

**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 lundi 24 octobre 2005

Held at:

Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario

Monday, October 24, 2005

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Mr. Steven Shrybman	Canadian Labour Congress/Council of Canadians and the Polaris Institute
Mr. Emelio Binavince	Minority Advocacy and Rights Council
Mr. Joe Arvay	The British Columbia Civil Liberties Association

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Monday, October 24, 2005
3 at 10:20 a.m. / L'audience débute le lundi 24
4 octobre 2005 à 10 h 20

5 THE COMMISSIONER: Mr. Cavalluzzo.

6 MR. CAVALLUZZO: Good morning,
7 Commissioner.

8 We have, as you know, Mr. Pardy
9 here for his fourth return engagement.

10 I'm sorry. Time flies when you're
11 having fun.

12 MR. DECARY: Your memory is the
13 second thing to go by the way.

14 MR. CAVALLUZZO: Prior to the
15 examination of Mr. Pardy by Mr. Decary, I
16 understand that Ms. Edwardh on behalf of Mr. Arar
17 has a few introductory comments.

18 THE COMMISSIONER: Ms Edwardh.

19 MS EDWARDH: Good morning. I
20 don't mean to start off by complaining, but I do
21 want to raise an issue of concern on behalf of
22 Mr. Arar.

23 It will not have escaped your
24 notice that on behalf of Mr. Arar we have filed
25 our final written submissions to you.

1 THE COMMISSIONER: Right.

2 MS EDWARDH: We are now once again
3 in the process of hearing evidence and I
4 understand we will hear further evidence on the
5 8th and 9th of November. It doesn't take a huge
6 for those of us who have been involved in
7 inquiries in the past to know that we are in part
8 dealing with a process generated perhaps by a
9 section 13 notice, the contents of which are
10 always and traditionally kept confidential, so I
11 don't know them.

12 I do want to take this position,
13 though: I believe that any further examination or
14 cross-examination of Mr. Pardy must be strictly
15 confined to that and not stray beyond those
16 parameters, and I must place in your hands and of
17 course Commission counsel's hands the scrutiny and
18 supervision of that process.

19 Lastly, in the ordinary course
20 Mr. Pardy would have completed his testimony
21 before Mr. Martel, and I see from my friend areas
22 of concern that he has provided to us that may
23 give him an opportunity to revisit issues that
24 Mr. Pardy??Martel?? testified about in a way that
25 I think is a little unfair to Mr. Arar's position.

1 So I may ask leave to ask some
2 questions. I do appreciate that I have
3 cross-examined Mr. Pardy, but to the extent that
4 he embarks in areas he has not touched upon, I may
5 ask leave to ask some questions today.

6 I would also ask you to consider
7 whether or not reply submissions which are due at
8 the end of this week should be given now or we
9 should await an opportunity to hear all the
10 evidence and include any further submissions in
11 one fell swoop, because I have a sense we will be
12 doing another set of submissions to you.

13 It does concern me that if the
14 proposed witnesses on November 8th and 9th indeed
15 do come and testify, that some of what we have
16 done will have to be revisited.

17 THE COMMISSIONER: I think I can
18 fairly say to you that if as a result of this
19 further evidence today or the evidence on the 8th
20 and 9th you wish to make further submissions, you
21 will be entitled to do so with respect those
22 matters, clearly. I take note of your first
23 point. I won't comment further on it, but I think
24 the principle you enunciate is a sound one.

25 MS EDWARDH: One last small issue,

1 if I could.

2 When Mr. Martel testified,
3 Commission counsel invited him to further review
4 the content of his file to see whether or not he
5 could locate the Statement of Claim. You will
6 recall there was a discussion about the Statement
7 of Claim being on his desk February the 8th and
8 whether the date was an error, and I'm wondering
9 if any news has come forward as to the existence
10 of that Statement of Claim in Mr. Martel's file at
11 all.

12 MR. CAVALLUZZO: Just several
13 comments.

14 In respect of the last comment
15 relating to Mr. Martel, at this point in time I
16 have heard nothing, which I assume means that
17 there was nothing in his file. Subject to further
18 notice, that is the status of that particular
19 situation.

20 As far as reply submissions are
21 concerned, I just advise counsel now that the
22 further redacted submissions will be distributed
23 tomorrow. My friend talked about a reply by the
24 end of this week, so that as a result of the late
25 receipt of those redacted submissions, those reply

1 submissions would not be due until one week
2 thereafter, which would be Tuesday of next week.

3 As to holding off all submissions
4 until after we do get submissions relating from
5 Mr. Decary, I leave that in your hands.

6 As far as the reply submissions to
7 the redacted submissions which will be released
8 tomorrow, it is one week from tomorrow. That is
9 when we will expect a reply.

10 THE COMMISSIONER: I think this is
11 the best way to go. So the reply submissions to
12 those submissions that you receive tomorrow,
13 Ms Edwardh, and for the intervenors, will be due a
14 week from then.

15 In terms of the new evidence, the
16 new evidence today and the evidence heard on
17 November 8th and 9th, perhaps those could be
18 separate discrete submissions. The issues being
19 raised in the new evidence are relatively narrow
20 and discrete. It is helpful to me if I can get
21 submissions and reply submissions sooner rather
22 than later.

23 MR. CAVALLUZZO: If I may be so
24 bold as to interject again, in respect of the
25 evidence of November the 8th and 9th, we will be

1 then getting submissions from Mr. Decary, and
2 perhaps any submissions from counsel for Mr. Arar
3 and the intervenors could await --

4 THE COMMISSIONER: On the 8th and
5 9th, once I've heard the evidence, then we will
6 set a timetable for submissions relating to that
7 evidence. I think I will be in a better position
8 to set the timetable once I've actually heard the
9 evidence and know what is in involved.

10 Mr. Decary.

11 PREVIOUSLY SWORN: HENRY GARFIELD PARDY

12 EXAMINATION

13 MR. DECARY: I want to start by
14 thanking you for allowing me to pose a few
15 questions to Mr. Pardy and to apologize to
16 Mr. Pardy for having him back, but I am
17 responsible, Mr. Pardy.

18 I wish to assure you first that I
19 in no way want to directly, or indirectly, attack
20 you. The purpose of my examination is really to
21 help me understand four situations. I will state
22 them to you.

23 The first has to do with lines of
24 authority and the relationship between
25 headquarters and the department and consuls and

1 ambassadors and obviously the consul and the
2 ambassador in Damascus at the time.

3 The second will have to do with
4 the Syrian human rights record, its pertinence and
5 how it is to be applied in this particular matter.

6 The third has to do with
7 information concerning prison conditions.

8 And the fourth and possibly, I
9 think it will be the second, but the fourth
10 subject will be mixed signals, has to do with the
11 exchange of information. We have been talking
12 about this in a general level.

13 So my first line of questioning
14 has to do with the authority, lines of authority
15 between headquarters, so yourself, and the consul
16 in Damascus.

17 We take for granted that we would
18 rather take cognisance of the regulations,
19 rules -- the written documentations which govern
20 this relationship. However, in reality, are there
21 changes or -- I would ask you to describe the
22 relationship to see if there is a difference
23 between what is written and what truly happens,
24 how these relationships truly exist.

25 MR. PARDY: Yes. I think the

1 issue has been extensively covered, not only in my
2 earlier testimony, but the in the testimony of
3 other persons. Mr. Livermore in particular I
4 think touched on this issue. I think the
5 ambassador himself touched on this issues, as
6 well; and, in addition, I think the Minister had
7 some comments to make as well.

8 But if you go back, I think part
9 of the problem here is there is considerable
10 historical baggage in existence, if you like, with
11 respect to the role of an ambassador, not only a
12 Canadian ambassador but any ambassador abroad.

13 The term is still used that an
14 ambassador is appointed as a plenipotentiary. A
15 plenipotentiary in the normal meaning of that word
16 means a person that is capable of independent
17 action.

18 That still exists I would regard
19 as a legal fiction. The reality is entirely
20 different and this has been an evolution now that
21 has been going on well over a hundred years, I
22 think, in terms of the practice I think of most
23 countries in this area.

24 What has replaced it in practice
25 is a series of instructions that goes to a Head of

1 Mission. Most ambassadors now are given letters
2 of instructions that go out and usually those are
3 done on an annual basis, where Ottawa provides --
4 sometimes I've seen them as long as 20 pages, a
5 series of instructions, depending on what is going
6 on in the relationship between a country. Those
7 go out to the ambassador and those instructions do
8 cover consular affairs, given the nature of our
9 consular relationship.

10 In addition, there is a series of
11 ad hoc instructions, if I can use that, that go
12 out on a periodic basis, mostly on an issue basis
13 that go out to an ambassador.

14 Third, I could mention the fact
15 that within the Canadian practice and certainly
16 within the Canadian foreign service, and I think
17 you can generalize to foreign services generally,
18 we have put in place a communication system
19 between Ottawa and all of our missions abroad so
20 that quite literally there is instantaneous
21 communications, both on a secure basis and on a
22 non-secure basis, between an embassy and Ottawa.

23 Then the fourth area I would cover
24 is that in a practical sense what has happened is
25 that some programs have developed manuals of

1 instruction, if you like. And certainly the
2 consular program has two manuals of instruction
3 out there. One is the manual of consular
4 instruction and then there is a manual of passport
5 services.

6 The bottom line for all of this is
7 that when there are issues where there is the
8 potential for conflict between either different
9 units of the Department of Foreign Affairs or
10 different units of the Canadian government, then
11 the practice is fairly clear cut, I would say
12 almost absolute, that an ambassador is expected
13 that if he finds that he is in a position where
14 there is some conflict in his mind as to what he
15 has been asked to do, then quite clearly he is to
16 come back to headquarters, to the appropriate
17 units in the Department of Foreign Affairs in most
18 instances, and ask for clarification as to what he
19 should be doing in a given situation.

20 MR. DECARY: And in the matter of
21 consular affairs, what is the relationship
22 precisely between headquarters and yourself in
23 particular and Mr. Martel, the consul?

24 Is it correct to state that you
25 give instructions, you have the power and

1 authority to give instructions to the consul?

2 MR. PARDY: Yes, and to the
3 ambassador. As you notice from the record is that
4 in both instances -- because we run into this
5 dichotomous situation where Mr. Martel or the
6 consul at any mission is at one level responsible
7 to the ambassador for his activities within that
8 particular country, and in another practical sense
9 he is responsible back to a headquarters unit, the
10 consular affairs bureau, for day to day
11 instruction management and that goes on.

12 And the manual of consular
13 instructions, if you look at it in detail in all
14 of its manifestations, you will find quite a
15 common element in the instructions that are there,
16 or the stated instructions is that look, if you
17 have got a problem, check with Ottawa.

18 That is a common, constant element
19 in the manual of consular instructions, yes.

20 MR. DECARY: When we read in the
21 exchanges between yourself and Ambassador
22 Pillarella, when you use the words, for instance,
23 suggest, appreciate, ask, in general is that to be
24 understood as an instruction?

25 MR. PARDY: Absolutely, yes.

1 There is a collegiality involved in all of this
2 and you use words that reflect that collegiality,
3 yes.

4 MR. DECARY: Now, were you
5 satisfied that both Mr. Martel in this Arar matter
6 and Ambassador Pillarella acted in accordance with
7 the instructions that you gave to them when there
8 were cases that you gave instructions?

9 MR. PARDY: Yes, and I think I've
10 given testimony on several occasion as on that
11 point, yes.

12 MR. DECARY: I'm turning to a
13 second matter, Mr. Pardy, on which I would truly
14 need your help and you may help me
15 also understand. You realize -- and I have stated
16 this before the Commission -- that I, as a lawyer,
17 am not well versed in these matters and in
18 particular on the subject of mixed signals.

19 Therefore, I would ask you to bear
20 with me should certain questions not be clear.

21 Throughout this what I see in the
22 Arar matter is the following.

23 First of all, with respect to the
24 ongoing investigation by Syria into certain
25 allegations concerning Mr. Arar, you wanted to be

1 informed of the evolution of that investigation.

2 Is that correct?

3 MR. PARDY: That is correct, yes.

4 MR. DECARY: And at the risk of
5 repeating this -- and I apologize to the
6 Commissioner, but just as an introduction -- why
7 do you want to be informed of the evolution of the
8 investigation?

9 MR. PARDY: Well, Mr. Arar was in
10 Syria. His future would be determined by the
11 government of Syria and the intentions of the
12 government of Syria with respect to Mr. Arar was
13 important to us so we could plan and take action
14 to affect anything that they might do with respect
15 to Mr. Arar.

16 I would suggest -- well, I
17 wouldn't suggest; I would say to you. I don't
18 need to be polite here to you at all.

19 I would say to you that this is a
20 very standard thing we do with respect to all
21 consular cases. Even to the point in New York
22 where this effort of trying to understand what
23 "the charges" were with respect to the Americans
24 and Mr. Arar, we were going through much the same
25 process.

1 Now the expectation in New York
2 was that more -- how can I put it? The legal
3 process that Mr. Arar was going through was --
4 could be a bit more understanding. In Syria it
5 wasn't. I think the difference in Syria was that
6 probably the process in Syria was more
7 policy-driven than it was driven by legal matters,
8 and as a result of that I think there was a need
9 to talk to people within the Syrian system who
10 were going to make those determinations on a
11 policy basis as to what they were going to do to
12 Mr. Arar.

13 Mr. Pillarella's obligation was to
14 obtain that information and send it back it us,
15 and then it became our obligation or our
16 responsibility to determine what we were going to
17 do with that information.

18 MR. DECARY: The record clearly
19 states that the bout de papier, what was referred
20 to as the bout de papier, was remitted to Ottawa.
21 Would it be correct to state that that piece of
22 information was important and your evaluation of
23 what the issues were with respect to the Syrians?

24 MR. PARDY: Yes. What the piece
25 of paper told us -- and I think the evidence is

1 there that I spoke to Mr. Pillarella on the
2 telephone the day, on November 3rd when he had the
3 discussion with General Khalil, right after that
4 discussion, and he reported to me the details
5 there.

6 The most salient point of course
7 was the suggestion that Mr. Arar had been in
8 Afghanistan in 1993. It was a new piece of
9 information for us. I think the testimony is
10 already there that I did not attach any particular
11 importance to this. But it was a piece of
12 information that indicated where the Syrians were
13 going.

14 The suggestion was in that piece
15 of information that the Syrians were using was
16 a -- was a suggestion that the -- well, there were
17 two ways you could have taken it.

18 One was that this was confirmation
19 of the American view that Mr. Arar was a member of
20 al-Qaeda, for which there was no Canadian
21 information whatsoever to support that, and I
22 think that is the testimony of a number of people,
23 including those from the RCMP and CSIS.

24 The second point was a suggestion
25 -- and this was much more tenuous -- that maybe as

1 a result of that collaboration that went on in
2 Afghanistan in 1993 that this in some way touched
3 on the broader Muslim Brotherhood and its
4 activities throughout in a number of Middle
5 Eastern countries and that. So most of those were
6 there.

7 It came back and it was evaluated
8 and I think other people in the Canadian
9 government did an evaluation of that and came to
10 much the same conclusion that I did.

11 The fact that Mr. Pillarella was
12 given that information by a senior official of the
13 Syrian government, his responsibility was quite
14 clear-cut: it was to get it back to us.

15 I would add the further point,
16 which I have already stated earlier, the fact that
17 he was able to get it in writing, in my view, was
18 a step up in terms of this kind of information.

19 MR. DECARY: Now, moving always in
20 this mixed signals but to another areas, the
21 Syrians. The Syrians hold Mr. Arar in detention.

22 Did you at the start or at any
23 time know for what period he would be detained?
24 Did you have any estimate?

25 MR. PARDY: You know, we know

1 somewhere on the early morning of October the 8th,
2 2002 the Americans removed him from detention in
3 Brooklyn, New York. We then -- we got conflicting
4 signals from the Americans as to what may have
5 happened to him. And as you know, the testimony
6 is replete with various -- not assumptions, but
7 various scenarios that we certainly kept in mind.

8 It was not until Mr. Martel saw
9 Mr. Arar on October 23rd that in my mind a number
10 of things crystallized to the point that said that
11 shortly after, and I think the date that we use in
12 our mind October the 9th, that Mr. Arar was in
13 Syrian custody from October 9th onwards.

14 That was based not only on
15 Mr. Arar's open comments to Mr. Martel, but also
16 the information from the Jordanians which came in
17 almost within the same time frame, where the
18 Jordanian Foreign Minister said to the Canadian
19 ambassador that yes, Mr. Arar had been in Jordan a
20 while earlier but had been in transit, which in
21 normal terms means a short period of time.

22 MR. DECARY: My question was,
23 though -- and I don't mean to offend you: Did you
24 at that time have any idea for how long Mr. Arar
25 would be held in custody?

1 MR. PARDY: Would in the future.

2 I'm sorry, I misunderstood you.

3 No, none whatsoever.

4 MR. DECARY: And did you speculate
5 or examine certain variables as to what
6 conditioned the detention?

7 MR. PARDY: Well, two things. If
8 you mean by condition of detention, the physical
9 conditions --

10 MR. DECARY: No, of --

11 MR. PARDY: You are talking about
12 how he might be treated in terms of --

13 MR. DECARY: I will rephrase my
14 question, I apologize.

15 MR. PARDY: Yes.

16 MR. DECARY: Mr. Arar was
17 detained. Why was he detained, in your view?

18 MR. PARDY: Because he showed up,
19 the Jordanian -- and again I'm --

20 MR. DECARY: No, but the reason
21 behind his detention.

22 Is it one -- I will be suggestive,
23 with your permission. Was it, one, to please the
24 Americans, and to hold him pending an
25 investigation into links with al Qaeda?

1 MS EDWARDH: It may be that
2 Mr. Pardy feels that he can answer the question,
3 did the Syrians want to please the Americans. I
4 don't know that he can, but I don't think he
5 should be invited to speculate unless he has some
6 basis for his conclusion.

7 MR. DECARY: Well then I will
8 rephrase it.

9 THE COMMISSIONER: Let me say --
10 and I think Mr. Pardy was about to say something.
11 Mr. Pardy, if you are not obviously comfortable in
12 answering a question or don't feel you are
13 competent or have enough information, any
14 question, let me in advance --

15 MR. PARDY: The question, with
16 slightly different wording, has been asked several
17 times before and I've answered it.

18 It is, I think Mr. Decary has
19 added in the reason for Syrian detention. I think
20 he is trying to slice the bread very thinly, but I
21 think what he is trying to get at here.

22 Certainly my views on that
23 particular issue are throughout the record.

24 THE COMMISSIONER: Would you like
25 him to --

1 MR. DECARY: Yes, please.

2 THE COMMISSIONER: If you would
3 just express those again.

4 MR. PARDY: We are back to the
5 business of the relationship of Syria with the
6 United States, and I think the Syrians probably --
7 and again, Ms. Edwardh is entirely correct. There
8 is a very high level of speculation in all of
9 this. I think you are going to have an expert
10 witness of some sort in November that was at the
11 centre of American policy with regard to Syria, I
12 think, or certainly is quite knowledgeable about
13 this issue.

14 Fundamentally, I think at this
15 point the Syrians and the Americans were working
16 fairly closely together in the area of
17 international terrorism. I think when Mr. Arar
18 arrived, there is some suggestion -- and I don't
19 don't know how much reliability to put on this --
20 that there might have been prior consultation by
21 officials of the American government with Syria.

22 Mr. Ashcroft has said publicly
23 that this issue of guarantees with respect to
24 torture, that the Americans had received some
25 assurances from the Syrians on that particular

1 point.

2 I think fundamentally here the
3 reason for the detention was that Syria and the
4 United States were cooperating and Mr. Arar, based
5 on allegations -- not allegations, but a statement
6 of fact by the Americans that he was a member of
7 al Qaeda, he is there, and the Syrians then
8 decided yeah, okay in these circumstances we are
9 going to deal with Mr. Arar. And the fact that he
10 was a Syrian citizen I think just added to that
11 Syrian dossier with respect to Mr. Arar.

12 MR. DECARY: Could I add a second
13 reason of preoccupation. That had to do for the
14 Syrians to find out if Mr. Arar was involved in
15 the Muslim Brotherhood.

16 MR. PARDY: No, I don't think
17 that -- well, okay. Publicly probably the Syrians
18 might tell you that, but the Muslim Brotherhood
19 was a catch-all for the Syrians. Literally
20 everybody they picked up was in one way or another
21 -- they had given themselves a series of, a law
22 that allowed them pretty much to do what they
23 wanted based on the fact of allegation that
24 someone was a member of the Muslim Brotherhood.

25 There have been some suggestions

1 that Mr. Arar's family, while they were in Syria,
2 might have been. But again, I don't know.

3 I think the Muslim Brotherhood
4 issue was a secondary one compared to their
5 relationship with the United States.

6 MR. DECARY: But would you -- and
7 I don't want to play on words. But in effect it
8 may very well have been an area of concern, not
9 for the Americans but --

10 MR. PARDY: It is an area -- I
11 would go so far as to say it was an area of
12 explanation by the Syrians rather than area of
13 concern, I would say. The Syrians are not -- the
14 people dealing with this are practical people in
15 that sense, the people that are dealing with these
16 issues, and they will use whatever is available to
17 them. And that's what they did here.

18 MR. DECARY: Well, just on this
19 front -- and again I don't mean to contradict.
20 But could it be that for the Syrians, the
21 existence of the Agora and the relationships
22 between the Syrians outside of Syria and those
23 within, was of concern? And until they had to
24 elucidate all questions they may have of possible
25 links, until they were satisfied that there were

1 no links between a person and the Muslim
2 Brotherhood, that they would put an end to their
3 investigation and free the person?

4 MR. PARDY: I suppose, possibly.
5 I don't attach -- I don't give it the value that
6 your question seems to suggest here.

7 MR. DECARY: And I note that.
8 Let's call it an hypothesis. Following that
9 hypothesis, therefore, would it not be important
10 -- because the sources of information are outside
11 of Syria, it would be important, just as you
12 needed the information to evaluate the Syrians,
13 what was behind Syria's mind, it was important for
14 the Syrians to get whatever information with
15 respect to the Brotherhood in order to satisfy
16 themselves whether or not there was a cause for
17 concern.

18 MR. PARDY: The only thing I can
19 say to you is in all of the information that
20 Ambassador Pillarella was able to obtain in all of
21 this, there was never really any specifics with
22 regard to the Muslim Brotherhood. It was an
23 accusation that stood out there on its own.

24 I think in other areas, and
25 certainly in terms of the information the

1 ambassador picked up and other information that
2 came back to the Canadian government, it was the
3 al-Qaeda connection that was the key one here.
4 And the Syrians never fleshed out -- certainly in
5 my memory, they did not flesh out any supporting
6 evidence of their concern with respect to the
7 Muslim Brotherhood in the way you suggest.

8 MR. DECARY: Do you know -- well,
9 I don't know how far I can go.

10 May I pause for a moment to ask a
11 question of Mr. Cavalluzzo as to my conduct here?

12 THE COMMISSIONER: Absolutely.

13 --- Pause

14 MR. DECARY: Mr. Pardy, to ensure
15 that none of this discussion goes beyond the
16 limits which I accept of a public hearing, that's
17 why I addressed Mr. Cavalluzzo, and you, also,
18 Mr. Commissioner.

19 If we move away from the specific
20 Mr. Arar case for a moment and just more generally
21 to detainees in Syria, in your experience, if they
22 are in investigations or they are subjects of
23 concern that have to do with the Muslim
24 Brotherhood, a person tied to a Muslim
25 Brotherhood, would it not be important for Canada,

1 if it has information, for instance, that could
2 disprove a belief, that that information be given
3 to the Syrians?

4 MR. PARDY: I'm not sure that I
5 understand that question in the way -- because
6 certainly you are into an area far beyond my
7 knowledge, and you get into the area of the
8 commitment of the Government of Canada with
9 respect to providing other governments with
10 information that has come it their attention.

11 I think there is a fair bit of
12 testimony out there in terms of the concern that
13 one has in terms of providing any information to a
14 government like that of Syria in this area.

15 If you move beyond the government
16 of Syria and say deal with England or Germany or
17 Japan, it happens as a matter of course. There
18 are very deep and very substantial exchanges of
19 information that take place, both in terms of
20 information from the criminal justice --

21 MR. DECARY: Mr. Pardy --

22 MR. PARDY: Let me just finish. I
23 think one needs to provide a context for your
24 question here.

25 Is there a responsibility on the

1 Government of Canada to provide the government of
2 Syria with information that might come to its
3 attention with respect to Muslim Brotherhood
4 activities? I think you are into an area here of
5 -- and has been suggested by other witnesses, one
6 has to be very careful.

7 It would be the nature of that.
8 It would have to be -- and I would suggest to you
9 if it involved Canadian citizens that were within
10 the purview of the government of Syria, then that
11 would add another serious dimension to whether or
12 not such information should be passed.

13 MR. DECARY: Mr. Pardy, I don't
14 know if you have been recognized as an expert, but
15 clearly I want to state that we recognize you as
16 an expert on consular matters.

17 MR. PARDY: Mm-hmm.

18 MR. DECARY: With respect to the
19 knowledge of relations with Syria, would you
20 consider yourself an expert?

21 MR. PARDY: In the sense that I
22 need a body of knowledge and understanding in
23 order to carry out my consular responsibilities, I
24 did not draw a line in any narrow sense,
25 whatsoever. I regarded myself and not only Syria,

1 but for all of the countries of the world, I
2 needed a body of knowledge, a body of
3 understanding in order for me do my consular
4 responsibility.

5 I would suggest to you that my
6 understanding, based on an experience of a number
7 of years in the foreign service of dealing with
8 countries like Syria on a daily basis, that I did
9 have that understanding. Now, it needed to be
10 updated on specific things and that's why we have
11 embassies and other people and that's why we have
12 political affairs.

13 But I come back to the issue of
14 collegiality here, there is that coming together.

15 I did not regard myself as being
16 ignorant as far as the government of Syria was
17 concerned, its larger policies and the kinds of
18 activities that it was engaged in.

19 MR. DECARY: I did not mean it in
20 the way of being ignorant; clearly not.

21 I want to come back to where I was
22 leading, therefore. Let's assume -- I would
23 recognize that quite a bit of expertise in that
24 field. I have just listened to your answer and I
25 will not call upon the determination,

1 Mr. President, moving here.

2 Let's assume that the Syrians have
3 two concerns. One was to deal with the al-Qaeda
4 matter, and the other was to deal with the Muslim
5 Brotherhood matter. And that their detention, the
6 detention was conditioned upon they would be able
7 to satisfy themselves that there was no risk with
8 respect to either.

9 MR. PARDY: Mm-hmm.

10 MR. DECARY: Would it, in that
11 hypothesis -- so it is just an hypothesis. In
12 that hypothesis, if someone turned to you and
13 asked if information that could be very helpful to
14 a detainee, who could clearly show, for instance,
15 that in Canada there was absolutely no relation
16 with respect to al-Qaeda, would it not be
17 important that that information be communicated
18 verbally or in writing, whatever; but that
19 information be clearly communicated to the
20 Syrians?

21 MR. PARDY: Yes, and I think it
22 was on the issue of al-Qaeda.

23 MR. DECARY: And what about the
24 issue of the Muslim Brotherhood?

25 MR. PARDY: I think we all

1 regarded the issue of the Muslim Brotherhood as a
2 chimera. It was something out there, it didn't
3 really matter. And certainly in all of our
4 discussions, both with the RCMP and CSIS, I think
5 the idea that the Muslim Brotherhood was an
6 important consideration in any -- it was just not
7 there as something of serious attention or serious
8 concern.

9 MR. DECARY: But do you agree --
10 and this is the last question I missed -- if
11 someone, a consul or an ambassador, is authorized
12 to remit information to the Syrian, to the Syrian
13 Military Intelligence, whoever in Syria, that he
14 not only can, but should do so?

15 MR. PARDY: Yes, if that
16 authorization is there; yes.

17 MR. DECARY: I would now turn to a
18 third point, which is rather easier. It has to do
19 with prison conditions in Syria.

20 If we go back to 2002, and to get
21 to the point rapidly, because I know you've read
22 the various human rights and state department
23 reports. In these reports we read that prison
24 conditions generally were poor and did not meet
25 international standards of health and sanitation.

1 This is State Department. Facilities for
2 political or national security prisoners generally
3 were worse than those for common criminals, and
4 the Syrian international reports as cruel, inhuman
5 and degrading conditions.

6 And I take that this information,
7 you knew at the time. Is that correct?

8 MR. PARDY: Yes. And previous to
9 2002 as well.

10 MR. DECARY: And previous to 2002.
11 How detailed information did you
12 or headquarters know? What information did they
13 have at the time about conditions of detention?

14 MR. PARDY: What you had were the
15 reports that you referred to, and as you know, you
16 have sort of frozen in time, if you like, those
17 reports for that period of time. Those reports,
18 similar reports have a history of this.

19 The history of Syria, I think at
20 one point was being named under the process in
21 Geneva, the human rights committee in terms of
22 allegations about conditions in Syria, how it
23 treated its own people and the conditions in its
24 prisons and things like that. All of this
25 information was there as background.

1 If I can use this term, the
2 quality of the government in Syria was one that, I
3 mean going back to 30, 40 years, was one that one
4 could assume did not have high on its agenda
5 the wellbeing of people that it detained for
6 political reasons or even on criminal matters.
7 That was not something that the government was
8 known to be concerned with.

9 MR. DECARY: During examination of
10 you, Mr. Pardy, Ms Edwardh read to you a lengthy
11 extract from Mr. Arar's public statement on
12 November 4th, 2003, which included a very detailed
13 description of his cell.

14 In particular I read from page
15 3867, and I quote:

16 "But put me in and closed the
17 door. It was like a grave,
18 exactly like a grave. It had
19 no light. It was three feet
20 wide. It was six feet deep.
21 It was seven feet high."

22 At the time, in 2002, 2003,
23 pertinent period, did you not realize that in
24 effect the conditions described by Mr. Arar were
25 those of prisoners held in the SMI detention

1 centre?

2 MR. PARDY: No. I think the --
3 what we are talking about here is the level of
4 detail that Mr. Arar in his personal testimony has
5 given. That, I think it's fair to say, that level
6 of detail I don't think was extant in any of the
7 literature that was out there, I don't think.

8 People talked about terrible
9 conditions, but that personalization that Mr. Arar
10 was able to give here, I think was not generally
11 available and certainly did not -- and came as a
12 bit of a surprise when I first heard the numbers,
13 particularly the three, six, seven numbers, things
14 like that.

15 Generally -- I'm trying to think
16 of other prisons that we certainly have had
17 Canadians in around the Middle East. I don't
18 think we have ever experienced that particular
19 condition before.

20 We had another case in a
21 neighbouring country where just the opposite
22 happened, where the person was in a prison cell
23 that was something like 25 feet by 35 feet, and he
24 was the only person in that particular cell. So
25 again, you're back.

1 But again, no, I did not have
2 that detail that Mr. Arar was able to give after
3 his release.

4 MR. DECARY: Had Mr. Martel, on
5 August 14th, 2003, indicated in his report the
6 size of the cell, would that have elicited any
7 particular reaction on your behalf?

8 MR. PARDY: You mean specific to
9 the size of the cell?

10 MR. DECARY: Well, specific to
11 any -- would it have changed anything?

12 MR. PARDY: I mean, we have done
13 quite a bit I think following that. But I think
14 the main information we took from Mr. Martel's
15 August 14th report was the statement that a trial
16 was going to take place within seven days, and I
17 think all our activities from then certainly until
18 the end of August was in effect to try to deal
19 with that particular set of circumstances.

20 And again -- and I don't know when
21 this became apparent, but shortly after I think or
22 it might have been in September, we had word that
23 he had been transferred to another prison at which
24 I think there was much more information available,
25 Sednaya.

1 MR. DECARY: The report is on
2 August 14th to you, and he is moved I believe a
3 week later, six or seven days later, to Sednaya.

4 MR. PARDY: I think the important
5 thing about the decision of the Syrians to do the
6 charging and even down to the name of the court
7 that was going to be used was a transfer of
8 responsibility, if I can use that term, from
9 Mr. Arar from military intelligence to the
10 criminal justice system.

11 MR. DECARY: Had, on August 14th,
12 Mr. Martel stated in his report the cell size,
13 three by six by seven, would that have --
14 obviously that would be an additional piece of
15 information, I respect that, obviously.

16 MR. PARDY: Yes.

17 MR. DECARY: But would that have
18 changed anything? Would you have done anything
19 differently?

20 MR. PARDY: I don't know. It's
21 easy to look back and say if I had that piece of
22 information immediately, I would have gone back to
23 the ambassador and said you go in there and you
24 tell Mr. Khalil these are inhuman conditions and
25 to do something about it.

1 I would like to think I would do
2 that, but you are asking me today, two or three
3 years later. I don't know, to be quite honest
4 with you, whether that would have changed because
5 the intensity of action that we had to take on as
6 a result of the decision to charge Mr. Arar was
7 such that we were going flat out in that area and
8 we thought that was the most important one.

9 MR. DECARY: In this particular
10 case, because we know now the fact that he was
11 moved from the prison six or seven days later in
12 the month of August, truly do you believe with
13 respect to your last statement that it would have
14 helped had he gone to General Khalil and point
15 fingers and tell him these conditions are
16 obnoxious?

17 Would that have helped anything,
18 seeing that he had been moved and based on the
19 testimony of Mr. Arar that General Khalil had
20 already sort of given him the message during their
21 visit in the prison cell that he would be moved?

22 MR. PARDY: Again you are into a
23 high level of speculation. If the process was
24 already under way in the Syrian system to bring
25 Mr. Arar into their justice system and that the

1 arrangements were being made for his transfer, I
2 could see a complaint to the general, and the
3 general saying to the ambassador, oh yes, thank
4 you very much, ambassador, I'm going to act on
5 this right away, already knowing that the
6 decisions had already been taken.

7 You are into an area of high
8 speculation.

9 But clearly it seems that the
10 Syrians, prior to the August 14th meeting, were
11 making arrangements to bring this matter to a
12 conclusion, I think in some way, and that was the
13 decision to bring Mr. Arar to trial.

14 MR. DECARY: Would you disagree
15 with the statement that had you gone to General
16 Khalil at that time, immediately after August
17 14th, and I use the expression pointed fingers --
18 there may be better expressions -- that that may
19 have risked a negative response rather than just
20 an acquiescence on his behalf; that there was that
21 risk?

22 MR. PARDY: The risk is already --
23 is always there for that kind of thing. Saying
24 how large that risk was in these set of
25 circumstances, I would say was fairly low. But

1 again, our job was to try to minimize the risk to
2 Mr. Arar, and our job was to maximize the effort
3 to get him out of there. That was the thing we
4 were doing.

5 MR. DECARY: What I'm leading to
6 is would you have taken that risk?

7 MR. PARDY: At that point, I don't
8 know. I really don't know whether I would have.
9 And I think that's the essence I was trying to
10 tell you a few minutes ago. I don't know whether
11 I would have taken that risk or not.

12 I'm not risk adverse by any means
13 in terms of the things that I do, but I am very
14 conscious of the decisions that we take that could
15 make things worse for the Canadian that is in
16 difficulty.

17 MR. DECARY: With respect to the
18 conduct of consuls and ambassadors, and in
19 particular in this case as applied to Mr. Martel
20 and the ambassador, do you agree that they were
21 governed by paragraph 2.4.4(3) of the manual of
22 consular instructions which provides, and I read:

23 "Care should be taken to
24 avoid any implication that
25 Canadian officials have

1 already concluded that the
2 local authorities have
3 maltreated the prisoner."

4 MR. PARDY: Could you repeat?
5 Care should be...?

6 MS EDWARDH: Could I have the
7 Exhibit number?

8 MR. DECARY: It is Exhibit P-11.

9 MR CAVALLUZZO: It is Exhibit
10 P-11, tab 22, page 10.

11 MR. PARDY: Yes, that instruction
12 is out there and I think care should be taken. In
13 this instance I think care was taken, and I think
14 both the ambassador and Mr. Martel were
15 certainly quite familiar with this, principle is
16 not the issue, but this practice.

17 It comes back to what I stated
18 earlier, that we did not want to take any action,
19 and it's not only in Mr. Arar's case but any case,
20 that will make the situation for any Canadian
21 worse. That's the principle under which we work.

22 MR. DECARY: How do you explain
23 the meeting between Ambassador Pillarella and
24 General Khalil and the release -- I'm sorry, the
25 access to Mr. Arar by Mr. Martel the day

1 following?

2 MR. PARDY: I -- and I think again
3 the testimony is there. I don't have any more of
4 an explanation than Mr. Pillarella had. This was
5 clearly an exception on the part of the Syrians in
6 terms of their normal practice in this area. Why
7 the Syrians decided on that, I think I speculated
8 on that in my earlier testimony, the possibility
9 that the Syrians decided that -- or had knowledge
10 of the fact that the relationship with the
11 Americans was getting into difficulty. And they
12 might have felt that in the case of Mr. Arar,
13 which clearly had this American dimension to it,
14 they were going to try to walk both sides of the
15 streets, and they did by this decision that they
16 would permit consular access and would provide the
17 ambassador with information with respect to "their
18 investigation".

19 And at the same time we asked the
20 ambassador to raise the case of Mr. Almalki, and
21 the decision on Mr. Almalki was totally different.

22 MR. DECARY: Thank you.

23 Turning now to the Syrian human
24 rights record and its importance in this matter,
25 in assessing the likelihood of Mr. Arar being --

1 I'm not sure what the term is, and it's only my
2 ignorance -- abused, mistreated or tortured. I
3 will let the Commission on this decide.

4 I understand you came to the view
5 and it's possibly very likely -- I'm not
6 commenting on that at all, directly or indirectly.

7 But in assessing the likelihood of
8 Mr. Arar being -- I'll use the term tortured, just
9 to use the strongest term in the first two weeks
10 of detention, is it correct to state that in
11 addition to the various human rights reports, the
12 Department of State, Canadian, American, Amnesty
13 International, and the reports which are referred
14 to in this matter, that you also took into account
15 two other matters?

16 One was the deportation to Syria
17 in September/October of 2002 of a person. I don't
18 know how I can go with the specifics, but anyway.

19 MR. PARDY: Deportation from
20 where? From Canada?

21 MR. DECARY: Sorry, from Syria to
22 Egypt. I believe this is public, is it?

23 MR. PARDY: Yes.

24 MR. DECARY: Thank you. And the
25 fact that you were informed that that person had

1 been tortured; stated to representatives of Canada
2 that he had been tortured. Did that also play in
3 your decision, in your conclusion?

4 MR. PARDY: Yes, that was
5 information that Mr. El Maati provided to the
6 consul in Cairo on August 14th, 2002. Clearly he
7 gave a general description of what happened to him
8 and clearly from that general description the word
9 torture was appropriate, yes.

10 That was part of the information
11 set that we had with respect to conditions in
12 Syria, yes.

13 MR. DECARY: Did the fact that at
14 that time you also knew that both Mr. El Maati and
15 Almalki were detained without access during that
16 period also play?

17 MR. PARDY: Oh, yes, very much so.

18 MR. DECARY: Now, which was more
19 relevant in your assessment of Mr. Arar's likely
20 treatment, likely torture? Was it the public
21 record or these additional facts concerning
22 Mr. Almalki or El Maati?

23 MR. PARDY: I think it was the
24 public record that was more specific, and the
25 public record I think displayed a pattern of

1 activity by the government of Syria going over a
2 long number of years, and I think that allows you
3 to form a certain impression of a government.

4 Certainly we saw nothing down to
5 today that gives any suggestion that Syrian
6 practice in this area is changing.

7 The others were details that went
8 into your understanding of the practice of that
9 government. These were, if you like, sign posts
10 along the way, but the pattern is clearly evident
11 with respect to the government of Syria and how it
12 treats prisoners and particularly prisoners who
13 have "a political label" on them.

14 MR. DECARY: Would you go so far
15 as to state before this Commission that the fact
16 that a person with a political record is held in
17 detention, does that mean that he has been
18 tortured in every case?

19 MR. PARDY: No, not in every case.
20 But I think in terms of what I would work against
21 is the assumption that it would be, and I would
22 need to be convinced otherwise that it had not
23 taken place.

24 MR. DECARY: So it's a working
25 assumption, as you put it?

1 MR. PARDY: Yes.

2 MR. DECARY: Seeing that you were
3 working under this assumption, when you look at
4 this experience today, is there anything that you
5 did or have done or authorized to have been done
6 that should not have been done? Or are you
7 satisfied that all that you did was appropriate in
8 the circumstances?

9 MR. PARDY: Yes, I am satisfied
10 that in terms of the activities that I carried out
11 and the activities that I initiated, that in
12 effect -- and there was one objective which was
13 stated right in the very beginning, which I still
14 maintain in terms of having Mr. Arar returned from
15 Syria in less than a year, was a significant
16 achievement. It was based on the kind of
17 decisions that were made, not only by myself, but
18 by others within the system or within Foreign
19 Affairs.

20 As the record will show, generally
21 the level of cooperation elsewhere in the Canadian
22 government except towards the end was not there on
23 some issues that we thought were important. But I
24 think in terms of what we did, we achieved
25 something fairly significant here.

1 I think it has been used as a
2 standard with respect to other cases, and that
3 standard has not been achieved with respect to the
4 other cases.

5 MR. DECARY: Now, this is a lawyer
6 asking the question and I don't want it
7 repeated -- I think I understood perfectly from
8 your testimony, but just to be precise; Is there
9 anything that you did not do that, viewed from
10 today, you think you should have done? Just to
11 make sure I get both.

12 MR. PARDY: It's a tough -- I
13 mean, it was so intense. I don't think that there
14 is anything in terms of what we were doing that
15 maybe you might have ratcheted things up a little
16 bit, the noise level the Syrians, and I'm talking
17 about the noise level with respect to the Canadian
18 government here.

19 I think, as most people have
20 testified, you are back into the business of
21 measurement of risk here or the possibility of
22 adding to the miseries that Mr. Arar was facing.

23 I think one needed to balance all
24 of your actions against that, which we did. You
25 had to be judicial, I think, in that approach.

1 And that's what we were.

2 Whether perhaps some people would
3 say we were too hesitant in terms of our timing, I
4 don't know. I don't think I will come to that
5 conclusion yet. I'm not prepared to state that to
6 you.

7 MR. DECARY: Does your statement,
8 your two last statements, something you did or did
9 not do, as applied to Mr. --

10 MR. PARDY: Both. Applied to
11 Mr. Martel?

12 MR. DECARY: Applied to
13 Mr. Martel. Is there anything that he did or
14 didn't do in this matter that you know of?

15 MR. PARDY: No, not at all. No.

16 MR. DECARY: And Ambassador
17 Pillarella?

18 MR. PARDY: No, not in this area
19 of consular affairs. I think
20 Ambassador Pillarella was sensitive to us on the
21 issue of consular instructions. He carried them
22 out and we provided him with appropriate
23 instruction and guidance from time to time. I
24 think my testimony has been consistent on that
25 point from day one; that both he and Mr. Martel

1 were very supportive of our efforts to have
2 Mr. Arar returned to Canada as early as possible.

3 MR. DECARY: No further questions,
4 Commissioner.

5 THE COMMISSIONER: Thank you.
6 Anybody else? Or just over to
7 you, Mr. Cavalluzzo.

8 Ms. Edwardh, you said you might
9 make an application.

10 MS EDWARDH: It is 11:30. Could
11 we have a 15-minute break now? We have a couple
12 of documents to check before I say yes or no.

13 THE COMMISSIONER: Okay. We will
14 take 15 minutes.

15 --- Upon recessing at 11:30 a.m. /
16 Suspension à 11 h 30

17 --- Upon resuming at 11:45 a.m. /
18 Reprise à 11 h 45

19 THE COMMISSIONER: Ms Edwardh?

20 MS EDWARDH: Thank you,
21 Mr. Commissioner.

22 I have reviewed my notes and I do
23 not see that Mr. Pardy has added, in any material
24 way, to his earlier testimony and therefore I have
25 no questions.

1 Thank you for the opportunity.

2 THE COMMISSIONER: Thank you.

3 Mr. Cavalluzzo?

4 EXAMINATION

5 MR. CAVALLUZZO: Just a couple of
6 questions for clarification, Mr. Pardy.

7 I wonder if Mr. Pardy may be given
8 Exhibit P-26. This is the United States
9 Department of State review of political conditions
10 in Syria.

11 If you have P-26 in front of you,
12 you were asked certain questions about why
13 Mr. Arar was detained and you were asked certain
14 questions which one could generally describe as
15 perhaps the geopolitical impact or context in
16 which his detention occurred.

17 I would refer you to page 4 of 13,
18 because you did mention the impact of the
19 Americans.

20 I'm reading at the bottom of page
21 4 wherein it states:

22 "2002 to 2004

23 In the aftermath of 9/11, the
24 Syrian government began
25 limited cooperation with the

1 U.S. in the global war
2 against terrorism. However,
3 Syria opposed the Iraq war in
4 March 2003, and bilateral
5 relations with the U.S.
6 swiftly deteriorated."

7 So it would appear that perhaps
8 the arrival of Mr. Arar on October the 8th or 9th
9 of 2002 and his detention at that point in time
10 may have suggested some kind of cooperation with
11 the Americans, and that is in effect what you have
12 stated.

13 The question that I would have for
14 you is in light of this particular statement by
15 the Department of State, it would appear that in
16 any event around the time of the invasion of Iraq
17 in 2003, and indeed before that time, you may
18 recall the famous speech that Colin Powell made in
19 the United Nations on February the 5th of 2003,
20 suggests to me and I would ask you the question:
21 In early 2003 would you agree with me that
22 relations with the United States were
23 deteriorating and perhaps the American effect, if
24 we can call it that reason for detaining Mr. Arar,
25 had disappeared or at least dissipated by that

1 point in time?

2 MR. PARDY: Yes, I think that's a
3 fair conclusion. What is missing from the
4 comments that you have just read, the State
5 Department comments of course placed all of this
6 in the context of the global war against
7 terrorism, but another American objective quite
8 clearly with Syria had to do with Lebanon, and
9 that was to see the Syrian influence in Lebanon
10 removed. And this has to do I think with the
11 larger issue of Middle East peace with respect to
12 Israel.

13 That I think was playing out very
14 much, and I think if I remember correctly, the
15 title on the sanctions legislation in the United
16 States included the restoration of Lebanese
17 sovereignty, or something to that effect, which I
18 think summed up, quite frankly, American policy
19 with respect to Syria during this period.

20 MR. CAVALLUZZO: Right. Now, that
21 would seem to suggest that if the American effect
22 was dissipating by early 2003, then the Canadian
23 effect would become much more important in terms
24 of getting Mr. Arar released from Syria.

25 Would you agree with that?

1 MR. PARDY: It certainly I think
2 became a more significant element in Syrian
3 thinking. I think the Syrians do not have many
4 friends in the world, quite frankly, and I think
5 they play -- when their efforts to reach some sort
6 of a permanent, not permanent, but certainly an
7 understanding with the Americans, when that faded,
8 I think then the Syrians started to look about.

9 They don't have -- like I say,
10 even in Europe, the French government, which is
11 surprising because the French government tends to
12 be very even-handed with respect to governments
13 like Syria and even it was not prepared to do so.

14 MR. CAVALLUZZO: Now, you would
15 agree with me as well that not only was Syria
16 looking for friends because they were being
17 marginalized and isolated in early 2003, but at
18 the same time you would agree with me that they
19 were very pleased with the Canadian decision not
20 to join the Coalition of Forces in the invasion of
21 Iraq in 2003.

22 You would agree with that, I
23 assume.

24 MR. PARDY: Yes, I think it
25 probably helped balance off the Canadian decision

1 with regards to Hizbollah in terms of its listing.
2 You had these things. They were all
3 interconnected elements.

4 And over time, even I think the
5 Americans I think and the Syrians continued to
6 talk. The Americans I think used the threat of
7 sanctions legislation throughout the summer of
8 2003, because they still needed cooperation from
9 the Syrians, as is evidenced today with respect to
10 their position in Iraq.

11 MR. CAVALLUZZO: You would agree
12 with me, then, that in the early portion of the
13 invasion of Iraq, in that first month, the
14 Americans were concerned that terrorists were
15 crossing the Iraq border from Syria and as a
16 result made certain threats to Syria.

17 Isn't that correct?

18 MR. PARDY: Absolutely. The way
19 things were going, and during this period in
20 particular, as you know, we were trying to get the
21 parliamentarians making a visit there in March,
22 which came right in the middle of the start of the
23 war, and that continued and it wasn't until I
24 believe late April that finally we could get the
25 attention of the Syrians with respect to that

1 visit taking place. And then there was a fair
2 hiatus in terms of Syrian responses generally with
3 respect to Mr. Arar.

4 MR. CAVALLUZZO: Right.

5 MR. PARDY: And it was only then,
6 in August, that things started to crystallize
7 following Mr. De Bané's visit.

8 MR. CAVALLUZZO: I would like to
9 ask you some questions now with that context in
10 mind in the sense that Canada's leverage with
11 Syria was certainly improving as of the early part
12 of 2003. You were asked certain questions as the
13 actions that you did or the inaction, what you
14 didn't do, whether that impacted on the release of
15 Mr. Arar in respect of its timing.

16 I have heard your evidence
17 concerning what you did or what you didn't do.
18 The question that I have for you is: If you had
19 the full cooperation of the Canadian government,
20 that is the other agencies that you were trying to
21 engender in respect of their support in May of
22 2005(sic), if you had their full cooperation, do
23 you think that would impacted on the timing of
24 Mr. Arar's release from Syria?

25 MR. PARDY: I think so, yes,

1 because it was a major effort, as is reflected in
2 the documentation, that was undertaken. It
3 followed on from the visit of the parliamentarians
4 at the end of April, and immediately we started to
5 bring all of this together in an effort to "get
6 the Canadian government to speak with one voice"
7 to the Syrians.

8 May was very much taken up by that
9 effort and it started to fall apart quite clearly,
10 what we went to the Minister with, and the
11 Minister quite rightly said look, this isn't good
12 enough, and sent us back to the trenches. And out
13 of that effort we were able to get the Prime
14 Minister involved.

15 On the issue of influence with the
16 Syrians, I think the selection of Mr. De Bané and
17 the type of person that Mr. De Bané is with his
18 entrée with respect senior leaders in the Middle
19 East, as you know at the end there were two
20 letters prepared for Mr. De Bané. One was
21 specific to Mr. Arar, but the other one was
22 playing on this other area, in terms of Canada's
23 activities in the Middle East, that the Syrians
24 would find some support for.

25 MR. CAVALLUZZO: Just a couple of

1 final questions.

2 You were asked whether in your
3 view Mr. Pillarella and Mr. Martel -- and I'll
4 deal with one at a time. First of all with
5 Mr. Pillarella: whether there was anything that
6 he did or didn't do which may have affected his
7 performance of his duties in respect of Mr. Arar.

8 Do you recall that testimony?

9 MR. PARDY: Yes, I do.

10 MR. CAVALLUZZO: The question that
11 I have for you is: Don't you agree with me that
12 if Mr. Pillarella had concluded that Mr. Arar had
13 in fact appeared in Syria on October 9th, and that
14 during that period of incommunicado was mistreated
15 or tortured by the Syrians, do you not feel, with
16 that knowledge, he may have acted somewhat
17 differently, that is a little more perhaps
18 aggressively in respect of his representation of
19 Mr. Arar with the Syrians?

20 MR. PARDY: Oh, boy we are into
21 the area of calculus here. You mean the actions
22 that the ambassador took -- and I think his
23 explanation of those actions are on the public
24 record. You know, when we -- when the Syrians in
25 that period when we were assuming here, and I

1 think there are documents to that effect, that
2 despite the confusion in the record, that Mr. Arar
3 was in Syria, you know, the ambassador did not --
4 you mean did not diminish his activities in any
5 way. He tried to see the appropriate people and
6 he did certainly get access to senior officials in
7 the foreign ministry, which at that time were the
8 ones to see, and out of those contacts then led to
9 the association or the meetings with General
10 Khalil. And every time we went back to him during
11 this period, certainly he was able to exploit that
12 relationship.

13 So there was no hesitation,
14 whether this -- I hasten back to the testimony of
15 the Minister who said that if I had known this, I
16 would be lighting fires. Well, you know, I'm not
17 sure whether, in retrospect -- and the
18 Commissioner in some of his questions on a
19 previous occasion was talking about hindsight and
20 the need to be very careful in this area.

21 I find it very difficult in the
22 area of Mr. Pillarella's consular activities and
23 his effort to help Mr. Arar, that there is
24 anything to be critical for on my part. And that
25 would apply to Mr. Martel as well.

1 MR. CAVALLUZZO: We will deal with
2 Mr. Martel. But in terms of Mr. Pillarella, I
3 find it -- let me put it this way. I am somewhat
4 troubled in the sense that Mr. Pillarella was
5 operating under a different assumption that you,
6 at headquarters, were operating under. According
7 to your testimony, your operating assumption was
8 he was there by October the 9th and during that
9 period of incommunicado he was mistreated and as a
10 result of the mistreatment had given a statement.
11 That was his clear evidence.

12 MR. PARDY: Right.

13 MR. CAVALLUZZO: The troubling
14 part that I have is to have two important people
15 in Foreign Affairs, one in headquarters and the
16 other the ambassador, operating on two different
17 assumptions. I find that somewhat troubling and I
18 wonder if you might explain why there is nothing
19 wrong with that.

20 MR. PARDY: I deal with
21 ambassadors -- there are 200 of them out there --
22 on a daily basis. I don't measure their
23 performance based on whether or not they agree
24 with me in terms of certain assumptions that I
25 make. I measure their performance on the actions

1 that they take with respect to the instructions
2 that they are given. I measure Mr. Pillarella's
3 performance, I think, on that basis.

4 I find it very difficult to say
5 that if all of the assumptions that I made were
6 shared by everybody in the system, I would assume
7 maybe life would have been a lot easier for the 11
8 months or so that Mr. Arar was in detention, but
9 that's not the way the world operates.

10 MR. CAVALLUZZO: But the world
11 operates on what you described as operating
12 assumptions.

13 MR. PARDY: Yes.

14 MR. CAVALLUZZO: And operating
15 assumption is the assumption of the operation, I
16 always thought.

17 MR. PARDY: Yes.

18 MR. CAVALLUZZO: I will leave that
19 area. You have answered that.

20 MR. PARDY: Yes.

21 MR. CAVALLUZZO: As far as
22 Mr. Martel is concerned, I want to be clear for
23 the record. You left the employ of the Department
24 of Foreign Affairs at the end of August.

25 Is that correct?

1 MR. PARDY: Yes, '03.

2 MR. CAVALLUZZO: That's fine. I
3 have no further questions regarding Mr. Martel.

4 THE COMMISSIONER: Thank you
5 again, Mr. Pardy. This is a standard routine with
6 you. I have thanked you about five times.

7 MR. PARDY: I hope the routine
8 ends here.

9 THE COMMISSIONER: I am pretty
10 confident it is going to end this time.

11 In any event, thank you for coming
12 back. I appreciate, as I have in the past, your
13 cooperation and your assistance.

14 We stand adjourned then,
15 Mr. Cavalluzzo, until November the 8th for public
16 hearings.

17 MR. CAVALLUZZO: That is correct.
18 We will be sitting on November the 8th and
19 November the 9th, commencing at 10 o'clock in the
20 morning on November the 8th.

21 THE COMMISSIONER: In this room.

22 MR. CAVALLUZZO: In this room too.

23 THE COMMISSIONER: We will rise
24 until then.

25 MR. PARDY: Mr. Commissioner, good

1 luck on the rest of the process.

2 THE COMMISSIONER: Thank you.

3 --- Whereupon the hearing adjourned at 12:00 p.m.,
4 to resume in public on Tuesday, November 8,
5 2005, at 10:00 a.m. / L'audience est ajournée
6 à 12 h 00, pour reprendre en publique le mardi
7 8 novembre 2005 à 10 h 00

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Lynda Johansson,

C.S.R., R.P.R.

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