to the fact that Mr. Arar's counsel
14 will be the only lawyers that will not see
15 this document.

16 Commission counsel, at the same
17 time, is also very sensitive to your May 12th
18 ruling, which gives clear direction as to how the
19 evidence should be elicited, and that is in a
20 manner which should not call the witness to be
21 called upon to give a response which may rely upon
22 in-camera information. So that we are very, very
23 sensitive to that.

24 What we have attempted to do to
25 facilitate the evidence of Mr. Cabana and the

1 other RCMP witnesses, is that we have given the
2 parties already a detailed RCMP chronology of
3 public information and events. Today we are going
4 to be sending a further RCMP chronology which
5 incorporates all the recently redacted documents
6 which the government have given to us in the last
7 couple of weeks, so that counsel, including
8 Mr. Arar's counsel, will have an extensive public
9 chronology of maybe 60 pages which basically says:
10 This is on the public record as far as the RCMP is
11 concerned.

12 At the same time, we will be
13 sending to counsel a statement of general themes
14 and areas and events that Mr. Cabana will testify
15 to, and hopefully I will be meeting Mr. Fothergill
16 shortly after this motion. Hopefully, through the
17 cooperation of all counsel, we will be able to
18 agree upon a more detailed examination-in-chief of
19 Mr. Cabana so that we can share that with
20 Mr. Arar's counsel, who will have the opportunity
21 to prepare properly for his cross-examination, and
22 I look forward to the cooperation of other counsel
23 in that regard.

24 Thank you.

25 THE COMMISSIONER: Thank you,

1 Mr. Cavalluzzo.

2 Mr. Boxall, do you have anything
3 by way of reply argument?

4 MR. BOXALL: Just a couple of
5 points, if I may.

6 THE COMMISSIONER: Yes, please.

7 REPLY

8 MR. BOXALL: Just picking up your
9 comments, Mr. Commissioner, when Ms Edwardh was
10 speaking and you were indicating that if the
11 government was to lift anything you would want it
12 to be done in a balanced way.

13 One of the concerns that we have
14 when Commission counsel talks about what is in the
15 public record is what has ended up in the public
16 record was not determined by a judicial officer
17 sitting down and attempting to put things into the
18 public record in a balanced way, so what is
19 already out in the public record is by no means
20 balanced or determined to be fair. Sometimes it
21 is by coincidence, sometimes it is by all kinds of
22 circumstances.

23 So that is one of the difficulties
24 in just saying the evidence will be just about the
25 public record. The public record may not be

1 balanced or fair to begin with.

2 THE COMMISSIONER: I didn't
3 take Mr. Cavalluzzo to say that everything in the
4 public record will go in by way of evidence. I
5 took him to be saying that the 60-page public
6 record forms the starting point, or is one of
7 the bases upon which the examination-in-chief will
8 be drawn.

9 But I take your point.

10 MR. BOXALL: Okay. Thank you.

11 Then with respect to Mr. Cameron's
12 points that he had reviewed the document, the
13 can-say/can't-say. In fact, when this motion was
14 scheduled neither Mr. Bayne nor I had seen that
15 document. So that document, I do agree, is
16 certainly helpful --

17 THE COMMISSIONER: Have you seen
18 it now?

19 MR. BOXALL: I have seen it, and
20 immediately upon seeing it we attempted to arrange
21 and we have arranged an appointment with
22 Mr. Cavalluzzo, because the document is helpful
23 for counsel to attempt to work with it.

24 I would just point out, as
25 Mr. Cameron has, that the document does appear to

1 result in incomplete disclosure and potential
2 unfairness in certain areas. So it is going to be
3 quite a challenge for counsel to sit down and try
4 and work that out, because that is exactly the
5 position we are taking, is that it does result or
6 could result in that.

7 Essentially, those are the
8 comments I wanted to make.

9 THE COMMISSIONER: Thank you,
10 Mr. Boxall.

11 RULING

12 THE COMMISSIONER: I am not
13 prepared to accede to the request to make NSC
14 rulings at this time.

15 I have set out the procedure that
16 I think this Commission should follow in my
17 rulings of April 7th and May 12th. I see no
18 reason to depart from the course that I set in
19 those rulings.

20 I do think that if I were to
21 embark upon a process by which I would rule on NSC
22 at this time that this Commission would be delayed
23 significantly in terms of when we could hear this
24 evidence and when I could get to preparing the
25 interim report.

1 So I understand the concerns
2 that underlie the request that Mr. Boxall has
3 brought forth on behalf of Inspector Cabana. As
4 I indicated in my ruling on May 12th, I will
5 attempt to be fair in ensuring that the
6 examinations of Inspector Cabana are conducted in
7 a way that brings out the evidence in an
8 even-handed and fair way.

9 Okay. Should we rise now?

10 MR. CAVALLUZZO: Yes. I
11 understand Mr. Edelson is being called and he will
12 be called at 10 o'clock.

13 THE COMMISSIONER: Okay. We will
14 rise until 10 o'clock.

15 THE REGISTRAR: Please stand.

16 --- Upon recessing at 9:28 a.m. /

17 Suspension à 9 h 28

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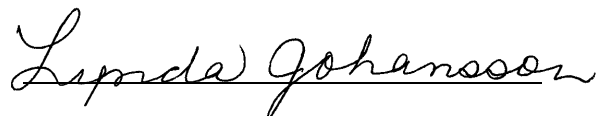
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