

**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 jeudi 26 mai 2005

**Held at:**

Algonquin Room  
Old City Hall  
111 Sussex Drive  
Ottawa, Ontario

Thursday, May 26, 2005

## APPEARANCES / COMPARUTIONS

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Mr. Ronald G. Atkey	<i>Amicus Curiae</i>
Mr. Lorne Waldman Ms Marlys Edwardh Ms Breese Davies Ms Brena Parnes	Counsel for Maher Arar
Ms Barbara A. McIsaac, Q.C. Mr. Colin Baxter Mr. Simon Fothergill Mr. Gregory S. Tzemenakis Ms Helen J. Gray	Attorney General of Canada
Ms Lori Sterling Mr. Darrell Kloeze Ms Leslie McIntosh	Ministry of the Attorney General/ Ontario Provincial Police
Mr. Faisal Joseph	Canadian Islamic Congress
Ms Marie Henein Mr. Hussein Amery	National Council on Canada-Arab Relations
Mr. Steven Shrybman	Canadian Labour Congress/Council of Canadians and the Polaris Institute
Mr. Emelio Binavince	Minority Advocacy and Rights Council
Mr. Joe Arvay	The British Columbia Civil Liberties Association

## APPEARANCES / COMPARUTIONS

Mr. Kevin Woodall	The International Commission for Jurists, The Redress Trust, The Association for the Prevention of Torture, World Organization Against Torture
Colonel Me Michel W. Drapeau	The Muslim Community Council of Ottawa-Gatineau
Mr. David Matas	International Campaign Against Torture
Ms Barbara Olshansky	Centre for Constitutional Rights
Mr. Riad Saloojee Mr. Khalid Baksh	Canadian Council on American-Islamic Relations
Mr. Mel Green	Canadian Arab Federation
Ms Amina Sherazee	Muslim Canadian Congress
Ms Sylvie Roussel	Counsel for Maureen Girvan
Ms Catherine Beagan Flood	Counsel for the Parliamentary Clerk

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Thursday, May 26, 2005

3 at 10:10 a.m. / L'audience débute le jeudi

4 26 mai 2005 à 10 h 10

5 THE REGISTRAR: Please be seated.

6 Veuillez vous asseoir.

7 THE COMMISSIONER: Good morning.

8 Mr. Cavalluzzo, did you have

9 further questions as a result of the new process?

10 MR. CAVALLUZZO: Yes. As a result

11 of the new process, Mr. Commissioner, I have three

12 very brief areas that I want to discuss with

13 Mr. Pardy initially this morning.

14 PREVIOUSLY SWORN: HENRY GARFIELD PARDY

15 EXAMINATION (Continued)

16 MR. CAVALLUZZO: The first area,

17 Mr. Commissioner, relates to a discussion that I

18 had with government counsel, and we both agree

19 that there are no national security concerns with

20 the answer I am going to elicit. But I just

21 advise the witness to ensure that the answer he

22 gives me relates to his own information and not

23 relating to any in camera information or

24 information that is protected by national security

25 confidentiality.

1                   The area I would like to initially  
2 ask you about, Mr. Pardy, relates to, if I can  
3 call it, the evolution of the attitude of the  
4 Syrians to Canada in respect of the prospects of  
5 releasing Mr. Arar.

6                   One point that I am going to ask  
7 you relates to the listing of Hezbollah on the  
8 terrorist organization list under the Criminal  
9 Code on or about December 15th of 2002, and ask  
10 you whether the listing of Hezbollah had any  
11 impact whatever in terms of the Syrian response to  
12 our efforts to have Mr. Arar released?

13                   MR. PARDY: Yes, very much so.  
14 The issue of the listing of Hezbollah had been  
15 under discussion in Canada for some time by the  
16 government, and I think there was an awareness of  
17 the sensitivity of this insofar as the Syrian  
18 government was concerned.

19                   The sensitivity wasn't in Syria  
20 per se but it was the role of Syria in  
21 neighbouring Lebanon, and Hezbollah was very much  
22 seen as -- I wouldn't say a client of the  
23 Government of Syria, but certainly acted with the  
24 full support of the Syrian government, and this  
25 was particularly so in southern Lebanon, next to

1 the border with Israel.

2 MR. CAVALLUZZO: Okay. The second  
3 area of questioning relates to the CAMANT notes.

4 We saw in your curriculum vitae  
5 that you were instrumental in implementing the  
6 CAMANT note system or the COSMOS system, and there  
7 was some discussion through the evidence of  
8 Ms Girvan as to the propriety of destroying notes  
9 after information was uplifted into the CAMANT  
10 system.

11 I wonder, as the key implementer  
12 of this system, whether you can comment on her  
13 actions?

14 MR. PARDY: Yes. In large  
15 measure, the development of COSMOS, and in  
16 particular the CAMANT module, which was for case  
17 management, the problem that we were facing in all  
18 of this is you had a lot of information scattered  
19 throughout the system. Particularly when you run  
20 the consular business, headquarters, very  
21 straightforward. But we had upwards of over 200  
22 points of service overseas.

23 So one of the things that we were  
24 concerned with is that we try to bring together  
25 that information so that it was available in a

1 coherent way to anybody who could be involved in a  
2 particular case.

3 Consistent with this of course, as  
4 well, was to protect the information, consular  
5 information about individuals, and restrict access  
6 to it, which was one of the things that went along  
7 with the development of the COSMOS system.

8 But insofar as the people keeping  
9 personal notes, we never gave any direction in  
10 this area. It was pretty much left to the  
11 discretion of the individual. Some people kept  
12 them; some didn't.

13 I didn't myself. For instance, in  
14 terms of -- I had the desk diary book, which I  
15 think is before the Commission, but as you can see  
16 in there, the notes are very cryptic and  
17 essentially that was meant as a means by which I  
18 could give reminders to myself if I had to do  
19 something later on in the day.

20 But the destruction of those kinds  
21 of notes was entirely normal, and I would say most  
22 people followed the practice of Ms Girvan.

23 MR. CAVALLUZZO: Thank you.

24 Finally, the third area will -- I  
25 wonder if the clerk might give you Volumes 2 and



1 9.

2 --- Pause

3 MR. CAVALLUZZO: And if we start  
4 at Volume 2, I was advised by counsel that I  
5 slipped over the third consular visit. It's the  
6 only visit that we skipped over. So let us do  
7 that now, at tab 192.

8 THE COMMISSIONER: Tab 192?

9 MR. CAVALLUZZO: That's correct.

10 As you will recall,  
11 Mr. Commissioner, the third consular visit was on  
12 November 12th of 2002.

13 I am going to ask you a particular  
14 question relating to paragraph 4, but just the  
15 typical question that I would have: Is there  
16 anything unusual in the third consular visit  
17 report that you should bring to the attention of  
18 the Commissioner, or is it business as usual?

19 MR. PARDY: Just give me one  
20 moment here and I will review the information,  
21 please?

22 --- Pause

23 MR. PARDY: No. I think the key  
24 thing is probably in some ways paragraph 5, where  
25 Mr. Martel of course tried to, as he was want to

1 do I think just about on every visit, to obtain  
2 information about the progression of this  
3 "investigation" by the Syrians. The people that  
4 he was talking to were certainly aware of the  
5 General's conversation with Ambassador Pillarella  
6 the week before, and they reflected that in their  
7 response to Mr. Martel.

8 MR. CAVALLUZZO: Okay. The  
9 specific question relates to paragraph 4, and I am  
10 reading it now:

11 "He asked the following be  
12 sent to his wife and asked  
13 that she continued dating her  
14 letters. He spoke Arabic (as  
15 requested by the Syrians) and  
16 Col. Majed why I had acted as  
17 interpreter. 'I hope to be  
18 released soon. Thank you for  
19 sending me your message. I  
20 am asking you to continue  
21 sending me letters as this is  
22 the only way for me to know  
23 of your whereabouts. I  
24 believe the decision you have  
25 taken is a wise one as the

1 family is returning to  
2 Canada. As we had discussed  
3 before the chances of working  
4 in Tunis did not turn out to  
5 be positive. With God's will  
6 we will be re-united.'"

7 And I would like to ask you now  
8 about tab 808 in the last volume.

9 As you may recall, Ms Girvan was  
10 extensively questioned about this particular  
11 memorandum, which appears to be dated either June  
12 5th or May 6th of 2004. In particular, she was  
13 asked about the paragraph at the bottom of page 1,  
14 and I read:

15 "He also told me ..."

16 And this, of course, was when  
17 Mr. Arar was in detention in New York City.

18 "He also told me that he and  
19 his wife and children had  
20 moved from Tunisia some  
21 months previously, and had  
22 given up their home in  
23 Canada, because his wife  
24 wanted to be nearer her  
25 father, who was very ill. He

1                   said that he was looking for  
2                   work in Tunisia first, but  
3                   that there were not many  
4                   prospects. He is a computer  
5                   expert. He had been on his  
6                   way to Canada to see about  
7                   business opportunities, as he  
8                   had had a discussion, he  
9                   said, with his wife about the  
10                  need for him to either look  
11                  in Europe or North America  
12                  for work. He talked about  
13                  how much work he had done for  
14                  Mathworks in the U.S. and  
15                  that he had travelled often  
16                  to the United States during  
17                  that period. He wondered if  
18                  this had made the authorities  
19                  suspicious of him."

20                                This information, which is noted  
21                   in 2004, was apparently given to the witness  
22                   Girvan allegedly on or about October 3rd of 2002  
23                   when she visited Mr. Arar in detention in New  
24                   York.

25                                The question I have for you is

1           twofold: The first is whether you became aware of  
2           this information from Ms Girvan around the time of  
3           Mr. Arar's detention in New York City?

4                       MR. PARDY: Yes. As my notes  
5           indicate, I had a number of telephone  
6           conversations with Ms Girvan right after I had  
7           returned to Ottawa on October the 3rd.

8                       In addition, as you know, we met  
9           in Washington on October 9th, I think it is that  
10          Ms Girvan arrived there. I was there a day  
11          earlier. And we had a number of face-to-face  
12          discussions. And some of those points came up  
13          very clearly in those discussions.

14                      My recollection is that most of it  
15          came up in Washington, and particularly there was  
16          one other piece of information. As you know,  
17          there was some discussion of it earlier, and this  
18          was the issue of the use of points by Mr. Arar and  
19          the reason why he was flying through the United  
20          States was that he had points, I think from  
21          American Airlines. I very clearly remember in my  
22          mind saying it's probably the most costly use of  
23          points that I had experienced up to that point.

24                      And it was that kind of context.  
25          We just saw it not as being significant

1 information at the time. It was part of our  
2 understanding of what was going on.

3 Mr. Arar also, if you will  
4 recall -- and I think this is recorded in Ms  
5 Girvan's notes of her discussion with him --  
6 mentioned MathWorks, the company that he had  
7 worked with in the Boston area. Things like that.

8 So all of these things were there.

9 Very early on, as you know, in  
10 terms of the family being in Tunis, I was talking  
11 to Dr. Mazigh, and the reasons for them being  
12 there: illness in the family, the situation in  
13 Canada with respect to possible work. The  
14 high-tech industry had certainly bottomed out, or  
15 was bottoming out I guess is a better way to put  
16 it.

17 But in all of this, I would  
18 emphasize that where a Canadian is located in  
19 terms of our responsibility to provide consular  
20 services does not matter one jot to us. I mean,  
21 we deal with Canadians who have never been in  
22 Canada in their lives.

23 So that element of it was of no  
24 consequence whatsoever.

25 MR. CAVALLUZZO: Thank you. You

1 just answered my second question.

2 MR. PARDY: Oh, okay.

3 MR. CAVALLUZZO: That would  
4 complete the final line of questions.

5 THE COMMISSIONER: Thank you,  
6 Mr. Cavalluzzo.

7 Ms Edwardh?

8 EXAMINATION

9 MS EDWARDH: Thank you,  
10 Mr. Commissioner.

11 We will come back to the issue of  
12 where a Canadian is located.

13 It certainly has no relevance to  
14 whether a person is a Canadian citizen, Mr. Pardy.

15 MR. PARDY: No.

16 MS EDWARDH: But as the construct  
17 of dominant nationality has evolved, it's  
18 certainly not a matter that is irrelevant in  
19 pressing your right to have access to a dual  
20 national, the issue of residence?

21 MR. PARDY: Well, as you know -- I  
22 am getting into the issue of -- as you know, under  
23 international law, there is in my understanding no  
24 recognition of this concept of dominant  
25 nationality except in a 1930 League of Nations

1 treaty, which essentially states that a dual  
2 national when living in a country of second  
3 nationality then the country of first nationality  
4 has no right to intervene and provide consular  
5 service.

6 We found that concept -- Canada  
7 was a signatory to that treaty in 1930. It's  
8 still in effect, by the way.

9 And we found in the early '90s  
10 that that was such a limiting factor to our work  
11 in this area that we took action to have Canada  
12 denounce that treaty.

13 And it's certainly my  
14 understanding that it's the only time that Canada  
15 has ever denounced a treaty of this -- or any  
16 treaty, for that matter.

17 MS EDWARDH: But certainly -- and  
18 we can go to the note a little later, but I just  
19 make this point now, since the Commissioner's mind  
20 is on it.

21 When you instruct the Ambassador  
22 and Mr. Martel with respect to the objectives of  
23 their first few consular visits, as they approach  
24 those visits, having not had them then, you  
25 specifically instruct them to stress Mr. Arar's



1 continued residency in Canada. That's one of the  
2 factors?

3 MR. PARDY: Oh, yes, very much so.  
4 We had mentioned it in one of the -- I think it's  
5 mentioned in one of the notes.

6 MS EDWARDH: Yes.

7 MR. PARDY: But again, you know,  
8 you work with the information that you have and  
9 try to put the very best face on it that you  
10 possibly can.

11 MS EDWARDH: Right. And  
12 essentially you knew that there had been an  
13 extended stay in Tunisia, but Mr. Arar and his  
14 wife, and their children -- all Canadian  
15 citizens -- had deep roots in Canada and expected  
16 to return?

17 MR. PARDY: Yes, and that's  
18 reflected in our instructions to Ambassador  
19 Pillarella, yes.

20 MS EDWARDH: Fair enough.

21 Mr. Pardy, my hope, if you will  
22 bear with me, is that we can cover some large  
23 swaths of information without going in detail  
24 through the chronology that Commission counsel led  
25 you through, but I suppose I should say, if I

1           overstep that mark and you want reference to some  
2           document, stop us, and I am sure everyone will  
3           search for it.

4                           But I would like to have some  
5           general discussion with you, if I could.

6                           It's fair to say that your view,  
7           not only in this case but in other cases, has been  
8           that the public discussion of some issues can  
9           compromise the efficacy of quiet diplomacy?

10                           MR. PARDY: Yes.

11                           MS EDWARDH: Right. And we see it  
12           on a number of occasions in this case,  
13           particularly after August in 2003, where you  
14           become aware of allegations of torture and you  
15           have a concern, as does Mr. Martel and the  
16           Ambassador, that public discussion of that could  
17           impair the delivery of consular services to  
18           others, particularly in Syria?

19                           MR. PARDY: Yes.

20                           MS EDWARDH: And that it's not  
21           only in relation to the future -- I mean, the  
22           future of delivery of services to others -- it's  
23           generally your view that consular services are  
24           most effective if they are not carried on at the  
25           same time as a public campaign in the nation that

1 is concerned about the wellbeing of one of its  
2 citizens?

3 MR. PARDY: Yes. My views on this  
4 are in writing, and certainly I have spoken  
5 publicly about it as well.

6 MS EDWARDH: You said that to  
7 Mr. Cavalluzzo. It's a wisdom that certainly is  
8 not written in stone, is it?

9 MR. PARDY: No, and it's almost  
10 counter-intuitive for Canadians, yes.

11 MS EDWARDH: If I take you back to  
12 another case, certainly you have in your  
13 curriculum vitae your involvement with a Canadian  
14 citizen who found herself tragically in Vietnam?

15 MR. PARDY: Yes.

16 MS EDWARDH: And indeed you worked  
17 in that case with a number of people, the family,  
18 and also AIDWIC?

19 MR. PARDY: Yes. And the Toronto  
20 police who played a very large role.

21 MS EDWARDH: And indeed you had  
22 the assurances of the government of Vietnam that  
23 they would await a contingent of police officers  
24 from Toronto so that they could review evidence  
25 of -- it's Madam Hiep?

1 MR. PARDY: Yes, Nguyen Thi Hiep,  
2 yes.

3 MS EDWARDH: Yes. Her innocence,  
4 that was the objective?

5 MR. PARDY: It wasn't awaiting.  
6 The two visits did take place by officers of the  
7 Toronto police and they delivered evidence to the  
8 Government of Vietnam, yes.

9 MS EDWARDH: It was the object of  
10 those visits to show she was innocent?

11 MR. PARDY: Yes.

12 MS EDWARDH: Now, you will agree  
13 with me, sir, that the issue of whether to have a  
14 public campaign or leave it to private diplomacy  
15 was a matter that was discussed in her case as  
16 well, and that you advised the board of AIDWIC, or  
17 those of us who were involved, that  
18 confidentiality and privacy and not having a  
19 public campaign is the best way to bring about a  
20 positive result --

21 MR. PARDY: Yes, that was my  
22 recommendation to the organization, yes.

23 MS EDWARDH: And you will agree  
24 that, tragic though it may be, we all woke up one  
25 morning, and having been silent, learned that this

1 Canadian citizen was buried in a shallow watery  
2 grave in Vietnam?

3 MR. PARDY: I think it's fair to  
4 say that you are overcharacterizing the scene in  
5 Canada as one of silence. There was a fair amount  
6 of public comment about this case in the Canadian  
7 press.

8 MS EDWARDH: Well, I am going to  
9 suggest there wasn't much until she was executed?

10 MR. PARDY: Oh, I follow these  
11 things fairly carefully. There was a fair bit of  
12 comment in the press. I would have wished it as  
13 otherwise, and I will wait for your other  
14 questions in terms of why we ended up with the  
15 situation that we did there.

16 MS EDWARDH: My point is simply to  
17 the extent that that case was much quieter than  
18 the Arar case -- you will agree with that?

19 MR. PARDY: I would want to review  
20 my notes and the file on that one to make that  
21 determination. I mean, a death penalty case where  
22 the possibility of a death penalty takes on a  
23 particular connotation in the Canadian body  
24 politic, and certainly the fact that Madam Thi  
25 Hiep had been sentenced to death, and we were

1 working against that sentence, I think resonated  
2 within the Canadian media.

3 MS EDWARDH: Of course. The fact  
4 that you are not prepared to agree with me on is  
5 that was a case where organizations like AIDWIC,  
6 which are usually loud and clamouring, in fact  
7 opted for silence in deference to allowing  
8 diplomacy to go forward, and you are not prepared  
9 to say that there was less coverage in that case,  
10 certainly, by --

11 MR. PARDY: The other element in  
12 that case was the fact that the family members  
13 themselves were concerned as to whether or not  
14 publicity in Canada was going to be helpful to  
15 Madam Nguyen Thi Hiep, yes.

16 MS EDWARDH: All I am really  
17 trying to establish is that there are different  
18 ways to approach it. If you assume that being  
19 quiet always works, it would be a terrible  
20 mistake, because being quiet may not work to your  
21 advantage?

22 MR. PARDY: And then I would like  
23 to be in a position to make that decision based on  
24 what I know about the case and whether or not  
25 moving from one of a quiet approach on a case to

1           one of publicity is going to be beneficial to the  
2           individual involved.

3                           That is the key determination  
4           here. On my part, it's not a determination that I  
5           am trying to protect the Government of Vietnam, or  
6           any other government for that matter; it has to do  
7           with what is going to work to help the person that  
8           is in difficulty.

9                           MS EDWARDH: That's my point. I  
10          am not suggesting you were trying to help, in this  
11          advice, any foreign government, but that your  
12          judgment about quiet diplomacy is one that  
13          certainly we cannot say always works?

14                          MR. PARDY: At my age, nothing is  
15          absolute, Ms Edwardh.

16                          MS EDWARDH: There was a question  
17          put to you by Mr. Cavalluzzo about the media  
18          campaign, and we can certainly agree with this  
19          fact: Mr. Arar's wife and his supporters, and  
20          members of the media, and other concerned citizens  
21          raised their voices very loudly in the Canadian  
22          public, and the issues that they were concerned  
23          with were given significant press?

24                          MR. PARDY: Yes.

25                          MS EDWARDH: And in fact close to

1 the time he returned and thereafter, and shortly  
2 thereafter, it was your view -- and we can go to  
3 the documents if you need -- but it was your view,  
4 and I think expressed to others in that group,  
5 that there would be no public inquiry?

6 MR. PARDY: My view was that the  
7 mechanism that was available, that mechanism under  
8 Canadian law, to review action by the Canadian  
9 Police Complaints Commission, was a vehicle that  
10 was available and could conceivably arrive at  
11 certain conclusions with respect to the conduct of  
12 certain Canadian officials, yes.

13 MS EDWARDH: But you also told --  
14 and we have the minutes of the meeting -- those  
15 that were Mr. Arar's supporters that it was highly  
16 improbable and extremely unlikely that a public  
17 inquiry would ever be called?

18 MR. PARDY: Yes, that was my view  
19 then. But then as you know, other events  
20 intervened that --

21 MS EDWARDH: Certainly.

22 MR. PARDY: Yes.

23 MS EDWARDH: But you will agree  
24 with me that one of the reasons there is a public  
25 inquiry today was the public pressure put on the



1 government to create such an inquiry?

2 MR. PARDY: I am not sure whether  
3 that was the main reason that led to the decision  
4 of the government, when it did, to call a public  
5 inquiry.

6 MS EDWARDH: How about a  
7 significant contributing reason?

8 MR. PARDY: The government, if you  
9 follow the statements throughout the fall of 2003,  
10 were united on this issue in terms of not having a  
11 public inquiry. Then an event occurred that led  
12 to the government to change its mind.

13 If you look at the statements made  
14 publicly, not in the House of Commons, by members  
15 of the government, they had concluded that a  
16 public inquiry was not warranted in this  
17 situation, and they were sticking to this until a  
18 certain event occurred.

19 MS EDWARDH: And that event was  
20 the publication of an article written by Juliet  
21 O'Neill?

22 MR. PARDY: That was the  
23 initiating event, but the event itself, I think,  
24 that led to the inquiry were the search warrants,  
25 yes.

1 MS EDWARDH: Search of her home?

2 MR. PARDY: And the offices of the  
3 Ottawa Citizen, yes.

4 MS EDWARDH: I am going to suggest  
5 to you, sir, throughout this whole period there  
6 was significant public pressure, as well, for a  
7 public inquiry?

8 MR. PARDY: Oh, yes. And as I  
9 said earlier, the government's response to that  
10 pressure, based on the situation previous to the  
11 search warrants, was that a public inquiry was not  
12 necessary in these circumstances.

13 MS EDWARDH: So I guess, given  
14 your view, Mr. Pardy, and I just found it odd and  
15 a little unreasonable that certainly from the  
16 outside looking at government, it is not  
17 infrequent to find Members of Parliament, cabinet  
18 ministers, or the Prime Minister, respond to  
19 matters of great public concern? They respond?

20 MR. PARDY: Oh, the Canadian  
21 political system is highly reactive to what  
22 happens within -- it's probably one of the most  
23 reactive systems in the world, certainly in terms  
24 of my experience.

25 MS EDWARDH: And certainly you

1 will agree with me that one of the principal  
2 vehicles promoting a reaction is the media?

3 MR. PARDY: Oh, yes, absolutely.

4 MS EDWARDH: And so it won't  
5 surprise you if I share some of Mr. Cavalluzzo's  
6 surprise that the pressure for action to bring  
7 home Mr. Arar, that was certainly placed on the  
8 government may have been a significant factor in  
9 the Prime Minister's decision to bring about a  
10 consensus and move this matter forward?

11 MR. PARDY: Well, I think you  
12 would have to call the former Prime Minister to  
13 find out what his exact reasons were.

14 But if you go back and look at the  
15 file that is before this Commission, long before  
16 there was any public clamour to assist Mr. Arar,  
17 the record of my actions were taken right from the  
18 very beginning to assist Mr. Arar independent of  
19 any of the pressures that were going on in the  
20 body politic.

21 MS EDWARDH: Mr. Pardy, you  
22 misunderstand me. I am not suggesting that from  
23 the get-go you didn't pursue this objective.

24 MR. PARDY: Yes.

25 MS EDWARDH: I am interested in

1           how you get to a stage where the waters are  
2           sufficiently calm between the various entities of  
3           the Government of Canada so that you go above the  
4           concerns of CSIS, above the concerns of the RCMP,  
5           you go around them and you end up with a letter  
6           from the Prime Minister.

7                       All I am doing is putting to you  
8           the simple proposition that there is no doubt that  
9           by that time, by the time the Prime Minister signs  
10          on to this proposal, that there is significant  
11          public support for bringing Mr. Arar home?

12                      MR. PARDY: Yes, and that public  
13          clamour was there, I would say, for several months  
14          prior to the decision for the Prime Minister to be  
15          involved in it. So he was living with that, and  
16          he became certainly very aware, I think through  
17          discussions that his own officials would have had  
18          with him, that there was a need here to break  
19          through, if you like, the lack of consensus at the  
20          ministerial, if you like, or below the ministerial  
21          level in the Government of Canada.

22                      MS EDWARDH: And that public  
23          expression of concern would certainly be a matter  
24          that we would expect the Prime Minister to note  
25          when he decided to forge that consensus and write

1           that letter. That's all I am saying.

2                       MR. PARDY: Yes. And there is a  
3 counter interpretation of all of this. It is  
4 possible that we could have arrived at a consensus  
5 within the Government of Canada earlier on if the  
6 public clamour had not been there.

7                       I think one of the issues here,  
8 the issue of public policy, is that that level of  
9 agitation that was going on could have delayed a  
10 consensus arriving at a lower level and possibly  
11 earlier within the Government of Canada.

12                      MS EDWARDH: Well, we certainly  
13 have no evidence that the blocks in your road,  
14 sir, arose from the public concern as expressed to  
15 Members of Parliament, to the Government of Canada  
16 and to the Prime Minister's Office. Those weren't  
17 the location of the blocks as you knew them, as  
18 you described them over the last two days?

19                      MR. PARDY: No. And I would  
20 suggest to you that institutions of government and  
21 the way that they respond to public pressure  
22 varies widely. Some respond to it positively;  
23 some respond to it negatively.

24                      And certainly we had found insofar  
25 as the Government of Syria was concerned, and

1 foreign governments generally respond negatively  
2 to public pressure in other countries, and that  
3 was my experience on any number of cases that I  
4 had dealt with over the years.

5 MS EDWARDH: But my question is  
6 really is quite narrow, Mr. Pardy. All I am doing  
7 is asking you to agree with me that in the couple  
8 of months leading up to the Prime Minister's  
9 decision to write the letter that you think had  
10 such an important impact on the Syrian government,  
11 all I am really saying, sir, is that there was a  
12 continuous public concern expressed in wanting  
13 action to bring Mr. Arar home, and that there is  
14 no doubt that that was a factor that led to the  
15 Prime Minister's decision.

16 I am not saying exclusive. He is  
17 a politician. Clearly a factor.

18 MR. PARDY: And I think in my  
19 response, I think it's important that in effect  
20 the issue be laid out in all of its manifestations  
21 and not just one narrow interpretation.

22 MS EDWARDH: Absolutely.

23 MR. PARDY: Yes.

24 MS EDWARDH: Can you concede that  
25 that would at least be a factor --

1 MR. PARDY: Oh, I have said right  
2 at the very beginning that it was a factor. I  
3 didn't say that.

4 What I am saying to you is that,  
5 as a factor, it could have cut both ways.

6 MS EDWARDH: Sure. It didn't in  
7 this case. I don't think it did anyway.

8 MR. PARDY: Okay.

9 MS EDWARDH: We don't have any  
10 evidence that it cut both ways?

11 MR. PARDY: Well, as I said to  
12 you, the reaction of institutions of government  
13 meant, in my view, that it did cut both ways.

14 MS EDWARDH: All right. So what  
15 you are talking about is not the Prime Minister's  
16 Office. You are talking about institutions of  
17 government that are other than the Prime  
18 Minister's Office?

19 MR. PARDY: Yes.

20 MS EDWARDH: Such as the RCMP and  
21 CSIS?

22 MR. PARDY: And CSIS, yes.

23 MS EDWARDH: They don't like the  
24 public clamour because they don't like operating  
25 in the public domain?

1 MR. PARDY: But in my mind --

2 MS EDWARDH: Is that a fair  
3 statement?

4 MR. PARDY: That's a fair  
5 statement.

6 But in my mind it wasn't  
7 necessarily exclusive to those organizations. It  
8 was the reaction of the Government of Syria, where  
9 Mr. Arar was located.

10 MS EDWARDH: So that's the third  
11 component?

12 MR. PARDY: That's the third, yes.

13 MS EDWARDH: I am not trying to  
14 argue with you, Mr. Pardy.

15 MR. PARDY: No.

16 MS EDWARDH: I want to thank you  
17 for your candid acknowledgment yesterday that  
18 there is a very significant public record about  
19 human rights abuses in Syria.

20 MR. PARDY: Yes.

21 MS EDWARDH: And particularly, it  
22 appears, that detainees of military intelligence  
23 were more vulnerable to abuse or degrading  
24 conditions of confinement or perhaps even torture?  
25 That accords with your understanding of the public



1 record?

2 MR. PARDY: Yes. My understanding  
3 is that people who find themselves within the  
4 purview, if you like, or captivity of intelligence  
5 organizations, not infrequently they are outside  
6 of any rule of law that exists in a given country.

7 MS EDWARDH: And I think that's an  
8 important observation, Mr. Pardy, because, you  
9 see, in Canada, if one were arrested and detained,  
10 generally the provisions of the criminal law come  
11 into play.

12 MR. PARDY: Yes.

13 MS EDWARDH: Police officers have  
14 certain duties about giving information to  
15 detainees, then they must bring detainees before a  
16 court within a reasonable period of time. So the  
17 idea of an allegation of criminal wrong-doing in  
18 the face of no charge, no access to a court and no  
19 trial is something most Canadians are unfamiliar  
20 with?

21 MR. PARDY: Very much so.

22 MS EDWARDH: But it is in fact the  
23 standard fare of detention by organizations that  
24 are really like the Military Intelligence Division  
25 of the Syrian government?

1 MR. PARDY: That is correct, yes.

2 MS EDWARDH: We knew, and you  
3 described being aware in mid-August, that Mr. El  
4 Maati had claimed that he had been tortured by the  
5 Syrians.

6 You talked about that yesterday.

7 I take it you received this  
8 information when Mr. El Maati was given consular  
9 visits when he was in Egypt?

10 MR. PARDY: Yes. I think --  
11 again, I didn't have a chance to check the record,  
12 but I think it was earlier than August. I think  
13 it was July.

14 MS EDWARDH: Yes, you actually  
15 said that you thought that it was a little  
16 earlier.

17 And the place that Mr. El Maati  
18 was, where was he? Was he also under the control  
19 as a detainee of Syrian Military Intelligence, to  
20 your knowledge?

21 MR. PARDY: We are talking Egypt  
22 now?

23 MS EDWARDH: That's right, no.  
24 You talked to him in Egypt?

25 MR. PARDY: Yes.

1 MS EDWARDH: When he was in Syria,  
2 please forgive me.

3 When he was in Syria, he was a  
4 detainee of Syrian Military Intelligence?

5 MR. PARDY: I don't have that as  
6 conclusive evidence because we had no access to  
7 him whatsoever, and we had no information from the  
8 Syrian authorities where he was located in Syria.

9 But I think that it's a reasonable  
10 conclusion that that's where he was being held,  
11 yes.

12 MS EDWARDH: And I take it if he  
13 were held by the Syrian Military Intelligence, he  
14 was most probably held in what we now know as the  
15 Palestine Branch, if he was held in the Damascus  
16 area?

17 MR. PARDY: I have no evidence,  
18 one way or the other, on that particular issue.

19 MS EDWARDH: All right.

20 You said in answer to a couple of  
21 questions yesterday that you acknowledge the  
22 public record in respect of Syrian human rights,  
23 and the Military Intelligence branch included a  
24 practice of holding people incommunicado during  
25 periods of intensive interrogation and the

1 techniques of interrogation may well amount to,  
2 certainly abuse, if not torture.

3 You acknowledged that?

4 MR. PARDY: If you recall that as  
5 the record, yes.

6 MS EDWARDH: Well, we can look at  
7 the record --

8 MR. PARDY: No, I am quite -- you  
9 are quoting the record to me. I have not seen it  
10 since I said it yesterday.

11 MS EDWARDH: Well, if you have any  
12 concern about whether you said it, I can just  
13 remind you specifically that Mr. Cavalluzzo took  
14 you to the Amnesty International report that  
15 specifically talked about incommunicado detention  
16 and torture.

17 MR. PARDY: I will not be shy in  
18 differing with you if I think the record is  
19 different from what you suggest.

20 MS EDWARDH: Thank you, Mr. Pardy.  
21 It is not my intention to mislead at all.

22 MR. PARDY: No.

23 MS EDWARDH: Yesterday you said a  
24 couple of important things, and I just want to  
25 break them down because they certainly are

1 important for Mr. Arar.

2 You said that from your knowledge,  
3 from the time he leaves the United States until  
4 the time everyone is prepared to say "Ah, he's  
5 here", that being October 21st, that what happened  
6 to Mr. Arar is certainly, from your perspective,  
7 not only consistent with, but now it is confirmed,  
8 that he was held incommunicado in Syria?

9 MR. PARDY: I think that's a very  
10 reasonable conclusion to reach based on the  
11 information that we have, yes.

12 MS EDWARDH: And it's also fair to  
13 say, Mr. Pardy, that you knew that there was a  
14 substantial, if not probable, risk that if he was  
15 held incommunicado in Syria and held by Syrian  
16 Military Intelligence, that there was a probable  
17 risk he would suffer abuse, perhaps even torture,  
18 in the interrogation process?

19 MR. PARDY: Yes.

20 MS EDWARDH: And you made the  
21 comment, sir, that the consular report, where it  
22 is described as Mr. Arar saying the investigation  
23 was much more intensive earlier, was consistent  
24 with your knowledge of this initial period of  
25 incommunicado detention and interrogation?

1 MR. PARDY: Yes. I think I would  
2 need to be reminded of what visit that was.

3 MS EDWARDH: Well, we will find it  
4 at tab 229, August --

5 MR. PARDY: Oh, this is the very  
6 last visit.

7 MS EDWARDH: No, it's not the very  
8 last?

9 MR. PARDY: No.

10 MS EDWARDH: I am being taken  
11 astray here.

12 It is indeed --

13 THE COMMISSIONER: Tab 214, is it?

14 MS EDWARDH: Yes -- I am sorry,  
15 it's 229.

16 THE COMMISSIONER: Tab 229?

17 MS EDWARDH: Yes, Mr. Commissioner  
18 229.

19 And in particular paragraph 7,  
20 Mr. Pardy. Commission counsel took you to this  
21 paragraph I guess in your first day of testimony.

22 "Upon being questioned..."

23 I am looking at the second line.

24 Do you see that?

25 MR. PARDY: Yes.

1 MS EDWARDH: It says:

2 "Upon being questioned on his  
3 current health compared to  
4 the day he was first visited  
5 he indicated he had been  
6 afraid at the beginning as  
7 the investigation was more  
8 intensive."

9 MR. PARDY: Yes, and I think I  
10 went on to say that this was consistent with other  
11 experiences that I had with cases in the Middle  
12 East.

13 MS EDWARDH: Yes. And you even  
14 went further in your testimony yesterday. You  
15 said it was certainly not only consistent with  
16 your understanding of the public record of  
17 incommunicado detention and interrogation, but  
18 from your perspective, you said it was very  
19 consistent as well with the statements made by  
20 Mr. Arar when he returned home?

21 MR. PARDY: Yes.

22 MS EDWARDH: Right. And not to  
23 challenge in any way, just to put on the record  
24 what those statements were, Mr. Pardy, I would ask  
25 you to turn to tab 693.

1                   You will recall that Mr. Neve and  
2 Mr. Waldman, and several others, appeared with  
3 Mr. Arar when he made a public statement, and that  
4 public statement was transcribed.

5                   It won't surprise you if you find  
6 it in the notes here. I am sure it was of  
7 interest to persons at the department.

8                   You will see it transcribed, and  
9 the portion of this that I want to take you to,  
10 just to acknowledge what words Mr. Arar spoke when  
11 he returned, begins at page 4 of 6.

12                   MR. PARDY: Four of six? Yes.

13                   MS EDWARDH: And I am going to  
14 start, if I could, with what Mr. Arar said.

15                   For the record, let's be clear.  
16 He made this public statement early in November,  
17 November 4th, 2003. Is that correct?

18                   MR. PARDY: Yes, about a month  
19 after he had returned to Canada, yes.

20                   MS EDWARDH: And what he said --  
21 and if you just want to follow with me in case I  
22 fail in my reading. About eight or ten lines down  
23 on page 4 it begins:

24                   "It was about 6:00 in the  
25 evening..."



1 Do you see that?

2 "...6:00 in the evening on  
3 October 9th. Three men came  
4 and took me into a room."

5 Do you see that?

6 MR. PARDY: Yes, I do.

7 MS EDWARDH: And:

8 "Three men came and took me  
9 into a room. I was very,  
10 very scared. I was crying  
11 all the time. They put me on  
12 a chair and one of the men  
13 started asking me questions.  
14 I later learned this man was  
15 a... Colonel. He asked me  
16 about my brothers and why we  
17 had left Syria. I answered  
18 all the questions. If I did  
19 not answer quickly enough, he  
20 would point to a metal chair  
21 in the corner and ask, do you  
22 want me to use this?"

23 Let me just stop there.

24 In the reports in the public  
25 record, there certainly is reference to the use of

1 a metal chair in torture sessions in Syria that  
2 involve breaking people's backs. Do you recall  
3 those references?

4 MR. PARDY: I will take your word  
5 that they are there. I can't recall them. But  
6 certainly this is not inconsistent with other  
7 situations that I have dealt with the use of a  
8 metal chair.

9 MS EDWARDH: Thank you.

10 "And he said it many times,  
11 do you want me to use this?  
12 I did not know then what that  
13 chair was for. I learned  
14 later it was used to torture  
15 people. I asked him what he  
16 wanted to hear. I was very  
17 terrified and I did not want  
18 to be tortured. I would say  
19 anything to avoid torture.  
20 This lasted for four hours.  
21 There was no violence. Only  
22 threats. At about 1:00 in  
23 the morning, the guards came  
24 to take me to my cell  
25 downstairs. We went into the

1 basement and they opened a  
2 door and I looked in. I just  
3 could not believe what I saw.  
4 I asked how long I would be  
5 kept in this place. He did  
6 not answer. But put me in  
7 and closed the door. It was  
8 like a grave, exactly like a  
9 grave. It had no light. It  
10 was three feet wide. It was  
11 six feet deep. It was seven  
12 feet high. It had a metal  
13 door with a small opening in  
14 the door which did not let in  
15 light because there was a  
16 piece of metal on the outside  
17 for sliding things into the  
18 cell. There was a small  
19 opening in the ceiling, about  
20 one foot by two feet, with  
21 iron bars. Over that was  
22 another ceiling so only a  
23 little light came through  
24 this. There were cats and  
25 rats up there, and from time

1 to time, the cats peed  
2 through the opening into the  
3 cell. There were two  
4 blankets, two dishes, two  
5 bottles. One bottle was for  
6 water and the other one was  
7 used for urinating during the  
8 night. Nothing else. No  
9 light. I spent ten months  
10 and ten days inside that  
11 grave ... The next day, I was  
12 taken upstairs again. The  
13 beatings started that day and  
14 was very intense for a week.  
15 And then less intense for  
16 another week. The second and  
17 the third days were the  
18 worst. I could hear other  
19 prisoners being tortured and  
20 screaming and screaming."

21 Let me stop you there.

22 From your vast knowledge of human  
23 rights issues, this technique of letting people  
24 just hear others who are being tortured, would you  
25 agree with me, Mr. Pardy, is a form of

1           psychological torture?

2                           MR. PARDY:  Yes, and it's a very  
3           common technique.  As you will note from my  
4           curriculum vitae, I spent three years dealing with  
5           what was going on in Idi Amin's Uganda from 1975  
6           to 1978 and certainly Uganda in those years where  
7           the theory and practice of hell was very evident,  
8           yes.

9                           MS EDWARDH:  And:

10                           "Interrogations are carried  
11                           out in different rooms.  One  
12                           tactic they use is to  
13                           question prisoners for two  
14                           hours and then put them in a  
15                           waiting room so they can't  
16                           hear the others screaming,  
17                           and then bring them back to  
18                           continue the interrogation.  
19                           The cable is a black electric  
20                           cable, it's a shredded cable,  
21                           about two inches thick.  They  
22                           hit me with it everywhere on  
23                           my body.  They mostly aim for  
24                           my palms but sometimes missed  
25                           and hit my wrists.  They were

1 sore and red for three weeks.  
2 They also struck me on my  
3 hips and lower back.  
4 Interrogators constantly  
5 threatened me with a metal  
6 chair, tire, and electric  
7 shocks. The tire is used to  
8 restrain prisoners while they  
9 torture them with beating on  
10 the sole of their feet. I  
11 guess I was lucky because  
12 they put me in the tire but  
13 only as a threat."

14 And on and on it goes.

15 I take it, given your knowledge of  
16 the human rights record and the conditions of  
17 detention and confinement under the auspices of  
18 the Syrian Military Intelligence, that does not  
19 surprise you and is consistent with what you know  
20 about the initial periods of detention?

21 MR. PARDY: Yes.

22 MS EDWARDH: Thank you, Mr. Pardy.  
23 Now, let me turn to one -- excuse  
24 me.

25 And it's those comments that you

1 believe were consistent when you said that his  
2 public statements upon his return were consistent  
3 with what your understanding was of what kind of  
4 thing he would have experienced in the initial  
5 period of his interrogation?

6 MR. PARDY: Yes.

7 MS EDWARDH: Thank you.

8 Without taking you through the  
9 consular notes -- and we can go through them all  
10 if you want to -- can we at least agree on this,  
11 and I think Mr. Cavalluzzo used almost as an  
12 expression "the moustached men". But it's quite  
13 clear that none of these visits -- none of them --  
14 permitted Mr. Martel or Mr. Arar to have any kind  
15 of a free and candid exchange?

16 MR. PARDY: No, and that's  
17 characteristic of almost all consular visits in  
18 situations where these kinds of circumstances  
19 prevail, yes.

20 MS EDWARDH: And so what we do see  
21 on the record is the domination and the control of  
22 the detainee through various mechanisms. Is that  
23 fair?

24 One of the most important  
25 mechanisms is, "Mr. Arar, you speak in Arabic"?

1 MR. PARDY: Yes.

2 MS EDWARDH: And of course that's  
3 done because the one thing that the persons who  
4 are detaining Mr. Arar want control of is what he  
5 says?

6 MR. PARDY: Yes.

7 MS EDWARDH: We do see in the  
8 consular reports certain signs that Mr. Arar has  
9 had difficulty or is having difficulty. Is that  
10 fair?

11 MR. PARDY: Yes, there are  
12 indications in, I think, at least two if not three  
13 of the reports when you read the sentence, even at  
14 the time I read them, that sort of suggested  
15 that -- I mean, this was not a very pleasant place  
16 to be, but certainly the confirmation of that in  
17 any absolute sense was through the information  
18 that you just read into the record, yes.

19 MS EDWARDH: Sure. For example,  
20 one of the ones -- well, my friend Mr. Cavalluzzo  
21 has pointed out:

22 "The first red flag for me  
23 was that after someone has  
24 disappeared for a period of  
25 time, we are told by the



1                   Syrians that within 24 hours  
2                   he has made a confession."

3                   You recall that there was --

4                   MR. PARDY: Oh, yes. The visit on  
5                   October 23rd, yes.

6                   MS EDWARDH: And that's a big red  
7                   flag. Because if the Syrians are telling you the  
8                   truth, that they just got him the night before,  
9                   then they have done some very rapid and effective  
10                  interrogation?

11                  MR. PARDY: Or they had a standard  
12                  script to use in these situations.

13                  MS EDWARDH: Or they were lying?

14                  MR. PARDY: Yes.

15                  MS EDWARDH: Fair enough. If you  
16                  want to, we can turn some of these up, because I  
17                  think they are useful.

18                  THE COMMISSIONER: What's the tab?

19                  MS EDWARDH: Let's look at tab 131  
20                  and 130, because I think you are very good at  
21                  reading your consular notes and see things in  
22                  them, Mr. Pardy, that may not be obvious to those  
23                  of us who are reading them.

24                  So if we turn to tab 130, there  
25                  are a couple of observations I made, and you tell

1 me whether you attach any significance.

2 This relates to the first consular  
3 visit, the 23rd of October, 2002.

4 The first sign is we know that  
5 Mr. Arar is not meeting Mr. Martel in any prison.  
6 He has been taken out from wherever he is and  
7 brought to an office; right?

8 MR. PARDY: Yes, but I think your  
9 assumption that there isn't a prison involved in  
10 the narrow meaning of that word is wrong, because  
11 we find quite often in countries that a prisoner  
12 is brought to another location for these kinds of  
13 meetings and not in the place where incarceration  
14 is taking place.

15 MS EDWARDH: But one of the things  
16 you are instantly alive to is you can't see what  
17 that place is?

18 MR. PARDY: Absolutely.

19 MS EDWARDH: And if I go into  
20 Millhaven or Collins Bay, I know what I am  
21 getting.

22 MR. PARDY: What you are getting,  
23 yes.

24 MS EDWARDH: You have no idea here  
25 what you are getting. Is that fair?

1 MR. PARDY: Oh, yes, yes.

2 MS EDWARDH: And that's indeed the  
3 observation Mr. Martel makes, and it's a thing to  
4 note that he could not see where Mr. Arar was  
5 being detained; right?

6 MR. PARDY: Yes.

7 MS EDWARDH: Now, here's another  
8 interesting observation: Mr. Arar is sat at a  
9 distance. He is not sitting, as you and I would,  
10 across a desk for a discussion. He is placed some  
11 distance away.

12 And I am going to suggest to you  
13 that -- you may not know the distance, but you  
14 wouldn't disagree if I said it was 10 or 12 feet  
15 sitting away from Mr. Martel?

16 MR. PARDY: Mm-hmm.

17 MR. BAXTER: I am afraid I wonder  
18 how Ms Edwardh can lead that question, and how  
19 Mr. Pardy can have any opinion with respect to  
20 that without running afoul somewhat of where we  
21 were yesterday.

22 THE COMMISSIONER: Mr. Martel is  
23 going to give evidence, so we will hear from him.

24 I don't know if the witness can  
25 answer it from his experience that that might be?

1 I don't know. Maybe he was told by Mr. Martel? I  
2 just don't know.

3 MR. BAXTER: Fine.

4 THE COMMISSIONER: One thing I  
5 notice is this witness is very able to answer  
6 these questions, and when he doesn't know the  
7 answer --

8 MR. BAXTER: He will tell you so.

9 THE COMMISSIONER: He is very  
10 helpful.

11 I will say this to you,  
12 Mr. Pardy -- I am not sure I need to say it to  
13 you, but let me say it. If you are not able to  
14 answer a question, please say so.

15 MR. PARDY: Yes, thank you.

16 MS EDWARDH: And knowing you,  
17 Mr. Pardy, and reading the language that the  
18 person, the detainee, is put away from any really  
19 close eye-balling, that raises a concern -- or it  
20 would to me. Did it to you?

21 MR. PARDY: Yes. The ideal  
22 situations in all of these -- I mean conditions  
23 for all of these kinds of things is to see  
24 Mr. Arar up close, be able to touch him, talk to  
25 him in private and all of these things. I fully

1 agree that that's the ideal circumstances.

2 But yet -- can I just draw a  
3 conclusion here for you. When you are not in  
4 control of those conditions, or if the conditions  
5 are such in a given country where you cannot  
6 expect that, you don't let your desire for the  
7 best kill the little bit of good that is evident.  
8 And that is seeing Mr. Arar --

9 MS EDWARDH: He is alive.

10 MR. PARDY: He is alive. He is  
11 talking to us.

12 MS EDWARDH: I am with you,  
13 Mr. Pardy.

14 What I am really trying to  
15 establish is that when you are told by Mr. Martel  
16 that this distance is established, one of the  
17 things distance does is it makes sure that you  
18 don't see any of the marks and bruises that are on  
19 a body?

20 MR. PARDY: Yes, or clothes is  
21 used, whether it's long sleeves, short sleeves --  
22 all of these kinds of things come into play here,  
23 yes.

24 MS EDWARDH: And certainly, to the  
25 best of your knowledge in any of the early visits,

1 Mr. Martel was not in a position to say to  
2 Mr. Arar, "Would you mind discreetly showing me  
3 your body? Can I see?"

4 None of that ever happened?

5 MR. PARDY: None of that ever  
6 happened, no.

7 MS EDWARDH: And it wouldn't have  
8 been allowed to happen?

9 MR. PARDY: Exactly.

10 MS EDWARDH: So Mr. Martel tells  
11 you that it's quite clear that Mr. Arar is not  
12 free to answer all the questions?

13 MR. PARDY: Yes.

14 MS EDWARDH: And he appears  
15 healthy, but it's a difficult question for him to  
16 properly assess?

17 MR. PARDY: Mm-hmm.

18 MS EDWARDH: And certainly, given  
19 the structure of the interview that he had with  
20 Mr. Arar, it would be impossible to assess whether  
21 someone had been the victim of physical abuse?

22 MR. PARDY: Exactly, yes.

23 MS EDWARDH: Now, one of the other  
24 indications -- I just want to see whether you  
25 share my concern, sir.

1                   Mr. Martel tells you that Mr. Arar  
2                   is required to puppet the directions given to him  
3                   by the Syrians. In other words, he is instructed  
4                   about certain things to say?

5                   MR. PARDY: Yes, and how to  
6                   behave, exactly, and areas that were not to be  
7                   discussed. Very specific.

8                   MS EDWARDH: And he was completely  
9                   compliant?

10                  MR. PARDY: Yes, except on one or  
11                  two occasions I remember that he pushed against  
12                  those directions and additional information came  
13                  out.

14                  MS EDWARDH: But that's much  
15                  later?

16                  MR. PARDY: That's much later,  
17                  yes.

18                  MS EDWARDH: In October --

19                  MR. PARDY: In October, yes.

20                  MS EDWARDH: -- Mr. Martel makes  
21                  it clear to you that the man he sees is submissive  
22                  and resigned. That conveys a whole lot, doesn't  
23                  it?

24                  MR. PARDY: Yes, it does.

25                  MS EDWARDH: And people who are

1 described that way in the language of a consular  
2 note are people for whom you would have profound  
3 concern had been abused significantly in the  
4 detention, up to that time?

5 MR. PARDY: I would draw a  
6 conclusion that this was a very difficult  
7 situation, and what led to all of these things --  
8 I mean, I still had an open mind -- I shouldn't  
9 say I had an open mind. I made certain  
10 assumptions that that was quite likely the case,  
11 that he was subject to what the British used to  
12 say in colonial days -- what was it? -- harsh  
13 conditions or harsh imprisonment or something like  
14 that -- rigorous imprisonment.

15 RI was the term the British used  
16 to use.

17 MS EDWARDH: And in modern  
18 discussions in liberal democratic countries like  
19 our own, you will agree with me that those  
20 conditions and the physical abuse that has gone on  
21 in no way comport with the minimum standards of  
22 confinement and indeed frequently violate the  
23 Convention Against Torture, which prohibits cruel,  
24 degrading treatment?

25 MR. PARDY: Yes, but I -- and this



1           came up I think once before, where you made the  
2           assumption that there are international standards  
3           with respect to prison conditions.

4                       As you know, if you narrow your  
5           question down to just prison conditions, there are  
6           no international standards in this area and it's  
7           one of the large issues that I think the  
8           international community need to come to  
9           conclusions on.

10                      Efforts have been made to do so,  
11           but they have failed.

12                      MS EDWARDH: I read those books  
13           that said there were minimum standards.

14                      But in any event, physical abuse,  
15           conditions that are cruel, degrading, and are  
16           inhuman -- we are not worried about international  
17           standards; we are worried about Convention Against  
18           Torture?

19                      MR. PARDY: And the Convention  
20           Against Torture was a major step by the  
21           international community in this area, yes.

22                      MS EDWARDH: Certainly in the  
23           first report you have all these red signals going  
24           off, that this is consistent with this typical  
25           program of interrogation abuse in the initial

1 stages. But there are some things that are  
2 missing, and I am curious about the function of a  
3 consular note.

4 Mr. Martel doesn't say certain  
5 things, or he may not have the information, but if  
6 you were going to assess some of the information  
7 about Mr. Arar, you would have wanted to know how  
8 was he dressed? Is he dressed in full pants --

9 MR. PARDY: Mm-hmm.

10 MS EDWARDH: -- are his arms  
11 covered? Would you agree with me that that would  
12 be an important observation?

13 MR. PARDY: It was -- it would be.  
14 And I think he did refer to those kinds of things  
15 in subsequent notes.

16 MS EDWARDH: Only one.

17 MR. PARDY: Only one about the  
18 dress? I am not sure.

19 But certainly I think what we are  
20 looking for here in these kinds of reports, you  
21 try to provide what the client had to say, which  
22 is very important, his words. You describe the  
23 conditions under which the interview was taking  
24 place, and you then try to provide certain  
25 conclusions, if you like.

1                   You know, Mr. Martel said,  
2           "Subject appeared to be healthy, but this is  
3           difficult to assess."

4                   I think that's the kind of  
5           information that we are looking for from notes on  
6           these visits.

7                   MS EDWARDH: All right. But my  
8           observation is if one were really alive to a  
9           concern that a person may be the victim of  
10          treatment that falls below the standards of the  
11          Convention Against Torture, it would be helpful to  
12          have the kind of record that one could say  
13          Mr. Martel could only see Mr. Arar's arms on  
14          August the 14th, which was the first time he said  
15          he is wearing a T-shirt. Other than that, he is  
16          either warmly dressed --

17                   MR. PARDY: Warmly dressed.

18                   MS EDWARDH: Which implies totally  
19          covered, to me, or there is no notation.

20                   There is no discussion in the  
21          notes, for example, of whether Mr. Arar appears  
22          over the months that pass to lose considerable  
23          weight.

24                   There is no discussion of -- well,  
25          those are the kinds of things that I would think,

1 if you had a real concern that someone might be,  
2 or is likely the subject of treatment that falls  
3 below -- there might well be a protocol where  
4 those consular officials who get access are  
5 looking specifically for things?

6 MR. PARDY: All of these things,  
7 yes, I don't disagree with you. But I think you  
8 have to look at it in the sense of we had five  
9 consular visits in a matter of 10 weeks, I think  
10 it's fair to say. I think that's what it was, to  
11 the end of December, say, for example.

12 Now, what was the weight loss?  
13 Ten pounds? Would you notice a drop of ten pounds  
14 or even 15 pounds on the part of an individual?

15 Then when the visits started to  
16 space themselves out, unfortunately on the April  
17 23rd visit, Mr. Martel was not part of the group  
18 that went in to see Mr. Arar. That might have  
19 been an observation at that point, because the  
20 people that were there were seeing Mr. Arar for  
21 the first time.

22 Then it was not until August that  
23 Mr. Martel saw him again.

24 So those kinds of -- yes, it would  
25 be nice to have that information but, again, I

1 think you have to rely on the individual that's in  
2 there. And he is doing a number of things in  
3 terms of talking to the individual, providing some  
4 measure of encouragement to him, trying to  
5 ameliorate the conditions of imprisonment by  
6 conversations with the guards and other officials  
7 that are around.

8 As I mentioned yesterday, part of  
9 the process is to try to humanize the situation  
10 for the person that is incarcerated. And it's a  
11 very difficult role to play.

12 I have gone into these situations  
13 and afterwards I said to myself in my mind, I  
14 didn't observe this and I should have observed  
15 this. These are trying situations, not only for  
16 the individual, but for the consular officer in  
17 trying to think, "Well, what do I really need to  
18 look for here?"

19 As you say in this visit, at a  
20 distance, there was a conversation, there was  
21 communication, there was information passed, and  
22 Mr. Martel was able to make certain observations.

23 But I did not need Mr. Martel to  
24 tell me his suspicions as to whether or not  
25 serious abuse or torture had taken place. I mean,

1           this is something that I am working with on a  
2           daily basis, and it's something that I bring to  
3           the equation as a result of my experience.

4                       MS EDWARDH:   And you read it into  
5           these circumstances?

6                       MR. PARDY:   Yes, absolutely.   And  
7           I think anyone back in Ottawa that deals with  
8           these cases would do exactly that.

9                       MS EDWARDH:   Fair enough.   I see  
10          you as being more attuned to this, because by the  
11          time you are giving some instructions on the 29th  
12          of October, you ask that any changes in Mr. Arar  
13          be noted.

14                      MR. PARDY:   Yes.   Could I --

15                      MS EDWARDH:   Yes, you will find  
16          that at tab 147.

17                      That's a visit.   I think it's 145  
18          where you give the instruction.

19                      Just before you get into number 2,  
20          you say:

21                                "Also to see whether there is  
22                                any change in Maher's  
23                                presentation/demeanour over  
24                                the past six days."

25                      MR. PARDY:   Yes.

1 MS EDWARDH: So you specifically  
2 send Mr. Martel in to look for that?

3 MR. PARDY: Mm-hmm.

4 MS EDWARDH: And, interestingly,  
5 he says for the first time, if you turn to the  
6 consular visit, and he doesn't note this in the  
7 first visit, but he tells you at tab 147,  
8 paragraph 5, that:

9 "He did not seem to be  
10 disoriented anymore..."

11 MR. PARDY: That's correct, yes.

12 MS EDWARDH: So might we draw from  
13 that that certainly it's fair to conclude that  
14 Mr. Martel would have understood that, when he  
15 first saw Mr. Arar, his presentation was as a  
16 person who was disoriented, and there is an  
17 improvement now noted?

18 MR. PARDY: Yes, I think that's a  
19 reasonable conclusion to draw from the report that  
20 Mr. Martel did on -- what's this? October 29th  
21 now, yes.

22 MS EDWARDH: So it's just between  
23 the 22nd and the 29th, there is some improvement?

24 MR. PARDY: Yes.

25 MS EDWARDH: If you go to the

1 fourth consular exhibit as another example, which  
2 you will find at tab 229 -- I am sorry, that's in  
3 the next volume, Volume 3.

4 MR. PARDY: Yes.

5 MS EDWARDH: There is a suggestion  
6 that the Syrian officials make him stand up?

7 MR. PARDY: Yes.

8 MS EDWARDH: And they do this to  
9 show how well he is taken care of?

10 MR. PARDY: Yes, which was a real  
11 surprise to me, quite frankly, but, yes --

12 MS EDWARDH: It told you he could  
13 stand?

14 MR. PARDY: He could stand.

15 MS EDWARDH: Does it really tell  
16 you anything else other than he is still utterly  
17 compliant?

18 MR. PARDY: He is under their  
19 instruction still, and they want to restrict the  
20 amount of information that could become available  
21 to us in these circumstances, yes.

22 MS EDWARDH: And that's how you  
23 understood it when Mr. Martel was conveying it to  
24 you?

25 MR. PARDY: Absolutely.



1 MS EDWARDH: All right. Now,  
2 there is another --

3 MR. PARDY: But I would add  
4 another point. Over the period of these visits --  
5 and I think Mr. Martel noted this once or twice --  
6 there seemed to be a -- I don't want to use too  
7 strong a word here, but certainly a relaxation on  
8 the rigidity of the Syrian authorities here with  
9 respect to these visits, which I found equally  
10 encouraging, and that led us to conclusions as  
11 well.

12 MS EDWARDH: And when you say  
13 "relaxation" with respect to the visits, I take it  
14 from what you are saying, Mr. Pardy, is what you  
15 found there to be was less of the  
16 domination/control/direction that you saw in the  
17 earlier consular visits?

18 MR. PARDY: Yes. They were  
19 allowing, they were willing -- they said well, you  
20 can give him -- pass magazines and newspapers.  
21 Whether the Syrian guards were interested in  
22 reading those themselves, I don't know. But  
23 whether they got to Mr. Arar, I am not sure.

24 But again, on their part, it was  
25 part of the psychology that surrounds these

1 visits.

2 MS EDWARDH: Right. We will come  
3 back to the newspapers, because one of the  
4 interesting things that you drew is that Mr. Arar  
5 was in fact getting the newspapers.

6 But in fact, if you go to tab  
7 192 -- sorry, you have to go back a volume.

8 MR. PARDY: Yes.

9 MS EDWARDH: It is absolutely  
10 clear that Mr. Martel is telling him certain  
11 things about the news.

12 I would ask you to look at  
13 paragraph 3 where he explains the purpose of the  
14 visit:

15 "... to provide consular  
16 assistance, moral support, as  
17 permitted by Syrian  
18 authorities and that Canada  
19 was doing what it could on  
20 his behalf. Arar indicated  
21 he hoped to be released soon.  
22 Martel kept to the lines that  
23 are public knowledge as they  
24 appeared in the press."

25 And I took that to be that

1 Mr. Martel -- and of course he will tell us. But  
2 I am going to suggest to you that Mr. Martel  
3 conveyed certain information to Mr. Arar about  
4 what was in the press?

5 MR. PARDY: Yes, that's one  
6 conclusion, but on that particular point it's a  
7 very narrow one. Mr. Martel would be in the best  
8 position, I would think, to provide the Commission  
9 with an interpretation of what he meant there.

10 MS EDWARDH: But when you took  
11 some comfort in the next consular visit when  
12 Mr. Arar asked about something in the press or if  
13 it continued in the press, I take it -- you said  
14 well at least he was getting the magazines.

15 Well, it may be all he was doing  
16 was asking about what Mr. Martel said on an  
17 earlier occasion. Fair enough?

18 MR. PARDY: Yes, and I may have  
19 overstated that.

20 But I am still open to  
21 Mr. Martel -- or, I am sorry, Mr. Arar could -- I  
22 don't think it was referred to in his November 4th  
23 statement, I think --

24 MS EDWARDH: It wouldn't surprise  
25 you for a second --

1 MR. PARDY: No.

2 MS EDWARDH: -- if he never saw a  
3 single newspaper or magazine that was dutifully  
4 brought to him by consular officials?

5 MR. PARDY: In these  
6 circumstances, you are never surprised by  
7 anything.

8 MS EDWARDH: And it sure wouldn't  
9 surprise you that when you learned something about  
10 the conditions of confinement in a shady,  
11 grave-like cell, if you couldn't read because it  
12 was too dark, that wouldn't surprise you either?

13 MR. PARDY: No, no.

14 MS EDWARDH: These are not the  
15 airy, well-lit facilities that we in Canada would  
16 expect?

17 MR. PARDY: I don't have any  
18 firsthand knowledge of those conditions in Canada.

19 MS EDWARDH: Well, I can vouch for  
20 those.

21 --- Laughter / Rires

22 MR. PARDY: I assume you do.

23 MS EDWARDH: Innocently,  
24 Mr. Commissioner.

25 There is another interesting

1           thing, and it's almost humorous if you don't  
2           translate the significance of it. It is the  
3           January 7th consular visit, tab 267. And that is  
4           in Volume 3.

5                           I just want to make sure your  
6           interpretation is the same as mine.

7                           MR. PARDY: I am sorry, the tab  
8           number again?

9                           MS EDWARDH: This is 276.

10                          MR. PARDY: Oh, 276.

11                          MS EDWARDH: January 7th, 2003  
12           consular visit?

13                          MR. PARDY: Yes.

14                          MS EDWARDH: And there is an  
15           almost funny paragraph, paragraph 9:

16                            "At the end of the meeting  
17                            and once Arar had left the  
18                            room the two officials spent  
19                            considerable time discussing  
20                            the detention condition.  
21                            They went out of their way to  
22                            say Arar was receiving  
23                            special treatment. They said  
24                            he was being kept in a  
25                            separate room and not mixed

1 with other detainees, was  
2 given decent clothing and was  
3 provided with the necessary  
4 food and water."

5 Well, let me just focus on the  
6 separate room.

7 When we go to the hospital or live  
8 in a hotel for a while, we love a separate room.  
9 I translate that, as I am sure you did, Mr. Pardy,  
10 that Mr. Arar was held in utter isolation?

11 MR. PARDY: When anybody in these  
12 kinds of conditions uses the word "special", I  
13 don't see it necessarily as a positive element.  
14 You can be special and be very bad, and that's  
15 what I looked at.

16 But in terms of the isolation that  
17 was taking place, which is a concern for you,  
18 because if there is a mixing of prisoners, that in  
19 itself denotes a certain progress, possibly, in  
20 terms of what's going on in these circumstances.

21 MS EDWARDH: Well, he is saying he  
22 is not mixed with other people --

23 MR. PARDY: Exactly. And I took  
24 that to mean that there were still things going  
25 on, that they wanted to keep him isolated. And

1 isolation, as you know in these conditions, is in  
2 effect a form of abuse.

3 MS EDWARDH: It's complete and  
4 utter in his circumstances. If he can't see other  
5 prisoners, he can't see his family, he can't see  
6 his wife and children, and the only people he has  
7 any human contact with are those who hold him in  
8 captivity or a consular official, it's pretty  
9 clear that is abuse?

10 MR. PARDY: Oh, absolutely, yes.

11 MS EDWARDH: And you and I can  
12 agree as well that detention in conditions of  
13 isolation that are prolonged inevitably produce a  
14 very serious deterioration in mental health and  
15 wellbeing?

16 MR. PARDY: Yes, isolation is -- I  
17 think there is all sorts of medical literature on  
18 that particular point, yes.

19 MS EDWARDH: So you and I agree on  
20 that?

21 MR. PARDY: Yes. I have even read  
22 Robinson Crusoe.

23 MS EDWARDH: Let me just move and  
24 try to summarize this as quickly as possible.

25 You stated in your testimony that

1 the understanding you had from the beginning and  
2 continued with you throughout the period of time  
3 that Mr. Arar was in detention was that the  
4 significant abuse, physical abuse,  
5 torture/whatever, which took place in the early  
6 days, and -- that's what you are saying?

7 That's your understanding of what  
8 happened?

9 MR. PARDY: I think -- and again,  
10 I am not going to ask to check the record.

11 But certainly what I was trying to  
12 suggest here -- I don't want to use the term  
13 "serious". All abuse is serious. What I am  
14 trying to say is there was a concentration of  
15 attempts, if you like, by the Syrian authorities  
16 to condition Mr. Arar quite early in the process,  
17 and that is again a normal element that I have  
18 observed over the years in terms of people that do  
19 this kind of thing.

20 MS EDWARDH: Let me then flip  
21 through a whole other time period.

22 I would like to take to you tab  
23 508, if I could, and it relates to the last  
24 consular visit.

25 Just to summarize the context of



1           that visit, you had seen the Syrian Human Rights  
2           Committee report, and then you get a letter passed  
3           on to you from Mr. Arar's wife documenting or  
4           saying he has been the victim of torture.

5                        Mr. Martel obviously goes back  
6           into that last visit, and one of the things he is  
7           concerned about -- and as you said, there was no  
8           real time frame to the allegations put forward by  
9           the human rights committee. He goes and he is  
10          looking in his mind --

11                       I would ask you to turn over to  
12          the next tab, 508?

13                       MR. PARDY: 508 is a New York  
14          Times article -- I am sorry, there is a written  
15          note on 508. Tab 507 is the report of Mr. Martel.

16                       MS EDWARDH: Right. Is 508  
17          anything you are familiar with, or the  
18          handwriting?

19                       MR. PARDY: No, I don't recognize  
20          this report at all.

21                       MS EDWARDH: Fair enough. Let's  
22          go back to the other tab, 507.

23                       It's clear in your mind that what  
24          Mr. Martel is going to do is he is going to look,  
25          because you haven't had access to Mr. Arar since

1 April. He is looking to see if there are any  
2 signs of present, ongoing torture.

3 Is that fair?

4 MR. PARDY: Yes.

5 MS EDWARDH: That was his focus  
6 when he went into that meeting.

7 MR. PARDY: We used that issue as  
8 the pressure point on the Syrians to grant us  
9 access, because as you know, we had nothing since  
10 April.

11 MS EDWARDH: Right. So what  
12 Mr. Martel wants to know is, "Mr. Arar, have you  
13 been recently tortured?" That's what he is  
14 looking for it, signs of it, physical signs of it,  
15 et cetera?

16 MR. PARDY: Yes.

17 MS EDWARDH: What Mr. Martel was  
18 not concerned about, because you guys already had  
19 a working set of hypothesis, was whether when  
20 months and months and months in the past he had  
21 been held incognito, he had been tortured. That  
22 was the subject matter of the inquiry?

23 MR. PARDY: And as I mentioned,  
24 the information that was received from the SHRC,  
25 as I said, did not have a time context, and we

1           were concerned, given the specificity of that  
2           information, as to whether something was going on  
3           in August of 2003.

4                       MS EDWARDH:    So certainly  
5           Mr. Martel's inquiry was about, "Are you being  
6           tortured now?"

7                       MR. PARDY:    Yes.

8                       MS EDWARDH:    Let's leave that  
9           whole area -- it's always troubling for the  
10          soul -- to another one for a moment.

11                      I am troubled by tab 502,  
12          Mr. Pardy. I am troubled with it because -- just  
13          give me a moment to find it.

14                      I can find the tab, it's just the  
15          page.

16                      MR. PARDY:    Yes, there are ten  
17          pages there.

18                      MS EDWARDH:    Because there is a  
19          reference, and this is sent from Mr. Pillarella,  
20          the ambassador.

21                      This is the very top one, August  
22          12th, 2003. So you are just getting ready to go  
23          into this visit; correct?

24                      MR. PARDY:    This is the page 1 you  
25          are referring to.

1 MS EDWARDH: Yes, I am looking at  
2 page 1.

3 MR. PARDY: Okay.

4 MS EDWARDH: The first e-mail.

5 MR. PARDY: Yes.

6 MS EDWARDH: It goes to a number  
7 of people -- and perhaps you will just describe  
8 it -- sent August 12th, 2003.

9 It goes to Graeme McIntyre. Who  
10 is he again?

11 MR. PARDY: I think he was the  
12 desk officer for Syria in the Political Relations  
13 Division at that time, yes.

14 MS EDWARDH: And the person who  
15 was the desk officer for Political Relations, what  
16 is their function?

17 MR. PARDY: Their function is to  
18 have an overview of all of the elements that go  
19 into Canada's relation with a specific country,  
20 and that would include political, economic, social  
21 conditions, human rights conditions. All of that  
22 should fall within the purview of the desk  
23 officer.

24 MS EDWARDH: And are they  
25 fundamentally tasked with promoting both Canada's

1 values and interests, but in the maintenance of  
2 the relationship?

3 MR. PARDY: An element in that,  
4 yes, quite clearly. That's why the Department of  
5 Foreign Affairs exists up to a certain point, yes.

6 MS EDWARDH: And it is copied to a  
7 number of other persons whom we have seen before?

8 MR. PARDY: Mm-hmm.

9 MS EDWARDH: Do you get this memo?

10 MR. PARDY: I can't recall, I am  
11 not on the -- which I find surprising, that there  
12 is no one in the Consular Affairs Bureau that is  
13 copied on this memo.

14 MS EDWARDH: And I do, too.

15 MR. PARDY: Yes.

16 MS EDWARDH: Because of course --

17 MR. PARDY: That does not say,  
18 given the way the system operates, that one of the  
19 addressees on the message says, "Oh, god, we  
20 didn't copy Pardy. Let's get it over to him."

21 I can't discount that possibility.

22 MS EDWARDH: No, but I can't find  
23 any record.

24 MR. PARDY: Yes.

25 MR. BAXTER: It's coming from your

1 secretary, Mr. Pardy. Does that assist you in any  
2 way?

3 The CAMANT note is a posting by  
4 Laura Cyr.

5 MR. PARDY: Okay. So that would  
6 indicate that I would have seen it then, if she  
7 had posted it into CAMANT as one of the data dumps  
8 that she was doing.

9 Is that what you are suggesting?

10 What's the record number? Oh, I  
11 am sorry, yes. Exactly. This is a record out of  
12 CAMANT -- I am sorry. I forgot to look at the top  
13 of the page.

14 So quite obviously it did come to  
15 my attention, yes.

16 MS EDWARDH: When you say it did  
17 come to your attention -- I am unclear about these  
18 dumps. All of a sudden you get 20 e-mails --

19 MR. PARDY: Can I explain?

20 MS EDWARDH: Sure. Would you help  
21 us?

22 MR. PARDY: It's a puzzle.

23 CAMANT, as I explained earlier, is  
24 a very restricted database, and we restrict the  
25 people who do have access to this. But when you

1           get high-profile cases, the number of people that  
2           are involved in the case is quite broad and they  
3           are outside of the information that is available  
4           in CAMANT.

5                        A large part of this information  
6           would come to me through e-mail. It would come  
7           and given a variety of preoccupations -- and it's  
8           very simple. Every time I had a piece of this, I  
9           could have copied it over into CAMANT, and would  
10          have done so. But I was dealing with so many  
11          subjects, I would put them in an e-mail file, and  
12          the arrangement then was for Miss Cyr to go in  
13          every couple of days -- and sometimes, as you will  
14          see, there is larger gaps than that -- and she  
15          would cut and paste them all over into CAMANT on  
16          my behalf.

17                      MS EDWARDH: And was your practice  
18          then to carefully review them all, or do you just  
19          know that they are in the file and if you need  
20          them you could go back? If you have reviewed  
21          them, great.

22                      MR. PARDY: No, I would have  
23          reviewed them when they came to me in their  
24          original form. I would not have gone back into  
25          CAMANT after they had been posted there by Miss

1           Cyr, other than if I was going for something that  
2           was in the file, I would note the fact that this  
3           material was there.

4                       MS EDWARDH:   So somehow this gets  
5           into the CAMANT file.  Can you tell what date it  
6           was posted by your secretary?

7                       MR. PARDY:    On the 20th of August.

8                       MS EDWARDH:   Right.  So on the  
9           20th of August then.  Can we tell when you would  
10          have seen it?

11                      MR. PARDY:    I would have assumed  
12          here that I would have -- because I would have  
13          seen it probably in close proximity to the date on  
14          the message, August the 12th.

15                      MS EDWARDH:   All right.  Let me  
16          tell you what troubles me.

17                      MR. PARDY:    Yes.

18                      MS EDWARDH:   There is a  
19          notification that there is a Thursday morning  
20          consular visit with Mr. Arar in that paragraph.

21                      MR. PARDY:    Yes.

22                      MS EDWARDH:   It says:

23                               "... a meeting with Arar  
24                               should help us to rebut the  
25                               recent charges of torture."



1                   And I find that troubling,  
2           Mr. Pardy, because knowing you, for example, the  
3           last thing you would start off with is a mindset  
4           that you are rebutting it, but rather to assess  
5           carefully whether there is any evidence that would  
6           warrant a conclusion one way or the other.

7                   But you wouldn't start from the  
8           position of rebutting something that you cannot  
9           know whether it happened or not.

10                  MR. PARDY: Insofar as my view is,  
11           no, I would not start from that proposition, no.

12                  MS EDWARDH: Right. And it's  
13           clear that Mr. Pillarella, at least from this  
14           memorandum -- and we will hear from him -- had  
15           that mindset, or that's the language that he chose  
16           to use?

17                  MR. PARDY: Yes, and I would not  
18           wish to impute motivation here for Mr. Pillarella.  
19           As you have noted, there is going to be a chance  
20           to see him.

21                  I would read this in the context  
22           of everything else that Mr. Pillarella had done  
23           over the months there to help Mr. Arar. So my  
24           inclination is to be much more charitable than  
25           suggested by your question here.

1 MS EDWARDH: Or suggested by the  
2 language that Mr. Pillarella --

3 MR. PARDY: Or suggested by the  
4 language, exactly, yes.

5 MS EDWARDH: I am drawing it from  
6 the language.

7 MR. PARDY: Yes.

8 MS EDWARDH: Because there is a  
9 big difference in seeking to rebut something  
10 rather than seeking to explore whether it is a  
11 possibility that exists.

12 You will agree with that?

13 MR. PARDY: Can you repeat that?  
14 There were two turns there.

15 MS EDWARDH: Sorry. There is a  
16 difference between seeking to rebut something,  
17 showing it is wrong, and seeking to explore  
18 whether or not there is a basis, one way or the  
19 other, to conclude it's true or false?

20 MR. PARDY: Yes. The words would  
21 lead to certain conclusions, yes.

22 MS EDWARDH: I have another  
23 question that relates to this.

24 On the final visit we know that  
25 Mr. Pillarella approves the consular note, and he

1 does from time to time other consular notes.  
2 Mr. Martel signs off, and it says "Approved -  
3 Pillarella".

4 But we don't find that, for  
5 example, that anyone approves Ms Girvan's notes.  
6 When she writes about her visits, she writes from  
7 her observations.

8 Why does Mr. Pillarella approve  
9 the note in Damascus?

10 MR. PARDY: Again, practice varies  
11 according to the location. Ms Girvan in New York  
12 did it.

13 When I was overseas, in some  
14 situations the ambassador wanted to review  
15 anything that I sent back to Ottawa, because at  
16 the end of the day it is the responsibility of the  
17 ambassador to ensure that what goes out of that  
18 embassy is correct in his view because he has the  
19 final authority and the final responsibility here.

20 MS EDWARDH: So if he, for  
21 example, took umbrage to some statement or  
22 conclusion or description of events as set out in  
23 Mr. Martel's report, he could direct Mr. Martel to  
24 redact or remove it?

25 MR. PARDY: I would not expect

1           that he would try to change any observation or any  
2           conclusion that Mr. Martel might have reached as a  
3           result of his discussion in the prison with  
4           Mr. Arar. I would find that most unusual. That  
5           sort of thing does not happen.

6                           MS EDWARDH: I just want to go one  
7           step further.

8                           It's clear Mr. Pillarella's  
9           interests are not the same as yours entirely, as  
10          you have very carefully described yesterday.  
11          Mr. Pillarella stands and holds a number of  
12          interests that he promotes as ambassador from  
13          Canada. He has an interest, and must acknowledge  
14          the role of the RCMP, CSIS, Immigration. All of  
15          those interests play into his mandate.

16                           Is that a fair statement?

17                           MR. PARDY: Yes.

18                           MS EDWARDH: And so his concerns  
19          may be broader than consular affairs.

20                           Is that fair?

21                           MR. PARDY: His concerns and  
22          interests are broader than consular affairs, but I  
23          would come back to the basic principle here that  
24          in a situation such as this, the primary interest  
25          is the wellbeing of Mr. Arar.

1                   I have never in my life  
2           experienced a situation where an ambassador abroad  
3           would, if you like, affect that basic  
4           responsibility in any way.

5                   MS EDWARDH: Well, certainly  
6           Mr. Pillarella shared your view that any public  
7           discussion of torture allegations could have a  
8           negative impact?

9                   MR. PARDY: Yes -- well, I am  
10          sorry.

11                  I would not -- because it's not  
12          something that I have discussed with  
13          Mr. Pillarella, and you will have a chance as to  
14          whether his views coincide with mine. The  
15          important view was mine, not his.

16                  MS EDWARDH: Right. And we will  
17          then ask him that question.

18                  MR. PARDY: Yes.

19                  MS EDWARDH: But certainly you  
20          will agree with me that as having an interest in  
21          protecting the immigration processes, both to  
22          Canada and deportation from Canada to Syria, he  
23          would be concerned that an allegation of torture,  
24          if it wasn't rebutted, could impair Canada's  
25          ability to deport people to Syria?

1 MR. PARDY: I understand Canadian  
2 law, and that's an issue that has come up. I  
3 think there was a report last week or earlier this  
4 week from an international committee that talked  
5 about that, to a certain extent.

6 MS EDWARDH: But he would have  
7 that concern?

8 MR. PARDY: Oh, yes. Absolutely,  
9 yes.

10 MS EDWARDH: And he would also --

11 MR. PARDY: Not in a -- can I just  
12 add, not in the negative sense that seems to be  
13 suggested here.

14 MS EDWARDH: I am not suggesting  
15 that.

16 MR. PARDY: Exactly.

17 MS EDWARDH: But one of his  
18 concerns was that public discussions about torture  
19 (1) could impair Canada's ability to deport  
20 persons to Syria. And so does the existence of  
21 torture impair Canada's ability to deport to  
22 Syria; right?

23 MR. PARDY: Yes, but I don't think  
24 this would devolve down to the level of the  
25 ambassador as an important consideration.

1 MS EDWARDH: It's an interest,  
2 though. And he has this section that deals with  
3 immigration at the embassy. It's one of the  
4 interests that Mr. Pillarella would be alive to?

5 MR. PARDY: But the immigration  
6 section at the embassy deals only with the  
7 movement of people, say, from Syria, or other  
8 countries that they had responsibility to, to  
9 Canada. It really had nothing to do with the  
10 deportation process in Canada.

11 MS EDWARDH: Then let's forget  
12 Mr. Pillarella. The Government of Canada has an  
13 interest in ensuring that, should it wish to, it  
14 can deport persons to Syria. And an allegation of  
15 torture, unrebutted, would prevent such  
16 deportations, or impair the ability of the country  
17 to effect them.

18 MR. PARDY: Well, as you know, the  
19 deportation process in Canada is subject to so  
20 many influences and constraints as far as Canadian  
21 law is concerned. At the end of the day, I think  
22 there has even been Supreme Court decisions on  
23 this point.

24 So the views of an ambassador on  
25 this point I don't think is really germane at all.

1 MS EDWARDH: I am not any more  
2 with the ambassador.

3 MR. PARDY: Okay.

4 MS EDWARDH: I am with the  
5 proposition -- the Government of Canada has an  
6 interest in deporting persons to Syria and that a  
7 proven allegation of torture impedes that  
8 interest; correct?

9 MR. PARDY: Yes.

10 MS EDWARDH: The Supreme Court of  
11 Canada -- you know the cases? It's Suresh.

12 MR. PARDY: I know the cases, yes.  
13 I am just trying to fix in my mind whether I was  
14 aware of any case where, within the Canadian  
15 system, a decision had been made to try for a  
16 deportation to Syria.

17 Suresh was -- I am not sure which  
18 country involved Suresh.

19 MS EDWARDH: We can come to that.  
20 Whenever there are proven practices of torture, it  
21 becomes very hard to expel persons to those  
22 nations.

23 MR. PARDY: Oh, absolutely. And  
24 as you know, members of your profession have been  
25 very adept at making sure that it not happen, yes.



1 MS EDWARDH: Thank you, Mr. Pardy.  
2 I appreciate that comment.

3 --- Laughter / Rires

4 MS EDWARDH: Let's go on to the  
5 other proposition. A proven allegation of torture  
6 also could impair bilateral relations.

7 MR. PARDY: Yes, absolutely.

8 MS EDWARDH: We don't have to go  
9 beyond that?

10 MR. PARDY: No.

11 MS EDWARDH: A proven allegation  
12 of torture can also impair your access to deliver  
13 consular services if the Syrians ever saw fit to  
14 give it again?

15 MR. PARDY: Absolutely. Yes.

16 MS EDWARDH: And a proven  
17 allegation of torture can impair bilateral  
18 relations with the United States?

19 MR. PARDY: I wouldn't go --  
20 that's a large leap.

21 MS EDWARDH: Yes, that's true.

22 A proven allegation of torture is  
23 at least an irritant in an already large and  
24 complex bilateral relationship?

25 MR. PARDY: It would loom so small

1           that it would be insignificant in that  
2           relationship.

3                           MS EDWARDH:   That's almost hard to  
4           believe.

5                           MR. PARDY:   No, it really does.

6                           I would expand.   Apart from the  
7           one or two individuals that might have been  
8           involved in making a decision within the American  
9           system -- but we had already gone over this ground  
10          in the sense that, if you want to look at  
11          Mr. Ashcroft's public statement that they had  
12          sought a diplomatic guarantee with respect to the  
13          issue of torture, we knew the value of that.

14                          And as you know, there is an  
15          extensive debate and a whole set of legal issues  
16          under review by the courts in the United States on  
17          that.

18                          But in terms of Canada's bilateral  
19          relationship with the United States, I would not  
20          agree with you that this is a --

21                          MS EDWARDH:   Even an irritant.

22                          MR. PARDY:   Not even an irritant.

23                          MS EDWARDH:   Let's put it this  
24          way.   Given that we are undertaking this activity  
25          of looking at the flow of information, can we go

1           this far: that to the extent our friends to the  
2           south render or send persons to countries where  
3           they are probably going to be the victim of  
4           treatment falling below CAT, does that raise any  
5           issue about cooperation with those friends?

6                       MR. PARDY: Yes, it does, because  
7           we have obligations, I think, under the CAT itself  
8           that cuts across this kind of an issue.

9                       MS EDWARDH: Absolutely.

10                      MR. PARDY: Yes.

11                      THE COMMISSIONER: Is this a  
12           convenient time?

13                      MS EDWARDH: It's a perfect time.  
14           Thank you very much, Mr. Commissioner.

15                      THE COMMISSIONER: We will rise  
16           for 15 minutes.

17                      THE REGISTRAR: Please stand.

18           --- Upon recessing at 11:43 a.m. /

19                      Suspension à 11 h 43

20           --- Upon resuming at 12:05 p.m. /

21                      Reprise à 12 h 05

22                      THE REGISTRAR: Please be seated.  
23           Veuillez vous asseoir.

24                      MS EDWARDH: Thank you,  
25           Mr. Commissioner. If I could proceed?

1                   Mr. Pardy, I can take you to it --  
2                   but you've looked at it. I just want to talk  
3                   about the role of the Muslim brotherhood in the  
4                   history of Syria, as you know about it.

5                   MR. PARDY: Mm-hmm.

6                   MS EDWARDH: And one of the  
7                   observations that I understand we can make from  
8                   the history of Syria is, first of all, there was a  
9                   state of emergency declared sometime in 1963?

10                  MR. PARDY: I think that's when  
11                  the transition occurred from a successive  
12                  colonial-type government into something different,  
13                  yes.

14                  MS EDWARDH: Authoritarian  
15                  government?

16                  MR. PARDY: Well, the previous one  
17                  was authoritarian as well.

18                  MS EDWARDH: Okay. So there was  
19                  some kind of change --

20                  MR. PARDY: Yes.

21                  MS EDWARDH: -- but there was a  
22                  state of emergency?

23                  MR. PARDY: Yes.

24                  MS EDWARDH: And one of the  
25                  reasons -- maybe that's too simple -- but

1           certainly the powerful role of the security forces  
2           in Syria today is in part justified, at least, by  
3           the ongoing emergency state that Syria perceives  
4           itself as being in? That state of emergency has  
5           never abated, nor has it ever been declared to be  
6           over?

7                           MR. PARDY: Yes. Syria, I  
8           think -- and again, I don't want to telescope too  
9           much into a few words here -- but Syria sort of  
10          emerged as an independent country in the aftermath  
11          of the First World War. It was part of the French  
12          sphere of influence.

13                           After the Second World War, Syria  
14          started to emerge as an independent actor, I  
15          think, in a more concrete way, but the creation of  
16          the State of Israel, of course, just turned  
17          everything upside down as far as the Middle East  
18          was concerned here.

19                           And a lot of the governments, as  
20          you know, that are in that part of the world, one  
21          can easily characterize as authoritarian regimes,  
22          yes.

23                           MS EDWARDH: Right. And if the  
24          witness could be given Exhibit P-89?

25                           This is a document, Mr. Parady,

1           which you may have -- well, you should have had an  
2           opportunity to look at it, but its provenance is  
3           not in Canada.

4                           It is a document that was obtained  
5           through FOI in the United States and is a record  
6           of a visit to the Syrian Ministry of Foreign  
7           Affairs in respect of the Proposed Country Report?

8                           MR. PARDY:    Yes.

9                           MS EDWARDH:  You've had a chance  
10          to look at it?

11                          MR. PARDY:    Yes, I have.

12                          MS EDWARDH:  It's interesting, and  
13          it fits very much into what you were saying,  
14          because if you look at the overall subject matter,  
15          it says:

16                                       "Subject:  Syria.  Human  
17                                       rights reform not possible in  
18                                       current environment."

19                                       (As read)

20                          And one of the components of that  
21          environment is of course Syria's perceived need to  
22          deal with the State of Israel.  And the other one,  
23          as noted on the top of page 2, is Syria's view  
24          that it is the original victim of terrorism.  Do  
25          you see that?

1 MR. PARDY: Is that paragraph 3 or  
2 4?

3 MS EDWARDH: It's paragraph 3, and  
4 it's just at the very top of page 2 of this  
5 document. It says --

6 MR. PARDY: Yes.

7 MS EDWARDH:

8 "...said Syria is the  
9 original victim of terrorism  
10 having fought the Muslim  
11 brotherhood for many years.  
12 And according to... these two  
13 factors..." (As read)

14 That being Israel.

15 "...necessitate the  
16 continuation of the emergency  
17 decree through which the SARG  
18 is governed (for no regard  
19 for the rule of law) for 40  
20 years." (As read)

21 And so certainly the Muslim  
22 brotherhood plays large in Syria's history and its  
23 justifications for the nature of the regime in  
24 place. At least that is reflected in this  
25 document, and POPOF is, of course, a public

1           affairs officer with the U.S. embassy?

2                           MR. PARDY:  Political affairs  
3           officer.

4                           MS EDWARDH:  Political affairs.  
5           When I googled it, it was public affairs.

6                           Anyway, that observation, sir, is  
7           one I'm just going to ask you to comment.

8                           Do you agree that the Muslim  
9           brotherhood has been used by the Syrians to  
10          justify the ongoing nature of the emergency decree  
11          and plays a significant role in how they see  
12          themselves as victims of terrorism?

13                          MR. PARDY:  I think if you use  
14          1963 as the date here, then I do not believe that  
15          the Muslim brotherhood was of much influence at  
16          that point.

17                          It was a subsequent -- the Muslim  
18          brotherhood, as you know, originated in Egypt  
19          about 75-80 years ago, and that's where most of  
20          its activities -- but then it started to spread to  
21          other countries.

22                          The key period I think, as far as  
23          Syria is concerned, is in the late '70s, early  
24          '80s, and the touchstone event, if I can use that,  
25          was an attack by people who were assumed to be



1 part of the Muslim brotherhood on cadets attending  
2 a military academy, and there was a large number  
3 of people that died.

4 In the aftermath of that, in 1982,  
5 the Syrian government attacked the town of Hama,  
6 which was concerned to be the heart of the Muslim  
7 brotherhood, and according to published reports,  
8 somewhere between 5,000 and 40,000 people were  
9 killed.

10 So that is sort of seen by a lot  
11 of observers as being the date at which, in  
12 effect, the effect of the Muslim brotherhood in  
13 Syrian politics --

14 MS EDWARDH: Ended?

15 MR. PARDY: I wouldn't say ended,  
16 but certainly has a serious concern to the  
17 stability of the Syrian authority or Syrian  
18 government.

19 MS EDWARDH: Right. And it would  
20 be fair to say, not only from the experience in  
21 that attack on the town, but also thereafter, that  
22 the Government of Syria set out and targeted for  
23 elimination that organization for many years?

24 MR. PARDY: Yes, and I think the  
25 other element, of course, the Ba'athist party,

1       which is the one in Syria, has that -- or used to  
2       have as its core a socialist philosophy that did  
3       not admit to the possibility that Islamic law  
4       could be a significant feature in the public  
5       affairs of the country

6                     And that, along with the other  
7       factors that you mention, I think were important.

8                     MS EDWARDH:   So we can agree,  
9       though, that the -- I think you used the term  
10      "convenient label" to describe the allegation that  
11      someone in the '90s, or even thereafter, may have  
12      been a threat to the security of Syria because  
13      they were a member of the Muslim brotherhood, and  
14      one of the things you said, that that was often  
15      used as a label that permitted political  
16      detention.

17                    MR. PARDY:   Yes, and this relates  
18      to a law that was enacted -- I shouldn't say  
19      "enacted", but certainly was adopted in some way  
20      or another in 1980, the focus of which was  
21      membership in the Muslim brotherhood.

22                    MS EDWARDH:   And am I correct,  
23      sir, at least I gathered from a recent report from  
24      Amnesty International, you may have had an  
25      opportunity to read it, but it remains a capital

1           offence in Syria today to be a member of the  
2           Muslim brotherhood?

3                           MR. PARDY:   Yes.

4                           MS EDWARDH:   Now, I just want to  
5           jump, if I could, and see if I can't go past, it  
6           becomes apparent in December of 2002, you are  
7           given information as a result of meetings between  
8           the ambassador, or Mr. Martel, and General Khalil  
9           that currently, in December, and thereafter in  
10          January and I think it goes well beyond that into  
11          February, that Mr. Arar, after being interrogated,  
12          they have decided there is a basis to have  
13          concluded that he is a member of the Muslim  
14          brotherhood or is associated somehow with the  
15          Muslim brotherhood, and that is why they think  
16          that he is a person who raises internal security  
17          issues for the State of Syria?

18                          MR. PARDY:   Yes, that was the  
19          information provided the ambassador, yes.

20                          MS EDWARDH:   Now, you know, as I  
21          do, that Mr. Arar was born in 1970 and left Syria  
22          as a seventeen-year-old?

23                          MR. PARDY:   Yes, I do know that.

24                          MS EDWARDH:   So that would be  
25          around 1987?

1 MR. PARDY: Yes, that is correct.

2 MS EDWARDH: In 1982 and '83, at  
3 the height of the efforts to crush the Muslim  
4 brotherhood, Mr. Arar was a twelve- and  
5 thirteen-year-old?

6 MR. PARDY: Yes, and as you know,  
7 I had concluded that this was highly -- what's the  
8 word here? -- suspect information, and I did not  
9 take it at face value whatsoever.

10 MS EDWARDH: Right. In fact, you  
11 thought it was -- when you call it "suspect  
12 information", I take it you thought it was nothing  
13 more than a convenient ruse on the part of the  
14 Syrians to put a label that justified the  
15 detention of Mr. Arar?

16 MR. PARDY: That is correct, yes.

17 MS EDWARDH: Now, one last comment  
18 about the Syrian Human Rights Committee, and I'm  
19 posing this, really, for the future.

20 When the report came out -- my  
21 friend asked you to comment on it, and you said  
22 you came with some scepticism to emigre --

23 MR. PARDY: Organizations.

24 MS EDWARDH: Emigre organizations?

25 MR. PARDY: Yes.

1 MS EDWARDH: And emigre  
2 organizations are organizations made up of  
3 expatriates?

4 MR. PARDY: That is correct, yes.

5 MS EDWARDH: And they generally  
6 are non-resident?

7 MR. PARDY: Generally speaking,  
8 they find themselves in countries other -- they  
9 might have some connection back into their country  
10 of citizenship or former citizenship, but  
11 generally speaking you refer to an emigre  
12 organization as one located outside of the country  
13 of interest, yes.

14 MS EDWARDH: Right. But it's fair  
15 also to say, and indeed you've described yourself  
16 as having quite a different view once you got real  
17 details of what was alleged --

18 MR. PARDY: Yes.

19 MS EDWARDH: -- but these  
20 organizations are often the only way Syria's human  
21 rights problems are brought to the attention of  
22 States and nations in the international community?

23 MR. PARDY: That is one possible  
24 effect of these organizations, yes.

25 MS EDWARDH: Right. And one of

1 the things I noticed, whether you have scepticism  
2 or not, it's certainly the case that the U.S.  
3 State Department Country Report with respect to  
4 Syria -- and if you could maybe perhaps take a  
5 look at it, it's P-27 and P-28. Mr. Registrar, if  
6 you could give that to the witness?

7 I just note, and you may have  
8 observed, that those reports themselves rely on  
9 this very same committee.

10 MR. PARDY: I will --

11 MS EDWARDH: Okay, take a look.

12 MR. PARDY: No, I would say I  
13 would take your word for that.

14 MS EDWARDH: Okay. All right. So  
15 there's no dispute about that?

16 MR. PARDY: Mm-hmm.

17 --- Pause

18 MS EDWARDH: It's throughout. My  
19 friend asked me -- it's page 1, it's page 2. You  
20 see the Syrian Human Rights Committee referred to  
21 throughout.

22 So, I suppose, while you have some  
23 concerns, one of the ways to dispel any  
24 concerns -- let's say if someone is in your  
25 position and they don't have the broad swath of

1           experience you have, Mr. Pardy, certainly one  
2           could pick up the phone and consult with other  
3           NGOs that you have good relations with and who you  
4           value their views of, to get their opinion about  
5           the credibility of an organization?

6                           For example, you could pick up the  
7           phone and phone Alex Neve of Amnesty International  
8           and say "What do you know about this group, and do  
9           you credit their views?"

10                          MR. PARDY:  Yes, I think that did  
11           happen after the fact, but only after the letter  
12           came which provided much more detail and much more  
13           colour in terms of what they were alleging with  
14           respect to Mr. Arar, and I think the statement was  
15           made by Mr. Neve that this was an organization  
16           that Amnesty themselves had some confidence in.

17                          MS EDWARDH:  Right.  And certainly  
18           though, for the future, this network of NGOs, like  
19           Human Rights Watch and Amnesty International, they  
20           are good assessors, often, of whether they would  
21           act on or accept allegations from an NGO like, you  
22           know, the Syrian --

23                          MR. PARDY:  I'm still a little  
24           sceptical of such organizations because, one, I  
25           would want to have some provenance of who they are

1 and who they represent in these kinds of issues,  
2 and whether or not they are serving more than  
3 one -- something other than a search for truth and  
4 justice. I mean, I think this --

5 MS EDWARDH: Right, as some  
6 governments sometimes serve more than one end --

7 MR. PARDY: Absolutely.

8 But, again, it's always useful  
9 sometimes to be sceptical because you can get  
10 dragged down the road sometimes on some of these  
11 things.

12 So that's what's always in the  
13 back of your mind when you look at these things,  
14 yes.

15 MS EDWARDH: One of the things I  
16 thought was interesting, and we can come to the  
17 2003 report of the Department of State, it was  
18 your view, as expressed to Mrs. Arar, or  
19 Dr. Mazigh, and her supporters and those working  
20 with her that they would be best to obtain counsel  
21 for Mr. Arar in Syria who was not a  
22 high-profile/human rights lawyer. Is that  
23 correct?

24 MR. PARDY: In the context of the  
25 developments in August of 2003, yes.



1 MS EDWARDH: Yes. But I found it  
2 interesting to see that the lawyer that was  
3 eventually sought out and retained is described at  
4 page 4 of the country report, and I would take it  
5 this is released and it's describing a  
6 situation -- it's paragraph 3:

7 "On July 15 the military  
8 court dropped all charges  
9 against lawyer and SHRC  
10 chairman, Haytham Al Maleh."  
11 (As read)

12 I'm going to suggest to you you  
13 can recognize that name. That was the name of the  
14 lawyer that was contacted with a view to having  
15 him try and see Mr. Arar. Do you recall that  
16 name?

17 MR. PARDY: No, I do not.  
18 Do you mean --

19 MS EDWARDH: I assure you,  
20 Mr. Pardy, I don't have the page reference, but  
21 I'll ask --

22 MR. PARDY: Which one are you  
23 referring to here? Was it the lawyer or the SHRC  
24 individual?

25 MS EDWARDH: No, I'm suggesting

1           that the lawyer that was contacted to represent  
2           Mr. Arar in Syria is also the SHRC Chairman?

3                       MR. PARDY:  Oh, I see.  You say is  
4           this one and the same person.  Yes.

5                       MS EDWARDH:  Is that one and the  
6           same person.

7                       MR. PARDY:  Yes.

8                       MS EDWARDH:  And he is the person  
9           who tried to get access to Mr. Arar and was denied  
10          access right up to the last minute --

11                      MR. PARDY:  I'm puzzled by where  
12          you see the reference that this person is also  
13          chair of SHRC in -- I'm sorry, I can't seem to  
14          locate it here.

15                      MS EDWARDH:  I'm sorry.  Let me  
16          show you.  Page 4 of your document.

17                      MR. PARDY:  Yes.

18                      MS EDWARDH:  It's the third  
19          paragraph.

20                      MR. PARDY:  Right here?  In  
21          September of 2001?

22                      MS EDWARDH:  No, on July 15.

23                      MR. PARDY:  Oh, I've got a  
24          different piece of paper here.

25                      MS EDWARDH:  Then maybe you have

1 the other year. You've got -- P-28. You've got  
2 the wrong report.

3 MR. PARDY: I have P-27

4 MS EDWARDH: That's frightening.

5 MR. PARDY: Okay, there we go.

6 MS EDWARDH: So it's page 4 --

7 MR. PARDY: Page 4.

8 MS EDWARDH: -- and it's the third  
9 paragraph.

10 MR. PARDY: Yes, okay.

11 MS EDWARDH: So there's a  
12 reference to the military court in Syria dropping  
13 charges against a lawyer?

14 MR. PARDY: Mm-hmm.

15 MS EDWARDH: And the SHRC  
16 chairman, Haytham Al Maleh?

17 MR. PARDY: Mm-hmm.

18 MS EDWARDH: Okay, and he had been  
19 charged with spreading false news, belonging to an  
20 international political association, and  
21 publishing material that caused sectarian  
22 friction. Do you see that? Those are the  
23 charges?

24 MR. PARDY: Yes, which is code  
25 word for the fact that this was an attack on the

1 minority government of Syria, which everybody  
2 agrees -- it's an Al Duwait(ph), what they refer  
3 to as an Al Duwait(ph), which is a minority group  
4 in Syria.

5 MS EDWARDH: So this is an attack  
6 on him as a member of that group?

7 MR. PARDY: When they say that the  
8 sectarian friction, they're saying that the group  
9 was promoting sectarian division within the  
10 country.

11 MS EDWARDH: Right. And I would  
12 assume that those charges don't tell us much about  
13 the substance of any real wrong-doing on the part  
14 of the lawyer who is also the head of the group --

15 MR. PARDY: But it does tell us --  
16 it does tell us the sensitivity of the  
17 authorities.

18 MS EDWARDH: Oh, I have no doubt  
19 that they're sensitive.

20 MR. PARDY: Yes.

21 MS EDWARDH: I'm not sure  
22 "sensitive" is the right word, but in any event...

23 MR. PARDY: Yes.

24 MS EDWARDH: Just to confirm, if I  
25 could just take you to tab 581 and 540.

1                   So turn to 540 first. And you've  
2                   just left the department, but I can take you back  
3                   to --

4                   MR. PARDY: Just one second. I  
5                   need the document here.

6                   MS EDWARDH: And you may have only  
7                   had this come clearly to your attention -- or it  
8                   may not have come to your attention, I'm sorry,  
9                   Mr. Pardy, but you may have learned this as you  
10                  read the document thereafter.

11                  We have a number of notes, and I  
12                  suppose the first one that I draw your attention  
13                  to is 540.

14                  MR. PARDY: Mm-hmm.

15                  MS EDWARDH: It originated, this  
16                  CAMANT note, from Myra -- I'm sorry? Oh, 514  
17                  apparently is the first one.

18                  THE COMMISSIONER: 514.

19                  MS EDWARDH: Oh, I'm sorry. This  
20                  does put you in the loop -- 514, tab 514.

21                  Thank you very much.

22                  "Dr Mazigh..."

23                  Do you see 514, at the very  
24                  bottom?

25                  MR. PARDY: Yes, I do.

1 MS EDWARDH:  
2 "Dr Mazigh has canvassed  
3 various contacts and suggests  
4 following two names as  
5 possible lawyers for Maher.  
6 Her preference is for the  
7 first, Mr Emaleh."

8 And then you see, and I think we  
9 can agree, this is a version of Canadian  
10 misspelling of names --

11 MR. PARDY: Transliterations.

12 MS EDWARDH: Transliterations.

13 MR. PARDY: It's a difficult  
14 process, yes.

15 MS EDWARDH: That indeed, Haytham  
16 Al Maleh is the lawyer who is to be retained to  
17 act for Mr. Arar in Syria?

18 MR. PARDY: That was their  
19 preference.

20 MS EDWARDH: Right. And you see  
21 that again if you go to tab 540 --

22 MR. PARDY: Yes.

23 MS EDWARDH: -- second line, or  
24 second paragraph:

25 "She has decided that she

1                               would prefer to engage..."

2                               And the name of the lawyer.

3                               And then over again -- perhaps  
4 we're getting closer to the real name at tab 581.  
5 And we're now into September.

6                               MR. PARDY: Yes, and I think my  
7 views on this issue were reflected, I think,  
8 fairly accurately in the minutes of the meeting  
9 that I had with Dr. Mazigh on August 18 where we  
10 discussed this issue, I thought, in some detail,  
11 and I gave her the reasons for my concern in terms  
12 of the hiring of a person such as this.

13                              MS EDWARDH: Right. And she heard  
14 you out and --

15                              MR. PARDY: And decided otherwise,  
16 yes.

17                              MS EDWARDH: And decided  
18 otherwise?

19                              MR. PARDY: Yes.

20                              MS EDWARDH: But certainly your  
21 recommendation -- I mean, I suppose, to just  
22 explore this a little so we don't leave any  
23 misunderstandings, it's my understanding of your  
24 recommendation that you are not only trying to  
25 urge someone to get counsel who may not have

1 divided loyalties, but you're urging the retaining  
2 of counsel who may not be as much a target for the  
3 administration?

4 MR. PARDY: Or not so much divided  
5 loyalties, but could have other objectives in this  
6 process as well, yes.

7 MS EDWARDH: Okay. Certainly in  
8 other cases where you and I have been involved,  
9 it's been certainly my view that the object of the  
10 exercise is to find someone who has the courage to  
11 act, who won't disappear?

12 MR. PARDY: Or is not disappeared  
13 in the process.

14 MS EDWARDH: Right. That's right.

15 So, for example, if I can just --  
16 I know, it's tough to be a lawyer in some places,  
17 Mr. Commissioner.

18 MR. PARTY: Yes.

19 MS EDWARDH: So, for example, this  
20 same discussion occurred between you and I in  
21 respect of Mrs. Kazemi's family --

22 MR. PARDY: Yes, it did, yes, I  
23 remember.

24 MS EDWARDH: And I listened to  
25 you, I did the same thing and didn't follow the



1 advice of the embassy, but hired someone I thought  
2 couldn't disappear --

3 MR. PARDY: Yes. That was a very  
4 unique case. She had just --

5 MS EDWARDH: Won the Nobel Peace  
6 Prize.

7 MR. PARDY: -- been awarded the  
8 Nobel Peace Prize, and I thought that gave her a  
9 large measure of protection in that process. So I  
10 did not --

11 MS EDWARDH: Right. So the real  
12 objective in hiring someone is to try and make  
13 sure that those persons who are retained don't put  
14 themselves in harm's way to such an extent that  
15 they lose their own lives in the course of acting?

16 MR. PARDY: Absolutely, yes.

17 MS EDWARDH: Thank you.

18 We covered the introduction of the  
19 Syrian brotherhood into the calculus, and indeed  
20 that occurs as early as the beginning of December  
21 in 2002, December 12? The first record I could  
22 find. Do you want a reference --

23 MR. PARDY: Subject to any  
24 other -- I mean, certainly it was -- that may have  
25 been the very first specific reference, although

1 I'm not sure, in the notes that Mr. Pillarella  
2 prepared after the November 3 or -- I had a  
3 telephone conversation with Mr. Pillarella right  
4 after he had seen the General on November 3. We  
5 had spoken over the phone. And I'm not sure  
6 whether we speculated at that point about the  
7 Muslim brotherhood at that point.

8 MS EDWARDH: Okay. So it may have  
9 occurred --

10 MR. PARDY: But it certainly  
11 was -- it didn't surprise me when I saw this  
12 specific reference in December, no.

13 MS EDWARDH: Certainly it's  
14 specifically on the table that it's Syria's  
15 interests that are at stake, no one else's  
16 interests that are at stake, and this is an issue  
17 of great concern to the Syrian government. That's  
18 essentially what you were told?

19 MR. PARDY: That's what we were  
20 told, yes.

21 MS EDWARDH: Right.

22 And I want to just go back to your  
23 comments, that you requested some assistance from  
24 Mr. Arar's family at the beginning of January.

25 MR. PARDY: I wasn't that

1 specific. I said it was in the context of when  
2 the first allegations started to emerge about the  
3 possibility of a trial, and I think -- my memory  
4 was that this was February or March -- it was the  
5 first time, and then when it emerged in August, we  
6 returned to this issue again, yes.

7 MS EDWARDH: Okay. So my note of  
8 your evidence, sir, and that -- you know, I may be  
9 wrong or you may have misspoken yourself, was that  
10 this matter was raised with Monia and Bassam in  
11 January --

12 MR. PARDY: No.

13 MR. CAVALLUZZO: -- and I take it  
14 you will agree with me that while the Syrian  
15 brotherhood is on the table, there is absolutely  
16 no reason to be asking them about 1993?

17 MR. PARDY: No, I did not -- in  
18 the first instance, it was not raised with Monia  
19 and Bassam. They were together in the August time  
20 frame when I raised it. Earlier on, I think it  
21 was in a telephone conversation with Dr. Mazigh,  
22 yes.

23 MS EDWARDH: Right. And that you  
24 now locate in March --

25 MR. PARDY: Somewhere in that time

1 frame, because I was thinking about this issue,  
2 the allegations of Afghanistan, and what did this  
3 mean? And I was casting about for any information  
4 that could be available to us in the event that  
5 that was important, yes.

6 MS EDWARDH: Well, certainly by  
7 the time -- if we go through the various stages,  
8 the allegation about Afghanistan wasn't important  
9 to the Syrians, or did not appear to be important  
10 to the Syrians.

11 MR. PARDY: Well, when they moved  
12 off to the -- at a certain point there they made  
13 the allegation of membership in al-Qaeda and you  
14 had a match with what the Americans had stated in  
15 their exclusion order, and what I found  
16 significant was that the Syrians had moved to  
17 match their allegations, if you like, with those  
18 of the Americans, yes.

19 MS EDWARDH: And certainly the  
20 first we know of that is as a result of the  
21 meetings that take place when the Members of  
22 Parliament are in Syria?

23 MR. PARDY: Again, I would have to  
24 refresh my memory as to whether that was the very  
25 first suggestion of that.

1 MS EDWARDH: The first record I  
2 can find, because there's a lengthy hiatus, and  
3 there are no visits for a period of weeks leading  
4 up to --

5 MR. PARDY: February.

6 MS EDWARDH: Yes -- leading up to  
7 that April visit, and then the briefing comes:  
8 "Our investigation is complete, Mr. Arar will  
9 stand trial as a member of al-Qaeda."

10 MR. PARDY: That certainly  
11 occurred in the April 23 time frame --

12 MS EDWARDH: Well, the record  
13 speaks for itself. I don't want to prove a  
14 negative because we'll be here till next June,  
15 okay.

16 MR. PARDY: No, no, no.

17 MS EDWARDH: And that accords  
18 roughly with your recollection?

19 MR. PARDY: Yes. But I think the  
20 other thing that sort of touched off in my own  
21 mind were the allegations themselves of being in  
22 Afghanistan in 1993 and the relevance of that to a  
23 consideration of this whole issue.

24 And the allegations about  
25 Afghanistan, of course, occurred in November of

1 2002.

2 MS EDWARDH: Right.

3 Now, let's go to your view of this  
4 allegation, and I take it -- you said very clearly  
5 in answer to Commission counsel's question -- that  
6 the suggestion of someone being in Afghanistan in  
7 1993 was really not an important element for you?

8 MR. PARDY: Not an important  
9 element. What I was suggesting here, that to  
10 suggest and to draw a conclusion that presence in  
11 Afghanistan in 1993 denoted, say, membership in  
12 al-Qaeda, I think. There is a distinction there,  
13 I think you will agree with me.

14 MS EDWARDH: Sure. So that's as  
15 much a stretch, in fact, as saying that a  
16 twelve-and thirteen-year-old is a member of the  
17 Muslim brotherhood because, quite frankly,  
18 al-Qaeda -- or no.

19 In Afghanistan in 1993, as you  
20 pointed out, the Mujaheddin were freedom fighters  
21 supported by Western liberal democracies, like the  
22 United States?

23 MR. PARDY: Yes, and they were  
24 fighting against another group in Afghanistan  
25 called the Taliban who had not succeeded at that

1 point, yes.

2 MS EDWARDH: So that's why for you  
3 it was not a meaningful element in a step of proof  
4 that someone was a member of al-Qaeda?

5 MR. PARDY: No, not at all.

6 MS EDWARDH: Yes. Now, let me  
7 just go back.

8 I've looked through your notes, or  
9 the CAMANT notes, or the voluminous e-mails  
10 between you and Dr. Mazigh, and I cannot find  
11 anywhere, Mr. Pardy, any specific reference to,  
12 "Can you help me find X, Y, and Z?".

13 MR. PARDY: Not in that period.  
14 As I mentioned, I thought it was done in a  
15 telephone call with her, and as you know, there  
16 were quite a number of telephone calls.

17 I think it does find reflection in  
18 August in a written record.

19 MS EDWARDH: Right, and we'll come  
20 to that.

21 MR. PARDY: Yes.

22 MS EDWARDH: But certainly at the  
23 time you have a recollection of making this  
24 request --

25 MR. PARDY: Yes.

1 MS EDWARDH: -- and there are  
2 many notes you make of telephone calls. You put  
3 them into the CAMANT system.

4 MR. PARDY: Yes.

5 MS EDWARDH: So I'm going to make  
6 a couple of suggestions to you: first of all,  
7 that that conversation that you had, Mr. Pardy,  
8 the first time you recall having it, was in the  
9 context of Dr. Mazigh saying, "I want you to help  
10 me meet the men who are saying this. I want to  
11 meet with the RCMP." And you knew that was not  
12 going to be in the cards.

13 MR. PARDY: No.

14 MS EDWARDH: You don't remember  
15 that conversation?

16 MR. PARDY: No, I'm saying, that  
17 was not in the cards, yes.

18 MS EDWARDH: Yes, that's right.  
19 But you recall her wanting to meet with --

20 MR. PARDY: Yes, from the top to  
21 the bottom, yes.

22 MS EDWARDH: Yes.

23 MR. PARDY: Yes.

24 MS EDWARDH: And, indeed, the  
25 suggestion of trying to gather some assistance was



1 often in the context of Monia saying to you, "Help  
2 me meet these men who are my husband's accusers"?

3 MR. PARDY: Yes, and I think by  
4 counter to that, on this particular issue, it  
5 really had nothing to do with officials of the  
6 Government of Canada.

7 This information came from the  
8 Syrian authorities. And what I was interested in  
9 achieving, and given the fact that the information  
10 was ten years old, was whether or not through  
11 family records or academic records that there  
12 might be some indication that, factually, the  
13 allegation was wrong and could be discounted on  
14 that basis.

15 MS EDWARDH: Now, I'm going to  
16 also suggest that, while this may have been the  
17 subject matter of a discussion in the context of  
18 her wanting to meet with Canadian policing and  
19 intelligence authorities, that there really was --  
20 it was not of high priority of yours at this time  
21 because, you see, Mr. Pardy, there's no follow-up,  
22 and if someone were to say to you, sir, "I'll  
23 bring you X" or "You send someone out to look for  
24 X", I can tell you, Mr. Pardy, you would have a  
25 follow-up memorandum shot out through an e-mail

1 saying, "Have you got it yet? What you have  
2 learned?"

3 MR. PARDY: No. I think what you  
4 have to remember is that the Syrians were saying  
5 that a trial was imminent, and it was raised in  
6 that context. And then the issue of an imminent  
7 trial in that period of time, of course, just fell  
8 by the wayside and I just, you know, as with all  
9 other things you just left it lie there.

10 But again, come August, we knew  
11 that the Syrian suggestion that there was going to  
12 be a trial, that was going to take place within a  
13 week, and I was concerned then that if there was  
14 any information that we could obtain and put it in  
15 play to discount what could have been a central  
16 tenet in the Syrian prosecution.

17 MS EDWARDH: Maybe. Maybe not.

18 MR. PARDY: Maybe, yes. I didn't  
19 know.

20 But I thought it was very valuable  
21 for us to have, and I also felt that it was  
22 information, that if the family had something,  
23 that they could provide it, yes.

24 MS EDWARDH: From your perspective  
25 it's fair to say when these discussions about a

1 trial occurred in April, it was going to be an  
2 imminent trial, right? No one gets a lot of --  
3 Weren't you told in April by --

4 MR. PARDY: I think it was earlier  
5 than April. I thought it was March, I think. But  
6 I stand to be corrected again on this one. I  
7 mean, we're covering -- in terms of time.

8 But I think it was a little  
9 earlier in -- was it in the February visit, or at  
10 that time frame? February 18 --

11 MS EDWARDH: Let me check.

12 MR. PARDY: Yes, it's worth  
13 checking.

14 MS EDWARDH: Because you may be  
15 right.

16 I have a clear sense that it was  
17 formally stated in the context of the visits of  
18 the Mps when they said, "Our investigation is over  
19 and Mr. Arar will stand trial."

20 MR. PARDY: Well, that's -- I  
21 mean, let's see if the record is -- what it says.

22 THE COMMISSIONER: What tab?

23 MS EDWARDH: Just give me a  
24 moment, Mr. Commissioner.

25 MR. CAVALLUZZO: It's tab 313 and

1 the witness is referring to paragraph 4.

2 MR. PARDY: And what is the date  
3 on that?

4 MR. CAVALLUZZO: February 17 and  
5 the visit is February 18.

6 MR. PARDY: Give me the tab number  
7 again, please?

8 MR. CAVALLUZZO: 313.

9 MR. PARDY: 313.

10 Yes, I think this is the -- sort  
11 of the general environment in which we were  
12 working, yes.

13 MS EDWARDH: All right. So let's  
14 take a look at the information that is provided to  
15 you.

16 MR. PARDY: Mm-hmm.

17 MS EDWARDH: First of all, there's  
18 the statement -- and if you see anything else that  
19 draws you in another direction, point it out --  
20 but:

21 "As previously indicated, we  
22 had no indication that  
23 charges had been laid..."

24 Right?

25 MR. PARDY: As you will know -- or

1 perhaps not, since you're in the common law  
2 tradition -- in the civil law tradition, the  
3 detailing of charges is part of the adjudication  
4 process, and it doesn't sort of necessarily take  
5 place in advance of a trial.

6 MS EDWARDH: But they also say  
7 that the charges --

8 "There's no indication that  
9 charges have been laid... and  
10 security services confirmed  
11 the fact."

12 MR. PARDY: That's right.

13 MS EDWARDH:

14 "They also indicated that  
15 if/when charges will be laid,  
16 consular access might cease."

17 MR. PARDY: Mm-hmm.

18 MS EDWARDH: And -- it's tab 313,  
19 Mr. Baxter.

20 MR. BAXTER: I'm looking for --  
21 paragraph 4 refers to specific issues you have  
22 raised, and I believe paragraph 4 is in response  
23 to something that's been sent from the witness to  
24 Mr. Martel. So I apologize for all the flipping  
25 of papers.

1 MS EDWARDH: No, no. I thought  
2 perhaps you couldn't find your place. I'll let  
3 you flip then.

4 --- Laughter / Rires

5 MS EDWARDH: I mean, all I really  
6 want to point out, Mr. Arar is still being  
7 detained. Then it goes on under c):

8 "Investigation is ongoing and  
9 there is no indication as to  
10 when it will be completed."

11 So, in February, as I read this  
12 note, a trial is not on the horizon, nor is any  
13 specific allegation, and it crystallizes on April  
14 22 when people are told -- am I missing something?  
15 No.

16 It crystallizes on April 22 when  
17 people are told the investigation is, in fact,  
18 concluded, and there will be a charge that  
19 Mr. Arar is a member of al-Qaeda?

20 MR. PARDY: Yes, but you will see  
21 from the record, the way I approach dealing with  
22 cases such as this, there are certain things that  
23 you need to do today in order to take care of  
24 today, but there are certain things that you do  
25 today in order to plan for the future in the event

1 of what's going to occur.

2 And what touched off in my mind  
3 were these comments by Mr. Martel. He was  
4 speculating about the possibility of something  
5 happening, and what I was concerned with, that we  
6 start some of the planning that might be necessary  
7 to meet this sort of thing if, as occurred in  
8 August, the Syrians suddenly decided, okay, he's  
9 in a court tomorrow --

10 MS EDWARDH: Well, indeed, they  
11 told you in April he would be in a court within a  
12 week.

13 MR. PARDY: But, yes, within --  
14 no, well, it was a bit later. In August, they  
15 told us within a week he was going to be in trial.

16 MS EDWARDH: In any event, you'll  
17 agree with me, will you not, that certainly the  
18 conversation that you had with Dr. Mazigh did not  
19 take place directly as a result of this visit but,  
20 rather, sometime after this visit and before  
21 April, there was a conversation, and we don't have  
22 a record of it.

23 MR. PARDY: We don't have a record  
24 of it, but, again -- and I think what was  
25 interesting about the fact is that I think it was

1 at that point that Dr. Mazigh had mentioned to me  
2 that she did not know Mr. Arar in 1993, that they  
3 had met in early 1994, and she said -- I think  
4 even mention was made about the -- that he was  
5 living with his mother in Montreal -- I'm not  
6 certain of this. But, again, you know. But,  
7 again --

8 MS EDWARDH: I don't find in the  
9 record the details that I know you know about  
10 Mr. Arar, when he met his wife, how she couldn't  
11 personally assist you with knowledge of 1993.

12 Can you describe for us where in  
13 this record would this history that you clearly  
14 had at your fingertips, Mr. Pardy -- why isn't it  
15 written down?

16 MR. PARDY: The record is so large  
17 here and so frequent with respect to the  
18 conversations that I had with Dr. Mazigh through  
19 this period -- I don't think there was hardly a  
20 day that went by; and if I had to sit down after  
21 every one of those conversations and give you the  
22 level of detail that you're suggesting here, well,  
23 I'm sorry, then I don't think I would have been  
24 able to do the job that I was asked to do.

25 MS EDWARDH: Fair enough.



1 MR. PARDY: And, you mean, so in  
2 that sense, a lot of this kind -- it goes back to  
3 the earlier questions when we were dealing with  
4 whether or not you kept notes and this sort of  
5 thing.

6 MS EDWARDH: Sure.

7 MR. PARDY: But what I did was --  
8 my memory is not bad, even at my advanced age, and  
9 I could remember things and I would deal with it.

10 MS EDWARDH: So it's very clear  
11 that generally it's fair to say that Bassam and  
12 Dr. Mazigh tried to help you?

13 MR. PARDY: In -- well, as far  
14 as -- I don't know if she had gone to Bassam in  
15 the earlier conversation, but certainly Bassam was  
16 present in August when we raised the issue and --  
17 and went away and said, "Well, I'll see what we  
18 can come up with."

19 MS EDWARDH: I'm going to suggest  
20 to you that he was alive to this general request  
21 earlier, and one of the things -- you know, we  
22 start with, what did he give you? One of the  
23 things you wanted early on was a copy of  
24 Mr. Arar's Syrian passport. And he brought it,  
25 you copied it, and he left with it. But that was

1 to make sure that it was expired -- or I don't  
2 know what it was for.

3 MR. PARDY: I must say -- sure,  
4 that was with Ms Pastyr-Lupul, because I do not  
5 remember that incident at all with respect to the  
6 passport, although we were sensitive on this issue  
7 of the Syrian passport and the validity and  
8 whether or not it had been used in any way in  
9 terms of his travels in 2002.

10 MS EDWARDH: Right.

11 MR. PARDY: Yes.

12 MS EDWARDH: That's why it makes  
13 logical sense for you to have asked for it. But  
14 at the same time, I take it -- I can't find any  
15 record of its receipt, nor can I find any record  
16 of the request; and I take it, Mr. Pardy, that  
17 that doesn't mean it didn't happen, it's just that  
18 there's no record and you don't happen to have a  
19 memory today.

20 MR. PARDY: Exactly, of that one  
21 particular thing. But on this, which I saw as  
22 very central, the issue if there was going to be a  
23 trial, I saw that particular bit of information  
24 about Afghanistan as being particularly important,  
25 and the possibility that there could have been

1           either a financial or an academic record that  
2           would demonstrate that during the seven and a half  
3           months it was alleged that he was in Afghanistan,  
4           no, he was in downtown Montreal. That would have  
5           been a wonderful thing to have.

6                       MS EDWARDH: We know we don't have  
7           any other follow-up, even from the August meeting.

8                       But let me just ask you: were you  
9           aware, or did you make any inquiry of Dr. Mazigh,  
10          about the difficulty she had getting transcripts?  
11          Did you make any inquiry about that?

12                      MR. PARDY: Transcripts of what?

13                      MS EDWARDH: Of Mr. Arar's  
14          attendance at McGill, because he was not --

15                      MR. PARDY: No, I did not know  
16          that that was the case, no. I did not and --

17                      MS EDWARDH: Were you aware that  
18          Dr. Mazigh had tried to get the lawyer in Syria to  
19          obtain a power of attorney that would give her  
20          access to certain documents, but, of course he  
21          never got in.

22                      MR. PARDY: Which lawyer is this  
23          now?

24                      MS EDWARDH: The lawyer in Syria.

25                      MR. PARDY: That was appointed

1 back in August?

2 MS EDWARDH: Yes.

3 MR. PARDY: Yes, because, as you  
4 know, all of that came together very quickly, and  
5 I was gone as of the 30th of August, yes.

6 MS EDWARDH: Right. But he never  
7 got in, to your knowledge?

8 MR. PARDY: No. As a matter of  
9 fact, I think -- I learned subsequently that the  
10 lawyer had great difficulty in obtaining any  
11 information about the process in Syria in that  
12 latter part of August and September.

13 MS EDWARDH: And certainly then,  
14 it's fair to say, that should anyone require the  
15 usual formalities with respect to documents, like  
16 a power of attorney or a letter from the person  
17 who the documents belong to, that Dr. Mazigh  
18 couldn't get them?

19 MR. PARDY: Well, I know these are  
20 laws that have been put in place in Canada and I  
21 know they're very difficult, in terms of academic  
22 institutions and financial records, to obtain  
23 access to them.

24 MS EDWARDH: And, indeed, if you  
25 were to ask someone today, "Would you mind going

1 back a decade to a bank and get the banking  
2 records?", two things are obvious: first of all,  
3 Mr. Arar knows where his banking records are. Is  
4 that correct? That's an assumption --

5 MR. PARDY: I don't know. Ten  
6 years ago and he's living in Montreal, he had  
7 moved to Ottawa in the meantime, had gone down to  
8 the States, you know, we don't have a large trail  
9 of these things with us.

10 MS EDWARDH: If anybody knows, he  
11 knows.

12 MR. PARDY: Yes, I would think  
13 that would be the --

14 MS EDWARDH: But nobody is in a  
15 position to ask him which bank he banked at or  
16 whether he has the records?

17 MR. PARDY: Yes, but my  
18 recollection is that he was -- you mean, this, as  
19 I understand it, was quite a close family and they  
20 were -- they weren't -- no suggestion of  
21 estrangement or anything else.

22 I was working under the assumption  
23 that somebody might be able to chip in some pieces  
24 of information. That was the only assumption.

25 MS EDWARDH: And do you, from your

1 vast experience, Mr. Pardy, know how long banks  
2 keep records? I'm going to suggest it's seven  
3 years.

4 MR. PARDY: Is that -- I take your  
5 word for that, yes. Academic records are kept a  
6 little longer, I think, yes.

7 MS EDWARDH: But then you have to  
8 have the power to get them out of the  
9 institution --

10 MR. PARDY: The need the power,  
11 yes, yes.

12 MS EDWARDH: But I take it that if  
13 we look at this record, there is no evidence at  
14 all of any follow-up on your part on this issue?

15 MR. PARDY: Yes, because I think  
16 the issue then sort of faded to a certain extent  
17 and we were trying to do other things, and, you  
18 know -- and I just made the assumption that if the  
19 family were able to develop or provide  
20 information, that that would have been on my desk  
21 without me having to prompt them, given the  
22 importance of this, yes.

23 MS EDWARDH: Yes. Given the  
24 importance, if you had thought that it should --  
25 if it hadn't kind of moved off the horizon with

1 rapidly changing events, you would have followed  
2 up as well?

3 MR. PARDY: Yes, and I did when  
4 things started to really move in August. There is  
5 a record that I did follow up, yes.

6 MS EDWARDH: And I just want you  
7 to identify for me -- we'll go to the August.  
8 This is a note taken in a meeting with Ms Pither.  
9 Is that correct?

10 MR. PARDY: No, this is -- my  
11 understanding is that -- in that meeting, Bassam  
12 Arar was not present. This was another meeting,  
13 and it is reflected, as I understand it, in the  
14 desk notes of Ms Myra Pastyr-Lupul. I think  
15 that's my understanding. But all of this --

16 MS EDWARDH: Can you give us -- or  
17 could counsel give us some assistance? I have not  
18 seen that note. I am interested, if I could find  
19 it or perhaps I could ask --

20 MR. BAXTER: We will -- I believe  
21 they're in the process of being redacted in  
22 advance of Ms Pastyr-Lupul's testimony. But we  
23 will certainly attempt to find the relevant  
24 sections and produce them to my friend as soon as  
25 we can.

1                   I believe I've seen the piece of  
2 paper, the one page that the witness is referring  
3 to. I don't know, frankly, where it is,  
4 Mr. Commissioner, and it may take a bit of time to  
5 get it.

6                   MS EDWARDH: You're not sure it's  
7 an exhibit?

8                   MR. BAXTER: It's not an exhibit.  
9 --- Laughter / Rires

10                  MS EDWARDH: Not surprising I  
11 haven't seen it.

12                  THE COMMISSIONER: But it will be.

13                  MR. BAXTER: The custom is to make  
14 it an exhibit when the witness arrives to identify  
15 the notes, I believe.

16                  THE COMMISSIONER: I see.

17                  MS EDWARDH: And so your memory,  
18 sir, is that in August, you raised this issue  
19 again, and you would have raised it sometime after  
20 August 14?

21                  MR. PARDY: I think it was -- I'm  
22 trying to -- I think it was getting towards the  
23 very end when this thing -- I had Mr. Lockyer  
24 appointed. He was going to go out. And the  
25 family was making a final decision on a lawyer



1           there.  And it was in that context of those  
2           discussions, and I do explicitly remember that it  
3           was a meeting with Dr. Mazigh and her  
4           brother-in-law, Bassam.

5                           MS EDWARDH:  And then you retired  
6           on the 31st?

7                           MR. PARDY:  I should have done it  
8           a year earlier.

9           --- Laughter / Rires

10                          MS EDWARDH:  And might I take from  
11           the description you've just given us that  
12           Mr. Lockyer would be alive to any assistance he  
13           could provide in respect of the subject matter?  
14           In other words, if --

15                          MR. PARDY:  Not necessarily,  
16           because, as you know, the purpose of Mr. Lockyer  
17           going out in this context was to observe the  
18           process, if there was a trial that was going on,  
19           and to provide us with information.

20                          And given his own background in  
21           terms of the vicissitudes of the Canadian judicial  
22           system, I thought he was well-placed to provide  
23           that information to us in terms of casting a  
24           judgment on any judicial process that would take  
25           place in Syria.

1 MS EDWARDH: But surely, sir, if  
2 you had any information that would assist in  
3 Mr. Arar's defence, once you have a sense of what  
4 the allegations was, you're going to get it into  
5 the hands of someone who can ensure that counsel  
6 in Syria can try to defend Mr. Arar?

7 MR. PARDY: And we would have  
8 given it direct to the counsel through the  
9 embassy, yes.

10 But Mr. Arar -- and I just made  
11 reference to Mr. Lockyer -- it was a slightly  
12 different role that he was playing. As you know,  
13 there were discussions continuously with the  
14 lawyer that was appointed, between him and the  
15 embassy officials, and that would have been the  
16 channel that we would have used. Because in the  
17 first instance, we would work cooperatively with  
18 that lawyer in any way we could.

19 That's the way we do it.  
20 Mr. Lockyer was sort of a -- I don't want to say  
21 "supernumerary", but certainly was serving a  
22 separate purpose.

23 MS EDWARDH: Did you give the  
24 November 3 statement to the lawyer in Syria?

25 MR. PARDY: I do not know

1           whether -- what material was passed by the people  
2           in Damascus, whether Mr. Martel or Mr. Pillarella,  
3           but I think what we were trying to do, and I think  
4           what the lawyer was trying to do after he was  
5           appointed -- he was sort of visiting the various  
6           offices, trying to find out where the file was,  
7           and he was getting the run-around from everybody  
8           there. But what was the discussion was, I think  
9           Mr. Pillarella or Mr. Martel can certainly provide  
10          you with details on that.

11                       MS EDWARDH: Fine. But you will  
12          agree, Mr. Pardy, as a simple proposition, if one  
13          were going to arm defence counsel in Syria and  
14          give them the tools to challenge the assertions  
15          made under interrogation, in circumstances where  
16          they may lack credibility, you needed to give that  
17          material to the counsel representing Mr. Arar?

18                       MR. PARDY: Absolutely, yes.

19          --- Pause

20                       MS EDWARDH: And, in addition, I  
21          take it that you would forward to that lawyer any  
22          other information you had that could bear upon the  
23          involuntariness of the statement in question?

24                       MR. PARDY: Yes, that whole  
25          process -- by the time I left, I think the

1 discussions -- I am not quite sure if the final  
2 decision on retention of the lawyer had been taken  
3 by the time I left. I was still arguing against  
4 the retention of this kind of lawyer.

5 I still felt that it was  
6 unamicable to Mr. Arar's interests to have  
7 somebody of this background, and I'm not sure then  
8 just where it went after August 30, yes.

9 MS EDWARDH: But, my point is, the  
10 commitment is that this man is going to stand  
11 trial, even if it's in a court that you don't  
12 approve of, your role is to make sure that  
13 materials essential to the defence, which you  
14 understood related to 1993, would be in the hands  
15 of that defence counsel?

16 MR. PARDY: Yes, and I think it  
17 was also reflected in the actions of Ms Girvan in  
18 New York in dealing with counsel there. It is the  
19 same process. That is the standard way that we  
20 operate, yes, yes.

21 MS EDWARDH: And so one takes it  
22 then, if that document could be put into  
23 Mr. Arar's counsel's hands, it might be equally  
24 put into this counsel's hands, but I leave that  
25 for your consideration, Mr. Commissioner.

1 MR. PARDY: I'm sorry, I've lost  
2 the bending of the roses. The document in  
3 question? I'm not quite sure.

4 MS EDWARDH: Oh, we're talking  
5 about the November 3 --

6 MR. PARDY: Oh, I'm sorry, you are  
7 being a bit rhetorical.

8 MS EDWARDH: Yes, I am. I was.  
9 My apologies. It's five to one.  
10 --- Laughter / Rires

11 MR. PARDY: I looked at the  
12 commissioner, and he looked as puzzled as I was.  
13 --- Laughter / Rires

14 MS EDWARDH: Let me move to a  
15 different area then, and I think we can do this  
16 quickly.

17 You were here during Ms Collins'  
18 testimony when she was asked a series of questions  
19 about what steps -- they're hypotheticals,  
20 obviously -- but what steps would she have taken  
21 had she believed that it was a realistic  
22 possibility or probability that Mr. Arar was going  
23 to be deported to Syria.

24 And we need your guidance, to some  
25 extent, about the mechanisms that should exist

1 for, first of all, frontline persons. Assuming  
2 Ms Collins were to accept as a fact that this was  
3 a probability, what should such a consular officer  
4 do?

5 MR. PARDY: I think what would  
6 happen, it would be referred to me for action,  
7 because there is no point then of walking around  
8 at the lower reaches of a bureaucracy on an issue  
9 of this magnitude.

10 Two things could happen: one is,  
11 at a very high level in Washington, possibly the  
12 ambassador, he would go in and see a senior person  
13 in the Department of State there; and secondly, we  
14 would possibly call in the American Ambassador  
15 here in Ottawa on that issue.

16 MS EDWARDH: And by calling in the  
17 ambassador, the ambassador would be called in to  
18 speak with the Minister?

19 MR. PARDY: Yes, it would be at  
20 that level. Mr. Cellucci, as you know, given  
21 his -- I won't go there, but anyway...

22 That would be the normal thing to  
23 do.

24 MS EDWARDH: Right. Assuming he  
25 wasn't attending a luncheon meeting?

1 MR. PARDY: Yes, that's correct.

2 MS EDWARDH: Okay. So that would  
3 be the high-level steps that would need to be  
4 taken to deal with such an extraordinary  
5 situation?

6 MR. PARDY: Yes, it would have to  
7 be very high in that sense, yes, if that -- but  
8 our problem was -- I mean, you'd go in and you  
9 would assume, make the assumption, that we had  
10 sufficient evidence to justify our concerns, and  
11 that's what would be laid on the table, yes.

12 But, again, I'm back to the issue  
13 that I discussed on the first day, I think, with  
14 Mr. Cavalluzzo here, as to what would be the  
15 results of that in the absence of very specific  
16 information, and I guess we had conflicting  
17 information. I think is not an unreasonable  
18 characterization to make of the information we had  
19 at that time.

20 MS EDWARDH: But the only direct  
21 statements you had -- I don't want to argue about  
22 the record. It's an idea of, what would you do if  
23 you decided there was evidence that there was a  
24 probability this would happened?

25 MR. PARDY: As I say, that's the

1 two channels -- that's, general speaking, the most  
2 appropriate way to go. The American Ambassador in  
3 town and the Canadian Ambassador in Washington,  
4 yes.

5 MS EDWARDH: And we do know that  
6 there was no direct contact with the Americans on  
7 this issue. No one contacted them between  
8 October 3 and 8 on this issue: Is Mr. Arar really  
9 going to Syria or are you sending him to Syria?

10 MR. PARDY: No, that is correct,  
11 yes.

12 MS EDWARDH: Now, here's my  
13 problem, Mr. Pardy. I believe, sir, from your  
14 evidence, the conclusion that one would reach is  
15 that you were blind-sided by this conduct on the  
16 part of the Americans, sending him to Syria?

17 MR. PARDY: I thought their  
18 behaviour was duplicitous, yes.

19 MS EDWARDH: And one of the things  
20 you thought were the probability -- maybe not  
21 "probability". Maybe that's not fair to you.

22 One of the things you were afraid  
23 of, knowing the history of this case and knowing  
24 what else was happening in the world, that  
25 Mr. Arar might find himself in Guantanamo. You



1 mentioned that earlier.

2 MR. PARDY: Yes, I did.

3 But the other scenario that I  
4 mentioned in the same context, being a member of  
5 al-Qaeda was a criminal offence in the United  
6 States, and the possibility that he would be  
7 incarcerated until such time as they decided  
8 whether they would have a trial.

9 MS EDWARDH: Right. That would,  
10 of course, be the civilized way to approach the  
11 allegation of involvement in a criminal  
12 organization.

13 Did you have any other basis to  
14 believe that there was a realistic possibility  
15 that he would be shipped out to Guantanamo?

16 MR. PARDY: No, other than the --  
17 as you know, this behaviour or this action by the  
18 Americans, in terms of shipping people to  
19 Guantanamo, which was -- the issue here is it gets  
20 back to citizenship; and, as far as I know, there  
21 was one example of an American citizen ending up  
22 in Guantanamo, but he was quickly removed because  
23 the courts -- the legal basis for Guantanamo, if I  
24 can use that term, did not support having such a  
25 person there.

1                   But a person such as Mr. Arar  
2 could easily have ended up in a place like  
3 Guantanamo.

4                   MS EDWARDH: Because, in fact, the  
5 population of Guantanamo was not at all confined  
6 to persons who were apprehended and detained out  
7 of Afghanistan?

8                   MR. PARDY: Not at all, no.

9                   MS EDWARDH: Right. There were  
10 collections of people from various nations placed  
11 in Guantanamo on the principle that there might be  
12 some actionable intelligence obtained through  
13 their detention.

14                  MR. PARDY: And the removal of  
15 individuals from the field of action, if I can use  
16 that term.

17                  MS EDWARDH: Incapacitation?

18                  MR. PARDY: "Incapacitation" is a  
19 good word, yes.

20                  MS EDWARDH: Now, if you thought  
21 that Mr. Arar was going to Guantanamo, from my  
22 perspective as his counsel, Mr. Pardy, it's not  
23 much better than Syria. So --

24                  MR. PARDY: Yeah, no, I'm sorry.  
25 In the context that this came up was that I was

1 being asked by -- what was going through your  
2 mind, as I was trying to deal with the situation  
3 of Mr. Arar in New York; and I think the question  
4 was, "Well, what were the possibilities here?"  
5 And there were certain possibilities.

6 My primary conclusion was that --  
7 and I think other people that were working on this  
8 case -- was that Mr. Arar would be treated  
9 somewhat similar to what happened to Mr. Baloch  
10 and Mr. Jaffri. That was -- the other  
11 possibilities was Guantanamo --

12 MS EDWARDH: That's the most  
13 likely probability.

14 MR. PARDY: That's the most likely  
15 probability.

16 MS EDWARDH: But certainly on your  
17 radar as a risk was Guantanamo?

18 MR. PARDY: Was a possibility,  
19 yes, if there was going to be something going on  
20 other than retaining him in the continental United  
21 States for possible -- further investigation,  
22 because the term that was used -- I'm trying to  
23 think -- there was people such as this, and it  
24 came up in the context of Mr. Baloch and  
25 Mr. Jaffri -- was that they were subject to

1 clearance following an investigation by the FBI.

2 MS EDWARDH: Yes, and it's just as  
3 easy to remove someone to Guantanamo for such  
4 clearance as well.

5 MR. PARDY: Very few people, as I  
6 recall, were moved -- again, we're back into  
7 this -- were removed from the continental United  
8 States to Guantanamo. Most -- I think the vast  
9 majority were over.

10 Again, that was an exceptional --  
11 it would have been an exceptional development,  
12 just as the removal of Mr. Arar to Syria was an  
13 exceptional development. Yes.

14 MS EDWARDH: My question, though,  
15 is this: Having got it in your mind or it's on  
16 your radar screen --

17 MR. PARDY: Mm-hmm.

18 MS EDWARDH: -- why weren't steps  
19 taken, such as that you've just described in  
20 respect of Syria, why weren't they taken in  
21 respect of the prospective removal or possible  
22 removal of a Canadian citizen on his way home,  
23 travelling on a passport -- why weren't they taken  
24 with respect to your concern that he's going to  
25 Guantanamo?

1                   MR. PARDY:  Because, as I just  
2                   mentioned, the conclusion -- or not the  
3                   conclusion, that's too strong a word -- but the  
4                   operational assumption we were making here, that  
5                   Mr. Arar would remain in American custody in New  
6                   York for some time to come.

7                   MS EDWARDH:  And, of course,  
8                   that -- it's not a criticism, but it's the  
9                   operational assumption that is premised upon an  
10                  entire absence of candour and information by  
11                  American authorities.

12                  MR. PARDY:  Well, I think during  
13                  this period, after the 2nd of October, I think  
14                  there was a fair degree of openness and  
15                  cooperation from the American authorities during  
16                  that period.

17                  The consular access, the  
18                  acknowledgment that he was a Canadian citizen, the  
19                  agreement that a lawyer could be appointed and the  
20                  lawyer could go visit him -- there were a number  
21                  of those factors that gave us some measure of  
22                  confidence that the operational assumption was a  
23                  reasonable one.

24                  MS EDWARDH:  But my problem with  
25                  that -- that's the jail.  That's the jail.  You

1 know, I mean, the jail lets you in. You said  
2 yesterday that you were satisfied that the  
3 acknowledgment by MDC authorities was sufficient  
4 to constitute notice under the Vienna Convention.  
5 Fair enough. That's the jail --

6 MR. PARDY: Followed by word from  
7 Washington on October 4.

8 MS EDWARDH: Yes, and I don't  
9 think it would have mattered to you if Washington  
10 hadn't called you, as long as you had confirmation  
11 from MDC?

12 MR. PARDY: Not really, no.

13 MS EDWARDH: Right.

14 And I also think that it's clear  
15 that it's the MDC who lets you in. You weren't  
16 dealing with INS or you weren't dealing with the  
17 Department of Justice, you were dealing with a  
18 jail. It doesn't matter how fancy a jail or how  
19 tight a jail it is, it's just a jail.

20 MR. PARDY: Yes, but in terms  
21 of -- you mean, as you know, our understanding of  
22 what went on at MDC, the type of person there, in  
23 part supported our operational conclusion that  
24 Mr. Arar was going to be in the United States for  
25 some time to come.

1 MS EDWARDH: But my point isn't  
2 that you drew the wrong conclusion, my point is  
3 that you didn't get any information from the INS  
4 about the allegations, about the suggestion, about  
5 the process.

6 It looked to me like everybody  
7 didn't understand what was happening, and perhaps  
8 including Mr. Arar's New York lawyer.

9 MR. PARDY: Well, that was the  
10 whole point, to get a lawyer into this process as  
11 early as possible. And, really, from quite early  
12 on, in Ms Girvan's testimony here, not only did we  
13 raise this issue with the family, they decided  
14 that they would go out through contacts of their  
15 own and seek the appointment of Ms Oummih.

16 But on top of that, we were  
17 talking to people at the Centre for Constitutional  
18 Rights, who had a fair bit of experience in this  
19 area, that could advise us on these things. And  
20 so it wasn't a static situation in that sense  
21 whatsoever.

22 MS EDWARDH: But all I'm really  
23 saying, when I talked about the lack of  
24 information from the U.S. authorities, while we  
25 can agree that MDC, which is just a federal

1 holding facility -- that's all it is --

2 MR. PARDY: For the 9th floor, for  
3 a very specific purpose.

4 MS EDWARDH: But it's a big  
5 institution.

6 MR. PARDY: It's a big  
7 institution, but I think the 9th floor, in terms  
8 of part of that institution, was there for a very  
9 specific purpose, so that people could be held and  
10 investigated by the FBI with respect to any crime  
11 that they might have committed in the United  
12 States.

13 MS EDWARDH: My point only is  
14 that, while you got some cooperation from the  
15 prison or the jail, it is obviously clear that  
16 through this time period in Mr. Arar's removal,  
17 that there was no cooperation, by being forthright  
18 and candid about who was holding him, what the  
19 nature of the process was, no dealings with the  
20 American authorities outside the jail?

21 MR. PARDY: But that is the  
22 purpose of the appointment of counsel, is to get  
23 into and understand -- I mean, my understanding  
24 was that Ms Oummih was retained on the basis that  
25 she practised in the area of immigration law in



1 the United States, and that's the purpose.

2 It's to get her involved in the  
3 process. She understands that process and knows  
4 how to work in that process.

5 MS EDWARDH: But you tried, didn't  
6 you, Mr. Pardy? I mean, isn't there --

7 MR. PARDY: Yes.

8 MS EDWARDH: -- ample evidence of  
9 senior officials from the Government of Canada  
10 trying to get information?

11 MR. PARDY: Oh, absolutely.

12 But I think in terms of -- when  
13 you get down to the level of detail that you're  
14 suggesting here that might lead us to change our  
15 operational assumptions here, what we were looking  
16 for was the lawyer to help us out on this process.

17 And I think, as is recorded in one  
18 of the chronologies, and certainly was not  
19 necessarily evident at the time, but the lawyer,  
20 in her advice to Mr. Arar, was exactly the same as  
21 ours -- or our understanding, if you like, as to  
22 how American law was going to play out here.

23 MS EDWARDH: Okay. Certainly, in  
24 addition to the lawyer, you got no help from U.S.  
25 authorities that were not prison officials between

1           October 3 to October 8?

2                       MR. PARDY:  No, but we did not  
3           think that those officials that were involved and  
4           Ms Girvan was talking to, that they were sort of  
5           just images of no consequence.

6                       I mean, they were making  
7           decisions, and one has to assume that decisions  
8           that are made by American officials, in cases such  
9           as this, they are not idiosyncratic, they are  
10          coming based on some consultation within their  
11          system.

12                      And what gave us some measure of  
13          confidence here was the conclusion by American  
14          officials that Mr. Arar was a Canadian, he was  
15          travelling on a Canadian passport, they  
16          acknowledged all of this through consular access,  
17          and the right to have access to counsel.

18                      MS EDWARDH:  And that's why you  
19          considered their conduct duplicitous?

20                      MR. PARDY:  No.  Following all of  
21          this, in terms of what they did with respect to  
22          the deportation -- or the exclusion to Syria, yes.

23                      MS EDWARDH:  Well, I think I  
24          pursued that area with you, and we're not going to  
25          go any further.

1 I wonder what your views are,  
2 Mr. Commissioner --

3 THE COMMISSIONER: We'll take a  
4 lunch break. We've gone a bit over, so we'll go  
5 to -- 2:20, we'll resume.

6 THE REGISTRAR: Please stand.

7 --- Upon recessing at 1:11 p.m. /

8 Suspension à 13 h 11

9 --- Upon resuming at 2:27 p.m. /

10 Reprise à 14 h 27

11 THE REGISTRAR: Please be seated.

12 Veuillez vous asseoir.

13 MS EDWARDH: Good afternoon,

14 Mr. Commissioner.

15 THE COMMISSIONER: Good afternoon.

16 MS EDWARDH: Good afternoon,

17 Mr. Pardy.

18 Let me just move on to another  
19 area and try and link them.

20 I think it's fair to say from what  
21 you have said that your working assumption with  
22 respect to the early stages of Mr. Arar's  
23 detention in Syria is that he was the victim of  
24 ill-treatment.

25 I want to now turn to what I

1 consider a link in an important area -- that's a  
2 fair statement?

3 MR. PARDY: Yes.

4 MS EDWARDH: -- which is the  
5 sharing of information. And I want to first ask  
6 you about the sharing of this kind of working  
7 assumption.

8 Would Mr. Martel, who of course  
9 you would have known I am sure as a colleague over  
10 a number of years, would he be alive to the  
11 working assumption that you approached this case  
12 on?

13 For example, would you have had an  
14 opportunity to talk to him and reflect on his  
15 observations and reflect on the public record, and  
16 share this view that it was obvious or clear or  
17 likely that Mr. Arar was the victim of treatment  
18 that fell below the standard set in CAT early on?

19 MR. PARDY: I can't recall that I  
20 had any direct conversations with Mr. Martel. It  
21 would have had to have been by telephone.

22 But certainly I had conversations  
23 with the ambassador, and in talking to the  
24 ambassador, quite literally you are talking to  
25 everyone in the embassy.

1                   But I think the tenor of the  
2                   questions, the written questions, that went out to  
3                   the embassy, I think, in terms of the -- I can't  
4                   remember the first set or the second set.  
5                   Certainly one of the elements in that was just  
6                   exactly this point.

7                   MS EDWARDH:   The change in  
8                   demeanour and --

9                   MR. PARDY:   That sort of thing,  
10                  and that was the underlying reasons for asking  
11                  these questions, yes.

12                 MS EDWARDH:   And would it be fair  
13                  for us to assume then that -- I don't want to talk  
14                  about this code.  It's like lawyers speaking to  
15                  lawyers.  When you ask those kinds of questions,  
16                  it's clear to the recipient that you are looking  
17                  for information about those kinds of issues, about  
18                  ill-treatment?

19                 MR. PARDY:   Oh, absolutely.

20                 MS EDWARDH:   I don't want to leave  
21                  it just at the implied level.

22                 Were you saying, sir, that  
23                  Ambassador Pillarella would have had an  
24                  understanding that, from your perspective, given  
25                  your extensive knowledge, that was your view?

1 MR. PARDY: Yes, I think that  
2 would be a fair assumption to make, yes.

3 MS EDWARDH: He would have known  
4 that?

5 MR. PARDY: Yes.

6 MS EDWARDH: You are all involved  
7 in a pretty close circle of providing consular  
8 services to Mr. Arar. Now I want to talk about up  
9 the chain of authority.

10 There are other people above you,  
11 and while you may have been alive to these issues  
12 in October, in November, I have not seen any  
13 document, Mr. Pardy, that clearly expresses your  
14 concerns about this issue to your superiors, right  
15 on up into the Minister's office.

16 But would it be clear from your  
17 briefings -- and I know you spoke to all these  
18 people in addition to providing written  
19 information.

20 Would they have been aware of the  
21 working assumption you had about Mr. Arar's  
22 treatment in October and November of 2002?

23 MR. PARDY: Yes, I think both  
24 horizontally and vertically that that was the  
25 case.

1                   I would just explain to you that,  
2                   like in New York, I had a dual reporting  
3                   relationship. Ms McCallion, who ostensibly was my  
4                   theoretical boss, every time we had a major case  
5                   involving a country, like this case, then I went  
6                   over to the political side. And it wasn't so much  
7                   as the boss but the people on the Middle East side  
8                   of things, Mr. Sinclair was there as the Director  
9                   General and Mr. McNee was the ADM. And that's the  
10                  route that we would go upstairs on this kind of an  
11                  issue. It wouldn't go up the other route at all.

12                   MS EDWARDH: And the other route  
13                  would be?

14                   MR. PARDY: Through Ms McCallion,  
15                  although her name shows up occasionally on the  
16                  thing, but it would be on the other side.

17                   The people on the political side  
18                  were certainly as familiar as I was in terms of  
19                  what kind of conditions might prevail in a country  
20                  like Syria.

21                   MS EDWARDH: Right. And I  
22                  appreciate that they would be aware in general.  
23                  But it's important in a sense to know that you  
24                  had, from your own experience and from your  
25                  talking to the ambassador and talking to

1 Mr. Martel, you had formed a view that allowed you  
2 to draw certain conclusions or tentative  
3 conclusions in this time period of  
4 October-November.

5 MR. PARDY: Yes, and I think --

6 MS EDWARDH: They would have known  
7 that?

8 MR. PARDY: Yes, I think these  
9 views were shared, that that was a good solid  
10 working assumption that one made in dealing with  
11 cases such as this.

12 I should point out, as well, we  
13 had another very prominent case going that I was  
14 dealing with the same group of people on in  
15 another country in the region, yes.

16 MS EDWARDH: Right. And I think  
17 we all know what that case was.

18 Let me just ask, because I always  
19 get lost in these organizational charts -- I can't  
20 figure out what's up and what's down.

21 We know that Mr. Livermore held a  
22 senior position. He was the director of what,  
23 intelligence and security?

24 MR. PARDY: Director General.

25 MS EDWARDH: Director General. So



1 he was, in a sense, on a line with you?

2 MR. PARDY: Yes, roughly.

3 MS EDWARDH: So when you say  
4 "horizontally and vertically", would it be your  
5 view that, in light of Mr. Livermore and  
6 Mr. Solomon's involvement in this case, they too  
7 would have been alive to the working assumptions  
8 you had?

9 MR. PARDY: Yes.

10 MS EDWARDH: Thank you.

11 I don't mean to rehash old areas,  
12 but let's take a look at some of these issues in  
13 the context of information-sharing within the  
14 department.

15 Mr. Cavalluzzo raised with you the  
16 statements set out in the information provided to  
17 Canadian citizens or indeed landed immigrants,  
18 that their communications were confidential. I  
19 don't have to go back over that.

20 You said it needed updating, as I  
21 recall your answer.

22 MR. PARDY: Yes, in light of  
23 experiences on some of these high-profile-type  
24 cases involving terrorism and national security,  
25 yes.

1 MS EDWARDH: So I take it there  
2 needs to be some clear communication to persons  
3 that there are exceptions to the principles of  
4 confidentiality. That's really what you are  
5 saying. They need to be told that.

6 MR. PARDY: I think we just made  
7 specific -- we just said the Privacy Act, and I  
8 think in these circumstances perhaps what would go  
9 on under the authority of the Privacy Act there  
10 are provisions for the sharing of information in  
11 the following circumstances, yes.

12 MS EDWARDH: Right. Because what  
13 it says is it's protected by the Privacy Act,  
14 which at least to an ordinary reader would convey  
15 that there was a non-sharing.

16 MR. PARDY: Yes, I think perhaps  
17 too much shorthand was used in that sense.

18 But certainly I would come back,  
19 fall back upon the fact that this was really an  
20 exceptional case. And I think exceptional cases,  
21 of course, always lead to changes in terms of  
22 operational procedures and the information one  
23 provides to clients.

24 MS EDWARDH: Right. You have said  
25 three things I want to explore.

1                   Are the RCMP and CSIS clients of  
2 the Department of Foreign Affairs?

3                   MR. PARDY: No.

4                   MS EDWARDH: Okay.

5                   MR. PARDY: Except in one -- no, I  
6 am sorry. I would amplify that.

7                   In the sense that when they are  
8 operating in an overseas capacity, then quite  
9 clearly the Department of Foreign Affairs has a  
10 role to play in terms of what they are doing  
11 overseas, yes.

12                  MS EDWARDH: Okay. And we have  
13 heard about the hierarchy and the responsibilities  
14 of the ambassador in respect of either CSIS  
15 operatives or the RCMP that could be operating in  
16 the country. In other words, in theory they are  
17 supposed to report to the ambassador who is  
18 largely a person who has knowledge and, I suppose,  
19 some direction.

20                  MR. PARDY: I think it's more than  
21 theory. I think the practice has been that that  
22 is the case.

23                  MS EDWARDH: All right. So the  
24 client you were referring to is the person  
25 receiving consular services, in your answer?

1 MR. PARDY: Yes.

2 MS EDWARDH: We will come to this.  
3 What is troubling is that if in  
4 fact the -- and we will come to Mr. Livermore's  
5 phraseology -- the promise of confidence to  
6 persons facing charges, or detained without  
7 charge, could readily be, not by any rule that  
8 said that criminal intelligence or security  
9 interests could result in disclosure.

10 MR. PARDY: I don't think that's a  
11 fair interpretation of Mr. Livermore's testimony.  
12 I listened to it very carefully, and I know there  
13 were a number of subtleties that were there.

14 What Mr. Livermore was talking  
15 about when he was talking about the sharing of  
16 information was information for which he had  
17 responsibility. That did not include consular  
18 information. These were not decisions for him to  
19 make, and I think he made that clear, I think, on  
20 the last morning of his testimony.

21 MS EDWARDH: Well, we are going to  
22 come to that in a little bit more detail, because  
23 I think it's very important for the Commissioner  
24 to understand.

25 My associate will kick me if I

1 forget to come back to that specifically, because  
2 I had thought you had merged the two, i.e.,  
3 information received by the ambassador from Syrian  
4 Military Intelligence and information received by  
5 the ambassador through the consular process.

6 We will come to try to separate  
7 them out then.

8 MR. PARDY: Yes.

9 MS EDWARDH: But I want to start  
10 out with something you said, because I would just  
11 like to have you review it with me. I am going to  
12 put to you it doesn't get you there.

13 It is tab 30, Mr. Pardy.

14 It is clear, if you look at tab  
15 30, the purpose of the conversation recorded by  
16 Ms Girvan allows us two things, gets you two  
17 places.

18 Ms Girvan is quite properly making  
19 a record which discloses that she has informed  
20 Mr. Arar of the provisions with respect to  
21 confidentiality and is seeking his consent to the  
22 release of certain information.

23 Is that fair?

24 MR. PARDY: The first sentence in  
25 the first paragraph, yes.

1 MS EDWARDH: Yes. So we do know  
2 that the promise of confidentiality was held out  
3 to him and he was asked to give consent to the  
4 release of information; fair enough?

5 MR. PARDY: Yes.

6 MS EDWARDH: Now, the list of  
7 persons Mr. Arar gives consent to are his brother,  
8 his mother-in-law, his wife, and anyone who could  
9 help him, including his company, Mathworks.

10 I am going to suggest to you that  
11 when you look fairly at that consent, that it is  
12 clearly a list of persons that are close to  
13 Mr. Arar?

14 MR. PARDY: The first part, yes.  
15 The first part of the construction there, yes.

16 MS EDWARDH: Well, embedded in the  
17 construction, anyone who could help, including the  
18 company, Mathworks, that employs him, still forms  
19 a circle of persons who he knows and who have  
20 worked with him or with whom he is in a  
21 relationship with.

22 MR. PARDY: I took the words to  
23 mean, as I explained when this came up with  
24 Mr. Cavalluzzo, was that this was a -- the words I  
25 took at face value, "anyone who would help him".

1           And the fact they included Mathworks in this  
2           construction suggested to me that Mr. Arar himself  
3           was possibly thinking about that maybe something  
4           happened in the United States that gave rise to  
5           his detention by the American authorities.

6                           I mean, it's an interpretation of  
7           the words, and I interpret them and acted  
8           accordingly.

9                           MS EDWARDH: I want to say, sir,  
10          that I find it troubling, because clearly if I  
11          tell you that you can speak to my mother and  
12          father and spouse and child and the men and women  
13          I work with, it is a circle of people with whom I  
14          have personal dealings.

15                          We can agree with that?

16                          MR. PARDY: But if you use the  
17          words "anyone who can help me", then in effect I  
18          would take those words at face value and act  
19          accordingly.

20                          MS EDWARDH: The trouble with that  
21          is I asked Ms Girvan the question about whether  
22          she thought that these notes that she made of  
23          Mr. Arar's consular visits were shared -- whether  
24          she knew they were going to be shared.

25                          MR. PARDY: Yes, I think I can

1 remember the exchange, yes.

2 MS EDWARDH: And she said she was  
3 unaware of any such sharing.

4 MR. PARDY: Mm-hmm.

5 MS EDWARDH: So certainly you will  
6 agree with me that it was not within her  
7 contemplation when she made these notes that the  
8 sharing or the consent extended to third party  
9 agencies who had no personal dealings with  
10 Mr. Arar.

11 She didn't think she was asking  
12 that question?

13 MR. PARDY: But I think the issue  
14 that was facing me, sitting in Ottawa and  
15 attempting to provide assistance to Mr. Arar, was  
16 to make a decision as to who the people might be  
17 that could provide assistance to him.

18 And that's why it came to the  
19 conclusion that I did.

20 But I would come back as well  
21 here, and it's important to realize that in the  
22 Privacy Act itself, in addition to being a  
23 specific grant, if you like, of permission, as  
24 contained in this message, there is also the  
25 general grant of permission that the information



1 can be used for which it has been collected.

2 MS EDWARDH: Or that you can make  
3 the decision on a calculus of benefit and harm.

4 MR. PARDY: Yes.

5 MS EDWARDH: Which you referred to  
6 yesterday.

7 MR. PARDY: Yes.

8 MS EDWARDH: And I was going to  
9 say to you, Mr. Pardy, that I think it is clear  
10 that Mrs. Girvan did not have in mind, when she  
11 wrote this down -- forget what you were  
12 thinking -- when she wrote this down, it is clear  
13 that the consent did not extend beyond a circle of  
14 persons who had personal dealings with Arar.

15 That's what she meant.

16 MR. PARDY: But I think that I --

17 MS EDWARDH: We will come to the  
18 calculus.

19 MR. PARDY: I can't impute to  
20 Ms Girvan. I think it was an area not totally  
21 explored in the detail that you are suggesting  
22 right now.

23 MS EDWARDH: Certainly there is no  
24 evidence that any discussion occurred with Maher  
25 Arar that the information would go beyond the

1 circle of persons who knew him. That's not  
2 discussed. There is nothing to suggest it was  
3 discussed.

4 MR. PARDY: No, but I think there  
5 is implicit -- and I am not saying I would use the  
6 expression that implicit in what he said there,  
7 there was a plea to the Canadian authorities to do  
8 whatever they could to help him out of this very  
9 difficult situation.

10 MS EDWARDH: Well, what I am  
11 struggling with is the Privacy Act has different  
12 branches which give you different authority.

13 MR. PARDY: Yes.

14 MS EDWARDH: There are a number of  
15 them and I am going to come to them, Mr. Pardy.

16 But the first fundamental  
17 principle is you can give confidential information  
18 with a person's consent. That's the first  
19 principle; right?

20 MR. PARDY: No. The first  
21 principle is that you can use the information for  
22 the purpose with which it was collected.

23 I think that is -- again, we may  
24 be talking of a hierarchy here, but certainly in  
25 terms of my reading of the Privacy Act is that

1           they are almost co-equal in use.

2                           MS EDWARDH:  We don't have to  
3           argue --

4                           MR. PARDY:  Okay.

5                           MS EDWARDH:  -- very much here.

6                           It says:

7                                       "Personal information under  
8                                       the control of a government  
9                                       institution shall not,  
10                                      without the consent of the  
11                                      individual to whom it  
12                                      relates, be used by the  
13                                      institution except ..."

14                           So the fundamental overriding  
15           principle, I am going to suggest to you, is really  
16           it must be used in accordance with the statutory  
17           regime, unless you have consent?

18                           MR. PARDY:  You are the lawyer.  I  
19           will accept your interpretation of this.

20                           MS EDWARDH:  Thank you.

21                           MR. PARDY:  But, again, in  
22           operational terms, in terms of the way you would  
23           operate, I didn't see this as a hierarchy.

24                           MS EDWARDH:  That's fair enough.

25                           MR. PARDY:  In the way that you

1           constructed it now.

2                           MS EDWARDH: I want to put to you,  
3           and I think you will be sensitive to this,  
4           Mr. Pardy -- and we can go to other provisions of  
5           this Act that may or may not authorize the release  
6           of information.

7                           MR. PARDY: Mm-hmm.

8                           MS EDWARDH: But the consent given  
9           here could not realistically be understood as  
10          informed consent, in the sense that Mr. Arar knew  
11          he was consenting to the release of information to  
12          policing and intelligence authorities. He didn't  
13          know any of the risks or benefits.

14                          All he knew was that there would  
15          be a confidence maintained unless he permitted  
16          people within his inner circle to get access to  
17          information. There is no informed consent.

18                          MR. PARDY: Well, as you know,  
19          informed consent has been the subject of great  
20          debate within the Canadian courts.

21                          But what I took it to mean was  
22          that Mr. Arar, who found himself in a very  
23          difficult situation, was appealing to the Canadian  
24          government, through the consular services, to do  
25          what they could to assist him out of this

1 particular set of circumstances.

2 And we took that to mean -- or I  
3 should say I took that to mean that I could share  
4 information as I deemed appropriate to help  
5 Mr. Arar.

6 MS EDWARDH: So even though  
7 Mr. Arar was alone, without the benefit of  
8 counsel, held incognito for several days by the  
9 American authorities in a secure, isolated  
10 position, even though it's not told to him who  
11 these other entities are, I take it, sir, it's  
12 your view that this is a consent that you could  
13 actually act on under the Privacy Act?

14 MR. PARDY: Yes. The question  
15 would not have been put to him otherwise -- and I  
16 should say that consent being given in these  
17 circumstances is not a unique one in terms of  
18 Mr. Arar. It's a set of conditions that we found  
19 quite often in terms of the work that we were  
20 doing.

21 MS EDWARDH: But you didn't use  
22 those consents to transmit the information to the  
23 Mounties and CSIS because you have told --

24 MR. PARDY: I am sorry?

25 MS EDWARDH: The conditions in

1           which you found Mr. Arar, even if they are not  
2           terribly unusual, you have told the Commissioner  
3           that the transmission of information to the  
4           Mounties and to CSIS was unusual; it wasn't a  
5           common event.

6                           MR. PARDY:  Oh, absolutely not.

7                           MS EDWARDH:  Right.

8                           MR. PARDY:  To that extent  
9           Mr. Arar's case was not common.

10                          MS EDWARDH:  Would you have  
11           obtained any legal advice from the legal  
12           department, or from the Privacy Commissioner, as  
13           to whether the consent you had obtained, based on  
14           this representation, justified the release or was  
15           a real consent that made release possible?

16                          MR. PARDY:  No, I would not go  
17           to -- certainly one of the lawyers that was  
18           involved with us, or a person that was involved  
19           with us was a lawyer on these matters.

20                          I would not go to the Privacy  
21           Commissioner unless I clearly felt that there were  
22           unusual circumstances about sharing information  
23           which I thought was going to be helpful to  
24           Mr. Arar.

25                          MS EDWARDH:  Right.  And there

1           were unusual circumstances in this case.

2                           MR. PARDY:  The consent that we  
3           were given was not different than the consent we  
4           get in many cases.

5                           MS EDWARDH:  Okay.

6                           MR. PARDY:  People who find  
7           themselves in prison, they are looking for  
8           assistance here, and they are not going to make a  
9           deeply convoluted decision with regards to the  
10          use.

11                           It would have been nice if, say,  
12          following the October 3rd visit, if we had the  
13          opportunity to go back to Mr. Arar and go over  
14          this in some detail or were able to do this  
15          following his removal to Syria.  It would have  
16          been very nice to have been able to go back and  
17          explain to him exactly what we were doing, but the  
18          circumstances were such that that was not  
19          possible.

20                           But at the same time we still had  
21          the responsibility to try to help Mr. Arar, and we  
22          made decisions based on that set of circumstances.

23                           MS EDWARDH:  Certainly, Mr. Pardy,  
24          you will agree that no one who might reasonably be  
25          regarded as having Mr. Arar's interests in their

1 heart, such as his spouse, was ever asked whether  
2 or not she had any concerns with sharing  
3 information with CSIS and with the RCMP?

4 MR. PARDY: But I think his family  
5 members, in terms of their retention of  
6 Mr. Edelson early on in the process, and  
7 Dr. Mazigh's efforts to try to speak with the  
8 people on that side of the Canadian government I  
9 think speaks to the fact that there was that  
10 realization that they could have been a source of  
11 help to Mr. Arar in his circumstances.

12 MS EDWARDH: You did not, though,  
13 ask Mr. Edelson, nor did you ask Dr. Mazigh, what  
14 view she had of the sharing of information with  
15 CSIS and the RCMP?

16 MR. PARDY: No, I did not.

17 MS EDWARDH: Mr. Livermore  
18 testified that after 9/11 there was a  
19 recalibration of the need to share information,  
20 and the information that fell within -- and I will  
21 read you the pages, if you would like to hear  
22 them. But information was liable to be shared if  
23 it fell within the category of criminal  
24 intelligence or national security, and it would be  
25 liable to be shared to the appropriate



1 authorities.

2 And then he referred to the  
3 existence of 20 to 40 cases of detainees in that  
4 category.

5 Do you recall that evidence?

6 MR. PARDY: But again I come back  
7 to his subsequent testimony in this area where he  
8 was quite categorical when he referred to these  
9 matters. He did not have responsibility nor  
10 control over information, consular information,  
11 with respect to those 20 or 40 cases. That  
12 responsibility remained with me.

13 MS EDWARDH: Okay.

14 MR. PARDY: And so any sharing of  
15 information that could be broadly categorized as  
16 consular, then it was my responsibility to make  
17 that decision.

18 MS EDWARDH: All right. So let's  
19 deal with that.

20 MR. PARDY: Yes.

21 MS EDWARDH: So when Ambassador  
22 Pillarella meets Syrian Military Intelligence,  
23 converses with them, assesses where the state of  
24 the investigation is, what the allegations are, is  
25 he doing that as an adjunct to the provision of

1 consular services?

2 MR. PARDY: He is doing it -- as I  
3 explained yesterday, he has at least two  
4 responsibilities in this area. One of them is the  
5 consular responsibility, and the second one then  
6 is his responsibility as the Canadian ambassador,  
7 who has the responsibility to report back to his  
8 government information that relates to the  
9 security of Canada.

10 MS EDWARDH: Right. And that  
11 would go to CSIS and to the RCMP?

12 MR. PARDY: No, it would go to the  
13 ISI, and then they would make a decision in that  
14 second category as to whether or not that  
15 information would go directly to CSIS or the RCMP.

16 MS EDWARDH: Right. So then  
17 Mr. Pillarella wears the two hats in all of those  
18 interactions with the Syrian Military Intelligence  
19 persons that he interacts with?

20 MR. PARDY: Yes.

21 MS EDWARDH: Mr. Pillarella  
22 sometimes -- no, Mr. Martel sometimes goes to meet  
23 with Mr. Arar, and we have seen the dissemination  
24 of consular materials.

25 It is your evidence, Mr. Pardy,

1           that in those cases you have a specific  
2           recollection of approving the dissemination of  
3           consular materials, notes of consular interviews?

4                       MR. PARDY:  Yes.  The reports that  
5           we are talking about here, if you like, and for  
6           shorthand we can refer to them, the eight reports  
7           prepared by Mr. Martel of his visits.

8                       MS EDWARDH:  Yes.

9                       MR. PARDY:  And then we had the  
10          ninth one in terms of visit by the MPs.

11                      MS EDWARDH:  Yes.

12                      MR. PARDY:  I would regard those  
13          almost as -- these were exclusive.  The eight  
14          reports by Mr. Martel, in particular, were  
15          exclusive consular information.

16                      MS EDWARDH:  Yes.

17                      MR. PARDY:  And there was, I can  
18          remember -- I mean, if you ask me for the date and  
19          time when they came up, that I remember that  
20          Mr. Solomon -- and this was the arrangement we had  
21          with Mr. Solomon.  He would approach me and say or  
22          he would make the suggestion that perhaps this  
23          could be useful.  I would look at those reports  
24          and do the assessment of benefit and harm/injury,  
25          and then gave him, in a limited number of cases,

1 permission to share with the RCMP and CSIS.

2 MS EDWARDH: So the RCMP got three  
3 of them on that basis -- by the way, how would  
4 Mr. Solomon know about them?

5 MR. PARDY: Because, in effect,  
6 the incoming reports were copied to ISI, as you  
7 can see in many cases. They came back to Ottawa,  
8 not in the consular system, necessarily, but  
9 through the regular departmental e-mail or the C4  
10 system.

11 MS EDWARDH: So while there was,  
12 in your sense, an understanding that Mr. Solomon  
13 would discuss the matter with you, he as a matter  
14 of course got the consular reports?

15 MR. PARDY: Yes, because I think  
16 ISI had other responsibilities in this area that  
17 were not directly related to sharing that  
18 information with the RCMP and CSIS. They had a  
19 departmental responsibility in these areas as  
20 well.

21 MS EDWARDH: Right. What would  
22 have been, if you can help us, the departmental  
23 responsibility of ISI?

24 MR. PARDY: The departmental  
25 responsibility was to provide the Minister and the

1           senior management of the department with  
2           information about the activities of Canadians  
3           overseas that could affect the security of Canada  
4           or the security of other countries in which Canada  
5           had relations.

6                           MS EDWARDH:   So that would mean,  
7           from ISI's perspective, they might consider the  
8           matter and determine that, not only material  
9           received from Syrian Military Intelligence given  
10          to the ambassador should be sent to CSIS or RCMP,  
11          they could, as well, look at the consular reports  
12          they got and, assuming they are working within the  
13          protocol, touch base with you, get your views, and  
14          then hand those over.  Or they could, on their  
15          own, send them upward?

16                          MR. PARDY:   Yes, but there would  
17          be consultation with me in terms of -- if there  
18          was consular information reported upwards to --  
19          but again you are talking about the readership  
20          upstairs, of course, is the same readership that I  
21          am going to in terms of when I send a memo to the  
22          Foreign Minister or to the Deputy Minister or to  
23          anybody else above.  It is the same readership.

24                          As you can see from the file here,  
25          there was a sharing of tasks to a certain extent.

1                   But the sharing of information  
2 outside of the department is a different issue  
3 entirely than that.

4                   MS EDWARDH: Well, ISI sent  
5 information outside the department with --

6                   MR. PARDY: In these three  
7 specific instances that are reflected in the  
8 files, yes.

9                   MS EDWARDH: Well, with respect,  
10 sir, it is a minimum of four specific incidences  
11 because there were three, according to you,  
12 consular reports sent to the RCMP: October 22nd,  
13 April 22nd, and August 14th. And with respect to  
14 CSIS, there was a January 7th and again an April  
15 22nd.

16                   MR. PARDY: I am not familiar with  
17 the January 7th.

18                   What I had seen and all I was  
19 aware of were the three reports: the October 23,  
20 April 23 --

21                   MS EDWARDH: If you could,  
22 Mr. Pardy, either I misspoke myself, or I didn't  
23 understand it.

24                   MR. CAVALLUZZO: No, there is some  
25 confusion which I might clarify if I have a minute

1 to speak to government counsel?

2 THE COMMISSIONER: Okay. Do you  
3 want a break?

4 MR. CAVALLUZZO: No.

5 --- Pause

6 MR. CAVALLUZZO: Commissioner,  
7 this is an area where there are some NSC concerns,  
8 and if Mr. Pardy is going to return, if my friend  
9 has not finished her cross-examination by the end  
10 of the day and there is a possibility he may be  
11 returning either Tuesday or Thursday of next week,  
12 hopefully by that time we will have a clear  
13 direction in respect of the documents we are  
14 talking about. We are discussing that with  
15 government counsel.

16 MS EDWARDH: Mr. Commissioner, I  
17 had made these notes of the remarks made by  
18 Mr. Cavalluzzo in examination-in-chief, so I  
19 thought the matter was without doubt not a  
20 problem.

21 So let's deal with the RCMP then.

22 You do concede that we have three  
23 consular visits, October 22nd, April 22nd, and  
24 August the 14th, but on your then approval were  
25 provided to ISI for distribution to the RCMP and

1 to CSIS?

2 MR. PARDY: I gave permission to  
3 ISI to share, yes.

4 MS EDWARDH: And it's also clear  
5 that there was other information provided by  
6 Syrian Military Intelligence to Mr. Pillarella on  
7 November 3rd, and Mr. Martel came home with some  
8 information on his -- you are looking very  
9 troubled, Mr. Pardy.

10 You don't know what I am talking  
11 about?

12 MR. PARDY: No, I don't. Your  
13 reference to Mr. Martel coming home with certain  
14 information.

15 MS EDWARDH: So in the documents  
16 that you have reviewed, you have not seen anything  
17 that indicates that certain information was  
18 brought home after Mr. Arar was released?

19 MR. PARDY: No. As you know I  
20 was --

21 MS EDWARDH: You are gone?

22 MR. PARDY: I am gone.

23 MS EDWARDH: And there is nothing  
24 you have seen in your review of the record that  
25 tells you that.



1                   MR. PARDY: I think I have gone  
2 through the record. I have seen the public  
3 release of documents here. I know that I have  
4 seen reference in the -- I had the disc and I  
5 reviewed everything that was there.

6                   There was reference to the  
7 question of whether or not there was a report from  
8 the Syrian authorities that was supposed to come  
9 to the Government of Canada following Mr. Arar's  
10 release.

11                  MS EDWARDH: All right. Well, we  
12 will --

13                  MR. PARDY: But I have not seen  
14 any of the material. I have just seen references  
15 to it.

16                  MS EDWARDH: We will hear from  
17 Mr. Martel, but I would like you to assume as a  
18 fact that he brought some documents or materials  
19 home with him when he accompanied Mr. Arar; and  
20 furthermore, that there were then efforts to  
21 obtain a further file, a "completer" file, upon  
22 Mr. Arar's return by Mr. Martel and others,  
23 perhaps the ambassador -- I can't precisely  
24 remember.

25                  But that continues.

1 MR. PARDY: Mm-hmm.

2 MS EDWARDH: Now, I take it that  
3 whole chain, of obtaining information from Syrian  
4 Military Intelligence to the ambassador, to the  
5 head of consular affairs -- and the embassy,  
6 really, right? Mr. Martel, he is the consul. I  
7 mean, he provides the services, right, consular  
8 services?

9 MR. PARDY: I am not quite sure  
10 whether you are telescoping too much here, but  
11 anyway ...

12 Can I answer the premise of your  
13 question, the first part?

14 MS EDWARDH: Let's try it. If I  
15 can't ask it, you answer it.

16 MR. PARDY: This might explain.

17 If we refer to the November 3rd  
18 visit, a meeting between Mr. Martel and the  
19 General, they discussed in effect information that  
20 the General said that they had obtained and that  
21 Mr. Pillarella, being the astute one rather than  
22 just committing this to memory, asked for a piece  
23 of paper, which was delivered to him within a few  
24 days.

25 Then that is what I know as being

1 the only written piece of paper that was supplied  
2 during this whole process by Syrian Military  
3 Intelligence to the Government of Canada.

4 MS EDWARDH: All right. But I am  
5 just trying to understand the channels of  
6 authority in which it was shared.

7 I would take it that  
8 Mr. Pillarella did not have to seek your consent  
9 to the provision of that information outside of  
10 consular services?

11 MR. PARDY: No, not at all.

12 MS EDWARDH: He did that as a  
13 matter of his own prerogative in wearing a number  
14 of hats that he wears?

15 MR. PARDY: No, it wasn't Mr. --  
16 and I think I mentioned this in previous  
17 testimony. It wasn't Mr. Pillarella's  
18 responsibility to make a decision on the sharing  
19 of that information. His responsibility was to  
20 get it back to the Department of Foreign Affairs,  
21 and in this case to ISI, and then they made the  
22 decision as to whether it was going to be  
23 disseminated further within the Government of  
24 Canada.

25 MS EDWARDH: Fine. And the

1 person, of course, we are talking about is  
2 Mr. Livermore?

3 MR. PARDY: That's correct, yes.

4 MS EDWARDH: He wears that  
5 responsibility?

6 MR. PARDY: Yes, he does.

7 MS EDWARDH: So let's start for a  
8 moment with the issue of the consular information  
9 that you consented to be shared.

10 MR. PARDY: Yes.

11 MS EDWARDH: And I want to know  
12 that when you approved that ISI forwarded on to  
13 the RCMP or to CSIS, that you were aware, when you  
14 did that, given your experience, that they could  
15 choose to send it where they wanted if they saw  
16 fit in accordance with their own mandate?

17 MR. PARDY: No. My understanding  
18 in this area is that when the Department of  
19 Foreign Affairs provides information to the RCMP  
20 or CSIS, that information cannot move beyond those  
21 organizations without the permission of the  
22 Department of Foreign Affairs.

23 MS EDWARDH: Now, we have heard of  
24 such things as caveats.

25 MR. PARDY: Exactly.

1 MS EDWARDH: And indeed it is my  
2 understanding that the sharing of information that  
3 is subject to caveats and control usually carries  
4 with it some kind of description on the very  
5 document -- there is an expression of this  
6 qualification right on the document, so there can  
7 be no doubt.

8 MR. PARDY: No ambiguity, right.

9 MS EDWARDH: No ambiguity,  
10 correct? And you are familiar with those?

11 MR. PARDY: Yes. I probably  
12 invented the system.

13 MS EDWARDH: And indeed if I look  
14 at the faxes -- we can look at them, if you care  
15 to. But if we look at the faxes where you  
16 provided the information or consented to its  
17 provision to the RCMP, there are no caveats  
18 written on those documents. There is nothing that  
19 suggests that there is any control on the use of  
20 that information?

21 Would you like to look at them?

22 MR. PARDY: I take your word for  
23 that. I think I have seen one or two of the  
24 covering pages --

25 MS EDWARDH: No, I --

1 MR. PARDY: I am not disputing  
2 your assertion here whatsoever. All I am saying  
3 is that the responsibility of ISI would have been  
4 to ensure, either in a general sense, or in the  
5 way that you suggest, that the documents are  
6 stamped, that they are caveated in an appropriate  
7 way.

8 MS EDWARDH: I got the sense from  
9 Mr. Livermore that post-9/11 caveats were down in  
10 the sense that, as he said it -- let me just find  
11 his language -- "that after 9/11 this kind of  
12 information was liable to be shared".

13 In other words, the presumption  
14 was in favour of sharing.

15 MR. PARDY: But in the aftermath  
16 of 9/11, the government did not repeal the Privacy  
17 Act. It did other things, mind you, and it made a  
18 number of policy statements, that both within  
19 government and between governments every effort  
20 should be made in effect to share appropriate  
21 information to deal with the threat as it was seen  
22 by the Canadian government, and other governments  
23 for that matter.

24 MS EDWARDH: I take it, sir, then,  
25 you are not aware of any either general or

1 specific caveat or control placed on these  
2 particular documents that Mr. Livermore forwarded?

3 MR. PARDY: At a minimum, I made  
4 the assumption that there was a general caveat in  
5 place for all information going from the  
6 department that was, if I can use the term,  
7 information that was owned by the Department of  
8 Foreign Affairs in its various manifestations and  
9 went outside. That information was protected by  
10 caveat, yes.

11 MS EDWARDH: And I am going to say  
12 to you certainly that there is nothing that I can  
13 recall in the MOU governing sharing of information  
14 between the Mounties that would impose a general  
15 obligation of the kind that you are saying; that  
16 you, at best, are saying that there is a control  
17 through the Privacy Act?

18 MR. PARDY: No, I can't remember  
19 what MOU you are referring to here.

20 MS EDWARDH: Okay. Maybe I am  
21 mistaken.

22 Is there an MOU that governs the  
23 sharing of information, or was there in 2002,  
24 between the Department of Foreign Affairs and the  
25 RCMP?

1 MR. PARDY: No. The only MOU that  
2 has been in place between the Department of  
3 Foreign Affairs and the RCMP is the MOU with  
4 respect to the foreign operations of the RCMP, if  
5 you like, and the role there.

6 MS EDWARDH: I misunderstand.

7 MR. PARDY: And the sharing of  
8 information, I think, is governed by -- I am  
9 trying to think of whether or not there are  
10 Treasury Board regulations, which would be the  
11 source of such caveats, if you like, in terms of  
12 the sharing of information.

13 But again, I would have to refresh  
14 my memory on that to be more specific.

15 MS EDWARDH: Well, it would  
16 appear, though, at least from the record we have,  
17 that there is nothing that controls, expressly  
18 either on the face of the document or through any  
19 agreement, the use and dissemination of this kind  
20 of information?

21 MR. PARDY: Apart from that  
22 general understanding out there that the owners of  
23 the information have to be consulted before there  
24 is further dissemination outside of a given  
25 channel.



1 MS EDWARDH: Right. And of course  
2 if the RCMP have been given it, if they are using  
3 it for a consistent use, that would be  
4 appropriate?

5 I mean, the consent to give it to  
6 the Mounties would in fact be a consistent use  
7 consent, would it not?

8 In other words, they could provide  
9 it to the Metropolitan Toronto Police or to the  
10 OPP?

11 MR. PARDY: I am not quite sure  
12 how you would define consistent use. Your  
13 examples that you gave would not fall within my  
14 understanding of what they could do with the  
15 information.

16 MS EDWARDH: Okay. So you would  
17 be surprised to learn then if the RCMP shared the  
18 information with anyone else without your  
19 permission.

20 MR. PARDY: I would be very  
21 surprised, yes.

22 MS EDWARDH: And I take it one of  
23 the things we should do is to go through the  
24 specific things you chose to share with the RCMP  
25 and have you identify, sir -- and maybe we should

1 start with the October visit.

2 THE COMMISSIONER: What tab is  
3 that?

4 MS EDWARDH: I was going to  
5 actually go through the -- I am sorry,  
6 Mr. Commissioner, I have P-93, 94, and 95.

7 Thank you, T-131? Or T-130?  
8 It's T-130, I think.

9 And we know that that was sent to  
10 the RCMP.

11 And that's P-93. Thank you,  
12 Mr. Baxter.

13 THE COMMISSIONER: P-93?

14 MS EDWARDH: Yes, the fax to the  
15 RCMP.

16 THE COMMISSIONER: Yes.

17 MS EDWARDH: I suggest to you,  
18 sir, that this fax was sent on October the -- I am  
19 sorry, November the 4th, 2002.

20 That would appear to be the case?

21 MR. PARDY: I am sorry.

22 MS EDWARDH: It's P-93.

23 MR. PARDY: I have P-93. Is that  
24 correct?

25 MS EDWARDH: Yes. That was the

1 first.

2 MR. PARDY: Yes.

3 MS EDWARDH: It was forwarded to  
4 the RCMP on November the 4th, 2002; correct?

5 I am confident your French is  
6 better than mine.

7 --- Laughter / Rires

8 MR. PARDY: Oh, yes, I see, on the  
9 4th of November, 2002, at the top of page 2 of the  
10 fax, yes.

11 MS EDWARDH: Yes. There is that  
12 and the front facsimile, the front page, it has  
13 that date on it too?

14 MR. PARDY: Oh, yes. Now I see  
15 it, yes.

16 MS EDWARDH: So this would have  
17 been sent the same day as the products of  
18 Mr. Arar's interrogation in Syria arrived in  
19 Canada.

20 MR. PARDY: You are talking the --  
21 Ambassador Pillarella's conversation with the  
22 General, yes. That occurred on the 3rd.

23 MS EDWARDH: Yes.

24 MR. PARDY: I am assuming that  
25 your dates are correct, that that information then

1           came back in a written format on the 4th. Or did  
2           Mr. Pillarella bring it back with him direct?

3                       I am not sure what the sequence of  
4           events was. I was in Beruit at this point.

5                       MS EDWARDH: It had to be  
6           translated.

7                       MR. PARDY: Yes.

8                       MS EDWARDH: But this all happens  
9           within a couple of days of one another?

10                      MR. PARDY: Yes. There was the --  
11           the reporting message of Mr. Martel's visit was  
12           dated the 23rd and then it appears to have been  
13           transmitted on the 4th, yes.

14                      MS EDWARDH: Sir, in light of the  
15           nature of what is being shared, can I ask whether  
16           any record is made of your consent to distribute  
17           this consular information to the RCMP?

18                      MR. PARDY: Not on my part. It  
19           would be whether or not ISI kept a record of this  
20           information in terms of the movement of documents  
21           through its system.

22                      MS EDWARDH: So logically, having  
23           obtained your approval, which was a prerequisite  
24           for distribution --

25                      MR. PARDY: That's right.

1 MS EDWARDH: -- you would expect  
2 the record to be kept there?

3 MR. PARDY: Yes, they have a  
4 special registry for their material and I don't  
5 know what happens in that sense within their  
6 system any more. It used to be there was a fairly  
7 tight record kept of information that went out of  
8 the department, yes.

9 MS EDWARDH: Can I ask the  
10 question, because I think it bears on the purpose  
11 of the distribution of the information, and I  
12 believe it's on the record -- no, I will wait  
13 until I get to another visit; thank you very much.

14 I was going to ask the question of  
15 whether the material had been provided to CSIS,  
16 but --

17 THE COMMISSIONER: Can I just ask,  
18 though, even on the RCMP, Ms Edwardh, just looking  
19 at it, it says "Description: Task 42" on the  
20 front, the first fax.

21 MS EDWARDH: Yes.

22 THE COMMISSIONER: That's the fax,  
23 the one that is in French that goes from DFAIT to  
24 somewhere where it's blanked out at the RCMP.

25 Is that right?

1 MR. PARDY: Yes, I assume so, yes.

2 THE COMMISSIONER: Do you know  
3 what "Task 42" means?

4 MR. PARDY: No, I don't --

5 MS McISAAC: Excuse me, sir. I  
6 think that's an internal RCMP, from "A" Division  
7 to "C" Division.

8 THE COMMISSIONER: That's the next  
9 page. I read the next page from "A" Division to  
10 "C" Division.

11 MS McISAAC: Task 42, remember  
12 when they enter material into their document  
13 management database, they have various tasks?

14 THE COMMISSIONER: Right.

15 MS McISAAC: And I think task 42  
16 relates to the RCMP's document management  
17 database.

18 THE COMMISSIONER: What we don't  
19 have here then is -- am I right? -- we don't have  
20 the fax which accompanies it going from DFAIT,  
21 presumably to "A" Division, because "A" Division  
22 sent it to "C" Division.

23 Tut we don't have the DFAIT fax.  
24 Is that right?

25 MR. PARDY: That would appear to

1 be the case.

2 THE COMMISSIONER: That's what I  
3 wasn't clear on.

4 MS EDWARDH: Thank you,  
5 Mr. Commissioner. It's an important observation.

6 THE COMMISSIONER: Is there a fax?

7 MR. CAVALLUZZO: There is.

8 --- Off microphone / Sans microphone

9 MR. PARDY: That's the standard  
10 Department of Foreign Affairs fax covering sheet.

11 MR. CAVALLUZZO: There doesn't  
12 appear to be a DFAIT fax for the previous --

13 THE COMMISSIONER: For the  
14 consular, the notes the consulate made. That  
15 appears to relate to the last page.

16 MR. PARDY: That's right. There  
17 are two pages in that fax.

18 THE COMMISSIONER: What we don't  
19 have then -- sorry to interrupt.

20 MS EDWARDH: No, that's fine.

21 THE COMMISSIONER: What we don't  
22 have is a fax sheet accompanying the notes of the  
23 consular meeting.

24 MR. PARDY: This is all I have  
25 seen is this, yes.

1 THE COMMISSIONER: I don't know if  
2 anything turns on that.

3 MR. CAVALLUZZO: There is an  
4 answer to that in the in camera evidence.

5 THE COMMISSIONER: Which I should  
6 have known about.

7 MS EDWARDH: Well, I take it that  
8 it's no surprise to anyone that the liaison  
9 officer from time to time, in fact quite  
10 regularly, attended at A-OCANADA and chatted with  
11 the officers involved in the investigation.

12 You were aware of that?

13 MR. PARDY: No, I was not.

14 MS EDWARDH: And if the liaison  
15 officer was providing consular information, would  
16 you have expected Mr. Solomon as well to come to  
17 you, or come to whoever was standing in if you  
18 happened to be out of town, and say, "Can I  
19 provide this information?"

20 MR. PARDY: Yes if it was, I  
21 guess, a written format because you will recall as  
22 well that we had meetings with the RCMP and CSIS  
23 where we sat down trying to work out whether or  
24 not we could get a consensus within the Government  
25 of Canada here. And within those meetings



1           certainly there was a sharing of information. I  
2           was present for those.

3                       MS EDWARDH: I am not talking  
4           about when you were present or supervising.

5                       MR. PARDY: Yes.

6                       MS EDWARDH: I am talking about  
7           the sharing of information, whether verbal or in  
8           writing. And in either case if it comes from  
9           consular information, it can only be properly  
10          shared with your authority.

11                      MR. PARDY: Yes, and in all cases  
12          it related to written information.

13                      MS EDWARDH: I am sorry, I am not  
14          quite sure.

15                      So you could transmit it otherwise  
16          than written without your approval?

17                      MR. PARDY: No, no, I am saying  
18          that coming to me, there was a specific document  
19          under consideration, and my approval related to  
20          that document in terms of whether or not it could  
21          go beyond the Department of Foreign Affairs.

22                      MS EDWARDH: And what if I just  
23          wanted to transmit, if I was someone working and I  
24          just wanted to transmit some information to the  
25          Mounties so that they were aware of it, but it

1 derived from a consular note and I don't want to  
2 give them the note because it isn't necessary. I  
3 just want to tell them I have the information and  
4 give them a heads up.

5 Now, do they have to come to you  
6 for that authority if it comes from a consular  
7 note or from information?

8 MR. PARDY: I would expect so.  
9 That being the case, and it's clearly consular  
10 information, I would expect to be consulted on  
11 that, yes.

12 MS EDWARDH: Is it your position,  
13 Mr. Pardy, that each of the documents that you  
14 knew you were sharing -- and we will come to  
15 others -- and there are only three for the RCMP.  
16 And I take it you are not aware of any other  
17 sharing from consular information?

18 MR. PARDY: Well, in preparation  
19 for my testimony, I was only told about the three  
20 that I am aware of, yes.

21 MS EDWARDH: I am not so much  
22 interested in what you were told as what you did.

23 MR. PARDY: Well, again, you are  
24 back here -- I mean, in terms of the way this  
25 procedure worked, I am assuming here, when I gave

1 permission, there was a consequential action.

2 MS EDWARDH: Right.

3 MR. PARDY: That's what reflected,  
4 as I understand the documentary files.

5 MS EDWARDH: And you have conveyed  
6 to the Commissioner the very clear impression -- I  
7 want to confirm it with you -- that you would only  
8 share information piece by piece, document by  
9 document. You wouldn't have given a general  
10 authority to Dan Livermore to say, you know, this  
11 could be a very serious case; share as you see  
12 fit?

13 MR. PARDY: No, I did not.

14 MS EDWARDH: And you would never  
15 say that?

16 MR. PARDY: No. And I think  
17 Mr. Livermore's testimony on that point, I think,  
18 is clear, particularly his testimony on the final  
19 morning.

20 MS EDWARDH: I am puzzled because  
21 it's clear to me that other consular material was  
22 shared.

23 I am going to start with tab 31  
24 and I am going to see if you can help us  
25 understand whose decision it was, where you were

1 at the time, and whether you were subsequently  
2 informed of sharing.

3 Sir, if you look at tab 31 and tab  
4 32, can we agree -- and if I can just find the  
5 line -- that one of the things that Mrs. Girvan  
6 does is she obtains from Mr. Arar details of what  
7 the FBI were interested in?

8 Can you agree with that in  
9 general?

10 MR. PARDY: I am sorry, we are  
11 back now to tab...?

12 MS EDWARDH: Tabs 31 and 32.

13 MR. PARDY: Yes.

14 MS EDWARDH: Right? What  
15 Mrs. Girvan is doing is she is getting from  
16 Mr. Arar the gist of what the FBI wanted to know  
17 from him, as best as she could get it down?

18 MR. PARDY: Yes.

19 MS EDWARDH: And at tab 32 -- and  
20 this is the second of these kind of notes that  
21 came out of this consular visit.

22 Let me just read you the first  
23 sentence:

24 "Mr. Arar has been trying to  
25 understand why they would

1                   have arrested him. He says  
2                   that they kept asking about a  
3                   man called Abdullah, who  
4                   lives in Ottawa and is also  
5                   of Syrian origin."

6                   Do you see that?

7                   MR. PARDY: Yes.

8                   MS EDWARDH: So Mrs. Girvan has  
9                   obtained from him important information about what  
10                  the police in the United States or the security  
11                  services in the United States want.

12                  Now, you will agree with me -- and  
13                  it's a comment I just want to draw your attention  
14                  to. When Mrs. Girvan is making these notes with a  
15                  voluble and distraught Mr. Arar, she doesn't think  
16                  she is a police officer writing a confession down,  
17                  does she?

18                  MR. PARDY: No, not at all.

19                  MS EDWARDH: So when we jump then  
20                  to tab 61 in this volume, we have a document.

21                  Can you just tell us something  
22                  about -- just a minute.

23                  This is a document from  
24                  Mr. Livermore?

25                  MR. PARDY: Yes, it is.

1 MS EDWARDH: Oh, yes, yes. I am  
2 sorry, I have to take you to a blank, but I am  
3 going to fill it in.

4 If we go down to the third  
5 paragraph, this is Mr. Livermore. Who is he  
6 talking to?

7 MR. PARDY: I am sorry, which --

8 MS EDWARDH: This is a letter or  
9 an e-mail.

10 MR. PARDY: We are on tab 61?

11 MS EDWARDH: Yes, 61.

12 MR. PARDY: Yes.

13 MS EDWARDH: Signed by Daniel  
14 Livermore, Director General, Security and  
15 Intelligence Bureau.

16 MR. PARDY: Yes.

17 MS EDWARDH: Going to ...?

18 MR. PARDY: This is going to  
19 Damascus, the Head of Mission in Damascus.

20 MS EDWARDH: Right. And it's  
21 copied to yourself, but also to Mr. Solomon?

22 MR. PARDY: Yes.

23 MS EDWARDH: To yourself?

24 MR. PARDY: GMR, the political  
25 division.

1 MS EDWARDH: Yes, okay.

2 MR. PARDY: Yes.

3 MS EDWARDH: Let's go to the third  
4 paragraph.

5 "On 26 or 27 September he  
6 arrived in the airport using  
7 his Canadian passport and was  
8 detained and transferred to  
9 the high security section of  
10 the Metropolitan Detention  
11 Center in Brooklyn..."

12 Well, that is clearly information  
13 from Mrs. Girvan; correct?

14 MR. PARDY: Yes.

15 MS EDWARDH: It goes on:

16 "... where he was questioned.  
17 Some of the questions dealt  
18 with his relationship  
19 with..."

20 And I am going to fill it in:  
21 "Abdullah", because he is the only one that  
22 Ms Girvan mentions.

23 "DFAIT was granted consular  
24 access..."

25 So now you have this consular

1 information on October 10th going from  
2 Mr. Livermore; correct?

3 So he has obviously had access to  
4 it.

5 MR. PARDY: Yes.

6 MS EDWARDH: Did you consent to  
7 him having access to the consular information from  
8 the October 3rd visit?

9 MR. PARDY: I think on the direct  
10 examination this point came up. I was in  
11 Washington at this point, and I spoke -- and I  
12 think it's Ms Harris that has spoken to him. I  
13 don't know why he did this particular message, but  
14 for reasons -- probably good reasons -- he did  
15 this message and she did the one to Amman, Jordan,  
16 which is a match of this one.

17 The issue here for us -- and I had  
18 already spoken to -- when I was in Washington, I  
19 had called Mr. Heatherington and we were enlisting  
20 the assistance of the ISI division to try to find  
21 out where Mr. Arar was located. I think it was in  
22 that sense there was an exchange of information  
23 with them.

24 They used this information for the  
25 very specific purpose here of trying to find out



1 where Mr. Arar was.

2 MS EDWARDH: Well finding -- my  
3 problem is noting what the interrogation is about,  
4 who is named in the interrogation has nothing to  
5 do with locating Mr. Arar. Nothing.

6 MR. PARDY: In the sense that  
7 there was -- I am not quite sure. There was an  
8 issue of names here as well, in terms of what name  
9 was being used here, and I think there is another  
10 message --

11 MS EDWARDH: That was about  
12 Mr. Arar's name, though, surely.

13 MR. PARDY: Yes. But again, in  
14 terms of Abdullah here, we were trying to figure  
15 out just what we were dealing with. We had very  
16 little information that was of any specificity to  
17 us, and we were casting about here with the  
18 fundamental consular responsibility of trying to  
19 find out where Mr. Arar was.

20 I don't think any of us were  
21 prepared, in effect, to cut the salami so thin as  
22 to leave out a piece of information that might  
23 have been germane to other people.

24 MS EDWARDH: Well, you left out  
25 the name of Nisam. The reason it's so important

1 is that everyone knows in the intelligence world,  
2 if they want to flip open their file here really  
3 quickly, that this is Abdullah Almalki. And it is  
4 only his name that is being disseminated.

5 MR. PARDY: But again, is that  
6 the -- is it completely Abdullah Almalki  
7 underneath the tab here, underneath the deletion?  
8 I am not sure.

9 MS EDWARDH: By my calculation of  
10 the number of letters you could fit in the page,  
11 it is.

12 MR. PARDY: I take advice on that.

13 MS EDWARDH: But I don't think  
14 it's a privacy issue, and I think it's wrong,  
15 because it's relevant to the -- it's relevant to  
16 an issue before you, Mr. Commissioner, about how  
17 information was moved and whether there was  
18 authority to move it, and indeed whether or not it  
19 was moving within proper channels for proper  
20 purposes.

21 So I would ask for confirmation  
22 that Abdullah Almalki's name or Abdullah's name is  
23 set out, again, duplicating the consular note of  
24 October 3rd in tabs 61 and 82.

25 THE COMMISSIONER: Is it correct

1           that this is a privacy claim rather than an NSC  
2           claim?

3                           MS McISAAC: I think it originally  
4           was both, Mr. Commissioner; not an NSC claim so  
5           much as the investigative interest claim, but the  
6           investigative interest to the A-OCANADA  
7           investigation seems to have become quite public.

8                           But it was still intended to be,  
9           at least in part, a privacy issue. That seems to  
10          have gone by the way as well.

11                          But I am not prepared to confirm  
12          what is under there until I actually see the  
13          document, though my colleague points out that if  
14          you look at the note at 63, the name Abdullah is  
15          there and it's the last name.

16          --- Laughter / Rires

17                          THE COMMISSIONER: It seems clear  
18          from the other documents what it is.

19                          MS EDWARDH: Well, I think it's  
20          important because I am going to proceed on the  
21          basis that if tab 63 has the last name, or the  
22          first name, or the repetition of Abdullah, then  
23          it's quite clear that what is being transmitted is  
24          the proceeds of the consular interview.

25                          THE COMMISSIONER: I take your

1 point.

2 Carry on with the line of  
3 questioning.

4 MS EDWARDH: And I want to just  
5 establish this: It is quite clear that the RCMP  
6 had an expectation that they would know about  
7 consular access.

8 Would you agree with that?

9 MR. PARDY: They would know that a  
10 standard feature of the way we operated was to get  
11 to see the individual. That's fundamental to our  
12 work, yes.

13 MS EDWARDH: And they would expect  
14 that they would know that you had done this, that  
15 you had access --

16 MR. PARDY: No, I don't think one  
17 follows the other.

18 MS EDWARDH: Then can you explain  
19 to me why Deputy Commissioner Loepky seems so out  
20 of joint when he doesn't know, or says he doesn't  
21 know, about the October 3rd visit?

22 Let me take you two tabs, if you  
23 could: tabs 547 and 548 where Deputy Commissioner  
24 Loepky makes his complaint and Mr. Solomon from  
25 ISI responds.

1           --- Pause

2                           MS EDWARDH:  At page 2 of tab 548,  
3           paragraph 7, there is a complaint by, I think, the  
4           Deputy Commissioner, and this is a complaint that  
5           is dated September 8th, 2003, so it's almost a  
6           year after these events.

7                           It says:

8                                       "Loeppky complained that the  
9                                       RCMP had learned only two  
10                                      weeks ago that while he was  
11                                      in detention in New York in  
12                                      September/October 2002, a  
13                                      consular official from our  
14                                      Consulate General had visited  
15                                      Arar in the Metropolitan  
16                                      Detention Center in Brooklyn  
17                                      where he was being held, and  
18                                      during that consular  
19                                      interview Arar had told the  
20                                      consul that he expected to be  
21                                      deported to Syria.  Loeppky  
22                                      said that DFAIT had not said  
23                                      publicly that we had made a  
24                                      consular visit to Arar in New  
25                                      York and he asserted that it

1 would have been helpful if  
2 the RCMP had known this  
3 earlier so they could have  
4 briefed their Minister."

5 So Mr. Solomon responds, and you  
6 will find that at 547.

7 Oh, I am sorry, it's Mr. Saunders.  
8 And he is writing through ISD? Do you see that at  
9 the top?

10 MR. PARDY: Yes, to Mr. Wright as  
11 well.

12 MS EDWARDH: And Mr. Saunders is  
13 with ISI?

14 MR. PARDY: Yes, he is.

15 MS EDWARDH: So I misspoke when I  
16 attributed this to Mr. Solomon, but it is the same  
17 branch of the unit.

18 So starting at the top:

19 "At the meeting between MJW  
20 and Deputy Commissioner  
21 Loepky on September 5, the  
22 latter asserted that the RCMP  
23 had not known until two weeks  
24 ago that a consular official  
25 had visited Arar while he was

1 in detention in New York,  
2 prior to his deportation to  
3 Syria, and that during that  
4 visit Arar had indicated that  
5 he expected to be deported to  
6 Syria."

7 Then going down to point 3:

8 "As for Loepky's assertion  
9 that the RCMP only learned  
10 about this consular visit  
11 some two weeks ago, the facts  
12 strongly indicate otherwise.  
13 We shared most of the  
14 information we had on this  
15 case with our RCMP Liaison  
16 Officer who passed it on to  
17 his headquarters. We also  
18 met with a group of RCMP and  
19 CSIS officers on October 21  
20 to discuss the case."

21 So this is obviously a separate  
22 meeting than the one you had on the 18th.

23 MR. PARDY: Sixteenth.

24 MS EDWARDH: On the 16th.

25 So this is a second meeting they

1           have.

2                           MR. PARDY:   Mm-hmm.

3                           MS EDWARDH:  Were you aware of  
4           such a meeting?

5                           MR. PARDY:  At this point I am not  
6           sure whether the -- normally I would have been at  
7           that meeting, but I can't recall specifically.

8                           I very much remember the meeting  
9           on the 16th because in effect I dictated questions  
10          to Superintendent Pilgrim, which he then responded  
11          to on October the 18th.

12                          I knew that there was more -- I  
13          think my recollection is that there was more than  
14          one, but that was nothing more than to seek  
15          amplification on some of the answers that were  
16          provided by Superintendent Pilgrim in his October  
17          18th letter.

18                          MS EDWARDH:  Certainly the way I  
19          read this memorandum from Mr. Saunders, it is a  
20          statement that the RCMP needn't feel out of joint  
21          about knowing about the first consular visit  
22          because indeed they knew about it and most of the  
23          information on the case had been shared by the  
24          Department of Foreign Affairs?

25                          MR. PARDY:  Well, the fact that we



1           made a consular visit in New York was in every  
2           newspaper that commented on this case.

3                           This was a piece of information  
4           that was used in the public domain almost  
5           immediately.

6                           MS EDWARDH:   Well, it's not so  
7           much, sir, the suggestion that they knew about a  
8           consular visit, or they needed to know; it's the  
9           contents of the consular visit that go beyond just  
10          the statement about going to Syria, "being told by  
11          the INS that he was going to go out to Syria".

12                          But the question that this gives  
13          rise to is a different kind of access to the  
14          content of consular communications, and indeed  
15          your view that the only ones the Mounties ever got  
16          was the first one.  That's clearly not the case?

17                          MR. PARDY:   No, and if you read  
18          the sentence here, this is a memo from the  
19          Security and Intelligence Division, Mr. Saunders.  
20          He is saying "we shared most of the information we  
21          had on this case", and that does not, in my mind,  
22          read that they were sharing information that  
23          belonged to the consular bureau.

24                          MS EDWARDH:   But the very  
25          information that is of concern to them is

1 information that comes from the consular note.

2 It is that Mr. Arar said he was  
3 going to Syria, or he had concerns about it  
4 because the INS had told him.

5 MR. PARDY: But in this context  
6 here, this was all public information. The Syrian  
7 issue, I mean, this was public. It was all out  
8 there. There was nothing confidential about this  
9 one way or the other.

10 It was in the press almost  
11 immediately, the Syrian issue. Is it The New York  
12 Times article on October the 12th, I think might  
13 have made reference to that fact.

14 MS EDWARDH: Even if -- I just  
15 want to put it to you. Even if there is  
16 information in the public domain, it doesn't  
17 change the confidential character of the record  
18 made of the consular visit. It doesn't become  
19 something that goes into the public domain without  
20 regard to the Privacy Act.

21 MR. PARDY: Yes. But when you  
22 come down here, we had a series of press lines at  
23 that point. And as you know, in the press lines  
24 these were things that were developed for use by  
25 the Minister and by our press office to respond to

1 inquiries from the media.

2 And basically in terms of our  
3 response to those inquiries, there was, if you  
4 want, a deprivatization of that information.

5 MS EDWARDH: But you are not  
6 allowed to deprivatize it just because it is in  
7 the media.

8 MR. PARDY: No. But what we were  
9 doing is that in order to respond to issues in the  
10 media, we needed to be able to -- you mean did we  
11 say, the media called up. "Where is he? We don't  
12 know. We are not going to tell you."

13 No. Basically, there is a  
14 reasonable expectation that we will respond to  
15 reasonable questions from the media, and the whole  
16 issue of questions and answers is geared to that  
17 basis.

18 Cases that are in the public  
19 domain, here the issue -- and maybe the Privacy  
20 Commissioner might have some views on this. But  
21 certainly it was our practice that we would  
22 respond to questions from the media and provide  
23 them with facts about the case that we obtained as  
24 a result of consular visits.

25 MS EDWARDH: Certainly the one

1           thing I didn't see in any of the media lines --  
2           and maybe you can make a note and look for this --  
3           at this time, or much thereafter, and in the first  
4           chronologies, was a matter that Mr. Cavalluzzo  
5           pointed out to you.

6                         I am not sure that anyone has ever  
7           stood up and said, "Mr. Arar told us that the INS  
8           was going to send or deport me to Syria."

9                         I don't think that's there. I am  
10          sorry, Mr. Pardy. We know he went there.

11                        MR. PARDY: Sorry?

12                        MS EDWARDH: We know he went  
13          there.

14                        MR. PARDY: But I think if you go  
15          back -- I would need to check the media record  
16          that's out there. I mean, the family were aware  
17          of this because they were the original source of  
18          this information, because it was said by Mr. Arar  
19          to his mother, I think it was, in that first  
20          telephone call --

21                        MS EDWARDH: Mother-in-law.

22                        MR. PARDY: -- and essentially  
23          that information was out and I -- again, I stand  
24          to be corrected, but my understanding was that  
25          that point was in the media quite early on.

1 MS EDWARDH: Right.

2 But you will agree with me, any  
3 fact stated in the media does not, merely by its  
4 existence in the media, relieve you of your duty  
5 under the Privacy Act?

6 MR. PARDY: I would have to take  
7 counsel on that particular issue --

8 MS EDWARDH: Particularly when  
9 Mr. Arar didn't put it there.

10 MR. PARDY: Or his family might  
11 have put it there?

12 I mean, again, I would take issue  
13 with all of this -- when you're dealing with  
14 high-profile cases here like this, in effect,  
15 there is an expectation that the government will  
16 respond to questions from the media, and our whole  
17 question-and-answer procedure is geared upon that  
18 fact, that the Minister can stand up, either in  
19 public or in the House, and respond to legitimate  
20 questions.

21 MS EDWARDH: Okay. I want to draw  
22 your attention, if I could, to one other exchange.  
23 You'll see it in the Garvie report. Exhibit P-19.

24 Thank you very much,  
25 Mr. Registrar.

1 And I will start with page 25.

2 --- Pause

3 MS EDWARDH: Page 25. And I want  
4 to read you an exchange and have you comment on  
5 it.

6 MR. PARDY: Page 25?

7 MS EDWARDH: That's correct.

8 MR. PARDY: Mm-hmm?

9 MS EDWARDH: Mr. Pardy, midway  
10 through the page, and it's under the heading  
11 02/10/08. Do you see that? 9:45 hours?

12 MR. PARDY: Yes.

13 MS EDWARDH:

14 "Insp. Roy was updated by A-0  
15 Canada..."

16 And, of course, Inspector Roy is  
17 the DFAIT liaison officer?

18 MR. PARDY: The RCMP liaison  
19 officer in DFAIT.

20 MS EDWARDH: In DFAIT?

21 MR. PARDY: Yes.

22 MS EDWARDH: But he sits, as we  
23 understand it, literally next door to  
24 Mr. Livermore.

25 MR. PARDY: That's correct, yes.

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MS EDWARDH:

"...was updated by A-O Canada investigators about ARAR's situation as they knew it at the time. Insp. Roy told the investigators he was unaware of ARAR's imminent deportation to Canada, however he stated that he knew that ARAR was still in custody and that there was a possibility that ARAR would be sent to Syria. Insp. Roy is only able to confirm that the information that he received most likely came from a DFAIT colleague. Insp. Perron commented in his report that is discussed later, that Insp. Roy had obtained the information having read a consular visit card that documented ARAR's fear of being deported to Syria."

1                   Okay. So now we have, on  
2                   October 8 -- we certainly get the impression that  
3                   sometime prior to October 8, because it's 9:45 in  
4                   the morning --

5                   MR. PARDY: Mm-hmm.

6                   MS EDWARDH: -- that Inspector  
7                   Roy, the RCMP liaison officer, had had access to  
8                   some consular record of the communication between  
9                   Mrs. Girvan and Mr. Arar. That's the only  
10                  explanation for that entry.

11                  MR. PARDY: But, again, I think  
12                  you've got to put this in the context of what we  
13                  were trying to do on the 10th of October, early in  
14                  the morning. We were still trying to establish  
15                  what had happened to Mr. Arar --

16                  MS EDWARDH: It's not the 10th,  
17                  sir. It's the 8th. 9:45 on the 8th -- you don't  
18                  even know he's gone.

19                  MR. PARDY: Even on the 8th of  
20                  October, he went missing -- I guess we found out  
21                  later that day, and I don't know about what he  
22                  means by a consular visit card.

23                  I must say that they did not have  
24                  access, of course, to our consular records, and  
25                  when he says a consular visit card, I find that



1           troubling.

2                           What I find equally troublesome is  
3           the information Inspector Roy told the  
4           investigators that he was unaware of Arar's  
5           imminent deportation to Canada.

6                           MS EDWARDH:   Why does that bother  
7           you?

8                           MR. PARDY:   Well, I don't  
9           understand the context, because on October 8,  
10          there was no suggestion of Mr. Arar's imminent  
11          deportation to Canada --

12                          MS EDWARDH:   Not that you knew.

13                          MR. PARDY:   That I knew or that --  
14          what we had learnt on the 3rd, and I guess  
15          Ms Girvan spoke to the lawyer a little later that  
16          day, I think, when the confusion then arose as to  
17          Mr. Arar's location, yes.

18                          MS EDWARDH:   And for someone to  
19          know, in the early morning of October 8, that  
20          there was a possibility that Mr. Arar, one, would  
21          be sent to Syria and that he had a fear of being  
22          deported to Syria, one could only have got that by  
23          having access to the actual description of the  
24          consular visit.  Will you agree with that as a  
25          principle?

1 MR. PARDY: That, in effect,  
2 information was shared with him. But again I come  
3 back to the --

4 MS EDWARDH: Can we just establish  
5 first that the information was shared?

6 MR. PARDY: If I take  
7 Superintendent Garvie's report here as being  
8 accurate, yes, okay.

9 MS EDWARDH: Okay. Now, feel free  
10 to make your comment.

11 MR. PARDY: And my comment is  
12 that, on the 8th of October, we were still trying  
13 to establish what we were dealing with here.

14 Ms Girvan had been in to see him  
15 on the 3rd. He had provided us certain  
16 information. We had conversations with family  
17 members who reported earlier that there was this  
18 fear that the deportation was going to be to  
19 Syria.

20 We were then working with his  
21 lawyer. And sort of using Mr. Arar's own words  
22 here, on the October 3 visit, to Ms Girvan, he was  
23 puzzled what this was all about.

24 Now, I mean, we were casting about  
25 to try to come to some understandings ourselves as

1 to what this was all about.

2 Why did the Americans detain him  
3 in the way that they did, what their future  
4 intentions were likely to be.

5 MS EDWARDH: I take it, sir, you  
6 have no recollection of giving --

7 MR. CAVALLUZZO: I don't like to  
8 interrupt my friend, but just to be fair to the  
9 witness, it was put to the witness that the only  
10 way this information could have come about is the  
11 transfer of the consular visit of October 3.

12 There's also a CAMANT note of  
13 October 1 wherein Mr. Arar's brother had phoned  
14 DFAIT saying that he had learned that his brother  
15 was threatened to be deported to Syria.

16 So it's not just the consular  
17 visit in which that threat is declared, but it is  
18 also the October 1 CAMANT note -- I can get you  
19 the exhibit number -- but to be fair to the  
20 witness, he should know that.

21 MR. PARDY: Thank you.

22 MS EDWARDH: And that's fair  
23 enough.

24 Thank you, Mr. Cavalluzzo.

25 But my problem still remains the

1 same. This is not information -- if you were to  
2 look at the telephone call from a family member  
3 about a problem and couple it with the October 3  
4 visit, you would expect to give permission in  
5 order to have that information go into ISI and  
6 then on to the Mounties?

7 MR. PARDY: Yes. What troubles me  
8 about all of this is there's no acknowledgment of  
9 what we are trying to do here.

10 And what we are trying to do is  
11 establish what's happening to Mr. Arar, and that  
12 information was not available -- you mean, in our  
13 domain.

14 MS EDWARDH: Mm-hmm.

15 MR. PARDY: There was a need here  
16 to go outside of our domain to see whether others  
17 within the system might have some information that  
18 would be helpful to us so that we could help  
19 Mr. Arar.

20 And I think to divorce the issue  
21 of information-sharing from what we were trying to  
22 do, our consular purpose here, I think distorts  
23 the record.

24 MS EDWARDH: Okay. It may distort  
25 the record from your perspective, but the

1 difficulty is, as I read the record -- and I want  
2 to take you to one other point. When your  
3 Inspector Roy, who is the RCMP liaison officer,  
4 can't get back and forth to A-OCANADA fast enough  
5 on the 7th -- and let's take a look at that. It's  
6 page 16. And this is -- I'm sorry, the 2nd,  
7 October 2.

8 And it would appear that you have  
9 the outline of what is alleged against Mr. Arar.  
10 Don't be misled by the date, because that comes  
11 from a document that has its source on the 3rd.  
12 But I am interested in the notation under 4:45.  
13 So:

14 "Insp. Richard Roy, RCMP  
15 Liaison Officer, attended  
16 A-O Canada and met with..."

17 Obviously, two people.

18 "Insp. Roy asked if they were  
19 aware of Maher ARAR's exact  
20 location. Insp. Roy was  
21 informed that they had last  
22 heard that ARAR was in New  
23 York, and he was to be  
24 returned to the country he  
25 had flown from, Zurich,

1 Switzerland."

2 Now, it doesn't appear to me that  
3 the Mounties do anything. Right?

4 MR. PARDY: I don't know. But I  
5 do not accept the premise that you're saying --  
6 that you're suggesting that the dates may be wrong  
7 on this.

8 MS EDWARDH: Well, let me stop  
9 you. To be fair, on the 2nd of October, the RCMP  
10 did not know, 24 hours before Mrs. Girvan knew,  
11 what the allegations were alleging Mr. Arar was  
12 inadmissible. That's all my point is.

13 MR. PARDY: No, but I think in Ms  
14 Girvan's report, Mr. Arar told Ms Girvan that he  
15 was given this paper, that Ms Girvan quotes from  
16 on the 3rd, he was given this paper at least on  
17 October 2.

18 MS EDWARDH: Yes, he does say  
19 that.

20 MR. PARDY: Yes.

21 MS EDWARDH: So is it your  
22 understanding -- I'm sorry. I have been perhaps  
23 mistaken.

24 I assumed there was an error,  
25 because that would entail the inference that when

1 Mr. Arar received the document on the 2nd,  
2 information was transmitted back to the RCMP as  
3 well, and I believe my friend pointed to the  
4 source documents which were -- yes, why don't you  
5 help us?

6 MS McISAAC: My recollection is  
7 that the explanation I gave is that -- Inspector  
8 Garvie, of course, is writing his report well  
9 after the fact.

10 MS EDWARDH: Yes.

11 MS McISAAC: And he is  
12 reconstructing the sequence of events. The source  
13 for his statement, that Mr. Arar received the  
14 notice on the 2nd, is after-the-fact interviewing  
15 Ms Girvan or receiving written responses from  
16 Ms Girvan.

17 So I don't think we can possibly  
18 draw the conclusion that the RCMP knew that this  
19 had happened on the 2nd or the 3rd; rather, that  
20 in reconstructing the sequence of events,  
21 Inspector Garvie is simply putting it into the  
22 sequence of events on that date.

23 THE COMMISSIONER: That didn't  
24 come through Inspector Roy. That came as a result  
25 of Superintendent Garvie's interview with

1 Ms Girvan.

2 MR. PARDY: May I comment as well  
3 on that point?

4 I was also interviewed by  
5 Superintendent Garvie, and I provided him with a  
6 copy of the complete removal order with this kind  
7 of information there.

8 So I'm not sure whether I can  
9 accept the premise of a question here because I  
10 don't have the information, quite literally.

11 But you're making an assumption  
12 here that this is something that happened within  
13 the consular mandate, if you like, and I'm not  
14 willing to accept that as a conclusion.

15 MS EDWARDH: So, if I could then,  
16 we can't exclude then the fact that if Mr. Arar  
17 received this from the INS on October 2, so did  
18 the RCMP? That's left open.

19 MR. PARDY: You take the dates as  
20 given by Superintendent Garvie.

21 He was a -- what's the word  
22 here? -- I mean, he was looking at a lot more  
23 information than certainly was available to  
24 either -- that was available to me and certainly  
25 available to me today.



1 MS EDWARDH: Right.

2 THE COMMISSIONER: Is this good  
3 time for the afternoon break?

4 MS EDWARDH: Yes.

5 THE COMMISSIONER: How are we  
6 doing time-wise?

7 I'm just looking ahead as to  
8 what -- we can sit until about 5:25 today, but no  
9 later.

10 Do you know how much longer you'll  
11 be, Ms Edwardh?

12 MS EDWARDH: Mr. Commissioner, I  
13 received a set of documents that relate to  
14 questions from the intervenors that I have been  
15 asked to pose to the witness.

16 THE COMMISSIONER: Right.

17 MS EDWARDH: Some of them I will  
18 have wound in my cross-examination.

19 THE COMMISSIONER: Yes, from your  
20 own, yes.

21 MS EDWARDH: Yes. Others, I have  
22 not. And, quite frankly, it will take me some  
23 time to --

24 THE COMMISSIONER: Sure.

25 MS EDWARDH: -- to pose these

1 questions to Mr. Pardy and have him, you know,  
2 have an opportunity to consider the answers.

3 So I think I will need an hour for  
4 these questions, an hour and 15 minutes.

5 And I might also ask one other  
6 indulgence. I'm not feeling well, and if we could  
7 just cut it a little early, I would be very  
8 grateful.

9 THE COMMISSIONER: Sure,  
10 absolutely. I have the intervenors' questions.  
11 How much longer would you be on your  
12 cross-examination?

13 MS EDWARDH: An hour and 20  
14 minutes, an hour and a half?

15 THE COMMISSIONER: So we're  
16 probably talking, really, a maximum of three  
17 hours?

18 MS EDWARDH: I will make it a  
19 maximum -- yes.

20 Thank you very much.

21 THE COMMISSIONER: If we could do  
22 that?

23 Mr. Baxter, at this point, I know  
24 you haven't heard all of the cross-examination,  
25 but how long do you think you'll be?

1 MR. BAXTER: Likely 45 minutes to  
2 an hour.

3 THE COMMISSIONER: Okay. And  
4 that's it. What are the alternatives for next  
5 week?

6 MR. CAVALLUZZO: The most feasible  
7 alternative will be Thursday, June 2. There is  
8 also a possibility that Mr. Manley, on Tuesday,  
9 May 31, may be less than one day.

10 But in light of the time we're  
11 looking at, it looks like June 2 is the more  
12 feasible date.

13 THE COMMISSIONER: Okay. Is there  
14 any reason we can't do it on June 2?

15 MR. CAVALLUZZO: Let me discuss it  
16 with counsel during the break. There may be a  
17 problem with that.

18 THE COMMISSIONER: Do you want to  
19 carry on at all this afternoon?

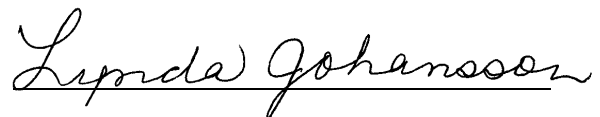
20 MS EDWARDH: I would be pleased to  
21 carry on till -- yes, I'll carry on.

22 THE COMMISSIONER: Well, if you  
23 feel up to it. You just let me know when you want  
24 to wind it down.

25 Okay. We'll take 15 minutes then.

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THE REGISTRAR: Please stand.  
--- Off-the-record discussion /  
Discussion officieuse  
--- Whereupon the hearing adjourned at 3:53 p.m.,  
to resume on Monday, May 30, 2005, at  
10:00 a.m. / L'audience est ajournée à  
15 h 53, pour reprendre le lundi 30 mai 2005  
à 10 h 00



Lynda Johansson,  
C.S.R., R.P.R.

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