

**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 22 août 2005

Held at:

**Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario**

Monday, August 22, 2005

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1 Ottawa, Ontario

2 --- Upon commencing on Monday, August 22, 2005
3 at 10:00 a.m. / L'audience débute le lundi
4 22 août 2005 à 10 h 00

5 MR. DAVID: Good morning,
6 Mr. Commissioner.

7 THE COMMISSIONER: Good morning,
8 Mr. David.

9 MR. DAVID: We have Superintendent
10 Richard Roy of the RCMP who is going to testify
11 this morning before you.

12 Mr. Roy, however, will be giving
13 his testimony in French. So it will be necessary
14 to have his testimony translated.

15 Therefore I think we should do an
16 equipment check at this point.

17 THE COMMISSIONER: Okay.

18 THE TECHNICIAN: Channel 2 is
19 English. Everybody should have it on channel 2
20 for English, 3 for French.

21 [TRANSLATION]

22 MR. DAVID: So, it's channel 2 in
23 French. And it works. Thank you.

24 [ENGLISH]

25 THE COMMISSIONER: We have one

1 down here that's...

2 Okay.

3 [TRANSLATION]

4 MR. DAVID: Can we swear in the
5 witness, Mr. Commissioner?

6 [ENGLISH]

7 THE COMMISSIONER: He has been
8 sworn before, has he not?

9 [TRANSLATION]

10 MR. DAVID: Okay.

11 [ENGLISH]

12 THE COMMISSIONER: You have been
13 sworn before, so you are still under oath. It's
14 not necessary to swear you again.

15 [TRANSLATION]

16 PREVIOUSLY SWORN: RICHARD ROY

17 EXAMINATION

18 MR. DAVID: Thank you.

19 Just to situate Superintendent
20 Roy's testimony, at the time that concerns your
21 mandate, Mr. Commissioner, Mr. Roy was a liaison
22 officer for the RCMP with the Department of
23 Foreign Affairs, and he held that position from
24 September 3, 2002 to October 14, 2004.

25 Is that correct, Mr. Roy?

1 MR. RICHARD ROY: That's correct.

2 MR. DAVID: You have been an RCMP
3 officer since 1977, so for 27 years.

4 EXHIBIT P-205: Résumé of
5 Richard Roy

6 MR. DAVID: I would now like to
7 file your résumé. Can we file Mr. Roy's résumé as
8 an exhibit?

9 That would be Exhibit number ---?

10 THE CLERK: Two hundred and five
11 (205).

12 MR. DAVID: Two hundred and five
13 (205). Thank you.

14 [ENGLISH]

15 THE COMMISSIONER: Two zero
16 five (205).

17 [TRANSLATION]

18 MR. DAVID: You now have the rank
19 of superintendent with the RCMP. At the time that
20 concerns us, Mr. Roy, you were an inspector. Is
21 that right?

22 MR. RICHARD ROY: That's right.

23 MR. DAVID: I don't intend to
24 review in detail your various positions with the
25 RCMP or in the RCMP, but let it be noted that, as

1 I said, you were a liaison officer for almost two
2 years, a little more than two years, and now you
3 are the Regional Director of Corporate Services
4 for the RCMP?

5 MR. RICHARD ROY: Of Financial
6 Services for --

7 MR. DAVID: Financial Services.

8 MR. RICHARD ROY: -- headquarters.

9 MR. DAVID: Thank you.

10 Firstly, Mr. Roy, I would like you
11 to describe the role of an RCMP liaison officer in
12 a department such as Foreign Affairs.

13 Could you explain the purpose of
14 this position and your role?

15 MR. RICHARD ROY: Yes.

16 First of all, there is a
17 memorandum of understanding between the two
18 departments for -- regarding some of my duties, my
19 main duties.

20 But to summarize it, I would say
21 that my role was that of a facilitator.
22 Facilitating communication. Facilitating
23 information sharing. And facilitating the various
24 partnerships that the RCMP and Foreign Affairs had
25 for many files.

1 I played a referral role. If
2 someone wanted certain information, I would obtain
3 it or refer the person to the unit or person who
4 could answer their questions and provide the
5 required help in many areas.

6 MR. DAVID: So clearly, as a
7 liaison officer, you didn't play an operational
8 role for specific files?

9 MR. RICHARD ROY: No, absolutely
10 not.

11 MR. DAVID: Okay.

12 I would like you to look at your
13 résumé, which was filed as Exhibit 205, Mr. Roy.
14 Please turn to page 3 of that document.

15 The third point, I think, concerns
16 the description of your function as a liaison
17 officer in the Department of Foreign Affairs.

18 You say in your résumé:

19 [ENGLISH]

20 As the liaison officer
21 between the RCMP and the
22 Department of Foreign Affairs
23 I provide briefings to senior
24 management of both
25 organizations. (As read.)

1 [TRANSLATION]

2 Is that an accurate description?

3 MR. RICHARD ROY: Yes. That's one
4 of the duties I was referring to, as listed in the
5 memorandum of understanding.

6 MR. DAVID: Okay. Did your duties
7 include giving briefings to senior management of
8 both organizations? Is that something you did in
9 actual fact?

10 MR. RICHARD ROY: No. Not
11 directly.

12 Only at the -- Mr.
13 Heatherington -- at the ISI level, and the people
14 I dealt with in the RCMP and the CID, which is
15 criminal intelligence.

16 MR. DAVID: Okay.

17 It goes on to say in your résumé:

18 [ENGLISH]

19 I establish and maintain
20 contacts, facilitate the
21 transmission of requests and
22 decisions... (As read.)

23 [TRANSLATION]

24 I think you testified to that
25 effect, that this was part of your role. Do you

1 agree with this description?

2 MR. RICHARD ROY: Yes, yes.

3 MR. DAVID: Okay.

4 And it goes on to say:

5 [ENGLSIH]

6 Provide advice and guidance,
7 and act as liaison regarding
8 criminal incidents and
9 activities posing a potential
10 threat. (As read.)

11 [TRANSLATION]

12 Do you also agree with that
13 description?

14 MR. RICHARD ROY: Yes.

15 MR. DAVID: If I understand
16 correctly, you must therefore be familiar with the
17 files, specific files, in order to carry out your
18 role properly and your duties as a liaison
19 officer?

20 MR. RICHARD ROY: Certainly not
21 the details; no. Not at all.

22 MR. DAVID: But if we take the
23 example of an investigation like the one conducted
24 by the RCMP, Division A, Project A-OCANADA, you
25 were aware of what was involved, the main thrust

1 of that file?

2 MR. RICHARD ROY: Yes. I went -- I
3 had a few meetings or a few discussions with
4 members of Project A-OCANADA when I started
5 working at Foreign Affairs, to familiarize myself
6 with the file.

7 Afterwards, the only knowledge I
8 received about that file was when members came to
9 Foreign Affairs to give updates and briefings when
10 there were meetings between the RCMP and Foreign
11 Affairs.

12 I was only aware of a few things
13 here and there at that level. Exactly.

14 MR. DAVID: We will cover in
15 detail your actions and interactions in the Arar
16 file, Mr. Roy.

17 We know that Mr. Arar arrived in
18 New York on September 26, 2002. We know that he
19 was detained there for a few days -- in fact, 13
20 days. And we know that he was eventually deported
21 from the United States and that you played a role
22 with respect to the period during which he was
23 detained in the State of New York. Correct?

24 MR. RICHARD ROY: Correct.

25 MR. DAVID: Would you agree that

1 this is a fairly typical example of the type of
2 role you might play as a liaison officer in a case
3 such as Mr. Arar's, that is, a Canadian detained
4 in the United States, in a foreign country, where
5 Mr. Arar was already the subject of or was of
6 interest to an RCMP investigation here, and was
7 also the subject of services rendered by the
8 Department of Foreign Affairs?

9 MR. RICHARD ROY: If you would
10 like to qualify my interactions or my involvement,
11 my role was simply to make sure that the right
12 people were sitting at the tables for the
13 discussions that were to take place, as well as
14 the sharing of information between A and B.

15 This is -- effectively, this role
16 is typical with other cases. Yes.

17 MR. DAVID: Okay.

18 In terms of the hierarchy, now,
19 and to whom you reported, according to the RCMP
20 organization chart, I understand that as the
21 liaison officer for the Department of Foreign
22 Affairs, you reported directly to Mr. Proulx,
23 Mr. --

24 MR. RICHARD ROY: That's right.

25 MR. DAVID: -- Assistant

1 Commissioner Proulx, but in fact, you reported to
2 Rick Flewelling more directly?

3 MR. RICHARD ROY: I wouldn't use
4 the expression "reported to," but when I had
5 information to give the RCMP specifically
6 concerning national security, I would give the
7 documents or information to Rick Flewelling, when
8 he was there.

9 MR. DAVID: So, in terms of
10 organizational structure, your position, you were
11 mainly accountable to headquarters.

12 MR. RICHARD ROY: Yes, that's
13 right.

14 MR. DAVID: Okay.

15 In terms of Mr. Flewelling's work
16 description, his role at headquarters, in the CID,
17 was it your understanding that he had special
18 authority regarding the investigation file being
19 conducted by A-OCANADA ?

20 MR. RICHARD ROY: That was my
21 understanding, yes.

22 MR. DAVID: Okay.

23 Can you give us an idea or an
24 overview of the type -- of the frequency of your
25 exchanges with Mr. Flewelling in your role?

1 MR. RICHARD ROY: In what sense do
2 you want me to answer that?

3 MR. DAVID: Did you speak to or
4 exchange information with Mr. Flewelling
5 frequently, daily?

6 MR. RICHARD ROY: Yes. Mr.
7 Flewelling was working on a lot of files in which
8 I was involved as a liaison officer.

9 So, certainly. Particularly as I
10 went to headquarters almost every -- on average,
11 every two days.

12 I would see him on the majority of
13 those occasions.

14 MR. DAVID: Okay. So when you went
15 to RCMP headquarters, was it mainly to meet Mr.
16 Flewelling?

17 MR. RICHARD ROY: No, not at all.

18 MR. DAVID: Okay.

19 When there was an issue related to
20 the A-OCANADA investigation file, did you contact
21 Mr. Flewelling?

22 MR. RICHARD ROY: Most of the
23 time, yes.

24 MR. DAVID: Okay. And when you --

25 MR. RICHARD ROY: Excuse me --

1 MR. DAVID: Yes.

2 MR. RICHARD ROY: Excuse me. I
3 should clarify that.

4 Most of the time, yes, at least at
5 first, when I started out as a liaison officer.

6 MR. DAVID: Yes.

7 MR. RICHARD ROY: In the later
8 months -- the first X months, that was the case.

9 Afterwards, I would see others
10 more frequently.

11 MR. DAVID: Can you explain that
12 transition to us?

13 MR. RICHARD ROY: I can't tell
14 you. I have no idea. In any case, you'll see
15 from the documents I transferred, the documents I
16 brought with me to the RCMP, that I was dealing
17 with others also.

18 Either Mr. Flewelling wasn't there
19 any more or I was dealing with someone else. I
20 can't tell you exactly.

21 MR. DAVID: Okay.

22 Did one person in particular more
23 or less take over Mr. Flewelling's role in the
24 CID?

25 MR. RICHARD ROY: I can't tell

1 you. I don't remember.

2 MR. DAVID: Okay.

3 Now, regarding your training for
4 the functions and duties of a liaison officer, Mr.
5 Roy, did you undergo training for that position?

6 MR. RICHARD ROY: No.

7 MR. DAVID: Did you have an
8 opportunity to discuss the functions and the role
9 you were to carry out in the Department of Foreign
10 Affairs with your predecessor?

11 MR. RICHARD ROY: I spent a few
12 hours with my predecessor.

13 MR. DAVID: When?

14 MR. RICHARD ROY: At the very
15 beginning. My first week, I think.

16 MR. DAVID: So you made the
17 transition in a few hours?

18 MR. RICHARD ROY: Yes, exactly.

19 MR. DAVID: And before you started
20 carrying out your duties in the Department, did
21 you have an opportunity to work on investigation
22 files that involved intelligence?

23 Do you get the drift of my
24 question? Did you have --

25 MR. RICHARD ROY: Yes. The answer

1 is no.

2 MR. DAVID: The answer is no.
3 Okay.

4 I would now like to spend a little
5 time trying to understand your work environment at
6 the Department of Foreign Affairs, Mr. Roy.

7 Correct me if I'm wrong, but
8 essentially, your office was physically located in
9 the Department of Foreign Affairs, and more
10 specifically, in the ISI Office?

11 MR. RICHARD ROY: That's correct.

12 MR. DAVID: What is your
13 understanding of ISI's mandate? What did ISI do
14 in the Department?

15 MR. RICHARD ROY: The function
16 that I'm familiar with, in my own words, was that
17 ISI, if you can call it that, received information
18 and intelligence from various sources, both in
19 Canada and abroad, and its role as I saw it, was
20 to analyse the intelligence that came in at that
21 level and then notify its various Foreign Affairs
22 clients accordingly, depending on what it was
23 about.

24 MR. DAVID: And your office was
25 physically located in that office?

1 MR. RICHARD ROY: Correct.

2 MR. DAVID: Were the premises
3 secure?

4 MR. RICHARD ROY: Yes, yes; they
5 were.

6 MR. DAVID: Could just anyone
7 access the premises?

8 MR. RICHARD ROY: No.

9 MR. DAVID: What did you need to
10 get into ISI's premises?

11 MR. RICHARD ROY: The premises
12 specific to ISI, you needed -- there is a password
13 on an alarm system at the door. You needed a
14 specific password to get inside.

15 MR. DAVID: Did you need to have
16 security clearance? Did you need to have --

17 MR. RICHARD ROY: Yes. I had it.
18 Top secret.

19 MR. DAVID: So, as a general rule,
20 the people who worked in that office had to have
21 "top secret" clearance.

22 MR. RICHARD ROY: Yes.

23 MR. DAVID: Okay.

24 Could other employees in the
25 Department enter or access those premises?

1 MR. RICHARD ROY: Those who had
2 the clearance or who were -- who arrived with an
3 escort.

4 MR. DAVID: Okay.

5 MR. RICHARD ROY: I assume.

6 MR. DAVID: How many people worked
7 in that ISI office?

8 MR. RICHARD ROY: There were about
9 eight of us --

10 MR. DAVID: Eight people in all.

11 MR. RICHARD ROY: -- who were
12 physically in ISI, as such.

13 MR. DAVID: And the Director of
14 ISI was Mr. Heatherington?

15 MR. RICHARD ROY: That's correct.

16 MR. DAVID: He also had an
17 assistant director at the time; was it Jim Gould?

18 MR. RICHARD ROY: Yes.

19 MR. DAVID: When you say eight
20 people, are they included in that number?

21 MR. RICHARD ROY: Yes, yes.

22 MR. DAVID: There was you. There
23 was also a liaison officer for the Canadian
24 Intelligence Service.

25 MR. RICHARD ROY: Yes; CSIS.

1 MR. DAVID: Okay. So was it -- was
2 it quite small as an outfit, if you can call it
3 that?

4 MR. RICHARD ROY: Yes.

5 MR. DAVID: Was it an informal
6 environment? Was it -- were the relationships
7 hierarchical? Was it -- can you just describe the
8 work environment a little for us?

9 MR. RICHARD ROY: Hierarchical
10 relationships -- the relationships were definitely
11 what I would call professional.

12 MR. DAVID: Could everyone speak
13 to everyone else in the office?

14 MR. RICHARD ROY: Yes, about this
15 and that. Yes, absolutely.

16 MR. DAVID: You, for example,
17 could directly address Mr. Heatherington, the
18 Director?

19 MR. RICHARD ROY: Yes, absolutely.

20 MR. DAVID: It wasn't formal in
21 terms of positions --

22 MR. RICHARD ROY: In that sense,
23 no. I could talk to Mr. Heatherington anytime at
24 all.

25 MR. DAVID: Was it an open-door

1 environment with spontaneous conversations?

2 MR. RICHARD ROY: General
3 conversation, if I can call it that, yes,
4 absolutely. That wasn't a problem.

5 But when we were dealing with
6 specific files, no. It wasn't like that at all.

7 MR. DAVID: Okay.

8 What floor were those offices on?

9 MR. RICHARD ROY: The third floor.

10 MR. DAVID: The third floor.

11 Were Consular Affairs also on the
12 third floor in the Department?

13 MR. RICHARD ROY: Yes, if I
14 remember correctly. Yes.

15 MR. DAVID: Okay.

16 MR. RICHARD ROY: In a different
17 wing.

18 MR. DAVID: In a different wing.
19 Did you have an opportunity to actually sometimes
20 go to other offices than those of ISI?

21 MR. RICHARD ROY: Yes, absolutely.

22 MR. DAVID: For example, did you
23 have access to the Consular Affairs office?

24 MR. RICHARD ROY: Yes, certainly.

25 MR. DAVID: And you would walk

1 over if you needed information or, as part of your
2 duties, you would sometimes go to other units in
3 the Department?

4 MR. RICHARD ROY: Yes, yes.

5 Regarding consular cases, you say
6 that I would go and get information. As far as --
7 with consular cases, it was more the opposite that
8 occurred.

9 But yes, I had contact with them.

10 MR. DAVID: Okay.

11 Did it sometimes happen that
12 informal caucuses were formed in the ISI office to
13 discuss an issue or information that had just been
14 learned, Mr. Roy?

15 MR. RICHARD ROY: An informal
16 caucus?

17 MR. DAVID: Where people would
18 find something out and then you would get together
19 to discuss the issue.

20 Did that sort of environment
21 exist?

22 MR. RICHARD ROY: No, no, not
23 really. If there was relevant information about a
24 topic or specific file, someone would ask to call
25 a meeting.

1 There was a conference room, a
2 small one, but there was one, and that's where
3 meetings were held.

4 MR. DAVID: And could those
5 meetings be called fairly quickly on occasion?

6 MR. RICHARD ROY: Yes, absolutely.

7 MR. DAVID: Okay. As soon as the
8 information became known?

9 MR. RICHARD ROY: Yes, on an as-
10 needed basis.

11 MR. DAVID: Okay. Regarding the
12 people who were present, you said there were eight
13 of you. Was Mr. Solomon, Jonathan Solomon, one of
14 the officers employed by the Department of Foreign
15 Affairs with whom ---

16 MR. RICHARD ROY: Yes.

17 MR. DAVID: Was he -- in terms of
18 your relationship, was he the person who was maybe
19 mainly authorized to liaise with you, in terms of
20 ---

21 MR. RICHARD ROY: In general
22 terms? No.

23 MR. DAVID: No?

24 MR. RICHARD ROY: No.

25 MR. DAVID: Did he have a

1 privileged position vis-à-vis your functions?

2 MR. RICHARD ROY: No.

3 MR. DAVID: Did you have more
4 relations with him than with other members of the
5 ISI office?

6 MR. RICHARD ROY: At the very
7 beginning, in the specific case we're dealing with
8 today, yes, at first, but, other than that, no.

9 MR. DAVID: Do you know why Mr.
10 Solomon was more involved in Mr. Arar's file at
11 the very beginning, as you say?

12 MR. RICHARD ROY: I can't see any
13 other reason than the fact that the file was
14 probably assigned to him, and I can't tell you
15 anything more.

16 MR. DAVID: Okay. Mr. Roy, did
17 you have occasion to notice that Mr. Solomon had -
18 - in connection with his duties -- had a special
19 relationship with Nancy Collins in Consular
20 Affairs?

21 MR. RICHARD ROY: No idea.

22 MR. DAVID: You don't know?

23 MR. RICHARD ROY: No.

24 MR. DAVID: Did you ever notice or
25 witness a conversation between Ms. Collins and Mr.

1 Solomon?

2 MR. RICHARD ROY: Not
3 particularly.

4 MR. DAVID: Okay. Did you -- we
5 saw that you started your duties on September 3,
6 2002. When the Arar affair occurred, on September
7 26, you were in your first weeks, in your -- at
8 the very beginning of your role as liaison
9 officer.

10 Was it your understanding that
11 that was also the case for Mr. Solomon at the
12 time?

13 MR. RICHARD ROY: No. I didn't
14 know it at the time.

15 MR. DAVID: You didn't know that
16 Mr. Solomon was also just starting out in that
17 division?

18 MR. RICHARD ROY: No, that doesn't
19 ring a bell.

20 MR. DAVID: Pardon?

21 MR. RICHARD ROY: That doesn't
22 ring a bell. I don't remember that he was also
23 starting, no.

24 MR. DAVID: Okay. Can you give us
25 an overview of how intelligence and information

1 about the files could be shared between you and
2 members of the ISI team? How did you share the
3 information?

4 MR. RICHARD ROY: Okay. If Mr.
5 Solomon, for instance, needed information and
6 wanted to ask me a question concerning a
7 particular file, he would ask the question.

8 I would go see the person who
9 should be able to give me an answer to the
10 question, so in some cases, in Division A, and in
11 other cases, at headquarters, and I would get an
12 answer and go back to the office and tell him,
13 quite simply.

14 MR. DAVID: Okay. In a way, a
15 physical presence was required to be able to
16 communicate that way?

17 MR. RICHARD ROY: Ah! In most
18 cases at the very beginning, yes, and I wasn't
19 familiar with the -- or comfortable with the SECUR
20 telephone system, so in the beginning, that's what
21 I did, quite simply. I would actually go see him
22 most of the time.

23 MR. DAVID: Okay.

24 Now, Mr. Roy, I would like to
25 review your more direct involvement in what is now

1 called the "Arar affair," and I would like to
2 refer you to your personal notes.

3 If we may, I would first like to
4 file your personal notes as an exhibit, and that
5 would be Exhibit 206, Mr. Clerk. P-206.

6 EXHIBIT P-206: Personal
7 notes of Richard Roy

8 MR. DAVID: Please turn to the
9 first page of your personal notes; these are
10 photocopies of excerpts, Mr. Roy, and there's an
11 entry dated September 10, 2002.

12 This is about an 11:00 am meeting
13 in the office of the Department of Foreign
14 Affairs. You marked down that Franco Pillarella
15 and Michel Cabana were present, among others.

16 Do you remember this?

17 MR. RICHARD ROY: Yes.

18 MR. DAVID: Okay. Can you tell us
19 what that meeting was about, the topic it dealt
20 with and why it took place?

21 MR. RICHARD ROY: I can't tell you
22 specifically why the meeting was held, except that
23 I was in the office and was invited to attend as
24 an observer since the meeting was about A-OCANADA.

25 MR. DAVID: Pardon?

1 MR. RICHARD ROY: A-OCANADA. It
2 was about ---

3 MR. DAVID: The investigation file
4 for ---

5 MR. RICHARD ROY: It was related
6 to that.

7 MR. DAVID: Did A-OCANADA, A-O-C,
8 mean anything to you on September 10?

9 MR. RICHARD ROY: On September 10,
10 very little.

11 MR. DAVID: Very little?

12 MR. RICHARD ROY: Yes, very
13 little.

14 MR. DAVID: Yes, but that means --
15 I mean, did you already have an idea -- did you
16 know about the existence of that investigation
17 file before the September 10 meeting?

18 MR. RICHARD ROY: I think it was
19 in the ensuing days that I had a greater
20 opportunity to be apprised about it.

21 MR. DAVID: Okay. So, is that
22 when you found out about the existence of the
23 investigation file called "A-O-C," on September
24 10, at that meeting?

25 MR. RICHARD ROY: That's pretty

1 hard to answer, but it was around that time.

2 MR. DAVID: It was around that
3 time; okay. As for the meeting, you can't -- can
4 you tell us what it was about, what was discussed
5 at that meeting?

6 MR. RICHARD ROY: On the basis of
7 my notes, no. There were -- obviously there was
8 some discussion, it lasted over an hour, but by
9 the way, I can't tell you the specifics of the
10 meeting, as such.

11 MR. DAVID: Okay. Now, Mr. Roy, I
12 would like to show you another document, and we'll
13 file it -- it's a SitRep dated September 11, 2002,
14 which was the day after that meeting, and it's
15 going to be Exhibit P-207.

16 EXHIBIT P-207: SitRep dated
17 September 11, 2002

18 MR. DAVID: So, on the first page
19 of that document of September 11, 2002, it says:

20 [ENGLISH]

21 The RCMP L.O. of D. Richard
22 Roy attended the A-OCANADA
23 Office during the morning to
24 be briefed on the
25 investigation and to acquaint

1 himself with the
2 investigation.

3 [TRANSLATION]

4 Do you remember that meeting?

5 MR. RICHARD ROY: Yes.

6 MR. DAVID: Okay. Can you explain
7 why you were briefed on that investigation file,
8 at that time?

9 MR. RICHARD ROY: Simply because
10 as a facilitator, I would have -- I would have
11 been encouraged to attend and to make sure that
12 when the time came, the work to be done between
13 the two parties could be done as easily as
14 possible; that's all.

15 In other words, it was a file that
16 I was going to hear about and it was important
17 that I know, first of all, what the threat was,
18 what the file was about and also, the names of
19 some of the subjects so that they would be
20 familiar to us when we heard about one of them.

21 MR. DAVID: To what extent could
22 there be a connection between the RCMP's mandate
23 regarding the A-O-C investigation and the
24 Department of Foreign Affairs' mandate?

25 Would you just explain why you

1 needed to be familiarized with this?

2 MR. RICHARD ROY: I'm in a bad
3 position to answer that. Certainly, when I look,
4 when we talk about September 11, I don't know what
5 to tell you.

6 We're talking about -- we're
7 talking about A-OCANADA; we know what threat we
8 were talking about, so it's obvious that for the
9 RCMP, the RCMP has to investigate, but the impact
10 that such a case might have, the consequences,
11 obviously Foreign Affairs has a role to play with
12 respect to security, etc.

13 MR. DAVID: The initiative or idea
14 that you be familiarized with the main thrust of
15 this file, who wanted you to be briefed on this
16 investigation file?

17 Was it the RCMP or did the request
18 come from ISI?

19 MR. RICHARD ROY: Ah! I can't
20 tell you; I don't remember.

21 MR. DAVID: Okay. Was ISI
22 interested in that RCMP investigation file?

23 MR. RICHARD ROY: ISI would have
24 to tell you that.

25 MR. DAVID: But as far as you're

1 concerned, you were working on the inside, in ISI,
2 at the time.

3 Did you sense that ISI was
4 interested in the investigation, the A-O-C
5 investigation file?

6 MR. RICHARD ROY: Yes, I would say
7 so, given the possible repercussions of such a
8 file or such a threat.

9 MR. DAVID: Okay. As for the
10 names that were identified, you said that you were
11 given a summary of the subjects of interest in
12 that investigation file.

13 Was Mr. Arar's name mentioned to
14 you?

15 MR. RICHARD ROY: No.

16 MR. DAVID: Was Mr. Arar's name
17 mentioned to you at that meeting of September 11,
18 2002?

19 MR. RICHARD ROY: No.

20 MR. DAVID: That brings me to the
21 next question: When did you hear the name? When
22 did you first learn Mr. Arar's name?

23 MR. RICHARD ROY: On October 2.

24 MR. DAVID: October 2. You had
25 never heard Mr. Arar's name mentioned in

1 connection with the A-O-C investigation before
2 that date?

3 MR. RICHARD ROY: No.

4 MR. DAVID: Not in the - not in
5 the ISI office either?

6 MR. RICHARD ROY: No.

7 MR. DAVID: Okay. I would like to
8 discuss that date, October 2, Mr. Roy, and will
9 refer you to three different documents.

10 The first document is what you
11 have called a time line, a chronological list of
12 sorts?

13 MR. RICHARD ROY: A time line,
14 yes.

15 MR. DAVID: I would like to file a
16 version, a new version of that time line. So that
17 would be Exhibit P-208.

18 EXHIBIT P-208: Document
19 entitled "Time Line"

20 MR. DAVID: With respect to the
21 time line, Mr. Roy, you made an entry dated
22 October 2; it's on the first page -- page 2 of 9,
23 and this is what you say in that entry. You say:
24 [ENGLISH]

25 Advised by Jonathan Solomon

1 of I.S.I. that Arar has been
2 arrested at J.F.K. Airport
3 and that consulate has not
4 been able to see him. Arar
5 called parents to advise.

6 [TRANSLATION]

7 Then, in parentheses, it says
8 "file".

9 Firstly, can you explain what
10 "file" refers to?

11 MR. RICHARD ROY: Yes. It's
12 simply a folder in which I would have placed a
13 document.

14 MR. DAVID: Was that your way,
15 your method of working?

16 MR. RICHARD ROY: Yes. It became
17 my ---

18 MR. DAVID: Okay. Would you --
19 would you explain how you worked?

20 MR. RICHARD ROY: After a few
21 weeks carrying out my duties, I simply -- I
22 developed my own record-keeping system, and all it
23 was, was a -- I used file folders and placed the
24 documents I received inside them.

25 What I did, what I started to do,

1 is that when I had -- when I received a document
2 that I was supposed to give to someone, I would
3 make a copy of it and write on it the name of the
4 person to whom I had given it, then I filed it in
5 my folder for referral purposes and so that I
6 would know, would be able to say, "document X
7 given to so and so," in case anyone asked. That's
8 what I did.

9 Here, the reason you see the word
10 "file" is simply that when the Commission
11 requested photocopies of the notes, etc, I
12 complied and thought it was a good idea at the
13 time to maybe make my own time line for my needs
14 and the needs of the Commission, if applicable.

15 MR. DAVID: Okay.

16 MR. RICHARD ROY: And the slip of
17 paper on which the indications I received from
18 Solomon were written was placed in such a folder.

19 MR. DAVID: I would now like to
20 refer you to another document concerning that
21 entry we just read, Mr. Roy, and file it now as
22 Exhibit P-209.

23 EXHIBIT P-209: Document
24 concerning the entry dated
25 October 2

1 MR. DAVID: Look at P-209, Mr.
2 Roy; can you tell us if that's the document that
3 comes -- to which you were referring when you
4 wrote "file" with respect to the entry?

5 MR. RICHARD ROY: Yes, absolutely.

6 MR. DAVID: Okay. Okay. So,
7 that's -- those are documents that we received
8 late Friday afternoon, Mr. Commissioner, documents
9 that were in Mr. Roy's folder. I would like to go
10 over P-209 with you, Mr. Roy. First of all, we
11 see that it's on a notepad from the Crown Plaza
12 Hotel & Resorts here in Ottawa. Is that where you
13 were when you wrote those notes?

14 MR. RICHARD ROY: No, but I had
15 come from there, I think. I had just arrived from
16 such a place.

17 MR. DAVID: Such a place?

18 MR. RICHARD ROY: Yes.

19 MR. DAVID: You were at the Crown
20 Plaza?

21 MR. RICHARD ROY: I had taken part
22 in a -- I had taken part in a conference on a
23 related topic, on terrorism or something, but ---

24 MR. DAVID: In connection with
25 your duties?

1 MR. RICHARD ROY: --- I went back
2 to the office, and that's when Mr. Solomon came to
3 see me and gave me that information. I wrote it
4 down on ---

5 MR. DAVID: The notepad from ---?

6 MR. RICHARD ROY: Exactly.

7 MR. DAVID: That you got at the
8 conference?

9 MR. RICHARD ROY: Yes.

10 MR. DAVID: So when Mr. Solomon
11 came to see you and told you that Mr. Arar had
12 been arrested at J.F.K. Airport in New York, you
13 were in the ISI offices?

14 MR. RICHARD ROY: Yes.

15 MR. DAVID: Do you remember the
16 approximate time when Mr. Solomon gave you that
17 information?

18 MR. RICHARD ROY: I think it was
19 in the afternoon.

20 MR. DAVID: In the afternoon. So
21 you jotted down "0202 Jonathan," which is a
22 reference to Jonathan Solomon. Right?

23 MR. RICHARD ROY: Yes; that was
24 the date.

25 MR. DAVID: That was the date.

1 MR. DAVID: That was the date, and
2 Jonathan was the Jonathan Solomon in question?

3 MR. RICHARD ROY: Yes.

4 MR. DAVID: Then you wrote:
5 "Canadian arrested" and the name "André," which
6 was crossed out.

7 Do you know what André refers to?

8 MR. RICHARD ROY: No idea.

9 MR. DAVID: But it's your writing?

10 MR. RICHARD ROY: Yes, yes.

11 MR. DAVID: It's -- okay. Was it
12 André Dion from the RCMP by any chance?

13 MR. RICHARD ROY: No.

14 MR. DAVID: Who was a liaison
15 officer in Washington?

16 MR. RICHARD ROY: No.

17 MR. DAVID: Okay. The document
18 says: "Canadian from Montreal or Ottawa" in
19 parentheses?

20 MR. RICHARD ROY: Yes.

21 MR. DAVID: Was that the
22 information from Mr. Solomon?

23 MR. RICHARD ROY: Yes.

24 MR. DAVID: And you say -- you
25 write "Syrian" in parentheses also. Does that

1 mean that Mr. Arar or the Canadian in question had
2 Syrian citizenship?

3 MR. RICHARD ROY: I think so.

4 MR. DAVID: Okay. To your
5 knowledge, did that refer to the fact that he had
6 dual citizenship?

7 MR. RICHARD ROY: I would say so.

8 MR. DAVID: Okay. And you wrote:
9 "arrested at J.F.K. Airport, New York, Tunis to
10 Mirabel, arrest". And then you wrote "not
11 immigration oriented". That too is something Mr.
12 Solomon told you.

13 What did you understand by that
14 question? Was it that -- you had asked Mr.
15 Solomon some questions or was it simply that Mr.
16 Solomon came to tell you the information and you
17 simply jotted it down, or did you jot down that
18 information after asking questions?

19 MR. RICHARD ROY: No, no. I just
20 wrote down the information that he gave me.

21 MR. DAVID: That he supplied?

22 MR. RICHARD ROY: I wasn't in a
23 position to ask a lot of questions.

24 MR. DAVID: Okay. And when you
25 wrote "not Immigration oriented", what did you

1 take that to mean?

2 MR. RICHARD ROY: I don't know if
3 I gave it much thought, but I must have suspected
4 the fact that he was, after all, at ISI, so
5 chances were that it was related to something
6 criminal.

7 MR. DAVID: Criminal. Were you
8 maybe thinking it might be a terrorism case?

9 MR. RICHARD ROY: Well, I was in a
10 very poor position to make judgments on that; I
11 couldn't say, but obviously, there was a chance.

12 MR. DAVID: Okay. Then there's a
13 dash and you wrote:

14 [ENGLISH]

15 Consulate not able to see
16 him. He called parents to
17 advise.

18 [TRANSLATION]

19 Does "He" refer to Mr. Arar?

20 MR. RICHARD ROY: Yes.

21 MR. DAVID: Okay. When you wrote:
22 "He called parents to advise", were you referring
23 to the previous sentence, that is, that the
24 consulate was not able to see him?

25 MR. RICHARD ROY: Ah! I don't

1 know, and in reading this now, I would think that
2 it simply refers to his being detained, and he's
3 calling his parents to let them know he's being
4 detained.

5 MR. DAVID: Okay. And you wrote:
6 "The consulate was not able to see him". Was it
7 your understanding, Mr. Roy, that by saying "not
8 able to see him" --

9 Was it your understanding that
10 there had been an attempt to see him already?

11 MR. RICHARD ROY: No. I don't
12 know.

13 MR. DAVID: You don't know?

14 MR. RICHARD ROY: No.

15 MR. DAVID: Okay. And at the
16 bottom left, there's a reference: "A" and "CID".
17 Is "A" a reference to the A Division or Division
18 A?

19 MR. RICHARD ROY: Yes, that's
20 right.

21 MR. DAVID: And "CID" refers to
22 headquarters?

23 Then you say: "in the loop in
24 notebook". What does that entry refer to?

25 MR. RICHARD ROY: It refers to the

1 fact that immediately afterwards, I went to A-
2 OCANADA to notify them and ask them questions, and
3 that's why I wrote here that they were in the loop
4 and I put my ---

5 MR. DAVID: Was that entry made at
6 the same time that Mr. Solomon gave you the
7 information that you jotted down, or was that
8 entry made later?

9 MR. RICHARD ROY: Specifically "A
10 Division"?

11 MR. DAVID: Yes.

12 MR. RICHARD ROY: No; afterwards.

13 MR. DAVID: Afterwards?

14 MR. RICHARD ROY: Yes, yes.

15 MR. DAVID: So, it was the
16 continuation ---

17 MR. RICHARD ROY: Yes, yes.

18 MR. DAVID: --- of your notes for
19 that day?

20 MR. RICHARD ROY: Yes. It was
21 simply so I could refer to my notes for continuity
22 ---

23 MR. DAVID: Okay.

24 MR. RICHARD ROY: --- to know
25 where I was.

1 MR. DAVID: It was in the
2 afternoon, and then you say you went to the
3 offices of the A-OCANADA investigation project,
4 which are in Division A; right?

5 MR. RICHARD ROY: That's right.

6 MR. DAVID: Let's get back to
7 P-208, which is the time line you prepared, Mr.
8 Roy. I'm still on page 2 of 9.

9 You go on to say:

10 [ENGLISH]

11 Met with...

12 [TRANSLATION]

13 And this was crossed out in black,
14 so, someone and someone else.

15 [ENGLISH]

16 ...of A INSET at 'A' Div.,
17 discussed ARAR'S situation.

18 [TRANSLATION]

19 Is that the reference in your
20 notes to the fact that you went to see your
21 Project A-O-C colleagues?

22 MR. RICHARD ROY: No, not at all.
23 You're at 8, there. That's ---

24 MR. DAVID: No, no, no. Still at
25 2.

1 MR. RICHARD ROY: Still at 2?
2 MR. DAVID: Still the entry of
3 October 2, sir. Second paragraph.
4 MR. RICHARD ROY: Oh! sorry.
5 Okay.
6 MR. DAVID: Are you...
7 MR. RICHARD ROY: Yes.
8 MR. DAVID: Yes, you're with me,
9 now?
10 MR. RICHARD ROY: Yes. Yes, okay.
11 MR. DAVID: Is that a reference to
12 the fact that you went to the A-O-C office?
13 MR. RICHARD ROY: That's it.
14 MR. DAVID: Did you go there
15 within minutes of hearing what Mr. Solomon told
16 you, or ---
17 MR. RICHARD ROY: Yes, immediately
18 afterwards.
19 MR. DAVID: You had a feeling that
20 it was important information that you should
21 immediately share ---
22 MR. RICHARD ROY: Yes.
23 MR. DAVID: --- with your Project
24 A-OCANADA colleagues?
25 MR. RICHARD ROY: He asked me

1 whether the RCMP was aware of this.

2 MR. DAVID: Who asked you that
3 question?

4 MR. RICHARD ROY: Mr. Solomon.

5 MR. DAVID: Mr. Solomon asked ---

6 MR. RICHARD ROY: He wanted to
7 know ---

8 MR. DAVID: --- asked you to
9 follow up on that information?

10 MR. RICHARD ROY: He wanted
11 information.

12 MR. DAVID: Okay.

13 MR. RICHARD ROY: So, I went over
14 to A-OCANADA.

15 MR. DAVID: What type of
16 information did Mr. Solomon want to know?

17 MR. RICHARD ROY: He didn't tell
18 me exactly what he wanted to know. He wanted to
19 know if we were -- if we knew or -- whatever. I
20 don't remember his exact words, but by and large,
21 he knew something and he wanted me to go to the
22 RCMP to see if there was any information I could
23 give him.

24 MR. DAVID: So essentially, Mr.
25 Solomon wanted to see if the RCMP could help him

1 understand what was happening to Mr. Arar in New
2 York?

3 MR. RICHARD ROY: It makes sense.

4 MR. DAVID: And that's why you
5 went to the A-O-C office?

6 MR. RICHARD ROY: Yes.

7 MR. DAVID: Is that it?

8 MR. RICHARD ROY: Yes.

9 MR. DAVID: Okay. Do you know
10 where Mr. Solomon got his information, Mr. Roy?
11 Do you know where the information that Mr. Solomon
12 had about Mr. Arar came from?

13 MR. RICHARD ROY: No.

14 MR. DAVID: Did he specify who had
15 asked him to check with the RCMP?

16 MR. RICHARD ROY: No.

17 MR. DAVID: Do you know if Mr.
18 Solomon referred to a -- I'm going to -- the term
19 is "CAMANT note." I don't know how to say it in
20 French, but you know, the Department of Foreign
21 Affairs has a system in which information about
22 specific files is recorded -- and computerized.

23 MR. RICHARD ROY: Mm-hmm.

24 MR. DAVID: Did Mr. Solomon refer
25 to a CAMANT note when he gave you the information

1 about Mr. Arar?

2 MR. RICHARD ROY: I have no idea.

3 MR. DAVID: You don't know?

4 MR. RICHARD ROY: No.

5 MR. DAVID: Okay.

6 I would like you to look at a
7 document that has already been filed in the public
8 records -- it's P-42. That would be Volume 1, Mr.
9 Clerk -- P-42, Volume 1.

10 --- Pause

11 MR. DAVID: Please go to the 10th
12 tab, Tab 10.

13 This is an entry from the
14 Department of Foreign Affairs computer system,
15 CAMANT. Are you familiar with this type of
16 document?

17 MR. RICHARD ROY: A little, yes.

18 MR. DAVID: Okay. The entry is
19 dated October 1, 2002, and was made at 12:17 pm.
20 This is what it says:

21 [ENGLISH]

22 Brother called this morning
23 in a state of panic.

24 [TRANSLATION]

25 That is Mr. Arar's brother and

1 it's -- it's the brother who called the Department
2 and spoke to Ms. Collins, Nancy Collins, who was
3 an officer at Consular Affairs, here in Ottawa.

4 The message says:

5 [ENGLISH]

6 He said that subject was able
7 to call him this morning from
8 MDC...

9 [TRANSLATION]

10 MDC stands for Metropolitan
11 Detention Centre, for your information.

12 [ENGLISH]

13 ...and informed him that he
14 would be deported back to
15 Syria where he was born.
16 Both, subject and brother are
17 extremely afraid that he
18 would be deported to Syria
19 and not in Canada.

20 Have informed brother
21 that we had just received
22 confirmation of subject's
23 whereabouts and that we were
24 trying to confirm the
25 charges. I also informed him

1 that without prior
2 authorization that we weren't
3 able to provide any
4 additional information
5 without subject's approval.

6 [TRANSLATION]

7 So, we see in this note, Mr. Roy,
8 that on October 1, Ms. Collins, who, after all,
9 works on the same floor as you and Mr. Solomon,
10 obtained information from Mr. Arar's brother and
11 that Mr. Arar was being detained in New York City,
12 and when Mr. Solomon gave you the information on
13 October 2, he was obviously referring to the fact
14 that they had confirmed Mr. Arar's presence in New
15 York State.

16 Does that note mean anything to
17 you? Have you ever seen that information brief?

18 MR. RICHARD ROY: If I saw it, I
19 certainly didn't see it at that stage.

20 MR. DAVID: I'm asking if you saw
21 it at that time. So, on October 2, did Mr.
22 Solomon show you that document? Did you have a
23 chance to read that document?

24 MR. RICHARD ROY: No.

25 MR. DAVID: On October 2, when Mr.

1 Solomon came to see you and gave you the
2 information he gave you, did he mention that Mr.
3 Arar and his brother were worried, were concerned
4 that there was a possibility of deportation to
5 Syria? Was that fact mentioned to you?

6 MR. RICHARD ROY: No.

7 MR. DAVID: And I'm talking about
8 on October 2.

9 MR. RICHARD ROY: Yes, yes.

10 MR. DAVID: You have no
11 recollection that Mr. Solomon told you that either
12 Mr. Arar or his brother expressed a fear of
13 possible deportation to Syria?

14 MR. RICHARD ROY: No.

15 MR. DAVID: Okay.

16 Let's get back to the events of
17 October 2. You continue.

18 I would now like to refer you also
19 to your personal notes, with your permission.
20 Your personal notes have already been filed under
21 P-206. Please turn to page 20.

22 --- Pause

23 MR. DAVID: Page 20 contains a
24 typed transcription of your personal notes, Mr.
25 Roy, which are still dated October 2.

1 MR. RICHARD ROY: Page 20?

2 MR. DAVID: Page 20.

3 MR. RICHARD ROY: Oh! At ---

4 MR. DAVID: The circled number at
5 the bottom of the page.

6 MR. RICHARD ROY: Okay.

7 MR. DAVID: Okay?

8 The only thing I'm telling you
9 about that page is that it's typed, but it's a
10 typed version of your personal handwritten notes.

11 MR. RICHARD ROY: Yes, okay.

12 MR. DAVID: Okay?

13 MR. RICHARD ROY: Mm-hmm.

14 MR. DAVID: Because your personal
15 notes are sometimes a little hard to read.

16 You have made some entries in your
17 personal notes about that meeting of October 2. I
18 would like to review what you say in your personal
19 notes.

20 At the top of the page, you say:

21 [ENGLISH]

22 See Rick Flewelling re Maher
23 phone number.

24 [TRANSLATION]

25 Do you remember what that entry

1 was about?

2 MR. RICHARD ROY: That would have
3 been written on the left side of my notebook.
4 It's simply things that - that's where I listed
5 things I planned to do.

6 MR. DAVID: So it was a follow up
7 ---

8 MR. RICHARD ROY: Yes, yes.

9 MR. DAVID: --- what needed to be
10 done as a follow-up?

11 And here, the next line says:

12 Almalki.

13 And here, it says, September 26:

14 [ENGLISH]

15 Advised of itinerary of Maher
16 to 'A' Division. Arrested on
17 27th.

18 [TRANSLATION]

19 Do you know what that entry is
20 about?

21 MR. RICHARD ROY: Yes. It's the
22 people at A-OCANADA advising me that they were
23 already aware of the --- that Mr. Arar had been
24 arrested. They were informed of his itinerary on
25 September 26.

1 MR. DAVID: Since September 26 --
2 you learned from your colleagues at A-O-C that
3 they had known since September 26 that Mr. Arar
4 was in New York City?

5 MR. RICHARD ROY: Well, not that
6 he was there, but about his itinerary. They knew
7 on September 26. What comes after indicates that
8 they -- they were asked to provide questions,
9 which they did, and that they knew about the
10 detention on the 27th.

11 MR. DAVID: Okay. So clearly,
12 when you met your colleagues from the RCMP, A-
13 OCANADA, they knew more than Mr. Solomon did about
14 where Mr. Arar was during that period?

15 MR. RICHARD ROY: I cannot say
16 that they knew, that they knew more, but they knew
17 that he was being detained.

18 MR. DAVID: Okay.

19 MR. RICHARD ROY: Yes.

20 MR. DAVID: And your notes
21 continue. You say:

22 [ENGLISH]

23 Re Arar Maher. (a) Supplied
24 questions on the 26th to...
25 -- somebody.

1 [TRANSLATION]

2 So you were told that Project A-
3 OCANADA did actually send questions to someone ---

4 MR. RICHARD ROY: Yes.

5 MR. DAVID: --- whom you
6 understood to be a U.S. authority?

7 MR. RICHARD ROY: Okay.

8 MR. DAVID: Without identifying
9 the person, is that it?

10 MR. RICHARD ROY: Okay.

11 MR. DAVID: And that questions
12 were sent to that U.S. authority on September 26?

13 MR. RICHARD ROY: Exactly.

14 MR. DAVID: You found that out on
15 that day?

16 MR. RICHARD ROY: Yes.

17 MR. DAVID: October 2nd?

18 MR. RICHARD ROY: Mm-hmm.

19 MR. DAVID: Further on, you say:

20 [ENGLISH]

21 27th. Less than forthcoming.
22 Refused entry to States.
23 Report was sent, faxed to CID
24 noting same.

25 [TRANSLATION]

1 This too is information that you
2 learned from your colleagues at A-O-C. So, you
3 find out that - when you said "Less than
4 forthcoming" were you referring to Mr. Arar?

5 MR. RICHARD ROY: Yes.

6 MR. DAVID: Your understanding is
7 that Mr. Arar hasn't answered or seems to --
8 doesn't seem to be fully co-operating in his
9 answers?

10 MR. RICHARD ROY: Exactly.

11 MR. DAVID: That is the impression
12 or information that was conveyed to you?

13 MR. RICHARD ROY: Yes.

14 MR. DAVID: You were also told
15 that he would be "Refused entry to the States".
16 Does this too refer to Mr. Arar?

17 MR. RICHARD ROY: Yes.

18 MR. DAVID: What do you mean by
19 "Report was sent, faxed to CID noting same"? Were
20 you saying that A-O-C had already disclosed those
21 facts to CID headquarters?

22 MR. RICHARD ROY: Yes.

23 MR. DAVID: Okay. Then you say:
24 "Communication problem". What does "Communication
25 problem" refer to?

1 MR. RICHARD ROY: That's why what
2 you saw before, that the -- that it's mentioned
3 that the fax was sent; I knew there was a -- I
4 knew there was a communication problem between A-
5 OCANADA and CID. So I asked if CID was aware of
6 it to confirm -- to make sure that CID was aware,
7 that I didn't have to do it myself.

8 MR. DAVID: You asked your
9 colleagues at A-O-C, the information you're giving
10 me now ---

11 MR. RICHARD ROY: Yes.

12 MR. DAVID: --- if headquarters
13 was aware of it?

14 MR. RICHARD ROY: That's it.

15 MR. DAVID: And you were told yes,
16 and that it was even faxed?

17 MR. RICHARD ROY: Yes.

18 MR. DAVID: Okay. Now, you say
19 that you were aware that there were sometimes
20 communication problems between CID, headquarters
21 and Project A-OCANADA?

22 MR. RICHARD ROY: Yes.

23 MR. DAVID: Who told you about the
24 communication problems?

25 MR. RICHARD ROY: Some people from

1 -- from CID told me; I was told something to the
2 effect that A-OCANADA members were slow sending in
3 the reports, and what I heard from the A Division,
4 was that CID members rarely attended their
5 meetings. That's all I was told, and that's what
6 I'm referring to when I talk about communication,
7 communication problems.

8 MR. DAVID: Okay. Let's continue.
9 The next entry says:

10 [ENGLISH]

11 Can we have system that you
12 can read reports entered?

13 [TRANSLATION]

14 What does that refer to ---

15 MR. RICHARD ROY: Those are my
16 personal notes, simply to see. I had just been
17 told that -- that maybe the reports hadn't been
18 sent. So, what I thought was that maybe we could
19 -- I could find out whether there was a system in
20 which data or information is input automatically,
21 immediately into a system, which would enable CID
22 to see it automatically. But that too -- that was
23 my observation at the time, not knowing much about
24 how things worked. That's all it is.

25 MR. DAVID: It was a desire?

1 MR. RICHARD ROY: It's a personal
2 note to see what I could do to improve things, or
3 whatever.

4 MR. DAVID: Okay. How long did
5 you stay in the A-O-C office, Mr. Roy, at that
6 moment, at that time, on October 2nd?

7 MR. RICHARD ROY: Ah! I couldn't
8 tell you, I didn't note it down, but it certainly
9 wasn't long. As soon as I gave the information, I
10 received other information and returned to ISI.

11 MR. DAVID: Okay. So, you didn't
12 go to RCMP headquarters?

13 MR. RICHARD ROY: No.

14 MR. DAVID: You went back to the
15 ISI office?

16 MR. RICHARD ROY: Yes.

17 MR. DAVID: And there, you
18 reported things to Mr. Solomon?

19 MR. RICHARD ROY: Exactly.

20 MR. DAVID: If we go back to your
21 time line, we can see that the last or second-last
22 entry in the time line says, in P-208:

23 [ENGLISH]

24 Advised Jonathan Solomon of
25 ISI that we were aware of his

1 operating under ---

2 MR. DAVID: Operating ---

3 MR. RICHARD ROY: --- Mr.

4 Flewelling, but other people too, not just him.

5 MR. DAVID: Okay. Your notes go

6 on to say that when you got back to the ISI

7 office:

8 [ENGLISH]

9 Advised Jonathan Solomon of

10 ISI that we were aware of his

11 detention.

12 [TRANSLATION]

13 That is in your time line.

14 MR. RICHARD ROY: Yes.

15 MR. DAVID: And your personal

16 notes say:

17 [ENGLISH]

18 Advised Jonathan. He had

19 told his counterpart that we

20 were pissed off but will

21 change this as this is

22 in-house and...

23 [TRANSLATION]

24 -- somebody -- it's blacked

25 out --

1 [ENGLISH]

2 ... advised us a day prior.
3 He is not to say that we were
4 told the day prior.

5 [TRANSLATION]

6 We're going to figure this out.
7 First of all, your time line says -- yes, the time
8 line says that you told Mr. Solomon about his
9 detention. You told Mr. Solomon that you knew
10 what had become of him, I imagine, since September
11 26 or 27; right?

12 MR. RICHARD ROY: Yes.

13 MR. DAVID: Did you tell Mr.
14 Solomon that the RCMP had already sent some
15 questions also, at least since September 27, to
16 the U.S. authorities, and that Mr. Arar had
17 already been questioned by the U.S. authorities?

18 MR. RICHARD ROY: I assume so,
19 yes. I don't remember the exact words I used. I
20 assume so.

21 MR. DAVID: You assume ---

22 MR. RICHARD ROY: Yes.

23 MR. DAVID: --- that you told Mr.
24 Solomon that the RCMP had already sent questions
25 to the U.S. authorities?

1 MR. RICHARD ROY: Yes, yes.

2

3 MR. DAVID: And you ---

4 MR. RICHARD ROY: We were aware
5 that he had been detained.

6 MR. DAVID: There was no reason for
7 you, not to hide but, not to provide Mr. Solomon
8 with this information?

9 MR. RICHARD ROY: No, I don't think
10 so.

11 MR. DAVID: You were not asked to
12 keep it secret, not to tell your ---

13 MR. RICHARD ROY: No, no.

14 MR. DAVID: ---Your---

15 MR. RICHARD ROY: No.

16 MR. DAVID: According to you,
17 logically, what you would have done would have
18 been to inform ISI as well that the RCMP had sent
19 these questions?

20 MR. RICHARD ROY: Yes. Highly
21 likely, yes.

22 MR. DAVID: And that Mr. Arar had
23 already been interrogated in relation to these
24 questions?

25 MR. RICHARD ROY: Yes.

1 MR. DAVID: Okay.

2 Let's go back to your notes, if I
3 may, once again P-206, your personal notes. The
4 entry:

5 [ENGLISH]

6 "Advised Jonathan."

7 [TRANSLATION]

8 Are you with me?

9 MR. RICHARD ROY: Yes.

10 MR. DAVID:

11 [ENGLISH]

12 He had told his counterpart
13 that we were pissed off but
14 will change this as this is
15 in-house.

16 [TRANSLATION]

17 Let's stop there.

18 "His counterpart", who was "his
19 counterpart"? Who does "his counterpart" refer
20 to?

21 MR. RICHARD ROY: Yes, I believe
22 that it referred to Mr. Pardy, someone from
23 Consular.

24 MR. DAVID: At Consular Affairs,
25 Gar Pardy?

1 MR. RICHARD ROY: Yes.

2 MR. DAVID: Okay.

3 Your notes read:

4 "-- we were pissed off."

5 The "we", is in reference to the

6 RCMP?

7 MR. RICHARD ROY: Yes.

8 MR. DAVID: Okay. Let's continue

9 reading your notes:

10 [ENGLISH]

11 "He had told his counterpart-

12 --"

13 [TRANSLATION]

14 That means that you indicated in

15 your notes that Solomon had told Pardy that the

16 RCMP was:

17 [ENGLISH]

18 "---pissed off but will

19 change this as this is

20 in-house and---"

21 --somebody--

22 "-- advised us a day prior."

23 [TRANSLATION]

24 Would you like to explain this

25 entry for us? What are you referring to here?

1 What is it about?

2 MR. RICHARD ROY: Yes. All I -- the
3 only justification that I would have for this is
4 that, most likely, when we learned -- Mr. Solomon
5 had mentioned Mr. Arar's detention to me, and we
6 must have had a discussion during which -- at ISI,
7 during which someone had apparently mentioned that
8 perhaps A-OCANADA knew about it, perhaps CID knew
9 about it, but the other party did not.

10 That's the only thing that I can
11 see.

12 If this were the case, I would
13 have probably said that if it were the case that
14 CID didn't know about it or the opposite then
15 "they would be pissed off".

16 That's the only thing that comes
17 to mind to explain this, because I went to
18 Division "A", and no one was angry at Division
19 "A".

20 I came back to ISI. Mr. Solomon
21 informed me of this. I told him that he was way
22 off track because there was absolutely no one
23 offended there.

24 MR. DAVID: In other words, there
25 was no reason, to your knowledge, you are telling

1 us, for the RCMP to be frustrated or "pissed off."

2 MR. RICHARD ROY: Absolutely none.

3 MR. DAVID: ---In relation to ---

4 MR. RICHARD ROY: No.

5 MR. DAVID: Okay.

6 Is it possible that ISI or the
7 Department of Foreign Affairs, Consular Affairs,
8 Mr. Pardy, for example, they were upset by the
9 fact that they learned on October 2 that the RCMP
10 had known since September 26 or 27 that there was
11 a Canadian being detained in New York City and
12 that the RCMP had not informed Consular Affairs of
13 this detention?

14 MR. RICHARD ROY: This is not what
15 that says at all. No.

16 MR. DAVID: I know, but I am asking
17 you. Is this a possible scenario to explain what
18 you noted?

19 MR. RICHARD ROY: I don't have the
20 slightest idea. I can't tell you. I don't know.

21 MR. DAVID: Did you see, witness or
22 hear anything about the Department of Foreign
23 Affairs being frustrated when they learned that
24 the RCMP had already known for at least seven or
25 eight days that Mr. Arar was being detained in New

1 York City?

2 MR. RICHARD ROY: No. I wasn't
3 informed of that.

4 MR. DAVID: Okay. Let's go on Mr.
5 Roy.

6 In your time line, you say

7 [ENGLISH]

8 . . . Rick Flewelling
9 advised that he was still in
10 detention.

11 [TRANSLATION]

12

13 MR. RICHARD ROY: Yes.

14 MR. DAVID: And in your notes, you
15 have indicated:

16 [ENGLISH]

17

18 The guy is still detained.
19 Somebody is advised. Rick
20 advised. (As read)

21 [TRANSLATION]

22

23 MR. RICHARD ROY: Yes.

24 MR. DAVID: The chain of events
25 involved Mr. Solomon coming to see you in the

1 afternoon with information regarding Mr. Arar, he
2 asked you to go to see the RCMP to find out what
3 they could tell you.

4 You went to the RCMP. You found
5 out information. You went back to ISI. You shared
6 this information with Mr. Solomon.

7 And then you reported -- I don't
8 mean it in the hierarchical sense -- but you
9 reported to Mr. Flewelling, and you said that Mr.
10 Flewelling had been advised.

11 MR. RICHARD ROY: Yes.

12 Now, if I may refer to testimony
13 that I have read that Division "A" was under the
14 impression that Mr. Arar was then, at that stage,
15 on his way to Switzerland, I believe, from where
16 he had --

17 MR. DAVID: Just so we understand
18 clearly ---

19 MR. RICHARD ROY: I will tell you
20 why.

21 MR. DAVID: Okay.

22 MR. RICHARD ROY: Okay. I didn't
23 note this, and I don't recall this, but obviously,
24 what I wrote afterwards corroborates this fact
25 because I mentioned that he was still being

1 detained; in other words, he was still in New
2 York.

3 I informed the members of Division
4 "A" that he was still in New York and not that he
5 had left for Switzerland, or I don't know where,
6 and I also informed Mr. Flewelling of this fact.
7 That is what this indicates.

8 MR. DAVID: Okay. We are going to,
9 just to be sure that we have clearly understood,
10 that everyone has clearly grasped the meaning of
11 your testimony -- You are telling us today that on
12 October 2, when you were in the offices of the
13 A-O-C, that the impression, the information, which
14 was believed to be accurate at the time, was that
15 Mr. Arar had already been deported from the United
16 States and sent back to Switzerland, to Zurich?

17 MR. RICHARD ROY: That's what I
18 read in the testimony. Okay.

19 MR. DAVID: Yes, but my question,
20 Mr. Roy, -- was this the information that was sent
21 to you on October 2?

22 MR. RICHARD ROY: Probably, but I
23 don't recall, and I didn't make a note of it. But
24 given the fact that I mentioned what I wrote here,
25 to the effect that I'd informed them that he was

1 still being detained corroborates what the
2 testimony --

3 MR. DAVID: The other testimony
4 that you have read.

5 MR. RICHARD ROY: Absolutely.
6 That's what I said.

7 MR. DAVID: Okay.

8 So to follow the logic of your
9 notes or to give a logical meaning to your notes,
10 you are saying that the information that others
11 said they had, to the effect that, on October 2,
12 Arar, they thought that he was already in
13 Switzerland or in Zurich, and you are saying to
14 them in the end that they were wrong about that;
15 they were incorrect, that Arar was still in New
16 York?

17 MR. RICHARD ROY: Yes.

18 MR. DAVID: Okay.

19 And you informed Mr. Flewelling
20 that Arar was still being detained in New York?

21 MR. RICHARD ROY: Yes.

22 MR. DAVID: Did you inform someone
23 at the A-O-C of the fact that the information ---

24 MR. RICHARD ROY: Yes.

25 MR. DAVID: --- and that, we will

1 come to the notes of someone who clearly points to
2 this.

3

4 Now, I would like to refer you to
5 the personal notes of an officer, one of the
6 investigators at Project A-OCANADA.

7 And I would like to file these
8 notes at this time.

9 Exhibit No. P-10: Personal
10 notes of Pat Callaghan

11 MR. DAVID: That will be P-210.

12 Thank you.

13 [ENGLISH]

14 THE COMMISSIONER: P-210.

15 MR. DAVID: P-210,

16 Mr. Commissioner.

17 And, Mr. Commissioner, at this
18 stage the name of the individual that drafted
19 these notes is redacted. However I don't see the
20 reason to keep this name from the public record.

21 My intention was to refer to the
22 identity of the author of these notes.

23 MR. FOTHERGILL: Commissioner, the
24 position of the Crown in respect of identifying
25 the investigator's notes is that generally it is

1 our preference not to do so because it does tend
2 to diminish their effectiveness in investigating
3 National Security matters.

4 If there's a particular or a
5 compelling reason why it's necessary to identify
6 them for a particular purpose, then, yes, we can
7 proceed to do so.

8 But if the object of the inquiry
9 is equally fulfilled simply by referring to them
10 generically as a Project A-O-CANADA
11 investigator's, that's certainly our preference.

12 THE COMMISSIONER: Do you claim
13 NSC or you would like the name to be --

14 MR. DAVID: The only reason,
15 Mr. Commissioner, I mean, it is simply -- this is
16 a public inquiry.

17 The name has come out in these
18 proceedings, and it's just -- it's for the clarity
19 of the record and for the ease of reference, for
20 the witness to be able to simply identify who it
21 is.

22 MR. FOTHERGILL: We're prepared to
23 abide by Mr. David's request.

24 THE COMMISSIONER: Thank you.

25 MR. DAVID: Thank you.

1 THE COMMISSIONER: Go ahead,
2 please.

3 [TRANSLATION]

4 MR. DAVID: Mr. Roy, we have filed
5 personal notes under Exhibit P-210, and these are
6 the personal notes of Mr. Callaghan, who was one
7 of the investigators at Project A-O-C at that
8 time.

9 I would like to read them with
10 you, regarding how events unfolded on October 2.

11 The first entry is dated -- 2:45
12 pm -- and here is what it reads:

13 [ENGLISH]

14 Richard Roy (DFAIT L.O.)
15 arrived at the office. He
16 asked us if we knew where
17 Arar was . . .

18 [TRANSLATION]

19 So you were following Mr.
20 Solomon's orders or Mr. Solomon's request.

21 [ENGLISH]

22 . . . and we replied we did
23 not. . . explained that we
24 last heard he had been
25 detained by the Americans in

1 New York and then returned
2 from where he had come from
3 which we understood to be
4 Zurich.

5 [TRANSLATION]

6 This refers to the idea that A-O-C
7 members understood on October 2,
8 that he had already left and that he
9 was in Zurich.

10 [ENGLISH]

11 I also advised Richard that
12 on September 26 -- had told
13 me of Arar's impending
14 arrival in the U.S. and that
15 he would be detained &
16 questioned. I specifically
17 asked him if he was detained
18 Arar based on own case or the
19 -- case. He stated it was
20 definitely their doing.

21 [TRANSLATION]

22 And there you have an entry -- and
23 that's what I would like to come to -- at 3:30 pm,
24 because, as you said, you had returned to the ISI
25 office after your meeting, and at 3:30 pm, there

1 is an entry in Mr. Callaghan's notes that reads:

2 [ENGLISH]

3 Richard Roy called me and
4 indicated that he had learned
5 that Arar was still being
6 detained in the U.S.

7 [ENGLISH] Do you see that entry?

8 MR. RICHARD ROY: Yes.

9 MR. DAVID: Therefore, that means
10 that you, you confirmed with A-O-C members that
11 Mr. Arar was not in Zurich, that there was an
12 error there, that he was still in New York.

13 MR. RICHARD ROY: Yes.

14 MR. DAVID: Okay.

15 And what was the reaction to this
16 information? Did Mr. Callaghan or the person with
17 whom you spoke react to this?

18 MR. RICHARD ROY: I don't recall.

19 MR. DAVID: Okay.

20 Fifteen minutes later, you called
21 back, and the entry at 3:45 pm reads:

22 [ENGLISH]

23 Richard Roy called me again &
24 advised me that Arar had
25 originally intended on flying

1 from New York to Mirabel.

2 [TRANSLATION]

3 Does this mean that you had other
4 information for --

5 MR. RICHARD ROY: No, not at all.

6 At this point, I looked at the
7 notes that I had, and I realized that I had
8 forgotten to tell them about the "Tunis to
9 Mirabel" part.

10 I called back just to tell them
11 that ---

12 MR. DAVID: Just so they had the
13 most complete picture in relation to the
14 information that Mr. Solomon had given you?

15 MR. RICHARD ROY: Yes.

16 MR. DAVID: Okay.

17 --- Pause

18 MR. DAVID: Mr. Roy, you informed
19 Mr. Flewelling -- you noted it in your notes - of
20 the fact, that in the reconstruction that you were
21 able to make of the events of this day, Mr. Arar
22 was still in New York?

23 MR. RICHARD ROY: Yes.

24 MR. DAVID: What was the
25 information that you gave to Mr. Flewelling in

1 relation to this?

2 MR. RICHARD ROY: I don't recall.
3 All that I know, is noted -- and I noted that I
4 had informed him.

5 MR. DAVID: Did you --

6 MR. RICHARD ROY: I imagine -- I
7 can't tell you exactly about what.

8 MR. DAVID: Did you inform him, as
9 we have seen in P-209, that the consulate or
10 Consular Services "were not able to see him"?

11 Did you tell Mr. Flewelling this?

12 MR. RICHARD ROY: I don't recall
13 exactly what I said to him.

14 MR. DAVID: Is it possible that you
15 sent the information that Mr. Solomon had given
16 you to Mr. Flewelling, as you did with the A-O-C ?

17 MR. RICHARD ROY: It's possible or
18 it's possible that I assumed that Division "A" had
19 informed him, and then I may have only informed
20 him that he was still being detained.

21 I can't tell you exactly, but he
22 knew about it ---

23 MR. DAVID: But the fact that Mr.
24 Arar -- you noted it in P-209 -- the fact that Mr.
25 Arar had not been seen by Canadian Consular

1 Services? --

2 MR. RICHARD ROY: Yes.

3 MR. DAVID: ---In New York. Was it
4 information that was relevant to you?

5 MR. RICHARD ROY: To me, no.

6 MR. DAVID: It wasn't relevant. In
7 what way, Mr. Roy ?

8 MR. RICHARD ROY: No. Relevant on
9 this date ---

10 MR. DAVID: No, but what I mean is,
11 did you give any importance to the fact that Mr.
12 Arar had not benefited from the Canadian Consular
13 Services as you have noted, as Mr. Solomon had
14 explained to you?

15 MR. RICHARD ROY: To me, no more
16 that the other items that are listed there. I
17 informed him of everything that was listed on the
18 sheet.

19 I did not prioritize or assign an
20 a greater degree of importance to one item than to
21 another.

22 I informed him of the information
23 that I had and that was it.

24 MR. DAVID: Okay. You gave the
25 information that you had, that you noted on your

1 sheet.--

2 MR. RICHARD ROY: Yes.

3 MR. DAVID: -- In P-209 ?

4 MR. RICHARD ROY: Yes, to

5 A-OCANADA.

6 MR. DAVID: To A-OCANADA.

7 MR. RICHARD ROY: That's right.

8 MR. DAVID: Did you also send this
9 information to Mr. Flewelling?

10 MR. RICHARD ROY: This is what I
11 told you: I don't recall exactly what I said to
12 Mr. Flewelling.

13 But it's obvious that I informed
14 him. What I said to him exactly probably depended
15 on what he knew already. I don't recall what I had
16 to tell him.

17 MR. DAVID: But at the very least,
18 you told Mr. Flewelling that the guy was not in
19 Zurich. Get that out of your head. He is in New
20 York.

21 MR. RICHARD ROY: Yes, I would say
22 yes.

23 MR. DAVID: Can you recall with any
24 certainty any other information that you sent to
25 Mr. Flewelling?

1 MR. RICHARD ROY: No.

2 --- Pause

3 [ENGLISH]

4 MR. DAVID: Mr. Commissioner, it
5 is 11:13 pm, 11:15 pm, on my watch, and I know
6 that Mr. Baxter has to attend a call and has asked
7 to break at 11:20.

8 We still have five minutes.
9 However, those five minutes, I'm now embarking on
10 another day. I can do -- we may as well ---

11 THE COMMISSIONER : How long are we
12 going to be? How long is the break going to be?

13 MR. BAXTER: Mr. Commissioner,
14 it's scheduled for half an hour, and if it goes
15 shorter than that I will tell you and advise
16 everyone as soon as can.

17 Thank you in advance for
18 accommodating in this regard.

19 THE COMMISSIONER: Okay. Well,
20 let's have the break now, but people hold
21 themselves ready in case the call is shorter
22 because we've got a lot of territory to cover.

23 MR. DAVID: Yes, we do,
24 Mr. Commissioner.

25 THE COMMISSIONER: Okay. We'll

1 rise now, and people be available.

2 MR. DAVID: Thank you.

3 --- Upon recessing at 11:14 a.m. /

4 Suspension à 11 h 14

5 --- Upon resuming at 12:03 p.m. /

6 Reprise à 12 h 03

7 MR. CAVALLUZZO: Commissioner,
8 there is one aspect that I would like to deal with
9 at this point in the testimony and that concerns
10 the evidence of Mr. Dickinson from the PCO.

11 THE COMMISSIONER: Mr. Dickinson
12 is scheduled?

13 MR. CAVALLUZZO: He is scheduled
14 to testify on Wednesday and it would appear -- oh!
15 excuse me, on Tuesday -- and it would appear from
16 the length of Mr. Roy's testimony as well as
17 Mr. Flewelling's testimony, that there is a very
18 good chance that we may not get to Mr. Dickinson
19 tomorrow.

20 So that we have two possibilities
21 and I see my friend Mr. Fothergill isn't here and
22 of two possibilities will be hopefully if he can
23 testify on Monday, August the 29th, that would be
24 ideal and the next week we would have
25 Mr. Dickinson on Monday, Mr. Martel on Tuesday and

1 Wednesday.

2 If Mr. Dickinson cannot testify on
3 Monday August 29th then he will have to testify on
4 Tuesday, September 6th, which obviously is not
5 ideal in light of the fact that the submissions
6 would be due within the week from that date, so
7 that those are the two possibilities.

8 I have spoken to Mr. Fothergill.
9 I didn't realize he was not here, but certainly
10 for other counsel, seeing that Mr. Dickinson will
11 not be testifying tomorrow, but will be testifying
12 on Monday, August 29th ideally and if not,
13 Tuesday, September 6th.

14 THE COMMISSIONER: O.k.

15 MR. BAXTER: I'll take those dates
16 back, your Honour, again.

17 THE COMMISSIONER: Thank you.
18 O.k. And today we'll be sitting till one o'clock
19 and will be breaking for lunch for half an hour
20 till 1:30 and we'll be starting the rest of the
21 week at nine o'clock, breaking from 12:30 to 1:30
22 for lunch for the rest of the week.

23 Mr. David.

24 [TRANSLATION]

25 MR. DAVID: Thank you.

1 Mr. Roy, before continuing, I
2 would like to go back to P-209. It's a document
3 with your handwritten notes that -- information
4 that Mr. Solomon provided you with on October 2.

5 You clearly said that this was the
6 information that you shared with your colleagues
7 at A-O-C at your meeting.

8 You also explained that with
9 respect to Mr. Flewelling, it was at the end of
10 the afternoon that you made a report to Mr.
11 Flewelling to of course correct the impression
12 that Mr. Arar was no longer in New York City; in
13 fact, he was in New York City.

14 And I asked you whether the
15 content of this information in P-209 was reported
16 to Mr. Flewelling, and I think that you testified
17 that you did not have any recollection; you did
18 not remember whether you shared this information
19 with Mr. Flewelling.

20 Is that right?

21 MR. RICHARD ROY: That's right.

22 MR. DAVID: The question is the
23 following: is there any reason why you would not
24 have shared this information, the content of
25 P-209, with Mr. Flewelling?

1 MR. RICHARD ROY: No, there is no
2 reason.

3 MR. DAVID: Okay.

4 Let's continue, Mr. Roy, with
5 October 3, and I would like to refer you to your
6 personal notes, and if you could turn to page 2 of
7 your personal notes, P-206.

8 There is an entry at 9:00 am.
9 Apparently, there was an A-OCanada meeting on
10 October 3. Do you remember the reason for this
11 meeting?

12 MR. RICHARD ROY: For the
13 investigations' side, it was quite simply an
14 update that investigators had, with
15 representatives from the A and O Divisions, as it
16 is mentioned here, and I was invited to merely get
17 an idea of what the project consisted of, as I
18 mentioned earlier.

19 MR. DAVID: We have seen that on
20 September 11, 2002, there was this type of
21 briefing with A-OCanada. Was it like this too?
22 Was it a general briefing on A-OCanada's
23 investigation or was it more specific?

24 MR. RICHARD ROY: This case in
25 particular, it was definitely not specific. From

1 what I recall, it was general.

2 MR. DAVID: Was the subject of Mr.
3 Arar discussed on October 3 at this meeting?

4 MR. RICHARD ROY: No, no.

5 MR. DAVID: I would like to refer
6 you to page 3, the following page, you have a note
7 concerning October 3 again, and I am going to read
8 to you what I think I am able to make out. Maybe
9 it's better if you read it, but it appears to me
10 to read:

11 [ENGLISH]

12 Meeting tomorrow of Almalki
13 and Arar as it is believed
14 the RCMP has something to do
15 with it.

16

17 [TRANSLATION]

18 Did I read correctly your ---

19 MR. RICHARD ROY: Yes. You read
20 it correctly. Quite simply, I'd just been apprised
21 of what you've just read. The next day there was
22 some lawyer who wanted to have a meeting with
23 members of A-OCanada.

24 They merely informed me of it;
25 that's all. I don't know anymore than that. I

1 don't know whether the meeting took place or
2 anything else.

3 MR. DAVID: Was it your
4 understanding that the lawyer in question was Mr.
5 Arar's lawyer?

6 MR. RICHARD ROY: I was under the
7 impression that it was the same lawyer for the two
8 individuals noted there.

9 MR. DAVID: Mr. Almalki and Mr.
10 Arar?

11 MR. RICHARD ROY: Yes, I had this
12 impression, yes.

13 MR. DAVID: Okay. And it concerned
14 these individuals and a meeting requested by the
15 lawyer?

16 MR. RICHARD ROY: Yes.

17 MR. DAVID: Did you attend this
18 meeting the next day?

19 MR. RICHARD ROY: No, no.

20 MR. DAVID: Now I would like to
21 show you in Volume I of P-42 if you could turn to
22 Tab 31, Mr. Roy.

23 It's a Consular Report. The author
24 is Maureen Gurvin, who was the consular officer in
25 New York, and she describes in this written report

1 a meeting with Mr. Arar while he was being
2 detained at M.D.C.

3

4 This is what is called a "Consular
5 Report," and it is dated October 3; the time
6 indicated was 3:48 pm, and it concerned Thursday,
7 October 3, so Mr. Arar's eighth day of detention
8 in New York City.

9 She describes information that she
10 learned from Mr. Arar and also describes a
11 document that Mr. Arar was apparently given, that
12 was apparently given to Mr. Arar by American
13 authorities with allegations to the effect, among
14 others that -- the fourth paragraph reads:

15 [ENGLISH]

16 You are a member of an
17 organization or an organizing
18 that has been designated by
19 the Secretary of State as a
20 foreign terrorist
21 organization to wit, al-
22 Qaeda.

23 [TRANSLATION]

24

25 Obviously, it's a document that

1 contains important information -- I would say that
2 are significant -- and the penultimate paragraph
3 refers to this. Ms. Gurvin notes that: "At one
4 point--" and she reports Mr. Arar's statements in
5 this document:

6 [ENGLISH]

7 At one point, two Immigration
8 Officers spoke to him, Mr.
9 Arar, and told him that they
10 were going to send him to
11 Syria. He said that he asked
12 why since he has not been to
13 Syria for years and all his
14 family is in Canada.

15 [TRANSLATION]

16 And she signed the document
17 "Maureen". Therefore, this is Maureen Gurvin,
18 Consular Officer, in New York.

19 To your knowledge, did Mr. Solomon
20 receive either a copy of this document or was he
21 informed of the information that it contained,
22 dated October 3, to your knowledge?

23 MR. RICHARD ROY: I can't tell you
24 that.

25 MR. DAVID: You don't know?

1 MR. RICHARD ROY: No.

2 MR. DAVID: Next, Mr. Roy, we
3 understand that your office is small; there are
4 only eight people working there; the atmosphere
5 seems to be one of cooperation.

6 Did you -- Is it accurate to say
7 that the working atmosphere between the eight
8 people was cooperative?

9 MR. RICHARD ROY: Yes.

10 MR. DAVID: Among you, among the
11 group?

12 MR. RICHARD ROY: Yes.

13 MR. DAVID: The document drafted
14 by Ms. Gurvin was sent to Nancy Collins at
15 Headquarters. It contains information that is
16 quite significant. It is therein alleged; we learn
17 that the Americans were alleging that Mr. Arar was
18 an al-Qaeda member.

19 From a Canadian perspective, this
20 is certainly information of interest, don't you
21 agree?

22 MR. RICHARD ROY: Yes, okay.

23 MR. DAVID: And my question is
24 simply that, normally, it seems to me that this is
25 the type of information that should eventually end

1 up in the hands of the ISI.

2 Do you agree with me?

3 MR. RICHARD ROY: Yes, I would say
4 so.

5 MR. DAVID: That is why I am
6 asking you whether, to your knowledge, someone in
7 the group, the small eight-member group, had been
8 made aware of this around October 3 or 4, I don't
9 know, but this type of information, the Americans
10 were alleging that Mr. Arar was an al-Qaeda
11 member, and that he was going to be deported.

12 Was he told, was he informed that
13 he was going to be deported to Syria?

14 MR. RICHARD ROY: Well, it's
15 possible, but obviously, from where I stand, ISI
16 members would be in a better position to answer
17 this question because, first of all, just because
18 ISI is aware of some documents does not
19 necessarily mean that I am.

20 And secondly, perhaps they would
21 be able to confirm when they were informed of such
22 a consular visit because as far as I can remember.
23 There is a good chance that ISI wasn't aware of or
24 involved in a consular visit at some point. They
25 don't necessarily know automatically. That rings

1 a bell.

2 MR. DAVID: Perhaps this is the
3 case for consular visits, but when it involves
4 information alleging that Mr. Arar or a Canadian
5 detained in New York is an al-Qaeda member, I
6 think that the information acquires some priority,
7 a certain -- requires a specific course of action.

8 And that is why I am asking you
9 whether in a small office atmosphere, in a
10 cooperative atmosphere, where information is
11 shared between departments that an ISI consular,
12 would you not have been informed of this type of
13 information during an informal discussion at the
14 ISI office?

15 MR. RICHARD ROY: All I can tell
16 you is that I don't recall whether or not this was
17 the case, but I remember a fact and what I saw. I
18 read on Mr. Solomon's computer screen some facts
19 concerning Mr. Arar's state of mind. On the third,
20 I doubt it, but Mr. Arar's state of mind: he was
21 afraid of going to Syria, and there was also a
22 reference to al-Qaeda, and if I remember
23 correctly, he was afraid.

24 That was it: his state of mind. He
25 was afraid; he had been threatened with being sent

1 to Syria. That, I remember reading on the screen,
2 at least those points. Was it that note or another
3 related report? That, I can't tell you; I don't
4 recall.

5 MR. DAVID: And that, you say was
6 on Mr. Solomon's computer screen?

7 MR. RICHARD ROY: Yes.

8 MR. DAVID: Was it Mr. Solomon who
9 said to you: Richard come see this; it's something
10 important. I would like you to read these ---

11 MR. RICHARD ROY: Well, I wouldn't
12 have been in his office and wouldn't have started
13 to read his screen unless he was there, if that's
14 what you mean.

15 MR. DAVID: So it was after Mr.
16 Solomon had invited you, said to you: I would like
17 you to read, to take cognizance of this
18 information?

19 MR. RICHARD ROY: Yes. There was
20 also -- but we will probably get to the eight, but
21 there was also the fact that I was given two of
22 these consular notes. It's something that I don't
23 remember.

24 MR. DAVID: Indeed we are going to
25 get to the eight, and we are going to get to these

1 two documents, and I will be spending some time on
2 them with you.

3 Mr. Solomon invited you into his
4 office. He invited you to read something. We have
5 -- I have clearly put the document into context,
6 Tab 31. Tab 31, we see that it is dated October
7 3.

8 My question, Mr. Roy, is -- and
9 you agree with me that this information --
10 certainly the allegation of being part of al-Qaeda
11 is something striking? It is something that
12 merits follow-up at the ISI level at the very
13 least, and I would certainly think that there is
14 an obvious interest that the RCMP should be
15 informed of this type of allegation. Do you agree
16 with me?

17 MR. RICHARD ROY: Yes, I agree
18 with you.

19 MR. DAVID: My question is, when
20 Mr. Solomon invited you into his office, do you
21 remember what time of the day it was when he asked
22 you?

23 Was it-- the document that we can
24 see here was dated -- not dated, but it is -- in
25 terms of a time line, we see that it was drafted

1 at 3:48 pm. Would it have been on this date,
2 after this time or at another time? Do you
3 remember the time.

4 MR. RICHARD ROY: No, as I said, I
5 am not even sure that it was this document anyway
6 and even less sure whether Mr. Solomon was
7 involved. I can't tell you.

8 MR. DAVID: I understand that you
9 cannot identify the document that you read on Mr.
10 Solomon's computer screen, but you can, at the
11 very least, in terms of information content
12 confirm what you were able to read; it confirmed
13 that Mr. Arar was an al-Qaeda member?

14 MR. RICHARD ROY: We -- yes, it
15 was alleged that he -- We were told that it was
16 known that---

17 MR. DAVID: That there was an
18 allegation and that ---

19 MR. RICHARD ROY:--- Something to
20 that effect. Yes, yes.

21 MR. DAVID: --- that the Americans
22 were alleging that he was an al-Qaeda member?

23 MR. RICHARD ROY: Mm-hmm!

24 MR. DAVID: And that, two, Mr.
25 Arar seemed to fear or was concerned about

1 possibly ending up in Syria?

2 MR. RICHARD ROY: Yes.

3 MR. DAVID: Do you remember if
4 there was any other information that you -- that
5 was -- that struck you that you remembered from
6 reading the screen?

7 MR. RICHARD ROY: No.

8 MR. DAVID: In terms of the time,
9 you can't tell me whether it was after 3:48 pm or
10 not. Can you tell us if it was on October 3, or
11 was it another day?

12 MR. RICHARD ROY: I cannot say
13 with any "certainty", and I can only refer to the
14 two other documents that I have mentioned to you:
15 the date that I received these documents, and, if
16 I am not mistaken, it would have been on the same
17 date.

18 MR. DAVID: But you are making a
19 distinction, Mr. Roy, between the two documents
20 that we are going to analyse and the fact that you
21 were reading information from a computer screen?

22 MR. RICHARD ROY: Mm-hmm!

23 MR. DAVID: There is a very clear
24 distinction to be made.

25 Are you telling us that these

1 documents were sent to you on the same day that
2 you read the information on the computer screen?

3 MR. RICHARD ROY: Well, I can't
4 say with any certainty, but I think so.

5 MR. DAVID: You think that the two
6 documents that were sent to you by the Department,
7 by ISI ---

8 MR. RICHARD ROY: Yes.

9 MR. DAVID: --- were given to you
10 on the same day that you read this information on
11 Mr. Solomon's computer screen?

12 MR. RICHARD ROY: I think so.

13 MR. DAVID: You think so?

14 MR. RICHARD ROY: Yes.

15 MR. DAVID: Okay. And what you
16 think is based on your recollection, your memory,
17 on the notes, on -- How do you ---

18 MR. RICHARD ROY: It's based on
19 notes, but -- on recollection, but also on what I
20 mentioned earlier to the effect that, from what I
21 knew, ISI was not aware -- and that, that was
22 related specifically to a consular visit -- that
23 they were not aware of a consular visit before a
24 certain date, which was more around -- I believe
25 the seventh or a few days later.

1 MR. DAVID: But, in other words, I
2 can confirm with you that the file, our evidence
3 shows that there was only one consular visit with
4 Mr. Arar while he was in New York, and this was on
5 October 3.

6 MR. RICHARD ROY: But what I'm
7 telling you is that I don't think that Mr. Solomon
8 or ISI knew about the consular visit until a few
9 days after it had taken place. That is what I
10 think and what I am telling you.

11 MR. DAVID: You are testifying that
12 you believe that ISI learned of the actual
13 consular visit only a few days after it had taken
14 place?

15 MR. RICHARD ROY: Yes.

16 MR. DAVID: So a few days after
17 October 3 ---

18 MR. RICHARD ROY: Yes.

19 MR. DAVID: --- Taking for granted
20 that October 3 was the day of the consular visit?

21 MR. RICHARD ROY: Yes, unless I'm
22 mistaken, and there was another case that was
23 discussed at the ISI office, but, based on what I
24 recall, it was indeed that.

25 MR. DAVID: Okay. Now, it is one

1 thing to know -- to understand that there was a
2 consular visit, but quite another, I'm suggesting,
3 Mr. Roy, to learn of the allegation that Mr. Arar
4 was an al-Qaeda member.

5 Do you agree with me that the two
6 don't necessarily go together: a consular visit
7 and understanding that he was alleged to be an
8 al-Qaeda member?

9 MR. RICHARD ROY: Yes.

10 MR. DAVID: Yes?

11 MR. RICHARD ROY: Okay.

12 MR. DAVID: Therefore, is it
13 possible that the information, the allegation that
14 Mr. Arar was an al-Qaeda member or the report that
15 Mr. Arar feared being deported to Syria, that this
16 information had been known by ISI before they may
17 have found out about a consular visit?

18 MR. RICHARD ROY: Yes. Yes, of
19 course. Yes.

20 MR. DAVID: Yes.

21 MR. RICHARD ROY: They could have
22 known it before. It's highly possible.

23 MR. DAVID: Let's take a
24 hypothetical situation and take as a given, Mr.
25 Roy, that there was evidence that says that, in

1 this cooperative, sharing environment of an
2 informal group meeting, on October 3 or maybe
3 October 4, this information was shared among the
4 ISI team members, and you were there.

5 Would it surprise you to find out
6 that Mr. Arar's being an al-Qaeda member, his
7 possibly ending up in Syria and his being deported
8 by the Americans were discussed in a cooperative,
9 informal meeting on October 3 or 4 that you
10 attended? Would it surprise you to learn that
11 there was evidence to this effect?

12 MR. RICHARD ROY: I would be
13 surprised to learn that there was a discussion to
14 the effect that Mr. Arar might be deported, yes,
15 because I don't recall hearing or discussing that
16 there was any possibility that he would be sent --
17 that he would be deported to Syria either by
18 Foreign Affairs or even the RCMP. I don't have
19 any recollection of hearing someone mention this
20 or having discussed it. That doesn't ring a bell
21 at all.

22 MR. DAVID: And if it concerned Mr.
23 Arar's fear of ending up in Syria, was that, was
24 that a possible topic of discussion among -- in --
25 in the same type of informal, cooperative context

1 on October 3 or 4, that Mr. Arar's fears were
2 discussed?

3 MR. RICHARD ROY: Yes, I would say
4 that that is possible, but I have no
5 "recollection"; I don't recall this; I have no
6 notes about this, and if the discussion had taken
7 place, I -- It wasn't apparent to me that this was
8 something that should be passed on to the RCMP.
9 It doesn't ring a bell.

10 You mentioned perhaps the fourth.
11 I know that on the fourth, it was impossible. The
12 fourth was a Friday, and I wasn't at work.

13 MR. DAVID: O.K. And how is it
14 that you can tell us that you were not at work on
15 the fourth?

16 MR. RICHARD ROY: It's based on my
17 notes.

18 MR. DAVID: It's in your notes?

19 MR. ROY: Mm-hmm.

20 MR. DAVID: Okay.

21 So, let's move on now to
22 October 4, and I would like to ask the Clerk if at
23 this point I could file Officer Flewelling's
24 personal notes.

25 --- Pause

1 MR. DAVID: That then would be
2 Exhibit ... ?

3 THE REGISTRAR: 211.

4 MR. DAVID: P-211,
5 Mr. Commissioner.

6 EXHIBIT P-211: Richard
7 Flewelling's personal notes.

8 These are then, Mr. Roy,
9 Mr. Flewelling's personal notes and I would like
10 to refer you to page 38 of these notes.

11 [ENGLISH]

12 MR. BAXTER: Pardon me,
13 Mr. Commissioner. Could we have a copy of those
14 notes, Mr. Clerk?

15 --- Pause

16 [TRANSLATION]

17 MR. DAVID: So, we are on
18 October 4. October 4; if it can help you, there
19 is a calendar, Mr. Roy, which ...

20 MR. ROY: Okay.

21 MR. DAVID: ... which is posted
22 there. It's a Friday.

23 MR. ROY: Yes.

24 MR. DAVID: These are
25 Mr. Flewelling's notes, as I was saying, and half

1 way down page 38, in the middle of the page, there
2 is a note:

3 [ENGLISH]

4 "Called Richard Roy to advise
5 what the status is."

6 [TRANSLATION]

7 Did you read that?

8 MR. ROY: Yes.

9 MR. DAVID: Do you remember a
10 conversation, whether on the telephone or
11 otherwise, with Mr. Flewelling on October 4?

12 MR. ROY: No. All I have entered
13 in my notepad is AOL, absent on leave.

14 MR. DAVID: Okay. And do you have
15 any recollection ... even though you were AOL, do
16 you recollect a telephone conversation with
17 Mr. Flewelling about Mr. Arar's status on that
18 date?

19 MR. ROY: No. No.

20 MR. DAVID: You have no
21 recollection?

22 MR. ROY: None.

23 MR. DAVID: Would it surprise you
24 to hear that you had a telephone conversation with
25 Mr. Flewelling on that day, October 4?

1 MR. ROY: Yes, that would surprise
2 me. Yes.

3 Mr. DAVID: And do you recall
4 where you were on that day ... ?

5 MR. ROY: No.

6 MR. DAVID: ... on Friday,
7 October 4?

8 MR. ROY: No.

9 MR. DAVID: Would you normally
10 have worked on that day? Friday would normally be
11 ...

12 MR. ROY: Yes. Yes.

13 MR. DAVID: ... generally
14 speaking, would you have been working?

15 MR. ROY: Yes.

16 MR. DAVID: Do you remember
17 requesting permission not to go into work, for
18 having requested authorization not to work?

19 MR. ROY: Yes. Yes, of course I
20 would have and would have advised
21 Mr. Heatherington.

22 MR. DAVID: Would
23 Mr. Heatherington have been in the position to ...
24 or have the authority to give you a day off, a day
25 of leave? Is that how ...

1 MR. ROY: Yes, yes.

2 MR. DAVID: How does it work?

3 MR. ROY: Yes, that's the way it
4 worked. I would have asked or advised him about
5 whether I could take that day of leave. Indeed.

6 MR. DAVID: And you have no
7 recollection of having had a telephone
8 conversation or some other conversation with
9 Mr. Flewelling on that day?

10 MR. ROY: No, it doesn't ring a
11 bell.

12 MR. DAVID: You don't remember
13 anything about Mr. Flewelling informing you that
14 he was going to continue, in connection with the
15 information you shared with him, that he was going
16 to continue his investigation with the Immigration
17 and Canada Passport authorities? It doesn't ring
18 a bell with you at all?

19 MR. ROY: No.

20 MR. DAVID: Even though, Mr. Roy,
21 according to your notes, you did not work on that
22 day, is it possible that you may have had a
23 conversation with Mr. Flewelling on that day? Did
24 you have a pager, for example, or perhaps a
25 telephone ...

1 MR. ROY: I have a cellular phone,
2 but I made no notes and have no recollection of
3 having discussed anything whatever ...

4 MR. DAVID: Okay.

5 MR. ROY: ... with Mr. Flewelling
6 on the 4th.

7 MR. DAVID: And if Mr. Flewelling
8 had wanted to reach you, he would have been able
9 to contact you on your cellular phone?

10 MR. ROY: Yes, absolutely.

11 MR. DAVID: Did you also have a
12 pager?

13 MR. ROY: No. A cellular, but ...

14 MR. DAVID: A cellular phone.

15 MR. ROY: ... anybody would have
16 been able to reach me at any time.

17 MR. DAVID: Even though you were
18 on leave?

19 MR. ROY: Yes, yes.

20 MR. DAVID: Your cell phone was
21 working?

22 MR. ROY: Yes, unless I was out of
23 town.

24 MR. DAVID: Very well.

25 Now, let's move on, Mr. Roy, to

1 October 8.

2 [ENGLISH]

3 MR. O'GRADY: Commissioner, I
4 wonder could the witness raise his voice a bit;
5 it's very hard to hear him back here.

6 [TRANSLATION]

7 MR. ROY: Yes, okay.

8 MR. DAVID: We will now move on to
9 October 8. Tuesday. It is day 13 of Mr. Arar's
10 detention and the day on which Mr. Arar was
11 deported from the United States.

12 I would basically like to refer
13 you to three documents. The first is your own
14 notes; the second is the Garvie Report and third
15 and last, I am going to refer you to
16 Mr. Callaghan's personal notes.

17 So let's begin with your own notes
18 and look at page 21, if you please.

19 [ENGLISH]

20 THE COMMISSIONER: What was the
21 exhibit number, 206?

22 MR. DAVID: 206, Mr. Commissioner.

23 THE COMMISSIONER: Page 21?

24 MR. DAVID: Page 20 and 21.

25 THE COMMISSIONER: Thank you.

1 [TRANSLATION]

2 MR. DAVID: So, on page 20,
3 Mr. Roy, October 8, your first entry reads:

4 [ENGLISH]

5 "Approximately 10:00 met with
6 A-OCANADA guys. A-OCANADA
7 are told that he is leaving
8 for Ottawa tomorrow."

9 [TRANSLATION]

10 Are you ...

11 MR. ROY: Yes.

12 MR. DAVID: ... are you following
13 me?

14 [ENGLISH]

15 " ... he is leaving for
16 Ottawa tomorrow."

17 [TRANSLATION]

18 That would be Mr. Arar?

19 MR. ROY: Yes.

20 MR. DAVID: The impression of the
21 members of A-OCANADA, then, was that he was coming
22 to Canada.

23 MR. ROY: That is correct.

24 MR. DAVID: Were you told how he
25 knew that, and where that information came from?

1 MR. ROY: I think that is a
2 question of national security.

3 MR. DAVID: But without
4 identifying the specific agency, was it from an
5 American source?

6 MR. ROY: Yes.

7 MR. DAVID: Mr. Roy?

8 MR. ROY: Yes, okay. Yes, that's
9 it.

10 MR. DAVID: So the members had
11 clearly indicated that according to their American
12 contact, Mr. Arar was returning to Canada?

13 MR. ROY: Yes, that's right.

14 MR. DAVID: All right.

15 And your notes say:

16 [ENGLISH]

17 "Knew it a couple of days
18 ago."

19 [TRANSLATION]

20 Does that mean that the A-O-C
21 members had intelligence from the Americans a few
22 days before that he was coming?

23 MR. ROY: That is the case.

24 MR. DAVID: So the American
25 information went back a few days?

1 MR. ROY: That's right.

2 MR. DAVID: It wasn't from that
3 day ...

4 MR. ROY: You are correct, that's
5 right.

6 MR. DAVID: Okay.

7 [ENGLISH]

8 "Court tomorrow and maybe
9 after that."

10 [TRANSLATION]

11 Is "Court" a reference to a U.S.
12 court?

13 MR. ROY: Yes.

14 MR. DAVID: Right.

15 "[A]nd maybe after that" means
16 that he was going to be released or that he could
17 return to Canada after his court appearance?

18 MR. ROY: Yes. That is what the
19 members of A-OCANADA were expecting and were
20 taking ... if I remember correctly, were making
21 arrangements accordingly.

22 MR. DAVID: Okay.

23 Now your notes say that you met
24 A-OCANADA at approximately 10:00 a.m. Can you
25 remember the events that preceded that meeting?

1 Did you go to the ISI office before going to the
2 A-OCANADA office on that day?

3 MR. ROY: Oh certainly, yes.

4 MR. DAVID: Okay, did you find
5 something out at ISI before going ... Was there a
6 reason ... in other words, how can you explain how
7 come you were at A-O-C at 10:00 a.m.

8 MR. ROY: Yes. I will go back to
9 the documents I told you about earlier. These
10 documents are also not mentioned in my ... in my
11 time line, simply because they are Mr. Callaghan's
12 notes which I use to remind myself that when I
13 went to the A-OCANADA office, I had two consular
14 notes in order to be able to share the contents
15 with RCMP members, which I did with Mr. Callaghan.
16 He read the two documents in question and ...
17 that's it.

18 MR. DAVID: Were copies of these
19 documents given to A-O-C?

20 MR. ROY: No. The copies were not
21 handed over and based on my recollection from that
22 day, what I had in mind would have been that
23 afterwards, I would go to headquarters with these
24 documents to inform them of the contents, but thus
25 far, I do not have a vivid memory of having ... of

1 having gone and had someone read the documents or
2 given them to anyone.

3 MR. DAVID: Do you mean ... ?

4 MR. ROY: I know that normally,
5 that's what I would have done, but I can't
6 remember to whom I might have given them or who
7 might have read them. I just can't remember.

8 MR. DAVID: And that was at
9 headquarters?

10 MR. ROY: Precisely.

11 MR. DAVID: Okay.

12 So let's go to the notes,
13 Mr. Callaghan's notes, for that day.

14 I would therefore like to file as
15 evidence, a version ... Will that be P-2 ... ?

16 THE CLERK: 212.

17 MR. DAVID: P-212,
18 Mr. Commissioner.

19 THE COMMISSIONER: Thank you, Mr.
20 Clerk.

21 EXHIBIT P-212: Pat
22 Callaghan's personal notes.

23 MR. DAVID: Please allow me to ...
24 There is an entry at 9:45 in my Mr. Callaghan's
25 notes for October 8 which says that:

1 [ENGLISH]

2 "Richard Roy (DFAIT LO)
3 arrived at our office and we
4 advised him of what we knew
5 about Arar's situation --
6 interviews and Arar's
7 possible deportation to
8 Canada on Wednesday. Richard
9 was not aware of the
10 deportation scenario."

11 [TRANSLATION]

12 That is to say the scenario
13 whereby he returned to Canada ...

14 MR. ROY: That is correct.

15 MR. DAVID: ... you learned that
16 from them?

17 MR. ROY: Yes.

18 MR. DAVID: So for the second
19 time, you do not all appear to have been on the
20 same wavelength ...

21 MR. ROY: That is correct.

22 MR. DAVID: ... in the sense that
23 the first time, they were saying that he was in
24 Zurich, which was completely wrong, and then, they
25 said he was coming to Canada?

1 MR. ROY: Yes.

2 MR. DAVID: You on the other hand,
3 said:

4 [ENGLISH]

5 "He stated that he only knew
6 that Arar was still in
7 custody and there was a
8 possibility he would be sent
9 to Syria."

10 [TRANSLATION]

11 MR. ROY: Yes. What I might
12 mention, is that there was the possibility ...
13 That is to say that I mentioned that Mr. Arar, in
14 his state of mind, was afraid to go to Syria.
15 Okay?

16 MR. DAVID: So ...

17 MR. ROY: That is what I
18 mentioned.

19 MR. DAVID: So when you ... the
20 note here refers to a possible scenario in which
21 Mr. Arar was in Syria, and you are saying that
22 according to your testimony, it is in fact ... it
23 is a reference to the state of mind or fears
24 expressed by Mr. Arar?

25 MR. ROY: Yes. That's right. And

1 certainly it may have been possible ... there may
2 have been some discussion, and then the person
3 came to that conclusion, but for me, there was no
4 one, as I mentioned earlier, who said to me, there
5 is a possibility that he might go to Syria. No
6 one ever said that in that way.

7 I therefore strongly doubt that I
8 would have gone to "A" Division and said that it
9 was highly likely that he was ... that he would be
10 going to Syria. I don't remember that at all.
11 What I do remember is mentioning his state of
12 mind, and that he was afraid of being deported to
13 Syria, and that is what I would have mentioned at
14 the time.

15 MR. DAVID: So what you are
16 telling us today, Mr. Roy, is that at no time did
17 anyone in ISI affirm that they had intelligence to
18 the effect that Mr. Arar would be deported to
19 Syria ...

20 MR. ROY: That's right.

21 MR. DAVID: ... or even that he
22 might be deported to Syria ...

23 MR. ROY: I never heard that ...

24 MR. DAVID: ... and the reference
25 to Syria was merely to Mr. Arar's subjective state

1 of mind?

2 MR. ROY: That's right. But on
3 that point, I could even go back perhaps to the
4 following day to once again reiterate this fact.
5 That is to say that on the 9th, once we knew that
6 Mr. Arar was no longer in New York, because it had
7 been confirmed at the consular level, the first
8 person we contacted, Jim Gould, whom you know from
9 ISI ...

10 MR. DAVID: Yes.

11 MR. ROY: ... was here. What he
12 mentioned first of all was Guantanamo. There
13 again, that was the first thing that happened.
14 That's a long way from Syria.

15 MR. DAVID: Okay.

16 Let's continue, then. It says:

17 [ENGLISH]

18 "Richard showed me the file
19 he had from DFAIT."

20 [TRANSLATION]

21 Does this mean that you had taken
22 your whole file with you?

23 MR. ROY: No, not at all. It was
24 a file folder with two documents and that's all.

25 MR. DAVID: There was no

1 compilation of the other documents?

2 MR. ROY: No. No, no. It's ...

3 MR. DAVID: It was two documents?

4 MR. ROY: Yes, and the two
5 documents, to be clear about it, which I did not
6 have in my file, as I explained to you at the very
7 outset ...

8 MR. DAVID: MM-hmm.

9 MR. ROY: ... was because it was
10 just after the time when I had begun the system.
11 You will no doubt remember that I mentioned to you
12 that I did not have a document filing system as
13 such. It was just after the two documents in
14 question that I began to include a copy of
15 everything that I took to the RCMP or that I took
16 to Foreign Affairs from the RCMP.

17 MR. DAVID: All right. Then as to
18 the two documents in question, Mr. ... Let's
19 continue with the notes, perhaps, just to finish
20 up on this matter.

21 Mr. Callaghan said:

22 [ENGLISH]

23 "It included a document where
24 Arar had spoken with his
25 brother and both were quite

1 concerned Arar could be sent
2 to Syria."

3 [TRANSLATION]

4 Is that OK?

5 MR. ROY: Yes.

6 MR. DAVID:

7 [ENGLISH]

8 "Another document identified
9 that he had obtained a
10 lawyer."

11 [TRANSLATION]

12 On that point, I would like to
13 refer back to two documents, Mr. Roy. Please take
14 P-42, Volume 1, and I would like you to refer to
15 Tab 10 and Tab 22.

16 Let's begin with Tab 10. It is a
17 document, a CAMANT note, dated October 1, which
18 says:

19 [ENGLISH]

20 "Brother called this morning
21 in a state of panic. He said
22 that subject was able to call
23 him this morning from MDC and
24 informed that he would be
25 deported back to Syria where

1 he was born. Both, subject
2 and brother are extremely
3 afraid that he would be
4 deported to Syria and not in
5 Canada."

6 [TRANSLATION]

7 Now, in reading Mr. Callaghan's
8 notes, and the way he described the document, and
9 reading the document at Tab 10, do you feel that
10 it is enough for you to remember that it was
11 indeed Tab 10 that you had in your possession?

12 MR. ROY: Definitely not with any
13 certainty. There may have been five other
14 documents resembling this one.

15 The part I remember, because I
16 read the two documents briefly, it had something
17 to do with comments about one of his brothers.
18 But other than that --

19 So what I can tell you is that it
20 is highly likely, yes, indeed, that this is one of
21 the two documents.

22 But I couldn't say for certain.

23 MR. DAVID: Did you read Tab 10 to
24 prepare your testimony, Mr. Roy?

25 MR. ROY: Yes.

1 To prepare my testimony is one
2 thing, but now I'm talking about three years ago
3 when I would have seen the document in question.
4 I do remember that his brother was mentioned.

5 But three years have gone by and
6 as for telling you that it is exactly this one, it
7 is likely that it is. But I cannot say with
8 certainty based on my recollection that I read it
9 three years ago. That is what I am saying.

10 MR. DAVID: In preparing your
11 testimony, did you read any other documents
12 referring to the two brothers and to any scenario
13 in which Mr. Arar would be in Syria?

14 MR. ROY: No, I believe that is
15 the only one that I saw.

16 MR. DAVID: You were shown no
17 other documents that may have contained this
18 combination of information, namely his brothers
19 and Syria?

20 MR. ROY: No. I do not believe
21 so. No.

22 MR. DAVID: Okay.

23 So then, it is likely that it is
24 this document, but you cannot confirm it
25 absolutely.

1 MR. ROY: Precisely.

2 MR. DAVID: Okay.

3 With respect to the other
4 document -- and I just wish to return to this
5 matter, Mr. Roy -- the document at Tab 10 is a
6 CAMANT note.

7 MR. ROY: Yes.

8 MR. DAVID: To the best of your
9 recollection, is what you carried, the document
10 you took to ASC, a CAMANT note?

11 MR. ROY: Yes, it was a consular
12 letter.

13 MR. DAVID: You remember very
14 clearly that it was a CAMANT note?

15 MR. ROY: Yes.

16 MR. DAVID: Okay.

17 And in both instances what was
18 involved were CAMANT notes?

19 MR. ROY: Yes.

20 MR. DAVID: Okay.

21 Now let's move on to the other
22 description, supplied by Mr. Callaghan, of the
23 second document. This involved:

24 [ENGLISH]

25 "Another document identified

1 that he had obtained a
2 lawyer."

3 [TRANSLATION]

4 And I would like you -- there are
5 two documents that in the end may, I think, lend
6 themselves to this sort of description.

7 I would like to begin by referring
8 you to Tab 22 and secondly, to refer to Tab 35.
9 Twenty-two (22) and thirty-five.

10 MR. ROY: Yes. There again, in my
11 preparations, I looked at both documents, and I'm
12 not able to tell you whether it was one or the
13 other.

14 The recollection, the memory of a
15 lawyer, that is Mr. --

16 MR. DAVID: Callaghan's.

17 MR. ROY: -- Callaghan's and not
18 my own.

19 MR. DAVID: So you did not even
20 remember that the other document referred to a
21 lawyer.

22 MR. ROY: No. I cannot. No.

23 MR. DAVID: Okay.

24 Now, you are a police officer.
25 You have had experience as an investigator.

1 Looking at Tab 22, there is -- look at the last
2 paragraph. It is entitled "Background". Do you
3 have it?

4 MR. ROY: Yes.

5 MR. DAVID: It provides
6 biographical information about Mr. Arar, to the
7 effect that he had a master's in communication,
8 that he worked for a company in Boston, that he
9 had a valid visa for the United State, that he
10 worked for two companies in Canada and that he was
11 an independent consultant here in Canada, that he
12 had two children aged such and such.

13 As an investigator, were you able
14 to identify that document as perhaps being of more
15 interest in terms of an RCMP investigation?

16 MR. ROY: My experience as an
17 investigator has nothing to do with any of that
18 because those documents were given to me by ISI,
19 and I don't know about their experience as
20 investigators.

21 They are the ones who decided.
22 They decided which documents they were going to
23 give me to take to the RCMP.

24 So I can't tell you --

25 MR. DAVID: So what you are saying

1 is that ISI identified the documents --

2 MR. ROY: I was not the one who
3 selected them.

4 MR. DAVID: -- who chose the
5 documents and gave them to you.

6 MR. ROY: Yes. I did not have
7 access to that system.

8 MR. DAVID: Did you request the
9 documents?

10 MR. ROY: No.

11 MR. DAVID: Were they delivered to
12 you?

13 MR. ROY: Yes.

14 MR. DAVID: Without your asking
15 for them?

16 MR. ROY: That's right.

17 MR. DAVID: Do you know who
18 authorized this transfer of documents to the RCMP?

19 MR. ROY: To the RCMP? Or do you
20 mean ISI?

21 MR. DAVID: Yes.

22 MR. ROY: Okay, to ISI. No, I
23 don't know. I cannot tell you who authorized it,
24 but I cant tell you that Mr. Heatherington had
25 solid control over what was coming into and going

1 out of ISI. But other than that, I cannot tell
2 you more.

3 MR. DAVID: Is it your
4 understanding that authorization was required
5 before documents from the CAMANT System could be
6 delivered and transmitted to the RCMP?

7 MR. ROY: I am not aware of that.

8 MR. DAVID: You don't know.

9 So you don't know who authorized
10 the transfer?

11 MR. ROY: No.

12 MR. DAVID: Were there any
13 restrictions on the use to which you could put the
14 documents?

15 MR ROY: I cannot recall the
16 parameters that were given to me. I don't
17 remember that.

18 But it is highly likely that,
19 because I only showed them to Mr. Callaghan and
20 did not give him a copy, it is possible that it
21 could have been "read and return", "read and
22 destroy" or --

23 But it's definitely based on that.
24 I don't remember exactly what the limits were.

25 MR. DAVID: Okay.

1 Now, the documents that we
2 reviewed were all dated prior to October 8. In
3 one instance, document 22 is dated October 2;
4 document 35 is dated October 3; and document 10 is
5 dated October 1.

6 Can you remember when you were
7 given a copy of those documents?

8 MR. ROY: I can't remember exactly
9 when I was given a copy of those documents, but
10 based on the way I was operating, working, there,
11 it is likely that it was immediately after
12 receiving the documents in question that I would
13 have gone there.

14 In other words, I believe that it
15 was that very morning. Possibly on the 7th. But
16 it would have had to have been very late on the
17 7th because, once again based on my notes, on the
18 7th I was answering calls for assistance and was
19 reading my predecessor's files, -- which indicates
20 to me that I would have had time to go to the RCMP
21 to give them to them.

22 So there again, we are talking
23 about assumptions. But based on how I worked, I
24 assume that I would have received -- I believed
25 that I would have received it on the morning of

1 the 8.

2 MR. DAVID: And it was Mr. Solomon
3 who gave you those documents?

4 MR. ROY: I believe so. I have
5 not yet -- I can't remember clearly. But it was
6 on his monitor that I saw the other document I
7 mentioned. The other document, or the document
8 that I read.

9 I vaguely remember that the
10 transaction took place there, that I would have
11 received some documents. But it may not have been
12 that way. But it was definitely at ISI that I
13 received the documents. There is no doubt about
14 that.

15 MR. DAVID: And you don't know who
16 authorized the handover of the documents?

17 MR. ROY: Who authorized it? No.
18 I can't tell you who authorized it.

19 MR. DAVID: But based on your
20 experience, Mr. Roy, would authorization normally
21 have been necessary before ISI could give you a
22 copy of those two documents?

23 MR. ROY: Listen. Based on my
24 experience, on what I know, on what I have
25 observed, the answer is no.

1 At the moment, I don't know.

2 But it's clear that based on the
3 testimony I have heard, I have learned that -- you
4 know the answer in any event. You know where I'm
5 headed.

6 Based on my own knowledge, and my
7 own experience, I do not know who is responsible
8 for authorization.

9 But based on the transcripts I
10 read, it is JPO. It is Mr. Pardy who is
11 responsible for authorization.

12 But to be clear, I did not know
13 that before reading it in the wake of your work.

14 MR. DAVID: Were you asked to do
15 something with those documents? Were you asked to
16 share the contents?

17 In other words, were the
18 instructions from --

19 MR. ROY: I mentioned earlier that
20 I could not at all remember the limits in which --
21 what the conditions were or anything else that may
22 have been involved.

23 But it's clear that I was in
24 possession of the two documents, and had to give
25 them to the RCMP. There is no doubt on that

1 score.

2 MR. DAVID: Okay.

3 Now, Mr. Roy, we saw that, in
4 terms of content -- without necessarily referring
5 to the physical documents as such.

6 But in terms of content, in one
7 instance there was information to the effect that
8 Mr. Arar was afraid of returning to Syria and that
9 his brother also had the same fear.

10 My question is that -- and this
11 information is in a document dated October 1.
12 Thus 10.

13 MR. ROY: Yes.

14 MR. DAVID: Is it possible that
15 you received or were informed of those contents
16 prior to taking physical possession of the
17 document on October 7 or 8?

18 MR. ROY: I do not believe so, no.

19 I have no recollection of that. I
20 therefore do not believe that to have been the
21 case.

22 MR. DAVID: You have no
23 recollection, or memory, about that possibility?

24 MR. ROY: No.

25 MR. DAVID: Let's go on then.

1 I would like now to refer you to
2 your notes. I am still working with P-206.

3 So it says -- Okay, you're with
4 me? P-206, still on October 8, second paragraph:

5 [ENGLISH]

6 "Approx. 10:45hrs ... "

7 [TRANSLATION]

8 (As read)

9 Someone came.

10 [ENGLISH]

11 " ... came. Discussion on
12 Maher?? Not issue don't know
13 when out it is. Discussed."

14 [TRANSLATION]

15 (As read)

16 So if I have understood properly,
17 someone came to the A-O-C office when you were
18 there -- interrogation.

19 MR. ROY: Yes.

20 MR. DAVID: -- and there was a
21 meeting or a discussion about Mr. Arar.

22 MR. ROY: Yes.

23 MR. DAVID: What do you remember
24 about this discussion? What was involved?

25 MR. ROY: No. I remember what was

1 at issue, but it's blacked out. I therefore
2 presume that I cannot really discuss it.

3 MR. DAVID: Okay.

4 MR. BAXTER: I think,
5 Mr. Commissioner, that we can say that what was
6 involved was an American, but no more than that.

7 THE COMMISSIONER: Okay.

8 MR. DAVID: On the next page,
9 page 21 of your notes, you say:

10 [ENGLISH]

11 "Would like to interview
12 him."

13 [TRANSLATION]

14 (As read)

15 MR. ROY: Yes.

16 MR. DAVID: This involved
17 Mr. Arar?

18 MR. ROY: Yes.

19 MR. DAVID: It was the RCMP that
20 wanted --

21 MR. ROY: Yes.

22 MR. DAVID: Who told you that?
23 The members of A-O-C?

24 MR. ROY: Yes.

25 MR. DAVID: And there you say:

1 [ENGLISH]
2 "Shared info on case note
3 regarding state of mind of
4 Mr. Arar (afraid to go to
5 Syria)."
6 [TRANSLATION]
7 (As read)
8 MR. ROY: Yes.
9 MR. DAVID:
10 [ENGLISH]
11 "Shared info on case note ...
12 "
13 [TRANSLATION]
14 (As read)
15 Is that in reference to the CAMANT
16 note?
17 MR. ROY: It refers to the one I
18 mentioned to you that I read.
19 MR. DAVID: Okay.
20 And then you say:
21 [ENGLISH]
22 "To do list on left page ...
23 "
24 [TRANSLATION]
25 (As read)

1 So it's on the left hand page in
2 your notes?

3 MR. ROY: Yes, that's right.

4 MR. DAVID:

5 [ENGLISH]

6 "To speak to Mike Cabana and
7 Rick RE: Arar in New York
8 jail. More questions to be
9 asked."

10 [TRANSLATION]

11 (As read)

12 To what are you referring there?

13 MR. ROY: I believe that's -- yes
14 on the left side. These are things for me to do,
15 questions I want to ask or whatever.

16 I don't remember that it was a
17 task anyone assigned to me.

18 MR. DAVID: But you have a
19 concern. You learned -- on the line above, that
20 they wanted to question Mr. Arar. The RCMP wanted
21 to interrogate Mr. Arar.

22 MR. ROY: Yes.

23 MR. DAVID: And then, for action,
24 you say: I need to talk about it to Rick and then
25 I need to talk to Mike Cabana.

1 MR. ROY: I couldn't tell you. I
2 can't remember the exact meaning of it.

3 MR. DAVID: Of your note?

4 MR. ROY: No.

5 MR. DAVID: Were you concerned
6 about this idea, this plan, to continue to
7 interrogate Mr. Arar when he was being held in New
8 York?

9 MR. ROY: Concerning -- no. Not
10 at all.

11 MR. DAVID: Okay.

12 Let us now return Mr. Roy to your
13 time line, P-208, if you will. Please refer to
14 October 8.

15 You say:

16 [ENGLISH]

17 "I shared information with
18 INSET ... "

19 [TRANSLATION]

20 (As read)

21 That's the last paragraph.

22 [ENGLISH]

23 " ... from Case note
24 regarding state of mind of
25 Arar (to the effect he was

1 afraid to be sent to Syria)."

2 [TRANSLATION]

3 In your mind, was INSET the
4 counterpart to A-OCANADA, or for you --

5 MR. ROY: No. I made a mistake.
6 It was A-OCANADA. It was not INSET.

7 MR. DAVID: Okay. It was not
8 headquarters?

9 MR. ROY: No, no.

10 MR. DAVID: Okay.

11 Let us now return to P-212,
12 Mr. Callaghan's notes, the manuscript notes.

13 Half way down around the middle of
14 the page, it says:

15 [ENGLISH]

16 "Richard Roy ... and I
17 attended the 3rd floor IPOC
18 board room to discuss Arar
19 and to review the 5 a/n
20 documents."

21 [TRANSLATION]

22 Do you know what this reference to
23 five documents is about?

24 MR. ROY: No, but I would not have
25 been present. I believe that it's about --

1 probably about what you mentioned earlier about
2 another person.

3 It has nothing to do with me. I
4 wasn't listening -- I would not have been there.

5 MR. DAVID: Okay.

6 I would now like to file the
7 personal notes of another investigator for that
8 day -- and to refer you to them, Mr. Roy.

9 EXHIBIT P-213: Personal
10 notes of another
11 investigator.

12 [ENGLISH]

13 THE COMMISSIONER: Two
14 thirteen (213).

15 MR. DAVID: Thank you.

16 [TRANSLATION]

17 These then are the personal notes
18 of another investigator for October 8.

19 At the bottom of the page,
20 Mr. Roy, there is an entry. I think that although
21 the time is entered incorrectly or is not very
22 clear, that it is 10:00 a.m.

23 It says:

24 [ENGLISH]

25 "With Richard Roy LO DFAIT

1

... "

2

[TRANSLATION]

3

And now we see:

4

[ENGLISH]

5

"Arrival of Arar ... "

6

[TRANSLATION]

7

And then at the bottom, in the

8

last paragraph.

9

[ENGLISH]

10

" ... and schedule surv on

11

him via " C " Div if he's

12

deported there."

13

[TRANSLATION]

14

MR. ROY: Yes.

15

MR. DAVID: Were you informed that

16

there were surveillance plans being prepared for

17

when Mr. Arar returned to Canada?

18

MR. ROY: Yes.

19

MR. DAVID: Okay.

20

And the reference in the notes "if

21

he's deported there" would appear to indicate that

22

there was some uncertainty remaining.

23

Does this mean that the

24

possibility of Syria was being taken somewhat

25

seriously?

1 MR. ROY: No. And the reference
2 in the notes to preparation occurred before I had
3 even mentioned that he was afraid of going to
4 Syria.

5 I am presuming that the "if" --
6 the investigators would have to be asked, but the
7 "if" means that there may be a possibility that he
8 would be going to Ottawa instead of Montreal.

9 I am presuming. I am in no
10 position to say so, but that would be my -- that
11 is certainly an option.

12 MR. DAVID: Okay.

13 I would now like to refer you to
14 P-19, Mr. Roy.

15 [ENGLISH]

16 THE COMMISSIONER: It is 1:00.
17 Should we, Mr. David --

18 MR. DAVID: Okay. We can break.

19 THE COMMISSIONER: This is good.

20 MR. DAVID: Sure.

21 THE COMMISSIONER: This a
22 convenient point?

23 MR. DAVID: Yes.

24 So we will break until 2:00,
25 Mr. Commissioner?

1 THE COMMISSIONER: Until 1:30.

2 MR. DAVID: I'm sorry, 1:30.

3 THE COMMISSIONER: The reason
4 being we did take a forty-minute break earlier
5 this morning.

6 [TRANSLATION]

7 MR. DAVID: We will be resuming at
8 1:30 p.m., then.

9 [ENGLISH]

10 THE COMMISSIONER: I know it will
11 be a bit of an inconvenience for some, but let us
12 try to make up the lost time.

13 MR. DAVID: Yes.

14 THE COMMISSIONER: Okay, so we
15 will rise until 1:30.

16 --- Upon recessing at 1:00 p.m. /

17 Suspension à 13 h 00

18 --- Upon resuming at 1:32 p.m.

19 Reprise à 13 h 32

20 [TRANSLATION]

21 MR. DAVID: Mr. Roy, you have
22 Exhibit P-19, The Garvie Report, before you. I
23 would like to refer you to page 25, an entry for
24 October 8, which states:

25 [ENGLISH]

1 "Insp. Roy was updated by
2 A-OCANADA investigators about
3 ARAR's situation as they knew
4 it at the time. Insp. Roy
5 told the investigators that
6 he was unaware of ARAR's
7 imminent deportation to
8 Canada, however he stated
9 that he knew that ARAR was
10 still in custody and that
11 there was a possibility that
12 ARAR would be sent to Syria.
13 Insp. Roy is only able to
14 confirm that the information
15 that he received most likely
16 came from a DFAIT colleague."

17 [TRANSLATION]

18 So the information you received
19 most likely from a DFAIT colleague concerns the
20 possibility that he be deported to Syria, the
21 possibility that Mr. Arar would be deported to
22 Syria?

23 MR. ROY: No; Mr. Arar's fear that
24 he would be deported to Syria.

25 MR. DAVID: Fear. But you agree

1 with me that Mr. Garvie's summary does not reflect
2 a subjective element, the fear that ...

3 The Garvie Report says "There ...
4 "

5 MR. ROY: Yes, if we could
6 continue on that point, it is ... please continue.

7 MR. DAVID: Okay.

8 [ENGLISH]

9 "Insp. Perron commented in
10 his report that is discussed
11 later, that Insp. Roy had
12 obtained the information
13 having read a consular visit
14 card that documented ARAR's
15 fear of being deported to
16 Syria."

17 [TRANSLATION]

18 And the Consular visit card, is
19 that a reference to the comment note?

20 MR. ROY: Yes.

21 MR. DAVID: Okay. What was the
22 reaction of the A-OCANADA members when you told
23 them about this fear scenario?

24 MR. ROY: When I mentioned that he
25 was afraid, what I noted was that one of the

1 investigators who was there repeated "Syria,"
2 which meant that this was not something that had
3 been considered at their level either, because as
4 I mentioned earlier that at ISI, what I told you
5 in connection with 9.

6 So it was the reaction that I
7 noted.

8 MR. DAVID: So a reaction of
9 surprise?

10 MR. ROY: I would describe it that
11 way, yes.

12 MR. DAVID: Was it taken
13 seriously? Was it simply set aside as not being
14 realistic?

15 MR. ROY: I could not tell you
16 that. I don't know.

17 MR. DAVID: Okay. After leaving
18 the A Division's Project A-O-C, the question
19 arises as to whether you also reported the content
20 of these documents to C.I.D. headquarters?

21 Do you remember anything like
22 that?

23 MR. ROY: No. I talked about that
24 somewhat earlier, to the effect that it is no
25 doubt what I did because that is what I would

1 normally have done, and I remember having thought
2 about it, but I cannot remember, that is to say
3 the person I dealt with or ... I cannot remember
4 at all.

5 MR. DAVID: This means that you
6 ... you cannot remember whether you met
7 Mr. Flewelling about those documents?

8 MR. ROY: Or anyone else.

9 MR. DAVID: Or anyone else. Do
10 you recollect whether copies were filed and left
11 with headquarters?

12 MR. ROY: No. No recollection.

13 MR. DAVID: Okay. But your normal
14 practice would have been to go to headquarters,
15 and report, normally?

16 MR. ROY: Yes. Definitely yes.

17 MR. DAVID: And normally, the
18 person to whom you would have spoken would have
19 been Mr. Flewelling?

20 MR. ROY: If he was there, yes.

21 MR. DAVID: Okay.

22 Mr. Commissioner, I would like to file a document
23 simply for the record. It is a SitRep dated
24 October 8, that describes Mr. Roy's presence at
25 A-OCANADA. Simply for the record.

1 THE REGISTRAR: 214.

2 MR. DAVID: Thank you.

3 EXHIBIT P-214: SitRep dated
4 October 8

5 MR. DAVID: We are now going to
6 move to October 9, Mr. Roy. I would like to refer
7 you to two documents.

8 The first is your personal notes
9 and I would like to refer you to page 21. We will
10 also look at Mr. Callaghan's notes.

11 So in your notes for the 9th,
12 there is an entry for 10:05 a.m.:

13 [ENGLISH]

14 "Call from ... "

15 [TRANSLATION]

16 -- someone --

17 [ENGLISH]

18 "He spoke to ... at 9:05 on
19 his cell. Had wanted to know
20 if he was held for, where he
21 will go after the process
22 prior to us going interview
23 him, he was told 'not
24 available', he was no longer
25 there, not coming to Canada."

1 [TRANSLATION]

2 So, this is a reference to
3 Mr. Arar?

4 MR. ROY: Yes.

5 MR. DAVID: And this is a
6 reference you learned from a member of A-O-C?

7 MR. ROY: Yes.

8 MR. DAVID: To the effect that
9 Mr. Arar was, firstly, no longer in New York?

10 MR. ROY: That's correct.

11 MR. DAVID: Was it also that he
12 was no longer in the United States or simply in
13 New York?

14 MR. ROY: I presume no longer in
15 the United States. Can I re-read it?

16 MR. DAVID: Yes, yes.

17 MR. ROY: I simply want to re-read
18 it.

19 MR. DAVID: Absolutely.

20 MR. ROY: I don't know what my
21 presumption was.

22 MR. DAVID: Okay. It's all right.
23 So certainly New York, and perhaps the United
24 States?

25 MR. ROY: Yes.

1 MR. DAVID: Okay. And that he
2 wasn't coming to Canada?

3 MR. ROY: That's right.

4 MR. DAVID:

5 [ENGLISH]

6 "Told him I was to advise my
7 counterpart and see what he
8 can find out."

9 [TRANSLATION]

10 MR. ROY: That's right.

11 MR. DAVID: Who then?

12 MR. ROY: Solomon.

13 MR. DAVID: Mr. Solomon?

14 MR. ROY: Yes, to see what he
15 could find out.

16 MR. DAVID: Find out, be aware of.

17 MR. ROY: What he could find out.

18 MR. DAVID: Okay:

19 [ENGLISH]

20 "Advised Jonathan who is
21 going to see person
22 responsible for case. Major
23 player is away for a few
24 days."

25 [TRANSLATION]

1 Was that Mr. Pardy who was out of
2 the country?

3 MR. ROY: Yes.

4 MR. DAVID: And do you know
5 whether Mr. Solomon followed up on your
6 information?

7 MR. ROY: Yes. Yes he left
8 immediately.

9 MR. DAVID: Okay. Do you know
10 whom he saw?

11 MR. ROY: At consular, no, I don't
12 know who it was, or who the contact is that he
13 saw.

14 MR. DAVID: Okay. Does the name
15 Helen Harris mean anything to you?

16 MR. ROY: Yes, I know Helen. It's
17 quite possible that it might have been her, but I
18 cannot tell you with any certainty who he went to
19 see.

20 MR. DAVID: He didn't tell you?

21 MR. ROY: No.

22 MR. DAVID: Okay:

23 [ENGLISH]

24 "It is clear that he is not
25 to mention what I have said

1 to him. He put his hand to
2 throat left to right and
3 zipped his mouth."

4 [TRANSLATION]

5 What was he referring to?

6 MR. ROY: It indicates quite
7 simply ... what it means is an agreement between
8 Mr. Solomon and myself. He said all right when I
9 told him, don't talk about it, because I was
10 concerned about the source of information and
11 instead of telling me "okay", what I would have
12 written was okay, he simply made the sign. It was
13 definitely meant for me because I was
14 uncomfortable owing to the information.

15 Mr. Solomon left immediately and
16 went to corroborate the information I had given
17 him to the effect that he had left. He returned
18 and that is when he said what follows.

19 MR. DAVID:

20 [ENGLISH]

21 "10:43 -- Jonathan and I
22 spoke to Jim Gould. He
23 advised Jonathan to contact
24 Helen Harris when I inquired
25 as to his whereabouts. He

1 wondered if Guantanamo Bay
2 could be another option
3 possibility as to his
4 whereabouts."

5 [TRANSLATION]

6 Is that Mr. Gould speculating?

7 MR. ROY: Yes.

8 MR. DAVID: This was before
9 Mr. Solomon went to see Mr. Pardy's replacement?

10 MR. ROY: No, after.

11 MR. DAVID: After?

12 MR. ROY: After, once it had been
13 confirmed that he was no longer there.

14 MR. DAVID: Okay.

15 [ENGLISH]

16 "Approximately 12:50, advises
17 me that Arar is now in Syria
18 according to ... to advise my
19 counterpart. Done
20 immediately. Scott, Jim,
21 Don."

22 [TRANSLATION]

23 Does this mean that your
24 counterparts are Scott, Jim and Don, or
25 counterparts at the RCMP?

1 MR. ROY: No, no. People with
2 whom I work at ISI.

3 MR. DAVID: Okay.

4 MR. ROY: Scott Heatherington, Jim
5 Gould and Don Saunders.

6 MR. DAVID: And of course you
7 shared that, with whom?

8 MR. ROY: With those three people.

9 MR. DAVID: With those three
10 people. Did you share the information with the
11 RCMP, colleagues at the RCMP?

12 MR. ROY: No. They were the ones
13 who sent me the notice.

14 MR. DAVID: They did what?

15 MR. ROY: The information that I
16 gave to ISI ...

17 MR. DAVID: Yes.

18 MR. ROY: ... came from the RCMP.

19 MR. DAVID: Yes. But on the other
20 hand, I understood that ISI was also conducting
21 their own research, taking their own steps to try
22 to understand what had happened?

23 MR. ROY: What I am telling you is
24 that it was determined that he was now in Syria.

25 MR. DAVID: Yes.

1 MR. ROY: I was advised ... The
2 RCMP advised me of this and I told the people at
3 ISI. That's all.

4 MR. DAVID: Okay.

5 MR. ROY: I did not contact anyone
6 else.

7 MR. DAVID: Perfect. Thank you.
8 We will now move on to the 16th
9 ... No, sorry. Just before leaving the 9th, let
10 us look at Mr. Callaghan's personal notes.

11 If we could file these notes for
12 October 9 as Exhibit P-215.

13 EXHIBIT P-215: Pat
14 Callaghan's personal notes.

15 --- Pause / Pause

16 MR. DAVID: The reference is to
17 the second of three pages, Mr. Roy. At 5:05 ,
18 Mr. Callaghan telephoned you:

19 [ENGLISH]

20 "At 5:05 I left the meeting
21 and called Richard Roy. I
22 informed him of the news on
23 Arar."

24 [TRANSLATION]

25 Is that the reference? It's at

1 the bottom of the page.

2 MR. ROY: Yes, that would be the
3 reference.

4 MR. DAVID: That's the reference.
5 So Mr. Callaghan was calling you at the end of the
6 day?

7 MR. ROY: Yes.

8 MR. DAVID: And that is when he
9 told you: according to our information ...

10 MR. ROY: I would have to read it
11 a little just before that.

12 MR. DAVID: No, it's okay. Take
13 your time.

14 --- Pause / Pause

15 MR. ROY: That's right. We're
16 speaking about the 9th there. So it would have to
17 be this time. That's nothing but the time, you
18 said the end of the day, but ...

19 MR. DAVID: It would seem to me
20 that it says 5:05.

21 MR. ROY: No. The time I have is
22 12:50. So I think that what is missing is "1" and
23 "2".

24 MR. DAVID: It's possible. It's
25 possible. The quality of the photocopy is not

1 very good.

2 MR. ROY: In any event, it
3 confirms that I was advised.

4 MR. DAVID: Very well.

5 Let us now move on to October 16,
6 and I refer you again to your personal notes. On
7 pages 22 and 23. What is involved is a meeting
8 held at the ISI office at the department. Several
9 people attended. There was Mr. Pilgrim for the
10 RCMP, Mr. Heatherington, Solomon, Mr. Saunders,
11 Ms. Collins, Mr. Pardy; there was also a
12 representative from the Secret Intelligence
13 Service or rather the Canadian Intelligence
14 Service I mean. And basically, it's Mr. Pardy who
15 chaired that meeting?

16 MR. ROY: That is correct.

17 MR. DAVID: And Mr. Pardy wanted
18 to know ... wanted to understand in fact, and to
19 try to reconstruct the facts and understand what
20 had happened and be able to somewhat explain what
21 exactly the string of events was with respect to
22 Mr. Arar?

23 MR. ROY: Yes.

24 MR. DAVID: Your notes say, on
25 line three of your entry for October 16:

1 [ENGLISH]

2 "Scott gave background. He
3 mentioned not been able to
4 get involved in the
5 investigation."

6 [TRANSLATION]

7 You seem to be saying that
8 Heatherington said that he was unable to get
9 involved in the investigation.

10 MR. ROY: No. What he was saying
11 was ... he said where we were precisely at that
12 point. And after that, he clarified the fact that
13 he realized that, as a member of Foreign Affairs,
14 he could not be aware of just how everything went
15 on within the investigations. The police
16 investigations are for the police. That is simply
17 what he was saying.

18 MR. DAVID: Okay.

19 We will now refer to
20 Exhibit P-137. Just to follow up on that
21 October 16 meeting. It is a document that was
22 given to you by Mr. Pilgrim on October 18, P-137,
23 and I would like to refer you to page 5. It is
24 what we have come to call the Pilgrim memo. Thus
25 it is the RCMP's follow-up action to Mr. Parady's

1 requests. This was given to you and you passed it
2 on to the appropriate people ...

3 MR. ROY: Exactly.

4 MR. DAVID: ... namely Mr. Pardy?

5 MR. ROY: Not Mr. Pardy, but
6 Mr. Heatherington, I believe, but at ISI.

7 MR. DAVID: Okay.

8 We move on now to October 22, and
9 I would like to refer you to a new exhibit, a new
10 exhibit which is a document dated October 22,
11 P-216.

12 P-216, Mr. Commissioner.

13 EXHIBIT P-216: Fax from
14 Richard Roy dated October 22,
15 2002

16 MR. DAVID: If you go to page 3,
17 you will see that it is a report or a document
18 that Ambassador Pillarella wrote about a meeting
19 he had with the Chief of Syrian Intelligence,
20 called the SMI, Syrian Military Intelligence, his
21 meeting with General Khalil of Syria.

22 MR. ROY: Yes.

23 MR. DAVID: It is a document that
24 was, apparently, transmitted to personnel at
25 Foreign Affairs and on page 1 of the document we

1 see that the document was sent by you on
2 October 22 to headquarters.

3 MR. ROY: That is correct.

4 MR. DAVID: Who gave you that
5 document?

6 MR. ROY: I'll check ...

7 MR. DAVID: Of course.

8 MR. ROY: ... my ... Can you tell
9 me once again where my ... not my notes, but my
10 ... my time line, please?

11 MR. DAVID: Your time line, that
12 is Exhibit P-208.

13 MR. ROY: I may have written it
14 down here, I'm not sure. It's someone at ISI if
15 that's all you want to know. Unless I'm mistaken.
16 As to precisely who it was, that is what I am
17 trying to find. No, I did not write it down, but
18 it was someone at ISI.

19 MR. DAVID: Okay. You can't
20 remember who?

21 MR. ROY: No.

22 MR. DAVID: Before such a document
23 was given to you for distribution, because it was
24 distributed at headquarters as well, and if you
25 look at page 2, you will see that from

1 headquarters, the document ... the second page of
2 the document.

3 MR. ROY: Yes, I have it.

4 MR. DAVID: The document went to
5 Project A-O-C from headquarters.

6 MR. ROY: Yes.

7 MR. DAVID: So my question, is
8 before receiving such a document, would
9 authorization be required from the Department of
10 Foreign Affairs for it to be distributed ...

11 MR. ROY: Within the RCMP?

12 MR. DAVID: Yes.

13 MR. ROY: Not that I am aware of.

14 MR. DAVID: No not inside ...
15 Excuse me. Is authorization required within the
16 Department of Foreign Affairs? That is what I am
17 asking.

18 MR. ROY: Oh! Okay. I don't
19 know.

20 MR. DAVID: It's a document ...

21 MR. ROY: I don't know.

22 MR. DAVID: You don't know?

23 MR. ROY: No.

24 MR. DAVID: So you don't know who
25 would have authorized it, if authorization had

1 been granted for such distribution ...

2 MR. ROY: I don't know whether
3 authorization is required.

4 MR. DAVID: Okay. And were there
5 conditions attached to the way in which the
6 document could be distributed within the RCMP?

7 MR. ROY: No. I am not aware of
8 any caveats there, or any distribution
9 restrictions. Is that what you meant?

10 MR. DAVID: Yes.

11 MR. ROY: No.

12 MR. DAVID: If there were any
13 conditions to be applied.

14 MR. ROY: I am not aware of any,
15 no.

16 MR. DAVID: And why would you have
17 been sent that document for distribution to the
18 RCMP? Were you told why?

19 MR. ROY: No.

20 MR. DAVID: We now move to
21 October 24, Mr. Roy, Exhibit P-93. It is a
22 consular report, and I refer you to your personal
23 notes on page 23. The entry is for October 24.

24 I will allow the Clerk to catch
25 up.

1 THE CLERK: Thank you.

2 MR. DAVID: P-93, Mr. Roy, you see
3 ... you have the document?

4 MR. ROY: Yes.

5 MR. DAVID: Please consult it.
6 You will see that it refers to a visit ... a
7 report on a consular visit with Mr. Arar in Syria
8 by the Canadian authorities from the Department of
9 Foreign Affairs ...

10 MR. ROY: Yes.

11 MR. DAVID: ... dated October 23,
12 and your notes on page 23 for October 24 state:

13 [ENGLISH]

14 "Approximately 1500 hours in
15 DFAIT consular report on Arar
16 given to me and I am told to
17 give copy to ... "

18 [TRANSLATION]

19 -- someone.

20 [ENGLISH]

21 And then you got a call from
22 somebody who also wants a copy.

23 [TRANSLATION]

24 You see?

25 MR. ROY: Yes, two persons from

1 the RCMP.

2 MR. DAVID: So it was within the
3 RCMP that you were distributing ...

4 MR. ROY: Yes.

5 MR. DAVID: Okay. Who then asked
6 you to distribute the document? Within Foreign
7 Affairs, who asked you to distribute the document
8 to the RCMP?

9 MR. ROY: I cannot remember who it
10 was, but it was someone again from ISI. It was at
11 ISI that I received the documents.

12 MR. DAVID: And once again, was
13 authorization given to you ... to your knowledge
14 was there any authorization to distribute the
15 document?

16 MR. ROY: I am not aware of that.

17 MR. DAVID: Based on our
18 understanding of the policies ... the procedures
19 at Foreign Affairs, it would require Mr. Pardy's
20 authorization for that type of document to be
21 shared, or distributed to the RCMP. Were you ever
22 aware that Mr. Pardy was involved in the decision
23 to distribute the document, to share it with the
24 RCMP?

25 MR. ROY: I don't know.

1 MR. DAVID: Were there conditions
2 on the distribution of that document to the RCMP?

3 MR. ROY: No.

4 MR. DAVID: Restrictions?

5 MR. ROY: No.

6 MR. DAVID: Okay.

7 We now move on to October 25,
8 which leads us to a new exhibit. It is Exhibit
9 ... the personal notes of Mr. Callaghan dated
10 October 25.

11 --- Pause / Pause

12 EXHIBIT P-217: Pat
13 Callaghan's personal notes.

14 THE COMMISSIONER: 217.

15 MR. DAVID: 217, thank you.

16 There is an entry at 1345,

17 Mr. Roy, which says:

18 [ENGLISH]

19 "Richard Roy of DFAIT
20 arrived. I received a
21 two-page document from him."

22 [TRANSLATION]

23 Quite simply then, to your
24 knowledge, does this involve, do you recollect,
25 whether it is the consular report of October 23 or

1 is it Mr. Pillarella's report of October 22? Can
2 you remember this?

3 MR. ROY: I believe it is the one
4 that someone else contacted me about, the one from
5 the 24th.

6 MR. DAVID: The 24th?

7 MR. ROY: The 24th.

8 MR. DAVID: The consular report

9 ...

10 MR. ROY: Yes.

11 MR. DAVID: ... concerning the
12 visit to Syria?

13 MR. ROY: I believe so, yes.

14 MR. DAVID: Okay. Thank you.

15 We will now go to November 6 and I
16 refer you to page 24 of your notes. It concerns a
17 meeting about the proposed trip by the Canadian
18 Security Intelligence Service to Syria and that
19 gets us to page ...

20 I would also like to refer to your
21 time line, Mr. Roy, and for your entry that would
22 be page 3 of 9.

23 So on November 6, in your time
24 line, you say:

25 [ENGLISH]

1 "1635 -- meeting at DFAIT
2 with Franco Pillarella,
3 Ambassador in Syria.
4 Discussed where the
5 expectations of the Syrians
6 and CSIS meet. Copy of brief
7 of the case of Maher Arar
8 (Arabic) given to
9 Superintendent Pilgrim (see
10 file)."

11 [TRANSLATION]

12 My question is what is referred to
13 here, the "Copy of brief of the case of Maher Arar
14 (Arabic)"? Do you know?

15 MR. ROY: Yes, that would be what
16 we might call a statement perhaps.

17 MR. DAVID: The statement ...

18 MR. ROY: In Arabic.

19 MR. DAVID: ... in Arabic, from
20 Mr. Arar ...

21 MR. ROY: Mm-hmm.

22 MR. DAVID: ... obtained by the
23 Syrian authorities and transmitted by
24 Mr. Pillarella to the Canadians?

25 MR. ROY: Yes. It was not

1 Mr. Pillarella who gave it to me ...

2 MR. DAVID: No.

3 MR. ROY: ... to hand it out, but
4 that's it.

5 MR. DAVID: Okay. Who gave you
6 the document?

7 MR. ROY: I'm not certain. I
8 thought it was Mr. Heatherington, but I'm not
9 100 percent sure. I am sure, on the other hand,
10 that it was somebody at ISI.

11 MR. DAVID: And here again, to
12 your knowledge, who authorized your sharing this
13 document with headquarters, including Mr. Pilgrim?

14 MR. ROY: I can't tell you.

15 MR. DAVID: To your knowledge, it
16 was never discussed?

17 MR. ROY: Not as far as I know,
18 no.

19 MR. DAVID: You were given the
20 document at your level?

21 MR. ROY: That's right.

22 MR. DAVID: And were you asked to
23 share it with headquarters?

24 MR. ROY: Yes, yes. I gave it to
25 Mr. Pilgrim.

1 MR. DAVID: Okay. Was it ... to
2 your knowledge did you distribute it within A-O-C?

3 MR. ROY: No.

4 MR. DAVID: Only headquarters?

5 MR. ROY: Yes. Mr. Pilgrim was at
6 the meeting. If I am not mistaken, I gave it to
7 him immediately afterwards.

8 MR. DAVID: And to your knowledge,
9 were there discussions at the RCMP, at your level,
10 at the level of your colleagues at the RCMP, about
11 the reliability to be assigned to this statement?

12 MR. ROY: Not any that I was
13 involved in.

14 MR. DAVID: Okay. Did you have
15 discussions ... Were you aware of any discussions
16 about how the document that came from Syria may
17 have been obtained through torture?

18 MR. ROY: No. I was not involved
19 in any discussion of that kind, no.

20 MR. DAVID: Were there discussions
21 or comments about the level of respect for human
22 rights in Syria or not?

23 MR. ROY: When?

24 MR. DAVID: At the time.

25 MR. ROY: At the meeting itself?

1 MR. DAVID: At the meeting.

2 MR. ROY: Yes, a woman there
3 mentioned it, as is written in my time line,
4 respecting their methods.

5 MR. DAVID: Mm-hmm.

6 MR. ROY: And I believe that there
7 had been discussion of human rights, but not
8 torture as such, no. I never heard anything to
9 that effect.

10 MR. DAVID: Okay.

11 Now, for November 18, I would like
12 to refer you to pages 24 and 25 of your notes. On
13 page 24 at the bottom, you referred to the date,
14 the 18th, and on page 25, you wrote the following:
15 [ENGLISH]

16 "1335 Pilgrim. Solicitor
17 General called Friday and
18 warned of DFAIT employee.
19 Was told by Powell right hand
20 that if he were to be asked
21 about Arar that he would have
22 said RCMP was supporting of
23 his transfer. Jonathan said
24 that during meeting Powell
25 said that law enforcement was

1 aware of what was going on
2 and orally, not in meeting
3 notes, that law enforcement
4 asked to have him sent away."

5 [TRANSLATION]

6 So let's consider the first
7 paragraph. These are your personal notes,
8 Mr. Roy, in connection with what you noted at a
9 meeting between Mr. Powell and Mr. Graham, the
10 Minister of Foreign Affairs. Was that the
11 context?

12 MR. ROY: In the first paragraph,
13 the subject of discussion is the Solicitor
14 General.

15 MR. DAVID: Yes, I'm sorry. You
16 are right of course and my reference is mistaken
17 because on November 15, there was a meeting
18 between Mr. Graham and Mr. Powell. But here, what
19 is involved is another matter.

20 It was the Solicitor General,
21 Mr. Wayne Easter, who called someone on Friday, as
22 you noted.

23 My first question is whether this
24 information came from Mr. Pilgrim? You mentioned
25 Pilgrim at the top of the page.

1 MR. ROY: Yes, that's it. I'm not
2 certain. I believe so, but I'm not certain. I
3 would think that yes, unless it was information
4 that I was supposed to pass on to Wayne Pilgrim,
5 but he was probably the one who advised me of it.

6 MR. DAVID: Okay.

7 MR. ROY: But I'm not 100 percent
8 certain. I cannot see clearly from this note.

9 MR. DAVID: Okay. So in that note
10 again:

11 [ENGLISH]

12 "Solicitor General called
13 Friday and warned of DFAIT
14 employee. Was told by Powell
15 right hand ... "

16 [TRANSLATION]

17 What is this entry referring to?
18 Who called ... Who did the Solicitor General call?

19 MR. ROY: But if ... I don't know
20 who. It may have been Mr. Pilgrim or his office
21 or the RCMP ...

22 MR. DAVID: Okay.

23 MR. ROY: ... it is likely, but I
24 don't know. I don't know ... I can't tell you any
25 more about it other than what I am reading there

1 or you yourself are reading there ...

2 MR. DAVID: Except that clearly
3 noted is the idea that there was someone, the
4 Minister or someone from his office, his
5 department, who called someone at the RCMP,
6 perhaps Mr. Pilgrim and gave him a warning. That
7 is what you noted.

8 MR. ROY: Yes.

9 MR. DAVID:

10 [ENGLISH]

11 " ... warned of DFAIT
12 employee ... "

13 [TRANSLATION]

14 So an employee from the Department
15 of Foreign Affairs received the information from
16 Mr. Powell ... from Mr. Powell's right hand
17 man ...

18 MR. ROY: Yes.

19 MR. DAVID: ... so one of
20 Mr. Powell's assistant?

21 MR. ROY: Yes.

22 MR. DAVID: That is what you were
23 noting?

24 MR. ROY: Yes, absolutely.

25 MR. DAVID: That:

1 [ENGLISH]

2 "If he were asked, if he were
3 to be asked about Arar ... "

4 [TRANSLATION]

5 And here, I am asking who ... to
6 whom are you referring?

7 MR. ROY: Powell, I would imagine.

8 MR. DAVID: Powell, Okay:

9 [ENGLISH]

10 "And he would ... ",

11 [TRANSLATION]

12 I would imagine that it's "have"?

13 MR. ROY: He would have said.

14 MR. DAVID: He would have said?

15 MR. ROY: He would have said that
16 the RCMP was supporting his transfer.

17 MR. DAVID: So are we to
18 understand here that Mr. Powell was of the opinion
19 ...

20 MR. ROY: Yes.

21 MR. DAVID: ... or understood
22 that the RCMP gave its blessing to Mr. Arar's
23 transfer?

24 MR. ROY: That is what it says
25 there. It does not clearly state Mr. Powell.

1 There were lots of people involved, there is a lot
2 of hearsay, but that is indeed the essence.

3 MR. DAVID: Yes, but the idea is
4 that ... okay. The idea is that there was ...
5 the transfer of Mr. Arar from the United States to
6 Syria, I would imagine, would have been sanctioned
7 or approved or that there was some sign of
8 approval for this action from the RCMP.

9 Is that what you were noting?

10 MR. ROY: Well, that is highly
11 likely what would have been said. That is what it
12 says.

13 MR. DAVID: Now, I want to say,
14 it's nevertheless startling information. You
15 agree that...

16 MR. ROY: If the source is correct
17 there...

18 MR. DAVID: If it's true, it's
19 nevertheless... it will be on page one tomorrow
20 morning?

21 MR. ROY: Yes.

22 MR. DAVID: Right. And lastly, I
23 would ask you who transmitted ... you yourself
24 noted that information. You yourself understood
25 that it was important information?

1 MR. ROY: Yes.

2 MR. DAVID: And I am asking you
3 ... I am going back to my question: Who told you
4 that?

5 MR. ROY: As I mentioned earlier,
6 it is highly likely that it was Mr. Pilgrim who
7 mentioned it.

8 MR. DAVID: Okay. Do you know
9 where Mr. Pilgrim got that information or where it
10 came from?

11 MR. ROY: No.

12 MR. DAVID: And the second
13 paragraph continues, stating:

14 [ENGLISH]

15 "Jonathan said that during
16 meeting, Powell said that Law
17 Enforcement was aware of what
18 was going on."

19 [TRANSLATION]

20 So there is a reference here to
21 Jonathan, and I would imagine that it is Jonathan
22 Solomon?

23 MR. ROY: Yes.

24 MR. DAVID: Does that mean that
25 Mr. Solomon was there at the discussion?

1 MR. ROY: I doubt it.

2 MR. DAVID: Okay. Then how would
3 you explain how Mr. Solomon comes into the
4 picture?

5 MR. ROY: Well, it's what he
6 heard, I don't know from whom, but what
7 Mr. Solomon mentioned was that at a meeting, I
8 don't know with whom, Mr. Powell had mentioned
9 what was written here, that the law enforcement
10 people were aware of what was going on.

11 MR. DAVID: Okay. But ... then
12 let's go on perhaps with the second paragraph just
13 to properly understand the idea being expressed.

14 You noted that Mr. Solomon said
15 that in the course of a meeting with Mr. Powell:

16 [ENGLISH]

17 "Law Enforcement was aware of
18 what was going on."

19 [TRANSLATION]

20 Now do you feel that law
21 enforcement is a reference to the RCMP?

22 MR. ROY: Yes.

23 MR. DAVID: Right:

24 [ENGLISH]

25 "And orally ... "

1 [TRANSLATION]

2 and here, you specified that it had not been noted
3 during ... in the notes for that meeting, but that
4 it had been said, but that it had not been
5 recorded that the RCMP had "asked him to be sent
6 away"?

7 MR. ROY: That is what I read.

8 MR. DAVID: Okay. Then initially,
9 Mr. Roy, for this entry in your notes, you
10 initially mentioned what appears to be information
11 that came from Mr. Pilgrim about a subject in
12 which it would appear that the RCMP gave its
13 approval to Mr. Arar's transfer to Syria.

14 And secondly, you noted the
15 information that came from Mr. Solomon to the
16 effect that Powell said that the RCMP was aware of
17 the fact that Mr. Arar would be deported to Syria
18 and that the RCMP had even asked that Mr. Arar be
19 deported to Syria? Once again ...

20 MR. ROY: That is what I am
21 reading there, absolutely.

22 MR. DAVID: ... this is very
23 startling information?

24 MR. ROY: Yes, and I am unaware of
25 the source.

1 MR. DAVID: But how come, under
2 what circumstances did you obtain these two
3 different sources, namely Mr. Pilgrim or
4 Mr. Solomon, on such a startling subject. What
5 was the context in which this occurred?

6 MR. ROY: Probably on one occasion
7 it would have been Mr. Pilgrim who contacted me
8 ...

9 MR. DAVID: Yes.

10 MR. ROY: ... I would have ... I
11 would have informed myself about the matter with
12 ISI and the feedback that I would have received
13 would have been what was mentioned about Jonathan.

14 I presume that that is how things
15 went.

16 MR. DAVID: Does this mean that
17 you were asked ... that Mr. Pilgrim asked you,
18 when he was giving you that information, if you
19 could check it with your ISI colleagues to find
20 out whether they have heard about anything like
21 this, about anything similar?

22 MR. ROY: I presume that it was
23 something along those lines, absolutely.

24 MR. DAVID: So headquarters was
25 concerned about the question. Headquarters,

1 Mr. Pilgrim and his representative, asked you to
2 take action yourself with the Department of
3 Foreign Affairs?

4 MR. ROY: Certainly. That's how I
5 see it.

6 MR. DAVID: And on that you
7 consulted Mr. Solomon about this issue?

8 MR. ROY: Yes.

9 MR. DAVID: And you also learned
10 from Mr. Solomon ... you found out that from his
11 point of view, from the information he had, that
12 was ... that confirmed it but went even further.
13 Further in the sense that he, it would appear,
14 told you that based on his information the RCMP
15 had even asked that Arar be transferred to Syria.

16 Is that what you learned from
17 Mr. Solomon?

18 MR. RICHARD ROY: Yes.

19 MR. DAVID: So what did you do
20 with that? You had very important, highly
21 significant information. Mr. Pilgrim or someone
22 else at Headquarters asked you to investigate.
23 You carried out your investigation, came across
24 some information, and things were going from bad
25 to worse. What did you do?

1 MR. RICHARD ROY: Well, of course
2 if you describe it that way I would have apprised
3 Mr. Pilgrim of what Mr. Solomon had told me.

4 MR. DAVID: Yes. And then what?

5 MR. RICHARD ROY: What is the RCMP
6 doing with this or what is Foreign Affairs doing
7 with that, I can't -- I don't know.

8 MR. DAVID: Did Mr. Solomon claim
9 to have attended this meeting at which Mr. Powell
10 said those things?

11 MR. RICHARD ROY: No, I don't
12 recall him -- him saying that he had been there,
13 no.

14 MR. DAVID: Did Mr. Solomon, when
15 he told you -- because you noted it that he told
16 you, that the RCMP was aware of what was going to
17 happen to Mr. Arar, that he would be deported to
18 Syria, and what's more, that it was the RCMP that
19 had asked that he be deported to Syria?

20 Did you ask Mr. Solomon how he had
21 come by this information?

22 MR. RICHARD ROY: I don't remember
23 if I asked him. Definitely, or if he gave me an
24 answer, I ---

25 MR. DAVID: You don't remember?

1 MR. RICHARD ROY: --- I don't
2 know.

3 MR. DAVID: Was there a follow-up,
4 something else after that? Did you hear more
5 information about the RCMP's involvement in what
6 happened to Mr. Arar?

7 MR. RICHARD ROY: No, not that I
8 can remember, that I can see here.

9 MR. DAVID: And in the days or
10 weeks after that, Mr. Roy, did you take interest
11 in the matter? Did you continue looking into the
12 matter?

13 MR. RICHARD ROY: I'd have to rely
14 on my notes, but I don't think so. There's only
15 -- there's another note that comes immediately
16 after, but in the following days, I couldn't tell
17 you.

18 MR. DAVID: And how did you react,
19 you, to these two pieces of information from Mr.
20 Pilgrim and Mr. Solomon?

21 MR. RICHARD ROY: Well, how I
22 reacted. I don't know the sources of these -- I
23 don't know the sources or the validity, but I'm
24 not aware of one case or another or who said what
25 to whom in which context. I couldn't tell you

1 more about that.

2 MR. DAVID: But you nevertheless
3 understood that it was a serious matter? You
4 understood that?

5 MR. RICHARD ROY: Yes, of course.

6 MR. DAVID: Let's move on, Mr.
7 Roy, to November 20, and I would ask you to go to
8 pages 9 and 10 -- 9 and 10 of your notes. Let's
9 go back. They're handwritten versions. Perhaps
10 it would be better if you read them, pages 9 and
11 10 of your personal notes. It's P-206. I'm
12 sorry.

13 MR. RICHARD ROY: Sorry. Which
14 page? Sorry.

15 MR. DAVID: Pages 9 and 10.

16 MR. RICHARD ROY: Okay. What do
17 you want to know?

18 MR. DAVID: Are these your notes
19 concerning obtaining a legal opinion on the
20 admissibility of Mr. Arar's statement from Syria?

21 MR. RICHARD ROY: No.

22 MR. DAVID: Could you read your
23 notes for the record, Mr. Roy? Because it's very
24 difficult to understand.

25 MR. RICHARD ROY: From where?

1 MR. DAVID: From page 9, please.

2 MR. RICHARD ROY:

3 [ENGLISH]

4 "At 12:10 pm, Jonathan got
5 info. from counsellor in
6 Egypt. He was brought to
7 Court."

8 Okay, but we're not talking about
9 Mr. Arar, here.

10 MR. DAVID: Okay. Continue.

11 MR. RICHARD ROY:

12 "He was brought to Court.
13 Judge said he saw no reason
14 to keep him. He was sent
15 back to another jail."

16 MR. DAVID: Okay. That's not Mr.
17 Arar?

18 MR. RICHARD ROY: No.

19 MR. DAVID: Okay. Continue.

20 MR. RICHARD ROY:

21 "Since he has now gone to
22 Syria, has Cabana heard back
23 from justice."

24 [TRANSLATION]

25 And all that deals with Mr. Arar here is "Since he

1 has now gone to Syria", and again, I'm assuming
2 it's about Mr. Arar's case, but I'm not sure.

3 MR. DAVID: Okay. But:

4 [ENGLISH]

5 "Since he has now gone to
6 Syria, has Cabana heard back
7 from justice regarding
8 admissibility of statements
9 received by other
10 authorities?"

11 [TRANSLATION]

12 Are we dealing here with the
13 admissibility of Mr. Arar's statement from the
14 Syrians?

15 MR. RICHARD ROY: It definitely
16 deals with that, but about whom, I couldn't say, I
17 don't know.

18 MR. DAVID: Well, that is, we know
19 that on November 6 the RCMP obtained a copy of Mr.
20 Arar's Syrian statement, isn't that right?

21 MR. RICHARD ROY: Yes, yes, but

22 ---

23 MR. DAVID: And your notes here
24 are dated November 20. Apart from Mr. Arar, did
25 you have a statement from another Canadian

1 imprisoned outside Canada?

2 MR. RICHARD ROY: Me, no.

3 MR. DAVID: So, is -- we can infer
4 that it deals with the matter?

5 MR. RICHARD ROY: It's reasonable
6 to infer this. I'm not certain that's the case,
7 but it's reasonable to infer this.

8 MR. DAVID: Okay. Let's now go to
9 Exhibit P-183. In fact, Mr. Clerk, never mind,
10 I'll -- I'll skip it. Sorry.

11 Mr. Roy, if you could go back, I'm
12 still on page 10 of your notes, dealing with the
13 statement and the admissibility of the Syrian
14 statement.

15 Your notes -- continue. You say:
16 "Cabana" -- is that "aware"?

17 MR. RICHARD ROY: Yes:

18 "Cabana aware, unable to
19 reach Flewelling."

20 MR. DAVID: After? "Will discuss
21 ---"

22 MR. RICHARD ROY:

23 "Will discuss it again next
24 week, difficulty with J.C.,
25 Justice Canada."

1 MR. DAVID: Okay.

2 MR. RICHARD ROY: Then mention is
3 again made of admissibility.

4 MR. DAVID: The potential
5 admissibility here in Canada of a Syrian statement
6 made by Mr. Arar?

7 MR. RICHARD ROY: Mr. Arar or
8 someone else, yes.

9 MR. DAVID: Is that it?

10 MR. RICHARD ROY: Yes.

11 MR. DAVID: Who asked you to
12 contact Mr. Flewelling about this? Was it on your
13 own initiative or did Mr. Cabana or someone else
14 ask you to call Mr. Flewelling about this?

15 MR. RICHARD ROY: I don't
16 remember.

17 MR. DAVID: Okay. Let's go to
18 April 23, and I would like to refer you to Exhibit
19 P-94, Mr. Roy. It's an e-mail from Mr.
20 Pillarella, Ambassador Pillarella, concerning a
21 visit from two Canadian MPs, Ms. Caterall and Mr.
22 Assadorian, who went to Syria, yes, and who
23 visited Mr. Arar, among other things.

24 You also refer to this in your
25 time line?

1 MR. RICHARD ROY: That's correct.

2 MR. DAVID: And I can refer you to
3 page 4 of your time line concerning this entry.

4 You wrote:

5 [ENGLISH]

6 "e-mail -- Damascus, approved
7 by Pillarella regarding visit
8 of M.P.s file sent to
9 Reynolds."

10 [TRANSLATION]

11 Who's Reynolds?

12 MR. RICHARD ROY: Inspector Rick
13 Reynolds, now Superintendent Rick Reynolds. He
14 was -- I think it was called FIB at the time or --
15 it's National Security.

16 MR. DAVID: Okay. But it's
17 headquarters?

18 MR. RICHARD ROY: Yes, yes,
19 absolutely.

20 MR. DAVID: So, who sent you this
21 e-mail? That's the first question.

22 MR. RICHARD ROY: I didn't note it
23 down. It's ISI again, same process as the others.

24 MR. DAVID: And who would have
25 given the authorization that it be sent to Mr.

1 Reynolds?

2 MR. RICHARD ROY: Same process.

3 MR. DAVID: Okay. Were there
4 conditions on the caveats or conditions,
5 restrictions on this transmission?

6 MR. RICHARD ROY: No, not
7 specifically, but since you mention caveats, I
8 think it always goes without saying in the field,
9 we talk about third-party caveats, that's what it
10 is. I think people in the community are aware of
11 it.

12 MR. DAVID: Okay. I'd like to
13 refer you to your personal notes with regard to
14 April 29 and 30, page 25.

15 Mr. Roy, I'll -- I forgot to refer
16 you to a document, if you'll allow me.

17 I'd like to refer you to P-183.
18 It's a meeting, Mr. Roy, that was held -- I'll let
19 you read the document, but it's a meeting that was
20 held on February 28, 2003, and that e-mail dated
21 March 3, 2003, refers to this meeting?

22 MR. RICHARD ROY: Yes.

23 MR. DAVID: The subject is DFAIT
24 Dec., so it's a presentation concerning consulate
25 services related to terrorist cases.

1 And we learn from this e-mail that
2 Mr. Livermore chaired the meeting:

3 [ENGLISH]

4 "Purpose of meeting was to
5 get more clarify from the
6 RCMP concerning"

7 --- something ---

8 "to talk to Mr. Arar,
9 discussions with Arar will be
10 in the context of him as a
11 witness. In the case of
12 Arar, Marilyn Caterall will
13 also be visiting from
14 humanitarian perspective. It
15 was agreed that the RCMP
16 would later visit until two
17 weeks after the Caterall
18 visit meeting on the above
19 was productive."

20 [TRANSLATION]

21 Did you attend this meeting?

22 MR. RICHARD ROY: Yes.

23 MR. DAVID: Could you tell us a
24 bit about the topic, the purpose? The RCMP had
25 plans to go meet, to interrogate Mr. Arar at the

1 time in Syria?

2 MR. RICHARD ROY: Yes, I believe
3 so.

4 MR. DAVID: Could you tell us
5 about the context?

6 MR. RICHARD ROY: Well, the
7 context, I know it was mentioned that we should
8 speak with one voice. It was something that was
9 mentioned around the table, and also, the RCMP's
10 request, indeed, according to the meeting, the
11 RCMP intended to go to Syria, at least it was
12 considered, and had agreed that it not take place
13 for a certain period of time, before the MPs paid
14 their visit. That's all.

15 MR. DAVID: Okay.

16 MR. RICHARD ROY: It corroborates
17 this.

18 MR. DAVID: Okay. Now I take you
19 to October 29 and 30, and if we could refer to
20 page 25 of your notes and a new document I'd like
21 to enter now.

22 THE REGISTRAR: 218.

23 EXHIBIT NO. P-218: Personal
24 notes of another
25 investigator.

1 MR. DAVID: 218. So, Exhibit
2 P-218, these are personal notes of another member
3 of the investigation team, an investigator on the
4 Project A-O-C team, Mr. Roy. Okay?

5 MR. RICHARD ROY: Which date did
6 you say, please?

7 MR. DAVID: Go to page 4 of 5.

8 MR. RICHARD ROY: Okay.

9 MR. DAVID: There's an entry on
10 page 4 and on page 5 for April 29 and 30, 2003.
11 At the bottom of page 4, Exhibit P-218, we read:
12 [ENGLISH]

13 "Discussed Mr. Arar's
14 contacts with DFAIT. Asked
15 that, call inspector Roy at
16 DFAIT to get reports.
17 Consular visits as stated in
18 today's Ottawa Citizen
19 article and then called and
20 left a message for inspector
21 Roy."

22 And there's entry after that for
23 4:22 p.m.:

24 "Received a call from Roy at
25 DFAIT who was told about the

1 Ottawa Citizen article about
2 Arar and consular visits with
3 him in Syria. Inspector Roy
4 was not aware that the visits
5 had occurred, but would find
6 out, he had known that two
7 members of Parliament were
8 going to see Arar in the
9 H.Q.C. and were all aware of
10 this."

11 And then, for October 30, at the
12 bottom of page 5, it's written:

13 "--- provided A-OCANADA with
14 a Q&A copy from DFAIT about
15 Arar."

16 And your personal notes, Mr. Roy,
17 for the 29th say this:

18 "Approximately 1630 received
19 message ---"
20 --- from someone ---
21 "--- who asked me for some
22 information regarding Arar as
23 they relate to him on the
24 newspapers."

25 I think it's the same reference.

1 MR. RICHARD ROY: Yes.

2 MR. DAVID:

3 "He did not know that
4 consullor had seen him at
5 many occasions and two
6 Members of Parliament had
7 seen him in Syria.
8 Approximately 1645 contacted
9 Myra Pastyr-Lupul who advised
10 me of the situation. There
11 is a political movement to
12 ensure the liberation of Arar
13 prior to his being accused in
14 Syria. The Members of
15 Parliament even want to go as
16 far as Monsieur Chrétien by
17 going by Manley, Graham and
18 Easter."

19 And then you say:

20 "Rick Reynolds advised copy
21 of question Q&A sent to him.
22 He will update ---"
23 --- something.

24 [TRANSLATION]

25 The question seems -- you seem to

1 be asked -- the A-OCANADA project seems to be
2 seeking information. It certainly seems to be
3 looking for other consular reports about consular
4 visits with Mr. Arar in Syria.

5 Was that the case? Were you asked
6 to provide other consular reports?

7 MR. RICHARD ROY: I don't remember
8 a specific request for consular reports. The
9 request more or less concerned the visit of the
10 two members of Parliament which had taken place,
11 and it seemed that the individual in question was
12 not aware of the status of the visit, et cetera.
13 So, I contacted Mr. Reynolds, who took care of
14 apprising that person.

15 MR. DAVID: Of apprising the
16 investigator of A-O-C ---

17 MR. RICHARD ROY: Of apprising the
18 investigator of what was going on.

19 MR. DAVID: Okay. Did you receive
20 a report concerning the MPs' visit from your ISI
21 colleagues?

22 MR. RICHARD ROY: I think so.

23 MR. DAVID: Did you forward that
24 document to the A-OCANADA team?

25 MR. RICHARD ROY: I would have.

1 MR. DAVID: And then, we also see
2 that you obtained, Mr. Roy, the Q&As, the
3 questions and answers?

4 MR. RICHARD ROY: I can answer
5 you.

6 MR. DAVID: Yes.

7 MR. RICHARD ROY: It's written --
8 maybe we've already covered this -- it's April 23,
9 "Regarding visit of MPs sent to Reynolds." That's
10 what you're talking about, I think.

11 MR. DAVID: Yes. That's in your
12 time line, right?

13 MR. RICHARD ROY: Yes.

14 MR. DAVID: Okay.

15 Now we'll go to your notes for May
16 8, page 26. It's a meeting held to discuss a memo
17 Mr. Pardy had drafted suggesting that the
18 Solicitor General and the Minister of Foreign
19 Affairs take a common approach with respect to
20 their counterpart in Syria, the Syrian Minister of
21 Foreign Affairs.

22 MR. RICHARD ROY: Yes.

23 MR. DAVID: And you attended a
24 meeting to discuss this approach?

25 MR. RICHARD ROY: Correct.

1 MR. DAVID: You noted this meeting
2 on May 8.

3 And discussions continued on May
4 12 regarding this same matter, and you were also
5 at this second meeting?

6 MR. RICHARD ROY: Yes.

7 MR. DAVID: Okay. And after these
8 two meetings, where did things stand?

9 MR. RICHARD ROY: We were at the
10 point of agreeing on the contents of the letter,
11 among other things.

12 MR. DAVID: Had it been agreed
13 that both the Minister of Foreign Affairs and the
14 Solicitor General would sign the letter or was it
15 agreed at the end of the second meeting that the
16 Solicitor General would not sign any letters?

17 MR. RICHARD ROY: There wasn't any
18 question of signing any letters, but if you
19 continue in the time line, we come to the final
20 wording on which everyone agreed. It continues, I
21 believe.

22 MR. DAVID: But on May 12, Mr. Roy
23 ---

24 MR. RICHARD ROY: No, it hadn't
25 been done.

1 MR. DAVID: --- what was ---

2 MR. RICHARD ROY: It hadn't been
3 finalized by May 12.

4 MR. DAVID: There still was no
5 agreement?

6 MR. RICHARD ROY: No.

7 MR. DAVID: Okay. The issue
8 hadn't been resolved?

9 MR. RICHARD ROY: No.

10 MR. DAVID: Okay.

11 You have an entry on page 27 of
12 your notes for May 23:

13 [ENGLISH]

14 "Reynolds, Arar and possible
15 visit by DFAIT. They will
16 advise 'A' and see if there
17 is a concern and a list of
18 questions could be obtained
19 to pass on to DFAIT."

20 [TRANSLATION]

21 Can you tell me what this is
22 about?

23 MR. RICHARD ROY: It's that I had
24 simply been asked, what's written here, to ask
25 whether there was -- I didn't know, and I still

1 don't know the context. Whom are we talking about
2 exactly, but the question was, do you have
3 questions ---

4 MR. DAVID: But it's Mr. Reynolds
5 of ---

6 MR. RICHARD ROY: --- for Arar.

7 MR. DAVID: Mr. Reynolds of
8 Headquarters asked you ---

9 MR. RICHARD ROY: No, no. Someone
10 at ISI had asked me. So I asked Mr. Reynolds for
11 it, Mr. Reynolds was taking care of it, and it was
12 never followed up with me.

13 MR. DAVID: There was no follow-
14 up, to your knowledge?

15 MR. RICHARD ROY: No.

16 MR. DAVID: Okay. Now I'll take
17 you to Exhibit -- no, I'm sorry, a new exhibit
18 we'll enter, dated June 17.

19 THE REGISTRAR: 219.

20 EXHIBIT NO. P-219: An e-mail
21 dated June 17, 2003.

22 MR. DAVID: Thank you. You know,
23 Mr. -- in any case, maybe you don't know, but the
24 final version of Mr. Parady's memo is dated June 5,
25 2003.

1 Mr. Roy, according to this memo,
2 only the Minister of Foreign Affairs would sign
3 the letter to his colleague. The letter would
4 contain -- the language is -- and on June 7, this
5 e-mail, which is from the Office of the Minister
6 of Foreign Affairs, asks whether the RCMP, Office
7 of the Solicitor General and CSIS should be
8 consulted as to whether they could agree on
9 stronger language that would be used in the letter
10 to the Syrian Minister.

11 And here we see the response,
12 which seems to propose such a letter. Did you
13 read this letter, because "notified Richard Roy of
14 above" is written at the bottom of the page?

15 MR. RICHARD ROY: Yes.

16 MR. DAVID: And what is written
17 above is:

18 [ENGLISH]

19 "Mr. Arar is currently
20 subject of a National
21 Security investigation in
22 Canada although there is not
23 enough evidence at this time
24 to warrant criminal code
25 charges."

1 [TRANSLATION]

2 Were you made aware of this?

3 MR. RICHARD ROY: Yes, yes, it's
4 in my time line, dated the 17th.

5 MR. DAVID: Who informed you of
6 the wording, the contents?

7 MR. RICHARD ROY: ISI again.

8 MR. DAVID: Someone at ISI; can
9 you be more specific?

10 MR. RICHARD ROY: Absolutely. I
11 sent the document, without the handwritten part
12 here, I don't think it was there, but I sent the
13 document to CID, which sent me back another --
14 another way, shall we say, of wording the letter.

15 MR. DAVID: Okay.

16 MR. RICHARD ROY: And the
17 description here of Mr. Arar, in the handwritten
18 part, I imagine this was a contribution from
19 someone at ISI:

20 [ENGLISH]

21 "Mr. Arar is currently
22 subject of a National
23 Security Investigation."

24 [TRANSLATION]

25 Did ---

1 MR. RICHARD ROY: I don't know, I
2 have no idea. It might have been Mr. Guimond. I
3 don't know whom it came from.

4 MR. DAVID: You don't know who
5 wrote this handwritten part?

6 MR. RICHARD ROY: No, it's not my
7 handwriting.

8 MR. DAVID: But, it's because it
9 says:

10 "Notified Richard Roy of
11 above."

12 That's why I'm asking you the
13 question.

14 MR. RICHARD ROY: Yes. Above
15 doesn't necessarily include what was written in by
16 hand.

17 MR. DAVID: Okay.

18 MR. RICHARD ROY: You see?

19 MR. DAVID: And when you read this
20 document, this version, Mr. Roy, had you already
21 noted Mr. Arar's description as being the subject
22 of a national security investigation?

23 Was that the first time you had
24 seen Mr. Arar described in this manner or was it
25 something you had already come across?

1 MR. RICHARD ROY: At that time, I
2 think so. I'm not sure where or how, but I think
3 so.

4 MR. DAVID: You think so.

5 MR. RICHARD ROY: Yes.

6 MR. DAVID: Okay. Finally, Mr.
7 Roy, simply for the record, for the purposes of
8 the record, I take you to Exhibit P-95, please.

9 It's a consular report, Mr. Roy,
10 dated -- a consular visit, I mean, dated August
11 14, 2003.

12 You have -- okay?

13 MR. RICHARD ROY: Okay.

14 MR. DAVID: It's a consular report
15 on a consular visit that you sent to NSIV, at
16 headquarters.

17 MR. RICHARD ROY: Okay.

18 MR. DAVID: Okay. Who gave you
19 this document? Someone at ISI?

20 MR. RICHARD ROY: Same thing,
21 someone at ISI.

22 MR. DAVID: And again, who
23 authorized you to send this document to the RCMP?

24 MR. RICHARD ROY: Same answer.

25 MR. DAVID: Okay. Those are my

1 questions, Mr. Commissioner. Thank you very much.

2 [ENGLISH]

3 THE COMMISSIONER: Thank you,
4 Mr. David.

5 Mr. Waldman, do you know how long
6 you will be?

7 MR. WALDMAN: About an hour, I
8 think.

9 THE COMMISSIONER: O.k. And who
10 else? Anybody else is going to cross-examine?

11 You will certainly go after Mr.
12 Waldman anyway. Anybody else? O.k., and then,
13 Mr. Boxall, you are going to be along. O.k. We
14 will take a five minute break.

15 --- Upon recessing at 2:31 p.m. /

16 Suspension à 14 h 31

17 --- Upon resuming at 2:42 p.m. /

18 Reprise à 14 h 42

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

21 EXAMINATION

22 MR. WALDMAN: I would like to ask
23 you first about the question of the way the
24 information was shared. I want to have some
25 clarity.

1 I just want to be clear. At no
2 point during all the time you worked as a liaison
3 officer at DFAIT did you ever discuss the whole
4 question with Mr. Solomon as to the process
5 involved inside DFAIT about how they authorized
6 sharing of information with the RCMP?

7 MR. ROY: May I ask you to repeat,
8 please? I tried this and it didn't work with my
9 ear. I'm okay in English anyways.

10 MR. WALDMAN: You are okay in
11 English?

12 [TRANSLATION]

13 MR. RICHARD ROY: Please, I will
14 speak in French, but I should be able to
15 understand you.

16 [ENGLISH]

17 Please, can you repeat.

18 MR. WALDMAN: That's fine.

19 You are going to have to excuse me
20 because I'm going to be hearing you so ...

21 I will ask the question again. I
22 just want to clarify: During all the time you
23 were working as liaison officer, at no point did
24 you ever discuss with ISI the process in DFAIT
25 about giving information to you, the

1 authorizations involved?

2 MR. ROY: No.

3 MR. WALDMAN: So you have no
4 knowledge of what internal process would have had
5 to have been undertaken within DFAIT before they
6 shared information with you?

7 MR. ROY: No.

8 MR. WALDMAN: And you had no
9 discussions at any time with DFAIT about any
10 limitations on the use of information provided to
11 you by DFAIT?

12 MR. ROY: No.

13 MR. WALDMAN: So DFAIT gave the
14 information to you, and at no point did they say,
15 "This is subject to any caveats of any kind"?

16 [TRANSLATION]

17 MR. RICHARD ROY: Like I said
18 earlier, third-party caveat in the intelligence
19 field is a restriction, a caveat, which is known,
20 and if the RCMP had wanted to do something else
21 with it, I assume that was the case -- a situation
22 that comes to mind -- that I had been contacted to
23 find out if it was okay, if the intelligence could
24 be used for another reason.

25 So, was there a stamp, a third-

1 party caveat, on the documents I was given? No.

2 [ENGLISH]

3 MR. WALDMAN: Okay. And DFAIT
4 never said to you that there was a third party
5 caveat?

6 [TRANSLATION]

7 MR. RICHARD ROY: No, I don't
8 recall being told that, no.

9 [ENGLISH]

10 MR. WALDMAN: So as far as your
11 instructions from DFAIT about the use of the
12 information, they gave it to you and didn't say to
13 you, "You cannot share it with anyone else other
14 than the RCMP"?

15 [TRANSLATION]

16 MR. ROY: That's correct.

17 [ENGLISH]

18 They didn't tell me that but I
19 don't believe they had to.

20 [TRANSLATION]

21 The document I was given was for
22 the RCMP, and I gave it to the RCMP.

23 [ENGLISH]

24 MR. WALDMAN: The document was for
25 the RCMP?

1 MR. ROY: That's correct.

2 MR. WALDMAN: So, in other words,
3 DFAIT gave it to you, and your understanding was
4 it was for the RCMP.

5 MR. ROY: That is correct.

6 MR. WALDMAN: But did you, at any
7 point, communicate to any of your superiors that
8 you understood there was a third party caveat?

9 MR. ROY: No. As I said, third
10 party caveat, from my understanding, is something
11 that is well-known in the environment.

12 MR. WALDMAN: Okay. But at no
13 point did you say to anyone else who you shared
14 the documents with that "this is only for RCMP
15 eyes only"?

16 MR. ROY: No.

17 MR. WALDMAN: Would your
18 understanding be that the document could have been
19 shared with CSIS without DFAIT consent? If you
20 gave the document to Inspector Cabana, couldn't
21 Inspector Cabana share it with the CSIS liaison in
22 A-OCANADA without DFAIT consent?

23 MR. ROY: The question is whether
24 I am aware whether that was taking place?

25 MR. WALDMAN: Or were you aware of

1 any requirements?

2 MR. ROY: Because I'm not -- no,
3 I'm not.

4 MR. WALDMAN: Okay. So just to be
5 perfectly clear. The documents were given to you
6 without any instructions other than whatever you
7 understood the caveats might be?

8 MR. ROY: Correct.

9 MR. WALDMAN: And once a document
10 was shared by you with whoever else in the RCMP,
11 you have no knowledge as to whether they
12 understood that there were any caveats as well?

13 MR. ROY: If I had the
14 understanding of a third party caveat, I think
15 that there is the same understanding as I.

16 MR. WALDMAN: But there was never
17 any explicit conversation between you and
18 Inspector Cabana, or anyone else, about caveats?
19 It's just your understanding and your assumption
20 that they would have operated under the same
21 assumption?

22 MR. ROY: That's correct.

23 MR. WALDMAN: Are you aware of the
24 Privacy Act?

25 MR. ROY: I'm what?

1 MR. WALDMAN: Are you aware
2 whether under the Privacy Act there was a
3 requirement -- I'm sorry, I'm getting
4 interference --

5 MR. ROY: If I go English, you
6 won't need that anyway.

7 MR. WALDMAN: It will make our
8 lives all much happier. If at any point you need
9 me to repeat anything, it would just make
10 everything a lot easier for us.

11 Are you aware that before DFAIT
12 can share information given by Mr. Arar, that
13 generally speaking there is a requirement for his
14 consent under the Privacy Act?

15 MR. ROY: I'm not aware.

16 MR. WALDMAN: Now, I am just
17 picking up a few quick areas.

18 I would like to move on to another
19 area. You mentioned a communication problem
20 between A-OCANADA and CID, that you were advised
21 that there was a problem.

22 MR. ROY: I perceived so, yes.

23 MR. WALDMAN: You perceived so?

24 MR. ROY: I perceived so based on
25 the two statements that I referred to, yes.

1 MR. WALDMAN: Can you tell us,
2 were you given a briefing by somebody at CID about
3 there being some -- maybe not anything as formal,
4 some conversation, at CID from someone who said,
5 "Look, we have this problem of a communication
6 between us and A-OCANADA"?

7 MR. ROY: No, nothing such as
8 briefing, nothing so formal. And, bottom line, my
9 perception of it from observing is that everybody
10 were extremely busy and reports were going up
11 and --

12 MR. WALDMAN: But someone must
13 have said something to you, I assume, because you
14 were pretty new on the game. You came on, and
15 fairly early on you were talking about
16 this communication problem. Is it fair to say
17 that someone mentioned it to you at some point
18 that there was such a problem?

19 MR. ROY: I mentioned that earlier
20 as to what the statements were --

21 MR. WALDMAN: Right.

22 MR. ROY: -- that I heard, but
23 that's the extent of it.

24 MR. WALDMAN: Were you given
25 instructions, for example, by someone at CID to

1 make sure that whatever information you sent down
2 to Cabana was -- or got from Cabana was provided
3 to CID as well, or did you just do that of your
4 own initiative? It seems most of the time you
5 were communicating with CID and A-OCANADA.

6 MR. ROY: At the beginning, you
7 are right, I was communicating with both, being
8 new, exactly it, and trying to at the beginning
9 have a better sense of what A-OCANADA was about.
10 But shortly thereafter, I was advised that it
11 would be wise to separate -- take a distance from
12 the actual investigation, and that is what I did.

13 MR. WALDMAN: So later on you are
14 just advising CID, and not -- and you didn't have
15 much communication direct with A-OCANADA; is that
16 correct?

17 MR. ROY: Yes, that's correct.

18 MR. WALDMAN: Okay. And I want to
19 go to the September 10th meeting. Perhaps P-166?
20 It's that loose page.

21 MR. ROY: 166?

22 MR. WALDMAN: P-166, Inspector
23 Cabana's notes. And there is a loose page 44.

24 Mr. Clerk, I don't know if you
25 have that. Is that attached? Remember we added a

1 page 44 afterwards?

2 I would ask you to go to page 44.

3 Mr. Commissioner, when Mr. Cabana
4 was being examined, we were handed up a loose
5 page, which is the second part of page 44. I
6 don't know ...

7 Yes, it was handed in. Oh, it
8 wasn't entered as a separate exhibit. We were
9 told just to attach it to the back. It is the
10 rest of page 44.

11 I don't know if you have that
12 loose page.

13 THE COMMISSIONER: No, I just have
14 the one page 44.

15 MR. WALDMAN: Perhaps --

16 MR. ROY: I just have the one
17 page.

18 MR. WALDMAN: It's not very much.
19 Perhaps I could just read it. It's only about one
20 page.

21 THE COMMISSIONER: Okay, why don't
22 you see if you could do it that way and we'll see
23 how it works out.

24 MR. WALDMAN: This is in relation
25 to that meeting on September 10th, and it says

1 that the meeting was with Mr. Pillarella, the
2 Canadian Ambassador, Scott Heatherington, Don
3 Saunders, RCMP DFAIT liaison officer. That would
4 be yourself? And Jonathan Solomon. Inspector
5 McDougall of CID joined in late.

6 Mr. Pillarella agreed -- I'm
7 having a hard time reading this myself.

8 "Mr. Pillarella agreed to
9 facilitate any requests to
10 Syrian authorities.

11 Mr. Pillarella suggested that
12 the Syrian authorities would
13 likely be expecting to share
14 with them. We explained --"

15 So this is about the meeting that
16 you had with A-OCANADA on the 10th. Do you recall
17 whether Ambassador Pillarella was at that meeting?

18 MR. ROY: On the 10th at DFAIT, I
19 believe so, yes.

20 MR. WALDMAN: Yes. This was the
21 first time you learned about the A-OCANADA --

22 MR. ROY: It would have been
23 really close to that.

24 MR. WALDMAN: Yeah, right. And I
25 think you told us that at that time Mr. Arar's

1 name didn't come up.

2 MR. ROY: That's correct.

3 MR. WALDMAN: So I gather that
4 they would have talked to you about -- we now
5 know Mr. Almalki was, according to Inspector
6 Cabana, the main target. So you were made aware
7 of that at that time?

8 MR. ROY: I don't believe I'm at
9 liberty to --

10 MR. FOTHERGILL: I think it's
11 acknowledged that Mr. Almalki was one of the
12 principal areas of the investigation, so he can
13 answer when he was made aware of that at that
14 meeting, yes.

15 MR. WALDMAN: Was Mr. Almalki's
16 name mentioned at that --

17 MR. ROY: Yes.

18 MR. WALDMAN: But Mr. Arar's name
19 wasn't mentioned?

20 MR. ROY: That's correct.

21 MR. WALDMAN: How long did this
22 briefing go on for; do you have any idea?

23 MR. ROY: About an hour and
24 fifteen.

25 MR. WALDMAN: So it was a fairly

1 extensive briefing. It was all about the
2 A-OCANADA investigation? That was what it was
3 about.

4 MR. ROY: That's how I understood
5 it, yes.

6 MR. WALDMAN: And Mr. Arar's name
7 didn't come up even once?

8 MR. ROY: No.

9 MR. WALDMAN: So, according to the
10 Garvie report, everyone who was questioned said
11 that Mr. Arar was peripheral to the investigation.
12 So it's fair to say, given that his name wasn't
13 even mentioned once during your first briefing,
14 your understanding was as well that Mr. Arar was
15 extremely peripheral to the A-OCANADA
16 investigation.

17 Is that correct?

18 MR. ROY: That is what I have
19 read, as you have, but ...

20 MR. WALDMAN: Right. And that was
21 based upon the fact that he wasn't mentioned.

22 MR. ROY: He wasn't.

23 MR. WALDMAN: But Mr. Pillarella
24 did say at that meeting, as far as you are aware,
25 that the Syrians would be willing to facilitate

1 RCMP access to another Canadian who was detained,
2 who we know was Mr. Almalki? He was the only
3 Canadian detained at that time.

4 That's what it says here. Do you
5 recall that --

6 MR. ROY: If that's what it says.
7 I don't recall much of that meeting, no.

8 MR. WALDMAN: Okay. And we know
9 from other information that...

10 If we go to page 1 of your
11 personal notes...

12 --- Pause

13 MR. WALDMAN: So you were made
14 aware of the fact that Mr. Almalki -- Mr. El Maati
15 had been seen by the Canadian Embassy in Cairo; is
16 that correct?

17 MR. ROY: It is mentioned here
18 that they saw him twice.

19 MR. WALDMAN: Right.

20 MR. ROY: I don't know where, but
21 they saw him twice.

22 MR. WALDMAN: Okay. And we
23 haven't seen the consular CAMANT note of August of
24 2002, detailing the information that the consular
25 officials got when they met with Mr. El Maati.

1 MR. ROY: I was not near Ottawa,
2 and I didn't see it, no.

3 MR. WALDMAN: I know, but we were
4 told by other witnesses that the RCMP obtained a
5 copy of this August 2002 note where Mr. El Maati
6 said that he had been tortured in Syria. Were you
7 made aware of this fact by Inspector Cabana or
8 anyone else at this September 10th meeting, that
9 Mr. Almalki, in his August 2002 interview, had
10 said that -- Mr. El Maati, in his August 2002
11 interview, had said that he had been tortured in
12 Syria?

13 MR. ROY: No, I don't believe so.

14 MR. WALDMAN: Were you not made
15 aware at any time by anyone of the existence of
16 this CAMANT note which said that Mr. El Maati told
17 DFAIT officials that he had been tortured in
18 Syria?

19 MR. ROY: No.

20 MR. WALDMAN: So is this the first
21 you are hearing this now?

22 MR. ROY: I read that in the
23 papers, I believe.

24 MR. WALDMAN: You read it in the
25 papers.

1 MR. ROY: Yeah, or in reference
2 to, or in some other testimonies. But me hearing
3 from anybody at the time about torture -- his
4 torture or whatnot, no. Not specific to him.

5 MR. WALDMAN: Now, you were aware
6 that Mr. -- so you weren't aware at all of this
7 allegation of Mr. El Maati. No one in A-OCANADA
8 or at DFAIT thought it important that you be made
9 aware of this fact?

10 MR. ROY: I don't recall that. I
11 don't --

12 MR. WALDMAN: You don't recall --

13 MR. ROY: I don't recall that, no.

14 MR. WALDMAN: You don't ever
15 recall being told by anyone, either at ISI or at
16 A-OCANADA, both of whom knew about this, that
17 Mr. El Maati had told DFAIT officials that he had
18 been severely tortured by the Syrians?

19 MR. ROY: It might have been
20 discussed when I was there, but not knowing
21 anything about the case, that went by me. I
22 didn't --

23 MR. WALDMAN: So, if someone
24 mentioned to you that a Canadian citizen was being
25 detained in Syria, was being tortured, it wouldn't

1 be something that would remain in your memory,
2 sir?

3 MR. ROY: Well, it most likely
4 would, yes. But I do not remember such a thing.

5 MR. WALDMAN: So it's not likely
6 that you were told?

7 MR. ROY: Not likely, no.

8 MR. WALDMAN: And you don't think
9 it would have been important that you be advised
10 of this serious allegation of torture made by a
11 Canadian citizen by Syria, one of the countries
12 you were dealing with as part of the A-OCANADA
13 investigation?

14 MR. ROY: In my role as a liaison
15 officer, not necessarily.

16 MR. WALDMAN: Not necessarily.
17 Your role as a liaison officer was to facilitate
18 discussions with respect to the possibility of
19 arranging RCMP visits to Syria, to interrogate
20 Canadian citizens there, and you don't think that
21 it would be important for you to know that Syrians
22 had been said to have tortured a Canadian in order
23 to extract information? You don't think it was
24 relevant, sir?

25 MR. ROY: Those discussions that

1 you are referring to did take place, they were
2 taking place. And, yes, my task was to make sure
3 that my person was at the table representing the
4 RCMP. Those discussions took place, if that's
5 what you are referring to.

6 MR. WALDMAN: Yes, but I'm asking
7 whether it would have been important for you to
8 have been aware that Syria was a country that
9 engaged in torture of detainees in order to
10 extract information.

11 Don't you think that was
12 important, that a Canadian citizen had said,
13 "While interrogated in Syria, I was tortured by
14 the Syrians"? In the context of your role as
15 possibly facilitating RCMP investigators going to
16 Syria, you don't think that was important?

17 MR. ROY: Yes. In those terms, it
18 would have, probably, yeah. And have I -- anyway,
19 I do not recall any specific discussions in
20 regards to same, to it. That does not mean that
21 nobody has mentioned it, or I read about it or
22 whatever. I cannot recall specifically being told
23 about a specific individual being tortured.
24 Definitely not.

25 MR. WALDMAN: And you just told me

1 a minute ago that the fact that -- if someone had
2 told you that a Canadian citizen had been tortured
3 in Syria, you probably would have remembered it.
4 So it's not likely that you were told that.

5 MR. ROY: Well, I can't recall.

6 MR. WALDMAN: Okay. So you can't
7 recall.

8 Now, are you aware, or were you
9 made aware, or did you make yourself aware of the
10 human rights record in Syria when you started
11 getting involved in these cases involving
12 Canadians detained in Syria?

13 MR. ROY: No, I did not.

14 MR. WALDMAN: So were you aware,
15 sir, of the Department of State reports about the
16 very poor human record in Syria? Did you have a
17 general understanding that there was problems in
18 Syria, or --

19 MR. ROY: A general understanding,
20 I would say that.

21 MR. WALDMAN: What would have been
22 your general understanding? If I had asked you in
23 September of 2002 about the human rights record in
24 Syria, what could you have told me?

25 MR. ROY: That's only based on

1 what I read, like anyone else, any other citizen
2 would read, insofar as the level -- lack of
3 democracy and basic human rights. No more than
4 that.

5 MR. WALDMAN: So you knew there
6 was a lack of democracy in Syria.

7 And what would you have -- you
8 know, what was in your mind about the way
9 prisoners were treated? Did you have any sense at
10 all that there was any problems in the treatment
11 of prisoners in Syria?

12 MR. ROY: I was not aware of the
13 exact conditions of prisoners in Syria, no.

14 MR. WALDMAN: Did you have any
15 sense at all of the likely treatment that might be
16 afforded to a person who was the subject of a
17 criminal investigation in Syria? Any sense that
18 there might be a possibility of mistreatment
19 during detention, during interrogation?

20 MR. ROY: I'm not aware.

21 MR. WALDMAN: So it's fair to say
22 you didn't have any knowledge other than this very
23 general, vague knowledge, that there might be
24 human rights -- that Syria wasn't a democracy,
25 when you were asked to facilitate the possibility

1 of the RCMP going to Syria to investigate and
2 question Mr. El Maati?

3 MR. ROY: I was not facilitating
4 the possibilities. I was facilitating having the
5 right person at those -- at whatever discussions,
6 whatever meetings were to take place.

7 MR. WALDMAN: Right. And it never
8 struck you that that might be something that you
9 might be concerned about, sending an RCMP
10 investigator to Syria given its poor human rights
11 record; that you might want to raise that with
12 your superiors or anyone else at the table?

13 MR. ROY: I don't believe that was
14 mine to do.

15 MR. WALDMAN: It wasn't your -- I
16 didn't --

17 MR. ROY: It wasn't mine to do.

18 MR. WALDMAN: Not your --

19 MR. ROY: The discussion, in
20 subjects such as this, there would be discussions.
21 That's why there was meetings with different folks
22 around the tables. That's how I understand it.
23 It's not ...

24 MR. WALDMAN: But as an RCMP
25 officer who believes in the rule of law, you

1 didn't believe it was a matter that you should be
2 concerned about, that the RCMP might be sending
3 investigators to a country where torture is used?

4 MR. ROY: There's a lot of -- it's
5 difficult for me to answer that because I have --
6 I get bits and pieces of actual déroulement of the
7 investigation and the status of who is talking to
8 whom, what's going on, what's considered, what's
9 the exact situation. I don't know all of those
10 elements that are in place in my position as I was
11 in. It's hard for me to elaborate on that.

12 MR. WALDMAN: Okay. I want to
13 clarify one other matter.

14 You have told us that your role as
15 liaison officer was to facilitate contact between
16 DFAIT and the RCMP; is that correct?

17 MR. ROY: Yes.

18 MR. WALDMAN: But are you aware
19 whether Inspector Cabana had a direct relationship
20 with ISI as well?

21 MR. ROY: There was a span of four
22 or five months prior to me starting to work there,
23 where there was no LO, and so I'm not surprised
24 that there would have been some contacts made in
25 different areas.

1 MR. WALDMAN: Are you saying --
2 because Inspector Cabana in his evidence testified
3 that he had numerous direct discussions with
4 Mr. Gould. This is found at pages 7866 and 8088
5 of the transcript -- 8008. I won't take you to it
6 unless we have to.

7 Were you made aware of these
8 discussions that Inspector Cabana had with
9 Mr. Gould?

10 MR. ROY: From reading
11 transcripts.

12 MR. WALDMAN: But before that,
13 while you were at RCMP in the DFAIT liaison
14 office, were you aware that these conversations
15 were going on?

16 MR. ROY: No, and I presume that
17 if such a thing did happen, it would have been
18 most likely because I wouldn't have been present
19 because I think normally they would have went
20 through me. It's possible, nonetheless. I have
21 no problem with it.

22 MR. WALDMAN: You have no problem
23 with --

24 MR. ROY: The fact that they don't
25 necessarily go through me to talk to -- "A" talk

1 to "B". No, I don't have a problem with that. I
2 don't have the monopoly over at DFAIT.

3 MR. WALDMAN: Wasn't it your
4 function, sir, to facilitate and coordinate the
5 communications? And if there was more than one
6 person doing the same thing, wouldn't it be
7 problematic because there wouldn't be any
8 systematic control over what information was being
9 shared by who?

10 MR. ROY: I wasn't there to
11 control. I was there to facilitate, and there was
12 a need to facilitate. I have no problem with
13 Mr. Cabana, if that's the case, dealing directly
14 with whoever in ISI that -- I have no problem with
15 that.

16 MR. WALDMAN: You have no problem
17 with that. But is that what was understood by the
18 superiors in headquarters, that you would be
19 interfacing with the RCMP and Inspector Cabana
20 would be doing that as well? I mean, my
21 understanding was that you were interfacing with
22 the headquarters and the headquarters would then
23 have control over the information.

24 If Inspector Cabana was conversing
25 directly with ISI, then headquarters wouldn't be

1 drawn into the loop, necessarily. Is that not
2 fair to say?

3 Wasn't the whole point of having
4 you there so that there was one coordinated person
5 who was facilitating communication between the two
6 institutions, DFAIT and the RCMP, and wasn't it
7 counterproductive to have Inspector Cabana going
8 direct?

9 MR. ROY: I had no coordinating
10 role in that sense. I had no coordinating role
11 insofar as those. But like I said, as far as I'm
12 aware, if I wasn't present, or prior to me taking
13 post, I could see where there would have been some
14 direct conversation. That's all I know.

15 MR. WALDMAN: But you don't know
16 if the communication continued after you came; is
17 that correct? It might have continued.

18 MR. ROY: It might have.

19 MR. WALDMAN: Were you ever --
20 pardon me.

21 Well, according to Inspector
22 Cabana, at 8008, he says that it did, after you
23 were there. At 8008 of the transcript -- I won't
24 read it -- but it's clear in his evidence that is
25 what he said.

1 Does this concern you, that he was
2 having direct communication with ISI after you
3 were there?

4 MR. ROY: It doesn't concern me,
5 and I don't know if I was actually at the office
6 on that such a day. I don't know. Maybe I
7 wouldn't have been there. But it does not concern
8 me in any event.

9 MR. WALDMAN: Would you at least
10 have expected to have been advised by Inspector
11 Cabana that these communications were taking place
12 after the fact so that you could be aware of what
13 was transpiring between DFAIT and the RCMP?

14 MR. ROY: I don't know of the
15 specific case. But it's not only Inspector
16 Cabana; I believe Mr. Gould most likely would have
17 advised anyway me as well.

18 MR. WALDMAN: But you have no
19 recollection of being advised of any conversation
20 between Inspector Cabana because you just told us
21 that you weren't aware of any, after you were
22 there. So it's clear that there was one, and you
23 weren't advised of it; correct?

24 MR. ROY: It is clear I wasn't --
25 no. It's possible, yes.

1 MR. WALDMAN: Okay. Now, when you
2 gave your statement to Inspector Garvie -- I won't
3 take you there unless we have to to save time.
4 You told him that you were at a conference between
5 September 26th and October 1st, and it was on
6 October 2nd that you learned about Mr. Arar's
7 detention. Does that jibe with your recollection?

8 MR. ROY: Yes.

9 MR. WALDMAN: Now, would it be
10 fair to say that if you had not been at this
11 conference, you probably would have learned about
12 the detention earlier from the RCMP?

13 MR. ROY: I can't answer that. I
14 wouldn't know.

15 MR. WALDMAN: No? Well, if a
16 Canadian citizen was the subject of an A-OCANADA
17 investigation -- because you were aware of the
18 A-OCANADA investigation -- were detained in a
19 foreign jurisdiction and the RCMP were aware of
20 that, wouldn't that be something they would let
21 you know?

22 Like, someone who was a part of a
23 national security investigation. We know that
24 this had to do with an alleged al-Qaeda sleeper
25 cell in Ottawa, high-profile, extremely important

1 investigation, and the RCMP is told on the 26th
2 that Mr. Arar is being detained in the United
3 States. Isn't that something that you think ought
4 to have been communicated to ISI?

5 MR. ROY: I can't answer that.

6 MR. WALDMAN: Now, it's true that
7 when DFAIT found out about it, they were the ones
8 that told you about it; correct?

9 You found out first about
10 Mr. Arar's detention from DFAIT?

11 MR. ROY: That's correct.

12 MR. WALDMAN: That was the
13 chronology?

14 MR. ROY: Correct.

15 MR. WALDMAN: So they were quite
16 concerned. By this time they knew that there was
17 an alleged al-Qaeda member, someone who the
18 Americans said was an al-Qaeda member, who was a
19 Canadian citizen, who was being detained in the
20 United States, and they were sufficiently
21 concerned about this and its import for RCMP work
22 that they immediately told you about it as soon as
23 you came back.

24 Is that correct?

25 MR. ROY: I presume so. It makes

1 sense.

2 MR. WALDMAN: And they passed on
3 the first consular note to you, is that correct,
4 as well? We know that they passed on consular
5 notes to you about this. We'll get to that in a
6 second.

7 They were so concerned about it
8 that as soon as you came back on the 2nd, they
9 told you about it. And then it turns out that the
10 RCMP already knew about it when you went to check.

11 Now, on page 2 of your notes, it
12 says -- of the time line, sorry. It says:

13 "Advised by Jonathan Solomon
14 of ISI that Maher Arar has
15 been arrested at JFK airport
16 and consular not able to see
17 him."

18 So that's when you first found out
19 about Mr. Arar and his detention, is that correct?
20 This is on your time line.

21 MR. ROY: Yes.

22 MR. WALDMAN: So then you go to
23 the RCMP, and that's when you find out for the
24 first time that Mr. Arar is a peripheral subject
25 of the A-OCANADA investigation; is that correct?

1 You got this information and then,
2 if I understood your testimony, you went to the
3 A-OCANADA -- that's the next line:

4 "Met with A-INSET and
5 discussed Arar's situation."

6 MR. ROY: It's just the word
7 "peripheral". I don't know if it was mentioned to
8 me.

9 MR. WALDMAN: My first question:
10 Why would you go right to A-INSET? That's the
11 national security investigation team. What about
12 the information provided to you by Mr. Solomon
13 caused you to go right to the A-INSET, because
14 that's what it says.

15 MR. ROY: Yeah.

16 MR. WALDMAN: Within a very short
17 time you are off at the INSET. Why did you choose
18 to go there? What was it about the information
19 that Mr. Solomon provided to you that caused you
20 to go to --

21 MR. ROY: Nothing specific. It's
22 just, as I mentioned earlier, that's the people
23 with who I spent some time at the beginning to get
24 familiar with the investigation, so I was familiar
25 with the individuals. I don't think there was

1 anything mentioned to me that would point to do
2 with A-OCANADA.

3 MR. WALDMAN: Okay. So if we look
4 at the time frame here, your next entry is on
5 October 8th, but we know that there were other
6 things that happened between that October 2nd and
7 October 8th. I just want to make sure I
8 understand.

9 You were in the office October
10 3rd; right?

11 MR. ROY: Yes.

12 MR. WALDMAN: October 4th,
13 although Mr. Flewelling seems to remember having a
14 conversation with you, you were away on leave;
15 right?

16 The 5th and 6th was the weekend.
17 I assume you didn't work on the weekend.

18 MR. ROY: No.

19 MR. WALDMAN: And so you had
20 nothing to do with Mr. Arar on those days?

21 MR. ROY: Correct.

22 MR. WALDMAN: So you are back in
23 the office on the 7th. And then on the 8th -- I
24 just want to understand -- you might have stopped
25 by the office and then gone to A-OCANADA, or you

1 went right to A-OCANADA on the 8th?

2 MR. ROY: A-OCANADA.

3 MR. WALDMAN: So you went right to
4 A-OCANADA on the 8th.

5 When you went to A-OCANADA on the
6 8th, you already had in your possession the two
7 consular notes that were given to you by Jonathan
8 Solomon?

9 MR. ROY: I believe it was, yes.

10 MR. WALDMAN: Or by somebody.

11 MR. ROY: Yes.

12 MR. WALDMAN: By somebody in ISI.
13 I don't really care who it is.

14 So those two consular notes would
15 have been given to you on the 7th; is that
16 correct?

17 MR. ROY: Most likely the 8th, as
18 I said.

19 MR. WALDMAN: How could it have
20 been given to you on the 8th if you went right
21 to --

22 MR. ROY: No, no. Right through.
23 I was at DFAIT, and then right from DFAIT I
24 went -- I didn't go from home to "A".

25 MR. WALDMAN: So you went to DFAIT

1 first?

2 MR. ROY: Yes.

3 MR. WALDMAN: So you didn't go
4 straight to A-OCANADA?

5 MR. ROY: No.

6 --- Pause

7 MR. WALDMAN: So what time do you
8 normally get into the office?

9 MR. ROY: Varied.

10 MR. WALDMAN: Pardon me?

11 MR. ROY: It varied.

12 MR. WALDMAN: On a normal day,
13 what time?

14 MR. ROY: Eight, nine.

15 MR. WALDMAN: Between eight and
16 nine. According to the notes we have from one of
17 the persons, the meeting started at 9:45 at
18 A-OCANADA.

19 MR. ROY: Okay.

20 MR. WALDMAN: And how far is
21 A-OCANADA from DFAIT? How long does it take you
22 to travel -- we're not talking about the
23 construction now on Sussex.

24 MR. ROY: Five minutes.

25 MR. WALDMAN: It's normally --

1 what -- about a five-minute ride? So from when
2 you leave your office, go down the elevator, get
3 in your car, go to A-OCANADA headquarters, park
4 your car, and go up to the meeting at 9:45, how
5 long would it have taken you to do all of that?

6 MR. ROY: Five to ten minutes.

7 MR. WALDMAN: Going down the
8 elevator, getting in your car, driving over, that
9 could all have been done in five or ten minutes?
10 Okay.

11 Was the October 8th meeting
12 already scheduled at that time? Were you aware of
13 that meeting on October 7th, or was this something
14 that just came up on an urgent basis on October
15 8th?

16 MR. ROY: No, there was no meeting
17 scheduled for October 8th.

18 MR. WALDMAN: No, there was no
19 meeting. So you just went? Once you got these
20 documents, you went?

21 MR. ROY: Yes.

22 MR. WALDMAN: And your evidence is
23 that you are not sure when you got them. It could
24 have been the 7th or the 8th?

25 MR. ROY: Yes, right.

1 MR. WALDMAN: But it wasn't before
2 the 7th?

3 MR. ROY: No.

4 MR. WALDMAN: Because the only
5 other day you were in the office would have been
6 the 3rd.

7 MR. ROY: Yes.

8 MR. WALDMAN: Because the 4th you
9 were away.

10 MR. ROY: Yes, and when I have a
11 document, I deliver it within a certain time, yes.

12 MR. WALDMAN: So you got the
13 documents probably on the 7th, and you went there
14 on the 8th?

15 MR. ROY: Or most likely on the
16 8th --

17 MR. WALDMAN: Or a meeting -- all
18 right.

19 Now, you told us as well that
20 Mr. Solomon had also shown you something on his
21 computer screen.

22 MR. ROY: Yes.

23 MR. WALDMAN: Presumably this
24 didn't happen contemporaneously with him giving
25 you the documents; is that correct? It didn't

1 happen at the same time he gave you the documents?

2 MR. ROY: I'm not sure.

3 MR. WALDMAN: You are not sure?

4 MR. ROY: No. I believe so, but
5 I'm not sure.

6 MR. WALDMAN: So you are not sure
7 when -- why would Mr. Solomon have shown you the
8 computer screen of the document if he handed it to
9 you? I mean, if you don't recall, wouldn't it
10 make sense that there would have been at least
11 some passage of time between Mr. Solomon showing
12 you this information on the computer screen and
13 him handing you the CAMANT documents? Otherwise,
14 he could have just handed you the document.

15 Isn't that fair?

16 MR. ROY: Yes, but I don't believe
17 it was the same document.

18 MR. WALDMAN: Well, it was the
19 same information. The key information was
20 Mr. Arar was detained --

21 MR. ROY: It was key information,
22 but one was relevant to the state of health and
23 threat, and the two documents, the paper documents
24 that I got, they weren't specific to that. There
25 was three documents that we looked at earlier.

1 MR. WALDMAN: But your evidence
2 with respect to the document that you saw on the
3 computer screen, if I recall it correctly, was
4 that the key evidence from that document was that
5 Mr. Arar was afraid --

6 MR. ROY: Yes.

7 MR. WALDMAN: -- of being deported
8 to Syria?

9 MR. ROY: Yes.

10 MR. WALDMAN: That he had had a
11 conversation with his brother?

12 MR. ROY: Yes.

13 MR. WALDMAN: Those were the two
14 parts of the document?

15 MR. ROY: Yes.

16 MR. WALDMAN: And Mr. David took
17 you to, I believe it was tab 10 of P-42, I think,
18 in which that was what was more or less said?

19 MR. ROY: Yes.

20 MR. WALDMAN: And that was also
21 one of the documents that -- or the same
22 information was contained in one of the documents
23 that you took to A-OCANADA, because that's what is
24 contained in the notes of Callaghan.

25 --- Pause

1 MR. WALDMAN: I just want to
2 understand. You are now telling us there were
3 three documents. One was the two that you had,
4 and you saw a third different document?

5 MR. ROY: Yes, that's exactly what
6 we went through in the binder. One dealt with
7 about a lawyer and the other was something to do
8 with his brother.

9 MR. WALDMAN: Right.

10 MR. ROY: Those were a paper
11 document. And then there was a third document,
12 that was longer, and it mentioned about al-Qaeda
13 and it mentioned about being --

14 MR. WALDMAN: Right. And that was
15 one we took you to. That was the consular visit
16 that was on October 2nd.

17 MR. ROY: Third, I think.

18 MR. WALDMAN: October 3rd.

19 I'm just trying to understand. It
20 doesn't make sense to me, sir, that if Mr. Solomon
21 gave you the hard copy of two documents, that he
22 would have shown you at the same time this other
23 document on the computer screen?

24 I mean, I believe there must have
25 been at least some hours or a day between the two;

1 would you not agree with that? It wouldn't make
2 any sense otherwise.

3 MR. ROY: Well, the documents were
4 different.

5 MR. WALDMAN: If he wanted to give
6 you the information, he could have just handed it
7 to you, handed you the document; right?

8 MR. ROY: Yes, he could have. He
9 could have. But from what I remember, I wasn't
10 under the impression it was right there. I looked
11 at the screen, and after that I'm given documents.
12 But that will be for him to state otherwise.

13 But that's my understanding.
14 That's what I remember.

15 MR. WALDMAN: So you don't have
16 any understanding why he would have showed you a
17 document from the screen and then given you
18 another completely different document at the same
19 time?

20 MR. ROY: No.

21 MR. WALDMAN: But is it fair to
22 say you don't have a strong recollection of the
23 timing of these two events?

24 MR. ROY: Yes, it's fair to say
25 that.

1 MR. WALDMAN: So he could have
2 shown you the document on the 3rd; he could have
3 shown it to you on the 7th. You are not sure?

4 MR. ROY: I doubt that very much,
5 but...

6 Because of what I said earlier, I
7 don't believe Mr. Solomon had access to that
8 document in the sense that he was advised about
9 consular access. As I said earlier, I don't
10 believe that ISI were aware of the consular visit.

11 MR. WALDMAN: My understanding --
12 and someone could correct me if I'm wrong -- was
13 that ISI had the same access to the CAMANT
14 documents as anyone else in DFAIT.

15 MR. BAXTER: You are wrong,
16 Mr. Waldman, I believe.

17 Mr. Pardy has testified at length
18 about this, Mr. Commissioner.

19 MR. WALDMAN: Then we'll move on.

20 THE COMMISSIONER: Just a second.
21 There's a comment.

22 MR. DAVID: Mr. Pardy's testimony
23 is to the effect that the CAMANT system notes are
24 not accessible to Mr. Solomon within the ISI
25 offices until November. That was Mr. Pardy's

1 testimony.

2 MR. WALDMAN: So it was November.
3 All right. I just want to clarify something about
4 some other information you gave us.

5 You told us that after you spoke
6 to Mr. Solomon on October 2nd you went to
7 A-OCANADA, and that's when you became aware that
8 Mr. Arar was part of this A-OCANADA al-Qaeda
9 sleeper cell investigation; right?

10 And so you came back and according
11 to your time line you say:

12 "Advised Jonathan Solomon of
13 ISI that we were aware of his
14 detention."

15 Right? But in evidence with
16 Mr. David this morning, you told us more. You
17 told us that, in fact, you believe you told
18 Mr. Solomon much more than that. You would have
19 told him that the RCMP had been aware that
20 Mr. Arar was detained before he arrived on the
21 26th; that they sent down the questions; that
22 Mr. Arar was part of an A-OCANADA investigation.
23 Right?

24 MR. ROY: Yes.

25 MR. WALDMAN: So you would have

1 told him that?

2 MR. ROY: Yes.

3 MR. WALDMAN: And so Mr. Solomon
4 would have been aware, well aware at that time, as
5 of October 2nd, that the RCMP had had a role in at
6 least providing information to the Americans about
7 Mr. Arar while he was being detained in the United
8 States? So ISI was aware of that as of October
9 2nd?

10 MR. ROY: They were aware that --
11 the RCMP were aware, yes.

12 MR. WALDMAN: And that the RCMP
13 had sent questions to the U.S.?

14 MR. ROY: Yes.

15 MR. WALDMAN: If that's the case,
16 if I could ask you to go to the Garvie report at
17 page 30 -- it appears in other areas as well -- we
18 know that on the 16th you attended a meeting where
19 Mr. Pardy posed questions, and on the 18th
20 Superintendent Pilgrim responds to the questions.

21 What strikes me is that the
22 questions contain information that you had already
23 provided to Mr. Solomon.

24 For example, on page 30 of the
25 Garvie report, it says:

1 "What information has been
2 shared with the U.S.
3 concerning Maher Arar?"

4 And so then they say they had
5 opened -- open investigation, communications, and
6 all available information was shared.

7 "How did the U.S. become
8 aware/interested in Arar?"

9 It says:

10 "U.S. authorities learned of
11 Arar through a sharing of
12 information --"

13 And then it goes through a list of
14 questions.

15 And it strikes me that this was
16 all information that you had already provided to
17 Mr. Solomon. You had told Mr. Solomon all of
18 this. You had told him that the Americans had
19 become aware of Mr. Arar on the 26th; that they
20 had provided information -- that Canadians had
21 provided -- that the Canadians were aware that
22 Mr. Arar was detained on the 26th; that the
23 Canadians had provided information.

24 Why would Mr. Pardy be asking you
25 the same questions if you had already provided

1 this information to Mr. Solomon?

2 Could it be that Mr. Solomon
3 hadn't shared the information with Mr. Pardy?

4 MR. ROY: I don't see there in the
5 same -- covering the same elements. We already
6 knew since the 26th and questions were sent.
7 That's a far cry from what you have here for
8 questions and answers.

9 MR. WALDMAN: So the fact -- so
10 that Mr. Pardy would still want to know --
11 Mr. Pardy, if he had been briefed by Mr. Solomon,
12 would have been aware from your briefing that on
13 September 26th the RCMP had been made aware of the
14 U.S. detention, that the Canadians were sending
15 information down during the course. Why would
16 they have to ask about the information shared with
17 the U.S. if you had already told Mr. Solomon that
18 they had been sending questions down and that
19 there was communication going back and forth
20 during all of this time while Mr. Arar was being
21 detained?

22 MR. ROY: You are going to have to
23 ask Mr. Pardy that question.

24 MR. WALDMAN: You provided the
25 answer already to Mr. Solomon. You told

1 Mr. Solomon on the 2nd that there was this
2 information-sharing going on already; right?

3 And Mr. Pardy is asking the same
4 question on the 16th.

5 MR. ROY: You will have to ask
6 Mr. Pardy that.

7 MR. WALDMAN: Right, right. But
8 you don't have any explanation as to why, on
9 October 16th, Mr. Pardy is asking the same
10 question with respect to information you provided
11 to Mr. Solomon on October 2nd?

12 MR. ROY: There's a lot more
13 questions being asked here.

14 MR. WALDMAN: Right. But some of
15 them are duplications?

16 MR. ROY: Some might be.

17 --- Pause

18 MR. WALDMAN: So when you
19 mentioned at this October 8th meeting that
20 Mr. Arar -- that the information you had was that
21 because Mr. Arar was a dual national, he might be
22 deported to Syria? I just want to clarify the
23 reaction of the other people around the table, all
24 right?

25 MR. ROY: I don't remember saying

1 that he might. The one that I did mention, that
2 he feared go to Syria. As I said earlier,
3 somebody repeated "Syria"? And that's the element
4 of surprise that I've noted.

5 MR. WALDMAN: Okay. But did
6 people at that point think -- did you get any
7 sense that anyone thought this was a possibility,
8 that he might be deported to Syria on October 8th?

9 MR. ROY: No, they were expecting
10 Mr. Arar to come back to Canada at that point.

11 MR. WALDMAN: But by this time,
12 there was mention of him being a dual national;
13 right? That was in the notes; that people were
14 aware that he was a dual national.

15 MR. ROY: Right.

16 MR. WALDMAN: And as a dual
17 national, people would have been aware that when
18 someone is deported they could be deported to
19 their country of citizenship. So legally there
20 might have been a basis in U.S. law to deport him
21 to Syria, or otherwise why would the issue of dual
22 nationality have come up?

23 MR. ROY: Can you repeat that a
24 little bit?

25 MR. WALDMAN: People were aware

1 that Mr. Arar was a dual national at that point?
2 It's in the notes.

3 MR. ROY: Yes, I believe some
4 were.

5 MR. WALDMAN: And the significance
6 of dual nationality, is it not that if you are a
7 national of a country under international law, you
8 can be deported to that country. You are aware of
9 that; right?

10 MR. ROY: I don't believe so. I'm
11 no expert as far as this goes. I don't believe
12 you are right.

13 MR. WALDMAN: Were you personally
14 aware that if you are a citizen -- as Mr. Arar was
15 a citizen of Syria, that made Syria possible for
16 his deportation there. Is that the significance
17 of the dual nationality in your mind?

18 MR. ROY: I'm not aware.

19 MR. WALDMAN: So why would the
20 fact that he was a dual national have come up
21 during this meeting then if it weren't significant
22 in some way or another? It's mentioned in the
23 notes that he was a dual national.

24 MR. ROY: Yes, it is mentioned,
25 yeah.

1 MR. WALDMAN: It is mentioned. So
2 you don't know why someone thought it important
3 that -- to mention Mr. Arar's dual nationality?
4 You weren't aware that that was a legally
5 significant point?

6 MR. ROY: I was not aware whether
7 that could be -- it could have any effect on that.

8 MR. WALDMAN: Did anyone during
9 the course of this meeting say, "Oh, my god, they
10 are going to send him to Syria. We know that El
11 Maati had been tortured; this is really bad. We
12 better do something to stop this"? On October
13 8th.

14 MR. ROY: What is the question?

15 MR. WALDMAN: On October 8th, when
16 you mentioned that there was this concern, at
17 least for Mr. Arar, that it might be possible that
18 as a dual national he might be deported to Syria,
19 did anyone say, "Oh, my god, we can't let that
20 happen. We know that Mr. El Maati was tortured
21 there. We don't want this to happen to Mr. Arar."
22 Did anyone in the room react in that fashion?

23 MR. ROY: Not that I recall.

24 MR. WALDMAN: So no one brought up
25 any concerns about this?

1 MR. ROY: As I said, there was a
2 fear from -- I know that there was a fear of being
3 deported. That's all there was. It's not like he
4 was going to be deported.

5 MR. WALDMAN: So there was no
6 conversation amongst any of the A-OCANADA
7 investigators about a concern that Mr. Arar might
8 be subject to mistreatment if he were sent to
9 Syria?

10 MR. ROY: There could have been,
11 but maybe after I left. I didn't take part in a
12 discussion as such as I remember.

13 MR. WALDMAN: While you were
14 there, there was no discussion --

15 MR. ROY: Not while I was there,
16 no.

17 MR. WALDMAN: And there was no
18 discussion of interceding to prevent Mr. Arar's
19 deportation to Syria at that time?

20 MR. ROY: Not that I remember, no.

21 MR. WALDMAN: Well, in the notes,
22 it says, of the RCMP time line, page 5 --

23 MR. BAXTER: Can we get that
24 document in front of the witness, please,
25 Mr. Waldman?

1 MR. WALDMAN: Page 5 of the RCMP
2 chronology. It's also in the Garvie report.

3 I think it's P-84, page 5. 168.

4 --- Pause

5 MR. WALDMAN: Perhaps I could just
6 show this because we are having difficulty
7 locating it.

8 THE COMMISSIONER: Sure. Please
9 do.

10 MR. WALDMAN: Were you present at
11 this time when this concern was raised, that by
12 going to interview him in the United States and
13 that he were sent to Syria, the perception would
14 be damaging to the RCMP? Were you there?

15 MR. ROY: No.

16 MR. WALDMAN: So you didn't hear
17 that part of this conversation on that day?

18 MR. ROY: No.

19 MR. WALDMAN: I would like to move
20 on to another area, sir.

21 --- Pause

22 MR. WALDMAN: From your notes and
23 your evidence this morning, we know that you were
24 aware that Mr. Edelson, who was representing
25 Mr. Almalki and Mr. Arar at this time, made a

1 request for a letter to help secure Mr. Arar's
2 release.

3 You were aware of that; right?

4 MR. ROY: Vaguely.

5 MR. WALDMAN: You were aware of a
6 meeting that took place between Mr. Edelson and
7 people from A-OCANADA --

8 MR. ROY: Yes. We covered that
9 earlier, yes.

10 MR. WALDMAN: If we could go to
11 P-83, Tab 2, page 206.

12 --- Pause

13 MR. WALDMAN: Have you found that,
14 sir? It's something to Commissioner Proulx --

15 MR. ROY: What page, sorry?

16 MR. WALDMAN: 206.

17 MR. ROY: Tab 3, you said?

18 THE COMMISSIONER: Tab two.

19 MR. WALDMAN: Tab 2, page 206.

20 MR. ROY: 306? I don't go to 306.

21 MR. WALDMAN: 206.

22 MR. ROY: Oh, sorry.

23 MR. WALDMAN: Did you find that?

24 There's a memo from December 5th, 2002.

25 MR. ROY: Yes.

1 MR. WALDMAN: To Commissioner
2 Proulx, and it's -- there's concern about
3 Mr. Edelson's letter/request.

4 MR. ROY: Yes.

5 MR. WALDMAN: So there was a
6 concern that Mr. Pardy was asking Mr. Edelson to
7 get a letter in which the RCMP -- from the RCMP,
8 where the RCMP said that Mr. Arar wasn't wanted
9 for any investigation in Canada, and the RCMP was
10 unhappy about this. Were you aware of that?

11 MR. ROY: Yeah.

12 MR. WALDMAN: Now, did you --
13 there's a suggestion in this memo that you were
14 supposed to speak to Mr. Livermore about this.
15 Did you have a conversation with Mr. Livermore
16 about Mr. Pardy and the role he was playing in
17 overstepping his bounds; do you recall?

18 MR. ROY: No. It's not -- what's
19 written is not what you've said. What it says is
20 I was asked as to who is the best person to speak
21 with in regards to Mr. Pardy. I asked
22 Mr. Heatherington that, and the answer was,
23 Mr. Livermore. And that's what it states here.

24 MR. WALDMAN: Okay. So did you
25 have -- aside from speaking to Mr. Heatherington

1 about who you should speak to, did you have any
2 other role at all in dealing with this issue?

3 MR. ROY: No.

4 MR. WALDMAN: And you had no other
5 conversation. So in terms of your conversation
6 with Mr. Heatherington, what did you say to him?
7 If you asked him who you should speak to, how did
8 you explain this? What was the ... The RCMP's
9 upset about Mr. Pardy and we want to know who we
10 should discuss this with?

11 MR. ROY: I can't remember the
12 words that I used but it would have been something
13 along the lines of -- I can't remember. I can't
14 remember what I said to him.

15 MR. WALDMAN: Now, we know that
16 there was effort to obtain a joint letter
17 between -- to be sent to the Syrian foreign
18 minister from the Minister of Foreign Affairs and
19 the Solicitor General, and you have already told
20 us that you were involved in the conversations
21 around that letter.

22 MR. ROY: I don't know what you
23 mean by "involved in conversations." But, yes,
24 there was a wording, and I forwarded it to CID and
25 they forwarded it under another wording that they

1 found more appropriate in that extent. Is that
2 what you're referring to?

3 MR. WALDMAN: Yes.

4 MR. ROY: Okay.

5 MR. WALDMAN: So were you
6 attempting to, in any way, mediate between the
7 opposing views? We saw there was very different
8 proposals with respect to the wording of the
9 letter. Was it your job at all to mediate, or you
10 just passed the information up and back?

11 MR. ROY: I just passed the
12 information up and back.

13 MR. WALDMAN: Were you in any way
14 involved in drafting the wording that was
15 eventually proposed by the RCMP, that he was the
16 subject of a national security investigation?

17 MR. ROY: No.

18 --- Pause

19 MR. WALDMAN: I'm just checking my
20 notes. I think I'm almost done, Mr. Commissioner.

21 THE COMMISSIONER: Okay.

22 --- Pause

23 MR. WALDMAN: I'd like you to go
24 to your time line, to P-208. There's an entry
25 03/05/01. It says:

1 "Briefing note to
2 commissioner, concern for
3 embarrassment to PM. File."

4 Did you write that briefing note?

5 MR. ROY: No.

6 MR. WALDMAN: So why would you
7 have been -- so this was just something that was
8 copied to you?

9 MR. ROY: For my information, yes.

10 MR. WALDMAN: Right. So there was
11 concern that if the Prime Minister got involved
12 with Mr. Arar, it might cause him embarrassment.
13 So you were aware of that briefing note, but you
14 didn't have anything to do with it.

15 MR. ROY: No.

16 MR. WALDMAN: Thank you,
17 Mr. Commissioner. Those are all my questions.

18 THE COMMISSIONER: Thank you very
19 much, Mr. Waldman.

20 Mr. Boxall?

21 EXAMINATION

22 MR. BOXALL: Sir, you indicated
23 your role was to facilitate discussions between
24 the RCMP officers and the DFAIT experts in any
25 particular situation?

1 MR. ROY: That's correct.

2 MR. BOXALL: And so it would be
3 your role to make sure that the RCMP officers
4 spoke to the appropriate persons at DFAIT with the
5 expertise to assist them?

6 MR. ROY: Yes.

7 MR. BOXALL: So, for example, with
8 respect to Mr. Waldman's questions about RCMP
9 officers knowing about human rights records in
10 Syria, it would be your job then to assist the
11 RCMP officers so they could speak with the DFAIT
12 experts who would know about the human rights
13 records?

14 MR. ROY: Yes.

15 MR. BOXALL: Right? And that's
16 what you did?

17 MR. ROY: Yes, so did ISI, the
18 members of ISI as well.

19 MR. BOXALL: Right. So you would
20 put them in contact with the right persons.

21 MR. ROY: Yes.

22 MR. BOXALL: And once you had
23 arranged for the RCMP investigator to speak with
24 the appropriate expert at DFAIT, they would be --
25 it would be quite appropriate for them to speak

1 direct?

2 MR. ROY: I have no problem with
3 it.

4 MR. BOXALL: Right. So once
5 Inspector Cabana knows who the expert is at DFAIT,
6 or if the DFAIT expert knows that Inspector Cabana
7 is involved in the investigation, they can proceed
8 directly and communicate directly between the two
9 of them?

10 MR. ROY: I see no problem.

11 MR. BOXALL: No problem. Okay.
12 And, sir, on October the 8th, when you attended at
13 A-OCANADA and indicated to them about Mr. Arar's
14 fears, we now know that Mr. Arar was already gone
15 from the United States by then in any event;
16 correct?

17 MR. ROY: Yes.

18 MR. BOXALL: Okay. And, sir, if
19 you could turn to page 25 of your notes, please,
20 sir? The top of the page, sir. You were asked a
21 number of questions by Mr. David about these
22 entries and what I would suggest is hearsay
23 information about what Mr. Powell might say or has
24 said.

25 Would you agree with me that this

1 wasn't so much information as it was hearsay
2 information from which you didn't know the source
3 of what Mr. Powell had threatened to say or had
4 said at some unknown meeting; would you agree?

5 MR. ROY: Yes, I did not know --

6 MR. BOXALL: And you didn't know
7 the source of that?

8 MR. ROY: No.

9 MR. BOXALL: Furthermore, sir, I
10 take it you're aware that subsequent statements by
11 senior American officials have indicated that it's
12 clearly false that the RCMP was in any way
13 supporting his transfer? They said that it was an
14 American unilateral decision.

15 MR. ROY: That's correct.

16 MR. BOXALL: Thank you, sir.

17 Those are the questions I have.

18 THE COMMISSIONER: Mr. Baxter?

19 MR. BAXTER: I have no questions,
20 Mr. Commissioner.

21 THE COMMISSIONER: Mr. David?

22 MR. DAVID: Just very briefly,
23 Mr. Commissioner.

24 EXAMINATION

25 [TRANSLATION]

1 MR. DAVID: In French?

2 MR. RICHARD ROY: Yes, yes.

3 Please.

4 MR. DAVID: Mr. Roy -- I will

5 leave the ---

6 You said that, to the best of your

7 knowledge, according to what you understood, ISI

8 had been made aware of Mr. Arar's consular visit

9 in New York a few days after the fact.

10 MR. RICHARD ROY: To the best of

11 my knowledge, yes.

12 MR. DAVID: To the best of your

13 knowledge.

14 MR. RICHARD ROY: Yes.

15 MR. DAVID: Without being able to

16 categorically say yes.

17 MR. RICHARD ROY: Correct.

18 MR. DAVID: On what basis -- what

19 makes you say -- what is your basis for thinking

20 that?

21 MR. RICHARD ROY: Based on a

22 conversation I overheard at the ISI office and --

23 to the effect that ISI members were displeased

24 about it.

25 Like I said earlier, I may be

1 mistaken. It could have been another case, but I
2 don't think so, because we were dealing with Mr.
3 Arar at the time.

4 And I also had a conversation with
5 Mr. Saunders, and in any case, what I understood
6 was that -- indeed, a few days went by before ISI
7 was informed.

8 But -- they are obviously in a
9 better position to say, but that's my
10 understanding.

11 MR. DAVID: So your understanding
12 comes from a conversation you overheard?

13 MR. RICHARD ROY: Yes.

14 MR. DAVID: Not one in which you
15 participated?

16 MR. RICHARD ROY: No -- not
17 participated. Not actively, but I was there,
18 present.

19 MR. DAVID: You were present.

20 MR. RICHARD ROY: Yes.

21 MR. DAVID: And Mr. Saunders was
22 there, definitely.

23 MR. RICHARD ROY: Yes.

24 MR. DAVID: Do you remember who
25 else was there?

1 MR. RICHARD ROY: No, I don't
2 remember who else.

3 MR. DAVID: And so displeasure was
4 expressed over the fact that there had been a gap
5 of time between the consular visit and when they
6 actually found out that the visit had taken place?

7 MR. RICHARD ROY: Yes.

8 MR. DAVID: Between consular
9 services and the ISI office?

10 MR. RICHARD ROY: Correct.

11 MR. DAVID: That's what you
12 remember.

13 MR. RICHARD ROY: Yes.

14 MR. DAVID: Do you have anything
15 else to tell us about this, something that could
16 shed some light?

17 MR. RICHARD ROY: No.

18 MR. DAVID: Second thing, Mr. Roy,
19 at the beginning of your testimony you described
20 the type of work environment, your office at ISI.
21 You described the offices as being secure.

22 Had a pass been given to you to
23 enter and access ISI offices?

24 MR. RICHARD ROY: Yes.

25 MR. DAVID: To your knowledge, is

1 there a file or a document -- that was kept -- is
2 it possible to track the comings and goings of
3 people by consulting a file?

4 MR. RICHARD ROY: I don't know.

5 MR. DAVID: You don't know.

6 MR. RICHARD ROY: It's possible,
7 but I couldn't tell you.

8 MR. DAVID: Okay.

9 Third, I'd like to refer you to
10 your personal notes. It's Exhibit P-206 again.
11 First page of your notes.

12 It's simply to clarify a point
13 that Mr. Waldman raised with you concerning the
14 meeting of September 10, 2002.

15 You had been in the position for
16 seven days. You had started on September 3, 2002.
17 So, it really was in the first days when you
18 started as a liaison officer that you attended
19 this meeting, and you understood that the meeting
20 concerned Mr. El Maati's case in Egypt?

21 Is that your understanding of
22 things?

23 MR. RICHARD ROY: Not exactly.

24 MR. DAVID: Then could you tell us
25 what was discussed at this meeting on September

1 10, 2002?

2 MR. RICHARD ROY: I don't know
3 whether I can talk about it.

4 MR. BAXTER: May we have a moment,
5 please, Mr. Commissioner?

6 --- Pause

7 [ENGLISH]

8 MR. FOTHERGILL: Commissioner, I'm
9 sorry for the interruption. It's a bit difficult
10 for us to anticipate the witness's answer in such
11 an open-ended question. The best I can do is if I
12 remind all participants that we assert a claim of
13 National Security Confidentiality with respect to
14 most operational details of the investigation that
15 gave rise to Mr. Arar's involvement with the RCMP.

16 So if he can answer in general
17 terms without disclosing operational information,
18 I think we can proceed.

19 THE COMMISSIONER: Thank you,
20 Mr. Fothergill.

21 [TRANSLATION]

22 MR. DAVID: So, in very general
23 terms, Mr. Roy, what was discussed?

24 MR. RICHARD ROY: I've already
25 told you, that I don't really remember what was

1 discussed, but the point I wanted to make was that
2 you mentioned Mr. ---

3 MR. DAVID: El Maati.

4 MR. RICHARD ROY: --- El Maati.

5 What I want to say is that it
6 wasn't strictly about Mr. El Maati.

7 MR. DAVID: But you discussed Mr.
8 El Maati, among other things.

9 MR. RICHARD ROY: Yes, among other
10 things.

11 MR. DAVID: Among other things.

12 MR. RICHARD ROY: Yes, yes.

13 MR. DAVID: During that
14 conversation.

15 And your notes -- simply read your
16 notes. The last passage, the last paragraph,
17 there's reference to a discussion in which you
18 noted what was said -- I think those are Michel
19 Cabana's statements.

20 MR. RICHARD ROY: Yes ---

21 MR. DAVID: Could you simply read
22 the passage?

23 MR. RICHARD ROY: First of all, I
24 see here that Scott said there was a possibility
25 of torture.

1 MR. DAVID: So Scott
2 Heatherington. Possibility of torture.

3 MR. RICHARD ROY: And Mike Cabana
4 says there's always a possibility he claimed he
5 was tortured but that it did not actually happen.

6 MR. DAVID: Okay.
7 That's in reference to Mr. El
8 Maati in Egypt?

9 MR. RICHARD ROY: I can't say that
10 it refers specifically to him, but ---

11 MR. DAVID: But it's a discussion,
12 it's part of the discussion that took place on
13 September 10.

14 MR. RICHARD ROY: Yes, I think
15 that it's probably -- in broad terms, yes.

16 But I can't tell that it's
17 specific to one situation, one individual. It
18 could be hypothetical. It could ---

19 I can't tell you.

20 MR. DAVID: Basically, Mr. Roy, on
21 September 10, at this meeting, Mr. Cabana was
22 there, Ambassador Pillarella was there.

23 MR. RICHARD ROY: Yes.

24 MR. DAVID: There were some
25 discussions. There was a discussion that dealt

1 with torture?

2 MR. RICHARD ROY: Apparently.

3 MR. DAVID: And obviously your
4 notes reflect this.

5 Thank you.

6 [ENGLISH]

7 THE COMMISSIONER: Well, thank you
8 very much, Superintendent Roy. That completes
9 your evidence. I appreciate the time and effort
10 you've put in to coming and giving your evidence.

11 MR. ROY: Thank you, sir.

12 THE COMMISSIONER: We will break
13 for ten minutes. I think it will make sense to
14 start with the next witness and perhaps get an
15 hour in today with the next witness.

16 We will rise for ten.

17 THE REGISTRAR: Please stand.

18 --- Upon recessing at 3:58 p.m. /

19 Suspension à 15 h 58

20 --- Upon resuming at 4:09 p.m. /

21 Reprise à 16 h 09

22 THE REGISTRAR: Please be seated.

23 Veuillez-vous asseoir.

24 THE COMMISSIONER: Mr. Cavalluzzo?

25 MR. CAVALLUZZO: Commissioner. We

1 have Mr. Richard Flewelling with us, and
2 Mr. Flewelling has been sworn before, so there's
3 no need to have him sworn.

4 THE COMMISSIONER: You're still
5 under oath. There's no need to swear you again.

6 PREVIOUSLY SWORN: RICHARD FLEWELLING

7 MR. CAVALLUZZO: There are a few
8 documents I'd like to file in respect of
9 Mr. Flewelling. The first is his curriculum
10 vitae.

11 THE COMMISSIONER: C-220 -- or,
12 no, it's P-220. It's late in the afternoon.
13 P-220.

14 EXHIBIT NO. P-220:
15 Curriculum vitae of Richard
16 Flewelling

17 EXAMINATION

18 MR. CAVALLUZZO: Mr. Flewelling, I
19 understand you have been with the Royal Canadian
20 Mounted Police for approximately 23 years?

21 MR. FLEWELLING: That's correct.

22 MR. CAVALLUZZO: At the present
23 time you are a corporal?

24 MR. FLEWELLING: Sergeant.

25 MR. CAVALLUZZO: Sergeant. And

1 you are located where?

2 MR. FLEWELLING: I'm presently
3 posted back here in Ottawa as of August the 2nd.

4 MR. CAVALLUZZO: August the 2nd.
5 What is your present position?

6 MR. FLEWELLING: I am presently
7 with the major events protective policing here at
8 headquarters.

9 MR. CAVALLUZZO: When did you
10 receive the promotion of sergeant?

11 MR. FLEWELLING: Approximately
12 April of this year.

13 MR. CAVALLUZZO: April of 2005?

14 MR. FLEWELLING: Yes.

15 MR. CAVALLUZZO: Okay. And prior
16 to that time, I understand that you became a
17 corporal in 1987; is that correct?

18 MR. FLEWELLING: That's correct.

19 MR. CAVALLUZZO: Okay. I'd like
20 to review just some of your responsibilities with
21 the RCMP, and of course we're going to focus in on
22 the period between June 2001 and May of 2003, when
23 you were at the CID. But just prior to that time,
24 just a few years ahead of that, as I say, you
25 became a corporal in 1987.

1 Now, between 1990 and 1994, you
2 worked in British Columbia in the Prince George
3 Municipal Detachment; is that correct?

4 MR. FLEWELLING: That is correct.

5 MR. CAVALLUZZO: Okay. And
6 between 1994 and 1998, you worked at the RCMP
7 depot division in Regina?

8 MR. FLEWELLING: Yes, that's
9 correct.

10 MR. CAVALLUZZO: And your
11 positions were, for a couple of years you were a
12 facilitator, and for a couple of years you were a
13 fitness instructor?

14 MR. FLEWELLING: That's correct.

15 MR. CAVALLUZZO: Okay. Between
16 1998 and 2000, you were in New Brunswick?

17 MR. FLEWELLING: Yes.

18 MR. CAVALLUZZO: And where were
19 you located there and what were you doing?

20 MR. FLEWELLING: I spent two years
21 as a team leader with the -- what they call
22 District 2 in Oromocto with both rural and
23 municipal detachments.

24 MR. CAVALLUZZO: Okay. And you
25 remained in New Brunswick. 2000, 2001, you were

1 in Fredericton?

2 MR. FLEWELLING: That is correct.

3 MR. CAVALLUZZO: What you were
4 doing in Fredericton?

5 MR. FLEWELLING: I spent one year
6 with the commercial crime unit.

7 MR. CAVALLUZZO: And in June of
8 2001, you moved to national headquarters in
9 Ottawa?

10 MR. FLEWELLING: Approximately
11 June 23rd of that year, yes.

12 MR. CAVALLUZZO: Okay. And you
13 moved into CID?

14 MR. FLEWELLING: That's correct.

15 MR. CAVALLUZZO: And in particular
16 you worked in the National Security Offences
17 Section?

18 MR. FLEWELLING: That's correct.

19 MR. CAVALLUZZO: Okay. Now we're
20 going to come to your duties and responsibilities
21 when you were at CID, but before doing that,
22 you've got extensive training, that we see in your
23 curriculum vitae. However, in respect of national
24 security training, I understand that in February
25 of 2002, you took the national security

1 enforcement course in Regina?

2 MR. FLEWELLING: That is correct.

3 MR. CAVALLUZZO: And that's, I
4 understand, a ten-day course?

5 MR. FLEWELLING: Yes.

6 MR. CAVALLUZZO: And the syllabus
7 for that course can be found in Exhibit P-12,
8 Mr. Loeppky's Book of Documents.

9 I understand as well that in
10 October of 2001, and September of 2002, you took
11 an international working group on financial
12 terrorism seminar or tutorial?

13 MR. FLEWELLING: Yes, that is
14 correct.

15 MR. CAVALLUZZO: Is that correct?
16 How long were those seminars or training courses?

17 MR. FLEWELLING: Each one of those
18 would be about two to three days in duration.

19 MR. CAVALLUZZO: Okay. And as
20 well the only other terrorism-, I guess, related
21 course would be something referred to as the G-8
22 terrorist workshop that you took at CSIS in April
23 of 2001?

24 MR. FLEWELLING: Yes.

25 MR. CAVALLUZZO: And how long was

1 that workshop?

2 MR. FLEWELLING: Again, I believe
3 that was a day, if not a day or two.

4 MR. CAVALLUZZO: Okay. Now, in
5 any of these courses, any of the three that we
6 were referring to, was there any training whatever
7 in respect of Muslim values, culture, traditions,
8 religion?

9 MR. FLEWELLING: Not specifically,
10 no.

11 MR. CAVALLUZZO: Okay. Now, I'd
12 like to now move from your curriculum vitae to
13 your duties and responsibilities at CID, and in
14 particular, I'm going to ask the clerk if he can
15 give you Exhibit P-12, Tab 6, which is an
16 organizational chart for the division at the
17 material time.

18 --- Pause

19 MR. CAVALLUZZO: We have something
20 here called the National Security Investigation
21 Branch, and Mr. Loepky testified that this was
22 the organizational chart which was effective
23 between May 2001 and April of 2003, which would be
24 the material time that we are reviewing.

25 Now, in respect of the National

1 Security Investigations Branch, we see that at the
2 top of the pyramid, or hierarchy, is something
3 called the Assistant Commissioner, Criminal
4 Intelligence Directorate, or Assistant
5 Commissioner CID, and I understand that for the
6 whole period of time that you were there, that
7 position was held by Mr. Richard Proulx?

8 MR. FLEWELLING: That is correct.

9 MR. CAVALLUZZO: Okay. And if we
10 move down to the IC, National Security
11 Investigation Branch, I understand that for the
12 material period of time that that position was
13 held by Mr. Wayne Pilgrim?

14 MR. FLEWELLING: That's correct.

15 MR. CAVALLUZZO: And did
16 Mr. Pilgrim hold that position for that period of
17 time?

18 MR. FLEWELLING: Yes, he did.

19 MR. CAVALLUZZO: Okay. And what
20 was your position in CID? I understand that if we
21 go to the right there, we see a box called
22 "National Security Offences Section." Is that the
23 section in which you were employed?

24 MR. FLEWELLING: Yes.

25 MR. CAVALLUZZO: Okay. What was

1 your position?

2 MR. FLEWELLING: My position would
3 be under the reviewer analyst. Upon my first
4 arrival there, I would have been surplus to
5 establishment.

6 MR. CAVALLUZZO: But it would be
7 the position of reviewer analyst?

8 MR. FLEWELLING: Yes.

9 MR. CAVALLUZZO: And in respect of
10 the NCO, or the National Commissioned Officer for
11 the NSOS, or the National Security Offences
12 Section, I understand that during the material
13 time there were two different people maintaining
14 that position? Initially who was it?

15 MR. FLEWELLING: Upon my arrival,
16 that position was vacant, and Corporal Tim O'Neill
17 was taking over that position, in the acting role.

18 MR. CAVALLUZZO: And then I
19 understand that Mr. Ron Lauzon took that position
20 from Mr. O'Neill?

21 MR. FLEWELLING: Yes, I believe he
22 arrived in mid 2002, or thereabouts.

23 MR. CAVALLUZZO: And so that
24 either Mr. O'Neill or Mr. Lauzon would be the
25 supervisors to whom you would directly report?

1 MR. FLEWELLING: That is correct.

2 MR. CAVALLUZZO: Okay. Let us
3 look, then, at the reviewer analyst position. Why
4 don't you tell us, and let me just break this down
5 into pre- and post-9/11. Let's deal initially
6 with before 9/11 and tell us what you did as a
7 reviewer analyst.

8 MR. FLEWELLING: Our functions as
9 reviewer analysts were multi-faceted in that we
10 were responsible for taking in any information
11 that would have come in from a foreign or domestic
12 agency, at which point we would analyze that
13 information and try and review our database to see
14 if there was additional information that we could
15 go along with that piece of information, then
16 determine who we would have to send it out to as
17 far as our field divisions in order to conduct the
18 investigation, if that's what it was.

19 A lot of our mandate surrounded
20 anything that was of a terrorist nature, anything
21 that was of a national concern or national
22 interest.

23 Once that information was sent out
24 or we had tasked our various units, then we would
25 solicit that information to come back through our

1 unit, whereby we would again review it and
2 determine who it had to go to.

3 I should also add that we would
4 also take a look at that information and determine
5 who else that we needed to engage in order to
6 bring into the mix, in order to be able to deal
7 with that information appropriately --

8 MR. CAVALLUZZO: So, for
9 example --

10 MR. FLEWELLING: Who we had to
11 inform.

12 MR. CAVALLUZZO: For example, if
13 we could just take a hypothetical. If the FBI or
14 other foreign agency tasked the RCMP with
15 something, the task or the request would go
16 through CID. You would sit down, analyse it,
17 review it, make a determination as to where it
18 should go, whether it should be a field unit or
19 perhaps it may even go to the CBSA, the Canadian
20 Border Services Agency, who may have
21 responsibilities in respect of that; is that
22 correct?

23 MR. FLEWELLING: Or maybe another
24 unit if it didn't touch our area or our mandate.

25 MR. CAVALLUZZO: And what would

1 happen is after that tasking was completed,
2 whether it be by a unit out in the field or by
3 another Canadian agency, that information would
4 flow back to you at CID?

5 MR. FLEWELLING: That is correct.

6 MR. CAVALLUZZO: And then you at
7 CID would make a determination as to what would go
8 and where it would go?

9 MR. FLEWELLING: Yes.

10 MR. CAVALLUZZO: And how it would
11 go?

12 MR. FLEWELLING: Correct.

13 MR. CAVALLUZZO: And I'll come
14 back to that.

15 Now, how many people, in
16 particular how many reviewer analysts did we have
17 employed in CID just prior to 9/11?

18 MR. FLEWELLING: At that time
19 there were, including myself, five.

20 MR. CAVALLUZZO: Okay. Now, with
21 the events of 9/11, and shortly after 9/11, as we
22 know, Bill C-36 was passed in December of 2001,
23 and we have heard a great deal of evidence
24 actually from Mr. Loepky and others that a great
25 deal of funding came to the RCMP respecting the

1 responsibilities emanating from Bill C-36, and I'm
2 wondering if you could just share with us briefly
3 how your job as reviewer analyst changed as a
4 result of 9/11, Bill C-36, and the increased
5 funding?

6 MR. FLEWELLING: After 9/11, that
7 was one thing where certainly the additional
8 requests and the pressure placed on us to get to
9 the various requests and get the various
10 information out was quite extensive, and it really
11 increased the pressure upon us to be able to do
12 our job and our functions.

13 If I move on to how the aspect of
14 the -- the Bill C-36 aspect translated --

15 MR. CAVALLUZZO: Just before you
16 do that, we've heard evidence about something
17 called Project Shock --

18 MR. FLEWELLING: Yes.

19 MR. CAVALLUZZO: -- in which a
20 number of -- hundreds, indeed thousands of tips,
21 requests and so on, came in to the RCMP. Now,
22 were you, at CID, part of Project Shock?

23 MR. FLEWELLING: The initial week
24 following September 11th, I was seconded to
25 Transport Canada where I acted as a liaison

1 between Transport Canada and the RCMP in order to
2 be able to deal with the landing of all aircraft,
3 the searches, and then the ultimate reopening of
4 civilian airspace.

5 Once that was completed, I
6 returned to headquarters, and I was assigned
7 responsibility within Project Shock for the
8 Provinces of Manitoba, Saskatchewan, Alberta,
9 British Columbia, the three Territories, as well
10 as to maintain a liaison with Transport Canada and
11 to act as a liaison with the newly created
12 Financial Intelligence Branch.

13 MR. CAVALLUZZO: Now, in regard to
14 the responsibilities relating to Western Canada
15 and the three Territories, were you coordinating
16 terrorist files that were active in those
17 provinces and territories?

18 MR. FLEWELLING: My role at that
19 particular point in time ended up more of a
20 processing of requests, where as they were coming
21 in, we were identifying who they needed to go to
22 and then shipping that information out, soliciting
23 the information to come back in and trying to get
24 it back to -- or funnelling it to whoever it
25 needed to.

1 MR. CAVALLUZZO: Obviously, you've
2 told us that the number of requests and demands
3 created as a result of 9/11 increased
4 substantially. Did that mean that there were
5 going to be more reviewer analysts employed in the
6 NSOS?

7 MR. FLEWELLING: Initially we
8 functioned with the number that we had and then
9 ultimately the numbers increased.

10 MR. CAVALLUZZO: Do you know what
11 the numbers were by the time you left in April of
12 2003?

13 MR. FLEWELLING: I believe there
14 were approximately eight positions, so --

15 MR. CAVALLUZZO: And when you
16 came, there were five?

17 MR. FLEWELLING: Yes.

18 MR. CAVALLUZZO: Now, before -- I
19 want to deal specifically with
20 information-sharing, and I'm going to come to
21 that, because we have heard some evidence on that,
22 and I'll introduce you to that evidence, but just
23 before we do that, we've heard a great deal of
24 evidence of something called Project OCANADA and
25 we've also heard of something called Project

1 A-OCANADA, and I'm wondering if you had any
2 dealings with Project A-OCANADA during your period
3 of employment in the CID?

4 MR. FLEWELLING: Yes.

5 MR. CAVALLUZZO: And when did you
6 start, shall we say, shepherding or being
7 responsible for A-OCANADA?

8 MR. FLEWELLING: I was asked at
9 the end -- or the beginning of June 2002, by
10 Inspector McDougall to start taking a look at --
11 looking at moving into that role.

12 MR. CAVALLUZZO: Okay. And when
13 did you fully take charge in a supervisory
14 capacity of Project A-OCANADA?

15 MR. FLEWELLING: I would say
16 approximately mid-June, July, in around that
17 range, where I was becoming the contact person for
18 that role.

19 MR. CAVALLUZZO: Okay. I'm going
20 to come back to that because I'm very interested
21 in the relationship between CID and Project
22 A-OCANADA.

23 But before doing that, there's one
24 area that I would like to deal with, and that is
25 information-sharing.

1 MR. FLEWELLING: Yes.

2 MR. CAVALLUZZO: Okay? Now, we've
3 heard -- we've heard evidence as to the use of
4 caveats, and I'm going to come back to that. But
5 I want to just set the context up for my
6 questions.

7 Now, if I can just save a wee bit
8 of time. In terms of information-sharing before
9 9/11 -- and let me just describe it how you
10 described it to me and see if I've captured it
11 correctly?

12 Let us look at an external agency
13 once again, if we take the FBI. The FBI seeks
14 information from the RCMP, or assistance, but
15 let's just focus in on information. That would
16 come to the CID?

17 MR. FLEWELLING: Yes.

18 MR. CAVALLUZZO: Now, where would
19 that come from, pre-9/11? Would that come from
20 FBI in Washington, FBI in Boston, FBI in Ottawa?
21 Where would it come from?

22 MR. FLEWELLING: The actual
23 request you're talking about?

24 MR. CAVALLUZZO: Yes.

25 MR. FLEWELLING: The actual

1 request would come from the U.S. Embassy.

2 MR. CAVALLUZZO: In...?

3 MR. FLEWELLING: In Ottawa.

4 MR. CAVALLUZZO: In Ottawa. Okay.

5 So it goes to the CID. You've told us that in
6 respect of that request, as the reviewer analyst,
7 you would analyse their request?

8 MR. FLEWELLING: That's correct.

9 MR. CAVALLUZZO: You would indeed
10 process, and then you would assign it --

11 MR. FLEWELLING: Yes.

12 MR. CAVALLUZZO: -- to -- whether
13 it's "A" Division that should get this request or
14 another domestic agency such as CBSA, or CSIS,
15 or --

16 MR. FLEWELLING: Or a number of
17 various divisions.

18 MR. CAVALLUZZO: Then it would go,
19 if we can call it, to the field, or to another
20 agency, or to another division?

21 MR. FLEWELLING: Yes.

22 MR. CAVALLUZZO: After you had
23 processed it?

24 MR. FLEWELLING: Correct.

25 MR. CAVALLUZZO: Now, after that

1 division, agency, or unit or whatever, wherever it
2 went, got the information that was required, where
3 would that information go?

4 MR. FLEWELLING: We would solicit
5 that information, again we would review it to
6 ensure --

7 MR. CAVALLUZZO: When you're
8 saying "we," you're talking about CID?

9 MR. FLEWELLING: Yes.

10 MR. CAVALLUZZO: Okay. Go on
11 then.

12 MR. FLEWELLING: We would review
13 it, ensure that the content of that information
14 didn't have any third party or another agency's
15 information in it, and if it did, we would solicit
16 approval for disseminating that information.

17 MR. CAVALLUZZO: And then that
18 information would go to the agency, the foreign
19 agency that was requesting?

20 MR. FLEWELLING: That is correct.

21 MR. CAVALLUZZO: Okay. Now, if we
22 look at the purposes as to why that kind of
23 information should go through CID, you've
24 mentioned a couple of things, and if I could just
25 summarize those with you.

1 First of all, there's the "what"
2 of it. What information is going to be sent to
3 this foreign agency? You're concerned about
4 things like national security. There's certain
5 information that shouldn't go because of national
6 security; isn't that correct?

7 MR. FLEWELLING: That's correct.

8 MR. CAVALLUZZO: I assume you're
9 concerned about what's known as need-to-know. If
10 it's personal information, you're not going to
11 send all the personal information that you have,
12 you're going to scrutinize that information on a
13 need-to-know basis. You may pass that on to the
14 foreign agency?

15 MR. FLEWELLING: I want to make
16 sure that the information is relevant and that
17 we're aware of it so that we can inform even our
18 management, if need be.

19 MR. CAVALLUZZO: So that's the
20 "what" of it: What information are you going to
21 send to the foreign agency?

22 And I guess what I didn't tie down
23 there in terms of the foreign agency, would that
24 go back to the American Embassy in Washington
25 directly, or would it go to your LO in Washington?

1 MR. FLEWELLING: Pre-9/11, we
2 would forward that information to our LO in
3 Washington.

4 MR. CAVALLUZZO: And then the LO
5 in Washington would deliver it to the --

6 MR. FLEWELLING: He would, in
7 turn, go to the various U.S. agency that needed to
8 be engaged.

9 MR. CAVALLUZZO: Okay. Just so
10 that I'm clear. Now, pre-9/11, you told us the
11 request would come from the American Embassy. Are
12 you sure of that, or would it come from the LO in
13 Washington, pre-9/11?

14 MR. FLEWELLING: Pre-9/11, that
15 information would be -- would come in to our
16 office, especially if it was with respect to the
17 U.S. agency, I think you mentioned the FBI --

18 MR. CAVALLUZZO: Yeah, where --

19 MR. FLEWELLING: Then in that case
20 it would come to us via the U.S. Embassy here in
21 Ottawa.

22 MR. CAVALLUZZO: So it wouldn't
23 come from the -- the FBI wouldn't bring it to the
24 LO -- your LO in Washington who would then deliver
25 it to Ottawa? It would come directly from the

1 Embassy?

2 MR. FLEWELLING: That is correct.

3 MR. CAVALLUZZO: Okay. So now
4 we've dealt with what information. We're talking,
5 once again, as to the reasons or rationale
6 underlying why the information should be processed
7 through CID. We've dealt with the what.

8 Now let's deal with the how of it.
9 In other words, what we're talking about here,
10 obviously, are whether caveats should be attached
11 to the information. Is that something that CID
12 would ensure was done?

13 MR. FLEWELLING: Yes. We would
14 peruse the information to ensure that whatever
15 information that was in that document was
16 protected in terms of the caveat, yes.

17 MR. CAVALLUZZO: And how many
18 caveats would you normally put on such information
19 going to the FBI?

20 MR. FLEWELLING: For a document or
21 a report that was going to a foreign agency, there
22 would be two.

23 MR. CAVALLUZZO: The two? And
24 it's: "This is the property of Canada" caveat?

25 MR. FLEWELLING: That would be

1 one.

2 MR. CAVALLUZZO: And what would be
3 the other one?

4 MR. FLEWELLING: The other one I
5 believe would say: "This is the property of the
6 RCMP and for your sole use for information
7 purposes," something to that effect.

8 MR. CAVALLUZZO: Okay. Now, the
9 third matter that CID would be concerned about.
10 We've talked about what information is going, how
11 it's going, that is, with caveats. And the other
12 aspect you mentioned, and that is, that if you
13 were going to give information that the RCMP had
14 obtained from another Canadian agency --

15 MR. FLEWELLING: Yes.

16 MR. CAVALLUZZO: -- which had
17 caveated that information, what would you do at
18 CID?

19 MR. FLEWELLING: If it was to be
20 shared, we would go back to the originator, which
21 would be either the field unit or we'd go to the
22 headquarters level here in Ottawa, to advise them
23 that this information was going to be passed along
24 and do we have the authorization to do that?

25 MR. CAVALLUZZO: Now, I guess the

1 final, excuse me, the final rationale underlying
2 why things should go through CID is coordination.
3 Would you have a role to play in terms of
4 coordinating information from different units,
5 divisions, agencies?

6 MR. FLEWELLING: That would be
7 part of my role.

8 MR. CAVALLUZZO: Okay. And that's
9 presumably an important role if you're getting
10 information from different Canadian agencies?

11 MR. FLEWELLING: Yes, at least
12 from the headquarters' perspective, yes.

13 MR. CAVALLUZZO: Now, I'd like to
14 move on now to 9/11 and whether things changed
15 after 9/11, and we've heard evidence -- we've
16 heard evidence in public from two different
17 witnesses. We've heard Mr. Cabana testify. You
18 know what his testimony is in respect of that, and
19 that is that he testified that caveats are down,
20 the free flow of information, that we didn't put
21 caveats on because there was implied caveats. And
22 then we heard from Deputy Commissioner Loepky who
23 said that the policy still applied after 9/11,
24 that is, that the policies requiring the
25 imposition of caveats on documents or information

1 going to other agencies.

2 And the question that I have for
3 you is that after 9/11, were you aware of this
4 idea of no caveats? That when you shared
5 information or documents with partner agencies,
6 whether it be in Canada or in the United States --
7 I'm talking about partner agencies -- that you did
8 not have to put caveats on these documents or
9 reports?

10 MR. FLEWELLING: Not that I'm
11 aware of.

12 MR. CAVALLUZZO: Clearly it was
13 never in writing?

14 MR. FLEWELLING: Not that I saw,
15 no.

16 MR. CAVALLUZZO: And did you get
17 any understanding from any of your superiors,
18 whether it be Proulx, Pilgrim, Lauzon, or O'Neill,
19 that caveats were down, "Boys, we don't have to
20 worry about putting the caveats on. Let's just
21 get the information over in a timely way"?

22 MR. FLEWELLING: I don't recall
23 ever receiving any instructions with respect to
24 caveats being down. There was, however, a
25 tremendous emphasis placed on ensuring that we

1 shared the information in a timely fashion and as
2 quickly as possible.

3 MR. CAVALLUZZO: So this idea that
4 we share information quickly, because of the
5 perceived threat that obviously existed after
6 9/11 --

7 MR. FLEWELLING: Yes.

8 MR. CAVALLUZZO: -- let's get it
9 done quickly. But did that mean that the policy
10 still applied, that is, the policies respecting
11 caveats?

12 MR. FLEWELLING: Again, I don't
13 recall there being anything written or other with
14 respect to caveats being down.

15 MR. CAVALLUZZO: Were you aware,
16 post-9/11 -- were you aware that information or
17 documentation was being sent to American or
18 Canadian agencies without caveats?

19 MR. FLEWELLING: Yes.

20 MR. CAVALLUZZO: And is there any
21 explanation as to why that was happening?

22 MR. FLEWELLING: I really don't
23 know if there was any reason or if there was any
24 preexisting arrangements or anything. However, I
25 do know that when I was asked to start to take

1 over, one of the instructions that I was given by
2 Mr. Pilgrim was to try and bring back the pre-9/11
3 way of doing things, if you will.

4 MR. CAVALLUZZO: We're going to
5 come to that. Indeed, when Mr. Pilgrim instructed
6 or directed you to start focusing in on Project
7 A-OCANADA, one of the instructions he gave you, as
8 you've just stated, is bring the situation back to
9 the pre-9/11 policies, which obviously would
10 include caveats?

11 MR. FLEWELLING: I think the other
12 thing too is that because of the 9/11 and with the
13 redistribution of resources, that there were a
14 number of new people that were brought in to the
15 national security environment that perhaps weren't
16 fully aware as to what some of the roles and
17 policies were, and part of our function was to try
18 and to get that message back out, that, yes, let's
19 try and follow the policies as they exist, and
20 that in the enforcement and in the intelligence
21 world, there is that implied caveat that whatever
22 information you get, you treat it as if it does
23 have caveats.

24 MR. CAVALLUZZO: So even if there
25 is no written caveat, there is an implied caveat,

1 that information will be used for intelligence
2 purposes only, and if you're going to use it for
3 another purpose, then you'd better come back to
4 the RCMP to seek your permission?

5 MR. FLEWELLING: Yes.

6 MR. CAVALLUZZO: Okay. Now, you
7 mentioned something about new people coming as a
8 result of 9/11, new people coming on to, if we can
9 call it, the national security scene, and may have
10 been used to criminal investigations before and
11 weren't necessarily sensitive to the needs of a
12 national security investigation; is that fair?

13 MR. FLEWELLING: That would be
14 fair.

15 MR. CAVALLUZZO: And of course one
16 of the things that's very important for a national
17 security investigation is what you talked about
18 before, that is, the coordination of
19 investigations, the coordination of information,
20 and certainly, in terms of dealings with foreign
21 or other agencies, there has to be that kind of
22 mediation between the field units and the outside
23 agencies; is that fair?

24 MR. FLEWELLING: I think it's
25 important to state that the actual investigation

1 that is being done is coordinated at the field
2 level, at the division level.

3 MR. CAVALLUZZO: Right.

4 MR. FLEWELLING: And then the
5 passing of that information, or the securing of
6 that information and to be disseminated, or to
7 ensure policy so on and so forth, is looked after,
8 then that would fall within our responsibility.

9 MR. CAVALLUZZO: Right, and
10 although obviously organized crime is world-wide,
11 but when you're dealing with national security
12 investigations, for the most part, you're going to
13 be dealing necessarily with foreign agencies all
14 the time, and that requires, once again, the kind
15 of coordination that we were talking about before,
16 before we send out information about Canadians to
17 foreign agencies; isn't that correct?

18 MR. FLEWELLING: Yes.

19 MR. CAVALLUZZO: Now, I would like
20 to deal with the situation post-9/11 -- and we've
21 talked about the trail from before 9/11, external
22 agencies, CID, field units, other divisions, other
23 agencies, back to CID, then out to the external or
24 foreign agency after you have done the analysing,
25 coordination, control, and so on -- and ask

1 whether that particular protocol or procedure
2 changed after 9/11?

3 MR. FLEWELLING: Oh, definitely.
4 It definitely changed our way of operations
5 because, from our level, our ability to be able to
6 analyze the information, number one, to the extent
7 that we want to, was not there.

8 Secondly our LO in Washington was
9 impacted with numerous tasks and was not able to
10 pass on the information in a timely fashion.
11 Therefore, the decision was made that for a time
12 period that we could pass that information
13 directly through the American Embassy.

14 MR. CAVALLUZZO: So how that
15 changed -- and we are going to come to a situation
16 of resources, and your notes deal with the limited
17 resources you had early on.

18 But how that protocol changed was
19 because of the time factor, your LO in Washington
20 was clearly overspent in terms of his or her time,
21 and as a result of that at the end of the day, the
22 direct agent -- the direct line would be to the
23 embassy in Washington -- or, excuse me, in Ottawa,
24 as well as the LO in Washington?

25 MR. FLEWELLING: There still would

1 be information that would be passed through our LO
2 in Washington.

3 MR. CAVALLUZZO: Right.

4 MR. FLEWELLING: However, due to
5 the influx in the number of various requests and
6 so forth, it was just unmanageable.

7 MR. CAVALLUZZO: Right.

8 MR. FLEWELLING: Therefore, the
9 decision was made to pass the information straight
10 through to the American Embassy.

11 MR. CAVALLUZZO: And that was to
12 meet the concerns of time. Time is of the essence
13 in this particular atmosphere, and as a result of
14 that, the information --

15 MR. FLEWELLING: Well, nobody
16 wanted --

17 MR. CAVALLUZZO: Listen to the
18 question. The information would go to the Embassy
19 as well as to the LO in Washington.

20 MR. FLEWELLING: Yes.

21 MR. CAVALLUZZO: And presumably,
22 obviously, even though it was a timely exchange of
23 information, the fact was that if it was come
24 through CID, caveats would be put on the
25 information if it was required by the policies?

1 MR. FLEWELLING: Yes.

2 MR. CAVALLUZZO: Now, I would like
3 to move now to your relationship -- or not your,
4 but the relationship between --

5 THE COMMISSIONER: Just before we
6 leave that, can I just ask you: Under this new
7 procedure as you understood it post-9/11, there
8 was a change in that it would be provided directly
9 from the operational level, A-OCANADA in this
10 example, as opposed to being sent to CID for
11 review and scrutiny.

12 Is that right?

13 MR. FLEWELLING: No, not
14 necessarily.

15 MR. CAVALLUZZO: I think his
16 evidence -- let me just rephrase that. His
17 evidence was the change was that it was still to
18 go from the division to CID, and the change was
19 CID could pass the information directly to the
20 Canadian Embassy -- or the American Embassy in
21 Ottawa as well as the LO in Washington.

22 MR. FLEWELLING: Yes.

23 MR. CAVALLUZZO: Is that correct?

24 THE COMMISSIONER: I misunderstood
25 that.

1 And you indicated that pre-9/11
2 the practice was that the information would be
3 scrutinized on a need-to-know basis to see if
4 there was any personal information that didn't go,
5 be scrutinized for relevancy, and so on.

6 MR. FLEWELLING: Yes.

7 THE COMMISSIONER: That the CID
8 would bring judgments to bear in the contents of
9 the information. Did that continue to be the case
10 post-9/11?

11 MR. FLEWELLING: Post-9/11, for
12 the most part of the country, the information
13 would come back through CID. And then the only
14 difference would be is that instead of it going
15 to, let's say, the LO Washington -- not all
16 information went straight to the LO Washington
17 because they were impacted. There was an awful
18 lot of information that flowed directly from CID
19 straight to the U.S. Embassy.

20 THE COMMISSIONER: Right.

21 MR. FLEWELLING: And that was
22 because of the concern of the threats and so on
23 and so forth.

24 THE COMMISSIONER: But my question
25 is: Was the scrutiny that took place pre-9/11 for

1 relevance, personal information, need to know and
2 so on, did that scrutiny still take place?

3 MR. FLEWELLING: Yes. Perhaps not
4 at the same level as it did previous, but that
5 scrutiny was there, yes.

6 THE COMMISSIONER: Okay. Thank
7 you.

8 MR. CAVALLUZZO: Coming to the
9 next topic that I would like to deal with this
10 afternoon is the relationship between CID and
11 Project A-OCANADA. You told us earlier that one
12 of the directives you received from Mr. Pilgrim,
13 who was your -- I guess between you and
14 Mr. Pilgrim there was a supervisor, either O'Neill
15 or Ron Lauzon, but Pilgrim would be the ultimate
16 person in the NSOS, or at least responsible for
17 NSOS.

18 And his direction was to bring
19 Project A-OCANADA back to the way things were, as
20 you put it, before 9/11 as far as the policies --

21 MR. FLEWELLING: Just try to bring
22 back the preexisting policies that were in place.

23 MR. CAVALLUZZO: And as far as
24 that is concerned, that obviously is a very
25 important responsibility. Did you have any more

1 responsibilities as being the supervisor for CID,
2 or the coordinator from CID in respect of Project
3 A-OCANADA, apart from bringing them back on to
4 policy? Were there any other responsibilities you
5 had?

6 MR. FLEWELLING: That I had at the
7 time? I would have to go back to the time when
8 Bill C-36 was in play and all of a sudden there
9 was a number of new units that were required to be
10 started.

11 As a result I know that management
12 had a great deal of pressure to get them up and
13 moving in a very quick fashion. Therefore, there
14 were a number of individuals from my unit that
15 were taken and utilized to head up those units and
16 replaced with other individuals from the field.
17 We also had to send a few off in order to look
18 after -- or in a secondment role to work with
19 other agencies in order to increase the awareness
20 of the RCMP and to facilitate the role of sharing
21 of information.

22 As a result, I found myself in a
23 position where I was mentoring, coaching,
24 supervising, if you will, a vast majority of major
25 investigations as well as acting as the

1 coordinator for this project.

2 MR. CAVALLUZZO: Now, I understand
3 that when you came on to the scene in respect of
4 your oversight responsibilities relating to
5 Project A-OCANADA that you were going to bridge
6 some of the relationship problems that may have
7 existed up at that point in time? I understand
8 that before you came on to the scene, that there
9 were a few problems between A-OCANADA and CID; is
10 that correct?

11 MR. FLEWELLING: I was the fourth
12 individual that was asked to oversee the project,
13 and I was aware that there were a few issues. The
14 exact nature of those issues, I'm not fully aware
15 of.

16 However, the two roles that I was
17 given was to (a) try and look after or give the
18 awareness of the various policies, and hopefully
19 to increase or to bridge the gap, as you
20 mentioned.

21 MR. CAVALLUZZO: Now, as far as
22 you being the fourth oversight supervisor, we
23 understand from the evidence that A-OCANADA was
24 created on October 5th of 2001, and you are moving
25 over in June of 2002, which in my calculation

1 would be a period of nine months. So being the
2 fourth oversight supervisor in nine months seems
3 to be, if not a record, but signifying that there
4 may be a problem.

5 Is that fair?

6 MR. FLEWELLING: Again, I can't
7 comment on what some of the issues were
8 previously, other than to say that when I was
9 asked to start to move into that role, that that
10 was instructions I was given by Mr. Pilgrim.

11 MR. CAVALLUZZO: Did you not go to
12 see the three other oversight supervisors and say,
13 "Thanks very much. What am I left with? What's
14 the problem?"

15 MR. FLEWELLING: I can't recall
16 what a lot of the -- specifically what some of
17 their issues were.

18 MR. CAVALLUZZO: Right. Well, we
19 are going to take you through it. And let me tell
20 you some of the issues that existed with you, and
21 there are about three or four.

22 One is what I would call keeping
23 you in the loop. You know what that means; right?

24 MR. FLEWELLING: Yes, definitely.

25 MR. CAVALLUZZO: And that was a

1 problem. Use of caveats. Another problem?

2 MR. FLEWELLING: We worked through
3 it.

4 MR. CAVALLUZZO: You worked
5 through it. Let's see. Another one was direct
6 dealings with foreign agencies. Was that a
7 problem?

8 MR. FLEWELLING: That was a
9 negotiation from my understanding that was
10 preexisting.

11 MR. CAVALLUZZO: So that was a
12 preexisting problem which surfaced a couple of
13 times when you were there?

14 MR. FLEWELLING: Unfortunately,
15 that was an arrangement, or an agreement if you
16 will, that was made with management when the
17 project started.

18 MR. CAVALLUZZO: Right. And we
19 will come back to that just to elucidate what some
20 of those problems were.

21 Finally, I want to try to put on
22 the table the perspective of A-OCANADA in respect
23 of what some of these problems will be. And as I
24 say, tomorrow, when we get into your evidence,
25 we'll deal specifically with each and every one of

1 those problems.

2 Is it fair to say that one of the
3 problems, and probably the fundamental problem
4 which gave rise to some of these relationship
5 issues, was that A-OCANADA viewed its task force
6 or Project A-OCANADA to be a criminal
7 investigation, whereas CID viewed it to be a
8 national security investigation in light of what
9 duties and responsibilities the project had.

10 Is that fair?

11 MR. FLEWELLING: I think one thing
12 that we have to make sure that's clear is that a
13 criminal investigation is a national security
14 investigation. They are one and the same. It's
15 just the umbrella they are under and the
16 sensitivities that go along with it.

17 MR. CAVALLUZZO: I'm sorry.

18 MR. FLEWELLING: I was just going
19 to say that I think, from my perspective, some of
20 it was just the reporting procedures.

21 MR. CAVALLUZZO: Right. But is it
22 fair to say that when someone, a trained
23 investigator, a seasoned investigator, is
24 conducting a criminal investigation, that there is
25 a great deal of autonomy or independence which

1 attaches to that particular investigation
2 resulting from our legal system, resulting from
3 our common law?

4 MR. FLEWELLING: In many cases, a
5 criminal investigation is more localized, yes.

6 MR. CAVALLUZZO: Is that fair?

7 MR. FLEWELLING: Yes.

8 MR. CAVALLUZZO: Okay. Is it also
9 fair that because of the perhaps different
10 perspectives which A-OCANADA had as opposed to
11 CID, that what you were attempting to do was to
12 get more coordination, more information filtering
13 through you to ensure that policies were followed;
14 in other words, to be sensitive to the national
15 security investigation aspect of it.

16 Isn't that fair?

17 MR. FLEWELLING: I would say
18 that's fair.

19 MR. CAVALLUZZO: And from
20 A-OCANADA's perspective, every time CID sought any
21 kind of intervention, whether it be keep us
22 informed, use caveats, do this, do that, they
23 would perhaps perceive that as being an
24 infringement upon their autonomy as criminal
25 investigators.

1 Is that fair?

2 MR. FLEWELLING: In part, yes.

3 MR. CAVALLUZZO: What is the other
4 part?

5 MR. FLEWELLING: I'm just looking
6 at it from the part that the instructions that
7 they were given from the "A" Division side of
8 things, that they were to report strictly through
9 their CROPS, which ended up causing some of these
10 issues.

11 MR. CAVALLUZZO: And that's what
12 would seem to happen -- and we'll take you through
13 some of that -- and that is that here,
14 Mr. Flewelling, Corporal Flewelling at the time
15 from CID would attempt to assert some kind of
16 coordination or whatever with Project A-OCANADA,
17 Project A-OCANADA would feel, "Well, that's an
18 infringement of our autonomy." They would go up
19 to their CROPS officers and then there would be a
20 meeting above you between the CROPS officer and
21 Richard Proulx, who is the head of the CID, and
22 there would be some kind of resolution.

23 Is that fair?

24 MR. FLEWELLING: Yes. I think
25 with just about any corporation where they have a

1 headquarters that is coming down to a field unit
2 that mentions anything, then they all think that
3 headquarters is just being a royal pain.

4 MR. CAVALLUZZO: Right. And it
5 would seem from my perspective in analysing all of
6 this evidence that "A" Division would win most of
7 the battles with headquarters?

8 MR. FLEWELLING: I don't know. I
9 didn't keep score.

10 MR. CAVALLUZZO: You didn't keep
11 score. I know you are not a score-keeper, but you
12 must have some --

13 MR. FLEWELLING: I don't know how
14 to answer that.

15 MR. CAVALLUZZO: Well, you must
16 have some feeling that they won more than they
17 lost?

18 MR. FLEWELLING: We ended up
19 rehashing a number of issues time and again.

20 MR. CAVALLUZZO: Right. And
21 sometimes deals would be made above your head,
22 indeed above Mr. Pilgrim's head, that you guys
23 weren't even aware of?

24 MR. FLEWELLING: That's fair.

25 MR. CAVALLUZZO: Right. And you

1 would have to go back and deal with whatever. And
2 we are going to deal with some of those specific
3 concerns later on in your evidence.

4 It is about five to five and I
5 want to just complete a couple of other things
6 before we let you go.

7 MR. FLEWELLING: You have a smile
8 on your face.

9 MR. CAVALLUZZO: I'm always
10 smiling.

11 And that is, let us move to the
12 initial stages of the Arar time line. We
13 understand that although you became the
14 oversight -- call it the overseer of Project
15 A-OCANADA in or about June, and that crystallized
16 later on, but in January of 2002 was the first
17 time you had become aware of Mr. Arar.

18 I refer to your notes which now
19 have been entered as Exhibit 206.

20 THE COMMISSIONER: 211, actually.

21 MR. CAVALLUZZO: Exhibit 211? I'm
22 sorry, 211.

23 I'm going to be using the page
24 numbers at the bottom right, which are written in.
25 So if you go to page 4, we see at the top -- this

1 is the entry for Tuesday, January 22nd of 2002,
2 and we understand from all of the evidence that a
3 number of search warrants were executed on this
4 particular day. We see in respect of that day
5 that the name Maher Arar is found in the context
6 presumably of other names on the left and names on
7 the right, which have been redacted.

8 Now, is this the first occasion
9 upon which you became aware of this individual by
10 the name of Maher Arar?

11 MR. FLEWELLING: Yes. Even that
12 day, I didn't know who it was.

13 MR. CAVALLUZZO: You just wrote
14 his name down. You didn't know who he was?

15 MR. FLEWELLING: I was asked to
16 step in that day or fill in for the coordinator of
17 the day to oversee or just to monitor what
18 transpired that day.

19 MR. CAVALLUZZO: Right.

20 MR. FLEWELLING: So the names
21 didn't mean anything.

22 MR. CAVALLUZZO: And so that you
23 didn't take part in terms of the execution of the
24 warrants, but you were at some central location
25 where you performed some coordinating

1 responsibilities.

2 Is that fair?

3 MR. FLEWELLING: That's fair.

4 MR. CAVALLUZZO: Okay. I just
5 want to clear the record because there's a
6 statement in the statement you gave to Mr. Garvie
7 that I just want to ensure that it's clarified.

8 I would like to introduce -- no,
9 this is the statement that Mr. Flewelling gave to
10 Mr. Garvie. I would like to introduce that as an
11 exhibit.

12 THE COMMISSIONER: 221.

13 EXHIBIT NO. P-221: Statement
14 given by Richard Flewelling
15 to Brian Garvie on January
16 22, 2004

17 MR. CAVALLUZZO: This is the
18 statement that you gave Mr. Garvie on January 22nd
19 of 2004? Do you recall giving Mr. Garvie that
20 statement?

21 MR. FLEWELLING: Yes.

22 MR. CAVALLUZZO: What I would like
23 you to clarify, if you could, for us at page 2,
24 and if you look around line 25 to 30, Mr. Garvie
25 says:

1 "Could you tell me in
2 chronological sequence what
3 you had to do with the
4 monitoring of the incidents
5 involving Maher Arar."

6 And you said:

7 "During that time frame when
8 he was incarcerated, I really
9 didn't know he was
10 incarcerated until several
11 days after he was actually
12 incarcerated. My first
13 knowledge that I became aware
14 of the issue of Maher Arar
15 would have been approximately
16 August 1st or 2nd."

17 So what I want to clarify with you
18 is what you meant there -- that's the Arar issue
19 after he was detained. You had seen the name
20 before in January in respect of the search
21 warrants, and that's what you meant by that
22 statement to Mr. Garvie.

23 Is that fair?

24 MR. FLEWELLING: I would say
25 that's fair.

1 MR. CAVALLUZZO: In regard to
2 Project A-OCANADA, we know that -- and we have an
3 exhibit, Exhibit P-85, tab 24.

4 MR. FLEWELLING: Sorry. That was
5 tab which?

6 MR. CAVALLUZZO: Twenty-four.
7 Much of this is redacted, but what this represents
8 is information, documentation that was shared or
9 given by Project A-OCANADA to a couple of American
10 agencies, and basically the entire SUPERText
11 database was given to the Americans in April of
12 2002.

13 I am wondering whether you were
14 aware that the entire SUPERText database of
15 Project A-OCANADA was given to the Americans in
16 April of 2002?

17 MR. FLEWELLING: Was I aware at
18 that time?

19 MR. CAVALLUZZO: Yes.

20 MR. FLEWELLING: No.

21 MR. CAVALLUZZO: When did you
22 become aware of that?

23 MR. FLEWELLING: Sometime after I
24 took over the project, I believe. I'm not exactly
25 sure of the exact date, but I wasn't aware of the

1 actual transaction until later. I guess that's
2 the best way of putting it. I wouldn't want to
3 try to put a date to it.

4 MR. CAVALLUZZO: And you would
5 agree with me that if you refer to it as a
6 transaction, this transaction was contrary to RCMP
7 policy?

8 MR. FLEWELLING: Again, I would
9 have to say and specify that I'm not aware of any,
10 I guess, arrangement that was made with upper
11 management or at the "A" Division level.

12 MR. CAVALLUZZO: But you would
13 agree with me -- well, let's deal with it on a
14 hypothetical level.

15 If this information was sent
16 directly to the Americans without going through
17 CID, that would have been contrary to policy?

18 MR. FLEWELLING: Again, in an
19 ideal situation, pre-9/11, yes.

20 MR. CAVALLUZZO: And what about
21 post-9/11?

22 MR. FLEWELLING: Post-9/11?
23 Again, like I say, the only caveat that I put on
24 it, if you will, is I'm not aware of any deal or
25 any negotiated structure, if you will, for the

1 sharing of information based on that.

2 MR. CAVALLUZZO: Right.

3 MR. FLEWELLING: That's why I want
4 to be cautious with my answer here and be fair.

5 MR. CAVALLUZZO: Just listen to
6 the question.

7 I know you weren't aware of the
8 transaction, but if this information went directly
9 to foreign agencies without going through CID, I
10 would assume that is not consistent with policy?

11 MR. FLEWELLING: Yes.

12 MR. CAVALLUZZO: If this
13 information was not processed, analyzed, for
14 purposes of personal information, need-to-know,
15 relevancy, national security concerns, that would
16 not be consistent with policy?

17 MR. FLEWELLING: We are talking
18 about hypothetically here?

19 MR. CAVALLUZZO: Yes.

20 MR. FLEWELLING: Yes.

21 MR. CAVALLUZZO: If this
22 information went to foreign agencies without
23 caveats, that would be contrary to policy?

24 MR. FLEWELLING: Yes. Bearing in
25 mind there is that implied caveat.

1 MR. CAVALLUZZO: Yes, I understand
2 the implied caveat.

3 And the final question I have: If
4 this information went, which contained information
5 from other agencies that had given the RCMP
6 information with caveats, if this information went
7 without getting the consent of these other
8 agencies, that would be contrary to policy?

9 MR. FLEWELLING: Yes.

10 MR. CAVALLUZZO: Thank you.

11 MR. FOTHERGILL: Commissioner,
12 this might be a good time for me to acknowledge an
13 error that I made during the testimony of Deputy
14 Commissioner Loepky. I think I advised you and
15 the participants that Mr. Flewelling had been
16 present during the January 31st stakeholders'
17 meeting when the prospect of sharing search
18 results with American agencies was raised, and it
19 has since been brought to my attention that I was
20 wrong in that. It was one of Mr. Flewelling's
21 predecessors but not him.

22 THE COMMISSIONER: Thank you,
23 Mr. Fothergill.

24 MR. CAVALLUZZO: How are you
25 feeling, Mr. Flewelling? Do you want to go on for

1 a bit, because the more we accomplish today -- how
2 about if we go for another half an hour? Is that
3 fair?

4 Does anyone have time concerns?

5 THE COMMISSIONER: Any problems if
6 we do a half an hour more?

7 MR. CAVALLUZZO: Okay. Let's move
8 on then.

9 THE COMMISSIONER: No hands shot
10 up. Okay. Carry on.

11 MR. CAVALLUZZO: You can set that
12 book aside, Mr. Flewelling, and we are going to
13 move on to something else now.

14 I want to deal now, if we can call
15 it, some of the communication issues between
16 A-OCANADA and CID, and let's look at your notes
17 once again, Exhibit 211.

18 I would like to start at the back.
19 If we can look at page 66, the date for this is
20 November 22nd of 2001. I understand that this was
21 a video conference.

22 Is that correct?

23 MR. FLEWELLING: I believe so.

24 MR. CAVALLUZZO: If you can just
25 help us, could you read the first eight lines

1 there?

2 MR. FLEWELLING: It says:

3 "The investigation is an NSIB
4 investigation and not a
5 [blank] A-OCANADA
6 investigation."

7 MR. CAVALLUZZO: Now, just
8 stopping there, once again we are distinguishing.
9 We are saying this is an NSIB investigation as
10 opposed to an A-OCANADA investigation or an
11 OCanada investigation.

12 And what was the point being made
13 by -- and do you know who was speaking during this
14 video conference that would have been giving these
15 kinds of directions?

16 MR. FLEWELLING: I would be making
17 an assumption as to who was speaking but --

18 MR. CAVALLUZZO: Who do you think?

19 MR. FLEWELLING: I'm assuming that
20 it was Superintendent Pilgrim.

21 MR. CAVALLUZZO: What was your
22 understanding as to what Superintendent Pilgrim
23 meant by saying it's an NSIB investigation?

24 MR. FLEWELLING: It's a national
25 security investigation.

1 MR. CAVALLUZZO: Okay. If you can
2 go on now to the third line?

3 MR. FLEWELLING: It says:
4 "It is imperative that they
5 begin to advise and inform HQ
6 of their information."

7 MR. CAVALLUZZO: And this
8 obviously, it is imperative that the divisions
9 keep, if we can call it, headquarters in the loop.

10 MR. FLEWELLING: Yes.

11 MR. CAVALLUZZO: Okay. If you can
12 go on then?

13 MR. FLEWELLING: It says:
14 "Coordinating divisions with
15 a national perspective from
16 an investigation point of
17 view."

18 I really don't know what I'm
19 saying or meaning there.

20 MR. CAVALLUZZO: Right. But you
21 know what the next line means? Why don't you read
22 that?

23 MR. FLEWELLING: "We have to be
24 better kept in the loop."

25 MR. CAVALLUZZO: Then if you go

1 two or three lines below the redaction on that
2 page?

3 MR. FLEWELLING: Yes.

4 MR. CAVALLUZZO: What does it say?

5 MR. FLEWELLING: "Coordination
6 between divisions and units
7 within a division is a
8 problem because of ..."

9 MR. CAVALLUZZO: That looks like
10 "medium."

11 MR. FLEWELLING: "... medium of
12 security issues resulting
13 from the use of SCIS."

14 MR. CAVALLUZZO: SCIS, as we've
15 heard --

16 MR. FLEWELLING: SCIS is the
17 national security information system where all
18 national security information is stored.

19 MR. CAVALLUZZO: Then if you go to
20 page 68 and just read from the top of that page?

21 MR. FLEWELLING: It says:

22 "We give you everything."

23 I don't know. There's something
24 there.

25 "So we don't look foolish.

1 We need to exchange
2 information --"

3 Sorry, I can't read it.

4 MR. CAVALLUZZO: Something about
5 "necessary"?

6 MR. FLEWELLING: Yes. That's what
7 it looks like.

8 MR. CAVALLUZZO: Okay. Then it
9 goes on, "A-OCANADA." Can you just read that?

10 MR. FLEWELLING: It says:

11 "Treat the document like a
12 murder and review the
13 information and come up with
14 a new list of questions."

15 I have no idea what that's about.

16 MR. CAVALLUZZO: It says "treat
17 the document like a murder". Does that mean you
18 are treating the investigation as a criminal
19 investigation as opposed to a national security
20 investigation --

21 MR. FLEWELLING: Obviously
22 somebody is expressing a view somewhere. I wrote
23 it down. Unfortunately I don't know what it
24 means. I don't recall.

25 MR. CAVALLUZZO: Then if you go

1 finally to the next page, page 69, at November 22,
2 2001?

3 MR. FLEWELLING:

4 "Lack of the use of SCIS,
5 lack of sharing information
6 within, lack of knowledge in
7 the intelligence field."

8 MR. CAVALLUZZO: Okay. And that
9 latter one -- we know what the other means. But
10 the latter one, "lack of knowledge in the
11 intelligence field", is this what you were talking
12 about before, that because of the crush of 9/11,
13 many investigators were being brought into these
14 kinds of investigations and lacked knowledge in
15 the intelligence field?

16 MR. FLEWELLING: I think the
17 message there was to try and ensure the divisions
18 were bringing their people, or advising them as to
19 the policy and the need to get the information on
20 to SCIS, and to notify headquarters quicker with
21 respect to the various investigations that were
22 ongoing.

23 MR. CAVALLUZZO: So that was in
24 November of 2001. If we can now move into 2002
25 and pick up at page 5 for April 12th of 2002.

1 What I'm referring to is the
2 last two lines. Could you read those lines for
3 us, please?

4 MR. FLEWELLING: "Lack of
5 communication between
6 A-OCANADA and HQ and NSOS and
7 two vacancies and stress for
8 NSOS."

9 MR. CAVALLUZZO: So this lack of
10 communication between A-OCANADA and headquarters,
11 this was before you became the overseer, but did
12 you have any idea of what was being referred to
13 there?

14 MR. FLEWELLING: No. This was a
15 unit meeting where obviously there is a point that
16 was made by one of the other individuals.

17 MR. CAVALLUZZO: Okay. And where
18 it says "stress for NSOS", does that mean that the
19 bulk of the work is creating stress because of the
20 resources that you had?

21 MR. FLEWELLING: I think that
22 comment alludes to, yes, the increase in workload
23 within NSOS.

24 MR. CAVALLUZZO: If we could move
25 on then in terms of time, if you go to page 14,

1 this is the entry for June 10th of 2002.

2 This is when, I guess, you are
3 becoming the overseer of Project A-OCANADA, and
4 I'm wondering if you could read the entry for
5 2030?

6 MR. FLEWELLING: 2030?

7 MR. CAVALLUZZO: Yes.

8 MR. FLEWELLING: Continue with the
9 briefing note?

10 MR. CAVALLUZZO: That's the one.

11 MR. FLEWELLING: Okay.

12 "2130 hours. Wrote Glenn an
13 e-mail with respect --"

14 MR. CAVALLUZZO: First of all,
15 Glenn is Glen MacDougall?

16 MR. FLEWELLING: Inspector Glenn
17 MacDougall.

18 MR. CAVALLUZZO: And you reported
19 to Glenn?

20 MR. FLEWELLING: Glenn would be in
21 between the sergeant's position and Superintendent
22 Pilgrim.

23 MR. CAVALLUZZO: So you wrote to
24 Glenn MacDougall. If you could go on?

25 MR. FLEWELLING: "... with respect

1 to today's meeting at
2 A-OCANADA office. I informed
3 him of the lack of
4 communication and lack of
5 professionalism. I further
6 informed him that I cannot do
7 my job effectively under the
8 present situation. I further
9 stated that their inability
10 to provide me with the
11 appropriate approval prior to
12 the aircraft taking off for
13 Washington makes me and HQ
14 look unprofessional."

15 MR. CAVALLUZZO: This lack of
16 communication and lack of professionalism, what
17 are you referring to there?

18 MR. FLEWELLING: I think the
19 communication was with respect to a meeting that
20 was held and they failed to let me know that there
21 was going to be a meeting that day.

22 MR. CAVALLUZZO: This is A-OCANADA
23 had an investigators' meeting?

24 MR. FLEWELLING: Yes.

25 MR. CAVALLUZZO: Failed to let you

1 know?

2 MR. FLEWELLING: Yes.

3 MR. CAVALLUZZO: Is that correct?
4 And you had a prior arrangement that they would
5 let you know of these meetings?

6 MR. FLEWELLING: Yes.

7 MR. CAVALLUZZO: And they didn't
8 let you know?

9 MR. FLEWELLING: No. I mean,
10 there's two messages I'm making in this one.

11 MR. CAVALLUZZO: Okay. What's the
12 second message?

13 MR. FLEWELLING: Unfortunately I
14 was a little frustrated at the time and probably
15 overly harsh. However, the other issue was that
16 there was an arrangement to fly to Washington, as
17 the statement states, and I had my bags packed and
18 ready to go. Unfortunately --

19 MR. CAVALLUZZO: It sounds like a
20 folk song by Gordon Lightfoot. I understand you
21 didn't make it, like him?

22 MR. FLEWELLING: No. Nor can I
23 sing as well as him.

24 Unfortunately, I was told to stand
25 by until I got the authorization from

1 Superintendent Pilgrim as well as Inspector Glenn
2 MacDougall. However it didn't get to me until
3 after the plane took off.

4 MR. CAVALLUZZO: You concern was
5 with head office because A-OCANADA had said,
6 "Listen, we're going to Washington tomorrow.
7 We've got a seat available for you on the RCMP
8 plane." You had your bags packed and ready to go
9 and unfortunately head office didn't get you the
10 approval prior to the plane taking off.

11 MR. FLEWELLING: That's correct.

12 MR. CAVALLUZZO: And that
13 frustrated you?

14 MR. FLEWELLING: Yes.

15 MR. CAVALLUZZO: So that your
16 complaint was with head office there, not with
17 A-OCANADA?

18 MR. FLEWELLING: No, on that
19 score.

20 MR. CAVALLUZZO: Is that fair?

21 MR. FLEWELLING: That's fair.

22 MR. CAVALLUZZO: Okay. If we go
23 to page 15 of your notes for the next day,
24 Tuesday, June 11, could you read the entry for
25 1500 hours?

1 MR. FLEWELLING: "Provided
2 briefing note to Glenn
3 MacDougall. We spoke about
4 the issue I raised last
5 evening. Glenn spoke to Mike
6 Cabana about this this
7 morning. Basically nothing
8 is going to happen."

9 MR. CAVALLUZZO: What does that
10 mean, "basically nothing is going to happen"?

11 MR. FLEWELLING: Just from the
12 manner upon which the discussion took place, I
13 didn't feel that Inspector MacDougall was going to
14 pursue or deal with the issue.

15 MR. CAVALLUZZO: So that must have
16 caused a wee bit of frustration in terms of you
17 performing your job an overseer?

18 MR. FLEWELLING: Well, at that
19 point I decided I would go and discuss the issue
20 with Mr. Cabana himself.

21 MR. CAVALLUZZO: Okay. And did
22 you do that?

23 MR. FLEWELLING: I did.

24 MR. CAVALLUZZO: And when did you
25 do that?

1 MR. FLEWELLING: I believe it was
2 on June the 18th.

3 MR. CAVALLUZZO: Then let's go to
4 your notes for June the 18th. I think it's at
5 page 17.

6 MR. FLEWELLING: That's correct.

7 MR. CAVALLUZZO: It looks like
8 something, Project A-OCANADA. Is that it?

9 MR. FLEWELLING: That's it.

10 MR. CAVALLUZZO: Why don't you
11 read that?

12 MR. FLEWELLING: "Following
13 meeting I spoke with
14 Inspector Mike Cabana. I
15 spoke to him about this
16 meeting of the 10th of June
17 where I was not invited. I
18 informed him that I was not
19 impressed and that it put me
20 in a position where I have
21 difficulties. More
22 importantly, I was more
23 disappointed with my own
24 unit."

25 MR. CAVALLUZZO: Okay. And was

1 that particular problem resolved at that point in
2 time?

3 MR. FLEWELLING: We sat down. We
4 had a very amicable discussion, and we both agreed
5 that the best thing for us to do was to put the
6 train back on the tracks and let's do everything
7 we can do get things moving.

8 MR. CAVALLUZZO: If you go to the
9 previous page, at page 16, this is for, I guess,
10 Tuesday, June 18th. At the 7:30 entry it says:

11 "Commenced shift. Began
12 reading SITREPs for Project
13 A-OCANADA."

14 MR. FLEWELLING: Sorry, what page
15 was that again?

16 MR. CAVALLUZZO: This is page 16,
17 the previous page. The very top entry, your shift
18 commenced.

19 "Began reading SITREPs for
20 Project A-OCANADA."

21 At this point in time did you
22 notice anything as to whether A-OCANADA was
23 putting the third party rule on their SITREPs?

24 MR. FLEWELLING: Right now I don't
25 recall.

1 MR. CAVALLUZZO: Did you recall at
2 any time that you advised A-OCANADA that they
3 should be putting caveats on their situation
4 reports?

5 MR. FLEWELLING: Yes.

6 MR. CAVALLUZZO: When did you give
7 that advice?

8 MR. FLEWELLING: I really don't
9 recall the exact date, but I know that I had
10 discussions with them that caveats should be
11 placed. Subsequently, caveats were being placed
12 on these SITREPs.

13 MR. CAVALLUZZO: If we can move on
14 in terms of time to page 19 of your notes, this is
15 now the entry for June 19 of 2002. Could you read
16 your entry for 8:00 and 8:30?

17 MR. FLEWELLING: "Commenced shift.
18 Spoke to Ron about our
19 situation and our inability
20 to cope with the amount of
21 work being expected of us."

22 MR. CAVALLUZZO: Okay. If you
23 could go on?

24 MR. FLEWELLING: I think it's:
25 "Entered meeting with NSOS to

1 discuss issues as they relate
2 to NSOS. Situations began to
3 surface that affected our
4 unit, workload and capacity.
5 Wayne stated that the buck
6 ended with him, provided we
7 prioritize properly and do
8 everything in our power to
9 cope."

10 MR. CAVALLUZZO: Okay. This is a
11 meeting in which you are raising the resource
12 issue which you referred to earlier. And the
13 first line there, where you say "spoke to Ron",
14 this is Ron Lauzon who became your supervisor
15 around this time?

16 MR. FLEWELLING: Yes.

17 MR. CAVALLUZZO: And when
18 reference is made to Wayne saying that the buck
19 stops here, that's Wayne Pilgrim?

20 MR. FLEWELLING: Yes. It's
21 approximately the time where we're starting to
22 develop these new units and these resources are
23 being pulled out of -- or the experienced members
24 are being pulled out of NSOS and being replaced.
25 It was all in and around this time.

1 MR. CAVALLUZZO: If we can move on
2 now through the summer, indeed let us go to
3 August. Let's go to page 26. This is the entry
4 for, I believe it's August -- the previous page,
5 at 25, is August 13th.

6 In any event, do you see about
7 halfway down page 26, it says:

8 "Advised by [somebody] that
9 DFAIT --"

10 Do you see that?

11 MR. FLEWELLING: Yes.

12 MR. CAVALLUZZO: Can you read that
13 for us, please?

14 MR. FLEWELLING: "Advised by ...
15 that DFAIT officials in Egypt
16 have seen El Maati. They
17 advised us of his present
18 condition and claims about
19 his treatment while in Syrian
20 custody."

21 MR. CAVALLUZZO: And then the next
22 line?

23 MR. FLEWELLING: "Received fax
24 from ... re DFAIT report."

25 MR. CAVALLUZZO: And did you see

1 the DFAIT consular report which we introduced as
2 an exhibit in these proceedings, that was dated
3 August the 12th of 2002?

4 MR. FLEWELLING: I don't recall.

5 MR. CAVALLUZZO: Do you recall
6 that, in this particular report, Mr. El Maati had
7 alleged that he had been tortured while he was in
8 Syrian custody?

9 MR. FLEWELLING: No, I don't
10 recall that.

11 MR. CAVALLUZZO: You don't recall
12 that at all?

13 MR. FLEWELLING: No.

14 MR. CAVALLUZZO: Do you recall --
15 well then, let us go on.

16 If you go to the next page, at
17 page 27, there is the entry for August 14th of
18 2002. At the entry at 9:00 it says:

19 "Meetings tomorrow 10:30 'A'
20 Division with DOJ, DFAIT,
21 CSIS and PCO, 'A' Division CO
22 boardroom."

23 Now, that meeting I understand
24 related to the El Maati allegations. Is that
25 correct?

1 MR. FLEWELLING: It could be. I
2 just don't recall.

3 MR. CAVALLUZZO: You don't recall?

4 MR. FLEWELLING: No.

5 MR. CAVALLUZZO: Then let's go to
6 the next page. August 15th, at page 28, the entry
7 for -- it looks like 2030. Do you see that?

8 MR. FLEWELLING: Yes.

9 MR. CAVALLUZZO: Okay. And that
10 says:

11 "Meeting with PCO, DFAIT,
12 CSIS, RCMP."

13 And then it says "Myra". And
14 we've heard evidence from Myra Pastyr-Lupul,
15 Consular Affairs, DFAIT, August 4th.

16 "DFAIT was advised that El
17 Maati was in custody in
18 Egypt. The family has been
19 advised through --"

20 I guess that's "through the
21 sister".

22 MR. FLEWELLING: Sister.

23 MR. CAVALLUZZO: "El Maati's
24 parents are in Indonesia.

25 Uncle in Cairo has contacted

1 the [something]."

2 The next page, unfortunately, we
3 do not have.

4 Now, we have heard evidence that
5 there was a meeting on this day where a number of
6 divisions of the Canadian government got together
7 to come up with media lines relating to the
8 allegations made by Mr. El Maati.

9 Do you recall being at that
10 meeting, and indeed these are the notes that you
11 took relating to that meeting?

12 MR. FLEWELLING: Obviously I must
13 have been there because I took the notes, but
14 honestly, I just don't recall anything that
15 transpired during that meeting other than what
16 I've taken down here.

17 MR. CAVALLUZZO: We are moving now
18 to when Mr. Arar gets detained in New York on
19 September the 26th, and this is about a month and
20 a half before, and I just want to be sure.

21 You recall the meeting. But do
22 you not recall that Mr. El Maati had made
23 allegations that he was tortured while he was in
24 detention in Syria earlier in that year of 2002?

25 --- Pause

1 MR. FLEWELLING: I'm not going to
2 say I didn't, but I just don't recall.

3 MR. CAVALLUZZO: Isn't that
4 something that you would remember, allegations of
5 torture in Syria, a Canadian?

6 MR. FLEWELLING: I know that there
7 was the meeting. But unfortunately, I'm sorry, I
8 just --

9 MR. CAVALLUZZO: You don't recall.

10 MR. FLEWELLING: I don't recall.
11 I didn't recall at that time that that had
12 transpired.

13 MR. CAVALLUZZO: Okay. Then a
14 couple of final questions.

15 If we go to the next page, this is
16 the entry for August 20th of 2002, and I would
17 like you to read for us the entry if we can start
18 six lines from the bottom, just after that
19 redaction?

20 MR. FLEWELLING: "... called to
21 advise the fax in my --"

22 MR. CAVALLUZZO: That says
23 "Somebody called to advise." Now, is that
24 "somebody" somebody in Project A-OCANADA?
25 --- Pause

1 MR. FLEWELLING: I believe so.

2 MR. CAVALLUZZO: I will speak to
3 my friend, but for tomorrow, hopefully we will
4 give you the name of that individual,
5 Mr. Commissioner.

6 THE COMMISSIONER: Okay.

7 MR. CAVALLUZZO: If you can say
8 "Somebody in A-OCANADA called", and could you pick
9 that up then, Mr. Flewelling?

10 MR. FLEWELLING: "... called to
11 advise a fax in my name was
12 en route. He also advised
13 that Mike Cabana still wants
14 to invite the Syrians to
15 review what Project A-OCANADA
16 has on and provide them --"
17 Sorry, the line is...

18 MR. CAVALLUZZO: "Provide them"
19 and it goes on to the next page?

20 MR. FLEWELLING: It's the top line
21 that I ...

22 MR. CAVALLUZZO: Right. Well, it
23 looks like, "with a series of questions they want
24 the Syrians to ask ..."

25 MR. FLEWELLING: "On our behalf".

1 MR. CAVALLUZZO: "On our behalf".

2 Right.

3 MR. FLEWELLING: Yes.

4 MR. CAVALLUZZO: This is like a
5 week after there are allegations -- or at least
6 the evidence is there are allegations that Mr. El
7 Maati has made that he has been tortured in Syria,
8 and you are getting information here that somebody
9 in A-OCANADA calls to advise you that Cabana still
10 wants the Syrians to review what Project A-OCANADA
11 has and then provide them with questions for them
12 to ask.

13 You may not recall the torture,
14 but did that concern you when Mr. Cabana, a week
15 after the El Maati meeting, is wanting to share
16 this information with the Syrians and indeed send
17 a series of questions for them to ask of somebody,
18 whose name is redacted here -- we have an idea who
19 it is.

20 But did that concern you when you
21 saw this or when you got this information?

22 MR. FLEWELLING: I would like to
23 deal with that from a policy perspective, in that
24 normally when you are going to be dealing with a
25 foreign agency, or sending information, the normal

1 course or the most prudent course would be to pass
2 that information through CID, engage CID, as well
3 as other agencies, such as our DOJ, Justice,
4 Solicitor General, and DFAIT, to solicit their
5 input, their advice, prior to that decision being
6 made, if you will.

7 MR. CAVALLUZZO: Right.

8 MR. FLEWELLING: And then once
9 that decision has been made, that information
10 would be shared, with the instructions. It would
11 go to the LO of the area, and the final step is
12 that the head of station would have the final say.
13 So there is a check and balance in play.

14 MR. CAVALLUZZO: What did you do
15 when you received this information from this
16 individual at A-OCANADA, that this was being
17 contemplated? Did you say, "Don't do it"?

18 MR. FLEWELLING: I advised that
19 the only person that could do that would be
20 the y-- that has the power to either invite
21 somebody to show up or to go, would be the
22 Commissioner.

23 MR. CAVALLUZZO: Of the RCMP?

24 MR. FLEWELLING: Of the RCMP.

25 MR. CAVALLUZZO: Okay. And you

1 gave that information back to this individual?

2 MR. FLEWELLING: That's correct.

3 MR. CAVALLUZZO: And presumably,
4 at least at this point in time, that ended that
5 endeavour, do you know, at this point in time?

6 MR. FLEWELLING: I believe so.

7 MR. CAVALLUZZO: Okay.

8 Mr. Commissioner, that brings us
9 to September the 26th, when Mr. Arar is detained,
10 and this might be an appropriate time to break for
11 the day.

12 THE COMMISSIONER: All right. We
13 will rise until nine o'clock tomorrow morning.

14 THE REGISTRAR: Please stand.

15 --- Whereupon the hearing adjourned at 5:28 p.m.,
16 to resume on Tuesday, August 23, 2005,
17 at 9:00 a.m. / L'audience est ajournée à
18 17 h 28, pour reprendre le mardi 23 août 2005
19 à 9 h 00

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Lynda Johansson,
C.S.R., R.P.R.