

**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 mercredi 27 juillet 2005

Held at:

Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario

Wednesday, July 27, 2005

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Wednesday, July 27, 2005

3 at 10:00 a.m. / L'audience reprend le mercredi

4 27 juillet 2005 à 10 h 00

5 THE REGISTRAR: Please be seated.

6 Veuillez vous asseoir.

7 THE COMMISSIONER: Good morning,

8 everyone. We will just wait a second here for the

9 cameras.

10 --- Pause

11 MR. DAVID: Good morning,

12 Mr. Commissioner.

13 THE COMMISSIONER: Good morning.

14 MR. DAVID: Good morning,

15 Mr. Loepky.

16 MR. LOEPPKY: Good morning.

17 MR. DAVID: Just in terms of a few

18 preliminary matters, in terms of the schedule for

19 this week, Mr. Commissioner, Mr. Loepky will be

20 testifying today and tomorrow, and there will be

21 two full days.

22 THE COMMISSIONER: Okay.

23 MR. DAVID: The objective is for

24 Commission counsel's examination to be complete as

25 of the end of today, allowing other parties to ask

1 questions of Mr. Loeppky tomorrow, all day
2 tomorrow. That is the desire.

3 On Friday, Mr. Cavalluzzo will be
4 examining Ms Myra Pastyr-Lupul, who is a DFAIT
5 employee. So that is the schedule for this week.

6 I wish to forewarn our clerk,
7 Mr. Brisson, that he is going to have a busy day
8 on his feet today with managing the documents,
9 because the collection of documents, when it
10 pertains to Mr. Loeppky's testimony, is quite
11 disparate and all over the place, so there will be
12 a lot of referrals to different documents.

13 I apologize ahead of that to
14 Mr. Loeppky and to Mr. Brisson.

15 If I may, I would like to
16 introduce my new sidekick, Miss Lara Tessaro, who
17 is now helping me out in this process, and I wish
18 to introduce you to her and to other parties, and
19 to welcome her on board.

20 Mr. Loeppky has already provided
21 testimony before you, Mr. Commissioner.

22 THE COMMISSIONER: I don't think
23 it is necessary to swear him again.

24 MR. DAVID: Mr. Loeppky will be
25 giving his evidence under the same oath.

1 I just wish to remind everyone
2 that Mr. Loepky has already provided detailed
3 contextual evidence in public, and we are going
4 back to last year. In fact, it is a year ago now.
5 On June 30th and on July 6th of 2004, Mr. Loepky
6 provided contextual evidence, and it is certainly
7 not our intention to go back to that evidence. I
8 just wish to highlight the fact that that evidence
9 is already on the record.

10 THE COMMISSIONER: Okay.

11 PREVIOUSLY SWORN: GARRY LOEPKY

12 MR. DAVID: Before we begin with
13 the examination, I would like to file two
14 documents at this point.

15 The first would be Mr. Loepky's
16 personal notes, a cerlox binder, if we could file
17 that.

18 THE COMMISSIONER: That will be
19 P-178.

20 MR. DAVID: Thank you.

21 EXHIBIT NO. P-178: Personal
22 Notes of Garry Loepky

23 MR. DAVID: And the second
24 document I would like to file is a revised --
25 revised in terms of redactions,

1 Mr. Commissioner -- a revised version of the Walsh
2 affidavit, or the information to obtain with
3 regard to the January searches. So this would be
4 a new version, and that would be P-179.

5 THE COMMISSIONER: Okay.

6 EXHIBIT NO. P-179: Revised
7 version of Affidavit of
8 Corporal Randal Walsh

9 THE COMMISSIONER: It is new only
10 in the sense that there are less redactions?

11 MR. DAVID: That is correct.

12 Finally, I just wish to alert that
13 there is also an issue with regard to another ITO
14 affidavit, and that is that of Mr. Quirion, and we
15 will simply defer the filing of that affidavit
16 until the break. I know government counsel wishes
17 to have a discussion with me with about the filing
18 of that document.

19 THE COMMISSIONER: All right.

20 MR. DAVID: And during the course
21 of Mr. Loepky's testimony, there will be a few
22 additional documents that will be filed, that are
23 essentially again new documents, new versions in
24 terms of the redaction process.

25 THE COMMISSIONER: Okay.

1 MR. DAVID: That being said, good
2 morning, Mr. Loepky, and welcome.

3 MR. LOEPPKY: Good morning, sir.

4 EXAMINATION

5 MR. DAVID: For the benefit of
6 all, the examination today will be essentially
7 divided into three parts, and the first two parts
8 will be dealt with quite briefly.

9 The first is the creation and the
10 mandate of the Project A-OCANADA. The second is
11 the information-sharing arrangements that existed
12 within that project. Third -- and this will be
13 taking most of the day -- is actual comment by
14 Mr. Loepky on the Arar chronology, on the Arar
15 fact pattern.

16 THE COMMISSIONER: Okay.

17 MR. DAVID: And that latter point,
18 the Arar chronology, as I termed it, is
19 sub-divided into 13 distinct areas, which I will
20 identify as we go along in the day.

21 If I may begin, the first subject
22 matter, Mr. Loepky, is the creation and the
23 mandate of Project A-OCANADA. I have divided that
24 point into three sub-points, if you will.

25 The first is the genesis of

1 Project A-OCANADA. The second is the management
2 structure of the project; and finally, the
3 characterization of the investigation.

4 If I am going too fast, please let
5 me know.

6 MR. LOEPPKY: No, it is fine.

7 MR. DAVID: I would like you to
8 first address the genesis. What brought on the
9 creation of Project OCANADA?

10 We have heard much evidence in
11 camera. You, as you know, are the only witness,
12 public witness, for the RCMP in terms of the
13 headquarters component of the organization, and it
14 is in that sense that your testimony is
15 appreciated. It would be from, I guess, the
16 perspective of RCMP management and headquarters
17 that I would be asking for your comments and your
18 insight.

19 Mr. Cabana, as you well know, has
20 already testified in public, so I just wish to
21 have your input on these different components.

22 So the first point is: Can you
23 tell us, can you speak to your recollection of
24 what it is that brought to the creation of Project
25 A-OCANADA, in what context it was created.

1 MR. LOEPPKY: Project A-OCANADA
2 was created as a result of some advisory letters
3 from the Canadian Security Intelligence Service
4 identifying a number of individuals, and
5 subsequently a component of that was in the
6 national capital area, which we commonly call "A"
7 Division, and as a result of those advisory
8 letters an investigation was started within "A"
9 Division, and that resulted in A-OCANADA.

10 MR. DAVID: It is also our
11 understanding, Mr. Loepky, that a few days or a
12 few weeks previous to the creation of Project
13 A-OCANADA, which was a particular project for, as
14 you have identified, the National Capital Region,
15 which is within "A" Division in terms of
16 organizational structure, there was also the
17 creation of a project in Toronto, and that was
18 called or termed OCanada.

19 Could you just speak to that very
20 briefly?

21 MR. LOEPPKY: Yes. Project
22 OCanada was created as a result of advisory
23 letters from CSIS, and it focused on an
24 international investigation as a result of that
25 advisory letter from the Service. It was centered

1 in the Greater Toronto Area, which in the RCMP is
2 known as "O" Division, and therefore it was called
3 Project OCanada.

4 MR. DAVID: Again, we have heard
5 testimony before this Commission as to the unique
6 structure, the organizational structure, the
7 management structure of Project A-OCANADA. We
8 understand it did not fit within the INSET mode or
9 the model, neither did it fit in within what has
10 been referred to as the joint management team
11 structure, which was, I think, the case for
12 OCANADA.

13 Could you comment on how it was
14 structured, the A-OCANADA was structured, and
15 maybe compare it to OCanada.

16 MR. LOEPPKY: That is correct.
17 The A-OCANADA team was created within "A"
18 Division, and I will briefly explain the
19 differences.

20 In Project A-OCANADA, it must be
21 borne in mind that it was immediately post-9/11.
22 Our NSIS unit was totally consumed with responding
23 to inquiries, and this particular investigation,
24 which had financial components, required that a
25 dedicated team be identified. That was done by

1 "A" Division, bringing in the requisite skillsets,
2 and it was a team that reported through the CROPS
3 officer in "A" Division and ultimately had the
4 coordination from CID.

5 There was what I would call an
6 informal joint management team, in that the
7 commanding officer of "A" Division regularly met
8 with her counterparts from the heads of other
9 police agencies in the National Capital Region.

10 Within "O" Division, the
11 investigation, while in its very, very early days
12 was with the NSIS unit, it was quickly realized
13 that there were a multitude of partners that had
14 an interest in it, given the geography in the
15 Greater Toronto Area. There was already a
16 combined forces special enforcement unit there
17 that had a joint management team providing the
18 governance for that. That was a longstanding
19 joint management team that had been in existence
20 for many years, and therefore it was decided that
21 it would roll in under that joint management team,
22 recognizing that it was still a national security
23 criminal investigation.

24 A joint management team is a
25 senior command group, usually made up of chiefs or

1 commanding officers, that really provides very
2 broad direction, certainly not operational
3 direction. It is there to resolve issues, to
4 address joint funding issues to the province or to
5 headquarters. Therefore, it is a very senior,
6 high-level team that just really gets together
7 from time to time to provide that high-level
8 support.

9 MR. DAVID: Guidance would be an
10 appropriate role for the --

11 MR. LOEPPKY: Guidance in terms of
12 resolving issues.

13 MR. DAVID: For the record to be
14 clear, would I be correct -- and please correct me
15 if I am wrong -- to say that in terms of the
16 project as it was structured in Toronto or the
17 Toronto region, OCanada, would that project be
18 reporting through the CROPS structure as was the
19 case for A-OCANADA?

20 MR. LOEPPKY: Exactly the same
21 reporting structure.

22 MR. DAVID: Okay. So it is in
23 terms of the supervisory capacity that the JNT has
24 a role?

25 MR. LOEPPKY: Supervisory in terms

1 of the very high-level issues, not supervisory in
2 terms of the actual operation. That's left to the
3 operational people within those teams.

4 MR. DAVID: Can you explain what
5 it is, what factors came into play to make that
6 difference in terms of the way it was structured
7 for the National Capital Region as opposed to the
8 structure in Toronto?

9 MR. LOEPPKY: There was already a
10 very coordinated team in place in Toronto that
11 operated within the combined forces special
12 enforcement unit, which is a coordinated team --

13 MR. DAVID: I am sorry to
14 interrupt you. But there is a Memorandum of
15 Understanding that exists with regard to the
16 combined forces special enforcement unit.

17 MR. LOEPPKY: I believe there is,
18 yes.

19 And there was already a joint
20 management team in place in Toronto to have
21 discussions if there were any very high-level
22 issues.

23 In Ottawa, there had been no
24 permanent CFSEU like there was in the GTA, but
25 this particular team was stood up, bringing in the

1 skillsets required and, as I mentioned, had an
2 informal JMT in terms of the commanding officer
3 and her police chief colleagues, Chief Bevan in
4 the National Capital Region.

5 MR. DAVID: The final point in
6 terms of the creation of Project A-OCANADA,
7 Mr. Loeppky, is the characterization of the type
8 of investigation and the correlation that may have
9 in terms of applicable policies that exist within
10 the RCMP.

11 I would like to refer you at this
12 point to Exhibit P-83, please.

13 I think it will be useful if you
14 keep this binder out because I will be referring
15 to it on occasion.

16 If you could go to tab 1, I would
17 refer you to page 3.

18 MR. LOEPPKY: Yes.

19 MR. DAVID: And the last paragraph
20 at the bottom of the page. I will read that to
21 you. This is a briefing meeting for Project
22 A-OCANADA, and it was held on December 19th, 2001,
23 and so it is sort of a report, an historical
24 report, I guess you could say, up to that point.

25 It says this:

1 "Until now, the impetus of
2 their investigation has been
3 an intelligence gathering
4 exercise, but it will now
5 shift to a criminal
6 investigation so that
7 detailed information can be
8 gathered in a matter suitable
9 for court purposes. Most
10 information gathered thus far
11 has been on an intelligence
12 level only."

13 So that brings me to ask you,
14 there seems to be a distinction being made here
15 between an intelligence-gathering exercise as
16 opposed to a standard criminal investigation.

17 Could you comment on that?

18 MR. LOEPPKY: The criminal
19 investigation is undertaken from the initial
20 stages. Obviously the writer here is articulating
21 that they were gathering some additional
22 information. But the reality is it is a criminal
23 investigation from the day that it starts.

24 MR. DAVID: Okay. Is there a
25 distinction to be made, Mr. Loepky, between a

1 criminal investigation and a national security
2 investigation?

3 MR. LOEPPKY: No. A national
4 security investigation is a criminal
5 investigation.

6 MR. DAVID: Is it your
7 understanding, from the beginning, that Project
8 A-OCANADA was a national security investigation?

9 MR. LOEPPKY: A-OCANADA, yes, was
10 a criminal investigation focusing on national
11 security.

12 MR. DAVID: And the fact that
13 A-OCANADA's investigation can be qualified a
14 national security investigation, does that bring
15 on the application of particular policies of the
16 RCMP?

17 I would refer you to Exhibit P-12,
18 which is a fairly large binder, and just by way of
19 example, I wish to refer you to tab 39.

20 There are several tabs that deal
21 with national security policies, and I just wish
22 to have your comments as to whether this policy
23 would apply to a national security investigation,
24 such as Project A-OCANADA.

25 THE COMMISSIONER: Sorry. Which

1 tab was it?

2 MR. DAVID: Tab 39 of P-12.

3 THE COMMISSIONER: Thank you.

4 MR. DAVID: Would these type of
5 policies be in application or applicable to the
6 kind of project that Project A-OCANADA was?

7 MR. LOEPPKY: Yes, they would.

8 MR. DAVID: So, basically, there
9 is nothing incompatible in terms of qualifying
10 Project A-OCANADA as both as a national security
11 investigation and a criminal investigation?

12 MR. LOEPPKY: No. You are
13 correct. But a national security investigation is
14 a criminal investigation.

15 MR. DAVID: Okay. We move on now
16 to the second point, Mr. Loepky, of your
17 testimony, and that's the information-sharing
18 arrangements.

19 There were particular
20 arrangements, or particular approaches, that were
21 brought on by the crisis of 9/11, and I would like
22 to address that context, that environment, with
23 you briefly.

24 My first question is one of a
25 general nature. If the RCMP is to deal with a

1 foreign organization's policing force, such as the
2 FBI, is there policy that exists to identify who
3 the normal contact point should be for an
4 organization such as the FBI?

5 MR. LOEPPKY: Yes.

6 MR. DAVID: And what do those
7 policies, or that policy, indicate in terms of
8 approach, in general terms?

9 MR. LOEPPKY: In general terms, it
10 indicates that the RCMP is a primary touch point
11 with the Federal Bureau of Investigation, and that
12 the Canadian Security Intelligence Service is the
13 primary touch point for the CIA.

14 MR. DAVID: Okay. You have
15 already testified, and I certainly don't want to
16 go back to the organizational structure of the
17 RCMP, but we know that there is a headquarters
18 structure. CID, you well explained, was within
19 the headquarters structure, and there is also a
20 very strong presence in terms of divisions.

21 So my question to you is: If the
22 RCMP has to have interplay, interaction with the
23 FBI, is this normally done from a headquarters
24 point of view or can it be done at the divisional
25 level?

1 MR. LOEPPKY: The protocol is that
2 it is done through headquarters to the FBI in the
3 initial instance, and then if there is an ongoing
4 investigation requiring ongoing contact on a joint
5 file, that takes place directly.

6 MR. DAVID: So in the case of a
7 project such as Project A-OCANADA, if there were
8 to be issues that had to be dealt with on a
9 cross-border basis with the FBI, it was
10 appropriate at some point for investigators to be
11 directly dealing with the FBI?

12 MR. LOEPPKY: Yes, and CID would
13 certainly be informed of that.

14 MR. DAVID: You have already
15 mentioned in terms of the CIA. Is it normal for
16 the CIA and the RCMP to be directly dealing with
17 each other on an operational matter?

18 MR. LOEPPKY: No.

19 MR. DAVID: And the key contact
20 person, or organization I should say, would be
21 CSIS in that case?

22 MR. LOEPPKY: Yes.

23 MR. DAVID: You have mentioned
24 that there are policies that exist with regard to
25 dealing with an organization such as the FBI. Are

1 there any RCMP policies that exist with regard to
2 the CIA, to dealing with the CIA?

3 MR. LOEPPKY: Yes. The policy is
4 that CSIS is a primary touch point with the CIA,
5 and if there is dealings with the CIA by the RCMP,
6 then we will ensure that CSIS is informed of those
7 dealings.

8 MR. DAVID: Okay.

9 MR. LOEPPKY: If I could just
10 explain --

11 MR. DAVID: Yes, Mr. Loepky, by
12 all means.

13 MR. LOEPPKY: I think post-9/11,
14 certainly the role of the CIA changed a little bit
15 in terms of their knowledge and their expertise in
16 terms of Sunni Islamic issues, and indeed, the
17 relationship between the FBI and the CIA changed
18 in terms of a much more integrated approach, to
19 work together. Therefore, the CIA did become more
20 involved in what we would traditionally consider a
21 law enforcement role.

22 MR. DAVID: In terms of sharing of
23 information and in terms of the implication there
24 may be for front line investigators, front line
25 investigators would be permitted, under RCMP

1 policy, to be exchanging information with the FBI?

2 MR. LOEPPKY: Yes.

3 MR. DAVID: And would that be the
4 case for the CIA?

5 MR. LOEPPKY: Yes, with the
6 appropriate conditions that I have articulated in
7 terms of notifying the Service.

8 MR. DAVID: I would like to bring
9 you now to Exhibit P-85, and it would be volume 1.
10 There are five volumes to that exhibit. I would
11 ask you to take the first volume.

12 And I bring you to tab 21,
13 Mr. Loeppky.

14 This is a briefing note to the
15 Commissioner that is dated the 29th of January,
16 2004, except it is an historical document in the
17 sense that it is reviewing what was historical
18 realities in terms of the post-9/11 environment.

19 If I could just bring you to the
20 following extract -- most of it is blacked out, as
21 you can see -- it says:

22 "Following the events of
23 9-11, a new era of openness
24 and an environment of sharing
25 was necessitated by the need

1 to prevent further terrorist
2 acts from happening. In
3 particular, the RCMP ...
4 agreed that all information
5 would be shared between
6 agencies as a matter of
7 course. Further, it was
8 agreed at Senior levels that
9 it would be the exception
10 rather than the rule to seek
11 permission prior to utilizing
12 or sharing the information
13 between the parties to the
14 agreement."

15 And then:

16 "[somebody] met periodically
17 and shared information of
18 relevance to ongoing
19 investigations."

20 There is here reference to the
21 fact that all information would be shared between
22 agencies as a matter of course. We have heard
23 much evidence before this Commission, and it deals
24 with what has been coined as a phrase now that is
25 almost famous, and that would be the free-flow

1 arrangement.

2 I ask you whether this is a
3 reference to such an arrangement, a free-flow
4 arrangement, with regard to the exchange of
5 information within defined, identified agencies?

6 MR. LOEPPKY: Yes.

7 MR. DAVID: Mr. Loepky, were you
8 involved in defining the parameters of that
9 arrangement?

10 MR. LOEPPKY: No, I was not.

11 MR. DAVID: Did you sanction this
12 arrangement?

13 MR. LOEPPKY: No.

14 MR. DAVID: And at what level was
15 this understanding conceived? At what level? Was
16 it conceived within headquarters? Was it
17 conceived within the division?

18 How did that come about?

19 MR. LOEPPKY: It was not my
20 understanding, nor was it the understanding of
21 Assistant Commissioner Proulx, who was in charge
22 of criminal intelligence and who had briefed me
23 directly in terms of this, as you coined it, free
24 flow of information.

25 Perhaps I could provide a couple

1 of comments?

2 Post-9/11, our environment changed
3 significantly. We had witnessed the most
4 significant terrorist attack in North America,
5 indeed around the world. There were broad calls
6 for cooperation internationally. There was a U.N.
7 Convention signed. Immediately post-9/11, there
8 were calls domestically and internationally by
9 political leaders, by law enforcement, by
10 business, by the community, about the importance
11 of working together, and consequently there was
12 certainly an understanding that there had to be a
13 new level of cooperation. The traditional stove
14 pipes had to come down.

15 So given the bombardment of
16 messages, it is understandable why some people
17 might have understood that that arrangement,
18 open-sharing arrangement, went further.

19 But my understanding was that we
20 share information quickly, fully, but that it
21 would be done within the parameters of the policy.

22 MR. DAVID: Okay, and we'll come
23 to the policies in a moment.

24 Before getting to the policies,
25 Mr. Loeppky, let me ask you: This arrangement

1 that is referred to in this briefing note to the
2 Commissioner, where it says "shared between
3 agencies as a matter of course", to your knowledge
4 did that arrangement include foreign agencies?

5 MR. LOEPPKY: Well, at the time --

6 MR. DAVID: Or was it only
7 domestic?

8 MR. LOEPPKY: I was talking
9 about -- and I will get to that, I am sure --
10 about sharing domestically. But obviously it is
11 important to share internationally, and we do that
12 quickly, within the appropriate guidelines.

13 MR. DAVID: Thank you.

14 Coming now to the policies, I
15 think the reference really here is to the
16 existence, or to the necessity, of including
17 caveats when you do share information, and
18 certainly you have described in your previous
19 testimony the policies that relate to caveats.

20 If you wish, I can certainly refer
21 you to them at this point. There are particular
22 policies that deal with the sharing of information
23 between CSIS and the RCMP, and sharing CSIS
24 information with others.

25 There are also special policies,

1 particular policies, I should say, in terms of
2 sharing information with foreign agencies and the
3 necessity of referring to caveats, and your policy
4 manual certainly includes the text of suggested
5 caveats, depending on with whom you are sharing
6 information.

7 I am coming to the question, and
8 that is: Again, we have heard testimony before
9 this Commission wherein people would say, and
10 people understood, that the necessity of using
11 caveats -- there was a term that was coined, and
12 that was "caveats were down".

13 Is that something that was to your
14 knowledge? Did you sanction such a rearrangement
15 of the application of policies as it dealt with
16 caveats, the use of caveats?

17 MR. LOEPPKY: No.

18 MR. DAVID: And let me ask you,
19 Mr. Loepky, had you ever heard in the time
20 that -- I know that you are recently retired, but
21 in the time that you were the Deputy Commissioner
22 of Operations, had you ever heard reference to
23 such an understanding, that caveats were down?

24 MR. LOEPPKY: No.

25 MR. DAVID: I come now to volume 5

1 of P-85, at tab 20, Mr. Loepky.

2 This is a communique that is
3 coming from you concerning the integration of
4 intelligence and law enforcement. It is tab 20,
5 as I said.

6 The first page simply refers to
7 the fact -- first of all, the date is September
8 12th, so it is the day after 9/11.

9 A communique is being issued by
10 you, by your office, and it concerns Project
11 Shock. Perhaps you could have a few comments
12 about what Project Shock was?

13 MR. LOEPKY: Project Shock was
14 created immediately after 9/11. It involved the
15 reassignment of up to 2,000 members of the RCMP to
16 respond to immediate demands, whether those were
17 additional protective security at airport, whether
18 those were VIPs, whether those were following up
19 on investigative leads. That project continued
20 for quite some time, given the volume of requests
21 that we were receiving in the couple of months.

22 Post 9/11 I think we received in
23 excess of 1500 requests from the U.S. for
24 assistance, and Project Shock was coordinated by
25 CID but spread out across Canada and responded to

1 those requests.

2 MR. DAVID: Thank you. If you
3 could go to page 2 now of the same tab, it says
4 "Note from Garry Loepky to all COs", commanding
5 officers. Those would be commanding officers of
6 the different divisions.

7 I bring you to the second and
8 third paragraphs, where it says:

9 "These are difficult times.
10 As the Commissioner said
11 yesterday, we are actively
12 working to provide the
13 fullest cooperation to all
14 public security agencies and
15 partners in the United States
16 and Canada.
17 Because of the extraordinary
18 nature of the events we are
19 all dealing with, there has
20 also been a requirement for
21 coordination with our
22 partners. This approach does
23 require a measure of
24 understanding by us all."

25 What was the purpose of this

1 communique that you are sending to your COs?

2 MR. LOEPPKY: The purpose was to
3 provide them with some advice in terms of how we
4 should be responding. We are the police force in
5 eight out of the ten provinces and three
6 territories, and there were a lot of questions
7 being posed to our commanding officers by police
8 chiefs, by provincial attorneys general, by the
9 community about: "What's next? What is your
10 response? What is the RCMP doing?"

11 So this communication had two
12 purposes. One was to say to them let's not
13 overreact. Let's make sure that we have
14 consistent messaging in the organization, that we
15 are doing what needs to be done --

16 MR. DAVID: Thus the requirement,
17 if I can just interject, about central control,
18 about messaging that you referred to in your --

19 MR. LOEPPKY: We just wanted to
20 have consistent messages, yes.

21 And the second message was that we
22 need to work very closely with our colleagues, our
23 policing partners and others, to make sure that
24 information is shared; that if there are
25 traditional stove pipes, they are put aside and

1 that we work together very closely in the
2 interests of public safety and the interests of
3 Canadians.

4 MR. DAVID: It is our
5 understanding, Mr. Loepky, and perhaps you could
6 again provide us with some insight, because
7 Mr. Proulx, although he testified in camera is not
8 testifying in public.

9 We understand that Mr. Proulx met
10 with representatives shortly after 9/11, with both
11 domestic and U.S. law enforcement and security
12 intelligence agencies. Could you brief us about
13 that meeting and its purpose and what was agreed
14 to at this meeting?

15 MR. LOEPPKY: He met with various
16 domestic and international partners, U.S.
17 partners, to provide them a level of assurance
18 that we would go out of our way to try and respond
19 to the many requests that they had.

20 It is important to note that there
21 were a lot of rumours and a lot of information
22 going around that the terrorists had either
23 transitted through Canada, that they had done
24 their planning in Canada, and had some connection
25 to Canada. Therefore, they certainly had some

1 questions and had some things that needed to be
2 followed up here, and it was just to provide them
3 a level of assurance that we were not going to sit
4 idly back and let their requests sit on the shelf.

5 MR. DAVID: And to your knowledge
6 was there any mention of the information-sharing
7 arrangements that were discussed at this meeting?

8 MR. LOEPPKY: No.

9 MR. DAVID: It is not to your
10 knowledge or it was not discussed?

11 MR. LOEPPKY: I don't believe --
12 there was nothing discussed -- from my
13 understanding, there was nothing discussed on the
14 issue of caveats or anything like that. It was
15 just, we are going to be responding to the
16 requests in a very timely way. We are going to
17 pull out all the stops to make sure that the usual
18 delays that might exist in less difficult times
19 don't exist.

20 MR. DAVID: I bring you now to the
21 next tab, and that's tab 21. It refers to a
22 teleconference wherein the Commissioner,
23 Commissioner Zaccardelli, and the chiefs of police
24 across Canada, eight identified forces, are
25 participating in a meeting on September 25th,

1 Mr. Loeppky.

2 First of all, did you attend?
3 Were you present at this teleconference, if you
4 recall?

5 MR. LOEPPKY: I don't recall if I
6 was present at this one. I was present at most of
7 them.

8 MR. DAVID: Okay. The
9 Commissioner's message to his colleagues of
10 various police forces, municipal and provincial
11 police forces, is -- and I refer you to the
12 discussion portion of the tab, where it says:

13 "It was evident from
14 discussions that all share
15 the same broad view, and that
16 is, there was to be an
17 integration of security and
18 law enforcement agencies that
19 will become essential."

20 And then it says:

21 "Sharing intelligence. We
22 need a robust vehicle for
23 effective sharing of
24 information/intelligence."

25 And it refers then to four

1 different areas where information was to be
2 shared. The first is sharing strategic analysis.
3 The second is criminal intelligence briefs. The
4 third is the daily situation reports. And
5 finally, there is to be the sharing of tactical
6 intelligence.

7 Could you briefly describe those
8 four areas that are referred to. What is sharing
9 strategic analysis?

10 MR. LOEPPKY: CID does strategic
11 analysis of trends based on a variety of sources,
12 and those had traditionally not been shared with
13 the municipal partners, and it was a commitment to
14 share those for their information.

15 MR. DAVID: And then it says
16 criminal intelligence briefs. What does that
17 refer to?

18 MR. LOEPPKY: Really, a very --
19 not identical document, but an intelligence brief
20 which just outlines, again, broad trends, what is
21 the intelligence internationally --

22 MR. DAVID: The environment.

23 MR. LOEPPKY: What is the
24 environment. Many of the domestic agencies
25 wouldn't have the capacity to do that analysis,

1 and so we committed to share those.

2 MR. DAVID: Thank you. Daily
3 situation reports?

4 MR. LOEPPKY: Really, just an
5 update as to broad threat levels. There is no
6 specifics in those daily SITREPs that would
7 divulge investigational details.

8 MR. DAVID: So there was not to be
9 any operational component to those situation
10 reports?

11 MR. LOEPPKY: No.

12 MR. DAVID: And finally, tactical
13 intelligence?

14 MR. LOEPPKY: That referred to the
15 sharing of operational intelligence through JFOs,
16 where it was appropriate, just to ensure that that
17 was taking place.

18 MR. DAVID: These are clearly
19 domestic agencies. Was this intended to be the
20 case for only domestic agencies, or could this
21 sharing also occur with U.S. partners?

22 MR. LOEPPKY: These meetings were
23 focused entirely on domestic agencies. I don't
24 think the international component was discussed at
25 them, except that the Commissioner would indicate

1 that it is important to share internationally as
2 well from an RCMP perspective.

3 MR. DAVID: To your knowledge,
4 Mr. Loepky, did CSIS react in any way to this
5 kind of messaging?

6 MR. LOEPPKY: Not that I am aware
7 of.

8 MR. DAVID: I bring you now to the
9 next tab, tab 22, and that is an e-mail now that
10 is coming from Mr. Proulx.

11 I asked you if there was any
12 reaction to the message at tab 21 on the part of
13 CSIS. Do you recall any reaction that may have
14 been expressed to you or come to your knowledge
15 from Mr. Elcock, the Director of CSIS, with regard
16 to this kind of messaging and possible
17 encroachment on the CSIS mandate?

18 Do you know if that became an
19 issue?

20 MR. LOEPPKY: There was no
21 discussions at that point.

22 MR. DAVID: I come now to tab 22.
23 That is an e-mail from Mr. Proulx, and it is being
24 cc'd to you. I believe this is going to different
25 chiefs, commanding officers, of the RCMP?

1 MR. LOEPPKY: Yes, it is.

2 MR. DAVID: And divisional
3 commanding officers also?

4 MR. LOEPPKY: To particular ones.
5 It is not going to them all. It was directed to
6 the areas where we had the bigger national
7 security investigation units on the ground.

8 MR. DAVID: In this e-mail,
9 Mr. Proulx is reiterating the fact that the chiefs
10 that were spoken to the previous day agreed to the
11 integration of security and law enforcement
12 agencies. They also agree that the sharing of
13 intelligence is a must.

14 And then Mr. Proulx says the
15 following. It is the sixth paragraph or sixth
16 bullet:

17 "The Commissioner reassure
18 them that all necessary
19 intelligence will be shared
20 and that a protocol/process
21 will be put in place within
22 the RCMP to accomplish that."

23 That is in Mr. Proulx's message.

24 So my question to you is: To your
25 knowledge, was there any written protocol put in

1 place with regard to sharing of information?

2 MR. LOEPPKY: No. If I could just
3 explain, I believe that that refers to issues
4 around -- it includes issues around technology,
5 because there was no means at that point of
6 transmitting secure information to any of the
7 municipal departments, and that was subsequently
8 something that was put in place.

9 MR. DAVID: Okay. On the next
10 page of the communique, or the e-mail, it says the
11 following, and it is a post-scriptum:

12 "PS: Since most of the
13 correspondence exchanged will
14 be classified material, they
15 should be reminded not to
16 disseminate further without
17 proper authorization from the
18 originator."

19 Which I think is a reference to
20 what is called the third party rule.

21 MR. LOEPPKY: Yes.

22 MR. DAVID: That third party rule
23 is normally included in a caveat?

24 MR. LOEPPKY: Yes.

25 MR. DAVID: Is this to say by

1 implication that there was to be no caveats on
2 this kind of information-sharing?

3 MR. LOEPPKY: No, I think this is
4 just a reminder to respect the third party rule.

5 MR. DAVID: Okay. I bring you now
6 to a video conference which you chaired, and that
7 was on October 12th. I don't have any documents
8 to show you in that regard, but on October 12th,
9 you spoke to your CROPS officers across the
10 country with regard to, again, sharing of
11 information and approach in the post-9/11
12 environment.

13 First tell us, what is a CROPS
14 officer?

15 MR. LOEPPKY: A CROPS officer is a
16 Criminal Operations Officer, a senior officer in a
17 division, which is roughly defined by geography of
18 province. A commanding officer is in charge of
19 the overall RCMP in that province, and then he has
20 key people reporting to him or her, somebody from
21 the corporate side, somebody from the human
22 resources side, and somebody who is accountable
23 for operations. And that is a Criminal Operations
24 Officer who is responsible for the criminal
25 operations in that province.

1 MR. DAVID: Could you now tell us
2 what was your messaging at this video conference?

3 MR. LOEPPKY: The purpose of the
4 video conference was that the Criminal Operations
5 Officers and I, and our program leaders in
6 headquarters, meet three times a year to talk
7 about planning and issues that come up in the area
8 of criminal operations, and approximately six
9 weeks before we meet face to face, we have a video
10 conference for issues to be identified so that the
11 appropriate research can be done so there can be a
12 good meaningful discussion at the Criminal
13 Operations Officers' face-to-face meeting six
14 weeks down the road or thereabouts.

15 I opened up this meeting with some
16 comments on the importance of working together and
17 information-sharing because of the environment we
18 were living in as a result of the 9/11 incident.

19 MR. DAVID: Was there any issue of
20 sharing information with people that don't
21 necessarily have security clearances, and that it
22 was something that was understandable in the
23 circumstances post-9/11?

24 MR. LOEPPKY: Well, I gave
25 direction to share information where it was

1 necessary and then I would expect them to do that
2 appropriately at the service delivery level. The
3 CROPS officers would do that where it was
4 appropriate and where they felt it was necessary.

5 MR. DAVID: Was there any issue of
6 sharing information at this meeting with regard to
7 American agencies, American partners?

8 MR. LOEPPKY: No, not that I
9 recall.

10 MR. DAVID: And was the issue of
11 sharing SITREPs specifically discussed,
12 operational SITREPs?

13 MR. LOEPPKY: I believe my opening
14 comments were fairly general, high level: just
15 share information so that we don't have any gaps.
16 We didn't discuss specific documents that I
17 recall.

18 MR. DAVID: And any messaging
19 about caveats --

20 MR. LOEPPKY: No.

21 MR. DAVID: -- or the non-use of
22 caveats at this meeting?

23 MR. LOEPPKY: No.

24 MR. DAVID: So it is clear in your
25 mind, Mr. Loepky, that throughout your tenure, in

1 terms of the applicable policies that may exist
2 for caveats, they were in place and they were
3 functional?

4 MR. LOEPPKY: Yes.

5 MR. DAVID: At this video
6 conference, specifically in terms of "A" Division
7 and Project A-OCANADA, do you recall if Monsieur
8 Couture and Monsieur Clément from "A" Division
9 were in attendance at this meeting?

10 MR. LOEPPKY: I don't recall
11 specifically, but I would expect, given the
12 importance of the video conference, that the
13 Criminal Operations Officers would be there. In
14 some cases they were accompanied by their
15 subordinates, one or two subordinates, but I am
16 speaking to the Criminal Operations Officers.

17 MR. DAVID: Thank you.

18 We now embark on the third area,
19 and that is the Arar chronology per se, the
20 factual chronology.

21 Before we address the specific
22 situation of Mr. Arar detained in Syria, I would
23 like to first bring you to the experience that the
24 RCMP may have had with regard to other detained
25 Canadians in Syria.

1 If we could go to Exhibit P-171,
2 please, that would be in the loose exhibits, the
3 three binders.

4 Mr. Loeppky, you have the document
5 in front of you, P-171?

6 MR. LOEPPKY: Yes.

7 MR. DAVID: This is dated early
8 January 2002, to situate you. It does not concern
9 Mr. Arar. That we can say. It does concern the
10 case of another detained Canadian in Syria.

11 It is basically the liaison
12 officer in Rome is sending along information from
13 Ambassador Pillarella concerning this detained
14 Canadian, and we see that it is info-copied to --
15 it is going to the officer in charge of Project
16 OCanada, which was the Toronto-based
17 investigation?

18 MR. LOEPPKY: Yes.

19 MR. DAVID: It is being
20 info-copied to CID, so the headquarters is somehow
21 being looped in. And it is also being info-copied
22 to the divisional CROPS officer within "O"
23 Division. It is coming from the liaison officer.

24 It says:

25 "... I received a call from

1 Ambassador PILLARELLA of our
2 embassy in Damascus, Syria.
3 He advises that [something]
4 and has received information
5 on Dec. 31st, 2001 that
6 [somebody] is being detained.
7 [Somebody] advised that we
8 would not concern ourselves
9 with this case because
10 [somebody] is Syrian."

11 Do you recall being briefed by
12 Mr. Proulx or anybody else in this time frame
13 concerning this case, this detained Canadian's
14 case?

15 MR. LOEPPKY: No.

16 MR. DAVID: I bring you to your
17 notes in regard to what I believe is this same
18 situation, if you could refer to your notes we
19 filed as Exhibit P-178.

20 I would ask you to go to page 5 of
21 your notes, Mr. Loepky.

22 This is an entry in your notes for
23 the 28th of February, 2002. I will try to read
24 them and help me if I make mistakes.

25 "Speak to Proulx."

1 And it says something --

2 "To ask our questions. I

3 advised we need have

4 questions asked. And then if

5 something or somebody has

6 access and can do that --"

7 MR. LOEPPKY: With our questions.

8 MR. DAVID: "... with our

9 questions."

10 Why don't you just continue?

11 MR. LOEPPKY: "And verification

12 it is he being interviewed,

13 it might suffice."

14 MR. DAVID: Thank you. You are

15 obviously being involved in managing the case of

16 somebody who's -- do you recall what these notes

17 refer to, what situation they refer to?

18 MR. LOEPPKY: Yes, I --

19 MR. DAVID: Was it in reference to

20 a detained Canadian in Syria?

21 MR. LOEPPKY: No.

22 MR. DAVID: Can you tell us what

23 it concerned?

24 MR. LOEPPKY: It did refer to a

25 detained individual, and this was an avenue of

1 investigative approach that Proulx was
2 considering, Assistant Commissioner Proulx, and
3 that he brought to my attention.

4 MR. DAVID: And was this person
5 detained overseas, outside of Canada?

6 MR. LOEPPKY: Yes.

7 MR. DAVID: Do you recall what
8 country this person was detained in?

9 MR. FOTHERGILL: Commissioner, if
10 I might just provide some assistance here, I think
11 if he answered that question it would clearly
12 identify the detainee.

13 What I think is probably of most
14 interest for this Commission of Inquiry is the
15 process whereby the RCMP considers whether to send
16 questions or interview detainees in countries that
17 may not share Canada's respect for human rights,
18 and I think we can certainly proceed on the basis
19 that this detainee is detained in a country where
20 there are legitimate questions about whether that
21 country respects human rights and perhaps proceed
22 on that basis.

23 MR. DAVID: That's fine.

24 So, Mr. Loepky --

25 THE COMMISSIONER: I may have

1 missed it, but don't answer the question just
2 because I am asking it if it shouldn't be. But I
3 take it this country is not Syria?

4 MR. FOTHERGILL: That's correct.

5 THE COMMISSIONER: Okay.

6 MR. DAVID: First let us try to
7 understand. You are being directly now involved
8 in a decision-making process on basically an
9 operational matter. Could you explain how is it
10 that an issue like this comes to your attention at
11 your level at this time?

12 MR. LOEPPKY: It was a discussion
13 that Assistant Commissioner Proulx would have
14 brought to my attention. I think saying that it
15 was an issue on a decision, that focused on a
16 decision, is not what it was. It was a discussion
17 about: This is an option that we are looking at,
18 and what do you think?

19 MR. DAVID: And was the concern in
20 terms of the appropriateness of the action or the
21 appropriateness of a certain way of dealing with
22 this detained Canadian?

23 MR. LOEPPKY: Yes.

24 MR. DAVID: So that now brings us
25 to the question, as Mr. Fothergill has identified,

1 and that's one of checks and balances. We will be
2 coming to those issues in some detail, but I just
3 wanted to establish on the record, Mr. Loepky,
4 with you, the fact that there were previous
5 occasions to be exposed to the kinds of
6 predicaments that Mr. Arar found himself in whilst
7 he was in Syria and the decision-making process.

8 So it is just to simply establish
9 with you at this point that there was previous
10 experience.

11 We come now to the -- we are in
12 January of 2002, and it is the first area I have
13 identified in terms of the chronology.

14 On the 22nd of January -- there is
15 much evidence that has been produced with regard
16 to the execution of a number of search warrants
17 here in Canada directly pertaining to Project
18 A-OCANADA's investigation. So I just want to put
19 that on the record and remind you of that date and
20 what occurred.

21 I think it is also fair to point
22 out that with regard to these searches that were
23 executed on this date, there was no search warrant
24 that was executed with regard to Mr. Arar.

25 Is that to your knowledge?

1 MR. LOEPPKY: That's correct.

2 MR. DAVID: With regard to the
3 fruits of those searches, there was a meeting on
4 the 31st of January, 2002.

5 If you could refer to P-85, and
6 that would be the first volume.

7 Actually, I am going to revise my
8 approach because the document is fully redacted,
9 so I don't think there is much point in referring
10 to it.

11 It was tab 22 I wanted to bring
12 you to. It concerns an inter-agency meeting that
13 occurred amongst many partners with regard to
14 managing the fruits of those searches. Basically
15 there was a two-hour meeting that occurred. Both
16 Mr. Couture and Mr. Clément were in attendance,
17 and we understand from Mr. Cabana's testimony that
18 CID was also in attendance at this meeting.

19 At this meeting, A-OCANADA,
20 Mr. Loepky, would have offered to share the
21 information that had been gathered with partner
22 agencies. And as I said, there is evidence of the
23 fact that CID was aware and present and would have
24 agreed to this sharing of information.

25 My question to you is: Were there

1 any issues with regard to the scope of the sharing
2 that was to occur? Were you aware of the fact
3 that Project A-OCANADA was proposing to proceed in
4 this manner, and were you briefed on the issue?

5 MR. LOEPPKY: No. My extent of
6 the briefing was that prior to the search, the day
7 of the search, I was advised that there were going
8 to be some searches, and the following day at an
9 early morning meeting I was advised that there
10 were a significant number of exhibits seized and
11 they were -- and that was it.

12 MR. DAVID: To your knowledge,
13 were there any issues that had to do with what we
14 can share or how far we can -- you know, the scope
15 of the sharing. Was that ever an issue that you
16 were made aware of?

17 MR. LOEPPKY: No.

18 MR. DAVID: We move on to the
19 second area, and that would be the sharing of
20 information by OCanada with U.S. agencies,
21 Mr. Loepky.

22 On April the 2nd, there is much
23 evidence, again, that has been produced that
24 concerns what has been referred to as the data
25 dump. That is just an expression that has been

1 developed.

2 This data-sharing or data dump, it
3 refers to the entire SUPertext database that had
4 been created by Project A-OCANADA.

5 We know that the entire SUPertext
6 database was shared. This included the notes, the
7 personal notes of officers, and it was included on
8 three CD-ROMs. This data that was shared, or this
9 information was shared with two American agencies.

10 We also know from the evidence
11 that there was no covering correspondence, there
12 were no conditions, there were no caveats attached
13 to the sharing of this information.

14 So were you aware personally that
15 this information was being shared with these
16 agencies in this form at this time?

17 MR. LOEPPKY: No.

18 MR. DAVID: We have also heard
19 from the testimony of Mr. Cabana, in terms of the
20 sharing of this information, that it included
21 documents from other agencies, other domestic
22 agencies, and it also included information in
23 relation to Mr. Arar, and that in his opinion
24 specific consent was not required from anybody in
25 terms of the sharing because of his understanding

1 of the free-flow arrangement that was in place.

2 And so my question to you is: Is
3 this permissible sharing of information, as it was
4 done at this time, and were there policies that
5 were in place that would have sort of controlled
6 how the process was to take place?

7 MR. LOEPPKY: The exhibits, the
8 data dump, as you referred to it as, I can't say
9 what was included in that. I assume that all the
10 exhibits that were seized during the searches were
11 part of that and indeed --

12 MR. DAVID: It may be useful to
13 put it out fully for you.

14 There was a reference to it in the
15 Garvie Report, and if you want maybe we can
16 briefly refer to certain of the conclusions that
17 Mr. Garvie had in this regard.

18 Maybe it would be useful to refer
19 to P-19, and if you could go to page 68.

20 MR. LOEPPKY: Page 68?

21 MR. DAVID: Sixty-eight. I draw
22 your attention to paragraphs 8 to 10.

23 These are the conclusions that
24 Mr. Garvie comes to.

25 It says at paragraph 8:

1 "Correspondence that
2 identified national security
3 investigative targets,
4 associations, and
5 intelligence was sent to
6 [somebody]."

7 As I said, the evidence is now on
8 the record that the American agencies were on the
9 recipient list.

10 MR. FOTHERGILL: Mr. Commissioner,
11 just a point of clarification so that people
12 aren't misled.

13 I think the evidence -- I don't
14 know whether it is on the record or not but there
15 is no objection to it being on the record -- is
16 that we shared with one agency, and whether that
17 agency subsequently shared it with other American
18 agencies I think we can acknowledge that occurred,
19 but who those agencies were would be subject of a
20 claim of NSC.

21 THE COMMISSIONER: Is it clear
22 that it was only shared with one agency, or there
23 was an intent that it was shared --

24 MR. FOTHERGILL: I think the offer
25 was broader but taken up by only one.

1 THE COMMISSIONER: Are you sure it
2 wasn't taken up by the second?

3 MR. FOTHERGILL: Well, then I
4 think we are rapidly moving into an NSC area.

5 I am rising because I don't think
6 it is just simply as a matter of fact correct to
7 say that they were shared with two agencies.

8 THE COMMISSIONER: Okay.

9 MR. DAVID: I think you will be
10 able to deal with the point with the evidence that
11 you have heard in camera.

12 I just wish to point out that in
13 terms of Mr. Cabana's public testimony -- it is at
14 page 7909, if people want to refer to it.

15 Mr. Cabana referred to the fact
16 that there were American agencies that the CDs
17 were given; that they were given to American
18 agencies without any caveats attached. That was
19 the question.

20 And the answer is:

21 "The release of the CDs --
22 again, there was a process
23 that took place prior to the
24 release of the CDs where the
25 managers, project managers,

1 had meetings with
2 representatives of these
3 agencies and reiterated the
4 fact that the sharing was
5 being done in the context of
6 the agreement that was in
7 place."

8 So it is just something I think
9 that we can deal with based on the in camera
10 evidence.

11 But be that as it may,
12 Mr. Loeppky, let's go back to what Mr. Garvie is
13 saying about this.

14 So it says:
15 "The correspondence did not
16 have the appropriate
17 caveats/conditions included,
18 in accordance with RCMP
19 policy."

20 And then he quotes the applicable
21 RCMP policy.

22 "... with respect to the
23 dissemination of national
24 security information being
25 passed to other domestic and

1 foreign law enforcement
2 agencies/departments."

3 In paragraph 9 he says:

4 "Correspondence that
5 identified national security
6 investigative targets,
7 associations, and
8 intelligence was sent to
9 [somebody] direct, and that
10 correspondence did not have
11 an appropriate supervisor's
12 signature."

13 And then the paragraph 10, it
14 says:

15 "... CD-ROMs ... containing
16 all of the Project A-0 Canada
17 [something] were burned from
18 that database. The CD's were
19 provided to both [somebody]
20 and [somebody]. A briefing
21 note to the Commissioner
22 dated 04/02/10 has revealed
23 that the CD's contained
24 [something] documents
25 including [something] that

1 were released to [somebody]
2 and [somebody] by the RCMP
3 without consent. There was
4 no covering correspondence
5 prepared and there were no
6 caveats/conditions included,
7 in accordance with RCMP
8 policy ... with respect to
9 the dissemination of national
10 security information being
11 passed to other domestic and
12 foreign law enforcement
13 agencies/departments."

14 And it says finally:

15 "Additionally, the RCMP
16 failed to respect
17 caveats/conditions."

18 So my question to you,

19 Mr. Loepky, is: The free-flow arrangement, or
20 the understanding of how information was to be
21 shared in the post-9/11 environment and the
22 environment of A-OCANADA's investigation, could
23 this transfer of information, this communication
24 of the fruits of the searches, occur as it
25 occurred without reference and use of caveats and

1 conditions?

2 MR. LOEPPKY: No. But I think it
3 is important to explain, if I understand the
4 question correctly and the reference that you
5 made, if the information was all relevant to a
6 cross-border investigation, to an international
7 investigation, and if in the minds of those
8 investigators there was an agreement that they
9 could share that information, then it could be an
10 implied understanding that they would be sharing
11 that within their own agencies simply for
12 information purposes.

13 The normal process would be that
14 we would share information that we have examined,
15 that we believe is important to share. We would
16 share that within existing policy and respect the
17 caveats that are attached to that information by
18 going back to the organization that provided the
19 information.

20 MR. DAVID: So certainly, as I
21 understand your testimony, the information, so
22 long as it meets the criteria of relevancy, can be
23 shared with a foreign agency.

24 MR. LOEPPKY: Yes.

25 MR. DAVID: So long as the

1 appropriate policies are followed and that the
2 caveats are included, and it is understood that
3 there are caveats in place in the sharing of that
4 information.

5 Is there a distinction to be made
6 between relevant information that would be shared
7 and sharing information that can be qualified
8 national security investigation with reference to
9 the need-to-know principle?

10 First, let me ask you: Is it
11 correct to state that national security
12 information to be shared must be shared on a
13 need-to-know basis, and that that concept forms
14 part of RCMP policy?

15 That's my first question to you.

16 MR. LOEPPKY: Yes.

17 MR. DAVID: And secondly my
18 question is: In addition to the relevancy
19 criteria that you have identified, would the
20 need-to-know criteria apply with regard to the
21 sharing of that information?

22 MR. LOEPPKY: I am not sure if I
23 am clear on the question, but when we talk about
24 sharing relevant information, you obviously share
25 information when you believe, or when you know,

1 that there is a cross-border interest, when there
2 is an international interest; or in some cases you
3 may not know whether it has linkages and you may
4 need to share.

5 So it is not a black-and-white
6 question about relevant, because sometimes you
7 don't know what is relevant depending upon what is
8 taking place in another part of the investigation.

9 MR. DAVID: Okay. I bring you to
10 the policy binder, and if we could refer to tab 26
11 of P-12, and if we could go to N.2?

12 MR. LOEPPKY: M.2?

13 MR. DAVID: "N" as in "Norman".

14 It says the following:

15 "When sensitive information

16 CLASSIFIED --"

17 I am sorry, at tab 26. And that's
18 "N" like in "Norman".

19 MR. LOEPPKY: I appear to be
20 missing tab N in mine.

21 MR. DAVID: All right. It is not
22 a tab, I am sorry. It is a paragraph, paragraph N
23 within tab 26.

24 MR. LOEPPKY: Here we go. Okay.

25 MR. DAVID: This part of the

1 administrative manual of the RCMP?

2 MR. LOEPPKY: Yes, it is.

3 MR. DAVID: Can you tell us if N.2
4 would be applicable to the sharing of the CD
5 information?

6 MR. LOEPPKY: N.2 refers to the
7 storage of information that is shared to make sure
8 they have the appropriate security containers, the
9 appropriate facilities, that it meets government
10 standards.

11 MR. DAVID: Okay. Paragraph N is
12 entitled "Release of classified/designated
13 information" in terms of its identified subject
14 matter?

15 MR. LOEPPKY: Yes. But I think
16 when you go to the end of the paragraph, it
17 concludes by saying:

18 "... that appropriate
19 safeguards are established
20 for the safekeeping of the
21 information --"

22 MR. DAVID: If we go to the
23 appendix, Mr. Loepky, and that would be
24 appendix Roman numeral XI, and then it would be
25 one five.

1 MR. LOEPPKY: Yes.

2 MR. DAVID: In terms of the
3 applicable caveats that would have to be imposed,
4 would paragraph B be the appropriate caveat when
5 sharing information, classified information?

6 MR. LOEPPKY: Yes.

7 MR. DAVID: So what I understand
8 is that before information that was contained on
9 the CDs, normally caveats should have been
10 included that would have stated:

11 "This document is the
12 property of the RCMP. It is
13 loaned to your
14 agency/department in
15 confidence and is not to be
16 reclassified or further
17 disseminated without the
18 consent of the originator."

19 MR. LOEPPKY: Yes.

20 MR. DAVID: And secondly that:

21 "This document is the
22 property of the Government of
23 Canada. It is provided on
24 condition that it is for use
25 solely by the intelligence

1 community of the receiving
2 government and that it not be
3 declassified without the
4 express permission of the
5 Government of Canada."

6 MR. LOEPPKY: Yes.

7 MR. DAVID: What is the
8 consequence of not including such a caveat in
9 terms of the receiving foreign agency? Could they
10 use, for instance, that information in a criminal
11 proceeding within their country without
12 restriction?

13 MR. LOEPPKY: They could, but I
14 think it is important that when you exchange
15 information in the law enforcement environment,
16 there is an implied understanding, whether written
17 or not, that a caveat does apply; that you don't
18 use that information outside of the purpose for
19 which you obtained it since that will lead to a
20 breakdown in trust between agencies and a
21 reluctance to share information.

22 MR. DAVID: We come now to May of
23 2002, Mr. Loepky, and we know that Project
24 A-OCANADA members travelled to Washington and
25 provided a PowerPoint presentation to U.S.

1 partners.

2 Were you personally aware of this
3 trip at this time?

4 MR. LOEPPKY: No.

5 MR. DAVID: And my question is:
6 Would this kind of trip require the approval of
7 the CID or headquarters?

8 MR. LOEPPKY: It would certainly
9 involve the coordination and advice to CID and
10 discussions with them.

11 MR. DAVID: We go now to the
12 sharing of information between A-OCANADA and
13 headquarters, Mr. Loepky.

14 Where I would like to begin is to
15 go to P-85, volume 5, and tab 24.

16 MR. LOEPPKY: Four?

17 MR. DAVID: Tab 24.

18 MR. LOEPPKY: Twenty-four, I am
19 sorry.

20 MR. DAVID: This is a memorandum
21 that is from you to Mr. Hovey. It is dated May
22 18th. And I will refer you to the first
23 paragraph.

24 It says:

25 "This is further to our

1 telephone discussion and
2 subsequent meeting of
3 02-05-02 which related to
4 investigators ... In your
5 comments at that time, you
6 pointed out that CID had been
7 less than forthcoming about
8 providing information which
9 related to this file --"
10 Which was A-OCANADA.
11 "... and were not providing
12 the assistance required to
13 advance the file. At that
14 point, there was some urgency
15 to address the [something]
16 issue, given that [something]
17 and I did not take the
18 opportunity to explore the
19 concern that you raised,
20 although you will recall my
21 animated response that it was
22 not acceptable that there
23 were gaps in communication
24 between the Division and the
25 Policy Center."

StenoTran

1 That brings me to ask you about
2 May 2nd, and my question to you, and I don't have
3 a specific document to bring you to: I understand
4 that there was a meeting between yourself and
5 Mr. Hovey, and could you tell us what that meeting
6 was about?

7 MR. LOEPPKY: A meeting subsequent
8 to this --

9 MR. DAVID: No, the May 2nd
10 meeting. In other words, your memo is addressing
11 May 2nd, and I would like you to explain to us May
12 2nd, what context that occurred in.

13 MR. LOEPPKY: It was a short
14 meeting between myself and Assistant Commissioner
15 Hovey who was in the headquarters building, and he
16 expressed some concerns about the slowness of a
17 CID response to a request for international travel
18 and that they were not -- they were not being
19 provided the support that they required or they
20 expected.

21 MR. DAVID: So you followed up on
22 this meeting with this memorandum to Mr. Hovey?

23 MR. LOEPPKY: That is correct.

24 MR. DAVID: The second paragraph
25 of your memorandum says the following:

1 "As you are aware, I expect
2 that CID will have a
3 comprehensive overview of the
4 current status and progress
5 in national security files.
6 This is the Directorate that
7 I, and ultimately the
8 Commissioner, look to when
9 determining the overall
10 intelligence profile on
11 national security threats and
12 updates with respect to
13 ongoing files. They are the
14 primary contact point with
15 international law enforcement
16 and intelligence
17 organizations as it relates
18 to national security and are
19 clearly responsible for
20 corporate liaison with the
21 Canadian Security
22 Intelligence Service."

23 There is somewhat of a lecture in
24 that paragraph, Mr. Loepky. I don't want to
25 attribute you a quality in tone and language, but

1 there seems to be here definite clear messaging
2 that you want to make sure that it is coming
3 across at the "A" Division level.

4 First of all, do you agree that
5 that's what you are doing? You are giving a clear
6 message here?

7 MR. LOEPPKY: Yes. This is
8 stronger wording than I would normally use.

9 MR. DAVID: Okay. And what
10 brought you to use this tone and to use this
11 method to discuss what was obviously an issue
12 between "A" Division and headquarters at this
13 time?

14 MR. LOEPPKY: I was aware from a
15 comment from Assistant Commissioner Proulx that he
16 was moving toward much more central coordination
17 and was meeting with divisions, and following the
18 face-to-face meeting with Assistant Commissioner
19 Hovey, I asked Assistant Commissioner Proulx what
20 the issues were with respect to a lack of
21 headquarters engagement. He assured me that from
22 his perspective their responses and level of
23 service were appropriate and adequate.

24 Consequently, I wanted to ensure
25 that if there was an issue that required my

1 involvement -- because I expect that two senior
2 Assistant Commissioners in the organization will
3 resolve issues in terms of these matters. I
4 wanted to put it squarely on the table that we
5 wanted to resolve this, and if it took my
6 involvement, then that's what it would take, and I
7 wanted to have the issues clearly outlined so that
8 we could then form the basis of a good discussion.

9 MR. DAVID: Okay. The basis of
10 that good discussion, as we saw, was May 2nd, and
11 that's where Mr. Hovey was complaining to you
12 about what he was perceiving as maybe misalignment
13 between headquarters and the needs of Project
14 A-OCANADA or the needs of "A" Division.

15 Were you aware that on the 26th of
16 February there was also a meeting between the
17 project and CID with regard to information-sharing
18 and exchange of information between headquarters
19 and "A" Division wherein CID was the complainant?

20 MR. LOEPPKY: I wasn't aware of
21 that particular meeting, but I was aware that
22 Mr. Proulx was working on more central
23 coordination of the national security program, and
24 the issues were not unique to "A" Division. I
25 mean, it was a bit of a sea change in how we were

1 trying to manage that program.

2 MR. DAVID: Was there a response
3 given to your -- at the end of your memo, you say
4 the following to Mr. Hovey:

5 "... I would ask that you
6 identify the precise concerns
7 that you have since I want to
8 ensure that Headquarters is
9 providing an excellent level
10 of service to Divisions."

11 My question is: To your
12 knowledge, was there any follow-up to this
13 invitation that you extended?

14 MR. LOEPPKY: No, there was not.

15 MR. DAVID: Simply for the record
16 two things, Mr. Commissioner, in this regard.

17 First of all, there is a less
18 redacted version of this memorandum as it appears
19 in Mr. Loepky's notes, which was filed as P-178,
20 and it is the very last page. That's page 144.

21 Second, in terms of, if we can
22 say, a continuation of the process on the
23 memorandum, there is an internal "A" Division memo
24 that is to be found at tab 24, this tab.

25 It is drafted in French and it is

1 between the CROPS officer, Mr. Couture, and
2 Inspector Belanger. Basically there is expression
3 of the idea that we best just leave the situation
4 as it is.

5 So there is internal, if I can
6 say, response to the invitation that Mr. Loepky
7 extended.

8 MR. LOEPPKY: My assumption was
9 that, given that I didn't receive a response with
10 specific issues, that it would have been resolved
11 at the senior levels between the Assistant
12 Commissioner of CID and Assistant Commissioner
13 Hovey.

14 MR. DAVID: You refer to who
15 should be the principal interlocutor with foreign
16 agencies. Was that something of an ongoing
17 concern between the relationship of headquarters
18 and "A" Division for the management of Project
19 A-OCANADA?

20 MR. LOEPPKY: I don't believe so.
21 I think most people -- I think everyone understood
22 the role that CID and ultimately headquarters had
23 to play.

24 MR. DAVID: Finally on the subject
25 of between headquarters and "A" Division, if I

1 could refer you to your notes, your personal
2 notes, at page 10, there is an entry for May 14th,
3 2002, and it says:

4 "Meeting with Dale Neufeld,
5 'A-OCANADA.'" "

6 MR. LOEPPKY: Yes.

7 MR. DAVID: Do you recall being in
8 contact with Dale Neufeld about what is in
9 brackets or in quotations, A-OCANADA?

10 MR. LOEPPKY: I don't recall the
11 specifics of the discussion. I believe that it
12 would have been one of the issues that I would
13 have wanted to raise when I met with Mr. Neufeld
14 on a biweekly basis for breakfast, just in terms
15 of general progress, cooperation, issues.

16 MR. DAVID: Do you know if the
17 case at this time, of Mr. Arar, was discussed in
18 any way?

19 MR. LOEPPKY: No, not that I
20 recall.

21 MR. DAVID: We move on now to the
22 third area, Mr. Loepky, and that is, again it is
23 not at this point specific to Mr. Arar, but it has
24 to do with the relationship between the RCMP and
25 DFAIT and specifically the ISI component of DFAIT

1 in terms of discussing access to detained
2 Canadians and the issue of respect of human
3 rights.

4 We know that in the summer of
5 2002, there were many discussions that occurred
6 between A-OCANADA and DFAIT relating to a Canadian
7 that was first detained in Syria and then was
8 detained in Egypt, and we know that from the
9 perspective of this Canadian that there were
10 allegations in August of 2002 that he had been
11 subject to torture whilst he was detained in
12 Syria.

13 We have had evidence that at
14 certain of these meetings there was the
15 participation of members of headquarters, or maybe
16 I could say CID, in discussing courses of action
17 and appropriate measures.

18 My question to you, first of all,
19 is: Were you ever briefed on any of these
20 meetings concerning the conditions or the
21 situation of detained Canadians, other than
22 Mr. Arar, during this time period?

23 MR. LOEPPKY: Just the one that we
24 have alluded to earlier, as I recall.

25 MR. DAVID: And my second question

1 in regard to this area is: Does, as a matter of
2 course in the way it does business, the RCMP
3 receive or incorporate annual reports about the
4 conditions of certain countries, such as Syria,
5 that address concerns with regard to human rights
6 records or human rights violations in these
7 countries?

8 MR. LOEPPKY: I don't believe we
9 receive reports. I think we receive, you know --
10 may receive advisories from Foreign Affairs,
11 perhaps from the security intelligence service at
12 the policy level. I believe that happens.

13 MR. DAVID: The fourth area,
14 Mr. Loepky, is headquarters' knowledge of
15 Mr. Arar's detention and deportation. So we are
16 coming now to the period of time when he's
17 arriving in New York, so we are on September 26th.

18 Simply for the record, we can
19 refer to two exhibits in this regard: P-124 and
20 P-125.

21 We know that Mr. Arar was on a
22 U.S. lookout system prior to his arrival, to his
23 landing in New York, and that it is been described
24 by the Americans in these two letters to, in one
25 case, Mr. Markey.

1 Maybe I can refer you to them,
2 P-124 and P-125.

3 In terms of P-124, this is a
4 letter from Paul Kelly, Assistant Secretary of
5 Legislative Affairs of the Department of State in
6 the United States, and it says:

7 "While Mr. Arar's name was
8 placed on a terrorist lookout
9 list based on information
10 received from Canada, the
11 decision to remove Mr. Arar
12 from the United States was
13 made by U.S. government
14 officials based on our own
15 assessment of the security
16 threat to the United States
17 posed by Mr. Arar. We
18 believed then and still
19 believe now that Mr. Arar's
20 removal was in the best
21 interests of the United
22 States."

23 The next tab, tab 125, which is
24 dated September 10th, 2004, is again from the
25 Department of State, William Taft, IV, and he is

1 quoted as saying:

2 "Mr. Arar's name was placed
3 on a United States terrorist
4 lookout list based on
5 information received as part
6 of an ongoing sharing of
7 information between the
8 Government of the United
9 States and Canada. The RCMP
10 was advised of Mr. Arar's
11 detention through law
12 enforcement channels --"

13 So the point being made in these
14 two documents, and I believe the way the record
15 shows, is that Mr. Arar is on a U.S. lookout list,
16 and he is there because of Canadian information.

17 In this time period, September of
18 2002, do you have knowledge as to what Mr. Arar's
19 status was at that time?

20 MR. LOEPPKY: No.

21 MR. DAVID: And when did you gain
22 knowledge of Mr. Arar? When did he come on to the
23 radar screen as far as you are concerned?

24 MR. LOEPPKY: The case was first
25 mentioned to me upon my return from a meeting, the

1 annual Conference of the International Association
2 of Chiefs of Police in Minneapolis, Minnesota, and
3 I believe it was a briefing, a very brief
4 briefing, from all of my business line leaders, my
5 program managers, I believe it was on October
6 10th, that there was a Canadian had been detained
7 in New York and deported to Syria.

8 MR. DAVID: So the first issue
9 that we just looked at was the fact that Mr. Arar
10 was on a lookout list.

11 The second issue deals with the
12 fact that before Mr. Arar lands in New York City,
13 the United States is making a request to the RCMP
14 to send a list of questions that they could use
15 in -- well, we could say meeting Mr. Arar. I
16 guess they were examining Mr. Arar, or
17 interrogating Mr. Arar. It can be qualified in
18 many ways.

19 But they are basically asking, the
20 United States agency is asking the RCMP to
21 collaborate in an investigation on Mr. Arar by way
22 of sending questions to them.

23 We see that on the same date,
24 September 26, 2002, and it is 2 p.m. in the
25 afternoon, the RCMP responds to this request and

1 sends forth a series of questions to their U.S.
2 counterparts.

3 And at P-84, page 26, we have the
4 source document in terms of the actual fax that
5 was sent. So if you want to refer to that
6 document, it is P-84, page 26.

7 We see that the fax is going
8 through the NOC, that's the National Operations
9 Centre, of the RCMP?

10 MR. LOEPPKY: Yes.

11 MR. DAVID: So it is going from
12 NOC to the U.S. Embassy, and again it is being
13 info- copied to the international liaison,
14 headquarters, so that's within the headquarters
15 structure?

16 MR. LOEPPKY: Yes.

17 MR. DAVID: And it is indicating
18 that it is coming from the officer in charge of
19 Project A-OCANADA in Ottawa?

20 MR. LOEPPKY: It is being copied
21 to both the international liaison program for the
22 benefit of the LO and to CID.

23 MR. DAVID: Okay. So we see that
24 CID is being looped into the process for
25 informational purposes?

1 MR. LOEPPKY: Yes.

2 MR. DAVID: My question to you is:
3 Before such a measure is taken, that is, before
4 the RCMP would be sending questions to an agency,
5 a law enforcement agency in the United States,
6 would CID, or should CID, be consulted?

7 Should CID be part of the process
8 in terms of evaluating the appropriateness of such
9 a measure?

10 MR. LOEPPKY: As I mentioned
11 earlier, in the initial instance, the flow was
12 always through CID to establish the initial
13 contact in investigation. But as it progresses,
14 and as an investigation is found to have
15 international linkages on an ongoing basis, then I
16 would expect that the investigators would deal
17 directly with their investigative counterparts and
18 keep CID involved.

19 MR. DAVID: Simply involved in
20 terms of info-copying?

21 MR. LOEPPKY: Yes.

22 MR. DAVID: And nothing more?

23 MR. LOEPPKY: On an ongoing file.

24 MR. DAVID: I understand that
25 before the RCMP in September of 2002 sends these

1 questions to its sister agency in the United
2 States, there had been a context, there had been
3 an investigation carried out. There had been
4 sharing of information. We saw the April 2002
5 data dump, for lack of maybe a better way of
6 describing it.

7 So there had been relations
8 between the RCMP and the United States previous to
9 this sending of questions, but now we seem to be
10 embarking in a specific operational avenue. We
11 are now going to be actually interrogating the
12 individual.

13 And my question is: Before such a
14 measure were to take place, an operational
15 measure, a measure of sending questions that will
16 have an operational impact in the United States,
17 should DFAIT be looped in, consulted, and involved
18 in terms of the process?

19 MR. LOEPPKY: No.

20 MR. DAVID: And why is that,
21 Mr. Loepky?

22 MR. LOEPPKY: At this point it is
23 a joint investigation, and the questions -- I
24 mean, CID would review, would be engaged, but the
25 purpose is to further the criminal investigation,

1 if that is possible.

2 At this point we are sharing
3 information with the United States. We share with
4 them very closely on a multitude of files on a
5 daily basis. They are not known as a country that
6 disrespects people's rights.

7 To notify Foreign Affairs at this
8 stage, there was no indication that he was not
9 going to be getting consular access. That was not
10 brought to our attention.

11 In fact, at this point notifying
12 Foreign Affairs could in fact be counterproductive
13 from an investigative perspective if in fact they
14 approached the individual and said, "We are here
15 to help." In some cases individuals don't want
16 the home country to be notified that they are in
17 fact having difficulties abroad. So there is a
18 host of reasons.

19 We leave that to Foreign Affairs
20 to carry out their consular mandate.

21 MR. DAVID: But you understand
22 what I am asking is: When do you enlist the
23 assistance of Foreign Affairs? Foreign Affairs
24 certainly plays a role in the international
25 dealings of the RCMP.

1 MR. LOEPPKY: Absolutely.

2 MR. DAVID: And so they are
3 consulted. It is a regular process. There is an
4 MOU that exists between the RCMP and DFAIT, and
5 many of the ministerial directives will in fact
6 require you to consult the Department of Foreign
7 Affairs before embarking on certain international
8 steps.

9 MR. LOEPPKY: Absolutely.

10 MR. DAVID: So we are definitely
11 here in the international forum. I mean, we are
12 sending questions to the American agency. And you
13 are saying that it is not necessary in this
14 situation to consult DFAIT.

15 Do I understand you to be saying
16 that it is because it is the United States? If it
17 was Syria, for instance, before the RCMP, Project
18 A-OCANADA could have sent questions to Syria,
19 would DFAIT have had to have been consulted, in
20 your opinion?

21 MR. LOEPPKY: In other countries,
22 obviously, we would have a lot more discussion and
23 liaison with Foreign Affairs in terms of countries
24 that don't share the same human rights records as
25 we do.

1 But in the United States, we would
2 not, as a matter of policy, consult Foreign
3 Affairs when we knew that there was a Canadian
4 detained in the United States. There was no
5 indication to us that anything was amiss, and this
6 was simply a step that we would take to further
7 the investigation that was a cross-border
8 international investigation.

9 MR. DAVID: This was at a time,
10 Mr. Loepky, I would suggest to you before the
11 RCMP, before you knew, before it was of general
12 knowledge within the RCMP that the Americans
13 referred to a practice known as extraordinary
14 rendition.

15 MR. LOEPPKY: Yes.

16 MR. DAVID: Would you agree with
17 me with that?

18 MR. LOEPPKY: Yes.

19 MR. DAVID: And my question to you
20 is: Knowing now what we now know about this
21 practice and the willingness of the United States
22 to resort to this practice, has this changed the
23 approach the RCMP takes in collaborating with
24 agencies in the United States?

25 MR. LOEPPKY: No.

1 MR. DAVID: Okay.

2 MR. LOEPPKY: I think it is
3 important to point out, Mr. Commissioner, that
4 even in the United States there are a lot of
5 questions being posed about this type of practice,
6 about a number of other issues that are under
7 debate, as they are in Canada; whether it is the
8 Patriot Act or the review going on on C-36.

9 So there are a lot of issues that
10 don't necessarily have the full support of
11 everyone.

12 MR. DAVID: We are close to the
13 break time, Mr. Commissioner. Maybe one last
14 question and then we could break.

15 THE COMMISSIONER: Okay.

16 MR. DAVID: I refer you to your
17 personal notes on page 13, Mr. Loeppky.

18 MR. LOEPPKY: Yes.

19 MR. DAVID: They are not very
20 extensive. They are dated October 2nd, 2002, and
21 it simply says: "CID - Arar".

22 Do you know what this refers to?

23 MR. LOEPPKY: No, I don't.

24 MR. DAVID: I think,
25 Mr. Commissioner, we can take our morning break.

1 THE COMMISSIONER: All right. We
2 will take a break for 15 minutes.

3 THE REGISTRAR: Please stand.

4 --- Upon recessing at 11:36 a.m. /

5 Suspension à 11 h 36

6 --- Upon resuming at 11:58 a.m. /

7 Reprise à 11 h 58

8 THE REGISTRAR: Please be seated.

9 MR. DAVID: Just a couple of
10 preliminary matters, Mr. Commissioner.

11 The first deals -- and I apologize
12 to Ms Edwardh, but I was supposed to offer her the
13 opportunity of addressing you with regard to a
14 discussion she would like to have about the scope
15 of the testimony of a witness next week, Mr. Dan
16 Killam, and I completely forgot to offer her that
17 opportunity this morning in making preliminary
18 remarks.

19 What I can say at this point is
20 that the discussion may not be necessary and that
21 the issue will be resolved amongst counsel, and we
22 are going to try to find a very practical way of
23 dealing with the matter.

24 THE COMMISSIONER: Good.

25 MR. DAVID: So I think we can just

1 defer.

2 THE COMMISSIONER: I endorse
3 practical short solutions.

4 MR. DAVID: Thank you,
5 Mr. Commissioner.

6 The second matter is -- and I
7 apologize for this too, having been involved in
8 this inquiry now for some year and a half.

9 Dale Neufeld is the Deputy
10 Director General of CSIS and sometimes we just
11 take for granted that everybody knows who an
12 individual is. Mr. Neufeld is basically the No. 2
13 of CSIS in terms of the organization.

14 THE COMMISSIONER: Right.

15 MR. DAVID: And would have been
16 your direct counterpart in CSIS, Mr. Loepky?

17 MR. LOEPPKY: That is correct.

18 MR. DAVID: Thank you.

19 If you could refer to P-85, volume
20 5, and go to tab 45, Mr. Loepky, and I would ask
21 you to go to page 2.

22 These are, for your benefit, the
23 personal notes of Mr. Richard Roy, and Mr. Roy was
24 the representative of the RCMP. He was the
25 liaison officer for DFAIT at the relevant time.

1 MR. LOEPPKY: Yes.

2 MR. DAVID: So this is an entry in
3 his personal notes dated October 2nd, 2002, and
4 let me just briefly read it to you.

5 It says October 2nd:

6 "Advised by Jonathan
7 Solomon of ISI --"

8 Again for your benefit,
9 Mr. Solomon was one of the fulltime -- I am not
10 sure if you would qualify him as an investigator,
11 but certainly a fulltime team player for the ISI
12 component of DFAIT.

13 So:

14 "Advised by Jonathan Solomon
15 of ISI that Arar has been
16 arrested at JFK Airport and
17 that consular has not been
18 able to see him. Arar called
19 parents to advise. (file)"

20 And then:

21 "Met with [somebody] and
22 [somebody] of A INSET at 'A'
23 Div., discussed ARAR's
24 situation."

25 So as a follow-up to Mr. Solomon

1 informing Mr. Roy that Mr. Arar was arrested and
2 detained in New York City, Mr. Roy then goes to
3 see the A-OCANADA team at "A" Division?

4 MR. LOEPPKY: Yes.

5 MR. DAVID: And informs them of
6 that. And then Mr. Roy, from the next message,
7 says:

8 "Advised Jonathan Solomon of
9 ISI that we were aware of his
10 detention."

11 So what Mr. Roy finds out, and
12 what the evidence shows, is that Mr. Roy was told
13 by Project A-OCANADA members that, yes, we are
14 fully aware that Mr. Arar is detained in New York
15 City as of September 26th.

16 So in effect, from these notes
17 what we see is that DFAIT, ISI specifically, was
18 informing the RCMP of the very fact that there was
19 a detained Canadian in New York City, and we also
20 find out or DFAIT finds out at this point that the
21 RCMP have known about the fact that this detained
22 Canadian was in New York City.

23 The record shows that the RCMP
24 obviously knew, as of September 26. So there are
25 approximately six days that went by where there

1 was no communication whatsoever between members of
2 the RCMP and the Department of Foreign Affairs,
3 which leads to my question, Mr. Loepky: Is this
4 normal practice?

5 Is it normal practice in the sense
6 that the RCMP, as an agency, is aware of the
7 predicament of a detained Canadian in a foreign
8 country, albeit the United States, and does not
9 advise consular affairs, consular services, the
10 Department of Foreign Affairs, of the fact of this
11 detention?

12 Is that normal practice?

13 MR. LOEPPKY: Yes. Our mandate is
14 criminal investigation, criminal law enforcement.
15 We were working with our U.S. colleagues on that
16 investigation, and we would have no reason to call
17 Foreign Affairs because we would have no reason to
18 believe that his consular rights were not being
19 provided.

20 That is the mandate of Foreign
21 Affairs and we would leave that to them.

22 MR. DAVID: Again, is that
23 assumption, that you would have no reason to
24 believe that consular rights were not respected,
25 in place because it is the United States, as

1 opposed to another country wherein perhaps
2 consular rights are not so well-respected?

3 MR. LOEPPKY: Certainly it would
4 apply more in the United States and other
5 democratic countries, like the U.K., because we
6 work under a democratic system where people have
7 rights and by and large those are respected. So
8 in a country that has a less acceptable human
9 rights record, there would be closer liaison with
10 Foreign Affairs in terms of detention.

11 But our mandate is criminal law
12 enforcement and that's our focus.

13 MR. DAVID: Is there a time period
14 after which you would feel that DFAIT should be
15 informed of the fact that a detained Canadian is
16 in a foreign country?

17 MR. LOEPPKY: Only if it came to
18 our attention that there was an unwilling -- that
19 he was not able to access or be provided with
20 consular access. We wouldn't do it as a matter of
21 course.

22 MR. DAVID: I am going to now call
23 upon you to comment, Mr. Loepky, in terms of your
24 background as an investigator and as somebody who
25 is basically the top man in the RCMP in terms of

1 criminal investigations or investigations.

2 Knowing, as we now know, that
3 Mr. Arar was in detention and was in detention for
4 six days and did not have consular access, and
5 knowing also that the RCMP was collaborating in
6 the efforts of the sister agency involved in this
7 investigation from the U.S. perspective, what was
8 the expectation in terms of what could come out of
9 this exercise for the RCMP?

10 What was in it for the RCMP? What
11 was the RCMP hoping, or wishing, or thinking they
12 would obtain in terms of result of this
13 collaboration with the American counterpart?

14 MR. LOEPPKY: We collaborate and
15 work together to further criminal investigations,
16 and that would have been the objective here.

17 MR. DAVID: And so was there an
18 expectation that the United States would share the
19 fruits of their investigation with regard to the
20 detained Canadian in New York City?

21 MR. LOEPPKY: I believe so.

22 MR. DAVID: And so the sharing
23 could be the results of the interrogation. It
24 could be a statement made by Mr. Arar?

25 MR. LOEPPKY: Information that was

1 relevant to us in terms of furthering our
2 investigation I would expect would be shared.

3 MR. DAVID: And would you have
4 expected, if a statement was obtained from
5 Mr. Arar, that that statement would have been
6 shared with the RCMP in these circumstances?

7 MR. LOEPPKY: Yes.

8 MR. DAVID: In terms of the use
9 that could be made in Canada in front of our
10 Canadian courts, knowing that he had been detained
11 for six days, knowing that he had no consular
12 access for six days, would you understand that
13 there could be problems, that there could be
14 issues in terms of the admissibility of such a
15 statement in our courts?

16 MR. LOEPPKY: That would be a
17 matter to be decided at courts, yes.

18 MR. DAVID: But do you conceive
19 that possibly there could be issues in terms of
20 the admissibility of that statement?

21 MR. LOEPPKY: The issue I think
22 that you are perhaps, that I believe you are
23 alluding to is: Does the absence of consular
24 access alone dictate whether there would be an
25 admissible statement provided? The U.S. has

1 similar approaches in terms of Charter rights and
2 those types of things as we do.

3 There are cases where people don't
4 want consular access. We generally don't concern
5 ourselves with that when we are doing a joint
6 investigation unless it is obvious, it comes to
7 the attention of our investigators that there has
8 been an obvious violation of conventions and we
9 would raise it with Foreign Affairs.

10 That was not the case in this
11 particular matter, to my understanding.

12 MR. DAVID: And if we were to
13 transpose the situation in a purely Canadian form,
14 and I realise this is a hypothetical question.
15 But if there was somebody that was detained here
16 in Canada for six days without going before a
17 judge, without the judicial system being involved,
18 just purely detained by an agency, be it anybody
19 -- it could be Immigration Canada, CSIS, RCMP,
20 CBSA -- would you understand that really the
21 fruits of any sort of examination of a statement,
22 there would be issues in terms of violation of
23 Charter rights and in terms of the admissibility
24 of that statement?

25 MR. LOEPPKY: Well, using the

1 hypothetical situation that you have outlined, if
2 the individual was held and contravened his
3 Charter rights, then obviously that calls into
4 question the admissibility of any subsequent
5 information.

6 MR. DAVID: We know that the RCMP
7 willingly collaborated with an American agency in
8 terms of sending questions for purposes of
9 interrogating Mr. Arar. In that situation, what
10 are the checks and balances that are in place to
11 ensure that policies are being respected, to
12 ensure that things are occurring as they should in
13 that form?

14 MR. LOEPPKY: Well, I have to go
15 back to the agreement on how we collaborate and
16 share information. The initial exchange is done
17 through a very formalized process through
18 headquarters, and thereafter on a joint
19 investigation information will be shared back and
20 forth where it is relevant, where it is
21 appropriate, and within the appropriate
22 guidelines, within the appropriate legal
23 guidelines, recognizing that there are checks and
24 balances within the chain of command that govern
25 that.

1 But there would be sharing of
2 information on a joint investigation at the unit
3 level.

4 MR. DAVID: For instance, in terms
5 of reviewing the actions of the RCMP, would the
6 complaints commission that is set up under the
7 RCMP Act, would that have jurisdiction to review
8 the actions of members of the RCMP in sending the
9 questions to New York City? Would they have
10 jurisdiction over that action?

11 MR. LOEPPKY: If there was a
12 complaint, yes, they would.

13 MR. DAVID: If there was a
14 complaint. That presumes that Mr. Arar would have
15 to be aware of the fact that the RCMP was
16 participating in that process.

17 MR. LOEPPKY: A complaint -- CPC
18 can be made by an individual, by anyone else that
19 has an interest.

20 MR. DAVID: Again, the person
21 would have to be aware, would have to have
22 knowledge of the actions of the RCMP.

23 MR. LOEPPKY: Yes.

24 MR. DAVID: And so if these
25 questions are being sent to an American agency,

1 and if the American agency is using them but is
2 not identifying the source and is not saying, "The
3 RCMP provided us with this information or with
4 these questions," it may be that this individual
5 or anybody would never know that the RCMP was
6 involved.

7 Would you agree with me that that
8 is possible?

9 MR. LOEPPKY: Yes.

10 MR. DAVID: In that scenario,
11 really, unless somebody tells Mr. Arar that the
12 RCMP is somehow involved, there is no outside
13 review body that can act as an oversight in terms
14 of these actions?

15 MR. LOEPPKY: I would not expect
16 that another agency would inform the individual
17 being interviewed of who was part of that
18 investigation. That would be revealing parts of
19 the investigation that would be inappropriate.

20 MR. DAVID: And so this action
21 would come outside the scope of an external review
22 body in terms of RCMP actions, in terms of a
23 chosen course of action?

24 MR. LOEPPKY: Well, one particular
25 sharing of information -- information in an

1 investigational file like that is shared in
2 confidence, obviously, to protect the integrity of
3 the investigation. So the individual would not
4 know it had been shared, that's correct.

5 MR. DAVID: But my question,
6 Mr. Loepky -- and I am trying to see in terms of
7 the checks and balances. You have identified that
8 the chain of command here is in place to make sure
9 that policies are being respected, that policy
10 considerations are being followed.

11 And that's fine. That's internal
12 to the RCMP.

13 My question then is in respect of
14 moving on to the external bodies that exist in
15 terms of reviewing RCMP actions, and I am trying
16 to understand whether there is any external body
17 that here would have the possibility of reviewing
18 the actions of the RCMP in sharing these questions
19 with --

20 MR. LOEPPKY: If I understand the
21 question correctly, the questions are shared to
22 further a criminal investigation, and obviously
23 they are shared to gather evidence. That is
24 reviewable if a case goes to court, as any piece
25 of evidence is.

1 There are a number of checks and
2 balances to ensure that that is appropriate: the
3 advice from CID or the consultation with criminal
4 intelligence when the questions are shared.

5 I talked about the supervisory
6 chain of command and the reviews that are done,
7 but we have very senior people that are running
8 these investigations, and they look at the
9 appropriateness of sharing the information to
10 further that investigation. And that is not in
11 the public domain.

12 MR. DAVID: So you have identified
13 now two possibilities of having oversight. One is
14 internal, in terms of the chain of command. You
15 have referred to the court system now as being
16 another possible check and balance in terms of the
17 appropriateness of these actions, and obviously
18 that refers to admissibility issues.

19 Supposing now that the RCMP had
20 said to itself, "We know that if we try to bring
21 forth, to bring into evidence this statement, we
22 will get nowhere. We recognize that there is an
23 admissibility issue and we are not even going to
24 try to have Mr. Arar's statement put in evidence
25 against him because we know that there are issues

1 and the issues are significant and we don't even
2 want to try having that."

3 My question is then: In terms of
4 an outside agency, an outside body, such as CPC,
5 does this not fall into a domain where the subject
6 matter may not be reviewable by an outside body?

7 MR. LOEPPKY: Well, I think there
8 are a number of other vehicles. For example, this
9 forum is looking at that whole issue, I suspect.

10 So I think that we operate
11 within the authorities, as law enforcement, to
12 share information appropriately and within policy
13 guidelines, and there is an audit process, if I
14 want to go further, in terms of how that internal
15 review works.

16 So the process of
17 information-sharing is tightly controlled, and in
18 this case there was a joint investigation with
19 joint interests. Therefore, it is appropriate to
20 work together. In fact, I think the public would
21 be surprised if we did not work together in a
22 common purpose for public safety of Canadians.

23 MR. DAVID: We are now going to
24 move to October 3rd, Mr. Loepky, and on this date
25 we know -- if you wish to refer to the documents

1 -- we know that there were two agencies that
2 sought the further assistance of the RCMP in terms
3 of Mr. Arar and they sent seven questions to be
4 answered by A-OCANADA. The response to these
5 questions came the next day, on October 4th.

6 I would refer you to Exhibit
7 P-172.

8 --- Pause

9 MR. DAVID: And though in terms of
10 content it is been all redacted, let me just refer
11 you to the message in terms of the fax transmittal
12 receipt.

13 It is coming from Project
14 A-OCANADA. It is going again to the liaison
15 officer in Washington -- or that is through
16 headquarters.

17 MR. LOEPPKY: Yes.

18 MR. DAVID: And the response is as
19 follows:

20 "Project A-O Canada received
21 a facsimile this date --"

22 By the way, the date that is
23 indicated, the 2nd October, is a wrong date. It
24 is the 4th of October, and the record is very
25 clear in that regard.

1 "... requesting information
2 on Maher ARAR. A-O Canada
3 investigators have responded
4 to each of the requests
5 contained in the facsimile.
6 This information is being
7 provided to the ... who are
8 coordinating the request for
9 information. The supporting
10 documents will be forwarded
11 on a later date."

12 So we see that in addition to the
13 initial questions sent on the 26th, there are
14 these additional responses coming on the 3rd and
15 4th.

16 Were you aware of this additional
17 measure as of this date, October 4th?

18 MR. LOEPPKY: No.

19 MR. DAVID: Again, in terms of
20 this further collaboration with American agencies,
21 would you have expected CID to have been involved
22 in a consultation process?

23 MR. LOEPPKY: Yes, and when I look
24 at this telex, it was routed through CID, so --

25 MR. DAVID: It was certainly info-

1 copied. My question goes beyond that.

2 Would there normally be, or should
3 there normally be, an actual consultation process
4 before responding to such a request; in other
5 words, seeking CID's input?

6 MR. LOEPPKY: CID would not look
7 at the individual exchanges in each investigation
8 and each step. I mean, we have literally hundreds
9 of investigations ongoing at all times and that
10 would be beyond their capacity. They would make
11 sure that it was within the acceptable parameters,
12 but they would not become involved in
13 second-guessing every exchange such as this.

14 MR. DAVID: I bring you now to
15 page 2 of the document, and at the very top it
16 says:

17 "The following has been
18 compiled from sources within
19 Project A-O'Canada regarding
20 questions posed by the USG on
21 Friday, October 4, 2002."

22 Again that's a mistake. It is
23 October 3rd.

24 And then there is a caveat,
25 Mr. Loepky.

1 It says:

2 "This document is the

3 property of the Royal

4 Canadian Mounted Police. It

5 is loaned to you in

6 confidence and is not to be

7 reclassified, distributed or

8 acted upon without the prior

9 authorization of the

10 originator."

11 What is the effect of this caveat?

12 MR. LOEPPKY: That the

13 information -- it is a standard caveat. The

14 information is not to be further shared without

15 coming back to the originator of the message. And

16 that would be us.

17 MR. DAVID: I would refer you now

18 to P-117, volume 1.

19 --- Pause

20 MR. DAVID: And if you could go to

21 tab 25, Mr. Loepky, there is a briefing note

22 being given to the Solicitor General about this

23 additional step, and I refer you to the second

24 paragraph on the first page.

25 It says:

1 "ARAR flew to New York on
2 2002.09.26... He was detained
3 by US INS upon his arrival
4 and held on possible
5 immigration charges. The
6 RCMP was notified by a US
7 Embassy representative on
8 this same date that Arar was
9 not going to be granted entry
10 into the United States. On
11 2002.10.03, both the CIA and
12 the FBI requested RCMP
13 assistance in acquiring any
14 information to support
15 criminal charges in the US
16 against Arar. We confirmed
17 information that previously
18 had been provided relative to
19 Arar's activity in Canada and
20 linkages to suspected
21 terrorists in Canada and
22 abroad."

23 So we see that clearly both the
24 CIA and the FBI identified to the RCMP what the
25 intended use or the intended purpose of the

1 additional information was, and that was to
2 support criminal charges. So the purpose was
3 known.

4 In that context why is it
5 necessary to put the caveat on the document as it
6 was done notwithstanding?

7 MR. LOEPPKY: Well, in this case,
8 the response to the seven points was sent down,
9 and I can only assume that in the minds of the
10 investigators they wanted to be contacted if that
11 was used further before it was further
12 distributed.

13 MR. DAVID: In terms of your trip,
14 Mr. Loepky, you were away in Minnesota from the
15 4th to the 10th of October attending a conference
16 of the International Association of Chiefs of
17 Police. I would like to refer you to your notes
18 for that period.

19 If you could go to page 14, on the
20 7th of October you met with the Director of the
21 FBI, Mr. Bob Mueller. Can you tell us whether the
22 situation of Maher Arar was discussed.

23 MR. LOEPPKY: No.

24 MR. DAVID: He was not discussed?

25 MR. LOEPPKY: No.

1 MR. DAVID: And was any reference
2 made to Project A-OCANADA and its investigation?

3 MR. LOEPPKY: A high-level
4 discussion on OCanada.

5 If I can just put it into a little
6 bit of context, the IACP meets annually, and in
7 each of those RCMP senior representatives meet
8 with senior representatives of the FBI just to
9 resolve any issues, talk about any ongoing
10 cooperation. It is not generally, very rarely
11 file-specific. It is just are there issues that
12 we need to work that have come to our attention
13 from the working level?

14 That's the nature of the meeting.
15 It was a rather short meeting, given Mr. Mueller's
16 agenda, probably about 20 minutes, and we just
17 talked very generally about ongoing cooperation,
18 including on OCanada.

19 MR. DAVID: We go now to your
20 return, the date October 10th, and I bring you to
21 Exhibit P-84. That would be page 50.

22 However, in that regard, we are
23 going to file also, Mr. Commissioner, two new
24 documents at this point.

25 That would be documents identified

1 as document Nos. 3 and 4, Mr. Brisson.

2 MR. LOEPPKY: I am sorry, sir,
3 which page?

4 MR. DAVID: Page 50. You can also
5 refer to the new version, if you wish, which is
6 less redacted.

7 THE COMMISSIONER: Exhibit P-181.

8 MR. DAVID: Thank you.

9 Again, just to try to make it as
10 clear as possible, Mr. Commissioner, P-81 is a new
11 version of P-84 at page 50.

12 THE COMMISSIONER: P-181.

13 MR. DAVID: Yes, P-181 is a new
14 version of P-84, page 50.

15 THE COMMISSIONER: Yes.

16 MR. DAVID: And then P-182 is a
17 new version of --

18 THE COMMISSIONER: The numbers are
19 180 and 181.

20 MR. DAVID: Yes.

21 THE COMMISSIONER: We haven't
22 filed 182.

23 MR. DAVID: It is 180 and 181?

24 THE COMMISSIONER: Yes.

25 MR. DAVID: Now it is really

1 confused. Let's start from the top.

2 THE COMMISSIONER: Yes.

3 MR. DAVID: Exhibit P-180 is new
4 P-84, page 50. Sorry about that.

5 And then P-181, the old version is
6 P-85, volume 5, tab 25.

7 THE COMMISSIONER: All right.

8 EXHIBIT NO. P-180: New
9 version of P-84, page 50

10 EXHIBIT NO. P-181: New
11 version of P-85, volume 5,
12 tab 25

13 MR. DAVID: There is a briefing
14 note, Mr. Loepky, at page 50. Or at P-180 there
15 is a briefing note that is going to the
16 Commissioner that concerns the deportation of
17 Mr. Arar, and it says that:

18 "CID NSOS learned that
19 Mr. Arar was deported and
20 subsequently escorted to
21 Syria by U.S. authorities at
22 an undetermined time on the
23 8th of October, 2002."

24 And further on it says that:

25 "CID NSOS learned that

1 Project A-OCANADA
2 investigators had submitted a
3 request to [somebody] to
4 interview Arar while he was
5 detained in New York. RCMP
6 investigators were concerned
7 as to what grounds [somebody]
8 was holding Arar if Arar had
9 volunteered any information
10 to U.S. authorities relating
11 to his activities and which
12 country Arar would be
13 returning to if he was
14 deported. And according to
15 A-OCANADA investigators
16 [somebody] had some
17 unidentified issues regarding
18 an RCMP interview of Arar
19 during this process and it
20 was determined that
21 [something]"

22 And then there is a handwritten
23 note at the bottom, and I believe it is your
24 writing.

25 Could you read that for us,

StenoTran

1 please?

2 MR. LOEPPKY: "Appreciate being
3 briefed on what the
4 issues/concerns were from
5 [somebody]."

6 MR. DAVID: From somebody. Could
7 you just try to explain to us what this refers to?

8 MR. LOEPPKY: Just the line in the
9 briefing note where they talked about U.S.
10 organization having some concerns about an
11 interview, and I wanted to know what they were.

12 MR. DAVID: Was it your
13 understanding that there was still an outstanding
14 request for this interview with the American
15 agency, an outstanding RCMP request?

16 MR. LOEPPKY: No. By this time
17 the individual had left the United States.

18 MR. DAVID: Right. But my
19 question, I guess, is: When he did leave the
20 United States, when he was deported by U.S.
21 authorities, was it your understanding that the
22 RCMP's request to interview was still an ongoing,
23 outstanding request?

24 MR. LOEPPKY: No, because I think
25 by that time, from the information that I am

1 familiar with, there was a belief that he would be
2 coming back to Canada, and in fact some steps had
3 been taken to put into motion some investigational
4 components related to that.

5 MR. DAVID: So was it your
6 understanding that the request to interview
7 Mr. Arar in the United States had been cancelled?

8 MR. LOEPPKY: I learned about this
9 much later. But, yes, subsequently the decision
10 to interview him down there was changed and we
11 decided to wait until he came through to Canada.

12 MR. DAVID: We go now to P-134,
13 please.

14 --- Pause

15 MR. DAVID: And I bring you to tab
16 1, Mr. Loepky. It is an e-mail that is
17 essentially coming from -- well, that is coming
18 from Daniel Livermore and it is going to the
19 Ambassador in Syria, the Canadian Ambassador.

20 In the second paragraph,
21 Mr. Livermore, who is the head of ISD within
22 DFAIT, says this:

23 "Maher Arar was born in
24 Syria, came to Canada at an
25 early age and became a

1 Canadian citizen. He is
2 known to the RCMP and is one
3 of the subjects of their
4 OCanada investigation."

5 Without referring to the idea of
6 OCanada as being maybe a mistake, would you agree
7 that there is an accurate description of Mr. Arar
8 at this point as being a subject of an
9 investigation?

10 MR. LOEPPKY: He was a subject of
11 interest.

12 MR. DAVID: To your knowledge, was
13 Mr. Arar's status changed, in your mind or in the
14 opinion of the RCMP, when he was deported? Did
15 that status somehow change?

16 MR. LOEPPKY: He always remained a
17 subject of interest that we were interested in
18 talking to.

19 MR. DAVID: And saying "a subject
20 of interest", in your mind is that the same thing
21 as saying he is a person of interest?

22 MR. LOEPPKY: Yes, person of
23 interest.

24 MR. DAVID: And is that to be
25 distinguished from being a target?

1 MR. LOEPPKY: Well, in this
2 context, it certainly is. I referred early on in
3 my testimony to the advisory letter from CSIS, and
4 Mr. Arar became a person of interest flowing out
5 of that investigation that was taking place.

6 MR. DAVID: We move on now to
7 various comments made by Ambassador Cellucci of
8 the United States in Canada, Mr. Loepky.

9 There are various documents that I
10 could refer you to. I am going to just ask you to
11 bear with me and I will try to describe to you
12 statements coming at various times.

13 On October 15th, 2002, Mr. Graham,
14 Minister Graham, met the American Ambassador to
15 protest what had occurred to Mr. Arar. At this
16 meeting there was a statement made by Ambassador
17 Cellucci.

18 Basically the Ambassador informed
19 Mr. Graham that deporting Mr. Arar was based on
20 information from Canadian authorities. This is
21 referred to, as I say, in Mr. Pardy's memo and
22 other documents.

23 There are three different ideas
24 that will be expressed by Mr. Cellucci, and I am
25 going to ask you to comment on those ideas.

1 The first is that the deportation
2 was based on -- or the actions, I should say, of
3 deporting Mr. Arar was based on information coming
4 from Canada, coming from Canadian authorities.

5 The second -- and this is the next
6 date -- Mr. Cellucci, being asked by reporters why
7 Mr. Arar was arrested, is quoted as saying:

8 "I think you may want to
9 check with your local people
10 on that."

11 And that has also been referred to
12 as "your own people".

13 So there is an idea here that, in
14 order to understand why Mr. Arar was arrested and
15 deported, it seems that the answer may lie in part
16 or in total within Canada, within the Canadian
17 structure.

18 And then the third area where
19 Mr. Cellucci is quoted as having made comments in
20 that similar light is in April of 2003, wherein he
21 was making an address at the Harvard Club, and he
22 is quoted as having said that:

23 "Canadian elements did not
24 want Mr. Arar returned to
25 Canada."

1 So those essentially are the three
2 areas or the three kinds of statements that
3 Ambassador Cellucci is known to have said over the
4 course of time about explaining what happened to
5 Mr. Arar.

6 My first question to you is: Were
7 you made aware of such comments on the
8 Ambassador's part?

9 MR. LOEPPKY: I became aware of
10 them through the media.

11 MR. DAVID: Second, did you
12 discuss these various statements, declarations,
13 internally within your organization, with your
14 Commissioner or with anybody else?

15 MR. LOEPPKY: Yes.

16 MR. DAVID: And can you give us
17 your appreciation of the validity of these
18 comments coming from essentially the official
19 representative of the United States in Canada?

20 MR. FOTHERGILL: Commissioner, the
21 first comment may raise an NSC issue in order to
22 comment on the veracity of the statement that
23 Mr. Arar was removed on the basis of Canadian
24 information.

25 If Mr. Loepky's answer requires

1 him to refer to foreign intelligence, we take the
2 position that that is subject to confidentiality.
3 So I would ask the witness to tailor his answer
4 accordingly.

5 MR. DAVID: Essentially I am
6 asking for your reaction and your assessment of
7 these statements.

8 MR. LOEPPKY: I don't know the
9 basis upon which the U.S. Ambassador was making
10 his statements. But clearly, given these
11 allegations, given these comments and given the
12 surrounding controversy about what our role may
13 have been, it was my intention to find out whether
14 we had been complicit, as the message seemed to
15 infer, in Mr. Arar's deportation to Syria.

16 MR. DAVID: So steps were put into
17 place to verify any sort of veracity to these
18 statements?

19 MR. LOEPPKY: That's correct. I
20 asked that there be a review done.

21 MR. DAVID: The fifth area,
22 Mr. Loepky, I wish to address with you, concerns
23 briefings following Mr. Arar's deportation.

24 Simply for the record I remind you
25 that on the 18th of October -- and your personal

1 notes refer to it -- there was a report made to
2 you on the RCMP's role in the deportation.

3 That's at page 17 of your notes.
4 This briefing is coming from Mr. Pilgrim and
5 Mr. Killam, and essentially they reported what?

6 MR. LOEPPKY: This is pursuant to
7 the requests that I spoke about in my last
8 response where I had asked about our role, and
9 they briefed me in person that there had been
10 certainly no involvement by the RCMP in terms of
11 the decision to send Mr. Arar to Syria.

12 MR. DAVID: There is then a
13 briefing note to the Commissioner on this topic,
14 and I would refer you to Exhibit P-117, and that
15 would be tab 7.

16 MR. LOEPPKY: Tab 7?

17 MR. DAVID: Tab 7. I will refer
18 you to pages 1 and 4.

19 In terms of identified issue, it
20 is Arar's deportation from the U.S. to Syria, and
21 there was a meeting held with Mr. Bill Graham, the
22 Minister of Foreign Affairs, and Cellucci. So
23 there is a reference to that.

24 And then the second paragraph
25 says:

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

9 And so following that:

10 "During a meeting hosted by
11 DFAIT, and attended by
12 [somebody] and RCMP, a
13 request was made for
14 additional information
15 regarding ARAR: i.e. What
16 role did Canada play in
17 ARAR's deportation from the
18 US to Syria? What
19 information had been provided
20 to US authorities regarding
21 ARAR? What prompted the
22 decision to deport ARAR to
23 Syria instead of allowing him
24 into Canada?"

25 We'll skip the next paragraph.

1 Then is says:
2 "DFAIT also advised that they
3 are pursuing an option to
4 request, through the
5 Solicitor General, a thorough
6 briefing to the Minister of
7 Foreign Affairs regarding
8 ARAR and other individuals of
9 interest to DFAIT that may be
10 subject to investigations by
11 the RCMP and ... and of
12 interest to foreign
13 agencies."

14 So we see here, from this briefing
15 note to the Commissioner, that the Minister of
16 Foreign Affairs, Mr. Graham, wants more
17 information. He wants to have a better handle on
18 the facts underlying what happened to Mr. Arar.

19 And simply for the record, we know
20 that Mr. Pilgrim responded by way of memorandum,
21 and that is found at P-137 at page 5.

22 There were specific responses made
23 to seven different questions. And you will see
24 the responses, as I say, at page 5 of P-137.

25 We then move on, Mr. Loepky, and

1 we see that on the 18th of October, again
2 Mr. Proulx specifies -- and this can be found at
3 P-83, tab 2. Maybe we want to go to that.

4 --- Pause

5 MR. DAVID: Mr. Proulx
6 specifies --

7 MR. LOEPPKY: What page number?

8 MR. DAVID: I am sorry, tab 2, and
9 that would be page 203.

10 So, again, the chain is you are
11 briefed. Then the Minister of Foreign Affairs
12 wants more information, and he's getting that
13 desire from the meeting he had with Ambassador
14 Cellucci. There was a meeting held between DFAIT
15 and RCMP, and basically RCMP is now going to have
16 to respond to this request coming from DFAIT.

17 I bring you to the last paragraph
18 of that briefing note to the Commissioner, and it
19 is being signed by Mr. Proulx, and it says the
20 following:

21 "Strategic advice: RCMP,
22 CID, and SID will prepare a
23 briefing note responding to
24 DFAIT questions regarding our
25 role with respect to Arar's

1 deportation from the U.S.A."

2 And he says then:

3 "There will be no information
4 of an operational/tactical
5 nature released to DFAIT."

6 Therein lies my question. My
7 first question to you is: What is
8 "operational/tactical information" as a concept?

9 MR. LOEPPKY: Those are day-to-day
10 operational decisions and tactical approaches that
11 are employed: when to put on surveillance,
12 investigative steps to be taken, those types of
13 things.

14 MR. DAVID: Would actual evidence
15 be part of operational information, evidence that
16 is gathered?

17 MR. LOEPPKY: Yes.

18 MR. DAVID: The results of the
19 investigation, the fruits of the investigation,
20 would be qualified as "operational/tactical
21 information"?

22 MR. LOEPPKY: Yes.

23 MR. DAVID: So, in essence,
24 Mr. Proulx here is saying that DFAIT will not have
25 access to where we are at in terms of

1 understanding Mr. Arar's involvement in terrorist
2 activities?

3 MR. LOEPPKY: No, it is not quite
4 that cut and dry.

5 MR. DAVID: Okay.

6 MR. LOEPPKY: We would provide
7 information to Foreign Affairs that would enable
8 them to carry out their consular responsibilities,
9 and we would also provide them with specific
10 information that the Minister of Foreign Affairs
11 needs to carry out his responsibilities as the
12 representative of the Government of Canada.

13 So they would be provided with
14 information that was required to carry out their
15 mandate.

16 MR. DAVID: And that would be
17 within the assessment made by RCMP? In other
18 words, it is the RCMP that is deciding what is
19 necessary for DFAIT to carry out their mandate, in
20 terms of what information is being passed on?

21 MR. LOEPPKY: We would pass on
22 information. If they felt that they required more
23 information in a specific area, there would be a
24 dialogue. It is a process where we are
25 essentially working together to make sure that our

1 various mandates are fulfilled.

2 MR. DAVID: But ultimately,
3 Mr. Loeppky, it is the RCMP that decides what
4 DFAIT has access to or not in terms --

5 MR. LOEPPKY: Yes.

6 MR. DAVID: And Mr. Proulx seems
7 to be drawing a line -- or not seems to be, but is
8 drawing a line in terms of what can be given to
9 DFAIT, and he's saying that if it is operational
10 or tactical information they are not getting it.

11 Would you agree with me?

12 MR. LOEPPKY: Yes.

13 MR. DAVID: My next question is:
14 Is there any relevant policy, RCMP policy, that
15 prohibits the disclosure of such
16 operational/tactical information to a partner
17 agency, such as the Department of Foreign Affairs,
18 dealing with a consular case of a detained
19 Canadian?

20 MR. LOEPPKY: The policy that we
21 utilize is that we share information where it is
22 important, where it is consistent with the Privacy
23 Act, where it is relevant and consistent with good
24 law enforcement practices. We would share
25 information with Foreign Affairs, as I said, for

1 them to carry out their mandate and to meet their
2 consular duties.

3 MR. DAVID: Let me ask you the
4 question from the flip side: Is there any policy
5 that prohibits per se the sharing of operational
6 or tactical information by the RCMP to another
7 Canadian domestic agency?

8 MR. LOEPPKY: Well, I think you
9 are asking me, are there provisions? There are
10 obviously consistent use provisions under the
11 Privacy Act --

12 MR. DAVID: I am not talking about
13 legislation.

14 MR. LOEPPKY: I am not sure of the
15 question.

16 MR. DAVID: I am simply asking
17 you, very simply: Is there policy in place --
18 guidelines, policy, protocols, directives -- that
19 prohibit the RCMP from disclosing operational or
20 tactical information in a specific file to another
21 agency, where the other agency would have a need
22 for that information or a reason to --

23 MR. LOEPPKY: I am not aware of
24 any specific policy that prohibits the sharing of
25 information. In fact, it encourages

1 information-sharing where it is necessary.

2 MR. DAVID: So, in essence,
3 operational and tactical information that is in
4 the possession of the RCMP could be shared with
5 the Department of Foreign Affairs if circumstances
6 dictate it?

7 MR. LOEPPKY: Where it is relevant
8 to their mandate, to carrying out their mandate.

9 MR. DAVID: And we see that the
10 Minister of Foreign Affairs certainly doesn't seem
11 to feel that he is being appropriately briefed or
12 he doesn't seem to -- he is expressing this idea:
13 I need to know more, I should know more, and I
14 want to know more.

15 And he is asking the RCMP to
16 respond to that.

17 Would you agree that there is a
18 request being made in that regard?

19 MR. LOEPPKY: Yes. Perhaps it is
20 important at this point, Mr. Commissioner, just to
21 add a little bit of context.

22 The challenge that we face is that
23 we are a law enforcement body, we are accountable
24 to the courts, and we very clearly maintain more
25 of an arm's length relationship with the political

1 environment than some other countries do.

2 Certainly the level of briefing
3 and the involvement in some other countries is
4 much greater than it is here, so that sometimes
5 puts us at a disadvantage.

6 MR. DAVID: What Mr. Proulx is
7 dictating in terms of the approach that we are
8 going to take with DFAIT -- we are not going to
9 share operational/tactical information with DFAIT.
10 That is what he's saying.

11 Was that the same position that
12 the RCMP had adopted vis-à-vis the PCO?

13 MR. LOEPPKY: By and large, yes.

14 I think it is important to outline
15 that when we talk about operational/tactical
16 information, we would not -- I mean, that is very
17 specific file information about whether we
18 undertake a Part VI investigation, whether we take
19 certain investigative steps. And those aren't
20 relevant to the mandate, nor is it appropriate to
21 share that, I think.

22 MR. DAVID: So let's get into some
23 specific examples of what the RCMP may or may not
24 have known about Mr. Arar at this point in time,
25 and these are purely by way of example,

1 Mr. Loeppky.

2 If, for instance, the RCMP had
3 been in the possession of statements that were
4 attributed to Mr. Arar, would you have shared
5 those statements with the Department of Foreign
6 Affairs in fulfilling its mandate?

7 MR. LOEPPKY: If it was considered
8 relevant to carrying out their mandate.

9 MR. DAVID: If you had evidence
10 showing Mr. Arar was associating or not
11 associating with identified targets, would you
12 share that information with DFAIT, if it was
13 relevant to their mandate?

14 MR. LOEPPKY: I think we can use a
15 lot of hypothetical situations, but I think my
16 comment, that we share where it is relevant to
17 them carrying out their mandate to ensure that
18 consular rights are protected, that's what we do.

19 MR. DAVID: Okay. And would you
20 share information that would be relevant to the
21 exercise of consular rights and to the mandate of
22 the Department of Foreign Affairs if it involved
23 efforts in trying to get the Canadian back to
24 Canada; in other words, trying to convince a
25 foreign authority that somebody is innocent?

1 MR. LOEPPKY: We would provide the
2 information that's required.

3 MR. DAVID: So whatever
4 information is necessary in terms of DFAIT
5 fulfilling its mandate, in terms of it ensuring
6 consular access or in terms of ensuring that a
7 Canadian is brought back home, who wants to come
8 back home, that would be shared?

9 MR. LOEPPKY: Yes.

10 MR. DAVID: Thank you.

11 The sixth area, Mr. Loepky,
12 concerns the RCMP's continuing investigative
13 efforts on Mr. Arar whilst he is in Syria.

14 I would first like to bring you
15 to -- unfortunately it is a series of three
16 documents. It is an entry for October 17th, 2002.
17 Let's start with P-173, page 13, and then P-84 --
18 actually, I think I will do this in a way that
19 will simplify the process.

20 I will just state certain things
21 and if they are not accurate, I will elicit
22 counsel's assistance.

23 In October of 2002, on October
24 17th, we see that there is a fax that is being
25 sent by the officer in charge of Project A-OCANADA

1 to the liaison officer in Rome, and he is
2 providing background information on Mr. Arar.

3 The documents in reference are
4 Exhibit P-173, and that would be at page 13; and
5 P-84, pages 51 and 52; and, finally, P-19 at pages
6 28 and 29.

7 Essentially what happened is the
8 liaison officer in Rome, responsible for Syria
9 amongst other countries, came across the name of
10 Maher Arar and was seeking to be briefed on Maher
11 Arar, thinking that later on down the line I am
12 going to be involved in this and so I want a heads
13 up on what this file is about.

14 It is in that context that
15 Mr. Cabana is supplying some background
16 information to Mr. Fiorido, the liaison officer in
17 Rome, and it is at that point that the liaison
18 officer opened up a file, his own file on
19 Mr. Arar, thinking that he might be involved in
20 certain investigative steps.

21 MR. LOEPPKY: Yes.

22 MR. DAVID: I bring you to --
23 actually this time I would like to bring you to
24 the exhibit, and that's P-166. These are
25 Mr. Cabana's personal notes.

1 If you could go to page 54,
2 Mr. Loeppky, of Mr. Cabana's personal notes -- and
3 I have cheated here because I have had these
4 retranscribed in nice handwriting, so I am going
5 to read them to you.

6 MR. LOEPPKY: Page 54?

7 MR. DAVID: Page 54, and it is an
8 entry by Mr. Cabana in his personal notes for the
9 21st of October. So just a few days after
10 Mr. Cabana faxes information to the liaison
11 officer in Rome about Mr. Arar in terms of general
12 background information, there is a conversation
13 that occurs on the 21st of October between
14 Mr. Gould -- and Mr. Gould, for your benefit, is
15 the Deputy Director of ISI at DFAIT.

16 So there is a phone call between
17 Mr. Gould and Mr. Cabana, and Mr. Cabana's notes
18 read as follows:

19 "Received a call from Jim
20 Gould of DFAIT advising that
21 Syrian authorities had
22 acknowledged the fact that
23 they had Maher Arar in
24 custody."

25 So actually the 21st of October,

1 for the record, Mr. Loepky, is the first official
2 date wherein the RCMP's advised, or actually the
3 Government of Canada is advised, that Syria has
4 acknowledged they detained Mr. Arar.

5 The notes go on to say:

6 "Mr. Gould advised the
7 writer --"

8 Being Mr. Cabana.

9 "... that the Canadian
10 ambassador to Syria was
11 scheduled to meet with Syrian
12 officials tomorrow and wanted
13 to confirm whether we were
14 interested in Mr. Arar, as
15 well as Mr. Almalki, and
16 whether charges were pending
17 in relation to Maher Arar.
18 The writer explained that we
19 were interested simply
20 because his association to
21 ... and would like to speak
22 to him, but at this time no
23 charges were being
24 contemplated. Mr. Gould
25 asked whether there was any

1 other message we would like
2 conveyed."

3 And then -- and this is the part
4 where I want to draw your attention.

5 It says:

6 "The writer advised that we
7 have intelligence evidence
8 that we would be prepared to
9 share with Syrian authorities
10 if they felt it could be of
11 assistance to their
12 investigation. This is in
13 light of sharing information
14 with us in past."

15 So it is almost a tit for tat type
16 of thing. They have given us, provided us with
17 information, intelligence, and I am now prepared,
18 or we are prepared to share intelligence or
19 information with the Syrian authorities.

20 So this is on the 21st of October.

21 My question is: For this offer to
22 be made directly from Mr. Cabana to Mr. Gould,
23 essentially to be transmitted to the Ambassador of
24 Canada in Syria, is this an appropriate manner of
25 acting? Is this following procedure? Is this how

1 this kind of offer should be made?

2 MR. LOEPPKY: In this particular
3 case Mr. Gould contacted the lead investigator,
4 and I think it was appropriate that Mr. Cabana
5 provided him with some background. There are
6 processes in place that before those questions
7 would actually be put to the government, there
8 would be --

9 MR. DAVID: I am not sure it is
10 questions. I think it was more in terms of
11 sharing information. I am not sure it was in
12 terms of sharing questions.

13 But, I am sorry, I don't want to
14 interrupt your answer.

15 MR. LOEPPKY: No. It would
16 ultimately involve the liaison officer and the
17 Ambassador in the host country.

18 MR. DAVID: And would or should
19 CID be involved in the process?

20 I mean, this seems to be a fairly
21 significant step now.

22 MR. LOEPPKY: Yes. CID would be
23 informed --

24 MR. DAVID: Would be informed.
25 But I am going beyond that. I am asking you,

1 should you be consulted? Should CID be consulted
2 in the decision-making process of sharing
3 information with Syrian authorities?

4 MR. LOEPPKY: Yes, I believe they
5 were.

6 MR. DAVID: For a detained
7 Canadian who is presently in Syria?

8 MR. LOEPPKY: Yes.

9 MR. DAVID: So your answer is they
10 should be consulted?

11 MR. LOEPPKY: I believe there was
12 discussions with CID, although I wasn't personally
13 involved.

14 MR. DAVID: But in terms of the
15 way things should be done, you would expect CID to
16 be consulted?

17 MR. LOEPPKY: Once the decision is
18 made, once there is a course of action proposed,
19 then obviously -- I think there is such a thing as
20 preliminary discussions that take place to look at
21 feasibility and then there is a process that is
22 followed.

23 MR. DAVID: Mr. Loepky, I want to
24 bring you now to the RCMP policy, if you could go
25 to P-12, please.

1 --- Pause

2 MR. DAVID: And I bring you to tab
3 31.

4 MR. LOEPPKY: Okay.

5 MR. DAVID: And if you could go to
6 paragraph M.3. So that's "M" like in "Marc", 3.

7 M.3 is RCMP. It is in the
8 operational manual of the RCMP?

9 MR. LOEPPKY: Yes.

10 MR. DAVID: M.3 deals with
11 "Enquiries from Foreign Governments that Violate
12 Human Rights".

13 MR. LOEPPKY: Yes.

14 MR. DAVID: M.3.a. says:

15 "The RCMP will not become
16 involved or appear to be
17 involved in any activity that
18 might be considered a
19 violation of the rights of an
20 individual, unless there is a
21 need to comply with the
22 following international
23 conventions."

24 And five conventions are listed.

25 And then 3.b says:

1 "The disclosure of
2 information to an agency of a
3 foreign government that does
4 not share Canada's respect
5 for democratic human rights
6 may be considered if it:"

7 And then there are three
8 scenarios:

9 "1. it is justified because
10 of Canadian security or
11 law-enforcement interests,
12 2. can be controlled by
13 specific terms and
14 conditions, and
15 3. does not have a negative
16 human rights connotation."

17 Let first ask you: Does that
18 raise a flag in your mind, and should it raise a
19 flag in the RCMP's mind, that there are concerns
20 about human rights violations?

21 MR. LOEPPKY: Yes.

22 MR. DAVID: And was that the case
23 in October of 2002?

24 MR. LOEPPKY: I believe it would
25 have been a consideration, yes.

1 MR. DAVID: And so in this process
2 of determining -- and clearly, would you agree
3 with me, that M.3.b applies to the contemplated
4 scenario of sharing information by Mr. Cabana to
5 the Syrians?

6 MR. LOEPPKY: Yes.

7 MR. DAVID: In that process, in
8 that decision-making process, in considering
9 whether we will go forward and share information
10 with the Syrians or not, would DFAIT be included
11 in that process or should DFAIT be included in
12 that process?

13 MR. LOEPPKY: Yes, they would be.

14 MR. DAVID: And if they would be,
15 would DFAIT be consulted at the headquarters level
16 of the RCMP or within the divisional level of the
17 RCMP?

18 MR. LOEPPKY: There would be
19 discussions involving the investigative unit, who
20 are the most knowledgeable about whether there is
21 an opportunity to advance the file. There would
22 be involvement by headquarters, by CID, to ensure
23 that the appropriate policies were followed, that
24 it met the organization's expectations. There
25 would be involvement of Foreign Affairs, the desk

1 that looks after that part of the world.

2 And, ultimately, the process would
3 then involve the -- we would also seek advice from
4 our liaison officer, who is most familiar with the
5 situation from a law enforcement perspective; and,
6 ultimately, the Ambassador, who would forward
7 those questions.

8 So there is a mechanism in place
9 that needs to be followed.

10 In this particular case, with the
11 call from Mr. Gould to the investigator, I would
12 expect the investigator to have some response. I
13 wouldn't expect him to put down the phone and say,
14 "I am sorry, I can't talk to you. I need to talk
15 to CID." This is an informal preliminary
16 discussion.

17 MR. DAVID: So it is very much a
18 multi-party approach in making this decision.

19 MR. LOEPPKY: Yes.

20 MR. DAVID: It involves the
21 headquarters, it involves the Project, "A"
22 Division, and DFAIT?

23 MR. LOEPPKY: Yes.

24 MR. DAVID: We move now to the
25 next date, October 22nd, and I could refer you to

1 P-85, volume 5, and that would be tab 27.

2 --- Pause

3 MR. DAVID: This is a fax. It is
4 a fax coming directly to you, Mr. Loepky, and it
5 is coming from the CROPS officer of "A" Division,
6 Mr. Antoine Couture. It is dated the 22nd of
7 October.

8 Essentially Mr. Couture is sending
9 you a time line, an Arar time line.

10 MR. LOEPPKY: Yes.

11 MR. DAVID: Did you request this
12 time line?

13 MR. LOEPPKY: This time line was
14 requested pursuant to the discussions between
15 Mr. Powell -- between the U.S. and Canada in terms
16 of the way Mr. Arar was dealt with.

17 MR. DAVID: And my question was:
18 Did you request "A" Division to provide you
19 with this?

20 MR. LOEPPKY: Yes, I did.

21 MR. DAVID: Let me just quote you
22 what Mr. Couture is saying.

23 He says in the second paragraph:

24 "Our investigative efforts on
25 this individual --"

1 That's Maher Arar.

2 "... continue and while we
3 have no evidence to pursue a
4 prosecution, we are of the
5 opinion that he has
6 significant involvement with
7 targets of this project and
8 his activities are of
9 concern."

10 So it is clear that Mr. Couture
11 has a keen interest in Mr. Arar and will pursue an
12 investigation in his regard.

13 I bring you to your handwritten
14 notes at the bottom, and they are dated the 23rd
15 of October. Could just read them for us? I think
16 it would be a lot easier if you read them.

17 MR. LOEPPKY: I sent it to --

18 MR. DAVID: CID.

19 MR. LOEPPKY: -- CID.

20 MR. DAVID: So that would be
21 Mr. Proulx, essentially?

22 MR. LOEPPKY: Yes. It is
23 forwarded to me from CID.

24 MR. DAVID: Okay.

25 MR. LOEPPKY: And then I put:

1 "CID: Your thoughts, please.
2 Although the ... may not have
3 been the decision-makers, I
4 am concerned over how we were
5 treated. We seem to have
6 been left out of the loop,
7 and given our commitment to
8 sharing, I would expect that
9 from the ... as well. Let's
10 discuss next steps."

11 MR. DAVID: Now those blanks,
12 without identifying who they are because they are
13 redacted, do they refer to an American
14 counterpart?

15 MR. LOEPPKY: Yes.

16 MR. DAVID: And essentially you
17 are expressing frustration here, and the
18 frustration you are expressing is that you were
19 not included in certain key decisions that were
20 made? You were not advised, at the very least?

21 MR. LOEPPKY: The fact that the
22 RCMP was not advised of the decision that was
23 taken and why it was taken with respect to
24 Mr. Arar was a concern to me.

25 MR. DAVID: It was a concern, and

1 you would have expected something else?

2 MR. LOEPPKY: Yes.

3 MR. DAVID: Mr. Commissioner, the
4 timing of it is very good because that ends that
5 area.

6 THE COMMISSIONER: You are going
7 to number 6 now?

8 MR. DAVID: It is one o'clock. I
9 would suggest that we reconvene at two o'clock.

10 We are doing okay, and I just want
11 to make sure that we keep on doing okay.

12 THE COMMISSIONER: All right. Two
13 o'clock.

14 MR. DAVID: Thank you.

15 THE REGISTRAR: Please stand.

16 --- Upon recessing at 1:06 p.m./

17 Suspension à 13 h 06

18 --- Upon resuming at 2:00 p.m. /

19 Reprise à 14 h 00

20 THE REGISTRAR: Please be seated.

21 THE COMMISSIONER: Good afternoon.

22 MR. LOEPPKY: Good afternoon, sir.

23 THE COMMISSIONER: Mr. David...?

24 MR. DAVID: Mr. Loepky, when we
25 left off, we were discussing how DFAIT gets to

1 participate in a decision-making process involving
2 RCMP interests. I think you have well-explained
3 how that works, and that is basically a multiparty
4 approach that is adopted.

5 My last question, and my only
6 question coming back to that subject, is: Did you
7 have personal knowledge as to whether DFAIT was
8 giving advice, providing advice, with regards to
9 sharing of information with Syria?

10 Was that brought to your
11 attention?

12 MR. LOEPPKY: No.

13 MR. DAVID: The eighth area,
14 Mr. Loepky, I would like to address, it is a
15 one-question area, and that is, we know that CSIS
16 went to Syria, we know that they went there in
17 November of 2002.

18 Were you aware of the trip?

19 MR. LOEPPKY: No.

20 MR. DAVID: To your knowledge, was
21 CID involved in the planning of this trip?

22 MR. LOEPPKY: I don't know to what
23 degree they were involved in the planning. I
24 understand that they were aware of it. I became
25 aware of that later.

1 MR. DAVID: They were aware of it,
2 in terms of your understanding -- CID was --
3 before the trip or after the trip?

4 MR. LOEPPKY: I don't know.

5 MR. DAVID: The ninth area is your
6 response to certain comments made by Mr. Powell,
7 now Secretary of State of the United States,
8 concerning a meeting that occurred between
9 Mr. Powell and Mr. Graham. This meeting occurred
10 on November 14, 2002.

11 I would like to bring you to
12 page 24 of your notes, and if you could read those
13 for us?

14 MR. LOEPPKY: Page 24?

15 MR. DAVID: Yes, page 24.

16 The issue somewhat resembles the
17 issue that we have already addressed concerning
18 Mr. Cellucci's comments.

19 Your notes say what?

20 MR. LOEPPKY:

21 "Paul calls."

22 MR. DAVID: Do you know who
23 that is?

24 MR. LOEPPKY: I believe that is
25 Paul Kennedy from the Solicitor General's

1 Department. He was the Assistant Deputy Minister
2 at the time.

3 "Powell/Graham meeting today
4 re Arar being shipped to
5 Syria. Jim Wright present.
6 Powell said..."

7 Jim Wright would have been present
8 at that meeting. Jim Wright was Assistant Deputy
9 Minister of Foreign Affairs, my understanding.

10 "Powell said RCMP supported
11 shipping Arar back to Syria.
12 Very contentious issue. CID
13 to check for the fourth time
14 what the story is."

15 MR. DAVID: Did you speak to
16 Mr. Jim Wright, who would have been in attendance,
17 of this matter?

18 MR. LOEPPKY: I don't believe
19 I did. I just referred to this conversation
20 with Paul.

21 MR. DAVID: I would like to bring
22 you now -- and the reference document is dated
23 somewhat later, but it is for the same time
24 period.

25 If you could go to tab -- I'm

1 sorry, Exhibit P-117 and volume 2.

2 MR. LOEPPKY: Exhibit P-117?

3 MR. DAVID: Volume 2. If you
4 could go to tab 75.5. We are beginning to read
5 like the Income Tax Act, Mr. Commissioner, and
6 that is a scary thought. I hope you will have a
7 recommendation in your report about that.

8 --- Laughter / Rires

9 MR. LOEPPKY: Yes.

10 MR. DAVID: If you could go to
11 page 4 of 6.

12 MR. LOEPPKY: Yes.

13 MR. CAVALLUZZO: So on one hand we
14 have just read your notes wherein it is reported
15 to you that Mr. Powell would have said the RCMP
16 supported the deportation of Arar to Syria, and
17 now we are going to a memo that was drafted by
18 Mr. Pardy. The memo is drafted on June 5th and it
19 is giving historical context to his Minister.

20 I bring you to paragraph 10, in
21 the third line, and it says:

22 "In your meetings with the
23 American Ambassador and
24 Secretary of State Powell
25 late last year..."

1 That is referring to November of
2 2002, Mr. Loeppky:
3 "... both stated that
4 American action in deporting
5 Mr. Arar was based on
6 information from Canadian
7 authorities. The American
8 Ambassador reiterated this in
9 response to a question from a
10 member of parliament in a
11 private meeting a few weeks
12 ago."

13 So my question is -- and I can
14 maybe refer you to Mr. Graham's testimony, if you
15 will, and Mr. Graham is quoted as saying:

16 "Mr. Powell said that you
17 guys knew what we were doing
18 all along."

19 I'm sorry, it is Mr. Cellucci who
20 said that. So:

21 "You guys knew what you were
22 doing all along, and Canadian
23 authorities were aware of our
24 actions."

25 So that is the context.

1 My question to you is: Did you
2 know that Mr. Graham asked eventually Mr. Powell
3 to provide him the name of the Canadian official
4 who would have given information to the Americans
5 that Mr. Graham was furthering the investigation
6 vis-à-vis Mr. Powell?

7 MR. LOEPPKY: I learned that at a
8 meeting at PCO, that that was an intended course
9 of action that the Minister of Foreign Affairs
10 would be taking.

11 MR. DAVID: Your reaction, your
12 assessment -- we got your reaction to the
13 statements made by Mr. Cellucci. The Secretary of
14 State of the United States is now making comments
15 that are obviously very negative vis-à-vis the
16 RCMP and its role in the deportation.

17 How did you react to the fact that
18 now Mr. Powell was claiming the same thing?

19 MR. LOEPPKY: I was disappointed
20 because I had had a number of reviews done and I
21 had been assured that we had given no direction,
22 and therefore I welcomed the initiatives that were
23 going to be undertaken by the Minister to try and
24 find out the name.

25 MR. DAVID: Did this bring on a

1 further review within CID of the Powell
2 statements?

3 MR. LOEPPKY: Yes, it did.

4 MR. DAVID: Okay. Mr. Loepky,
5 the meeting that you had at PCO wherein you
6 learned that Mr. Graham was pushing the issue with
7 Mr. Powell, do you recall when that meeting was?
8 Was it post the Pardy memo or was it at a time
9 when Mr. Powell said those statements in November
10 of 2002?

11 Do you recall?

12 MR. LOEPPKY: No, it was later on.
13 I think it was post the Pardy memo, if my memory
14 is correct.

15 MR. DAVID: Okay. Thank you.

16 I bring you now to an entry for
17 November 15, 2002. ISI, now of DFAIT, is
18 providing additional details of the Powell
19 statement to Minister Graham.

20 If you can go to Exhibit P-42,
21 which is the DFAIT collection, and it is tab 202.

22 --- Pause

23 THE COMMISSIONER: Volume 2.

24 MR. DAVID: Volume 2. It is tab
25 202.

1 There are two e-mails here,
2 Mr. Loeppky. One is internal to DFAIT, and it is
3 the bottom one, and the message there, on the
4 first paragraph, is:

5 "As indicated..."

6 This is again the day after
7 Mr. Powell and Mr. Graham met.

8 So the message is:

9 "As indicated during our
10 phone conversation at lunch
11 time, US side has indicated
12 to Cdn side yesterday, during
13 Powell-Graham mtg that 'US
14 government' had indicated to
15 'Cdn gvt' reasons/rationale
16 behind Arar's deportation to
17 Syria. It does not look,
18 however, that
19 reason/rationale was given by
20 State to DFAIT, but rather
21 from one US law-enforcement
22 agency to their Cdn
23 counterpart."

24 So the subject matter is a bit
25 different here. It is not so much what Powell

1 said, but it is the fact that reasons/rationale
2 for deporting Mr. Arar were given to a Canadian
3 law enforcement agency by a U.S. law enforcement
4 agency. That message was relayed to the RCMP via
5 your Liaison Officer, Mr. Roy, and that is the top
6 message.

7 So it seems that in November 2002
8 the RCMP was in possession of the explanation or
9 the rationale for the deportation by the
10 Americans.

11 Can you confirm, first of all, was
12 that the case? Was that so?

13 MR. LOEPPKY: That is not correct.

14 MR. DAVID: Okay. Do you have any
15 knowledge of a U.S. law enforcement agency
16 providing the RCMP with reasons to anybody in
17 Canada for explaining the deportation?

18 MR. LOEPPKY: No.

19 MR. DAVID: Okay.

20 Mr. Loepky, the removal order
21 that actually is the legal document that pertains
22 to Mr. Arar's deportation that is issued by U.S.
23 INS, it has been filed as Exhibit P-20.

24 Do you know when the RCMP received
25 a copy of that removal order?

1 MR. LOEPPKY: No, I do not.

2 MR. DAVID: Okay. I bring you to
3 an entry for November 15th. If you could go to
4 Exhibit P-48, tab 12, please?

5 I would like to file, in regard to
6 this reference, Mr. Brisson, there is a document
7 identified as No. 5.

8 If we could file that,
9 Mr. Commissioner. This is a new version of
10 Exhibit P-48, tab 12. That will be P-182. Thank
11 you.

12 EXHIBIT NO. P-182: New
13 version of Exhibit P-48,
14 tab 12

15 MR. DAVID: Again, it is just a
16 matter of redactions.

17 This refers to discussions between
18 yourself and PCO, the fact that you would have
19 spoken to Mr. Dickenson from PCO, who is the
20 Assistant Secretary for Security and Intelligence
21 at PCO --

22 MR. LOEPPKY: Yes.

23 MR. DAVID: -- about Mr. Arar.

24 Did you discuss at this
25 meeting -- if you want me to read you the message,

1 I am certainly happy to do so -- but did you
2 discuss the Powell comments with Mr. Dickenson at
3 this time?

4 MR. LOEPPKY: Yes.

5 MR. DAVID: What came of that
6 discussion?

7 MR. LOEPPKY: The nature of the
8 discussion was that this was creating a very
9 significant issue in terms of the different
10 messages that seemed to be out there from the U.S.
11 side versus the Canadian side. My discussion with
12 PCO was that we had done a number of reviews and
13 that I had not been able to find any indication
14 where we had given any direction that had been
15 alluded to or made any suggestions with respect to
16 the decision that they had taken.

17 MR. DAVID: Was this meeting or
18 this discussion initiated by the PCO or was it
19 initiated by you, if you recall?

20 MR. LOEPPKY: No, it was a
21 coordination by PCO, given that it involved a
22 number of different departments within government.

23 MR. DAVID: Okay. So you spoke
24 about the Powell statements.

25 Did you speak about Mr. Arar on

1 that date or around that date?

2 MR. LOEPPKY: Simply that I
3 commented on the fact that, you know, we had
4 looked at this, we had done a review, we had asked
5 a number of questions, and we had not been able to
6 find anything that would lead us to conclude that
7 the statements were accurate that were being made.

8 MR. DAVID: If we could refer to
9 the new exhibit that we filed, the third
10 paragraph, about halfway through it says:

11 "Also understand that RCMP
12 is/was displeased with U.S.,
13 that Arar was deported before
14 they had a chance to
15 interview him. Garry was
16 emphatic that RCMP had not
17 met with Arar in New York but
18 had wished to do so. Before
19 arrangements could be made,
20 Arar was deported."

21 It seems to insinuate that your
22 understanding at this time when you are speaking
23 to Mr. Dickenson is that the RCMP still had an
24 outstanding request to interview Mr. Arar when he
25 was deported?

1 MR. LOEPPKY: I believe I
2 indicated that we had had an interest in
3 interviewing him at one point. I believe I
4 went as far as to say that we had stood down
5 that request, given that we thought he was coming
6 to Canada.

7 MR. DAVID: You would have said
8 that to Mr. Dickenson?

9 MR. LOEPPKY: I believe so.
10 But the main thrust of the conversation was, did
11 we give direction to the U.S. to make the decision
12 they did.

13 MR. DAVID: Okay. Was this a
14 phone call with Mr. Dickenson, or was it a
15 meeting, if you recall?

16 MR. LOEPPKY: I believe it was a
17 phone call.

18 MR. DAVID: Okay. On December 13,
19 2002, yourself and Mr. Proulx go to Washington on
20 a trip and you are meeting with a representative
21 of the FBI.

22 Can you tell us who you met, first
23 of all, and what was the purpose of your trip to
24 Washington with Mr. Proulx?

25 MR. LOEPPKY: We went to

1 Washington to discuss some issues of concern to
2 us. We met with the Deputy Director of the FBI
3 for a very short period of time and then he had to
4 leave and we carried on the discussions with some
5 other people.

6 MR. DAVID: Approximately how long
7 did this meeting last, Mr. Loepky?

8 MR. LOEPPKY: It was less than
9 30 minutes. It was a short meeting.

10 MR. DAVID: It was a
11 brief meeting.

12 Did the issues that were matters
13 of discussion go beyond concerns of the
14 investigation, the A-OCANADA investigation?

15 MR. LOEPPKY: There were a number
16 of issues that were discussed, but we did
17 specifically discuss that, yes.

18 MR. DAVID: You specifically
19 discussed A-OCANADA.

20 Did you specifically discuss the
21 case of Mr. Arar?

22 MR. LOEPPKY: I raised the
23 issue, yes.

24 MR. DAVID: In this brief meeting,
25 were you satisfied that your concerns that you

1 were expressing to the FBI were addressed to your
2 satisfaction?

3 In other words, how did you come
4 out of this meeting?

5 MR. LOEPPKY: My concerns were not
6 addressed to my satisfaction, and I felt the
7 meeting could have been more productive.

8 MR. DAVID: Okay. We move on now
9 to January 13, 2003, and if I could refer you to
10 your notes at pages 31 and 32.

11 This is a meeting that is
12 occurring at the Solicitor General's office and it
13 is concerning the discussion of new ministerial
14 directives concerning national security
15 investigations. I would like to highlight certain
16 areas of those two pages with you and get your
17 comments.

18 Perhaps the best way, just to save
19 time, is for you to read, and I will tell you --
20 on the first page, page 31, for the 13th of
21 January 2003, "Discussion on national security."

22 MR. LOEPPKY: Yes.

23 MR. DAVID: Then it says
24 "Terrorist activities. Line ..."

25 MR. LOEPPKY: "Line is blurred."

1 MR. DAVID: Okay.

2 "Line is blurred between the
3 terrorist/criminal
4 activities. Ministerial
5 directives were issued by
6 Minister to security
7 service."

8 MR. LOEPPKY: That was pre -- pre,
9 yes.

10 MR. DAVID: Can you just explain
11 to us those comments?

12 MR. LOEPPKY: Pursuant to the
13 passage of C-36, which criminalized certain
14 activities, you know, there had been a discussion
15 about areas that previously fell into the domain
16 of security intelligence which now had been
17 criminalized and fell into the area of law
18 enforcement. C-36 did not change our mandate but
19 it criminalized certain offenses, so there was a
20 discussion about that.

21 There was a discussion about
22 during the days of the security service prior to
23 the MacDonald Commission the Minister had in fact
24 issued directives and a similar approach was being
25 contemplated on the national security

1 investigation side.

2 MR. DAVID: Okay. Then you
3 note (1), and it says -- if you could just read
4 that?

5 MR. LOEPPKY: These were broad
6 issues that were raised.

7 Number 1:

8 "Is Minister's accountability
9 different under national
10 security investigations?"

11 MR. DAVID: What does that refer
12 to, Mr. Loepky? Is there a different standard?
13 Is that what you are --

14 MR. LOEPPKY: A standard in terms
15 of national security investigations have the
16 potential to have broader impact on the national
17 interest on things like the economy and a variety
18 of other things, and so is there a different
19 interest, if you will, in terms of national
20 security investigations?

21 MR. DAVID: Okay. Moving on down,
22 we have at paragraph 3, if you could just read
23 that entry? "Involvement ..."

24 MR. LOEPPKY:

25 "Involvement for police to

1 dealing with other foreign
2 intelligence agencies.
3 Police and foreign
4 intelligence/levels of
5 interaction."

6 That I think ends that particular
7 piece and then the next piece carries on.

8 MR. DAVID: Just tell us what you
9 are referring to there.

10 MR. LOEPPKY: A discussion about
11 the information exchanges in relationship between
12 law enforcement and security intelligence agencies
13 in the new world and the mechanisms in place, or
14 the protocols in place, in terms of how you deal
15 between law enforcement and the security agencies.

16 MR. DAVID: Was there an
17 understanding there was to be increased dialogue
18 between security or intelligence agencies and law
19 enforcement agencies?

20 MR. LOEPPKY: No. This was really
21 in the context of, how do you -- is it an area
22 that needs to be looked at from the perspective
23 of, does it need to be -- does there need to be a
24 separate type of accountability framework, and
25 should that be reviewed.

1 MR. DAVID: Then you go on, you
2 say:

3 "What's driving agenda? No
4 lack of confidence.
5 Protocols must be in place.
6 Oversight challenges."

7 What does that refer to,
8 Mr. Loeppky?

9 MR. LOEPPKY: Those are just some
10 notes that I made. You know, my question, is
11 there a concern about -- you know, what are the
12 driving factors behind the discussions. Obviously
13 the passage of C-36 was one of those. There was a
14 fair bit of public debate about that.

15 I can provide some explanation. I
16 didn't detect a lack of confidence in how the
17 relationships were being managed. That is what
18 that comment, "No lack of confidence." That there
19 needed to be proper protocols in place so that the
20 public and the Minister would have a level of
21 understanding, level of confidence. And obviously
22 oversight challenges, that was an issue that was
23 being debated in the public forum and I put that
24 comment down.

25 MR. DAVID: Okay. I would like to

1 now move to your notes at page 33 for the 17th of
2 January. It refers to a meeting that you have
3 with Gessie and Wayne.

4 If you could just identify, first
5 of all, who those people are?

6 MR. LOEPPKY: Gessie is Assistant
7 Commissioner Gessie Clément.

8 MR. DAVID: So she was Commanding
9 Officer of "A" Division?

10 MR. LOEPPKY: She had recently
11 been appointed as the new Commanding Officer of
12 "A" Division, and Wayne would have been Chief
13 Superintendent Wayne Watson who was her Criminal
14 Operations Officer.

15 MR. DAVID: So you have a meeting
16 on this date.

17 If you could just read the
18 second paragraph?

19 MR. LOEPPKY: Yes. Assistant
20 Commissioner Clément had come to headquarters.
21 She had recently been appointed, and it was an
22 orientation tour, if you will, to the various
23 areas. Of course, operations were a critical area
24 and I spent a little bit of time, as did the other
25 areas of the organization.

1 MR. DAVID: I see that you note:
2 "Need for coordination/
3 awareness by CID. No room
4 for error."

5 MR. LOEPPKY: Yes.

6 MR. DAVID: That is concerning
7 national security files?

8 MR. LOEPPKY: Yes.

9 MR. DAVID: So this is more or
10 less the same message you had given Mr. Hovey,
11 that May 18th memo?

12 MR. LOEPPKY: Centralization,
13 central coordination was critical. It was
14 important that CID was involved. Sensitive
15 investigations, they need to be done expeditiously
16 and I was thinking about a broad range of
17 sensitive investigations that fall to "A" Division
18 simply because of their location in Ottawa.

19 MR. DAVID: This, you say, the
20 context was sort of an orientation meeting, given
21 that Ms Clément came in to --

22 MR. LOEPPKY: I was generally
23 laying out my expectations in terms of how a
24 division would function. These are two points
25 that we covered.

1 MR. DAVID: The next area,
2 Mr. Loeppky, is the travels of the Rome Liaison
3 Officer to Syria.

4 I will give you the context here.
5 The theme, again, I want to develop with you are
6 the checks and balances in place for carrying out
7 investigative work overseas.

8 In the period of time around
9 December 2002 A-OCANADA was clearly contemplating
10 certain steps, investigative steps, in Syria.

11 We know from the evidence of
12 Mr. Cabana that A-OCANADA wanted or desired to
13 interview Mr. Arar in Syria, as expressed in
14 December 2002 -- and this is coming through
15 Mr. Edelson's evidence. He had a meeting with
16 A-OCANADA at that time.

17 The second investigative lead in
18 terms of Syrian implication is that A-OCANADA was
19 contemplating sending questions to Syria
20 concerning not Mr. Arar but concerning another
21 detained Canadian in the same time period.

22 So we see that there is movement
23 in the sense of taking measures and taking steps
24 in Syria, and the liaison officer is involved in
25 that process.

1 My first question to you is -- and
2 we can refer perhaps to two different policies
3 that exist.

4 I will bring you to Exhibit P-12,
5 please, Mr. Greffier.

6 --- Pause

7 MR. LOEPPKY: Thank you.

8 MR. DAVID: If you could go to
9 tab 29. The first area are on pages 10 and 11,
10 and that is "J", specifically J.4.a. "J" has to
11 deal with "Foreign Liaisons Assistance and
12 Investigations Involving the U.S." as a general
13 topic. You will see that on page 9, just to
14 situate you, "Foreign Liaison Assistance and
15 Investigations Involving the U.S."?

16 MR. LOEPPKY: Yes.

17 MR. DAVID: J.4 deals with
18 international investigations and J.4.a is what I
19 want to read you. It says:

20 "With the commander's prior
21 authorization, an operational
22 unit may communicate directly
23 with an LO."

24 So the idea being expressed here
25 is that before there is going to be direct

1 interaction between an investigator and a liaison
2 officer you are going to need the commander's
3 approval.

4 Is that the case?

5 MR. LOEPPKY: Yes.

6 MR. DAVID: Then if we can go to
7 the subject matter "I", I would like to bring you
8 to I.2.g which is on page 7, Mr. Loepky. "I"
9 deals with "Foreign Travel" as a general topic.

10 I.2.g says the following:

11 "Do not contact or interview
12 Canadians in custody in a
13 foreign country unless:
14 1. the interview was
15 requested through a Canadian
16 government representative, or
17 consent to the interview is
18 given in writing, and
19 2. the interview has been
20 approved by the head of the
21 foreign post."

22 So those are what I have seen in
23 terms of policy that may apply in terms of what
24 A-OCANADA was thinking of at this time.

25 My question is: What training

1 is involved in terms of exercising the liaison
2 officer's position, for instance for Syria, for
3 the individual in Rome? What training is
4 involved in terms of him carrying out his duties,
5 him or her?

6 MR. LOEPPKY: There is a rigorous
7 selection process in place to identify liaison
8 officers with the right skills for particular
9 areas. They then go through an orientation period
10 and a training program in terms of the
11 responsibilities that they have with respect to
12 their accountability to the Ambassador.

13 With respect to the part of world
14 they are going to, there is a period of
15 orientation that takes place, including
16 presentations from within and from Foreign
17 Affairs, so that when they hit the ground in the
18 area that they are being posted to they have a
19 good sense of the issues of the countries they are
20 covering, the cultural sensitivities that they
21 need to be aware of, those types of things that
22 are important so that they can do their duty.

23 MR. DAVID: Now, in a push to go
24 and interview Mr. Arar in Syria by the members of
25 AOC, is it your understanding that policy dictates

1 that that would have to be authorized by the
2 commanding officer?

3 MR. LOEPPKY: It would be the
4 Criminal Operations Officer that I believe would
5 approve the request, you know, before the travel
6 actually takes place and would go up to the
7 commanding officer, you know, if travel was going
8 to take place.

9 MR. DAVID: Would CID and the
10 Department of Foreign Affairs be involved in
11 evaluating and assessing such investigative
12 steps --

13 MR. LOEPPKY: Yes, they would.

14 MR. DAVID: -- that is,
15 interviewing someone overseas, a Canadian
16 overseas, and, secondly, possibly sending
17 questions?

18 MR. LOEPPKY: Yes, they would.
19 There would be consultation with CID, with Foreign
20 Affairs, and obviously with the investigative
21 team. Then ultimately, if the decision was made,
22 then there would be consultation with the LO as
23 well who can give a sense as to the environment,
24 then ultimately the involvement of the head of
25 post, the Ambassador, who has the final decision.

1 MR. DAVID: Okay. I bring you
2 to tab 31 of the policy manual. If you could
3 refer to M.3. We have seen this already, and it
4 refers to:

5 "The RCMP will not become
6 involved or appear to be
7 involved in any activity that
8 might be considered a
9 violation of the rights of an
10 individual, unless there is a
11 need to comply with the
12 following international
13 conventions".

14 And again we have seen M.3.b,
15 Mr. Loeppky, in your testimony already today.

16 My question is: In terms of
17 Mr. Cabana has testified that he was contemplating
18 sending questions to Syria for the participation
19 of Syrian authorities in the examination of a
20 Canadian -- that was not Mr. Arar -- and he
21 contacted the -- he tells us that he contacted the
22 liaison officer in Rome in this regard and that
23 the liaison officer in Rome was the one who said
24 that the best approach to getting answers would be
25 to share a list of questions with the Syrian

1 authorities, that that was the best approach to
2 take in terms of eliciting -- getting answers to
3 these questions.

4 So my question is: Again, would
5 the human rights record and the track record in
6 terms of the human rights issues be contemplated
7 in deciding that before doing that?

8 MR. LOEPPKY: Yes, it would.

9 MR. DAVID: All right. We go now
10 to January 10th, Mr. Loepky, and if you could go
11 to Exhibit P-173, page 6.

12 MR. LOEPPKY: Page 6?

13 MR. DAVID: Page 6, which is the
14 source document. This document is going to the
15 liaison officer in Rome and it is coming from
16 Project A-OCANADA. It is dated January 10th. The
17 AOC, Mr. Loepky, is simply providing additional
18 information --

19 MR. LOEPPKY: I'm sorry, I'm
20 just -- I don't know if I have the same one. It
21 is Exhibit P-173?

22 MR. DAVID: Yes, Exhibit P-173,
23 and page 6. It is a document --

24 MR. LOEPPKY: Okay. Down at the
25 bottom. I see. Okay.

1 MR. DAVID: Page 6 of 14?

2 MR. LOEPPKY: Yes, I'm with
3 you now.

4 MR. DAVID: It is document that
5 is a fax to the liaison officer in Rome, it is
6 dated the 10th of January 200, and A-OCANADA is
7 providing additional information on Mr. Arar in
8 view of an eventual trip by the liaison officer
9 to Syria.

10 So it was contemplated that
11 Mr. Fiorido would be going to Syria so additional
12 information or background information is being
13 provided to the liaison officer in this regard.

14 Does policy require, before the
15 liaison officer would go on an operational trip,
16 headquarter approval?

17 MR. LOEPPKY: As long as he or she
18 is travelling to the countries that they are
19 responsible for, I don't believe they need
20 specific headquarters approval if it is a liaison
21 trip that they do from time to time. They would
22 advise headquarters that they are travelling.

23 MR. DAVID: If it is a trip
24 wherein operational information was going to be
25 discussed with a foreign government, with a

1 foreign police or intelligence agency, would that
2 require the headquarters approval?

3 MR. LOEPPKY: Yes.

4 MR. DAVID: Would that approval be
5 more than simply info copying headquarters on the
6 matter? Would there have to be a consultation and
7 a consent to the trip?

8 MR. LOEPPKY: There would be a
9 request to the liaison officer that would go
10 through the headquarters international liaison
11 office and onward to the LO. That would be the
12 normal course of communication.

13 MR. DAVID: Okay. The next area
14 is the RCMP's position versus certain efforts
15 being made by DFAIT, Mr. Loepky.

16 I would like to, first of all,
17 simply remind you and for the record state that
18 there are two MPs, Ms Catterall and
19 Mr. Assadourian, who went to Syria on April 22nd
20 and 23rd of 2003. I wish to bring you now to
21 Exhibit P-117, tab 49 -- actually, okay, that is
22 fine.

23 Mr. Commissioner, I think at this
24 point the easiest -- I have three documents to
25 file for this time period and I will just file

1 them all together and that would be 6, 7, and 8,
2 if you will. That will be the last of the new
3 documents that have to be filed.

4 THE COMMISSIONER: So these are
5 Exhibit P...?

6 MR. DAVID: That would be
7 Exhibit P-183 and then Exhibit P-184 and
8 Exhibit P-185.

9 THE COMMISSIONER: Okay.

10 MR. DAVID: Just for the record,
11 Exhibit P-183 is a new version of Exhibit P-48,
12 tab 15.

13 EXHIBIT NO. P-183: New
14 version of Exhibit P-48,
15 tab 15

16 MR. DAVID: Exhibit P-184 is a new
17 version of Exhibit P-117, tab 49.

18 EXHIBIT NO. P-184: New
19 version of Exhibit P-117,
20 tab 49

21 MR. DAVID: Exhibit P-185 is a new
22 version of Exhibit P-85, volume 5, tab 31.

23 EXHIBIT NO. P-185: New
24 version of Exhibit P-85,
25 volume 5, tab 31

1 MR. DAVID: So I was at
2 Exhibit P-184, Mr. Loepky, and I was going to ask
3 you questions about Exhibit P-184.

4 This is a briefing note to the
5 Commissioner. The context is the MPs visit and it
6 is also in the context of an attempt to get the
7 Prime Minister to intervene in Mr. Arar's
8 situation. It is a briefing note to the
9 Commissioner about their trip.

10 The issue is identified at the
11 very top. It says:

12 "Media reports of travel by
13 Members of Parliament to
14 Syria to inquire on the
15 status of detainee Maher
16 Arar."

17 On the second page of the document
18 there is a concern that is expressed, and it says
19 the following:

20 "Members of Parliament are
21 seeking intervention at the
22 Prime Minister level for the
23 release of Arar and his
24 return to Canada. The
25 potential for embarrassment

1 exists should the Prime
2 Minister become involved in a
3 similar fashion to the
4 incident following the
5 Egyptian Embassy bombing in
6 1995 in Pakistan. In that
7 situation, the Prime Minister
8 intervened on behalf of Ahmed
9 Said Khadr, an
10 Egyptian-Canadian, who was
11 subsequently released from
12 Pakistani custody. Khadr is
13 now recognized
14 internationally as a high-
15 ranking al-Qaeda member and
16 wanted by the Egyptians for
17 the bombing. The
18 intervention of the PM has
19 been raised on a number of
20 occasions in an attempt to
21 embarrass the government."

22 (As read)

23 Then there is a written comment by
24 you at the bottom dated May 1, 2003, and it says
25 the following:

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1 "Pursuant to the discussions
2 involving the Commissioner,
3 DSG ..."

4 Which is the Solicitor General's
5 Office or the Director of the Solicitor General's
6 Office?

7 MR. LOEPPKY: Yes.

8 MR. DAVID:

9 "... DOJ and DFAIT. We
10 should assess whether we need
11 to provide a briefing on
12 Mr. Arar so that Canada is
13 not put in an embarrassing
14 position of having the
15 highest level political lobby
16 only to find out, as happened
17 with Khadr, that he is
18 clearly involved in terrorist
19 activity. Let's discuss. I
20 would like your views."

21 This message is being addressed, I
22 imagine, to Mr. Proulx?

23 MR. LOEPPKY: That is correct.

24 MR. DAVID: If we go to
25 Exhibit P-85, volume 5, tab 21, there is a

1 response that is being made to your concern
2 or your...
3 --- Pause

4 MR. LOEPPKY: Which tab, sir?

5 MR. DAVID: The new version is
6 Exhibit P-185, but the old version is
7 Exhibit P-85, tab 31.

8 MR. DAVID: There is a
9 reference at the very, very top to your concerns,
10 and it says:

11 "Deputy Commissioner Loepky
12 has asked for an assessment
13 on whether we should be
14 briefing further on Arar to
15 ensure Canada is not put in
16 another embarrassing
17 situation."

18 The memo goes on, and it doesn't
19 seem to come back to this concern that you have
20 expressed already on May 1st and which seems to be
21 responded to on May the 14th.

22 I don't think I have identified
23 any document that gives further response than this
24 to your concerns expressed on May 1st.

25 So my question is: To your

1 knowledge, was there a further response to your
2 concerns?

3 MR. LOEPPKY: No.

4 MR. DAVID: Is the conclusion that
5 Maher Arar was not or could not be a potential
6 source of embarrassment for the Prime Minister?

7 Was that the conclusion that was
8 arrived at?

9 MR. LOEPPKY: We didn't have a
10 further discussion on it, but I believe that
11 following their discussions with Foreign Affairs
12 it was just felt that there was no need for a
13 briefing and we left it at that.

14 MR. DAVID: Okay.

15 MR. LOEPPKY: That would be
16 accurate.

17 MR. DAVID: We come now to
18 the RCMP's position, Mr. Loepky, on a series of
19 draft and final memos from Mr. Pardy. I just
20 remind you that the MPs' visit occurred on
21 April 22nd and 23rd.

22 I bring you to tab Exhibit P-117,
23 volume 2. If you could go to tab 75.3.

24 You will see that the final
25 version of the memo that goes to Minister Graham

1 that is being drafted by Mr. Pardy of consular
2 affairs is dated June the 5th. So this is a draft
3 version and I just want to bring your attention to
4 two bullets on the first page.

5 The first is in terms of
6 recommendations to the Minister, Minister of
7 Foreign Affairs, that is.

8 "Efforts continue to
9 establish a common
10 understanding within the
11 government of Canada on this
12 case with the objective of
13 the issuance of a statement
14 signed by the Solicitor
15 General and the Minister of
16 Foreign Affairs that could be
17 used with the Syrian
18 authorities".

19 The last bullet says:

20 "If necessary, that you meet
21 with the Solicitor General
22 and the Deputy Prime Minister
23 to arrive at a common
24 understanding on the case."

25 So what, in essence, we see is

1 that there is going to be a DFAIT-led initiative,
2 or there is thought being given to a DFAIT-led
3 initiative, of fabricating a joint letter
4 co-signed by the Minister of Foreign Affairs and
5 the Solicitor General of Canada that would be
6 issued to the Syrian counterparts, militating
7 for Mr. Arar's return to Canada and his release
8 from Syria.

9 MR. LOEPPKY: Yes.

10 MR. DAVID: So that, we see, is in
11 the air as of May 5th.

12 I bring you now to page 4 of 5 of
13 that tab and you will see that there is an opinion
14 being expressed -- actually, let's go to
15 paragraph 9 on the previous page, and it says:

16 "It remains our view that the
17 following elements need to be
18 in place..."

19 Then one of those things that need
20 to be in place is on page 4 at the very top.

21 "there is need for an
22 unambiguous statement by the
23 government of Canada,
24 preferably signed by the
25 Solicitor General and the

1 Foreign Minister, to the
2 effect that we have no
3 evidence in Canada, or from
4 foreign sources, that
5 Mr. Arar is or was a member
6 of al-Qaida, that we do not
7 believe that such information
8 exists and that Mr. Arar
9 should be permitted to return
10 to Canada."

11 Then it is noted in this draft
12 memo also, at paragraph 10, the first bullet:

13 "In the days ahead, our
14 efforts will concentrate on:
15 . convening a meeting of
16 Canadian officials
17 representing CSIS, RCMP, PCO,
18 and the office of the Deputy
19 Prime Minister to develop a
20 common Canadian approach that
21 could be sufficiently clear
22 to communicate to the Syrian
23 authorities."

24 That is May 5th, Mr. Loepky.
25 What happens as a follow-up to

1 this memo is that there is an interagency meeting
2 on the 8th -- so three days later, on the 8th of
3 May -- concerning, amongst other things, this
4 memo, the contents of this memo, as well as a
5 proposed visit by the Deputy Minister of Foreign
6 Affairs to Syria.

7 Let me bring you now to tab 45,
8 that is Exhibit P-85, volume 5, tab 45. Sorry.

9 THE REGISTRAR: Exhibit P-85?

10 MR. DAVID: I told you,
11 Mr. Brisson, you would be busy.

12 MR. LOEPPKY: Which tab, sir?

13 MR. DAVID: Tab 45. It is the
14 last one, and I ask you to go to page 4 of 9. If
15 you could go find the entry for the 8th of May,
16 2003. It is the last entry for that day.

17 MR. LOEPPKY: Yes.

18 MR. DAVID: It says the following:

19 "Gar Pardy gave an overview
20 and wants to have a common
21 voice asking that he not be
22 charged as there is no
23 foundation for it.
24 Strategies and elements to
25 make it work."

1 Then it says:

2 "Dan Killam wants to see a
3 memorandum written for the
4 Minister level and discuss in
5 house and have another
6 meeting."

7 Then we see a reference to there
8 is going to be another meeting:

9 "To meet again next week..."

10 As we understand it, this was the
11 first time where the RCMP was given the DFAIT
12 position on this joint letter.

13 Basically, were you briefed about
14 this initial meeting and the results of it?

15 MR. LOEPPKY: No.

16 MR. DAVID: Were you involved in
17 any way in such an initiative at this stage?

18 MR. LOEPPKY: No.

19 MR. DAVID: So we will follow up
20 now, and we go to May 12th, which is the second
21 interagency meeting, and if I could refer you to
22 Exhibit P-85, volume 5, tab 31 this time.

23 --- Pause

24 THE REGISTRAR: Volume 5...

25 MR. DAVID: Volume 5, tab 31. It

1 is also now, as of today, Exhibit P-185. Sorry
2 about that. So we filed today Exhibit P-185,
3 which is a less redacted version of this tab.

4 I would like to refer you now --
5 so this is a briefing note to the Commissioner,
6 Mr. Loepky, that is dated the 15th of May, except
7 it is referring to what occurred on May 12th,
8 which was the second follow-up meeting to the
9 DFAIT proposal, and it says, in terms of briefing
10 to the Commissioner:

11 "D/Commissioner Loepky has
12 asked for an assessment on
13 whether we should be briefing
14 further on ARAR to ensure
15 Canada is not put in another
16 embarrassing situation."

17 We just read that before. But the
18 part that concerns the meeting is in the second
19 paragraph, and it says:

20 "A meeting was held on
21 2003MAY12 with DFAIT, Sol
22 Gen, RCMP, CSIS, and PCO
23 present. Discussion
24 surrounded the current status
25 of ARAR as well as RCMP

1 [somebody else's] interest.
2 RCMP agreed that at this
3 point RCMP has the lead in
4 terms of investigating ARAR.
5 Both RCMP and [somebody else]
6 are of the opinion that while
7 there is suspicion
8 surrounding the historical
9 activities of Arar, there is
10 insufficient evidence to
11 claim he is a member of Al
12 Quida or any other group.
13 RCMP was asked by DFAIT if we
14 were interested in
15 interviewing ARAR. RCMP
16 advised that while we are
17 interested in interviewing
18 ARAR, it is not a priority at
19 this point. DFAIT advised
20 that they had earlier
21 indications from Syrian
22 authorities that they would
23 not be open to law
24 enforcement contact with
25 Arar."

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1 Then the before-last
2 paragraph says:
3 "H.G. Pardy, Director
4 General, Consular Affairs
5 Bureau, DFAIT had prepared a
6 Memo for his Minister
7 addressing ARAR. CSIS, the
8 RCMP, and Sol Gen expressed
9 concern over some of the
10 wording in the memo and Pardy
11 undertook to re-draft the
12 memo and supply all parties a
13 draft copy prior to
14 finalization. As of the
15 writing of this Briefing Note
16 no re-draft has been
17 received."

18 So we see that the Commissioner
19 is now being briefed on the issue of the Pardy
20 memo and the recommendations he is making.

21 Were you in the loop at this
22 point?

23 MR. LOEPPKY: No. But if I could
24 just explain -- and I commented on this during the
25 contextual evidence, during the in-camera

1 evidence.

2 The standard format to prepare a
3 briefing note by the unit is a Commissioner's
4 briefing note. Unfortunately, that is the way our
5 system was structured and we are in the process of
6 reviewing that.

7 Simply because it is on the header
8 saying "Briefing Note to Commissioner," that would
9 very often stop at Assistant Commissioner Richard
10 Proulx's level. He would look at it and determine
11 whether it was relevant enough or important enough
12 to brief me. To brief me in writing he would send
13 it to me, in which case I would initial it.
14 Otherwise he would brief me verbally.

15 Very few of these briefing notes
16 actually would go to the Commissioner unless I
17 felt that it was critical enough that at his level
18 he be aware of it. So the Commissioner would not
19 have seen this briefing note, and I don't believe
20 I did either. I was probably verbally briefed.

21 MR. DAVID: Do you have any
22 comments about the fact that we are now saying
23 that interviewing Arar -- and this is in May, as
24 opposed to what seemed to be the situation in
25 December 2002 -- but interviewing Arar was not a

1 priority at this point.

2 Can you tell us why that is the
3 case?

4 MR. LOEPPKY: I can't put myself
5 in the place of the writer. There may have been
6 other priorities that were consuming their time.
7 There could be a whole host of reasons, but I
8 really cannot respond.

9 MR. DAVID: Okay. Continuing on
10 in terms of the development of the Pardy memo, we
11 come to the final version. I would like to bring
12 you now to Exhibit P-117, volume 2.

13 --- Pause

14 MR. DAVID: If you could go to
15 tab 75.5.

16 We saw that both on May 8th and
17 May 12th at the interagency meetings, Mr. Loepky,
18 there were certain differences of opinion in terms
19 of the contents of the memo, and so that was a
20 work-in-progress. Here we have the final memo
21 that went up to the Minister of Foreign Affairs at
22 this time.

23 I would like to bring your
24 attention to paragraph 13, which is on page 5
25 of 6, which says:

1 "In recent days, we have
2 discussed the case with both
3 CSIS and the RCMP. They have
4 maintained their positions
5 that Mr. Arar, while not
6 under investigation in
7 Canada, is a person of
8 interest to them because of
9 the evidence of his
10 connections with others who
11 are. In these circumstances,
12 they will not provide any
13 direct support in having
14 Mr. Arar return to Canada.
15 Should Mr. Arar return to
16 Canada, CSIS and the RCMP
17 have both indicated that they
18 want to interrogate him. As
19 such, the best we can do in
20 these circumstances is to
21 again raise the matter direct
22 with the Syrian Foreign
23 Minister and to that end we
24 have attached a letter for
25 your signature."

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1 The draft letter -- if you wish,
2 we can go to it now -- is at tab 75.9 and it would
3 be page 3. The key portion is in the second
4 paragraph, the second sentence, and it says --
5 this is on the part of the Minister of Foreign
6 Affairs:

7 "I assure you that the
8 Government of Canada has no
9 evidence Mr. Arar was
10 involved in any terrorist
11 activity..."

12 So that is the language that is
13 going to go out, that is being recommended to the
14 Minister of Foreign Affairs, and it is certainly
15 not being co-authored or co-signed with the
16 Solicitor General.

17 Were you aware --

18 MR. FOTHERGILL: Sorry,
19 Commissioner, just a point of clarification.

20 I think the original
21 recommendation to the Minister did not include
22 that language and it was an aide to the Minister
23 who asked that it be inserted, which then resulted
24 in the consultation, I believe, Mr. David wants to
25 explore with the witness.

1 MR. DAVID: Right.

2 THE COMMISSIONER: I agree.

3 MR. DAVID: Mr. Loepky, were you
4 aware of the contents of this final memo? Was the
5 final memo brought to your attention in the
6 language proposed for the letter to Syria?

7 MR. LOEPKY: It came to my
8 attention as a result of receiving a copy of it
9 from Michel D'Avignon from the Solicitor General's
10 department.

11 MR. DAVID: So that is how it
12 comes to your attention?

13 MR. LOEPKY: Yes.

14 MR. DAVID: We will get to that.

15 We will now see what the RCMP's
16 position is on the text being proposed for the
17 Minister's letter. I bring you to tab 75.6, which
18 is the next tab.

19 This is an e-mail that is coming
20 from Minister Graham's office --

21 MR. LOEPKY: 75 point --

22 MR. DAVID: Point 6.

23 MR. LOEPKY: Point 6, yes.

24 MR. DAVID: It is an e-mail dated
25 June 17, 2003?

1 MR. LOEPPKY: Yes.

2 MR. DAVID: It is an e-mail coming
3 from the Minister's office, Minister Graham's
4 office, and it is going to Gar Pardy and to
5 others, and it says:

6 "Minister's advisors have
7 reviewed your memo [of
8 June 5, 2003] and draft
9 letter from Minister Graham
10 to Syrian FM Shara'a and
11 would like to see the
12 following change (below in
13 italics) made to the body of
14 the letter.

15 Could you seek, as early
16 as possible, to receive
17 concurrence from SolGen/RCMP
18 and CSIS, if at all possible,
19 on the text and report."

20 The language being suggested by
21 the Minister's office is the following:

22 "(...) I assure you that
23 there is no evidence he is
24 involved in terrorist
25 activity nor is there any

1 Canadian Government
2 impediment to Mr. Arar's
3 return to Canada (...)"

4 Would you agree with me that this
5 is more robust language than the language we have
6 already reviewed in the draft copy of the
7 Minister's letter?

8 MR. LOEPPKY: Yes, I believe so.

9 MR. DAVID: Okay. Now, the next
10 step is at tab 75.8 in the same series. I bring
11 you to page 3 of that tab.

12 This is on the 18th of June, it is
13 the next day, and there is a response that is
14 being provided to the Department of Foreign
15 Affairs via Mr. Heatherington's services.
16 Mr. Heatherington was the Director of ISI and at
17 this point was Acting Director of ISD, in
18 replacement of Mr. Livermore.

19 Mr. Heatherington, on behalf of
20 the RCMP and CSIS responds as follows -- and he is
21 addressing this to Gar Pardy:

22 "You will recall our meetings
23 of May 8 and 12. The
24 situation has not changed
25 since that time and as a

1 result the RCMP and CSIS have
2 concerns with the wording
3 proposed by some of the
4 Minister's advisors..."

5 That language we have just
6 reviewed at tab 75.6.

7 "... for use in your draft
8 letter."

9 Speaking on behalf of the RCMP and
10 CSIS, Mr. Heatherington asserts that:

11 "Both the Force and the
12 Service agree that the
13 following would be more
14 accurate..."

15 There is a quote, and it says:

16 "Mr. Arar is currently the
17 subject of a National
18 Security Investigation in
19 Canada. Although there is
20 not sufficient evidence at
21 this time to warrant Criminal
22 Code charges, he remains a
23 subject of interest. There
24 is no Canadian government
25 impediment to Mr. Arar's

1 return to Canada."

2 Mr. Heatherington ends off

3 and says:

4 "If you would like to speak

5 about this, please don't

6 hesitate to give me a call."

7 Was this language something that

8 was developed with your knowledge or to your

9 knowledge?

10 MR. LOEPPKY: No.

11 MR. DAVID: Would you agree with

12 me that the language being proposed here, and it

13 seems to be coming from, again, the RCMP and CSIS,

14 that the language, in terms of the intended use of

15 getting Mr. Arar back to Canada from Syria and

16 convincing the Syrians to let him go, would not

17 lend itself to that effort?

18 In other words, what I'm saying

19 to you is, if you confirm to the Syrians that

20 Mr. Arar is currently the subject of a national

21 security investigation in Canada, if you confirm

22 that to the Syrians, and if you confirm the fact

23 that there is not sufficient evidence at this time

24 to warrant Criminal Code charges but that he

25 remains a subject of interest, would you agree

1 with me that that kind of language will be
2 counterproductive to getting Mr. Arar back from
3 Syria?

4 MR. LOEPPKY: Yes.

5 MR. DAVID: This constitutes what
6 we could call -- yes, Mr. Loeppky?

7 MR. LOEPPKY: I would only
8 clarify that I'm not -- I'm not aware of at which
9 level the RCMP, if they did provide this
10 information, provided it. But obviously this is a
11 wording that has been put together by somebody
12 from Foreign Affairs based on an understanding at
13 a meeting I suppose.

14 MR. DAVID: Okay. Our
15 understanding is that this response came to
16 Mr. Heatherington via Mr. Roy, the liaison officer
17 for the RCMP. So that is -- anyway.

18 It is not to your knowledge. That
19 is what I understand.

20 So it constitutes what I will call
21 the first response of the RCMP.

22 If we go on now to tab 75.9, this
23 is where you are getting now directly involved.
24 If you could go to the second page of that tab?
25 This here is the office of the Solicitor General,

1 Michel D'Avignon, who is writing to you directly,
2 "Gary Loepky, DepComm, RCMP", and it is dated
3 June 24th. It concerns the request that was
4 coming out of the office of the Minister of
5 Foreign Affairs.

6 It says the following:

7 "This memo is to request your
8 views as to the
9 appropriateness of the sender
10 and content of the attached
11 draft letter. Specifically,
12 do you support sending this
13 letter as it is currently
14 drafted? Are there changes
15 you would recommend?
16 Alternatively, if your
17 recommendation would be to
18 not send the letter, please
19 provide a rationale for your
20 position.

21 As there is some urgency
22 to this matter, it is
23 important that I receive your
24 response by the close of
25 business , Thursday, June 26,

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1 2003, in order to advise the
2 Solicitor General as to his
3 response to Minister Graham."

4 So it is clear that
5 notwithstanding there had been some feedback
6 already provided by the RCMP via
7 Mr. Heatherington's letter, there is clearly
8 another push to get language or to get RCMP
9 participation in the letter on June 24th.

10 My first question to you is:
11 Are you aware of any developments that occurred
12 between June 18th and June 24th in terms of
13 response No. 1 of the RCMP and, again, this second
14 attempt at getting RCMP collaboration in the
15 letter?

16 Do you know of any --
17 MR. LOEPPKY: No. But I would
18 assume that the reason it was raised up a level
19 was because there wasn't agreement at a lower
20 level between the organizations.

21 MR. DAVID: Okay. We come now,
22 Mr. Loepky, to your comments, not to DFAIT per se
23 but to Mr. D'Avignon from the Solicitor General's
24 office. Your response is going to Mr. D'Avignon
25 and it is dated June 26th. I will refer you to

1 two documents and we are going to have to play
2 with those two documents simply because of the
3 redactions involved. In one document there is
4 less and more and so with both documents I will
5 come to a certain result.

6 The two documents are tab 10,
7 75.10, and then I will be referring you also to
8 the Garvie Report, Exhibit P-19.

9 If I could refer you to pages 41
10 and 42 of the Garvie Report.

11 Again, the Garvie Report quotes
12 your response in part, so between the two,
13 Mr. Loeppky, we will come to as complete a result
14 as possible.

15 So your response is as follows:

16 "Dear Mr. D'Avignon:"

17 The second paragraph:

18 "We want to assure you that
19 the RCMP has no intention of
20 interfering with Mr. Arar's
21 consular rights. We do have
22 however..."

23 You qualify them as:

24 "... major concerns with the
25 misleading statement made in

1 paragraph two of the attached
2 letter..."

3 Then you quote:

4 "I assure you that the
5 Government of Canada has no
6 evidence Mr. Arar was
7 involved in terrorist
8 activities...'. These
9 concerns have been expressed
10 on a number of occasions to
11 DFAIT officials by the RCMP,
12 CSIS and Solicitor General.
13 Mr. Arar is currently subject
14 of a national security
15 investigation.... Although
16 there is insufficient
17 evidence to warrant any
18 charges under the Criminal
19 Code at this time..."

20 Then we go to Garvie and go to
21 page 41, you say:

22 "... he remains a subject of
23 great interest."

24 That is in the blacked-out
25 portion. So you are saying:

1 "... he remains a subject of
2 great interest."

3 Then we will come back and
4 it says:

5 "Given this situation, we do
6 not believe it would be
7 advisable for Mr. Graham to
8 send this letter to his
9 Syrian counterpart."

10 So let's stop there for the
11 time being.

12 In drafting your response, did you
13 consult the members of A-OCANADA?

14 MR. LOEPPKY: My discussion now
15 was with CID and then they may have had
16 discussions with A-OCANADA. I'm not sure --

17 MR. DAVID: Your discussions
18 were with...?

19 MR. LOEPPKY: Criminal
20 Intelligence Directorate, my direct reports to --

21 MR. DAVID: CID?

22 MR. LOEPPKY: Yes.

23 MR. DAVID: So you did consult
24 with CID?

25 MR. LOEPPKY: Yes.

1 MR. DAVID: I just want to come
2 back to the language now you use. You are saying
3 that you have "major concerns with the misleading
4 statement made in paragraph two of the attached
5 letter", and the major concerns you have and what
6 you qualify "misleading statement" is:

7 "... I assure you that the
8 Government of Canada has no
9 evidence Mr. Arar was
10 involved in any terrorist
11 activities..."

12 I understand that you are
13 restricted in terms of not being able to refer to
14 operational information, but can you tell us why
15 this was misleading, in your view?

16 MR. LOEPPKY: Mr. Arar was a
17 subject of interest who had surfaced as a result
18 of some investigations that had been previously
19 undertaken. There were certain pieces of
20 information that were available to us as a result
21 of some work that we had previously done, and I
22 felt that saying "no evidence" left a
23 misperception that there was absolutely nothing on
24 Canadian files with respect to this individual.

25 MR. DAVID: Okay. Now, saying

1 that this language was misleading, that there was
2 no evidence, as you say, that Mr. Arar was
3 involved in terrorist activities, the implication
4 that could be drawn from that, by saying that that
5 is misleading, is that the opposite is not
6 misleading and that there is evidence.

7 Would you agree that that
8 inference is a pretty logical inference to draw
9 from the language that you are using?

10 Maybe, Mr. Loepky, I could refer
11 you to there was a letter that was sent to you by
12 Mr. Alex Neve of Amnesty International and he
13 makes that very argument. If I could refer you to
14 Exhibit P-84 on page 82. I think it expresses the
15 concern that I have that I'm raising with you at
16 this point.

17 MR. LOEPPKY: Page 82?

18 MR. DAVID: Page 82 of
19 Exhibit P-84. This is a letter that is coming to
20 the Commissioner -- not our Commissioner, but
21 Commissioner Zaccardelli -- on July the 9, 2003.

22 If I could refer you to the bottom
23 of page 82. Mr. Neve, who is the Director of
24 Amnesty International Canada, writes the
25 Commissioner of the RCMP saying:

1 "I'm writing to you because
2 we have heard repeatedly, but
3 always in vague terms, that
4 the RCMP is not prepared to
5 support a statement
6 indicating that Canada has no
7 such evidence."

8 He goes on and he says:

9 "The implication becomes, of
10 course, that there is
11 evidence of some description
12 possibly linking Mr. Arar to
13 allegations of involvement in
14 terrorist activity."

15 So I'm suggesting to you by saying
16 it is misleading, the claim that there is no
17 evidence linking Mr. Arar to any involvement in
18 terrorist activities, by implication you are
19 saying there is evidence.

20 Would you agree that that is a
21 reasonable inference to draw?

22 MR. LOEPPKY: You could draw that
23 inference, yes.

24 MR. DAVID: So the question
25 becomes: What is that evidence? I'm not asking

1 you to answer that question because there are
2 obvious concerns of national security
3 confidentiality.

4 I'm wondering, Mr. Loepky, in
5 making the statement that you made in your letter
6 and the fact, you know, claiming that it is
7 misleading to say that there is no evidence, was a
8 proper distinction being made in your mind between
9 the concepts that you well know in criminal law
10 between evidence and suspicion?

11 In other words, it is one of the
12 fundamental concepts, criminal law concepts, the
13 distinction between evidence and suspicion, and as
14 a criminal investigator you obviously know that
15 distinction. From evidence we can infer certain
16 facts and from suspicions we cannot.

17 I'm asking you, would it be a
18 proper characterization to say that we could
19 perhaps suspect Mr. Arar to be involved in
20 terrorist activities, but to say that there was
21 evidence that he was involved in terrorist
22 activities would be pushing the envelope too far?

23 Would you agree with me that that
24 is a fair distinction?

25 MR. LOEPPKY: I want to make

1 sure I understand the question, but I think I do.

2 The various pieces of information
3 that had come to our attention, while they were
4 not conclusive, while they were circumstantial,
5 could still form part of an evidentiary chain in a
6 criminal prosecution, and therefore I felt that
7 using that terminology did not convey the right
8 picture.

9 MR. DAVID: So you don't agree
10 with me that had the language being proposed that
11 there was no reason to suspect that Maher Arar was
12 involved in any terrorist activities, that that
13 would have been objectionable, but what is not
14 objectionable is that there is no evidence? In
15 other words, that it is not an appropriate
16 distinction to make in terms of what the RCMP had
17 in hand to make that distinction?

18 MR. LOEPPKY: My sense was that,
19 as I said, the piece of information that we had,
20 further development, further inquiries, that could
21 form part of an evidentiary chain.

22 MR. DAVID: Okay.

23 Let's go back, if you will, to
24 Exhibit P-85, volume 5, and keep your letter at
25 hand because we will be coming back to it, but I

1 would like to refer you to volume 5 of
2 Exhibit P-85.

3 If you could go to tab 27.

4 I remind you, this is dated
5 October 22, 2002 and it is a memo that is coming
6 to you. It is addressed to you and it is coming
7 from Antoine Couture, who was the CROPS officer of
8 "A" Division.

9 In his second paragraph he
10 asserts that:

11 "Our investigative efforts
12 on this individual continue
13 and while we have no
14 evidence to pursue a
15 prosecution, we are of the
16 opinion that he has
17 significant involvement
18 with targets of this
19 project and his activities
20 are of concern."

21 So the fact is, a senior officer
22 within "A" Division directly involved in the
23 investigation of Mr. Arar, as of October 22nd is
24 claiming that there is no evidence to prosecute
25 Mr. Arar.

1 Is there a distinction in your
2 mind between claiming or asserting there is no
3 evidence to prosecute Mr. Arar and the claim in
4 the Graham letter that there is no evidence that
5 Mr. Arar was involved in any terrorist activities?

6 Is there a distinction to be drawn
7 between those two concepts in your mind or are
8 they equivalent?

9 MR. LOEPPKY: I think there is a
10 difference between no evidence and sufficient
11 evidence to initiate a prosecution. I think when
12 you read the entire statement of Chief
13 Superintendent Couture, he talks about no evidence
14 to pursue a prosecution, but then he talks about
15 other activities.

16 So I don't see an
17 inconsistency there.

18 MR. DAVID: In other words, is the
19 bar different -- I'm asking you to evaluate what
20 exactly is the ramification of claiming that there
21 is no evidence to pursue a prosecution against
22 Mr. Arar and claiming that there is no evidence
23 that Mr. Arar was involved in any terrorist
24 activity.

25 Is there a difference in the

1 standards here being applied or is it the same
2 standard?

3 MR. LOEPPKY: I think in terms of
4 evidence, you collect evidence, circumstantial
5 evidence, a variety of pieces of evidence, and
6 then you eventually hopefully get to a
7 prosecution. I think that they are both saying
8 the same -- it is the same message.

9 MR. DAVID: The same message is
10 being given?

11 MR. LOEPPKY: Yes.

12 MR. DAVID: So for Mr. Couture to
13 say that there was no evidence to prosecute in
14 October 2002, is that to say that when you are
15 responding now in June 2003, therefore many months
16 later, that you find misleading to assert that
17 there is no evidence to say that Mr. Arar's
18 involved, is that to say that there was a change
19 in the quality of the evidence between the two?

20 MR. LOEPPKY: No. I think
21 Mr. Couture's statement puts in context -- and I
22 think perhaps it should have been there is
23 insufficient evidence, but he talks about no
24 evidence, but then he talks about some suspicious
25 activities. Those, with the development of an

1 investigation, can easily form part of an
2 evidentiary chain.

3 Maybe the wording is not as clear
4 as it could have been, but I'm not -- I'm not
5 convinced that there is no evidence, as those
6 words state.

7 MR. DAVID: So you are saying that
8 Mr. Couture, in October 2002, is not using
9 appropriate language when he is claiming that
10 there is no evidence to pursue a prosecution?

11 MR. LOEPPKY: He says no evidence,
12 but then he expounds on that and I think it has to
13 be read in its full context.

14 MR. DAVID: Okay. When you
15 consider Mr. Arar -- and this is on the public
16 record -- in January 2002, so going back quite
17 some time now, there were a series of search
18 warrants that were executed, as you know.
19 Mr. Arar was not one of the identified locations
20 for the execution of a warrant -- and it had been
21 contemplated, the thought had been given to
22 obtaining a warrant against -- not against, but at
23 Mr. Arar's different possible locations and an
24 assessment was made that there were not sufficient
25 grounds, that the lack of reasonable and probable

1 grounds did not allow for Mr. Arar to be the
2 object of a search warrant. That was in January
3 of 2002.

4 MR. LOEPPKY: I am not aware
5 of that.

6 MR. DAVID: You were not aware
7 of that?

8 MR. LOEPPKY: No.

9 MR. DAVID: So knowing that now,
10 or knowing that in June 2003 when you respond to
11 your Solicitor General's office, would that
12 knowledge have made a difference, Mr. Loepky?

13 MR. LOEPPKY: No.

14 MR. DAVID: In terms of
15 understanding the context in which this
16 language was being asked of you, it was clear
17 that it was to support an effort to get Mr. Arar
18 back in Canada?

19 MR. LOEPPKY: Yes.

20 MR. DAVID: That was the context.
21 It wasn't for getting him acquitted of any charges
22 in Canada; it was to sustain the actions of our
23 government, of our politicians, in getting
24 Mr. Arar back.

25 Would you agree with me that

1 having affirmed that there was no evidence that
2 Mr. Arar was involved in any terrorist activities
3 did not foreclose any investigation, any
4 possibility of an investigation, on the part of
5 the RCMP?

6 MR. LOEPPKY: That is correct.

7 MR. DAVID: The request that
8 had gone out on June 24th asked for alternative
9 language. It asked for alternative solutions.

10 MR. LOEPPKY: It basically gave
11 three options.

12 MR. DAVID: Right.

13 MR. LOEPPKY: One was, would we
14 support sending the letter as it was written,
15 would we recommend not sending any letter, or
16 would we recommend to some changes?

17 My comments in the letter speak
18 for themselves in terms of saying this letter,
19 with those two words in it.

20 MR. DAVID: In responding in
21 the way that you did, by saying it was misleading,
22 did you in any way take into account the
23 information that had been obtained through the
24 confessions of Mr. Arar in Syria, the statements
25 of Mr. Arar in Syria?

1 MR. LOEPPKY: I don't believe so.

2 MR. DAVID: Okay. The next issue
3 that I want to deal with in terms of your response
4 has to do with your qualification of Mr. Arar as
5 being "a subject of great interest". That appears
6 in the Garvie version of your letter.

7 It is the first time that I have
8 seen this qualification, "subject of great
9 interest." He was described previously as being a
10 subject of interest.

11 Is there a distinction to be made
12 between a "subject of great interest" and "a
13 subject of interest"?

14 MR. LOEPPKY: "Subject of great
15 interest" is somebody we would probably have an
16 interest in talking to. The distinction isn't
17 great -- a play on words -- but it is there. So
18 somebody that we would want to talk to.

19 MR. DAVID: So essentially the
20 language, as I understand it, is that it is now
21 identifying that this is somebody that you want to
22 meet and you want to have a discussion with?

23 MR. LOEPPKY: Somebody that we
24 would be interested in, yes, talking to.

25 MR. DAVID: Okay. If we go to

1 Exhibit P-85, volume 5 -- and it is now tab 32 I
2 would bring you to.

3 MR. LOEPPKY: Which tab?

4 MR. DAVID: Tab 32.

5 We see that this is a Briefing
6 Note to the Solicitor General, it is dated
7 June 27th and it has to do again with a briefing
8 on the circumstances of Mr. Arar's deportation.
9 There is an issue as to the characterization of
10 Mr. Arar and in the briefing note we see that
11 it says:

12 "Maher Arar was one of the
13 subjects investigated by the
14 RCMP in a large national
15 security investigation in
16 partnership with other
17 Canadian ... agencies
18 following the September 11
19 incidents."

20 So it qualifies Arar as being a
21 subject investigated.

22 Then there is a different
23 qualification. It says:

24 "Arar was a peripheral
25 subject of investigation."

1 If you go to the very bottom,
2 there is the fact that:

3 "Arar is currently a subject
4 of a national security
5 investigation in Canada."

6 Then refers to Arar as being "a
7 subject of interest."

8 So there are quite a number of
9 characterizations here being given.

10 Are all these characterizations
11 accurate? Are they appropriate, as the record
12 stood at that time?

13 MR. LOEPPKY: The terminology in
14 terms of how he might be categorized might be
15 influenced by the information in the mind of the
16 writer of the particular briefing note or the
17 particular piece of information, but I think that
18 the consistent message is that he was clearly a
19 subject of interest that we were interested in.

20 But, granted, there isn't one
21 specific term that has been utilized throughout.

22 MR. DAVID: Yet Mr. Proulx is
23 saying that he is a peripheral subject of interest
24 to a national security investigation, and you are
25 qualifying him as being a subject of great

1 interest. So "peripheral" versus "great." I
2 mean, there seems to be quite a difference in
3 those two qualifications.

4 MR. LOEPPKY: Well, I can perhaps
5 try and interpret. I mean, "peripheral" being
6 that he was not one of the named referrals in the
7 advisory letters but still a subject of interest.

8 MR. DAVID: Yes. Okay.

9 We will conclude on the matter of
10 the Syrian letter, Mr. Loepky, simply by
11 referring you to the fact that the Prime Minister
12 ended up issuing a letter to the President of
13 Syria on July 29, 2003, and that the language the
14 Prime Minister's letter contains was the exact
15 same language that had been proposed to Minister
16 Graham, essentially confirming that there were no
17 Canadian government impediments to Mr. Arar's
18 return to Canada. That was the end language that
19 went out to Syria.

20 Were you consulted by PCO about
21 the language that was used in that letter, in the
22 Prime Minister's letter?

23 MR. LOEPPKY: In the language used
24 in that letter, there was no impediments to his
25 return, I believe, rather than "no evidence."

1 MR. DAVID: That is right.

2 MR. LOEPPKY: I strongly support
3 that.

4 MR. DAVID: But my question is:
5 Were you consulted in the language that was being
6 used by the Prime Minister --

7 MR. LOEPPKY: I believe we were,
8 yes.

9 MR. DAVID: Okay. Did you approve
10 that letter?

11 MR. LOEPPKY: Yes.

12 MR. DAVID: Mr. Commissioner, that
13 ends that area. Maybe, given the time it is, we
14 could take the afternoon break?

15 THE COMMISSIONER: Are we
16 moving --

17 MR. DAVID: We are moving to
18 No. 12.

19 THE COMMISSIONER: I lost count.

20 MR. DAVID: So maybe a worst case
21 scenario would be 5 o'clock?

22 THE COMMISSIONER: Okay. We will
23 take 15 minutes.

24 MR. DAVID: Thank you.

25 THE REGISTRAR: Please stand.

1 --- Upon recessing at 3:27 p.m. /

2 Suspension à 15 h 27

3 --- Upon resuming at 3:48 p.m. /

4 Reprise à 15 h 48

5 THE REGISTRAR: Please be seated.

6 MR. DAVID: Mr. Commissioner, I
7 would like to make the following comments for the
8 record.

9 I referred Mr. Loepky at one
10 point during his examination to two documents that
11 were obtained from the State Department of the
12 United States, P-124 and P-125, and I may have
13 stated that the record establishes the contents of
14 those letters.

15 I think it is important to specify
16 that the letters speak for themselves, and it is
17 not necessarily the record.

18 THE COMMISSIONER: Okay.

19 MR. DAVID: So the contents of
20 those letters say what they do, not the record.

21 MS EDWARDH: I thought that the
22 letters form part of your record,
23 Mr. Commissioner.

24 MR. DAVID: They form part of the
25 record, but in terms of whether they are -- the

1 extent of the record would be the letters and
2 nothing else.

3 THE COMMISSIONER: Yes.

4 MR. DAVID: That is basically it.

5 Mr. Loepky, just coming back to
6 the line of questions that have to do with your
7 qualification of the desire to write a letter
8 signed by your Minister and Minister Graham that
9 would have indicated that there was no evidence
10 that Mr. Arar was involved in any terrorist
11 activity, I think that we have canvassed that area
12 quite thoroughly.

13 I just want you to be clear in
14 terms of the concept of evidence.

15 You are well aware, as an
16 experienced investigating officer, of the
17 distinctions between circumstantial evidence and
18 direct evidence?

19 MR. LOEPPKY: Yes.

20 MR. DAVID: And my question is:
21 To your knowledge, was there direct evidence
22 indicating Mr. Arar's involvement in any terrorist
23 activities?

24 MR. FOTHERGILL: I don't think he
25 can answer that question without getting into NSC

1 concerns.

2 MR. DAVID: I was not going to ask
3 Mr. Loeppky to identify the evidence, simply to
4 make the distinction between direct evidence and
5 circumstantial evidence.

6 If there is a claim of NSC on
7 that, let me know.

8 MR. FOTHERGILL: The difficulty of
9 the situation is without knowing how the witness
10 is going to answer the question, it is hard to
11 say.

12 THE COMMISSIONER: Okay. Is that
13 an objection?

14 MR. FOTHERGILL: I think it has to
15 be out of an abundance of caution. I am certainly
16 prepared to speak privately with the witness and
17 Commission counsel to see if we can come to an
18 agreement on this.

19 MR. DAVID: Thank you,
20 Mr. Fothergill.

21 So we are going to move on then to
22 the area of number 12, Mr. Loeppky. And to
23 encourage you, I think there were 13 identified
24 areas this morning, so we are getting there.

25 Let's go to P-84, pages 91 and 92.

1 The area we are embarking on has
2 to do with the RCMP's responses to the infamous,
3 at this point, "rogue elements" comment and media
4 reports.

5 The lead-up to that article --
6 first of all, let me explain for the record that
7 on July 30th is the published National Post
8 article quoting Minister Easter with the rogue
9 elements comment. That's on July 30th.

10 There was a lead-up article, if I
11 could qualify it as such, on the 29th, the day
12 before, and it is this article, found at pages 91
13 and 92.

14 I refer you specifically to page
15 92, wherein -- and there is a number 5 that
16 appears beside it. It is quoted as saying that
17 U.S. sources have told CanWest News Service that
18 Mr. Arar was put on a watch list that is used to
19 screen passengers at U.S. airports based on
20 information supplied by the RCMP:

21 " 'Mr. Arar had been monitored
22 for a long time. Canadian
23 authorities knew about him
24 long in advance before his
25 arrest,' a source said."

1 Then it goes on to say:
2 "Paul Cellucci, the U.S.
3 Ambassador to Canada, has
4 also said Mr. Arar was the
5 target of a joint U.S.-Canada
6 investigation long before his
7 deportation and Colin Powell,
8 the U.S. Secretary of State,
9 told Mr. Graham last fall
10 that the RCMP and CSIS
11 received classified U.S.
12 information about Mr. Arar's
13 alleged ties to al-Qaeda."

14 So the context article for the
15 rogue elements comments by Minister Easter are set
16 in this article.

17 Let me ask you, first of all --
18 and maybe I could refer you now, before asking you
19 the question, to the document in question. That
20 would be P-117. It is tab 30, so that would be in
21 volume 1.

22 I refer you to tab 30, page 1.

23 What I want to draw your attention
24 to is the last paragraph, and it says:

25 "On the detention of Arar in

1 New York, SolGen says:"

2 And then it says something but it
3 has been redacted.

4 "... contacted RCMP after the
5 arrest, but he had been
6 deported by the time the RCMP
7 got back to them with the
8 results of the inquiry.
9 - neither RCMP nor CSIS
10 tipped off US authorities."

11 I am sorry, that is not the right
12 reference. What I want to bring you to is on page
13 2 of that same tab. I apologize for that.

14 This is part of a briefing note or
15 a document that is being issued by PCO, the S&I
16 component of PCO. The second bullet in terms of
17 background information refers to the article
18 itself, and it says:

19 "D/Commr Loepky briefed the
20 Minister that 'at no time did
21 RCMP suggest to US
22 authorities that Arar should
23 be deported to Syria nor was
24 any information provided that
25 would have supported this

1 course of action.'" "

2 So my question is: Concerning the
3 July 29th article that we have seen at Exhibit
4 P-84, pages 91 and 92, did you brief the Office of
5 the Solicitor General as to the contents of this
6 article, as seems to be referred in tab 30 of
7 P-117?

8 MR. LOEPPKY: This refers to
9 earlier briefings, recognizing that this had been
10 a very controversial issue for the last 10 months.
11 At one point I briefed the Minister, whether it
12 was before a parliamentary appearance, simply on
13 our role, but it was not just before this article
14 was released.

15 MR. DAVID: I am talking about the
16 July 29th article.

17 MR. LOEPPKY: Yes.

18 MR. DAVID: I am not talking about
19 the one that contains the rogue elements.

20 MR. LOEPPKY: No. I realize that.

21 This infers that I briefed the
22 Minister just before this article, and that's not
23 the case. I briefed him well in the past in
24 relation to the ongoing controversy around the
25 issue.

1 MR. DAVID: Perhaps another
2 reference I can bring you to are your personal
3 notes at page 38.

4 It is an entry, Mr. Loepky, for
5 the 28th of July, '03. It says "Arar briefing
6 tomorrow".

7 MR. LOEPPKY: Yes.

8 MR. DAVID: Does that ring a bell
9 or does that help you situate when you would have
10 briefed the Minister or the Minister's office?

11 MR. LOEPPKY: I don't believe that
12 that particular entry relates to briefing the
13 Minister, but I did brief the Minister at some
14 point previous to this because it had been very
15 controversial for the last 10 months.

16 MR. DAVID: Coming back to tab 30
17 of P-117, this is internal to PCO. It is
18 including RCMP input, and I just want to ask you
19 about that input.

20 It refers at the third bullet on
21 page 2 to the following:

22 "When Arar was detained in
23 New York [somebody] contacted
24 RCMP for further information.
25 Apparently in response to the

1 question put by US
2 authorities as to whether
3 Canada could prevent Arar's
4 re-entry into Canada, the
5 answer was 'no, because he is
6 a Canadian citizen.'

7 Do you know who was in contact
8 with PCO at this time to provide this kind of
9 information?

10 MR. LOEPPKY: No, I don't. I
11 think --

12 MR. DAVID: Yes?

13 MR. LOEPPKY: If I am correct, I
14 believe this was a communication between two
15 employees in PCO, and I don't know what the origin
16 of their information would have been.

17 MR. DAVID: It is in the context
18 of -- you will see at the very top it says "ARAR
19 Article - July 30th, 2003". So there is clearly a
20 meeting that is going on, or there is clearly
21 input, RCMP input, with regard to the contents of
22 this briefing note.

23 You are saying that you did not
24 provide this information to PCO.

25 MR. LOEPPKY: But as I mentioned,

1 this has been a pretty controversial issue over
2 the last 10 months about what the RCMP's role
3 would have been, if any, so there would have been
4 some corporate history in PCO in terms of the
5 discussions that had taken place over that period
6 of time.

7 MR. DAVID: There is on the third
8 page of this document the following comment, and
9 it is S&I advice, Mr. Loepky, and it says:

10 "- the incident points to the
11 need to centralize control
12 over RCMP national security
13 investigations, and ensure
14 better accountability and
15 information flow."

16 I was wondering if you had any
17 comments about that?

18 MR. LOEPPKY: I think that is a
19 discussion that the Solicitor General would
20 certainly have an interest in. This is an
21 internal communication between two staff members
22 in PCO, and that is an issue that is much broader
23 than one communique between two employees.

24 MR. DAVID: If we could now go the
25 personal notes of Pierre Ménard's and that would

1 be at P-85, volume 5, tab 34, please.

2 --- Pause

3 MR. DAVID: I would like to bring
4 you to page 13. It is an entry again for July
5 30th, and these are Inspector Pierre Ménard's
6 personal notes, as transcribed.

7 There is an entry at 9 o'clock,
8 Mr. Loeppky, and it has to do with your
9 participation in developing a press line with
10 regard to the "rogue elements" comments by the
11 Minister.

12 Perhaps it would be useful if we
13 refer to that article, and that would be found at
14 P-38.

15 --- Pause

16 MR. DAVID: I don't want to quote
17 it extensively. The punch line is in the first
18 paragraph and it says -- and this, again, is dated
19 July 30th, 2003.

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

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

6 So that is the comment which was
7 reported in various media reports.

8 So there is a press line that is
9 being developed and that you are involved in that
10 development. And Mr. Ménard is referring at nine
11 o'clock to an entry where he says:

12 "D/C Loepky advised and
13 agree. D/C agreed with first
14 line 'The RCMP was not
15 involved in any way with the
16 arrest or deportation of
17 ARAR.'"

18 And then it says:

19 "And there are no rogues in
20 the RCMP."

21 So my question is: Do you recall
22 participating in the development of this response
23 to the media reports?

24 MR. LOEPPKY: It was a line that
25 was developed by communications and would have

1 come to me for approval. I was the Acting
2 Commissioner at the time. And it was a consistent
3 line that we had taken all along.

4 MR. DAVID: So it does reflect an
5 accurate reference to your position, or to the
6 position that you thought acceptable?

7 MR. LOEPPKY: Yes.

8 MR. DAVID: And that is that there
9 was no involvement of the RCMP in any way with the
10 arrest or deportation of Arar.

11 We will see at P-44 there is an
12 article that is published in the Citizen, in the
13 Ottawa Citizen, that more or less reproduces that
14 same line. It is published the next day, August
15 1st, 2003.

16 The opening paragraph of this
17 article in the Ottawa Citizen on August 1st is
18 that:

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

25 So certainly the press line that

1 was developed, you will agree with me, found
2 itself in two media reports in the following days?

3 MR. LOEPPKY: I think this was our
4 press line. This was our response to the media
5 article. I think this one might relate to
6 comments from the U.S. Embassy.

7 MR. DAVID: But in terms of the
8 idea that you wanted to put forth in the media was
9 that there was no involvement of the RCMP in the
10 arrest or deportation of Arar.

11 MR. LOEPPKY: Yes.

12 MR. DAVID: That was the language
13 that you approved?

14 MR. LOEPPKY: Yes.

15 MR. DAVID: And all I am saying is
16 that same language finds itself in this report
17 where it says that:

18 "... the RCMP had no direct
19 role in the U.S. arrest and
20 deportation to Syria --"

21 MR. LOEPPKY: Yes.

22 MR. DAVID: So we see that that
23 language is now being reproduced the day after in
24 various press reports.

25 MR. LOEPPKY: Yes.

1 MR. DAVID: That is the only point
2 I want to make.

3 MR. LOEPPKY: Yes.

4 MR. DAVID: My next line of
5 questions has to do with the accuracy of that
6 claim which you approved; the claim being that you
7 were not involved in any way with the arrest or
8 deportation of Mr. Arar.

9 Is that an accurate statement,
10 Mr. Loepky, if you account, for instance, a
11 number of different events that are factual
12 events, the first being that the RCMP sent
13 questions to the U.S. before Mr. Arar was arrested
14 in the United States?

15 Is it factually correct to say
16 that there is no involvement of the RCMP in the
17 arrest in the fact that we know both the CIA and
18 the FBI requested the RCMP's assistance in
19 acquiring further information to support criminal
20 charges in the U.S. against Mr. Arar, and this
21 occurred before his deportation?

22 Third, we know that the RCMP
23 provided a summary of all known information on
24 Arar in response to seven specific questions,
25 again before the deportation.

1 And fourth, we know that the RCMP
2 was consulted and advised on whether there were
3 any grounds to charge Mr. Arar in Canada and
4 whether they had grounds to keep him out of the
5 country -- speaking of Canada, of course.

6 So in claiming that there was no
7 involvement of the RCMP in the arrest of Mr. Arar,
8 is that really reflecting reality? Is it an
9 accurate statement?

10 MR. LOEPPKY: You could interpret
11 that as a result of the joint investigation that
12 there was a relationship. I read that line and I
13 approved it because we did not arrest him. He was
14 arrested solely by the U.S. And the decision to
15 deport him was made without our knowledge and our
16 awareness.

17 And I have given evidence with
18 respect to some concerns that I had on that.

19 MR. DAVID: And I certainly
20 acknowledge that you did not arrest him. The
21 arrest was the pure response of American
22 authorities.

23 But you are claiming that there is
24 no involvement in that arrest, and that is where I
25 have a bit of difficulty in terms of whether the

1 press line that was being issued was fully
2 accurate.

3 MR. LOEPPKY: From my perspective,
4 it was accurate. I don't know what information
5 they were acting on outside of what they may have
6 had. So from my perspective, the line that we
7 were using was accurate.

8 MR. DAVID: Again on July 30th,
9 Mr. Loepky, there is a follow-up in responses in
10 terms of media lines that are being considered in
11 addition to press releases.

12 I bring you to P-117, tab 30, page
13 2. We have already referred to this document, but
14 I want to refer you to it, because there is
15 reference to the fact that Mr. -- I am sorry.

16 So it is the next step. You will
17 see that there are a few bullets there.

18 In terms of next steps, what was
19 being considered is -- and this is following a
20 meeting that was being held in P.E.I. where
21 Commissioner Zaccardelli, Minister Easter,
22 Mr. Elcock, the Director of CSIS, and the Deputy
23 Solicitor General, Madame Jauvin, met in P.E.I.
24 and discussed the "rogue elements" article.

25 Were you aware of that meeting and

1 their discussion of how to respond to the
2 situation?

3 MR. LOEPPKY: I knew that there
4 was a heads of agencies meeting in Prince Edward
5 Island with those participants, but I don't know
6 what the nature of the discussion was.

7 MR. DAVID: There are a number of
8 decisions made, and one of the decisions was that
9 Mr. Proulx was going to be checking or verifying
10 with RCMP members as to what would have been said
11 to U.S. authorities.

12 Was that something that was to
13 your knowledge, as a follow-up again to the "rogue
14 elements" article?

15 MR. LOEPPKY: That was something
16 that I asked be undertaken, yes.

17 MR. DAVID: Second, that
18 Mr. Proulx would be meeting with the FBI to
19 discuss what information had been shared and what
20 statements had been made?

21 MR. LOEPPKY: Yes.

22 MR. DAVID: And finally, that
23 Commissioner Zaccardelli was going to meet or was
24 intending on meeting Ambassador Cellucci to
25 discuss the issue with him.

1 MR. LOEPPKY: The Commissioner was
2 in Prince Edward Island, and I believe that there
3 was a proposed phone call between them.

4 MR. DAVID: Between them and --

5 MR. LOEPPKY: Between the
6 Commissioner and the Ambassador.

7 MR. DAVID: And the ambassador.
8 Would this phone call have occurred on the 30th or
9 the 1st of August, to your knowledge?

10 MR. LOEPPKY: I don't know when.

11 MR. DAVID: But it is your
12 understanding that there was an actual
13 conversation between Commissioner Zaccardelli and
14 Ambassador Cellucci?

15 MR. LOEPPKY: I believe there was.

16 MR. DAVID: And then we have the
17 next day -- and I have referred to it already, at
18 tab 44 -- the article that is published in The
19 Citizen. It is Beth Poisson, speaking on behalf
20 of the U.S. Embassy, explaining the revised, I
21 guess you could call it, position of the U.S.
22 Embassy.

23 MR. LOEPPKY: The tab number is
24 what?

25 MR. DAVID: Tab 44, and we have

1 just seen it before; tab 44 of the public
2 exhibits.

3 It may have been a loose document
4 that was provided to you.

5 MR. LOEPPKY: Oh, I am sorry.

6 MR. DAVID: That's fine.

7 MR. LOEPPKY: That's P-38.

8 MR. DAVID: Anyway, Mr. Loepky,
9 the fact is the Ottawa Citizen, on the 1st of
10 August, again quoting a U.S. Embassy official,
11 Beth Poisson is claiming that the U.S. Embassy
12 says that the RCMP had no direct role in the U.S.
13 arrest and deportation to Syria of an Arab-
14 Canadian on suspicion of being linked to al-Qaeda.

15 That is being reported in this
16 article. So would you agree that somehow somebody
17 within the RCMP has had an impact in terms of
18 getting the Americans to revise their position?

19 MR. LOEPPKY: That is certainly
20 one option.

21 MR. DAVID: Area 13 -- I may have
22 lost count because there are two areas left.

23 The next one is fairly brief, and
24 that is, Mr. Loepky, you meet with Jim Wright
25 from DFAIT. It is on September 5th.

1 If we could go to the DFAIT
2 documents and go to tabs 547 and 548, we know that
3 on the 4th of September, the day before this
4 meeting that you had with Mr. Wright, who was the
5 ADM at DFAIT -- the meeting occurred at your
6 request for an urgent meeting with Mr. Wright?

7 MR. LOEPPKY: Yes.

8 MR. DAVID: And the issue was
9 basically it was a complaint on your part that --
10 and when I say "your", I mean the RCMP had --
11 according to your understanding, only very
12 recently found out, found out within the last two
13 weeks, of the fact that Mr. Arar had had a
14 consular visit while he was in New York City?

15 MR. LOEPPKY: Yes.

16 MR. DAVID: And it was your
17 understanding that that information had not come
18 to the attention of the RCMP?

19 MR. LOEPPKY: Yes.

20 MR. DAVID: Thus the meeting with
21 Mr. Wright to try to clarify the issue and wherein
22 you voiced your concerns.

23 I would like to bring you to tab
24 548, paragraph 7, and it says the following:

25 "Loeppky complained that the

1 RCMP had learned only two
2 weeks ago that while he was
3 in detention in New York in
4 September/October 2002, a
5 consular official from our
6 Consulate General had visited
7 Arar in the Metropolitan
8 Detention Center in Brooklyn
9 where he was being held, and
10 that during that consular
11 interview Arar had told the
12 consul that he expected to be
13 deported to Syria. Loepky
14 said that DFAIT had not said
15 publicly that we had made a
16 consular visit to Arar in New
17 York and he asserted that it
18 would have been helpful if
19 the RCMP had known this
20 earlier so they could have
21 briefed their Minister."

22 Does that reflect the voicing of
23 your complaint, of your objection?

24 MR. LOEPPKY: Yes. Just prior to
25 this meeting, I had been advised by Assistant

1 Commissioner Proulx that there had been consular
2 access to Mr. Arar in New York, something that I
3 had not been aware of and something that I believe
4 Assistant Commissioner Proulx was not aware of
5 either. I immediately undertook to call my
6 counterpart at Foreign Affairs, Jim Wright, and I
7 had a meeting with him.

8 I expressed my concerns, and I
9 expressed those concerns because this had been a
10 very high-profile topical issue in the media over
11 the last 10 months and going back as far as the
12 meeting in the fall in Ottawa where Mr. Powell or
13 the Ambassador had some discussions about the role
14 of law enforcement. I thought it would have been
15 helpful had it been known publicly that he in fact
16 had had a consular visit, so I was a little bit
17 upset that we would not have been advised.

18 But in the end, it turned out that
19 in fact as an organization we were aware, our
20 liaison officer was aware, and there were elements
21 within our headquarters that were aware
22 immediately thereafter. And it was a
23 communication issue within the RCMP.

24 MR. DAVID: We will come to that
25 very shortly.

1 There is at tab 547, at paragraph
2 3, DFAIT's position that basically you were
3 mistaken about this non-communication by DFAIT of
4 the consular visit, and in this paragraph DFAIT is
5 listing the reasons why you should have known.

6 I would like to file a new
7 document at this point, which concerns further
8 internal RCMP verification about the state of the
9 RCMP's knowledge.

10 Exhibit 186; thank you.

11 EXHIBIT NO. P-186: Internal
12 RCMP document in response to
13 request for review, dated 14
14 January 2004

15 MR. DAVID: So this is an internal
16 document to the RCMP, Mr. Loepky. There is no
17 date on it that formally identifies when it was
18 produced, but it does take place quite some time
19 after -- okay, I am sorry.

20 It seems that there was a memo
21 requesting this review, and the review would have
22 been requested on the 14th of January, 2004.

23 I just want to bring your
24 attention to two paragraphs, and that's the first
25 one, wherein it is stated that:

1 "On the 8th of October, 2002,
2 Insp. ROY updated
3 investigators on ARAR's
4 situation. ROY was queried
5 on ARAR's potential
6 deportation to Canada. ROY
7 was unaware of ARAR's
8 potential deportation to
9 Canada however, he stated
10 from what he read from a
11 consular visit card ARAR
12 feared he would be sent to
13 Syria."

14 So that is the confirmation that
15 the information was to your knowledge.

16 And finally on page 2 is the
17 conclusion, and it would be the second paragraph.

18 It says:

19 "While Assistant Commissioner
20 Proulx may have only become
21 aware of the consular visit
22 at the time of receiving the
23 report from Inspector Perron,
24 it was clear the RCMP was
25 aware of this in 2002."

1 And thus the conclusion, the fact
2 that Mr. Arar had benefited from a consular visit
3 was divulged to the RCMP.

4 MR. LOEPPKY: And I felt that
5 given the discussions that I had had over the last
6 10 months, both briefing our Minister and at PCO,
7 the fact that Foreign Affairs had had a role to
8 play as well would have been very helpful to me
9 and I wasn't aware of that. So consequently I had
10 written some correspondence saying "why not?" And
11 this time line was prepared in response to that.

12 MR. DAVID: As it appears in the
13 DFAIT document, it says that your identified
14 interest in having known of the fact that Arar had
15 benefited from consular visit was for the purposes
16 of briefing your Minister.

17 Was that the case? Were there any
18 other considerations? Would you have liked to
19 have known, or were you looking for the contents
20 of the discussions that would have occurred
21 between Mr. Arar and the consular agent?

22 MR. LOEPPKY: No. It was of
23 interest to me that he would have received
24 consular access and it would have been helpful for
25 me to know that.

1 MR. DAVID: Can you explain to me
2 from an operational point of view, from the
3 interests of the RCMP, was that of concern? How
4 was that of interest?

5 How could it be that the fact that
6 Mr. Arar had had a consular visit be of a concern
7 to the RCMP?

8 MR. LOEPPKY: Well, to that point
9 I was operating under the assumption that the only
10 one that had been contacted directly was the RCMP,
11 although I assume that other things had taken
12 place.

13 But in my discussions with our
14 Minister, it would have been helpful to be fully
15 informed.

16 MR. DAVID: I understand the fully
17 informed aspect. I just don't understand what
18 difference it would have made, in how the RCMP
19 carries out its mandate, to have known this
20 information.

21 How is this significant
22 information for you to the point that you would
23 have gone to the ADM to discuss the issue with
24 him?

25 MR. LOEPPKY: It would not have

1 made any difference to our mandate, but it would
2 have been helpful to me, as the deputy in charge
3 of operations, to know the full picture.

4 MR. DAVID: It is a question of
5 knowing the full picture?

6 MR. LOEPPKY: Yes, given the level
7 of briefings that I was giving.

8 MR. DAVID: We move on now to --
9 we filed P-186, Mr. Loepky. Let me bring you to
10 the last two paragraphs on the second page, where
11 it says the following:

12 "At the present time, CID
13 investigators do not receive
14 all documents generated by
15 National Security
16 Investigations. In fact, the
17 National Security Program at
18 HQ does not have sufficient
19 resources to deal with the
20 volume of work this would
21 generate should all documents
22 be reported at HQ. As well,
23 most National Security
24 Investigations are sensitive
25 in nature, and may involve

1 sensitive sectors as defined
2 in the recent Ministerial
3 Directions. It is impossible
4 to predict which of these
5 investigations will become
6 the focus of media,
7 government and the public, as
8 ARAR has.

9 In an effort to prevent
10 reoccurrence, we could
11 establish a centralized
12 National Security Program
13 that would be properly
14 renounced to allow us to
15 receive and review sensitive
16 investigations. This program
17 would be structured with
18 field units reporting
19 directly to HQ. Until this
20 is established, occurrences
21 like this will likely
22 continue."

23 Any comments about those comments?

24 MR. LOEPPKY: I am not sure who
25 the author is, but immediately subsequent to 2001,

1 we had 21 people in headquarters, in CID, working
2 on the national security side, and today that is
3 up to approximately 65, I believe.

4 So it was a question of having
5 sufficient resources to make sure that they could
6 do all the things that I expected of them. It was
7 not an uncommon situation within the RCMP, as it
8 was with other government departments, that we
9 were not ready and ramped up to take on this kind
10 of a challenge. So it took some time.

11 I assume that that is what that
12 refers to.

13 MR. DAVID: We move on now to the
14 fact that Mr. Arar returns to Canada and various
15 media leaks that occurred thereafter.

16 Let's first deal with Mr. Arar's
17 return.

18 I would like to bring you to P-85,
19 volume 4, and that would be tab 120.

20 These are the personal notes of
21 Mr. Jim Wright, ADM at DFAIT. They are his
22 personal notes. They are announcing Mr. Arar's
23 return, and there is a reference to you.

24 At the very top of the page, this
25 is page 5 of 18 --

1 MR. LOEPPKY: Page 5?

2 MR. DAVID: Five of 18. And it's
3 at the very top where there's an underlined
4 reference to your name "Gary Loepke", misspelled.

5 MR. LOEPPKY: Tab 120?

6 MR. DAVID: Tab 120, page 5.

7 MR. LOEPPKY: I am sorry. Here we
8 go. Yes?

9 MR. DAVID: Page 5, at "Gary
10 Loepke" underlined.

11 There is reference to:

12 "- Back in Canada

13 - Montreal arrival
14 anticipated

15 - providing documentation to
16 RCMP."

17 Then it says:

18 "Minister + Loepcke"

19 Do you recall having been informed
20 by Mr. Wright of Mr. Arar's return or planned
21 return before his actual arrival in Canada?

22 MR. LOEPPKY: He called me and
23 indicated that he would be coming back to Canada,
24 and whether I would be briefing our Minister on
25 that and providing documentation to the RCMP.

1 I am not sure in what context that
2 was relayed because there was nothing to share at
3 that point.

4 MR. DAVID: That was my next
5 question. What documentation was provided to you,
6 if any, by DFAIT at this time?

7 MR. LOEPPKY: None that I am aware
8 of.

9 MR. DAVID: We go now to your
10 personal notes, and if you could go to pages 54 to
11 61, please, that's an extensive entry for October
12 6th. I would like to review certain highlights
13 with you.

14 Actually, if we could just go
15 directly to page 57, about halfway down it says:

16 "Arm's length, fully
17 accountable to Minister."

18 And then there are three bullets I
19 would like you to comment on:

20 "Roles of police and consular
21 affairs are complementary
22 arm's length relationship."

23 And then it says.

24 "Independence of police from
25 foreign policy."

1 MR. LOEPPKY: "Process is
2 important."

3 MR. DAVID: Thank you. And:
4 "Torture of Arar."

5 MR. LOEPPKY: "We support Consular
6 Affairs to do their job."

7 MR. DAVID: What is going on here?
8 Where are you? Is this a meeting and what is the
9 context?

10 MR. LOEPPKY: As I recall, I
11 believe this is the day that Mr. Arar was coming
12 back. We anticipated that obviously there would
13 be a press conference, and these were some -- I
14 believe it was a meeting in my office just on some
15 of the issues that would probably come up as a
16 result of an anticipated press conference.

17 MR. DAVID: And the reference to
18 this arm's length relationship between yourself
19 and Consular Affairs?

20 MR. LOEPPKY: "Arm's length, fully
21 accountable to Minister". We are talking about
22 the role of law enforcement. It's arm's length
23 but it accounts to the Minister in terms of broad
24 policy direction.

25 These are just bullet points that

1 came up as I was kind of going through. What are
2 some of the issues that we might need to think
3 about?

4 MR. DAVID: And who were you
5 discussing these issues with?

6 MR. LOEPPKY: I don't recall who
7 was there. I think it was --

8 MR. DAVID: Okay.

9 MR. LOEPPKY: -- in my office. I
10 have looked through and I don't have reference to
11 anyone else.

12 I know it was an issue that
13 certainly occupied some of my time in terms of
14 just thinking through what are the things that we
15 need to be addressing?

16 MR. DAVID: If you could go to the
17 next page, page 58, at the very top:

18 "Are we prepared to clear
19 Arar's name?"

20 And then:

21 "No. Public interest
22 outweighs. Role is to
23 collect evidence for criminal
24 prosecution."

25 Could you please comment on that?

1 MR. LOEPPKY: Just some comments I
2 made. We had earlier taken a position in a letter
3 that we have talked about earlier, and that was my
4 response, no --

5 MR. DAVID: Was there a particular
6 context to this idea of clearing Arar's name? Was
7 there a request that was made that you knew about?

8 MR. LOEPPKY: No. But I knew that
9 that would come up. You know, we have to consider
10 the public interest, public safety, safety of
11 Canadians, and that outweighs making any comment.

12 Our role, the police role, is to
13 collect evidence for criminal prosecution. It is
14 just things that I was thinking about that we
15 would need to consider.

16 MR. DAVID: And then at page 59,
17 at the very bottom, there's a comment:

18 "Not up to us to comment on
19 guilt or innocence."

20 Is that also on the same line?

21 MR. LOEPPKY: It was a comment
22 that we would not comment publicly on the file.

23 MR. DAVID: And this was obviously
24 in a meeting with the Solicitor General?

25 MR. LOEPPKY: Yes.

1 MR. DAVID: There is an indication
2 at 11:30?

3 MR. LOEPPKY: Yes, that's correct.

4 MR. DAVID: So was that with the
5 Minister --

6 MR. LOEPPKY: I don't think it was
7 with the Minister, but I don't have a reference
8 who it was with.

9 MR. DAVID: We move on now to the
10 subject of ministerial directives, Mr. Loepky,
11 and I bring you to P-85, volume 5, tab 4. There
12 is an entry for October 17th.

13 This is a memo that is going to
14 the Deputy Solicitor General, Madame Jauvin. The
15 identified areas for the contents is concerning a
16 meeting she is about to have on October 20th, so a
17 few days down the line, with a member of PCO, Rob
18 Wright, who I believe was the Director of Security
19 Intelligence --

20 MR. LOEPPKY: National Security
21 Advisor.

22 MR. DAVID: National Security
23 Advisor to the Prime Minister.

24 And she was to discuss with
25 Mr. Wright a number of issues, including the Arar

1 case, accountability for CSIS, and the RCMP, the
2 upcoming RCMP appearance before the Sub-Committee
3 on National Security.

4 I just want to get your comments
5 on a few of the entries.

6 On page 1, it says Current Status:

7 "Regarding accountability
8 issues, the Department is
9 undertaking a number of
10 initiatives, including:

11 - Ministerial direction (MD)
12 for the RCMP's national
13 security investigations;"

14 Second:

15 "- planned review of existing
16 RCMP MDs;"

17 Ministerial Directives.

18 Third:

19 "RCMP-CSIS MOU;"

20 Memorandum of Understanding.

21 It seems that the agenda is quite
22 loaded here. In terms of topics, in terms of
23 depth, in terms of extent, the subject matter is
24 quite large, and we are in October of 2003.

25 Can you give us the context in

1 which these discussions are occurring?

2 MR. LOEPPKY: This is a meeting
3 between the Deputy Solicitor General and
4 Mr. Wright and these would be reflective of some
5 issues that the Deputy Solicitor General had
6 ongoing in her portfolio, and some of these were
7 issues that we in the RCMP and the department were
8 working on together.

9 MR. DAVID: Where was the lead
10 coming from in terms of dealing with these
11 identified issues? Was it a political lead? Was
12 it internal to the RCMP? Where was the impetus
13 coming from?

14 MR. LOEPPKY: Some were coming
15 from the RCMP. Some were coming from the
16 Solicitor General's office.

17 MR. DAVID: If you could go to
18 page 4 of the memo -- actually, let's start with
19 page 2.

20 There is a reference, and I just
21 want to seek your comments:

22 "Status of RCMP MDs..."

23 Ministerial Directives.

24 "... regarding national
25 security investigations"

1 It says in the second bullet:
2 "On October 16, the Assistant
3 Deputy Solicitor General met
4 with Deputy Commissioner
5 Loeppky to finalize the
6 wording of the MDs. The
7 issue of whether the
8 'Arrangements MD' should
9 pertain to law enforcement
10 agencies with a national
11 security mandate and the
12 issue of whether the
13 'Responsibility and
14 Accountability MD' should
15 require 'central control' or
16 'central coordination' remain
17 to be resolved with the
18 RCMP."

19 What is the issue here, central
20 control versus central coordination?

21 MR. LOEPPKY: It was an issue that
22 we had discussed for quite a period of time in
23 terms of what does control mean. And I think the
24 objective of the Solicitor General's Department
25 was to ensure that in conjunction with a

1 ministerial mandate, the ministerial directive
2 mandate, that they were able to demonstrate that
3 there was an appropriate policy mechanism in
4 place; that the Minister was able to exercise her
5 message that there was an appropriate process in
6 place.

7 So controlled -- coming down to
8 the key issue, if "control" meant that the
9 Criminal Intelligence Directorate in headquarters
10 Ottawa would tell somebody in Vancouver, when do
11 you put on surveillance, when do you go and meet
12 with an informant, if that was a definition of
13 control, that was unworkable.

14 And if it was unworkable then, it
15 would be unworkable today.

16 So "coordination" was a word that
17 was agreed upon; that it would be a tight
18 coordination on national security files and
19 headquarters.

20 And during this period of time,
21 obviously, we -- myself and Paul Kennedy -- were
22 still having those discussions.

23 MR. DAVID: There was a directive
24 that was issued in this regard on November 4th,
25 2003?

1 MR. LOEPPKY: That's correct.

2 MR. DAVID: The final area I want
3 to bring you in this memo is on page 4 and it has
4 to do with the RCMP-CSIS Memorandum of
5 Understanding.

6 The second bullet says:

7 "There remains an issue with
8 the wording pertaining to the
9 provision of information.
10 The Service's position is
11 that the MOU should read that
12 CSIS 'may provide'
13 information, which is
14 consistent with the CSIS Act.
15 The RCMP wants the wording to
16 read 'must provide.'"

17 Could you comment on that, please?

18 MR. LOEPPKY: The RCMP-CSIS MOU
19 was signed in 1991, and given the changes in the
20 environment, and in view of good management
21 practices, it's certainly important to review that
22 every once in a while to make sure it's still
23 relevant.

24 Post-9/11, there were some
25 discussions with respect to was there a greater

1 necessity that they had to provide everything to
2 the RCMP, given that the threat level was a little
3 bit different, given the potential for a terrorist
4 act?

5 So that was the context of the
6 discussion and those discussions are still
7 ongoing.

8 MR. DAVID: To your knowledge, the
9 revision of the MOU has not taken place since?

10 MR. LOEPPKY: Not to this point.

11 MR. DAVID: We go now to the next
12 and final topic, and that is what I have termed
13 misinformation campaign and various media leaks.

14 My first reference would be to
15 October 23rd, 2002, and there was a CTV report
16 that was issued on that date.

17 If you could go to P-84 at page
18 96, this is a briefing note to the Commissioner,
19 and it's giving him a heads-up on a news release
20 that is about to occur. The issue identified is:

21 "A potential CTV news report
22 tonight, 23rd of October,
23 2003, quoting unnamed
24 government sources as saying
25 Maher Arar is part of an

1 al-Qaeda cell in Canada and
2 was only released from Syrian
3 custody because he agreed to
4 tell about other members of
5 his cell."

6 And then the strategic
7 considerations: Maher Arar is a subject of
8 interest in an ongoing national security
9 investigation with the recommendation that the
10 standard line be issued that the RCMP can neither
11 confirm nor deny these allegations.

12 Did you know, as Mr. Reynolds, the
13 author of this briefing note seems to have known,
14 before -- no, let me ask you the question
15 differently.

16 Do you know how Mr. Reynolds knew
17 beforehand, before the actual release of the media
18 report, that this media report was going to be
19 coming out?

20 MR. LOEPPKY: Not specifically,
21 but quite often before a story is going to break,
22 the particular media outlet will phone our
23 communications people and ask if we have any
24 comments on a story that is going to be broadcast
25 in advance of it coming out, to put our

1 perspective out.

2 And if that would occur -- and
3 that may have occurred in this case -- then our
4 communications would immediately get hold of
5 criminal -- the area responsible and give them a
6 heads-up that this was happening.

7 MR. DAVID: Let's go to the news
8 report per se, and that would be at P-85, volume
9 1.

10 --- Pause

11 MR. DAVID: If you could go to tab
12 13, this is the transcript of the CTV news report,
13 Mr. Loepky, dated October 24th. And I will just
14 bring you to the first two paragraphs.

15 The first says: ...

16 "The case of Maher Arar has
17 taken another mysterious
18 turn. Sources in Ottawa have
19 told CTV News that Arar, a
20 Canadian of Syrian origin,
21 gave Syrian authorities
22 information while he was held
23 in that country from
24 September of 2002 until this
25 month. The information

1 allegedly refers to al-Qaeda
2 and points to the existence
3 of sleeper cells in Canada.
4 CTV's Joy Malbon has this
5 exclusive story."

6 And she is quoted as saying:

7 "Senior government officials
8 in various departments --"

9 That's the language she uses.

10 "... have told CTV News that
11 Maher Arar provided
12 information to the Syrians
13 about al-Qaeda, the Muslim
14 Brotherhood, a radical
15 Islamic group linked to Osama
16 bin Laden, and information
17 about cells operating in
18 Canada."

19 So that is the actual report.

20 I bring you now to volume 5 of
21 P-85, and that would be tabs 5 and 6.

22 Maybe I can just quickly go
23 through these entries without necessarily
24 referring to the documents.

25 On the 27th of October, 2003, PCO

1 orders a review, an investigation about this leak.

2 MR. LOEPPKY: Yes.

3 MR. DAVID: And the terms of the
4 mandate are indicated on page 1 of tab 5, and it
5 says:

6 "Please find out who in your
7 organizations had/has access
8 to information about the Arar
9 investigation and conduct
10 interviews with each to
11 determine who may have spoken
12 to the media. Report your
13 findings to me by noon
14 Friday, October 31st, 2003.
15 If you determine that more
16 time is needed, let me know
17 ASAP."

18 So this is the order that is
19 coming from PCO in this regard.

20 MR. LOEPPKY: Yes.

21 MR. DAVID: And we go to the 31st
22 of October and the entry would be in P-117, Volume
23 1, tab 56: Chief Superintendent Lanthier is
24 reporting to you, Mr. Loepky, at page 5.

25 So it is tab 56, page 5.

1 MR. LOEPPKY: Yes.

2 MR. DAVID: Mr. Lanthier is
3 reporting to you that senior RCMP officers were
4 interviewed. Given the task that had been ordered
5 by PCO, which was "conduct interviews with each to
6 determine who may have spoken to the media", why
7 was the decision made to restrict the RCMP
8 internal review to senior RCMP officials?

9 MR. LOEPPKY: The request
10 stipulated senior officials from PCO, and I
11 believe that that was based on the quotes in the
12 media which refer to senior officials.

13 MR. DAVID: And then at page 6 of
14 the same tab, we have your response that is going
15 internally to the Solicitor General's office with
16 your report?

17 MR. LOEPPKY: Yes.

18 MR. DAVID: On November the 4th.
19 So the deadline was not met.

20 Do you know why?

21 MR. LOEPPKY: No. It may have
22 been unavailability. I don't know.

23 MR. DAVID: And then on the 5th of
24 November, if you go to Exhibit P-83, tab 2, at
25 page 144, there is on the 5th of November, the

1 very next day, a high-level meeting at PCO
2 concerning the managing of the Arar file?

3 MR. LOEPPKY: Page 144?

4 MR. DAVID: That is page 144, tab
5 2.

6 We will see that there is a --
7 it's a memo to file from you, Mr. Loepky,
8 concerning a meeting that you had on the 5th of
9 November, a very high-level meeting; Rob Wright
10 replacing Bill Elliott, Peter Harder, Deputy
11 Minister, Nicole Jauvin, Deputy Minister, and Ward
12 Elcock, Director of CSIS, and yourself.

13 The objective was managing the
14 next steps of the Arar file. It is clear that PCO
15 at this point is requesting a detailed time line.

16 MR. LOEPPKY: Yes.

17 MR. DAVID: And we will see that
18 you submitted this detailed time line on November
19 14th.

20 MR. LOEPPKY: Yes.

21 MR. DAVID: Any comments about
22 that request?

23 MR. LOEPPKY: Every department was
24 requested to prepare a detailed time line with
25 respect to their activities, and I subsequently

1 asked that that be prepared, and it was done.

2 I know that it was a complex task,
3 given that we had had a lot of information, a lot
4 of involvement, and therefore I believe we met it
5 around November the 14th.

6 MR. DAVID: At this meeting, which
7 was, as I described, a high-level meeting, you
8 expressed an opinion that you are not favourable
9 to the holding of a public inquiry. I gather it
10 was in the air that a public inquiry would be
11 called?

12 MR. LOEPPKY: That was one of the
13 options that was being looked at, yes.

14 MR. DAVID: November 7th,
15 Mr. Loepky, let us go to your notes, your
16 personal notes, at page 90.

17 --- Pause

18 MR. DAVID: You are quoted as
19 saying:

20 "Media ordered Andre to speak
21 to 'A' Division not to speak
22 one more word on Arar.
23 Coordinate out of HQ."

24 That's a pretty direct order.

25 MR. LOEPPKY: Yes.

1 MR. DAVID: Very clear. Where was
2 this coming from?

3 MR. LOEPPKY: As a result of the
4 coverage on the potential leaks and that, there
5 was a desire by "A" Division to respond, to put
6 their position on the table. My view was that the
7 organization would speak with one voice out of
8 headquarters, and any input that "A" Division had
9 would be channelled through headquarters. I
10 thought that that was important.

11 THE COMMISSIONER: Sorry. It says
12 "one more word". Does that suggest that somebody
13 had spoken to the media?

14 MR. LOEPPKY: No, I didn't have
15 any indication that they had spoken to the media.
16 That's probably just my way of reinforcing that I
17 didn't want them speaking to the media. I don't
18 believe they had.

19 MR. DAVID: And on this same date,
20 Mr. Loepky, we know that the Solicitor General
21 filed its report with PCO, its internal review
22 report on the leak.

23 If you want to go to P-117, tab 56
24 in that regard.

25 --- Pause

1 MR. LOEPPKY: Yes.

2 MR. DAVID: And it's at page 1 of
3 13. And I just want to bring your attention to
4 the handwritten comments addressed to Bill
5 Elliott.

6 "Based on this report I
7 recommend that we do not
8 pursue further."

9 Meaning the PCO investigation.

10 "We managed to send out a
11 strong message."

12 And it's signed by, I would
13 imagine, Mary Chaput -- I am not sure though -- on
14 November 10th.

15 MR. FOTHERGILL: I think that
16 particular note is probably Gerry Deneault, who is
17 the PCO officer.

18 MR. DAVID: Thank you,
19 Mr. Fothergill.

20 And so ends the first PCO
21 investigation.

22 MR. LOEPPKY: Yes.

23 MR. DAVID: We now come to the
24 O'Neill article, and that is on November the 8th,
25 2003.

1 Very quickly, you will find the
2 article at Exhibit P-80, page 5.

3 I don't know if it's necessary to
4 necessarily refer to it; I think we are quite
5 familiar with the contents.

6 So just for the record I would
7 note that on the 8th of November, there was a
8 published article by Ms O'Neill.

9 The next date, on November the
10 8th, 2003 -- and this would be at P-48, tab 63 --
11 PCO initiated a second investigation, and this one
12 dealing with the O'Neill leak, Mr. Loepky.

13 Was this to your knowledge?

14 MR. LOEPPKY: Yes.

15 MR. DAVID: If we go now to P-83,
16 tab 2, at page 132: Garry Loepky to Richard
17 Proulx.

18 THE COMMISSIONER: What page?

19 MR. DAVID: Page 132,
20 Mr. Commissioner, and it's dated November the 8th.

21 "We need to establish a
22 course of action on what is
23 reported in the Citizen
24 article. I am very concerned
25 about this issue. Let's

1 discuss ASAP."

2 Did you discuss with Mr. Proulx?

3 MR. LOEPPKY: Yes.

4 MR. DAVID: Did you meet with him?

5 MR. LOEPPKY: I believe so, yes.

6 MR. DAVID: Was it at this meeting

7 that a decision was made with regard to

8 undertaking an investigation under the Securities

9 of Information Act?

10 MR. LOEPPKY: Yes. Subsequent to
11 the CTV News article, we had been looking at that
12 in terms of the various pieces of information that
13 were coming out, and we were trying to establish
14 whether in fact some of that information could
15 have been released through Access requests or was
16 it simply good investigative research that was
17 filling in some pieces between the dots that were
18 known.

19 We were looking at what had been
20 in the public domain over the last year, because
21 we were trying to evaluate how much of this
22 information, whether in fact it was information
23 that had not been previously out in the public
24 domain in any other forum.

25 Following the article, we had a

1 discussion and we came to the conclusion that at
2 that point it was important to undertake an
3 investigation.

4 MR. DAVID: And so you supported
5 this idea?

6 MR. LOEPPKY: Yes.

7 MR. DAVID: And the approach that
8 was to be taken, was it to be a centralized
9 headquarters type of investigation or dispatched
10 to a division?

11 What was the decision in terms
12 of -- you certainly understood that possibly --
13 and I use the word "possibly" there was RCMP
14 involvement in the leak.

15 MR. LOEPPKY: Yes.

16 MR. DAVID: So it was a delicate
17 matter in that sense?

18 MR. LOEPPKY: Yes, it was.

19 MR. DAVID: How did you adapt to
20 that?

21 MR. LOEPPKY: We looked at it
22 exactly in those terms, in terms of there being a
23 number of areas within government that would have
24 had access to that information, and the RCMP
25 clearly was one of those.

1 We decided that we needed to
2 assemble a team that was made up of highly skilled
3 investigators, of investigators that were cleared
4 at the top secret level at that point;
5 investigators that were bilingual, because there
6 might be documents, areas that need to be looked
7 at; investigators that were totally removed from
8 any component of what this type of investigation
9 would entail in terms of involvement in the file.

10 Therefore, Assistant Commissioner
11 Proulx was in contact with the commanding officer
12 of New Brunswick, and subsequently a team was
13 brought in from there to do that investigation.

14 MR. DAVID: Was it considered to
15 refer the matter to an outside police force, such
16 as the Sûreté du Québec or the OPP? Was that
17 considered in your options?

18 MR. LOEPPKY: I don't believe we
19 discussed it in this particular case, given the
20 national security issues and the top secret
21 clearances. We just decided that we need to bring
22 together a team very quickly.

23 MR. DAVID: Let's see how PCO
24 responds.

25 Let's go to P-85, volume 4, and go

1 to tab 120. And I would ask you to go to page 16
2 of 18.

3 These are notes of Jim Wright,
4 Mr. Loeppky, and they are dated November the 10th,
5 '03.

6 At the very top they say:

7 "Bill Elliott/PCO"

8 And about halfway down it says:

9 "- story Saturday -
10 Citizen..."

11 Ottawa Citizen, I guess.

12 "- Rob Wright - very
13 concerned
14 putting his life in danger
15 look into this
16 call RCMP in?"

17 So we see that from these notes --
18 and I am not asking you to comment because they
19 don't obviously concern you -- there seems to be
20 an indication that the RCMP is possibly going to
21 be drawn into an investigation.

22 My question simply to you is: Was
23 the matter of choosing to go by way of a formal
24 criminal investigation, in terms of a Security of
25 Information Act breach, was that an issue that was

1 discussed with PCO, to your knowledge?

2 MR. LOEPPKY: No. The extent of
3 the discussion was that I informed them at a
4 meeting that the RCMP was undertaking a criminal
5 investigation. The only question I was asked was
6 whether it would be appropriate to make that
7 public, and my comment was that that would not be
8 in the interests of the investigation and
9 therefore I did not want that being made public at
10 that point.

11 MR. DAVID: At this point is it
12 fair to say that the RCMP is contemplating an
13 investigation, but the PCO-led investigation is
14 still proceeding?

15 MR. LOEPPKY: My understanding is
16 that once the RCMP investigation was initiated,
17 the PCO review essentially was placed in abeyance,
18 and I learned that very recently.

19 MR. DAVID: If we could go to
20 P-83, tab 2, and it would be page 133.

21 MR. LOEPPKY: I have it here.

22 MR. DAVID: This is an e-mail from
23 you to Mr. Proulx on November 12th.

24 It says:

25 "I received a copy of a fax

1 from PCO requesting responses
2 on recent inappropriate
3 disclosures by Friday."

4 Is that a reference to the O'Neill
5 article?

6 MR. LOEPPKY: I believe it is.

7 MR. DAVID: All right.

8 "I have sent you an A5 this
9 evening for follow-up in the
10 morning."

11 And if we go to P-85, volume 5
12 now, at tabs 8 and 9, at this tab you are
13 submitting, as of November 14, 2003, to PCO the
14 chronology, the detailed time line that PCO
15 requested?

16 MR. LOEPPKY: Yes.

17 MR. DAVID: It's described in this
18 communication as being a high-level summary. You
19 will see that in the second paragraph.

20 MR. LOEPPKY: Yes, yes.

21 MR. DAVID: That seems to be a
22 term of art. Does it mean anything in particular,
23 a high-level summary?

24 MR. LOEPPKY: Well, it doesn't
25 include all the operational details. It's

1 high-level.

2 MR. DAVID: It's simply a
3 reference to the fact that maybe operational
4 detail is not included in it?

5 MR. LOEPPKY: That's correct.

6 MR. DAVID: The time line is
7 attached -- or there was an attached time line,
8 which is at tab 9, Mr. Loepky, and much of it has
9 been redacted.

10 Were you aware that there was no
11 reference to the April 2002 data dump, database
12 dump, in this time line?

13 MR. LOEPPKY: I wasn't until I
14 reviewed it prior to the inquiry.

15 MR. DAVID: That is a fairly
16 significant step in terms of the time line, would
17 you not agree?

18 MR. LOEPPKY: Yes.

19 MR. DAVID: And do you know why
20 this was not included in the reference to PCO?

21 MR. LOEPPKY: No, I don't.

22 MR. DAVID: There is also no
23 mention of the October 5, 2002, conversation
24 between a U.S. official and Mr. Flewelling.

25 Would you agree with me that that

1 is a fairly significant event in terms of the time
2 line?

3 MR. LOEPPKY: It's an event in the
4 time line. Whether the preparers of the time line
5 considered it high level, I guess it's subjective,
6 that particular issue.

7 MR. DAVID: Is it that you are not
8 referring to these items because you are not aware
9 of them, or is it because it was assessed not to
10 be relevant?

11 MR. LOEPPKY: I certainly don't
12 think it was assessed not to be relevant. I think
13 that we were being asked to pull together a time
14 line in a matter of a few days on a file that had
15 consumed literally thousands of pages in terms of
16 a lot of the back-and-forth/to-and-fro issues. So
17 I didn't see any bad faith.

18 But as I said earlier in my
19 testimony, it would have been helpful for
20 Mr. Wright to have some of those details.

21 MR. DAVID: Do you know when you
22 became aware of, for instance, the April 2002 data
23 dump?

24 MR. LOEPPKY: I believe it was in
25 January of 2004.

1 MR. DAVID: 2004. So it would
2 have been after the introduction of this time
3 line.

4 MR. LOEPPKY: After.

5 MR. DAVID: We are moving now to
6 November 15th, and it's P-85, volume 5, tab 11.
7 --- Pause

8 MR. DAVID: And here we see at
9 this entry that the RCMP is embarking on the
10 criminal investigation concerning the O'Neill
11 leak.

12 MR. LOEPPKY: Yes.

13 MR. DAVID: So this would be the
14 official date on which it was started?

15 MR. LOEPPKY: That was the day
16 that we announced it. We had been discussing it
17 leading up to that, internally.

18 MR. DAVID: Then we go to your
19 notes at page 113 for an entry on the 21st of
20 November. That's page 113.

21 --- Pause

22 MR. DAVID: And it says:

23 "High-level briefing at PCO -
24 Arar."

25 Do you know what that refers to?

1 Were you briefing PCO about the --

2 MR. LOEPPKY: I assume that I
3 was -- I don't recall specifically. I assume that
4 it was saying that we are progressing on the
5 investigation, but we don't have anybody
6 red-handed. That's where we are at.

7 MR. DAVID: I want to refer you to
8 two other articles that were published in the
9 Ottawa Citizen and the Montreal Gazette on
10 December 30th of 2003.

11 The references are at P-80, page 7
12 and page 9.

13 These, as I say, are two further
14 articles that are being published in two different
15 newspapers, and there is reference to, again,
16 that:

17 "U.S.-Canada 100 per cent
18 sure Arar trained with
19 al-Qaeda."

20 And the Gazette article at page 9
21 refers to the fact that there is no doubt that
22 al-Qaeda trained Arar.

23 So we are seeing more references
24 to what in appearance are more leaks.

25 Did you discuss these further

1 articles in terms of their source, in terms of the
2 accuracy of the information, internally at the
3 RCMP?

4 And I could refer you,
5 Mr. Loepky, to P-83, tab 2, in regard to that.

6 MR. LOEPPKY: P-83, tab 2.

7 MR. DAVID: And if you could go to
8 page 164, you writing to Andre Guertin and Bert
9 Hoskins. Who are they?

10 MR. LOEPPKY: Andre Guertin was in
11 our communications area, and Bert Hoskins was an
12 inspector -- is an inspector in CID.

13 MR. DAVID: It is dated the 30th
14 and you say:

15 "In this morning's news
16 clips, there was an article
17 wherein intelligence
18 officials are quoted as
19 making some comments about
20 Arar. I know that Dan was
21 following up to try and
22 determine, based on the
23 wording of the quotes, where
24 the information came from.
25 It contains inaccuracies, and

1 while we can't correct those
2 in the media, I would
3 indicate that the comments
4 were not made by someone who
5 is intimately familiar with
6 the file. I'll give you a
7 call on this."

8 So obviously there was some
9 concern being expressed as to whether again this
10 was another leak or another potential leak?

11 MR. LOEPPKY: Yes.

12 MR. DAVID: Mr. Killam is writing
13 to somebody -- Pierre Perron and Wayne Hanniman,
14 and that would be at page 163.

15 This follows your e-mail, and it
16 says:

17 "See attached message from
18 DCO."

19 DCO is you.

20 "Senior management is clearly
21 very interested in this
22 issue. PCO Rob Wright has
23 also indicated his concern
24 with what appears to be
25 another leak of information.

1 Wayne, your investigation may
2 want to look into this as
3 well. Dan Killam."

4 MR. LOEPPKY: Wayne is Inspector
5 Wayne Lang, who was leading up the Security of
6 Information Act investigation.

7 MR. DAVID: Would you agree with
8 me, in terms of appearance, this seems to be more
9 misinformation than a leak in the sense of the
10 information, the quality of the information, that
11 is being released?

12 MR. LOEPPKY: As I stated, I saw
13 some inaccuracies in it. But it was still a
14 concern.

15 MR. DAVID: In your e-mail, you
16 refer to "intelligence officials". That is at
17 page 164, Mr. Loepky. You are putting
18 "intelligence officials" in quotes.

19 MR. LOEPPKY: I think I took that
20 right out of the article.

21 MR. DAVID: So it's not --

22 MR. LOEPPKY: No. I put it in
23 quotes, so I would have taken it --

24 MR. DAVID: From the articles.

25 MR. LOEPPKY: Yes. On page 7 it

1 says "U.S. intelligence officials", "Canadian and
2 U.S. intelligence officials". That is where I
3 would have got it.

4 MR. DAVID: Mr. Loepky, that
5 completes my examination. Thank you very much.

6 THE COMMISSIONER: I have a few
7 questions before we close, Mr. Loepky.

8 The RCMP investigation, is that --
9 and I don't know if you can answer this. Is this
10 continuing, or is there a result to it? Is it
11 closed?

12 MR. LOEPPKY: It is an ongoing
13 investigation, Mr. Commissioner.

14 THE COMMISSIONER: It has been
15 over a year and a half. Does an ongoing
16 investigation like this ever end?

17 MR. LOEPPKY: Yes, it does. There
18 are issues being followed up and, as well, there
19 is a process that is going on in another court
20 with respect to access to the exhibits.

21 THE COMMISSIONER: So do I
22 understand you to say that the investigation at
23 this stage necessarily has to await that court
24 process before it is completed?

25 MR. LOEPPKY: I believe they are

1 looking at other issues.

2 THE COMMISSIONER: Well then,
3 that's it for today.

4 Tomorrow we will do the
5 cross-examinations. I would like to get some idea
6 as to how many cross-examiners we will have and
7 the length of time it will take so I can schedule.

8 I think you will probably lead
9 off, Ms Edwardh. Do you have any idea how long
10 you will be?

11 MS EDWARDH: Mr. Commissioner, I
12 expect I will be two and a half to three hours.

13 THE COMMISSIONER: And who else
14 will be cross-examining along the back row?

15 Who would be next? Mr. Bayne?

16 MR. BAYNE: Mr. Boxall already
17 cross-examined this witness on another occasion.

18 THE COMMISSIONER: Right.

19 MR. BAYNE: I would have no
20 questions at this point. I may have a couple of
21 questions at the end of my friend's, but it will
22 be brief.

23 THE COMMISSIONER: Mr. O'Brien?

24 MR. O'BRIEN: Thank you,
25 Mr. Commissioner.

1 I may have a couple of questions
2 in one discrete area. I am going to review my
3 resources tonight, but if I do, it will just be a
4 few minutes.

5 THE COMMISSIONER: Mr. Wallace?

6 MR. WALLACE: At the present time,
7 Mr. Commissioner, I don't have any, but I will
8 check that.

9 THE COMMISSIONER: Obviously there
10 is flexibility if things arise.

11 Mr. Bell?

12 MR. BELL: At the present time,
13 Mr. Commissioner, I can't imagine more than ten
14 minutes.

15 THE COMMISSIONER: Yes,
16 Mr. Westwick?

17 MR. WESTWICK: Possibly 5 or 10
18 minutes, Mr. Commissioner.

19 THE COMMISSIONER: At the back,
20 Ms. McIntosh?

21 MS McINTOSH: I do not anticipate
22 any questions at this time.

23 THE COMMISSIONER: Is there
24 anybody else? Have I missed anybody?

25 I beg your pardon?

1 I think Mr. Fothergill will say it
2 depends on what he hears.

3 MR. FOTHERGILL: Subject to that
4 proviso, perhaps half an hour.

5 THE COMMISSIONER: Okay, great.
6 We can start at ten o'clock then.

7 We will rise until ten o'clock.

8 THE REGISTRAR: Please stand.

9 --- Whereupon the hearing adjourned at 5:15 p.m.,
10 to resume on Thursday, July 28, 2005,
11 at 10:00 a.m. / L'audience est ajournée à
12 17 h 15, pour reprendre le jeudi 28 juillet
13 2005 à 10 h 00

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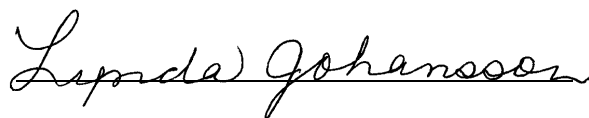
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Lynda Johansson,

C.S.R., R.P.R.

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