

**Commission d'enquête  
sur les actions des  
responsables canadiens  
relativement à Maher Arar**



**Commission of Inquiry into  
the Actions of Canadian  
Officials in Relation to  
Maher Arar**

**Audience publique**

**Public Hearing**

**Commissaire**

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

**Commissioner**

**Tenue à:**

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

le mercredi 29 juin 2005

**Held at:**

Algonquin Room  
Old City Hall  
111 Sussex Drive  
Ottawa, Ontario

Wednesday, June 29, 2005

## APPEARANCES / COMPARUTIONS

Mr. Paul Cavalluzzo M <sup>e</sup> Marc David Mr. Brian Gover Ms Veena Verma Ms Adela Mall	Commission Counsel
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 M <sup>e</sup> 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 Rousset	Counsel for Maureen Girvan
Ms Catherine Beagan Flood	Counsel for the Parliamentary Clerk
Mr. Norman Boxall	Counsel for Inspector Michael Cabana
Mr. Richard Bell	
Mr. Vince Westwick	Counsel for Ottawa Police Service
Mr. Paul Copeland	Counsel for Abdullah Almalki
Ms Barbara Jackman	Counsel for Ahmed El Maati

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1                                   Ottawa, Ontario / Ottawa (Ontario)  
2           --- Upon commencing on Wednesday, June 29, 2005  
3                                   at 10:00 a.m. / L'audience débute le mercredi  
4                                   29 juin 2005 à 10 h 00

5                                   THE REGISTRAR: Please be seated.  
6           Veuillez vous asseoir.

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

9                                   MR. CAVALLUZZO: Good morning,  
10          Commissioner.

11                                  Commissioner, at the outset I  
12          would like to make an opening statement,  
13          particularly in light of the ruling which you made  
14          on May 12th in respect of the RCMP testimony, and  
15          in particular Mr. Cabana's testimony.

16                                  I understand that subsequent to  
17          that opening statement Ms Edwardh has some  
18          preliminary matters which she would like to raise.  
19          I think it would be appropriate at that time. We  
20          can dispose of those preliminary matters and get  
21          on to Mr. Cabana's testimony.

22                                  In your ruling of May 12th you  
23          decided that Mr. Cabana should testify in respect  
24          of the publicly available evidence of which he has  
25          knowledge. As you know, we have already heard all

1 of Mr. Cabana's testimony in camera.

2                   However, because of certain  
3 national security confidentiality claims made by  
4 the Government of Canada, certain parts of  
5 Mr. Cabana's evidence cannot be disclosed at this  
6 time.

7                   However, whether or not such  
8 evidence will be ultimately disclosed to the  
9 public, of course, will be decided at the time of  
10 the issuance of your interim report. In short,  
11 some of the information not disclosed today may  
12 eventually be disclosed to the public in your  
13 interim report.

14                   There is one other matter which  
15 will further restrict the evidence of Mr. Cabana  
16 apart from the national security confidentiality  
17 claims, and that is the important matter of  
18 fairness to Mr. Cabana.

19                   Although an incident or an issue  
20 may be publicly available, in order to provide a  
21 full and complete answer Mr. Cabana would have to  
22 refer and rely upon evidence subject to a national  
23 security confidentiality claim of the government.  
24 There could be unfair prejudice to Mr. Cabana to  
25 compel him to testify publicly on a matter to

1           which he cannot give a full and complete answer  
2           because of these NSC claims.

3                         As a result, Commission counsel  
4           has met with Government counsel and Mr. Cabana's  
5           counsel over a period of days to ensure that not  
6           only national security will be protected by our  
7           procedure but at the same time we hope that the  
8           procedure we have adopted will be fair to  
9           Mr. Cabana because we are very sensitive to his  
10          situation.

11                        This has led to a procedure in  
12          which we have agreed that certain areas are off  
13          limits because of NSC claims or because of  
14          fairness to Mr. Cabana. However, once again I  
15          reiterate two very important things.

16                        First of all, as the Commissioner,  
17          you have, and will have, all of Mr. Cabana's  
18          evidence in respect of the making and issuance of  
19          your interim report. Second, some of the  
20          information not disclosed today, as I said  
21          earlier, will eventually be disclosed to the  
22          public in your interim report, after you have made  
23          rulings on these NSC claims.

24                        However, as Commission counsel,  
25          lead Commission counsel, I am thoroughly satisfied



1           that it is very beneficial to hear from the  
2           officer in charge of Project A-OCANADA for several  
3           reasons.

4                         First, there is a great deal of  
5           publicly available information which will give the  
6           public an interesting and informative description  
7           of the relevant events, starting with the  
8           aftermath of 9/11. We will review the creation of  
9           Project A-OCANADA, its mandate, its composition,  
10          who its members were, its reporting structure, the  
11          training of its members, any information-sharing  
12          arrangements and relationships which it had with  
13          other agencies, including both foreign and  
14          domestic agencies.

15                        We will be reviewing with  
16          Mr. Cabana relevant RCMP policies, as well as  
17          relationships within the RCMP itself.

18                        As to the circumstances of  
19          Mr. Arar, we will focus on Project A-OCANADA's  
20          interest in Mr. Arar, particularly after January  
21          of 2000. This will entail for the most part a  
22          detailed account of what the RCMP did in relation  
23          to Mr. Arar particularly, after his detention in  
24          the United States on September 26th of 2002.

25                        For the period of his detention in

1 the United States, we will have a daily account of  
2 what happened. After his removal to Syria, we  
3 will also have, I believe, a good description of  
4 what the RCMP did in relation to Mr. Arar while he  
5 was detained in Syria.

6 The procedure is not perfect, but  
7 I am satisfied that this story can be told in a  
8 coherent manner which will be of interest both to  
9 Mr. Arar, his counsel and the public. At the same  
10 time I believe it is fair to Mr. Cabana, who  
11 should not be placed in a circumstance in which he  
12 cannot comment publicly without giving a full and  
13 complete answer to the question.

14 With those opening comments,  
15 Mr. Commissioner, I perhaps --

16 THE COMMISSIONER: Let me just  
17 endorse those comments. In particular, the need  
18 for fairness to Mr. Cabana has been thoroughly  
19 canvassed by Commission counsel with both  
20 Government counsel and Mr. Cabana's counsel. As I  
21 said in my ruling, it is paramount, it is critical  
22 to today's hearing that it not proceed in a way  
23 that is unfair to Mr. Cabana.

24 As Mr. Cavalluzzo pointed out, we  
25 have heard Mr. Cabana's evidence thoroughly in

1 camera and it has been tested thoroughly, so I  
2 think it is fair to say that I, and those who were  
3 in camera, are satisfied that we have the full  
4 picture.

5 It is important that people not  
6 draw unfair conclusions at this point given the  
7 nature of the way the evidence will be led, as  
8 described by Mr. Cavalluzzo.

9 Finally, I should say that the  
10 evidence was canvassed so as it won't be  
11 misleading to the public, Mr. Cavalluzzo. That  
12 was also one of the factors that was taken into  
13 consideration in deciding what could be led.

14 Ms Edwardh?

15 MS EDWARDH: There are a number of  
16 matters I would like to raise before we start with  
17 the officer, Mr. Commissioner.

18 The first relates to a position  
19 just articulated by Commission counsel, and one  
20 that was brought to my attention in a letter sent  
21 to Commission counsel by Mr. Fothergill.

22 I, on behalf of Mr. Arar, in  
23 accordance with your rules, sent two documents to  
24 all counsel and all intervenors. I should add  
25 both of those documents were produced to us

1 through Access to Information.

2                   These documents indicate that as  
3 early as November 29th, 2001, Mr. Arar had been  
4 placed on a terrorist watch list, and also --  
5 because the word "terrorist" is printed there --  
6 and also, that when his laptop computer and his  
7 Palm Pilot was evaluated on December 20th, there  
8 is a note made that this will be held for  
9 evaluation and also for examination -- I am  
10 paraphrasing the note now -- by NCIS.

11                   When Mr. Cavalluzzo said in his  
12 submissions to you that certain areas were off  
13 limits, I rise because I am very concerned by such  
14 an approach because it is inconsistent with your  
15 ruling.

16                   The materials I forwarded to  
17 counsel produced this response from  
18 Mr. Fothergill.

19                   He acknowledges the correspondence  
20 and also the documents that have been forwarded to  
21 him in a timely manner. He says:

22                   "Due to considerations of  
23 National Security  
24 Confidentiality and  
25 administrative fairness, and

1 in accordance with the  
2 direction of the Commissioner  
3 on June 22nd, 2005, we  
4 understand that  
5 Superintendent Cabana will  
6 not be questioned in public  
7 about Project A-OCANADA's  
8 initial interest in  
9 Mr. Arar."

10 I take it that that area, given my  
11 friend's comments about really proceeding with the  
12 chronology commencing January, is one that has, on  
13 some private basis without the hearing of  
14 submissions from Mr. Arar, been determined. And  
15 it is that I take objection to.

16 When the issue was fully argued  
17 before you, and Mr. Arar was permitted to  
18 participate, you made a ruling which my friend has  
19 referred to, and you will find the portions of  
20 your ruling that are of significance, starting  
21 really with page 10 where you identify what may be  
22 the prospective problems -- because, of course,  
23 Commission counsel can deal with his  
24 examination-in-chief -- and I, of course, don't  
25 know what has been said in camera. So that is a

1 necessary problem for any cross-examiner.

2 But in your ruling at page 10, you  
3 make the observation, at the fourth line of the  
4 first paragraph -- and this is what I understood  
5 to be what was circumscribed:

6 "The witnesses will not be  
7 able to answer some questions  
8 if..."

9 And here is the portion I  
10 underline.

11 "... those questions are  
12 directed towards the  
13 propriety of certain actions  
14 or the reasons why certain  
15 decisions were taken."

16 Let's, for example, take the  
17 period of time post-9/11 and take the surveillance  
18 at Mango's Restaurant, the secondary inspection,  
19 and issues like that. I am not interested in  
20 asking the officer why. I want to establish the  
21 investigative steps taken, to ask him on what  
22 basis -- not the information but the legal  
23 authority he acted on. And I do not intend to go  
24 beyond your ruling.

25 Now, because I don't know the

1 information, I cannot avoid things that are dealt  
2 with by national security confidentiality in fact,  
3 and I have every confidence an experienced  
4 officer, who has probably testified hundreds of  
5 times in a criminal court, can say, "I'm sorry, I  
6 object to answer that on the basis of national  
7 security confidentiality".

8 The other issue of importance is  
9 that we canvassed in the submissions we made to  
10 you the whole question of whether areas should be  
11 taken off the table, and you will recall it was  
12 the position of the government that whole areas  
13 should be taken off the table and it was a  
14 position that counsel for Mr. Arar hotly  
15 contested.

16 I see in your decision at pages 10  
17 and 11 that you in effect deal with this issue.

18 Let me take you to page 11, the  
19 second full paragraph, beginning with the language  
20 "That said", where you state the following:

21 "That said, I am reluctant to  
22 block out in advance areas of  
23 cross-examination that are  
24 off limits. I think that the  
25 general directions I have

1 given in this ruling will  
2 suffice for the present time.  
3 During the course of the  
4 hearing, if problematic  
5 questions are asked, I will  
6 direct that they need not be  
7 answered and explain why. It  
8 seems to me at this stage at  
9 least that objections can be  
10 dealt with on a  
11 question-by-question basis  
12 rather than in the abstract."

13 So I come today prepared to ask  
14 questions knowing the caution that you presented,  
15 that the officer's reasons for his decision may  
16 fall outside the proper scope of cross-examination  
17 and there may well be an objection taken. I  
18 understand that.

19 But to hear this morning that  
20 there has been some agreement reached with  
21 Mr. Bayne that this officer is protected from  
22 answering questions in a whole area of evidence in  
23 my submission runs directly counter to your  
24 ruling.

25 THE COMMISSIONER: Let me just



1 explain a bit about the process.

2 It is more than just an agreement  
3 reached with Mr. Bayne. There was a hearing at  
4 which I was present in which specifics of evidence  
5 were discussed, and with a view to determining  
6 what areas would require reference to national  
7 security concerns if they were to be fairly  
8 canvassed in evidence.

9 So it is more than just an  
10 agreement. There was a discussion.

11 That hearing necessarily had to  
12 take place in camera because there was reference  
13 to in-camera evidence, so that we simply couldn't  
14 have done that in public.

15 As I say, as Mr. Cavalluzzo said,  
16 and I agree, this process is by no means perfect.  
17 I mean, this is a public inquiry that is most  
18 difficult to run, I can assure you. But it is  
19 necessary -- and I am repeating -- that when this  
20 witness and other witnesses give evidence in  
21 public, that it not prove to be unfair to them and  
22 to their interests.

23 It was for that reason, in the  
24 matters that you are referring to, Ms Edwardh,  
25 that when we looked at it in detail and considered

1           what evidence could be given in public and, more  
2           importantly, what could not be given in public,  
3           that it was decided that to lead some of the  
4           evidence in those areas would, potentially because  
5           it was only partial evidence, potentially be  
6           misleading about those areas, which is something  
7           that needs to be avoided, and also could  
8           potentially be unfair to Inspector Cabana.

9                                So there was a number of  
10           investigative steps that took place in the fall of  
11           2001 that, when we canvassed it, in my judgment  
12           would have run afoul of both the misleading and  
13           the unfairness part if they were canvassed at all.

14                           MS EDWARDH:   May I address you,  
15           Mr. Commissioner?

16                           THE COMMISSIONER:   Please do.

17                           MS EDWARDH:   I, of course,  
18           understand your duty of fairness to the officer  
19           and fully expect that the procedural fairness that  
20           is required will be extended to him, but my  
21           interest here today is fairness to Mr. Arar.

22                           We have received numerous, lengthy  
23           public documents that touch upon these  
24           investigative steps.  Sometimes we have received  
25           information to obtain that has been filed and

1           sworn to by officers in aid of criminal  
2           investigations. And my problem, quite frankly,  
3           not having been privy to this hearing and not  
4           having been permitted to make submissions on this  
5           issue, I don't know what is off limits. I can, I  
6           suppose, divine it by what Mr. Cavalluzzo doesn't  
7           see fit to touch. But with the greatest of  
8           respect, Mr. Arar has an interest, a very strong  
9           interest, in looking at some of these  
10          investigative steps that we have been given  
11          documents about.

12                        I understand and will accept any  
13          direction you provide to me should I trespass on  
14          issues that affect the ability of the officer to  
15          answer candidly, but my focus and my  
16          cross-examination is more based upon those steps  
17          rather than the reasons for them. I will make  
18          submissions about the propriety of those steps,  
19          even though I have not heard all the evidence when  
20          I come to making final submissions to you.

21                        THE COMMISSIONER: That is one of  
22          the difficulties with this inquiry: that  
23          Mr. Arar's participation necessarily is not  
24          complete. There is with this witness, and there  
25          has been with other witnesses, areas of evidence

1           that we have heard in camera, and so Mr. Arar has  
2           not had the opportunity, through you, to test that  
3           evidence by cross-examination.

4                       As I have indicated on several  
5           occasions, with that in mind, Commission counsel,  
6           I can assure you, has done their best to test the  
7           evidence thoroughly in camera so that it doesn't  
8           simply go in unchallenged, and I think they have  
9           done an exceptionally good job.

10                      But that is just simply one of the  
11           things that results from the nature of this  
12           process: that Mr. Arar, unfortunately, does not  
13           have access to all of the evidence and does not  
14           have the opportunity through you to test all of  
15           the evidence, only some of it.

16                      MS EDWARDH: Can you,  
17           Mr. Commissioner, for my benefit at least, and  
18           Mr. Arar's benefit, identify for me what are the  
19           areas that I cannot ask questions about? I would  
20           like on the public record what are the specific  
21           factual areas that are known in the documents that  
22           I can't question about.

23                      THE COMMISSIONER: I think, as I  
24           said in my ruling, we are going to have to play  
25           this in the cross-examination to some extent as we

1 go.

2 The purpose of preparing the  
3 examination-in-chief by Mr. Cavalluzzo and  
4 distributing that was to identify areas which do  
5 not transgress the directives that I have given  
6 with respect to what can and cannot be canvassed.

7 I think you can start with the  
8 assumption that Commission counsel, and indeed  
9 myself, have done our best to maximize public  
10 disclosure through this witness and to maximize  
11 the amount of evidence that can be called through  
12 the witness.

13 As Mr. Cavalluzzo indicated, he  
14 has spent an enormous amount of time, I can tell  
15 you, trying to work it out in order to do just  
16 that. I would hope by now that it is clear that  
17 the Commission -- Mr. Cavalluzzo, myself, and the  
18 others involved -- have over the last several  
19 months done everything we possibly can to maximize  
20 disclosure. I am repeating now. We are not going  
21 to, though, have public disclosure if it can prove  
22 to be unfair to an individual or to an  
23 institution.

24 The solution, the best solution, I  
25 am satisfied, is that in my report, which will

1           come, I will report fully to the government and at  
2           that time I will prepare a report, again, that  
3           will maximize the disclosure of information that I  
4           have heard in camera and my conclusions.

5                           I am optimistic that at the end of  
6           the day the conclusions that I reach, based on all  
7           of the evidence, will be made public. I suppose  
8           time will tell. But I can assure you -- and I  
9           have said it before -- that my commitment is that  
10          that occur.

11                           MS EDWARDH: I appreciate,  
12          Mr. Commissioner, the invitation to accept  
13          Mr. Cavalluzzo's lead in the areas that are open.  
14          I have the highest regard for his forensic skills.  
15          But I don't entirely disregard our own. So it may  
16          be, because I am not privy to what can't be talked  
17          about in any detail, it is not through wanting to  
18          be non-compliant but I do sometimes think we have  
19          a slightly different approach than Mr. Cavalluzzo.

20                           THE COMMISSIONER: Right.

21                           MS EDWARDH: So do I take then  
22          from your instruction that we will deal with this  
23          on a question-by-question basis, as your ruling  
24          indicated?

25                           THE COMMISSIONER: I would hope

1           that when it becomes obvious that certain matters,  
2           in my view, ought not be canvassed in public  
3           because of concerns about either misleading or  
4           unfairness to the witness, that the signal would  
5           become clear and there wouldn't need to then be  
6           repeated questions after it has become clear that  
7           those matters ought not to be canvassed.

8                                So when I say  
9           question-by-question, I would hope that -- and I  
10          am sure it would with you, Ms Edwardh -- that you  
11          would pick up the signal of where I am headed,  
12          whether you agree with me or not.

13                              MS EDWARDH:   Of course.

14                              Sometimes it has been my  
15          understanding, Mr. Commissioner, that it may be  
16          that we have a question that learned counsel for  
17          the Commission has not thought of, that we just  
18          want on the record for you to think about.

19                              THE COMMISSIONER:  Absolutely.

20                              MS EDWARDH:  And it may be that we  
21          just place it there, waiting for the witness to  
22          make an objection, knowing that one is likely, but  
23          it is one we are inviting you to consider.

24                              So we will try and balance those  
25          two concerns, and I of course will take my

1 direction from you, absolutely.

2 THE COMMISSIONER: Okay.

3 MS EDWARDH: The other question I  
4 have very simply relates to the order of  
5 cross-examination, and we can deal with that at an  
6 appropriate time.

7 THE COMMISSIONER: Thank you, Ms  
8 Edwardh.

9 I am just going to make a comment,  
10 Mr. Copeland.

11 Let me just repeat what I said at  
12 the beginning. I think it is important that the  
13 public and the media understand the nature of this  
14 process. Like Mr. Cavalluzzo, as I have said, I  
15 am satisfied that it can be done in a way that is  
16 not unfair to the witness and that will not  
17 mislead the public. But, necessarily, that means  
18 that the public in this hearing will not be  
19 hearing the entire story.

20 For that reason, I caution the  
21 public against drawing any premature conclusions  
22 about the witness and what may have happened  
23 because, as I say, there is evidence that has been  
24 heard in camera. It may be that this is, in a  
25 sense, a plea for patience, patience on the part



1 of many of those involved and the public as well,  
2 to be patient and to wait until the report is  
3 issued.

4 We have adopted a process where in  
5 that report I will consider all of the evidence  
6 and will base my conclusions on all of the  
7 evidence.

8 Mr. Copeland?

9 MR. COPELAND: Thank you  
10 Mr. Commissioner.

11 As I am sure you are aware,  
12 although some in the room may not be aware, I am  
13 counsel for Abdullah Almalki.

14 As, again you are aware, he was  
15 initially refused standing when an application was  
16 brought by Mr. Edelson. So far as I am aware,  
17 Mr. Almalki was not notified of the evidence that  
18 was being heard at this inquiry that affected his  
19 reputation. He became aware of that evidence and,  
20 as you are aware, in my absence last week,  
21 Ms Jackman brought an application for standing on  
22 my part on behalf of Mr. Almalki.

23 And so far as I understand your  
24 ruling -- and I apologize, but I only returned to  
25 Toronto late Saturday night -- we have been

1 granted standing so far for the testimony of  
2 Mr. Cabana.

3 THE COMMISSIONER: Right.

4 MR. COPELAND: My client is very  
5 concerned about what the RCMP and CSIS have done  
6 to his reputation. He is very concerned about how  
7 the actions of the RCMP and CSIS led to his  
8 detention and severe interrogation in Syria. He  
9 is very concerned about how the evidence at this  
10 inquiry will impact on his reputation.

11 I am greatly hampered in  
12 representing him by the non-participation to date  
13 and by the lack of detailed knowledge that I have  
14 about evidence that has gone in at this inquiry.  
15 I also will have, I think, some great problems  
16 knowing what areas I can examine on -- much like  
17 Ms Edwardh -- as to what is permissible and what  
18 is going to get barred by national security, and I  
19 have the additional difficulty that at this point  
20 I am not quite sure what areas I am allowed to ask  
21 questions about generally, what issues will be  
22 raised.

23 So I just wanted to alert you to  
24 that. I may have questions of this officer that  
25 get into the national security issues, and I

1 expect that I will be shut down when that happens.  
2 But I just wanted to make you aware of the  
3 concerns that I have.

4 THE COMMISSIONER: Just to  
5 clarify, Mr. Copeland, I was aware of the  
6 application that Ms Jackman brought on behalf of  
7 her client and on your behalf for Mr. Almalki.  
8 What I indicated through Mr. Cavalluzzo is I would  
9 rule, and I now rule, is that you do have standing  
10 for purposes of dealing with evidence that relates  
11 to your client and for purposes of addressing  
12 evidence that may adversely affect your client's  
13 reputation.

14 As I understand it, the evidence  
15 that will be led through this witness will mention  
16 your client from time to time. I am not sure of  
17 the exact details. But in any event, it will.

18 So your standing and your  
19 participation will be with respect to that issue.

20 As a general guideline I would say  
21 to you that your cross-examination of the witness  
22 should be limited to the interest which gives rise  
23 to your standing.

24 So it is not a grant of standing,  
25 if you will, generally for all of the issues in

1 the inquiry; it is a focused grant of standing. I  
2 will accompany the grant of standing with a  
3 recommendation of funding with respect to the  
4 grant.

5 MR. COPELAND: Thank you.

6 THE COMMISSIONER: Thank you.

7 MS JACKMAN: I echo what  
8 Mr. Copeland said.

9 THE COMMISSIONER: Thanks,  
10 Ms Jackman, and I make then the same order that I  
11 did with respect to you and to your client in  
12 exactly the same terms.

13 Just to indicate for the record,  
14 your client's name.

15 MS JACKMAN: I am appearing for  
16 Ahmed El Maati.

17 MS McISAAC: Mr. Commissioner, we  
18 were completely unaware of either of these  
19 applications and had no foreknowledge that this  
20 application was going to be made this morning, or  
21 any opportunity to make representations.

22 THE COMMISSIONER: Actually, it is  
23 consistent with the ruling that I made back in my  
24 initial ruling denying standing to these two when  
25 they applied at the outset.

1                   I apologize for that, Ms McIsaac.  
2           Would you like an opportunity to oppose these  
3           applications?

4                   MS McISAAC: I would like an  
5           opportunity to think about them, sir, because I am  
6           not sure what the implications are.

7                   THE COMMISSIONER: I have made a  
8           tentative ruling.

9                   Ms McIsaac, do you oppose these  
10          two counsel asking questions of this witness with  
11          respect to evidence that affects their clients and  
12          their clients' reputation?

13                  MS McISAAC: May I reserve my  
14          comments on that until I have had an opportunity  
15          to think about it, sir?

16                  THE COMMISSIONER: It is just that  
17          that will be coming up fairly soon.

18                  MS McISAAC: Yes. I will  
19          certainly advise you prior to that happening. I  
20          have to seek instructions as well.

21                  THE COMMISSIONER: I might just  
22          indicate for the record that I had, at the  
23          beginning when I made rulings on standing earlier,  
24          made what I considered to be a rather normal  
25          direction in a public inquiry of this sort: that

1 the type of standing that I have now granted to  
2 these two counsel would be available.

3 Ms Edwardh?

4 MS EDWARDH: Could I take a  
5 position with respect to the application?

6 I want to make two observations,  
7 Mr. Commissioner.

8 When all the applications for  
9 standing came forward, no one was given an  
10 opportunity to comment on other applicants. It  
11 was a matter for your discretion, as a matter of  
12 fairness to the persons. I certainly remind you  
13 of that process, because I think that no one other  
14 than you should determine the propriety of the  
15 grant of standing.

16 THE COMMISSIONER: Thank you.

17 We will simply wait until we hear  
18 from Ms McIsaac.

19 In that sense, I guess the ruling  
20 that I made this morning will be provisional or  
21 held in abeyance until we hear from you,  
22 Ms McIsaac.

23 MS McISAAC: Thank you, sir.

24 THE COMMISSIONER: Are we ready to  
25 begin?

1 MR. CAVALLUZZO: Just on that  
2 point, Commissioner, I want to remind counsel that  
3 there have been several grants of standing with  
4 counsel here today without notice to other  
5 parties. These matters are within your  
6 discretion.

7 THE COMMISSIONER: Absolutely.

8 MR. CAVALLUZZO: I reiterate  
9 Ms Edwardh's point.

10 THE COMMISSIONER: I agree. I am  
11 looking at at least three counsel in the back row  
12 who we didn't go through the formality of giving  
13 notice, and I don't recall Mr. Arar being given  
14 notice and an opportunity to object. That  
15 certainly has not been the process.

16 That said, Ms McIsaac makes the  
17 request, and I think if she wishes to consider it,  
18 she may do so.

19 MR. CAVALLUZZO: Thank you,  
20 Commissioner.

21 I wonder if we might start now  
22 with the evidence of Mr. Michael Cabana, and I  
23 would ask that he be sworn.

24 THE COMMISSIONER: He has been  
25 sworn in, in the in-camera proceedings, and I

1 think the oath that was administered previously is  
2 sufficient, so we can just carry on.

3 PREVIOUSLY SWORN: MICHEL CABANA

4 MR. CAVALLUZZO: At the outset of  
5 Mr. Cabana's testimony I would like to introduce a  
6 number of exhibits at this point in time.

7 First of all, we have Mr. Cabana's  
8 personal notes.

9 THE COMMISSIONER: And the exhibit  
10 number for that?

11 THE REGISTRAR: 166.

12 MR. CAVALLUZZO: Yes, 166 would be  
13 his personal notes.

14 EXHIBIT NO. P-166: Personal  
15 Notes of Michel Cabana

16 MR. CAVALLUZZO: Second is the  
17 affidavit of Randy Walsh, which is the ITO for the  
18 search warrants in January of 2002, which we will  
19 be dealing with.

20 THE COMMISSIONER: 167.

21 EXHIBIT NO. P-167: Affidavit  
22 of Randy Walsh (New Version  
23 of Exhibit P-85, Vol. 2,  
24 Tab 43)

25 MR. CAVALLUZZO: Finally for



1           counsel, in Exhibit P-131 we have a table of  
2           concordance for redacted exhibits. We have  
3           updated that, and that should be now placed as  
4           part of P-131.

5                           THE COMMISSIONER: So this  
6           replaces the previous 131?

7                           MR. CAVALLUZZO: That's correct.

8                           THE COMMISSIONER: Thank you.

9           EXAMINATION

10                          MR. CAVALLUZZO: Mr. Cabana, I  
11           would like to initially deal with your education  
12           and professional background, but I just want to  
13           state at the outset that you were the officer in  
14           charge of Project A-OCANADA between its creation  
15           in October of 2001 and February of 2003.

16                          Is that correct?

17                          MR. CABANA: That's correct.

18                          MR. CAVALLUZZO: In terms of your  
19           education, you received a diploma or degree in  
20           business administration at CJEP in Quebec?

21                          MR. CABANA: That's correct.

22                          MR. CAVALLUZZO: And you joined  
23           the RCMP when?

24                          MR. CABANA: I joined the RCMP in  
25           June 1981.

1 MR. CAVALLUZZO: Perhaps at this  
2 time we may identify Mr. Cabana's curriculum  
3 vitae, which was an exhibit in the in-camera  
4 proceedings but can be made an exhibit in these  
5 public proceedings.

6 THE COMMISSIONER: 168.

7 EXHIBIT NO. P-168:

8 Curriculum Vitae

9 Superintendent Mike Cabana

10 MR. CAVALLUZZO: You told us you  
11 joined the RCMP in June of 1981, and if I can just  
12 highlight your career with the RCMP, for five and  
13 a half years you were in Moncton, New Brunswick,  
14 with the drug police.

15 Is that correct?

16 MR. CABANA: I held different  
17 postings around the Moncton area. At one point in  
18 time I was with the drug section, yes.

19 MR. CAVALLUZZO: And you were a  
20 major crime investigator in that area?

21 MR. CABANA: Yes, I was.

22 MR. CAVALLUZZO: From Moncton you  
23 moved on to Fredericton Highway Patrol, then a  
24 major crime unit within Fredericton itself?

25 MR. CABANA: That's correct.

1 MR. CAVALLUZZO: Between 1992 and  
2 1993 you were with the Anti Drug Profiteering  
3 Unit?

4 MR. CABANA: That's correct.

5 MR. CAVALLUZZO: And where was  
6 that located?

7 MR. CABANA: That was in  
8 Fredericton as well, sir.

9 MR. CAVALLUZZO: In 1997 you were  
10 transferred to Ottawa headquarters with the  
11 Integrated Proceeds of Crime Unit?

12 MR. CABANA: At the branch, at  
13 headquarters with the Proceeds of Crime Branch.

14 MR. CAVALLUZZO: In 1999 you were  
15 seconded to IPOC major project investigating a  
16 multi-million dollar fraud case involving  
17 organized crime?

18 MR. CABANA: That's correct.

19 MR. CAVALLUZZO: And during your  
20 time with the IPOC, you gained experience in  
21 integrated teams through the IPOC?

22 MR. CABANA: Yes.

23 MR. CAVALLUZZO: Obviously we will  
24 come back to this, but you obviously operated with  
25 a number of agencies outside the RCMP?

1 MR. CABANA: Yes, I did.

2 MR. CAVALLUZZO: Your expertise is  
3 in criminal operations and not in national  
4 security investigations?

5 MR. CABANA: That's correct.

6 MR. CAVALLUZZO: As I said  
7 earlier, before your appointment as the OIC at  
8 Project A-OCANADA, you were made the OIC of the  
9 IPOC in 2001?

10 MR. CABANA: In the fall of 2001,  
11 yes.

12 MR. CAVALLUZZO: On October 5,  
13 2001, Project A-OCANADA was created in the "A"  
14 Division in Ottawa and at that point in time you  
15 became the Officer in Charge?

16 MR. CABANA: Yes, I did.

17 MR. CAVALLUZZO: You maintained  
18 that position until February 4th of 2003?

19 MR. CABANA: Yes, that's correct.

20 MR. CAVALLUZZO: And when you left  
21 the OIC position of Project A-OCANADA, where did  
22 you go?

23 MR. CABANA: While I was the OIC  
24 of Project A-OCANADA, I continued with my  
25 functions as the OIC of the IPOC unit at "A"

1 Division, and I simply continued with those  
2 duties.

3 MR. CAVALLUZZO: Sorry, I didn't  
4 hear the last part of that answer.

5 MR. CABANA: I'm sorry. While I  
6 was the OIC of Project A-OCANADA, I continued with  
7 my duties as the OIC of the IPOC unit in Ottawa,  
8 and upon concluding my responsibilities with  
9 Project A-OCANADA, I simply continued with the  
10 duties of OIC of the IPOC unit.

11 MR. CAVALLUZZO: So you maintained  
12 the position of OIC of IPOC while you were the OIC  
13 of Project A-OCANADA?

14 MR. CABANA: Yes, I did.

15 MR. CAVALLUZZO: Finally, on April  
16 26th of 2004, you were moved to your present  
17 position. Is that correct?

18 MR. CABANA: That's correct, sir.

19 MR. CAVALLUZZO: And that is in  
20 Montreal?

21 MR. CABANA: Yes, it is.

22 MR. CAVALLUZZO: And what is that  
23 position?

24 MR. CABANA: I am the assistant  
25 Criminal Operations Officer for the Province of

1 Quebec, responsible for national security and  
2 border integrity.

3 MR. CAVALLUZZO: At the outset of  
4 your evidence, Mr. Cabana, I would like to give  
5 some context to the investigations that we are  
6 going to be referring to, and in particular, at  
7 the outset I would like to deal with the context  
8 of the aftermath of 9/11 and ask you initially,  
9 after the impact of 9/11, September 11th of 2001,  
10 what impact that had on the investigators of the  
11 RCMP in the Ottawa area in which you were located?

12 MR. CABANA: Well, as you can  
13 imagine, the impact was quite severe, from a  
14 member's perspective, if that is what we are  
15 focusing on now. I guess the best way to term it  
16 is life as we knew it for the investigators  
17 stopped on 9/11.

18 The priorities that everybody had  
19 been assigned to, or working on, prior to 9/11  
20 were basically put on the shelf and everybody was  
21 redirected to try to address the threat and the  
22 crisis that was ongoing with respect to terrorist  
23 attacks.

24 There was a significant amount of  
25 pressure that was being put on the investigators,

1 not necessarily from U.S. agencies. There was  
2 some pressure that was being put, of course, from  
3 management on investigators, on the teams, but I  
4 would say the greatest pressure actually came from  
5 within the group itself, from the investigators.

6           Everybody was horrified with the  
7 attacks that had taken place on 9/11. The  
8 information, which unfortunately I'm prevented  
9 from referring to, that reached us clearly  
10 identified a continuation of an imminent threat,  
11 including a threat to Canada, and everybody was  
12 concerned to do everything in their power to make  
13 sure that no further attacks occurred.

14           It wasn't a situation where we  
15 were focusing necessarily on preventing attacks in  
16 Canada. I guess the best way I can describe it is  
17 the borders, as we knew it, had come down. All  
18 agencies, domestic, provincial, municipal and  
19 foreign, were working together to prevent any  
20 further attacks from occurring anywhere around the  
21 world.

22           MR. CAVALLUZZO: We heard from the  
23 public contextual evidence of Deputy Commissioner  
24 Loepky that resources were diverted to these  
25 kinds of investigations and duties and

1           responsibilities which flowed from the events of  
2           9/11.

3                               Is that correct?

4                               MR. CABANA: That is absolutely  
5           true. I guess it was unprecedented. I have been  
6           in law enforcement for 25 -- 24 years now, and I  
7           have never experienced anything like this, where  
8           the partnership and the collaboration between law  
9           enforcement and government agencies, again both  
10          domestic and foreign, was -- I had never seen  
11          anything like that.

12                              Everybody was focused on ensuring  
13          that appropriate resources were being assigned to  
14          address this new threat, if you want.

15                              MR. CAVALLUZZO: We have heard in  
16          the evidence something called Project Shock. I  
17          wonder if you might describe what Project Shock  
18          was, which I understand was created around that  
19          time?

20                              MR. CABANA: Project Shock was the  
21          initial response, if you want, of the RCMP to the  
22          attacks on 9/11. Project Shock was put in place  
23          at the headquarters level, at CID, in an effort to  
24          coordinate, if you want, the flow of information  
25          that was coming in and coordinate all the efforts



1 to make sure that no further attacks occurred.

2 Similar projects were created  
3 across the country, in all the different  
4 provinces, including in "A" Division.

5 MR. CAVALLUZZO: We have heard in  
6 the evidence, the contextual evidence, that there  
7 was something in each division called NSIS, which  
8 is responsible for national security matters.

9 Did the NSIS have any particular  
10 responsibility in respect of Project Shock?

11 MR. CABANA: Very much so. In  
12 each of the provinces -- well, I would say in the  
13 majority of the provinces, the parallel projects  
14 that were put in place under Shock fell under the  
15 responsibility of the NSIS units. The NSIS units  
16 were not equipped at the time to handle the volume  
17 of information that was coming in, so members were  
18 seconded to supplement these teams.

19 I believe across the country there  
20 is upwards of over 2,000 resources, members and  
21 support staff, that were redirected from criminal  
22 operations to try to address this.

23 MR. CAVALLUZZO: Right. And prior  
24 to 9/11, were the NSIS units involved in  
25 investigations or were they more involved in

1 intelligence-gathering and analysis?

2 MR. CABANA: I would say that  
3 prior to 9/11, the NSIS units were more focused on  
4 intelligence type of national security work. The  
5 in-depth type of criminal investigations, even  
6 though it related to terrorism, was not common.

7 MR. CAVALLUZZO: I understand as a  
8 result of -- and obviously we are focusing on the  
9 "A" Division in Ottawa.

10 I understand that as a result of  
11 the massive amount of tips and calls and so on  
12 that came in resulting from 9/11 and part of  
13 Project Shock that you were called upon to create  
14 some kind of information or case management system  
15 for the NSIS in the "A" Division?

16 MR. CABANA: Yes. I believe it  
17 was around September 12th that the criminal  
18 operations officer, referred to as CROPS officer,  
19 requested that I attend the NSIS unit to structure  
20 the unit and put in place a case management system  
21 to be able to better coordinate the flow of the  
22 information, because prior to 9/11 these units had  
23 never been faced with the amount of information  
24 that was reaching them on a daily basis.

25 MR. CAVALLUZZO: Okay.

1                   Commissioner, at this point in  
2                   time, we are going to deal with the CSIS  
3                   notification in September-October 2001 of  
4                   suspects, and we do have public information in  
5                   that regard.

6                   Mr. Cabana may not have -- and  
7                   does not have -- direct knowledge of this, and as  
8                   a result of this, in order to maintain a flow in  
9                   his direct examination, I intend now to read into  
10                  the record portions of the draft summary of the  
11                  CSIS evidence that you prepared, as well as the  
12                  public version of the Walsh ITO, which has just  
13                  been introduced as an exhibit.

14                 THE COMMISSIONER: These will be  
15                 matters about which Inspector Cabana does not have  
16                 direct knowledge himself so he cannot testify.

17                 MR. CAVALLUZZO: That's right.

18                 THE COMMISSIONER: This is just to  
19                 give some continuity and coherence to the evidence  
20                 you are leading?

21                 MR. CAVALLUZZO: That's right.

22                 THE COMMISSIONER: And you are now  
23                 going to read in matters that are in the public  
24                 record.

25                 MR. CAVALLUZZO: That's correct.

1                   If counsel want to cross-examine  
2           me on it afterwards, I'm prepared to be  
3           cross-examined.

4                   THE COMMISSIONER: That I would  
5           like to see.

6           --- Laughter / Rires

7                   MR. CAVALLUZZO: If we can  
8           commence, I am reading from the draft summary of  
9           the CSIS evidence that the Commission prepared,  
10          Mr. Cabana. I will just read it into the record.

11                   MR. CABANA: Yes, sir.

12                   MR. CAVALLUZZO: At paragraph 4,  
13          it states:

14                               "Within one month of  
15                               September 11th, 2001, CSIS  
16                               transferred to the RCMP  
17                               primary responsibility for  
18                               national security  
19                               investigations on a number of  
20                               targets that were believed to  
21                               warrant criminal  
22                               investigation and possible  
23                               charges."

24                   And then there's a redaction.

25                               "An RCMP-coordinated

1 investigation project was  
2 created. The project was  
3 called Project OCanada, and  
4 its operation in Ottawa was  
5 called Project A-OCANADA."

6 Just stopping there, Mr. Cabana,  
7 of course Project OCANADA was in the Toronto area?

8 MR. CABANA: Yes, it was.

9 MR. CAVALLUZZO: Moving on now to  
10 paragraph 5, it states:

11 "This transfer of  
12 investigations allowed CSIS  
13 to focus its resources on  
14 security threats that were  
15 less clear and to search for  
16 new threats. It was the most  
17 extensive transfer of  
18 investigations ever made by  
19 CSIS to the RCMP. The  
20 transfer of investigations  
21 was not made simply because  
22 of resource limits. CSIS  
23 believed that there was a  
24 good possibility that the  
25 RCMP would be able to lay

1 criminal charges against the  
2 individuals whose files had  
3 been transferred. Even with  
4 its resource allocation  
5 before the budget cutbacks in  
6 the 1990s, CSIS would have  
7 made the same decision to  
8 transfer the investigations.  
9 As yet there have been no  
10 prosecutions of any of the  
11 individuals in question.  
12 However, criminal  
13 investigations continue, as  
14 does the prospect of criminal  
15 charges under the new  
16 anti-terrorism legislation  
17 that was introduced in Bill  
18 C-36."

19 And that is the portion I read in  
20 from the summary of the CSIS evidence.

21 I would refer now to paragraph 13  
22 of the public version of the Walsh ITO, and it  
23 states:

24 "A police investigation  
25 targeting a suspected

1 terrorist cell operating in  
2 the ... and ... started in  
3 late September 2001 as a  
4 result of information  
5 provided by CSIS. CSIS had  
6 provided the named of ...  
7 suspected terrorists in ...  
8 and later, the name of a  
9 suspected ... for the  
10 terrorist network who lived  
11 in ... A Joint Force  
12 Investigative Team was  
13 established in ... to  
14 investigate the ... group of  
15 suspects and this team was  
16 assigned the project name  
17 'OCANADA'. Shortly  
18 thereafter, a similar Joint  
19 Force Investigative Team was  
20 established in ... and  
21 assigned the name 'A-OCANADA'  
22 to investigate the  
23 allegations about the ...  
24 terrorist suspect."

25 Commissioner, now we will flesh

1 out that information through the evidence of  
2 Mr. Cabana.

3 I am going to lead you a bit,  
4 Mr. Cabana, in order to expedite the matter so  
5 that we can get quickly to the creation of Project  
6 A-OCANADA. So I would like to first deal with the  
7 creation of Project OCanada, which you told us was  
8 located in the Toronto area.

9 I understand that in late  
10 September of 2001, a joint force investigative  
11 team was established to investigate and was  
12 assigned the project name OCanada in Toronto?

13 MR. CABANA: That's correct, sir.

14 MR. CAVALLUZZO: And by a joint  
15 force investigative team, can you give us some  
16 idea of what that means in layman's language?

17 MR. CABANA: It means there is  
18 input and representation from different law  
19 enforcement and government bodies on the  
20 investigative team. So it's not strictly an RCMP  
21 made-up team, if you want.

22 MR. CAVALLUZZO: And I understand  
23 that on September 24th of 2001, a joint management  
24 team was formed with senior officers of the RCMP  
25 and two other police agencies. The JMT, as it's



1 referred to, was formed specifically to provide  
2 guidance for Project A-OCANADA and a case  
3 management team was also formalized at that time.

4 Is that correct?

5 MR. CABANA: In relation to  
6 Project OCanada?

7 MR. CAVALLUZZO: That's correct.

8 MR. CABANA: That's correct, sir.

9 MR. CAVALLUZZO: On September 27th  
10 of 2001, we understand that there was a briefing  
11 for Project OCanada, including profile sheets and  
12 information on named targets. Personnel were  
13 advised that they were now part of a CFSEU, and I  
14 understand that stands for a Combined Forces  
15 Special Enforcement Unit?

16 MR. CABANA: That's correct.

17 MR. CAVALLUZZO: And this  
18 initiative was governed by a particular MOU  
19 between the different agencies.

20 When we come to Ottawa, I  
21 understand that in early October 2001, shortly  
22 after OCanada was created, that a similar joint  
23 force investigative team was established and  
24 assigned the project name A-OCANADA?

25 MR. CABANA: That's correct, sir.

1 MR. CAVALLUZZO: I understand that  
2 there were a number of targets that A-OCANADA was  
3 to investigate, and one of the Ottawa targets I  
4 understand was Abdullah Almalki.

5 Is that correct?

6 MR. CABANA: Yes sir.

7 MR. CAVALLUZZO: Now I would like  
8 to --

9 MR. COPELAND: Excuse me.

10 Mr. Commissioner, again, partly  
11 because of the lateness of my arrival, I'm not  
12 quite sure how I'm going to deal with issues of my  
13 client's name coming up, and I gather it comes up  
14 fairly regularly.

15 Everything that comes up in  
16 relation to my client obviously is going to affect  
17 his reputation, so perhaps I will just say at the  
18 outset that I'm very concerned about how easily  
19 his name is thrown around in relation to this.

20 There is no question it is now a  
21 matter of public record, partly because of what  
22 has come out at this inquiry and very much because  
23 of what appear to be leaks, I would assume by  
24 either CSIS or the RCMP earlier on, that linked  
25 him to these parts of the investigation; also

1 partly as a result of the applications before the  
2 various judges in the Ontario Court of Justice,  
3 the Superior Court of Justice, the Ontario Court  
4 of Appeal and the Federal Court.

5 So it has come out in a number of  
6 ways, but I'm very concerned that when it comes  
7 out just as bluntly as that, that he is a main  
8 focus of the investigation. He is obviously very  
9 aware that that is now the position, but every  
10 time that his name is mentioned and everything  
11 that the RCMP have CSIS have done have greatly  
12 affected his reputation.

13 THE COMMISSIONER: I think it's a  
14 fair point you raise, Mr. Copeland, and as you  
15 indicate, other than through this inquiry, there  
16 has been extensive disclosure through a variety of  
17 sources. So to the extent that there is an  
18 unfairness, I guess that has occurred.

19 What I can do here, and let me do  
20 it at this point -- and you may want to think how  
21 I might better do this.

22 I would simply say to people the  
23 fact that your client's name -- and indeed this  
24 would apply to Mr. El Maati, who is Ms Jackman's  
25 client -- is mentioned in the course of the

1 evidence, as it now has been and will again, does  
2 not mean that these individuals are guilty of  
3 anything.

4 Indeed, as you would quickly point  
5 out, they have never been charged --

6 MR. COPELAND: That was one of the  
7 things I intended to point out.

8 THE COMMISSIONER: -- with any  
9 offence.

10 We talk about fairness here  
11 insofar as the witness is concerned. That is  
12 important. But the process should be fair to  
13 everyone.

14 And there would be, I can tell  
15 you, information in camera that would relate to  
16 your client and to Mr. El Maati which they,  
17 unfortunately, don't know about, because the  
18 government claims national security  
19 confidentiality.

20 The point I'm making is that  
21 people, the public and the media, should not draw  
22 conclusions that because names are mentioned that  
23 that necessarily means they have done anything  
24 wrong at all. Indeed, the public and the media  
25 should be aware that they don't have an

1 opportunity to address information that they don't  
2 know about, and so there is a danger that people,  
3 in hearing names mentioned in evidence in this  
4 inquiry, could jump to wrong conclusions.

5 I simply make that request, that  
6 the public not draw conclusions.

7 If there is something else that  
8 you and Ms Jackman think of that I can do to  
9 promote that idea of fairness to your clients, I  
10 would certainly be open to hearing submissions  
11 from you and from Ms McIsaac and other counsel.

12 MR. COPELAND: Let me say that I  
13 won't rise every time my client's name is  
14 mentioned, but that is the concern that I have  
15 throughout these proceedings.

16 THE COMMISSIONER: As I say, I'm  
17 pleased to hear from counsel again with respect to  
18 how we do it.

19 MR. COPELAND: Thank you.

20 THE COMMISSIONER: I have made --  
21 and I will go on about this because it is  
22 important.

23 I have made the same comment with  
24 respect to Inspector Cabana: that people should  
25 not draw conclusions adverse to him from the

1 evidence because, as I said in my ruling, there  
2 may be things in camera which could explain a  
3 certain course of conduct that he is not able to  
4 refer to.

5 So that this process, both from  
6 Inspector Cabana's standpoint and from others  
7 whose names may be mentioned, as we keep saying,  
8 is not perfect. Nonetheless, we are satisfied  
9 there is value to hearing the evidence.

10 If people heed the caution not to  
11 draw conclusions that are adverse to anyone's  
12 interest, my report will be coming at some point,  
13 and I'm going to repeat that caution, as  
14 necessary, throughout the proceeding.

15 Thank you, Mr. Copeland.

16 MR. COPELAND: Could I just make  
17 one other comment, Mr. Commissioner?

18 THE COMMISSIONER: Sure.

19 MR. COPELAND: It is certainly a  
20 concern of my client that there are patterns of  
21 behaviour in relation to what happened to various  
22 people who were incarcerated in Syria that should  
23 impact on your work, and I just want to emphasize  
24 that my client's treatment in Syria, while not the  
25 same as Mr. Arar's, was not a pleasant experience,

1 and I will be hoping that I can explore some of  
2 that.

3 I may have some difficulties with  
4 you on that subject, but I just want to make you  
5 aware of that.

6 THE COMMISSIONER: Thank you.

7 Mr. Fothergill?

8 MR. FOTHERGILL: Thank you,  
9 Commissioner. I wonder if I might say something  
10 from a national security confidentiality  
11 perspective.

12 From our perspective, we would  
13 have preferred that none of the targets of either  
14 Project OCanada or Project A-OCANADA ever be made  
15 public, in part for reasons of protecting the  
16 integrity of the investigation, but also  
17 respecting the privacy rights of those involved.

18 I just want to say that the only  
19 reason why Mr. Almalki and Mr. El Maati have been  
20 identified is because I think our hand was forced  
21 by disclosure in other fora.

22 I think it's probably worth noting  
23 that they are not the only targets. I think it  
24 may be one way to proceed that we refrain from  
25 naming them whenever possible, because I think

1 from the perspective of your mandate, the  
2 importance of the individual identities of the  
3 other targets is not terribly important.

4 So I think, in fairness to all, if  
5 we can just acknowledge that these are not the  
6 only targets, that we should not pay undue  
7 attention to them, and as we move forward in the  
8 evidence, if we can generally refrain from naming  
9 them but simply refer to another target, we may be  
10 able to alleviate some of the concerns expressed  
11 by Mr. Copeland.

12 THE COMMISSIONER: I think that's  
13 a good idea, and to the extent the evidence can  
14 still be coherent in doing it that way, I agree.

15 Let me repeat the point that both  
16 of you have now made: that the disclosure of  
17 these names was through other fora long before we  
18 got to it here, and in that sense, the horse was a  
19 long way out of the barn.

20 MS JACKMAN: The only concern I  
21 have with Mr. Fothergill's suggestion,  
22 Mr. Commissioner, is that we need to know which  
23 target is our client. So if they just say an  
24 unnamed target, I won't know if they are talking  
25 about Mr. Almalki or Mr. El Maati. It creates



1 difficulties.

2 THE COMMISSIONER: Mr. Cavalluzzo?

3 MR. CAVALLUZZO: I will deal with  
4 it. I will ensure the name is not used. I will  
5 also ensure that counsel for the particular  
6 unnamed target at a particular point in time is  
7 aware that that is who we are talking about.

8 THE COMMISSIONER: Hopefully if  
9 you have been given a statement of anticipated  
10 evidence, or whatever it's called, you can do  
11 that.

12 Certainly, Mr. Cavalluzzo, if you  
13 cooperate with both counsel, we can address that  
14 concern. Thank you.

15 Go ahead.

16 MR. CAVALLUZZO: I guess the only  
17 other matter for the record is you have stated,  
18 Mr. Commissioner, with Mr. Copeland, that  
19 Mr. Almalki has not been charged. I think the  
20 same thing should be said about Mr. El Maati.

21 THE COMMISSIONER: I'm sorry, I  
22 meant to say it about both. Neither of those two  
23 individuals have been charged.

24 MR. CAVALLUZZO: Mr. Cabana, if we  
25 can come back to your evidence, I want to deal now

1 with -- once again we are in the aftermath of  
2 9/11, and I want to look now to  
3 information-sharing with other agencies,  
4 relationships with other agencies.

5 If we could start now in the  
6 context of Project Shock, can you give us some  
7 idea of what was the understanding with respect to  
8 cooperation with other agencies, and particularly  
9 focusing on the sharing of information?

10 MR. CABANA: I guess to understand  
11 the information-sharing process that was put in  
12 place, you have to look at the actual mandate that  
13 flowed from the creation of Project Shock.

14 There is actually three mandates  
15 that investigators were provided with or directed  
16 with.

17 The first mandate, of course, was  
18 prevention. In other words, we were directed to  
19 adopt a zero tolerance and -- I guess the best way  
20 to term it -- leave no stones unturned. We were  
21 to do everything in our power to prevent anything  
22 else from happening.

23 The second part of the mandate, of  
24 course, dealt with intelligence. We had to ensure  
25 that we could gather and exchange, share

1 intelligence, as quickly as possible, and the  
2 explanation/justification behind it, I guess, goes  
3 to the actual attacks on 9/11 and the fact that  
4 one of the first steps that we took upon creating  
5 Project Shock is communicating with our  
6 counterparts in the U.S. and ask what should we be  
7 looking for. Were there any indicators, anything  
8 we should be aware of in trying to identify or  
9 focus on the threat to Canada?

10 And the reality was that at the  
11 time there was nothing. In other words, there  
12 were pieces of the puzzle that were there that  
13 nobody knew were there.

14 So it's a little different than a  
15 normal criminal investigation, where normally you  
16 know what you are looking for. In this case here  
17 we knew there was something, but we didn't know  
18 what we were looking for.

19 So in order for us to be able to  
20 assess and make sure that we didn't miss this  
21 piece of the puzzle, we had to ensure timely  
22 sharing of all intelligence.

23 And of course the third part of  
24 the mandate dealt with prosecution.

25 MR. CAVALLUZZO: In respect of

1           those three mandates -- you have talked about  
2           prevention, intelligence and prosecution -- was  
3           there a priority in respect of any of these one of  
4           three mandates?

5                         MR. CABANA:   First and foremost  
6           mandate was prevention.  In other words, you do  
7           everything you can to make sure nothing happens  
8           anywhere.  If at the end of the day we are  
9           successful in prosecuting individuals or groups,  
10          that's fine.  But right now the priority is not to  
11          accumulate the information in an admissible  
12          format; the priority is to make sure that nothing  
13          blows up.

14                        MR. CAVALLUZZO:  Was there at this  
15          point in time development or establishment of a  
16          partnership arrangement with a number of law  
17          enforcement and perhaps security intelligence  
18          agencies?

19                        MR. CABANA:   I'm not sure I  
20          understood the question.

21                        MR. CAVALLUZZO:  As a result of  
22          9/11 and as a result of the information-sharing  
23          that we are going to be getting into, did the RCMP  
24          have a number of partners that they were going to  
25          have -- or stakeholders that they were going to

1 deal with in respect of carrying out this mandate?

2 MR. CABANA: Yes, there was a  
3 large number of stakeholders. Some agencies were  
4 more prominent in the partnership that was  
5 established, and there were discussions and  
6 agreements that were put in place with respect to  
7 information-sharing and directives.

8 I guess the description that I  
9 received to the situation, which was very unusual,  
10 was that the investigation that we were conducting  
11 was to be an open-book investigation. We were  
12 working in close partnerships with domestic and  
13 foreign agencies, and the marching orders that we  
14 received is to make sure that all available  
15 information is shared with these agencies, and  
16 again it goes to the prevention mandate.

17 MR. CAVALLUZZO: You have told us  
18 that you were working with foreign agencies, and I  
19 think you can name those foreign agencies that you  
20 would be working with.

21 MR. FOTHERGILL: Excuse me,  
22 Commissioner, with respect. There is a claim of  
23 national security confidentiality with respect to  
24 the identity of the U.S. agencies with the  
25 exception of the FBI.

1 MR. CAVALLUZZO: Okay. One of  
2 your partners was the FBI, and there were a number  
3 of other --

4 MR. CABANA: FBI and friends.

5 MR. CAVALLUZZO: And friends.  
6 American friends, though?

7 MR. CABANA: Yes.

8 MR. CAVALLUZZO: American friends.  
9 Okay.

10 You have talked about this  
11 open-book investigation in terms of  
12 information-sharing, and I assume what you are  
13 talking about is the feeling was that you couldn't  
14 tolerate delays in terms of sharing of information  
15 if you were going to try and prevent the kind of  
16 incident we saw in 9/11?

17 MR. CABANA: Very much so. In the  
18 discussions post-9/11, some of the discussions  
19 focused on the importance of ensuring that nobody  
20 was holding any information that might be -- or  
21 appear innocuous to them but, taken into the  
22 context of other information that other agencies  
23 had in their possession, might be that piece of  
24 the puzzle that we are talking about.

25 MR. CAVALLUZZO: We have heard

1 reference in terms of the understandings that  
2 might have been reached at this time, something  
3 called caveats are down. We know what caveats  
4 are. I won't take you to the RCMP caveat.

5 But have you heard the expression  
6 "caveats are down"?

7 MR. CABANA: Yes, I did very early  
8 in the project, actually when the project here in  
9 Ottawa was created. Again it goes to directives  
10 that we received to the effect that we had to  
11 share all information with these agencies without  
12 any delays.

13 In other words, the way it was  
14 described to us is you are working hand in hand  
15 with these people now, and when you are working in  
16 partnership with agencies, caveats don't apply.

17 MR. CAVALLUZZO: Perhaps you could  
18 give us an understanding of what that means,  
19 "caveats don't apply". Does that mean that if the  
20 RCMP gave information to another agency, that that  
21 agency could use that information to whichever end  
22 it believed possible?

23 MR. CABANA: No. The way I  
24 understood the agreement that was put in place  
25 post-9/11 is there was an agreement amongst these

1 agencies that the information was going to be  
2 free-flowing amongst the agencies. Everybody  
3 understood what the purpose of the sharing was and  
4 the procedure that had to be followed if this  
5 information was to be used for anything.

6 In other words, it was  
7 intelligence that was being shared for  
8 intelligence purposes. If it was to be used in  
9 the context of criminal proceedings, there were  
10 clear procedures that had to be followed.

11 MR. CAVALLUZZO: Right. And they  
12 would be procedures with the RCMP so that the RCMP  
13 would have the ultimate say as to whether that  
14 information could be used in the criminal  
15 prosecution.

16 Is that correct?

17 MR. CABANA: With respect to the  
18 RCMP, yes.

19 MR. CAVALLUZZO: I'm going to  
20 refer to a couple of documents, but before doing  
21 this I just want to ensure that this free flow of  
22 information, caveats are down, open-book  
23 investigation, is an understanding which you  
24 obtained from your superiors.

25 MR. CABANA: Oh, very much so. It



1 was the direction that was discussed at numerous  
2 meetings, video conferences, and it's also the  
3 directives that I received from my immediate  
4 superiors from the criminal operations office.

5 MR. CAVALLUZZO: When we come to  
6 the composition of A-OCANADA, we are going to have  
7 you name those officers.

8 But let's look at a couple of  
9 documents relating to information-sharing.

10 I am referring initially to  
11 Exhibit P-85, Volume 1.

12 Mr. Cabana and Commissioner, if  
13 you would look to the material, or the briefing  
14 note, behind tab 21, this was a briefing note  
15 which is dated February 4th of 2004. It was  
16 created by the Head of CID for Commissioner  
17 Zaccardelli, and it described the  
18 information-sharing arrangement in the following  
19 words.

20 It states:

21 "Following the events of  
22 9/11, a new era of openness  
23 and an environment of sharing  
24 was necessitated by the need  
25 to prevent further terrorist

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

14 And then it says:

15 "[Certain parties] met  
16 periodically and shared  
17 information of relevance to  
18 ongoing investigations."

19 Does that description that was  
20 given to the Commissioner accord with your  
21 understanding of what was going on in 2001, 2002  
22 and 2003?

23 MR. CABANA: Very much so. This  
24 makes reference to the agreement, inter-agency  
25 agreement.

1                   MR. CAVALLUZZO: You had no direct  
2 knowledge of the inter-agency agreement, but you  
3 knew that at senior levels this agreement was  
4 reached?

5                   MR. CABANA: I wasn't party to  
6 these initial discussions. It was just related to  
7 me in the directions that I received.

8                   MR. CAVALLUZZO: I would like to  
9 now just finally look at Exhibit P-85, Volume 5.

10                   If you go behind tab 22 of Volume  
11 5, this is an e-mail from Richard Proulx. As we  
12 know, Richard Proulx was the head of CID at the  
13 material time, so would be responsible for  
14 national security investigations, and it's to  
15 others.

16                   It is dated September 26th of  
17 2001, and it captures a telephone conference  
18 between the Commissioner of the RCMP and a number  
19 of Chiefs of Police across the country.

20                   There are certain points that I  
21 would reference.

22                   For example, in the second bullet  
23 point down, it says:

24                   "- They all agree with some  
25 form of integration of

1 security and law enforcement  
2 agencies (i.e., JFO that  
3 includes RCMP, CSIS, CCRA...  
4 - All mentioned that sharing  
5 of intelligence is a must and  
6 they need to be in the know."

7 It goes on, in the next bullet  
8 point:

9 "The Commissioner reassure  
10 them that all necessary  
11 intelligence will be shared  
12 and that a protocol/process  
13 will be put in place within  
14 the RCMP to accomplish that."

15 To your knowledge, was there ever  
16 a protocol or process put in place within the RCMP  
17 to deal with this sharing of information?

18 MR. CABANA: Other than the  
19 initial agreement, inter-agency agreement?

20 MR. CAVALLUZZO: Right.

21 MR. CABANA: No.

22 MR. CAVALLUZZO: Then it refers to  
23 other things, such as all daily situation reports  
24 will be delivered to Chiefs of Police, Deputy  
25 Chiefs, and so on.

1                   The only other reference I would  
2                   make is on the second page of that e-mail.

3                   The postscript states:

4                                 "Since most of the  
5                                 correspondence exchanged will  
6                                 be classified material, they  
7                                 should be reminded not to  
8                                 disseminate further without  
9                                 proper authorization from the  
10                                originator."

11                   We will be coming back to that  
12                   designation of classified material.

13                   There are a number of policies,  
14                   Inspector Cabana, that I would like to briefly  
15                   deal with you. These are, in my view, the  
16                   relevant policies dealing with the issues and  
17                   items that we are going to be dealing with in your  
18                   testimony.

19                   I would now refer you to Exhibit  
20                   12, which is the Loepky Book of Documents.

21                   If we could first look at what we  
22                   have just referred to, the designation or  
23                   classification of information, if you look  
24                   initially, Inspector Cabana, to tab 26, we have an  
25                   administrative guideline or policy of the RCMP

1           entitled "Organizational and Administrative  
2           Security".

3                           MR. CABANA:   Yes.

4                           MR. CAVALLUZZO:   And the first  
5           reference to you would be to section J.

6                           Section J, for the purposes of the  
7           RCMP -- this can be found, if you look at the top  
8           right corner, at page 3 of 11 -- is really the  
9           classification or designation of information.

10                          In the first paragraph of J, we  
11           see what classified information is, that is:

12                                        "Materiel assets deemed to be  
13                                        sensitive in the national  
14                                        interest must be CLASSIFIED."

15                          And then it goes on and it says in  
16           J.2 on the next page:

17                                        "Materiel assets with value  
18                                        or importance that warrant  
19                                        safeguarding must be  
20                                        DESIGNATED."

21                          So information that is publicly  
22           available is not to be classified or designated.

23                          This is really for counsel and the  
24           Commissioner just to take them through this  
25           quickly, because we will be coming back to these

1 rules.

2 J.6 is important because it deals  
3 with when classified information is received.

4 It says:

5 "When CLASSIFIED information  
6 is received from another  
7 federal institution or  
8 agency, a provincial,  
9 municipal or regional  
10 government, foreign  
11 government, or from an  
12 international organization of  
13 nations or one of its  
14 institutions, it must be  
15 protected at the  
16 CONFIDENTIAL, SECRET or TOP  
17 SECRET levels, or if  
18 applicable, in accordance  
19 with an agreement between the  
20 RCMP and the government or  
21 institution concerned."

22 Then it says in the next  
23 paragraph:

24 "The written permission of  
25 the originator is required to

1 release or downgrade  
2 CLASSIFIED information."

3 I'm not going to take you through  
4 that, but for counsel's interest, in section K we  
5 have what is called the "Injury Testing"; that is  
6 how something is classified as -- or is  
7 classified, as well as designated.

8 For example, in respect of  
9 designated protected information on the next page,  
10 you should be aware of paragraph K.5 because we  
11 are dealing with protected information, and we  
12 will be coming to this in respect of Project  
13 A-OCANADA: that there are three categories there,  
14 PROTECTED-A, PROTECTED-B and PROTECTED-C.

15 PROTECTED-A is information of low  
16 sensitivity; B being particularly sensitive  
17 information; and PROTECTED-C being extremely  
18 sensitive information.

19 In respect of the general rule  
20 relating to the release of classified or  
21 designated information, if we could go now to  
22 section N at page 7, we see the general rule in  
23 N.1, which states:

24 "CLASSIFIED/DESIGNATED  
25 information may be released



1                   only to an individual who has  
2                   a need to know and possesses  
3                   a security clearance or  
4                   reliability status  
5                   commensurate with the  
6                   sensitivity of the  
7                   information being released."

8                   So we see that there are two  
9                   conditions there. One is the need to know, and  
10                  secondly is the appropriate security clearance or  
11                  reliability status.

12                  And I'm going to come now to  
13                  caveats, which we referred to earlier, and it  
14                  states in N.2:

15                         "When sensitive information  
16                         CLASSIFIED in the national  
17                         interest is shared with or  
18                         released to other  
19                         governments, departments or  
20                         organizations not covered by  
21                         the Security Policy and  
22                         Standards of the Government  
23                         of Canada, the RCMP must  
24                         ensure, through written  
25                         agreements, e.g. MOU, that

1                   appropriate safeguards are  
2                   established for the  
3                   safekeeping of the  
4                   information. For appropriate  
5                   statements, see App. XI-1-5."

6                   This provision, you would agree  
7                   with me, Inspector Cabana, would relate to,  
8                   obviously, the FBI and American friends as a  
9                   result of the fact that they are obviously not  
10                  covered by the Canadian security policy?

11                  MR. CABANA: That's correct.

12                  MR. CAVALLUZZO: If we see the  
13                  precedent, or statement which is to be included,  
14                  if we go to Appendix XI-1-5 at the back, it's two  
15                  pages from the back, we see the caveats that are  
16                  to be inserted in respect of classified  
17                  information -- I'm sorry, you don't have that?

18                  Do you have it now?

19                  MR. CABANA: Yes.

20                  MR. CAVALLUZZO: We see the  
21                  caveats which are to be inserted in respect of  
22                  classified information, and in particular, if we  
23                  are dealing with the FBI and American friends in  
24                  paragraph (b) it states:

25                  "The following statement must

1 be included on all outgoing  
2 correspondence, messages and  
3 documents being passed to  
4 other domestic and foreign  
5 law enforcement  
6 agencies/departments."

7 And then it is stated in quotes:  
8 "'This document is the  
9 property of the RCMP. It is  
10 loaned to your  
11 agency/department in  
12 confidence and it is not to  
13 be reclassified or further  
14 disseminated without the  
15 consent of the originator.'"

16 And then there are other caveats  
17 as well.

18 And then in the second paragraph  
19 we see which caveats are to be inserted in  
20 designated information.

21 In regard to privacy concerns, if  
22 we move now, Inspector Cabana, to tab 27, this is  
23 another operational guideline entitled "I.3  
24 Assistance".

25 If we go to section L, there are a

1 number of relevant areas here but there is only a  
2 couple that I would like to deal with.

3 Unfortunately, this portion is not  
4 paginated, but if you go to L -- it's at the  
5 top -- the title in section L is "Release of  
6 Information". I will just read to you the  
7 important aspects here.

8 The general rule is set out in  
9 L.2.a and it states that:

10 "1. The disclosure of  
11 personal information must be  
12 made in accordance with the  
13 Privacy Act.

14 2. Subsection 8(1), Privacy  
15 Act, forbids disclosure of  
16 personal information without  
17 the consent of the person to  
18 whom the information  
19 relates."

20 And then it states that subsection  
21 8(2) lists exceptions to subsection 8(1).

22 It would seem to me that the  
23 relevant exception to our situation is L.2.b.,  
24 "Consistent use Disclosure".

25 I that correct?

1 MR. CABANA: Yes, sir.

2 MR. CAVALLUZZO: That provides,  
3 for those that do not have the document here:

4 "As law enforcement is  
5 considered one broad  
6 consistent use, the RCMP may  
7 collect personal information  
8 for one law enforcement  
9 purpose and release it for  
10 another law enforcement  
11 purpose.

12 1. A member must not seek or  
13 collect personal information  
14 solely for the purpose of  
15 facilitating inquiries or  
16 investigations undertaken by  
17 another law enforcement or  
18 government agency.

19 2. In such a case, a law  
20 enforcement or government  
21 agency should be advised to  
22 seek direct access to the  
23 desired information."

24 And then another important  
25 provision is in subparagraph 2.

1                                   It provides:

2                                   "Under the provisions of

3                                   L.2.b.1, the RCMP may

4                                   disclose personal information

5                                   to the following agencies for

6                                   legitimate investigative

7                                   purposes in connection with

8                                   their official duties and

9                                   responsibilities relating to

10                                  enforcement or administration

11                                  of law:

12                                  1. Canadian law enforcement

13                                  agencies and correctional

14                                  services, and investigative,

15                                  enforcement and support

16                                  bodies of federal, provincial

17                                  or territorial governments;

18                                  and

19                                  2. foreign law enforcement

20                                  agencies, correctional

21                                  services and investigative or

22                                  enforcement bodies of

23                                  government departments."

24                                  I am going to ask a question at

25                                  this point in time, and giving my friend an

1 opportunity to respond -- I don't know if this is  
2 permitted.

3 Is it your understanding that our  
4 American -- that one of the American agencies,  
5 such as the Central Intelligence Agency, that is  
6 the CIA, would that be a foreign law enforcement  
7 agency within the meaning of this RCMP policy?

8 And just wait to answer the  
9 question.

10 MR. FOTHERGILL: I have no  
11 objection.

12 MR. CAVALLUZZO: Thank you.  
13 Could you answer that question?

14 MR. CABANA: Yes, sir, I believe  
15 it would be.

16 MR. CAVALLUZZO: We normally  
17 consider the CIA to be an intelligence agency, and  
18 the wording here is "a foreign law enforcement  
19 agency".

20 Could you tell us why you believe  
21 that the CIA would be a foreign law enforcement  
22 agency within the meaning of this policy?

23 MR. CABANA: Because by the  
24 definition, the CIA is an investigative body.

25 MR. CAVALLUZZO: In respect of

1           that, that understanding that the CIA is an  
2           investigative body, is that understanding which  
3           you have, is that common within the RCMP, to your  
4           knowledge?

5                           MR. CABANA:  Yes, it is, and even  
6           more so following 9/11.

7                           MR. CAVALLUZZO:  Then finally in  
8           paragraph 3 there are other references that we  
9           need not make at this point in time.

10                           In regard to the caveat that we  
11           saw, I have a question.

12                           You said at senior levels we had  
13           this caveats are down or open-book investigation  
14           arrangement.  So it would appear that the policy  
15           that we reviewed relating to caveats was in some  
16           sense suspended as a result of this understanding  
17           or agreement reached at senior levels.

18                           MR. CABANA:  I'm not sure I would  
19           term it as suspended.  If you look at the policy,  
20           the policy makes reference to the fact that under  
21           certain circumstances the information can flow  
22           without caveat if there are proper MOUs in place  
23           and things of that nature.

24                           Policy, RCMP policy, is devised as  
25           a guideline, and it's a guideline that we base



1           some of our investigative steps, how we go about  
2           developing the different investigations.

3                         The policy, RCMP policy, was  
4           clearly not developed with the prospect of dealing  
5           with an event like 9/11. MOUs developed, like is  
6           being referred to in a policy for sharing of  
7           information, is a process that takes a lot of  
8           time. I have been involved in some of these  
9           processes, and they take actually several months  
10          and sometimes even more than a year.

11                        Clearly under the circumstances of  
12          9/11, that was not feasible, and I think that goes  
13          to the actual agreement, inter-agency agreement,  
14          that was put in place.

15                        MR. CAVALLUZZO: The policy or the  
16          reference you are making is to paragraph N.2 that  
17          we referred to earlier in the previous tab. And  
18          that provides that if you are going to share  
19          information, for example, with a foreign agency --  
20          this is at page 7 of 11 of the previous tab.

21                        THE COMMISSIONER: Of tab 26?

22                        MR. CAVALLUZZO: Of tab 26, yes.

23                        THE COMMISSIONER: Right.

24                        MR. CAVALLUZZO: I just want to  
25          make sure I understand your evidence here.

1                   Once again, if you look at the top  
2 of the page -- it's 7 of 11 -- it says at N.2 at  
3 the bottom:

4                   "When sensitive information  
5                   CLASSIFIED in the national  
6                   interest is shared with or  
7                   released to other  
8                   governments, departments or  
9                   organizations not covered  
10                  by..."

11                  The government policy, and that is  
12 what we have been talking about with the federal  
13 agencies.

14                  "... the RCMP must ensure,  
15                  through written agreements,  
16                  e.g. MOU, that appropriate  
17                  safeguards are established  
18                  for the safekeeping of the  
19                  information."

20                  That is what you are referring to?

21                  MR. CABANA: That is what I'm  
22 referring to when I suggest that the inter-agency  
23 agreement dealt with this.

24                  MR. CAVALLUZZO: It says it must  
25 be a written MOU. Was there a written MOU between

1 the agencies, to your knowledge?

2 MR. CABANA: Not to my knowledge,  
3 no.

4 MR. CAVALLUZZO: So you have never  
5 seen a written --

6 MR. CABANA: I have never seen a  
7 written agreement, no.

8 MR. CAVALLUZZO: Just before we  
9 move on from the sharing of information, while you  
10 were on Project A-OCANADA, which would bring us  
11 once again to February of 2003, was there any  
12 notice that that open-book arrangement, the  
13 caveats-are-down policy, was no longer apt and  
14 that you were going to revert back to caveats?

15 MR. CABANA: Not when I was  
16 attached to that project, no, sir.

17 MR. CAVALLUZZO: Okay.

18 Let us move on then, staying in  
19 the same tab 27. I want to deal briefly to the  
20 arrangements that RCMP has with CSIS respecting  
21 the release of information.

22 That can be found in section E of  
23 this particular policy, and that is the fourth  
24 page in.

25 In E.15.a, we see how requests for

1 assistance are made, and that is that the RCMP  
2 provides general police assistance to CSIS.

3 Paragraph (b) talks about the use  
4 of CSIS information in judicial proceedings.

5 What I would like to focus on is  
6 (c), which deals with when information is released  
7 by the RCMP.

8 It says, first of all, in  
9 paragraph 1:

10 "Release of criminal  
11 information/intelligence from  
12 operational case files will  
13 be made on a case-by-case,  
14 need-to-know basis,  
15 consistent with the terms  
16 outlined in Part III of the  
17 MOU between the RCMP and  
18 CSIS."

19 We have reviewed that with Deputy  
20 Commissioner Loepky and which is part of this  
21 Book of Documents.

22 Then it goes on to say:

23 "All information released  
24 must contain caveats as  
25 outlined in App. I-3-8."

1                   If we go to Appendix I-3-8, let's  
2 take a look at that. It is at the back.

3                   THE COMMISSIONER: Is that the  
4 last page?

5                   MR. CAVALLUZZO: No, it's the --  
6 unfortunately this isn't paginated. It's about  
7 seven or eight pages from the back. It is  
8 entitled "Conditions for the Dissemination of  
9 National Security Information".

10                   Do you have that, Inspector?

11                   MR. CABANA: No, sir, I don't.

12                   MS EDWARDH: Mr. Commissioner, in  
13 our book, it is the very last page of this tab.

14                   MR. CAVALLUZZO: Is that right?

15                   THE COMMISSIONER: Do you have it  
16 at the last page?

17                   MR. CABANA: Yes, I do.

18                   MR. CAVALLUZZO: In any event, the  
19 second paragraph I would focus in for relevance.

20                   This once again is entitled  
21 "Conditions for the Dissemination of National  
22 Security Information", and in the second paragraph  
23 it states:

24                   "The following conditions  
25 must also be included in all

1                    outgoing correspondence,  
2                    messages and documents being  
3                    passed to other domestic and  
4                    foreign law enforcement  
5                    agencies/departments."

6                    And then we have the two caveats,  
7                    which were the second and third caveats of the  
8                    last policy.

9                    I would like to move on to the  
10                    issue of foreign travel.

11                    Before doing that, it may be an  
12                    appropriate time to break as it's 11:35.

13                    THE COMMISSIONER: Just before we  
14                    break.

15                    Mr. Bayne, I didn't mean to leave  
16                    you out of the earlier discussion with respect to  
17                    any things I should say with respect to fairness  
18                    to your client. In my ruling, you will recall  
19                    that I indicated that I would give admonitions  
20                    from time to time about people not drawing  
21                    premature conclusions and so on.

22                    If you have any submissions along  
23                    those lines, particularly having regard to my  
24                    ruling, please feel free to make them as you see  
25                    fit.

1 MR. BAYNE: Thank you. I have  
2 nothing so far to add.

3 THE COMMISSIONER: Then we will  
4 take a 15-minute break.

5 THE REGISTRAR: Please stand.

6 --- Upon recessing at 11:34 a.m. /

7 Suspension à 11 h 34

8 --- Upon resuming at 11:52 a.m. /

9 Reprise à 11 h 52

10 THE REGISTRAR: Please be seated.

11 Veuillez vous asseoir.

12 MR. CAVALLUZZO: Mr. Cabana, we  
13 were just about to go on to the question of  
14 foreign travel, and I wonder if you might now go  
15 to tab 29.

16 This is the policy entitled  
17 "Investigation Guidelines", and the reference here  
18 would be to section I, at page 4 of 14.

19 MR. CABANA: Yes.

20 MR. CAVALLUZZO: And just reading  
21 some paragraphs for counsel that don't have access  
22 to this book at this time, paragraph 1.a states:

23 "A member will not undertake  
24 any investigational activity  
25 in a foreign country without

1 the knowledge of the Liaison  
2 Officer and the explicit  
3 consent of the foreign  
4 country."

5 Then it goes on:

- 6 "1. A member has no legal  
7 authority to conduct  
8 enquiries in the country  
9 being visited unless  
10 authorized by the country.  
11 2. A member must be  
12 accompanied by a  
13 representative of the foreign  
14 country during the course of  
15 the investigation.  
16 3. In many countries it is  
17 an offence for an agent of a  
18 foreign government to conduct  
19 enquiries."

20 If we go on to the next page and

21 1.b, it states:

22 "Travel to a foreign country  
23 for investigational purposes  
24 is restricted to:

- 25 1. Canadian investigations



1                    requiring evidence or  
2                    information to be gathered in  
3                    a foreign country, or  
4                    2. foreign cases of  
5                    enforcement interest to  
6                    Canada requiring evidence or  
7                    information to be gathered in  
8                    the foreign country by RCMP  
9                    personnel or technical  
10                    equipment."

11                    Stopping there, I have a question  
12                    for you.

13                    It says in the first paragraph.

14                    "Travel to a foreign country  
15                    for investigational purposes  
16                    is restricted to:  
17                    1. Canadian investigations  
18                    requiring evidence or  
19                    information to be gathered in  
20                    a foreign country."

21                    Would that apply, Mr. Cabana, to a  
22                    situation in which the RCMP wanted to interview a  
23                    Canadian who was detained in a foreign country?

24                    MR. CABANA: Yes, sir, it would.

25                    MR. CAVALLUZZO: Okay. And then

1 if we could, there are a couple of other  
2 paragraphs on this page.

3 Paragraph I.1.d:

4 "With the exception of an LO,  
5 a member must not use a  
6 foreign agency to contact  
7 another foreign agency."

8 And finally at I.2.b, in terms of  
9 approval:

10 "If the travel request  
11 requires National  
12 Headquarters approval, submit  
13 your request to division  
14 immediately upon knowing the  
15 need to travel to a foreign  
16 country."

17 If an RCMP officer wanted to  
18 travel to a foreign country, once again to  
19 interview a Canadian detained in that foreign  
20 country, would he or she need the approval of  
21 national headquarters?

22 MR. CABANA: Yes, he would.

23 MR. CAVALLUZZO: Then if we go to  
24 page 7 of 14, which deals with the interviews  
25 themselves, paragraph I.2.g states:

1 "Do not contact or interview  
2 Canadians in custody in a  
3 foreign country unless:  
4 1. the interview was  
5 requested through a Canadian  
6 government representative, or  
7 consent to the interview is  
8 given in writing, and  
9 2. the interview has been  
10 approved by the head of the  
11 foreign post."

12 The question that I would have for  
13 you is: Does the Charter of Rights and Freedoms  
14 apply to you as an RCMP officer when you are  
15 interviewing a Canadian detained abroad or in a  
16 foreign nation?

17 MR. CABANA: Very much so, sir.

18 MR. CAVALLUZZO: It does.

19 MR. CABANA: Yes.

20 MR. CAVALLUZZO: The second  
21 question I would have is: Does the Charter of  
22 Rights and Freedoms apply when you submit  
23 questions to a foreign agency to ask that Canadian  
24 who is detained abroad?

25 MR. CABANA: It would be in

1 relation to a suspect or in relation to a  
2 potential witness?

3 MR. CAVALLUZZO: Starting first  
4 with a suspect.

5 MR. CABANA: I think that would be  
6 a legal issue. It would be an issue to be debated  
7 in court over the admissibility of any statement  
8 that was to be obtained.

9 If the interview is a direct  
10 request from Canada, I would submit that, yes, it  
11 probably does. If it is an interview that is  
12 being conducted independently by the foreign  
13 state, no, I would say it doesn't.

14 MR. CAVALLUZZO: But what about a  
15 situation where you know that a foreign agency is  
16 going to be questioning the Canadian detained  
17 abroad and they call upon you for any questions  
18 you may want to ask the Canadian. Would that  
19 invoke the application of the Charter or would it  
20 not, dealing once again, first, with a suspect,  
21 then dealing with a witness?

22 MR. CABANA: If the interview is  
23 being conducted in the context of their  
24 investigation for their own process, then I would  
25 submit that their legal requirements would apply.

1 MR. CAVALLUZZO: So the foreign  
2 legal requirements would apply, not the Charter of  
3 Rights?

4 MR. CABANA: Not the Charter of  
5 Rights.

6 MR. CAVALLUZZO: Okay. And what  
7 if the foreign nation abroad has the person  
8 detained and says to the Canadian agency, "We have  
9 this guy or woman detained, Canadian, would you  
10 like us to ask any questions for you?" Would the  
11 Charter apply in that circumstance?

12 MR. CABANA: Again, like I say,  
13 this is something that would be open to debate and  
14 in a situation like that consultation would take  
15 place with our legal advisors to see the best  
16 course of action and whether or not we need to  
17 concern ourselves with the Charter.

18 Right now I would say it's not a  
19 clear -- I couldn't give you a clear answer on  
20 that. My inclination would be that, yes, it would  
21 apply.

22 MR. CAVALLUZZO: Let us move now  
23 to when the RCMP is dealing with countries with  
24 poor human rights records and go to tab 31, which  
25 is the policy entitled "Information Sources", and

1 go to section M, which can be found at page 17 of  
2 the tab.

3 MR. CABANA: Yes, sir.

4 MR. CAVALLUZZO: This section  
5 deals with foreign liaison, and I would like to  
6 just focus on two or three paragraphs.

7 If you go to the next page under  
8 paragraph M.1.c, it states:

9 "The Department of Foreign  
10 Affairs and International  
11 Trade formalizes agreements  
12 between the RCMP and foreign  
13 police, security or  
14 intelligence agencies."

15 And M.3.a provides:

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

25 And then five conventions are

1           therein set out.

2                           MR. CABANA:  Yes, sir.

3                           MR. CAVALLUZZO:  Finally, in M.3.b  
4           it states:

5                                   "The disclosure of  
6                                   information to an agency of a  
7                                   foreign government that does  
8                                   not share Canada's respect  
9                                   for democratic or human  
10                                  rights may be considered if  
11                                  it:  
12                                  1.  is justified because of  
13                                  Canadian security or  
14                                  law-enforcement interests,  
15                                  2.  can be controlled by  
16                                  specific terms and  
17                                  conditions, and  
18                                  3.  does not have a negative  
19                                  human rights connotation."

20                                  And that particular policy we will  
21           come back to in the course of your evidence.

22                                  Finally, Inspector Cabana, if we  
23           could just go then to tab 34, this is the policy  
24           respecting national security investigations which  
25           was in existence at the point in time that we are

1 going to be dealing with today.

2 The first question I would have  
3 for you, Mr. Cabana, is whether this particular  
4 policy, that is, the policy relating to national  
5 security investigations, applied to the  
6 investigation of Project A-OCANADA?

7 MR. CABANA: No, sir, it did not.  
8 We were involved in a criminal investigation.

9 MR. CAVALLUZZO: Okay. And we  
10 will come back to that.

11 There are just certain points in  
12 the policy, the national security policy, that I  
13 would refer to.

14 First of all in B.2 on the first  
15 page is deals with the MOU between CSIS and the  
16 RCMP, once again which is part of this Book of  
17 Documents and which we reviewed with Deputy  
18 Commissioner Loepky.

19 C.1 provides that:

20 "Members will not gather  
21 information on or investigate  
22 organizations engaged in  
23 lawful activity."

24 C.2:

25 "Members will restrict



1 investigations to persons  
2 within organizations  
3 allegedly committing criminal  
4 acts and will not  
5 unnecessarily expand  
6 investigations to the  
7 organizations themselves."

8 And then it goes in paragraph D.1  
9 and provides that:

10 "For an effective National  
11 Security Investigations  
12 Program, all information  
13 concerning real and potential  
14 national security threats  
15 must be entered promptly on  
16 the Secure Criminal  
17 Information System..."

18 That is something called SCIS, and  
19 we will come back to that when we are dealing with  
20 the information or data systems that Project  
21 A-OCANADA had.

22 In paragraph E, we have the  
23 mandate in respect of national security  
24 investigations, which I leave for counsel to read.

25 In E.2 we have the reporting

1 structure, and we see that there is a reporting  
2 structure to national headquarters, and we'll  
3 compare that to the reporting relationship with  
4 Project A-OCANADA.

5 I am not going to read these but  
6 point out to counsel that they are relevant.

7 E.2.b deals with the foreign  
8 liaison officer.

9 E.2.c deals with the RCMP/CSIS  
10 liaison officer, as do the remaining paragraphs of  
11 the policy.

12 As I say, this is the policy that  
13 was in effect at the material time.

14 The next two or three tabs show  
15 the evolution of that policy to its current state  
16 today, which can be found behind tabs 37 and 38.

17 I would like to move on,  
18 Mr. Cabana, now to the mandate of Project  
19 A-OCANADA.

20 You told us before, in respect of  
21 Project Shock, that the three-part mandate was  
22 prevention, intelligence, and prosecution. Is it  
23 fair to say that that would be the same mandate  
24 which existed in respect of Project A-OCANADA?

25 MR. CABANA: Yes, sir.

1 MR. CAVALLUZZO: In terms of the  
2 composition -- let's just deal a little more with  
3 the mandate before we go on to the composition of  
4 A-OCANADA.

5 We understand that originally  
6 A-OCANADA was created to assist Project OCanada,  
7 which is the Toronto unit. Is that correct?

8 MR. CABANA: That's correct, sir.

9 MR. CAVALLUZZO: And very shortly  
10 after the creation of Project OCanada, it became  
11 known that there were certain targets in the  
12 Ottawa area. Is that correct?

13 MR. CABANA: That's correct.

14 MR. CAVALLUZZO: And I understand  
15 that that is what gave rise to the creation of  
16 Project A-OCANADA?

17 MR. CABANA: Well, the actual  
18 creation of Project A-OCANADA stemmed from the  
19 request for assistance that was received from the  
20 Toronto group. Over a very short period of time,  
21 as you pointed out, there was targets from the  
22 Ottawa area that were identified, and the team  
23 became autonomous.

24 MR. CAVALLUZZO: It became  
25 autonomous over time?

1 MR. CABANA: Over a period of  
2 time, yes.

3 MR. CAVALLUZZO: And in respect of  
4 the focus of A-OCANADA, I understand that there  
5 was a financial transaction focus.

6 Is that correct?

7 MR. CABANA: The focus, the main  
8 focus of our investigation dealt with a very  
9 strong international financial component.

10 MR. CAVALLUZZO: Right. And also,  
11 obviously, with terrorist activity as well?

12 MR. CABANA: Very much so, yes.

13 MR. CAVALLUZZO: The question that  
14 I would have is that here in the "A" Division we  
15 already have something called the NSIS that is  
16 mandated to deal with national security concerns,  
17 and I'm just wondering why the "A" Division  
18 decided not to give this particular project to the  
19 NSIS rather than as it did, create a separate  
20 project?

21 MR. CABANA: Well, that decision  
22 was made at the Criminal Operations Officer level.  
23 The decision, from my understanding, was based  
24 mostly on the fact that, as I stated, NSIS were  
25 responsible, still by the beginning of October,

1 for the influx of the tips in relation to Project  
2 Shock. NSIS, still at that point in time, had a  
3 large contingent of members that had been seconded  
4 to assist with these tips, and they were not in a  
5 position to take over management of a major  
6 criminal investigation.

7 That, coupled with the fact that,  
8 as I pointed out, the NSIS unit pre-9/11 were not  
9 focused on conducting major criminal  
10 investigations and did not have some of the  
11 expertise, especially in relation to financial  
12 types of investigations that was required.

13 MR. CAVALLUZZO: And this, we will  
14 call it a task force, was created, as we heard  
15 earlier, sometime in early October.

16 Who put the team together? Who  
17 put Project A-OCANADA together?

18 MR. CABANA: I guess it was a  
19 combination of efforts. The criminal operations  
20 office made arrangements to bring the majority of  
21 the partners to the table and looked after  
22 secondment of necessary resources from those  
23 agencies. I myself looked at gathering specific  
24 individuals from within the division based on  
25 their expertise or expertise that I felt was

1 required.

2 MR. CAVALLUZZO: And what was that  
3 expertise that was required, did you feel?

4 MR. CABANA: Well, it was actually  
5 a wide range of expertise. Of course, the  
6 financial aspect of the investigation dictated  
7 that we needed individuals with a strong financial  
8 background, so there were members from our  
9 commercial crime unit that were seconded. There  
10 was a strong contingent from the IPOC unit, and  
11 that's simply because of the fact that those are  
12 the individuals I was working with and I knew  
13 their capabilities.

14 MR. CAVALLUZZO: Right.

15 MR. CABANA: There was individuals  
16 from our immigration section that were seconded to  
17 the group, criminal intelligence, drug unit. Of  
18 course we had individuals also, because of the  
19 national security aspect of the investigation,  
20 from NSIS that were seconded to the team.

21 We had legal advisors from Justice  
22 that were also seconded to the team. In fact,  
23 they were the same legal advisors from the IPOC  
24 unit.

25 MR. CAVALLUZZO: Did they continue

1 on, as you did, as being legal advisors to the  
2 IPOC unit?

3 MR. CABANA: Yes, on the IPOC  
4 unit, I had a significant number of legal advisors  
5 from Justice Department that were part of the  
6 unit, so they were able to carry or look after  
7 both teams.

8 MR. CAVALLUZZO: As far as the  
9 NSIS person is concerned, I understand that there  
10 was one person from NSIS that was dedicated to  
11 Project A-OCANADA and remained there from its  
12 outset until after you left in February 2002.

13 MR. CABANA: That's correct. From  
14 the inception of the team, there was one member  
15 from NSIS whom I felt probably had the best level  
16 of expertise that was required for our team. He  
17 was seconded fulltime to the team, and over the  
18 progression of the file, other people from NSIS  
19 joined.

20 MR. CAVALLUZZO: But he would  
21 agree with me, at least from what you are saying,  
22 that the main focus was the expertise in financial  
23 transactions, and that's why the bulk of the  
24 people came from the IPOC?

25 MR. CABANA: Yes, that's correct.

1 MR. CAVALLUZZO: Now, in respect  
2 of other agencies -- we know that there were other  
3 agencies; this is an integrated police unit. I  
4 understand that there were participants from the  
5 Ontario Provincial Police?

6 MR. CABANA: That's correct.

7 MR. CAVALLUZZO: And I understand  
8 there was somebody from the Ottawa Police Service?

9 MR. CABANA: More than one  
10 individual from each of the agencies.

11 MR. CAVALLUZZO: We know that two  
12 individuals, one from the Ottawa Police Service  
13 and one from the Ontario Provincial Police, were  
14 the co-managers of the project who directly  
15 reported to you?

16 MR. CABANA: That's correct.

17 MR. CAVALLUZZO: And then there  
18 were other people from Customs, from --

19 MR. CABANA: Revenue Canada.

20 MR. CAVALLUZZO: Revenue Canada,  
21 right.

22 MR. CABANA: That joined the team  
23 as well.

24 MR. CAVALLUZZO: And at its  
25 height, could you help us, how many investigators



1 would there have been in Project A-OCANADA?

2 MR. CABANA: Actual investigators,  
3 I would say between approximately 20. We had  
4 upwards of 40 people on the team. That is  
5 including, of course, support staff and case  
6 managers.

7 MR. CAVALLUZZO: And Project  
8 A-OCANADA was located somewhere in Ottawa,  
9 obviously?

10 MR. CABANA: Yes, it was located  
11 at the "A" Division Headquarters.

12 MR. CAVALLUZZO: A question that I  
13 would have: Were there any Muslim investigators  
14 on Project A-OCANADA?

15 MR. CABANA: Yes, there was.

16 MR. CAVALLUZZO: I understand  
17 there was one from the Ottawa Police Service who  
18 stayed for a period of time and left.

19 MR. CABANA: That's correct, there  
20 was one individual from the Ottawa Police Service  
21 that was seconded to the team for a period of  
22 time. There was also individuals from Sûreté du  
23 Québec that were seconded.

24 MR. CAVALLUZZO: And I understand  
25 that those persons from the Sûreté acted as

1 translators, analyzers of information that  
2 required -- it was information that had to be  
3 translated from Arabic.

4 Is that correct?

5 MR. CABANA: Well, they were -- in  
6 their day job, I guess, they were investigators.  
7 When they joined our team, because of the need for  
8 analysing and putting the information in proper  
9 context, documents in Arabic, they were assigned  
10 that task. But they were part of the  
11 investigative team.

12 MR. CAVALLUZZO: A final question  
13 in this regard. The person from the Ottawa Police  
14 Service, I understand that he only stayed for a  
15 short period of time?

16 MR. CABANA: Well, yes, a short  
17 period of time. Several months, yes.

18 MR. CAVALLUZZO: I would like to  
19 move on to the training of the members of  
20 A-OCANADA.

21 First of all, we reviewed -- and  
22 maybe we can do it quickly now -- with Deputy  
23 Commissioner Loepky the national security  
24 training program, which can be found in his Book  
25 of Documents, Exhibit P-12, at tab 45.

1                   We heard evidence in respect of  
2                   this, Inspector Cabana; that this is a two-week  
3                   course, a 10-day course, that has been put  
4                   together by the RCMP in respect of national  
5                   security investigations.

6                   If you have it there, its purpose  
7                   is described at page 4, for example.

8                   It says:

9                   "The purpose of the National  
10                  Security Enforcement Course  
11                  is to provide course  
12                  candidates with an  
13                  understanding of  
14                  intelligence-led policing in  
15                  the context of the national  
16                  priorities of terrorism.  
17                  This course is designed so  
18                  that persons working on  
19                  investigations relating to  
20                  terrorism acquire  
21                  introductory, current  
22                  knowledge and skills to  
23                  standardize and increase the  
24                  level of expertise of field  
25                  personnel required to perform

1                               these duties."

2                               You can see, as I say, on the next  
3 page that it is a 10-day course, and the syllabus,  
4 or the cases or the subject matters that are  
5 studied can be found at page 9 and following.

6                               There's an overview of the  
7 national security program that is given. There's  
8 something on criminal intelligence and threat  
9 assessment, something on anti-globalization  
10 criminal protest movements, the psychology of  
11 terrorism, cultures, Middle East and Islamic  
12 perspectives, the roots of terrorism, terrorist  
13 threats, the national counter-terrorist plan,  
14 terrorist funding, and the financial investigation  
15 branch, and so on and so forth.

16                              As I say, we reviewed this program  
17 with Deputy Commissioner Loepky, and would ask  
18 you, as the officer in charge of Project  
19 A-OCANADA, had you taken this course?

20                              MR. CABANA: Myself?

21                              MR. CAVALLUZZO: Yes.

22                              MR. CABANA: No.

23                              MR. CAVALLUZZO: Had any members  
24 of Project A-OCANADA taken that course?

25                              MR. CABANA: Yes, well, especially

1 the members from the NSIS unit that were seconded.  
2 Of course, they had received the training.

3 MR. CAVALLUZZO: And that would be  
4 the one person that was dedicated and the other  
5 persons that would rotate through?

6 MR. CABANA: Well, there was  
7 actually three individuals, including the person  
8 that came on the team initially.

9 MR. CAVALLUZZO: Right.

10 MR. CABANA: There were three  
11 individuals who were fulltime, but they didn't all  
12 start at the beginning. And there was another  
13 individual that was in on and off, I guess,  
14 because he still had NSIS responsibilities.

15 MR. CAVALLUZZO: So that would  
16 mean, if you had 20 investigators, that about  
17 three or four may have taken the national security  
18 course?

19 MR. CABANA: Approximately, yes.

20 MR. CAVALLUZZO: The next question  
21 that I would have is -- and I want to just focus  
22 on you, and then we will go to the other members  
23 of Project A-OCANADA -- whether you had any  
24 experience dealing with foreign agencies before  
25 the creation of A-OCANADA?

1 MR. CABANA: Yes, sir, I did.

2 MR. CAVALLUZZO: And which agency  
3 was that?

4 MR. CABANA: Internationally?

5 MR. CAVALLUZZO: Well, dealing  
6 first with the United States.

7 MR. CABANA: The FBI, U.S.  
8 Customs, mostly.

9 MR. CAVALLUZZO: And in respect  
10 of -- this is a question that I think is not  
11 problematic, but just hold on until I ask the  
12 question and give someone an opportunity to  
13 interject.

14 What would your normal  
15 relationship with the CIA be before the creation  
16 of A-OCANADA in your role as an RCMP investigator?

17 MR. FOTHERGILL: There is no  
18 objection, and perhaps I can provide some  
19 clarification.

20 Mr. Cavalluzzo is certainly at  
21 liberty to talk about the policy of dealing with  
22 any agency, much as Deputy Commissioner Loepky  
23 did in the public forum.

24 Where the objection lies is the  
25 particular involvement of particular agencies in

1 the A-OCANADA investigation.

2 MR. CAVALLUZZO: Okay. So you can  
3 respond to that, Mr. Cabana.

4 MR. CABANA: And we are talking  
5 about prior to 9/11?

6 MR. CAVALLUZZO: Prior to 9/11,  
7 yes.

8 MR. CABANA: I had no relationship  
9 with the CIA.

10 MR. CAVALLUZZO: And would that be  
11 true as well, to your knowledge, with respect to  
12 the other members of A-OCANADA?

13 MR. CABANA: Not all of them.  
14 Some of them had had prior working relationship  
15 with the CIA.

16 MR. CAVALLUZZO: In regard to you,  
17 before we move on to the other members, did you  
18 have any training in respect of human rights  
19 issues that may flow from a national security  
20 investigation?

21 MR. CABANA: There is no human  
22 rights training per se available within the RCMP.  
23 There is always components within, I would submit,  
24 practically every investigative or operational  
25 type of courses within the RCMP dealing with

1 Charter issues.

2 But with respect to human rights  
3 type of training, I'm not aware of any.

4 MR. CAVALLUZZO: Would you have  
5 had any training in respect of the human rights  
6 records of countries that you may deal with now  
7 that, as you say, the borders came down, and it  
8 was a global war against terror, so that you would  
9 be dealing with different foreign countries? Were  
10 you trained in respect of the human rights records  
11 of these countries you may be dealing with?

12 MR. CABANA: Again, I'm not aware  
13 of any training available in the RCMP dealing  
14 specifically with human rights records of foreign  
15 countries.

16 MR. CAVALLUZZO: We will come to  
17 this, but in respect of that you would rely upon  
18 the expertise of other agencies in that regard?

19 MR. CABANA: Any time that we deal  
20 with foreign agencies, there's always consultation  
21 process that takes place with our headquarters and  
22 with other government agencies. And I would rely  
23 on these experts, yes.

24 MR. CAVALLUZZO: Okay. Did you  
25 have any training in respect of Muslim culture,



1 values, practices, and so on?

2 MR. CABANA: Again, to my  
3 knowledge, there is no training available in the  
4 RCMP with respect to Muslim customs. There are  
5 cross-cultural types of courses that deal with  
6 different ethnic groups and beliefs and  
7 relationships. But I think I should probably  
8 point out at this time that, first of all, this  
9 investigation was not focusing on the Muslim  
10 community -- far from it. The individuals that  
11 were subject of the investigation were identified  
12 to us, and those were the individuals we were  
13 investigating.

14 MR. CAVALLUZZO: Right. These  
15 courses, these cross-cultural courses that you  
16 refer to, did you take any of them?

17 MR. CABANA: No, I don't believe I  
18 did.

19 MR. CAVALLUZZO: Finally, did you  
20 take any training in respect of Bill C-36?

21 I understand there is a three-day  
22 course given to the RCMP members.

23 MR. CABANA: No. Bill C-36  
24 training flowed again from 9/11. It became  
25 available, I would say, probably around April of

1           2002, if I remember correctly, April-May. And as  
2           with any new type of training initiative, seating  
3           was limited, and I ensured that if we were going  
4           to be assigned seats to participate in the  
5           training, it would be provided to investigators.

6                         Of course, when C-36 was enacted,  
7           I reviewed C-36 and we had numerous discussions  
8           with Justice, with our advisors, over the impact  
9           of C-36.

10                        MR. CAVALLUZZO: I would like to  
11           move on to your members, and that is whether -- we  
12           have talked about your members and whether they  
13           had taken the national security investigation  
14           course, and we have dealt with that.

15                        Now what about in respect of  
16           training on Muslim values, practices, and so on?  
17           Your answer would be the same; that is, that there  
18           are no such courses, there are just these  
19           cross-cultural courses that may be offered?

20                        MR. CABANA: Exactly. There are  
21           cross-cultural courses offered. Some of the  
22           members on the team had been on those courses. We  
23           had NSIS members on our team that had -- and you  
24           have to go back to the structure, the composition,  
25           of the team.

1                   Like I said initially, when the  
2                   team was put together, individuals were selected  
3                   specifically based on the expertise that they  
4                   could bring to the team. That was also true with  
5                   respect to investigative capabilities as well as  
6                   knowledge of national security issues and with the  
7                   participation of Muslim investigators. The  
8                   concern, of course, was to make sure that we  
9                   interpreted everything properly and we didn't take  
10                  any action that would be offensive to the  
11                  community.

12                  MR. CAVALLUZZO: Did you try to  
13                  ensure that your members or the members of Project  
14                  A-OCANADA took whatever courses were available  
15                  relating to Muslim values, culture, and practices,  
16                  or did you feel that that wasn't relevant because  
17                  this was, in your view, a financial investigation?

18                  MR. CABANA: Not at all. Not at  
19                  all. First of all, formal Muslim training, it's  
20                  just not there.

21                  There were informal sessions that  
22                  were put in place. And I'm going by recollection  
23                  here, but I believe that some of these workshops,  
24                  if we can term them that, were initiated by CID.  
25                  Some of them were initiated by "A" Division, just

1 to try to gain a better understanding, where we  
2 had lecturers come in for an hour, two hours,  
3 three hours.

4 In these circumstances, I would  
5 release members to attend. But I was not in the  
6 position to be able to release all investigators  
7 because we were still operating in a situation of  
8 crisis.

9 MR. CAVALLUZZO: These courses,  
10 did you ever suggest that there should be some  
11 kind of formalized training in respect of --

12 MR. CABANA: I was involved in  
13 managing a criminal investigation. Again, the  
14 focus of our investigation was the commission of a  
15 criminal offence. Whether a criminal offence was  
16 committed by somebody from the Muslim community,  
17 Chinese community, or a Canadian community, it  
18 really didn't make any difference. We were  
19 looking at the commission of an offence.

20 MR. CAVALLUZZO: Okay. In terms  
21 of training on Bill C-36, the three-day course,  
22 was it the same kind of thing? Those that could  
23 be released took the course; those that  
24 couldn't --

25 MR. CABANA: Well, that training,

1           like I said, had limited seating, so it wasn't a  
2           situation where I could release everybody to go  
3           attend the training.  If we were provided with  
4           three positions to attend the training, that's how  
5           many people I sent.

6                                Headquarters, when C-36 was  
7           enacted -- and I believe it was done through  
8           Justice -- prepared a training and an information  
9           package, if you want, with a CD and a manual.  
10          That was distributed to the members.

11                           MR. CAVALLUZZO:  That just  
12          reminded me that Deputy Commissioner Loepky  
13          stated in his contextual evidence that there was a  
14          booklet that was produced by another police force  
15          called "Islam & Muslims:  What Police Officers  
16          Need to Know".  That's at tab 47 of the Book of  
17          Documents.

18                           I would ask you whether you had  
19          the opportunity to read that particular booklet.

20                           MR. CABANA:  I don't remember  
21          seeing this book, but I see here its copyright is  
22          dated 2002, so maybe it wasn't available at the  
23          time.  It probably became available during the  
24          course of 2002, but I don't remember seeing it.

25                           MR. CAVALLUZZO:  Just before we

1 move off training, there are two e-mails I would  
2 ask you to identify, which we reviewed with you.  
3 --- Pause

4 THE COMMISSIONER: Should these be  
5 marked together or separately, Mr. Cavalluzzo?

6 MR. CAVALLUZZO: I believe  
7 separately.

8 THE COMMISSIONER: Okay.

9 MR. CAVALLUZZO: Could you tell  
10 us, Commissioner -- they are both dated the same  
11 day, November 7th. If we deal with the first  
12 one --

13 MR. CABANA: Sir, if I may, this  
14 one here -- and I don't have any numbers on it.

15 THE COMMISSIONER: Let's get some  
16 numbers on them before we go any further.

17 MR. CABANA: Well, this is a  
18 duplicate of this.

19 THE COMMISSIONER: Oh, they are  
20 duplicates?

21 MR. CAVALLUZZO: Oh, I see.  
22 That's correct.

23 MR. CABANA: The bottom part of  
24 this one, and the top part --

25 THE COMMISSIONER: So we only need

1 the longer one.

2 MR. CABANA: I believe you do.

3 THE COMMISSIONER: Good one. That  
4 will be P-169.

5 EXHIBIT NO. P-169: E-mail  
6 dated 7 November 2001

7 MR. CAVALLUZZO: Just to be clear,  
8 the recipient list in the long one has been  
9 redacted, so you should crib the names from  
10 that --

11 THE COMMISSIONER: Okay. We will  
12 make the shorter one P-170 so it's on the record.  
13 Go ahead.

14 EXHIBIT NO. P-170: E-mail  
15 dated 7 November 2001

16 MR. CAVALLUZZO: Inspector Cabana,  
17 let's deal first with 169. Exhibit 169 we  
18 referred to as the longer one?

19 MR. CABANA: Yes, sir.

20 MR. CAVALLUZZO: It is in French.  
21 I wonder if you might read that for us in English,  
22 if you could translate that?

23 MR. CABANA: In English?

24 MR. CAVALLUZZO: Yes. I would do  
25 it, but we might be here all day.

1 MR. CABANA: I will start with the  
2 bottom part --

3 MR. CAVALLUZZO: Yes, start with  
4 the bottom part. That's the logical --

5 THE COMMISSIONER: It's dated  
6 November 7th, 2001, first of all.

7 Is that right?

8 MR. CABANA: November 7, 2001, at  
9 12:02, sir.

10 THE COMMISSIONER: Thank you. Go  
11 ahead.

12 MR. CABANA: It says:

13 "As you know, the  
14 investigation we are  
15 presently conducting with  
16 respect to terrorism, in  
17 particular Middle East  
18 groups, led to a realignment  
19 of investigators who aren't  
20 necessarily familiar with the  
21 Muslim culture, the Islamic  
22 religion, for example, the  
23 names and surnames which can  
24 lead to confusion for certain  
25 North American investigators.



1 I have requested -- and it's  
2 blanked out -- of CSIS to  
3 identify an individual,  
4 resource individual, who  
5 could conduct a two-hour  
6 presentation for  
7 investigators and our  
8 partners of the investigative  
9 group..."

10 And that would be in relation to  
11 the NSIS investigative group.

12 Then this is blanked.

13 " ... identified a person  
14 employed by CSIS who is a  
15 specialist in Middle Eastern  
16 affairs. I would like to  
17 know if you are interested in  
18 participating in this  
19 presentation. I tentatively  
20 scheduled or reserved the  
21 auditorium at the Canadian  
22 Police College for next  
23 Tuesday, November 13th,  
24 between 8 and noon."

25 And the bottom basically says:

1 "Please confirm the number of  
2 participants so that I can  
3 make the necessary  
4 arrangements."

5 The top part, which is again  
6 November 7th, 2001, at 1313, is a response.

7 It says:

8 "Tuesday is not good for us  
9 because we have eight drug  
10 investigators who will be  
11 taking part in searches in  
12 relation to Project Angle.  
13 It's also the only day where  
14 we can focus on Project  
15 Shock. 14th will be  
16 debriefings and equipment  
17 will be distributed and the  
18 15th the G-20 is slated to  
19 start. In addition, at the  
20 request of Mr. Couture, we  
21 have identified a Concordia  
22 University professor who  
23 could be an independent  
24 consultant for 'A' Division  
25 who could also conduct

StenoTran

1 presentations to our members.  
2 We intended on doing this  
3 after G-20. I contacted  
4 somebody from procurement  
5 unit to obtain examples or  
6 precedents of contracts for  
7 such negotiated agreement.  
8 I'm waiting for a response.  
9 I will consult with  
10 Mr. Lanthier and advise."

11 That's basically in a nutshell  
12 what it says.

13 MR. CAVALLUZZO: Mr. Lanthier is  
14 the head of NSIS at that time, of the "A"  
15 Division?

16 MR. CABANA: Yes, he would be as  
17 of November, 2001.

18 MR. CAVALLUZZO: Did you have your  
19 members participate in this in terms of the offer  
20 that was made?

21 MR. CABANA: I believe we did,  
22 yes.

23 MR. CAVALLUZZO: How many members  
24 would have --

25 MR. CABANA: I have no idea. This

1 offer would have been transmitted or relayed to  
2 the team leaders who would have selected  
3 individuals based on their availability.

4 MR. CAVALLUZZO: What about this  
5 reference to this person from Concordia University  
6 who could act as an independent consultant for "A"  
7 Division. Was that ever done?

8 MR. CABANA: I have no idea.

9 MR. CAVALLUZZO: Certainly not to  
10 your knowledge?

11 MR. CABANA: Not to my knowledge,  
12 no.

13 MR. CAVALLUZZO: The only other  
14 question would be: Do you know how many -- you  
15 said this would have been done by the team  
16 leaders, but do you know how many officers in  
17 Project A-OCANADA would have attended this  
18 particular --

19 MR. CABANA: No, sir, I don't.

20 MR. CAVALLUZZO: In regard to the  
21 reporting structure of Project A-OCANADA, we  
22 reviewed the reporting structure of the NSIS,  
23 which subsequently became an INSET, I believe,  
24 Inspector, in April of 2002?

25 MR. CABANA: I believe it was

1 April of 2002.

2 MR. CAVALLUZZO: We have dealt  
3 with that. Now I would like to talk about the  
4 reporting structure in respect of A-OCANADA and  
5 perhaps look at an organizational chart, which can  
6 be found at Exhibit P-85, Volume 1, tab 14.

7 This is an organizational chart.  
8 And in terms of the actors at the material time,  
9 the CO, the Commanding Officer, of "A" Division  
10 was Dawson Hovey?

11 MR. CABANA: That's correct.

12 MR. CAVALLUZZO: The CROPS Officer  
13 was Antoine Couture?

14 MR. CABANA: Yes.

15 MR. CAVALLUZZO: The Assistant  
16 CROPS Officers were Gary Clement and Wayne Watson?

17 MR. CABANA: It was Gary Clement,  
18 and upon his transfer Wayne Watson assumed his  
19 responsibilities.

20 MR. CAVALLUZZO: Do you recall  
21 when Gary Clement left? I understand it was  
22 around April of 2002.

23 Is that fair?

24 MR. CABANA: Yes, I believe  
25 March-April of 2002.

1 MR. CAVALLUZZO: And then, as you  
2 say, it became Wayne Watson.

3 At the next level, that would  
4 be -- is that right -- the Officer in Charge,  
5 yourself?

6 MR. CABANA: I believe it would  
7 be, sir.

8 MR. CAVALLUZZO: And then we  
9 understand that there were what I have been  
10 referring to as two co-managers, one from the OPP  
11 and one from the OPS, the Ottawa Police Service?

12 MR. CABANA: That's correct.

13 MR. CAVALLUZZO: as you said, we  
14 see that you have legal counsel there, senior  
15 legal counsel, from Justice.

16 We have a lead investigator,  
17 affiant. We had that exhibit, the ITO, which was  
18 filed this morning.

19 In respect of the reporting  
20 relationship which Project A-OCANADA had -- and  
21 Project A-OCANADA of course would, in terms of  
22 this hierarchy or structure, would start from you  
23 and down. I want to know what the reporting  
24 relationship was.

25 Who did you report to as the

1           Officer in Charge of Project A-OCANADA?

2                           MR. CABANA: Project A-OCANADA was  
3 a criminal investigation and, as such, was  
4 reporting directly to Criminal Operations Officer.  
5 My direct report was Mr. Clement.

6                           MR. CAVALLUZZO: Did you have a  
7 reporting relationship at all to CID, which had  
8 responsibility or jurisdiction over national  
9 security investigations?

10                          MR. CABANA: I did not have a  
11 direct reporting relationship with CID. Because  
12 of the national security connotation of the  
13 investigation, CID was briefed on a daily basis  
14 with all developments.

15                          MR. CAVALLUZZO: And that was done  
16 by giving them copies of daily situation reports  
17 and so on and more important reports?

18                          MR. CABANA: Yes, very much so.  
19 It was also done in their attendance at  
20 investigators meeting, periodic attendance,  
21 whenever they were available, their participation  
22 at multi-agency meetings. And there was also  
23 direct reporting relationship, if you want,  
24 between the criminal operations officer and CID.

25                          MR. CAVALLUZZO: In terms of your

1 relationship with Project OCanada, you have told  
2 us that Project A-OCANADA began really as an  
3 assistance project to OCanada, and then that  
4 subsequently evolved into autonomy or independence  
5 from Project A-OCANADA.

6 Is that correct?

7 MR. CABANA: That's correct.

8 MR. CAVALLUZZO: And I understand  
9 that there were some compatibility problems in  
10 terms of your information systems that A-OCANADA  
11 had and that Project OCanada had.

12 What I would like to do is deal  
13 with first the information systems or data  
14 information systems that you operated within  
15 Project A-OCANADA and briefly describe each  
16 system.

17 MR. CABANA: Project A-OCANADA,  
18 the case management system that we implemented for  
19 that file involved a number of different software.  
20 The main software, the one that we were using as a  
21 case management tool, basically to manage tasks  
22 assigned to investigators and diary dates and  
23 investigative action, is called E&R III.

24 MR. CAVALLUZZO: Okay.

25 MR. CABANA: It's an in-house or



1 RCMP-developed software which was developed  
2 initially as a result of the Swiss Air disaster to  
3 manage exhibits and over a period of time was  
4 modified and became an actual case management  
5 system. It's a relational database.

6 We were also using software called  
7 SUPERText from a company I believe in Markham,  
8 SuperGravity, which is again basically the same  
9 thing. It's a document management software which,  
10 in some areas of the country, evolved to become a  
11 case management tool. It was not a relational  
12 database.

13 What we were using was SUPERText  
14 to manage the documents that were coming into the  
15 possession of the project, and we were using E&R  
16 to manage the tasks assigned to investigators.  
17 The two software are compatible; they work  
18 together.

19 Then there is other software that  
20 are linked to this for analytical purposes. I-2,  
21 I-Bridge is linked to this, and also Adobe for  
22 disclosure.

23 MR. CAVALLUZZO: The other system,  
24 though, that I would like to refer to -- you have  
25 told us about E&R, SUPERText, but I understand as

1 well you were uploading information to what we  
2 referred to before as SCIS, the secure  
3 information --

4 MR. CABANA: Again, that was to  
5 address the need to ensure that CID headquarters  
6 was fully briefed with investigative developments.  
7 Every day we were submitting what we call daily  
8 SITREPs, which basically are situational reports,  
9 over what has happened on that specific day. That  
10 was faxed to CID. It was also uploaded to SCIS.

11 SCIS is a national repository for  
12 national security information.

13 As well, the E&R portion of our  
14 database was being uploaded on a daily basis to  
15 SCIS to permit headquarters CID to be able to  
16 question and review all the investigative steps  
17 that were being taken.

18 MR. CAVALLUZZO: I understand that  
19 SCIS is a system to which NSIS, subsequently  
20 INSETs, had access to?

21 MR. CABANA: That's correct.

22 MR. CAVALLUZZO: Project A-OCANADA  
23 did not have access to SCIS other than through the  
24 intervention of the dedicated person who was from  
25 the NSIS?

1                   MR. CABANA: That is correct. We  
2 did not have direct access to one of those  
3 terminals, but with the NSIS personnel that we  
4 had, acting as liaison or coordinators between  
5 NSIS and us, we ensured through the NSIS personnel  
6 that the data was uploaded.

7                   MR. CAVALLUZZO: In respect of the  
8 "O" Division, did they use the same three systems  
9 that you have just described?

10                  MR. CABANA: No. "O" Division  
11 used SUPERText as a case management tool to manage  
12 the documents as well as the tasks that were being  
13 assigned.

14                  MR. CAVALLUZZO: Did this cause  
15 any problems for Project A-OCANADA in  
16 communicating with "O" Division?

17                  MR. CABANA: Yes and no. The  
18 problem wasn't created because of the different  
19 case management tools being used. The problem was  
20 created because of the security classification of  
21 the investigations. Treasury Board guidelines  
22 prevented the creation of a network, if you want,  
23 between the Toronto team and our team.

24                                 In the context of criminal  
25 investigations that are operating, and we looked

1 at the different classification levels that are  
2 classified or designated as Protected B, for  
3 example, Protected A, Protected C, we have the  
4 capability of creating a closed system where  
5 investigative teams anywhere in the country can  
6 work together on the same file. When you are  
7 dealing with Secret/Top Secret information, that  
8 capability simply doesn't exist, or at least  
9 didn't at the time.

10 MR. CAVALLUZZO: And did OCanada  
11 operate on the classified system of Top Secret,  
12 Secret and Confidential?

13 MR. CABANA: Initially, we didn't.  
14 Initially we operated at the Protected B level for  
15 a number of reasons, including the fact that we  
16 were, again, conducting a criminal investigation.  
17 Criminal investigations are classified or  
18 designated as Protected B level, simply because of  
19 the admissibility of the evidence in court later,  
20 as well as the fact that the case management tools  
21 that we had in place did not allow it to operate  
22 at any higher classification level.

23 MR. CAVALLUZZO: What about "O"  
24 Division. At the beginning were they operating on  
25 the classified system of Top Secret, Secret and

1 Confidential, or on the Protected B --

2 MR. CABANA: I wouldn't be able to  
3 tell you. I have no idea.

4 MR. CAVALLUZZO: You don't know.

5 MR. CABANA: I don't know.

6 MR. CAVALLUZZO: I would like to  
7 move on then to relationships with other agencies,  
8 and in particular I want to focus in on the Syrian  
9 Military Intelligence.

10 I am going to take you through the  
11 history of that, and I'm going to start by filing  
12 an exhibit.

13 --- Pause

14 MR. CAVALLUZZO: This is, I  
15 understand, the first occasion that you are aware  
16 of where there was some suggestion that there  
17 might be a sharing arrangement with the Syrian  
18 Military Intelligence?

19 The clerk will give you a copy of  
20 it.

21 It's dated January 1, 2002.

22 THE COMMISSIONER: P-171.

23 EXHIBIT NO. P-171: Fax dated  
24 2 January 2002

25 MR. CAVALLUZZO: We have heard

1           some public evidence of this from Mr. Pillarella.  
2           It relates to an individual, whose name we need  
3           not refer to, but it's from the liaison officer in  
4           Rome.

5                           The Rome liaison officer, just to  
6           remind us, Inspector, had jurisdiction over Syria.  
7           Is that correct?

8                           MR. CABANA: That's correct, sir.

9                           MR. CAVALLUZZO: Okay. And at  
10          this particular point in time the LO was Steve  
11          Covey, in 2002?

12                          MR. CABANA: At that time, yes, it  
13          would have been.

14                          MR. CAVALLUZZO: What this  
15          document states -- the document itself from the LO  
16          is dated January 2, 2002, and it's from him to the  
17          OIC of OCanada.

18                          It says:

19                                "As per message dated  
20                                December 28, 2001, regarding  
21                                the above-noted subject, on  
22                                January 2, 2002, I received a  
23                                call from Ambassador  
24                                Pillarella of our embassy in  
25                                Damascus. He advises that

1           ... has received information  
2           that on December 31 ... is  
3           being detained. Was advised  
4           that we should not concern  
5           ourselves with the case  
6           because he is Syrian. The  
7           Ambassador thanked his  
8           counterpart for the  
9           information. Our embassy in  
10          Syria has been treating this  
11          case as a consular matter and  
12          as such will be sending a  
13          diplomatic note to the Syrian  
14          government requesting that a  
15          consular agent from our  
16          embassy be allowed to see  
17          this person on humanitarian  
18          grounds and because we know  
19          he is a Canadian citizen."

20                   So, in essence, our embassy will  
21          pursue this case as a standard consular case.

22                   And then, finally:

23                   "Ambassador Pillarella  
24                   advises he has or will  
25                   shortly brief both his

1                    consular and intelligence  
2                    people in Ottawa, DFAIT  
3                    headquarters, given that they  
4                    are pursuing this as a  
5                    consular matter. If you wish  
6                    to discuss this matter  
7                    further, please do not  
8                    hesitate to contact the  
9                    writer."

10                    Is this the first occasion, to  
11                    your knowledge, that there was some kind of  
12                    budding relationship or prospective relationship  
13                    or contact with the Syrian Military Intelligence?

14                    MR. CABANA: That contact did not  
15                    originate from our team. It originated between  
16                    the embassy in Damascus and Syrian authorities.  
17                    It's a report that was sent to "O" Division and I  
18                    believe ultimately was transferred to "A"  
19                    Division.

20                    MR. CAVALLUZZO: After it was  
21                    transferred to "A" Division, was there anything  
22                    done as a result of this particular fax message?

23                    MR. CABANA: Yes, there was. I  
24                    believe it was on the 9th of January where there  
25                    was a fax that was prepared by the Assistant



1 Criminal Operations Officer and was forwarded back  
2 to the liaison officer in Rome.

3 MR. CAVALLUZZO: Do you know the  
4 content? What was the point of the fax?

5 MR. FOTHERGILL: Commissioner,  
6 before the witness answers, I wonder if I could  
7 just state some parameters from a national  
8 security confidentiality point of view.

9 We don't object to certain  
10 investigative avenues being disclosed as  
11 possibilities, but whether the investigative  
12 avenues were in fact pursued and whether they  
13 proved to be productive is subject to national  
14 security confidentiality.

15 Let me clarify that further.

16 What I anticipate we may be about  
17 to embark upon is a discussion of whether it was  
18 going to be possible for members of "A" Division  
19 to interview certain people in Syria -- and I'm  
20 excluding from this Mr. Arar -- and,  
21 alternatively, to send questions that the Syrian  
22 authorities might ask on behalf of the police.

23 So discussions internal to the  
24 RCMP about whether this was a good idea and the  
25 process that should be followed in order to pursue

1           this, we can talk about in this forum.  Whether,  
2           ultimately, these investigative steps were taken  
3           or whether, ultimately, these investigative steps  
4           produced anything, is subject to national security  
5           confidentiality.

6                           MR. CAVALLUZZO:  Okay.

7                           Inspector Cabana, do you  
8           understand that?  We will proceed slowly --

9                           MR. CABANA:  Yes, I believe I do.

10                          MR. CAVALLUZZO:  Okay, good.

11                          So a message was sent.  What was  
12           the thinking in respect of that message that was  
13           sent back to the LO in Rome?

14                          MR. CABANA:  The purpose of the  
15           message was likely to inform the liaison officer  
16           of "A" Division's interest in the person that was  
17           presently detained.

18                          MR. CAVALLUZZO:  Okay.  I  
19           understand that in July of that year, July of  
20           2002, there was a meeting at CID on July 4th?

21                          MR. CABANA:  On July 4th, yes,  
22           there was a meeting at CID.

23                          There was a -- if we are talking  
24           about the relationship with Syrian military -- or  
25           not the relationship but the potential prospect of

1 a relationship, there was a series of meetings  
2 that took place starting from, I would submit,  
3 this correspondence in January and right through  
4 to late 2002.

5 MR. CAVALLUZZO: Okay. But the  
6 meeting on July the 4th, I understand at  
7 headquarters, related to an individual who you  
8 were advised was now in detention in Egypt?

9 MR. CABANA: Yes, that's correct.

10 MR. CAVALLUZZO: And did the LO in  
11 Rome also have jurisdiction over Egypt?

12 MR. CABANA: Yes, sir, he did.

13 MR. CAVALLUZZO: I understand as  
14 well that on July 8th there was a further meeting  
15 between DFAIT, CSIS, Justice and the CID to  
16 discuss certain matters regarding the person that  
17 was referred to at the July 4th --

18 MR. CABANA: That's correct. That  
19 goes to the consultation process that was  
20 implemented, like I said, starting with this,  
21 where we were exploring -- and, again, it goes to  
22 our mandate to make sure that we look at every  
23 available option to us.

24 MR. CAVALLUZZO: Right.

25 MR. CABANA: And in order to do

1           that, there had to be a consultation process with  
2           other agencies.

3                         MR. CAVALLUZZO:  If we go to your  
4           notes at page 44 --

5                         THE COMMISSIONER:  In the bottom  
6           right-hand corner?

7                         MR. CAVALLUZZO:  Yes, at the  
8           bottom right-hand corner.

9                         MR. COPELAND:  Sorry, but where  
10          are you in --

11                        MR. CAVALLUZZO:  Actually, we are  
12          going to start at 37 of 68, in the lower  
13          right-hand portion.

14                        And we see at the top of the page  
15          that there is reference to Mr. Covey, who we know  
16          is the LO in Rome, and then at the bottom of the  
17          page it says -- it is now July 10th, 2002, about  
18          10:30 in the morning:

19                                 "Contacted Insp. Covey, LO  
20                                 Rome, and discussed fax  
21                                 message received this  
22                                 date..."

23                        And I'm wondering if you could  
24          pick that up because I cannot read your writing.

25                        MR. CABANA:  You said this would

1 be page 44?

2 MR. CAVALLUZZO: No, I'm sorry,  
3 37. It's the entry at the bottom there at 10:30,  
4 if you could just read that for us.

5 MR. CABANA: "Contacted Insp.  
6 Covey, LO Rome, and discussed  
7 fax message received this  
8 date and prospect of  
9 gaining..."

10 And the rest is redacted.

11 "Mr. Covey will be back in  
12 Canada next week and will  
13 meet with the investigative  
14 team to further discuss."

15 MR. CAVALLUZZO: Okay.

16 MR. CABANA: If I may, this makes  
17 reference to discussions on potentially gaining  
18 access to individuals.

19 MR. CAVALLUZZO: So there are  
20 really two things here: one is gaining access to  
21 information; the other is gaining access to  
22 individuals.

23 So you are considering both at  
24 this point in time in respect of the --

25 MR. CABANA: Yes, we are.

1 MR. CAVALLUZZO: When you received  
2 this fax on July 10th and your contact with Covey,  
3 did you brief or discuss the situation with  
4 anybody in DFAIT?

5 MR. CABANA: Yes, actually,  
6 immediately following the call with Mr. Covey, I  
7 contacted Mr. Gould at DFAIT and briefed him on  
8 the nature of the conversation I had with  
9 Mr. Covey.

10 MR. CAVALLUZZO: And Mr. Gould is  
11 in ISI of DFAIT?

12 MR. CABANA: Yes, he is.

13 MR. CAVALLUZZO: Was he your  
14 normal contact in respect of these kinds of  
15 prospective foreign relationships or contacts with  
16 DFAIT?

17 MR. CABANA: Yes. There was three  
18 individuals that I dealt with mostly; but, yes,  
19 Mr. Gould was definitely the one I probably spoke  
20 with most often.

21 MR. CAVALLUZZO: Okay. And the  
22 other two, just so that we know who they are?

23 MR. CABANA: It would be  
24 Mr. Heatherington and Mr. Saunders.

25 MR. CAVALLUZZO: If we move to

1 July 16th at page --

2 MR. CABANA: If I may, sir?

3 MR. CAVALLUZZO: Yes.

4 MR. CABANA: Also, following the  
5 conversation with Mr. Gould, I consulted and  
6 briefed the "A" Division Criminal Operations  
7 Officer.

8 MR. CAVALLUZZO: And that would be  
9 Mr. Couture?

10 MR. CABANA: That would be  
11 Mr. Couture.

12 MR. CAVALLUZZO: Did he advise you  
13 to do anything in respect of your contacts with  
14 Covey?

15 MR. CABANA: Well, I advised him  
16 of the nature of the conversation and the fact  
17 that Mr. Covey would be visiting us next week, and  
18 during our conversation Mr. Couture suggested that  
19 we look at the prospect of sharing information  
20 with Syrian authorities to further the  
21 investigation.

22 MR. CAVALLUZZO: Now, if we go to  
23 page 40 for July 16th, which would be the day that  
24 Mr. Covey attends -- do you see that, at the entry  
25 for ten o'clock?

1 MR. CABANA: Yes, sir.

2 MR. CAVALLUZZO: Could you read  
3 that to us?

4 MR. CABANA: "Meeting with  
5 Insp. Stephen Covey, ex-LO  
6 for Rome..."

7 At that point in time, Mr. Covey  
8 had been reassigned to other duties.

9 "...along with ... and ... to  
10 discuss options in relation  
11 to access to ... Mr. Covey  
12 provided a brief overview of  
13 situation..."

14 And there is more text redacted.

15 "... and his efforts to  
16 broker a deal. Mr. Covey  
17 advised that in his view ...  
18 will never be returning to  
19 Canada. We subsequently  
20 discussed protocol for  
21 sharing of project info with  
22 Syrians to reciprocate.  
23 Notes of this meeting taken  
24 by ..."

25 MR. CAVALLUZZO: Do you recall who



1 attended this particular meeting with Mr. Covey?  
2 Was it just yourself?

3 MR. CABANA: No. I believe at  
4 that meeting were the two team managers from the  
5 project and I believe there were representatives  
6 from Justice who also attended.

7 MR. CAVALLUZZO: If we go to the  
8 next page, page 41 of 68, it looks like the same  
9 date for July 16th. There's an entry at 11:05  
10 that I would ask you to read in.

11 MR. CABANA: 11:05:  
12 "At CROPS to discuss meeting  
13 of yesterday with Insp.  
14 Covey. Both Supt. Watson and  
15 C/Supt. Couture were busy."

16 MR. CAVALLUZZO: Okay. And then  
17 at 1545.

18 MR. CABANA: At 1545:  
19 "At CROPS briefed Supt.  
20 Watson on results of  
21 interview with Insp. Covey  
22 and decision to share project  
23 info with Syrian authorities.  
24 Mr. Watson advised writer  
25 that he agreed it would be

1                   appropriate to share with the  
2                   Syrians as it might assist  
3                   ... should the exchange of  
4                   info continue."

5                   MR. CAVALLUZZO: Now, after this  
6                   meeting with Mr. Covey and after the meeting with  
7                   the CROPS people, did you have an opportunity to  
8                   speak to anyone in DFAIT again?

9                   MR. CABANA: Yes, I believe it was  
10                  later on in the month -- I think it was on the  
11                  29th of July where I discussed, again, the options  
12                  and our intentions with Mr. Gould at DFAIT.

13                  MR. CAVALLUZZO: Was there anybody  
14                  else from ISI at this meeting, in particular  
15                  Saunders and Heatherington?

16                  MR. CABANA: I believe they were  
17                  there as well, yes.

18                  MR. CAVALLUZZO: And I understand  
19                  at this meeting in later July -- we don't have the  
20                  note for it, but I understand that what was  
21                  discussed was the sharing of information with  
22                  certain foreign nations, i.e., Syria and Egypt, in  
23                  respect of two individuals?

24                  MR. CABANA: That's correct.

25                  MR. CAVALLUZZO: The next meeting

1           that I would refer to would be on September the  
2           10th of 2002. We are going to start at page 44.

3                       THE COMMISSIONER: I notice it's  
4           one o'clock, Mr. Cavalluzzo.

5                       MR. CAVALLUZZO: I just want to  
6           develop this. This is the last meeting.

7                       THE COMMISSIONER: Sure, go ahead.

8                       MR. CAVALLUZZO: And this will be  
9           the end of this prior to Mr. Arar's detention.

10          --- Pause

11                       This should be inserted,  
12          Commissioner, behind page 44.

13                       THE COMMISSIONER: Inserted behind  
14          page 44?

15                       MR. CAVALLUZZO: That's correct.

16                       THE COMMISSIONER: Okay. We won't  
17          mark it as an exhibit then.

18                       MR. CAVALLUZZO: If we go to page  
19          44, just in closing, Mr. Cabana, if you could just  
20          read to us the entry for eleven o'clock on  
21          Tuesday, September 10?

22                       MR. CABANA: Certainly, sir.

23                                "At DFAIT with C/Supt.

24                                Couture and ... and ...

25                                Meeting with Mr. Franco

1 Pillarella, Canadian  
2 Ambassador to Syria, Scott  
3 Heatherington, Don Saunders,  
4 RCMP DFAIT LO, and Jonathan  
5 Solomon. Insp. MacDougall of  
6 CID joined us late. We  
7 provided a briefing to the  
8 Ambassador regarding..."  
9 Can't read this word.  
10 "...the origin, regarding the  
11 origin of the investigation  
12 and the reason for our  
13 interest in ...  
14 Mr. Pillarella agreed to  
15 facilitate any future request  
16 to Syrian authorities.  
17 Mr. Pillarella suggested that  
18 the Syrian authorities would  
19 likely be expecting us to  
20 share with them. We  
21 explained our intentions to  
22 share..."  
23 Can't read that word.  
24 "...any or our project  
25 information relevant to

1                   whatever investigation Syria  
2                   is conducting with them. We  
3                   explained that packages have  
4                   already been prepared to this  
5                   end."

6                   MR. CAVALLUZZO: Thank you,  
7                   Inspector.

8                   That, Commissioner, would complete  
9                   this portion of the evidence which we wanted to  
10                  complete, and this relates to this prospective  
11                  relationship prior to Mr. Arar's detention in  
12                  Syria. Thank you.

13                  THE COMMISSIONER: All right. How  
14                  are we doing time-wise? When should we be coming  
15                  back? Is 2:15 all right?

16                  MR. CAVALLUZZO: Yes, 2:15 is  
17                  fine. But I can advise counsel now that we may be  
18                  sitting a bit late today because I would like to  
19                  finish Inspector Cabana today.

20                  THE COMMISSIONER: I think we can  
21                  sit as late as 6 o'clock. If it was going to be  
22                  later than that, I have to make advance  
23                  arrangements. Should we aim for --

24                  MR. CAVALLUZZO: I will be in a  
25                  better position to know by 3:30.

1 THE COMMISSIONER: All right. We  
2 will rise now until 2:15.

3 THE REGISTRAR: Please stand.

4 --- Upon recessing at 1:03 p.m. /

5 Suspension à 13 h 03

6 --- Upon resuming at 2:15 p.m. /

7 Reprise à 14 h 15

8 THE REGISTRAR: Please be seated.

9 Veuillez vous asseoir.

10 THE COMMISSIONER: Mr. Cavalluzzo.

11 MR. CAVALLUZZO: Thank you,

12 Commissioner.

13 Mr. Cabana, just before we were  
14 dealing with the prospect of relationship with the  
15 Syrian Military Intelligence, we were dealing with  
16 certain aspects of OCanada and A-OCANADA, and I  
17 just want to make sure it is clear before we go  
18 on; and that is that A-OCANADA was not part of the  
19 NSIS or the INSET which subsequently was formed in  
20 April of 2002.

21 Isn't that correct?

22 MR. CABANA: That's correct, sir.

23 MR. CAVALLUZZO: And as far as

24 OCanada is concerned, I understand that Project

25 OCanada was under the NSIS of "O" Division, which

1 subsequently became the INSET in the "O" Division?

2 MR. CABANA: I believe so, sir.

3 MR. CAVALLUZZO: If we could stay  
4 with your notes for a bit, I'm going to come to a  
5 final area before we come to the Arar chronology,  
6 and that is at pages 14 through 16 of your notes.

7 It deals with a conversation you  
8 had with Mr. Pilgrim on or about November the 6th  
9 of 2001, and could you could just read starting at  
10 1420, four lines up from the bottom?

11 MR. CABANA: Yes.

12 "Returned Supt. Pilgrim's  
13 message. He requested that I  
14 locate Insp. Lanthier and  
15 call him back for a  
16 conference call."

17 MR. CAVALLUZZO: Then I will pick  
18 this up.

19 And Lanthier, once again, was the  
20 head of NSIS at the time?

21 MR. CABANA: At the time, he was.  
22 Yes.

23 MR. CAVALLUZZO: Then we can just  
24 cut out the next part, but it's about using the  
25 particular designation of Protected B which you

1           were using.

2                           If you go to the next page, page  
3           15, and start reading at the first paragraph down,  
4           "Mr. Pilgrim advised ..."

5                           MR. CABANA:   Yes.

6                           "Mr. Pilgrim advised the  
7                           writer that he was simply the  
8                           messenger and was asked to  
9                           convey to us the same message  
10                          that A/Comm. Proulx conveyed  
11                          to C/Supt. Ben Suave and John  
12                          McLaughlin last Friday."

13                          MR. CAVALLUZZO:  Go on.

14                          MR. CABANA:  I'm sorry?

15                          MR. CAVALLUZZO:  "Project  
16           OCanada ..."

17                          MR. CABANA:  "Project OCanada is a  
18                          National Security Operation  
19                          and is to be classified  
20                          Secret, Top Secret, as the  
21                          case may be.  Documents are  
22                          not to be reclassified at the  
23                          Protected B level, especially  
24                          documents from ...  
25                          counterparts."



1 MR. CAVALLUZZO: Okay. So what  
2 appears to be the problem is that OCanada is  
3 operating on the Secret, Top Secret basis.  
4 Project A-OCANADA is operating on a Protected B  
5 level, and he is saying Project OCanada is a  
6 national security operation. As a result of that,  
7 they are operating at that level.

8 MR. CABANA: What it appears to me  
9 here, sir, is based on the fact that the previous  
10 Friday Mr. Proulx had the same conversation with  
11 Mr. Suave, and Mr. McLaughlin seems to indicate  
12 that "O" Division was also operating at Protected  
13 B level and were asked to reclassify and make sure  
14 they were operating within the national security  
15 classification.

16 MR. CAVALLUZZO: But he does say  
17 here that the Project OCanada is a national  
18 security operation. Did he say the same thing to  
19 you, that Project A-OCANADA is also a national  
20 security operation during the course of this  
21 conversation?

22 MR. CABANA: I believe that --  
23 well, he didn't say Project A-OCANADA, but I  
24 believe that was the gist of the message.

25 MR. CAVALLUZZO: And what did you

1 tell him in respect of whether A-OCANADA could  
2 revert to the Secret, Top Secret classification  
3 system?

4 MR. CABANA: I raised the issue  
5 that we discussed earlier this morning over the  
6 inability of our case management system to operate  
7 at that classification level, and the fact that by  
8 putting this kind of information on the systems we  
9 would be in contravention to Treasury Board  
10 guidelines.

11 MR. CAVALLUZZO: Now when he said  
12 this to you, or the implication was that OCanada,  
13 and presumably A-OCANADA assisting OCanada, was a  
14 national security operation, did anyone from head  
15 office say to you, "You guys have got to be  
16 following the national security investigation  
17 guideline or policy that we reviewed?"

18 MR. CABANA: No, this conversation  
19 was specific to the classification of the  
20 material.

21 MR. CAVALLUZZO: I just want to be  
22 sure that nobody in the RCMP hierarchy, whether it  
23 be at head office or in "A" Division, ever said to  
24 you, "Project A-OCANADA should be operating under  
25 the national security guidelines"?

1 MR. CABANA: No, sir. Every  
2 meeting we had at head office, headquarters, were  
3 fully aware of the fact that we were operating  
4 under the premise that this was a criminal  
5 investigation.

6 MR. CAVALLUZZO: Commissioner,  
7 this brings me to the Arar chronology, and for the  
8 record I would like to read in a couple of  
9 paragraphs relating to some of the things that  
10 were discussed this morning. This is part of the  
11 will-say statement, but I would like to read it  
12 into the record.

13 The title is "Initial Interest and  
14 Investigation in respect to Mr. Arar".

15 "During the fall of 2001  
16 Project A-OCANADA in Ottawa  
17 commenced an investigation  
18 following receipt of a tip  
19 from Project OCanada in  
20 Toronto and intelligence from  
21 CSIS. The investigation was  
22 focused on a particular  
23 individual and Project  
24 A-OCANADA became aware of  
25 Mr. Arar as a result. The

1 project carried out certain  
2 investigative steps relating  
3 to Mr. Arar."

4 Now that should be:

5 "The investigation was  
6 focused on a particular  
7 individual and other targets  
8 in the Ottawa area."

9 And then:

10 "Some of these investigative  
11 steps have been referred to  
12 publicly in a fragmented and  
13 piecemeal fashion. These  
14 include surveillance of  
15 Mr. Arar at a meeting on  
16 October 12, 2001, at Mango's  
17 Restaurant and the obtaining  
18 of Mr. Arar's tenancy  
19 agreement from the Minto  
20 Developments. Because of the  
21 government's NSC claims, many  
22 of the details of the  
23 A-OCANADA investigation in  
24 the fall of 2001 cannot be  
25 made public at this time. It

1 is important to note,  
2 however, that all of the  
3 evidence relating to these  
4 matters has been heard and  
5 thoroughly tested during the  
6 in-camera hearings. In the  
7 interim report, the  
8 Commissioner will review this  
9 evidence and set out his  
10 conclusions. In the  
11 meantime, we have determined  
12 that because of the  
13 Government's NSC claims, the  
14 investigative steps taken in  
15 the fall of 2001 cannot be  
16 fairly canvassed in the  
17 public hearings. There are  
18 matters over which the  
19 Government claims NSC which  
20 would be of assistance in  
21 putting the evidence in its  
22 proper context and to avoid  
23 the possibility of unfairness  
24 or misleading the public. As  
25 a result, my examination will

1 not include reference to the  
2 fall of 2001 because of these  
3 contextual and fairness  
4 concerns. However, the  
5 failure to elicit this  
6 particular evidence does not  
7 mean that the Commissioner's  
8 conclusions concerning these  
9 investigations will not be  
10 made public in the context of  
11 the interim report. And as a  
12 result, my examination will  
13 commence in January of 2002."

14 Mr. Cabana, I would like to  
15 initially deal with the execution of a number of  
16 search warrants by the RCMP on or about January 22  
17 of 2002.

18 MR. CABANA: Yes, sir.

19 MR. CAVALLUZZO: First of all, you  
20 can confirm that a number of search warrants,  
21 indeed seven search warrants, were executed by the  
22 RCMP?

23 MR. CABANA: That's correct, yes.

24 MR. CAVALLUZZO: And were all of  
25 these warrants executed in the Ottawa area?

1                   MR. CABANA: No, there was other  
2 locations as well.

3                   MR. CAVALLUZZO: As a result of  
4 the execution of these search warrants, could you  
5 give us an idea of the fruits of the search, so to  
6 speak, in terms of the amount of documentation and  
7 so on that resulted from the execution of these  
8 warrants?

9                   MR. CABANA: Okay. Well, the  
10 execution of these searches again goes back to the  
11 mandate that we were provided: leave no stones  
12 unturned and look at every available investigative  
13 avenue.

14                   In late December of 2001, we  
15 reviewed and analyzed the evidence, the  
16 information and the evidence that we had  
17 accumulated, and determined that there was  
18 sufficient evidence to execute a number of search  
19 warrants at different locations.

20                   These searches were conducted in  
21 January of 2002, and as a result of that there was  
22 a significant amount of information, evidence,  
23 that was located. For example, I believe there  
24 was 26 hard drives, computer hard drives; there  
25 was hundreds of CD disks.

1                   Some of this information,  
2           including hard drives, some of them were hidden in  
3           rafters and in walls. There was tens of thousands  
4           of pages of documents that were seized as well at  
5           the different locations.

6                   MR. CAVALLUZZO: In respect of the  
7           amount of information, documents, hard drives,  
8           disks and so on that were seized, could Project  
9           A-OCANADA deal with that kind of volume?

10                  MR. CABANA: No. We anticipated  
11           to find some information but not the volume that  
12           we were faced with. And clearly, especially when  
13           you look at the analysis of computer hard drives,  
14           it's a very time-consuming process, and we were  
15           looking at 26 of them alone. It would take many,  
16           many months to go through it.

17                  So the investigative team itself  
18           was not equipped to analyze that in a timely  
19           fashion, no.

20                  MR. CAVALLUZZO: And as a result  
21           of this lack of resources, did you seek the  
22           assistance of anybody in respect of analysing the  
23           results of the searches?

24                  MR. CABANA: Yes. Actually, I  
25           believe it was January 30th or 31st --



1 MR. CAVALLUZZO: January 31st,  
2 yes.

3 MR. CABANA: On January 31st we  
4 had a meeting, and of course prior to the meeting  
5 there was discussions with the Criminal Operations  
6 Officer to coordinate this meeting. We met with  
7 all stakeholder agencies, both domestic and  
8 foreign, where we provided everybody -- and  
9 Justice, CID were at the table -- with a detailed  
10 briefing of the investigation up to that point.

11 There had been previous meetings,  
12 but the developments were fairly significant.

13 We also exposed the problem that  
14 had been created with the seizure of all this  
15 information and the importance of ensuring timely  
16 analysis of the information; but even beyond that,  
17 the importance of ensuring that the analysis would  
18 be conducted in comparison with information that  
19 was available elsewhere in other jurisdictions.

20 So we conducted this presentation.  
21 We offered to share the information, again, in the  
22 context of the agreement that was in place and the  
23 open-book concept, and we invited the agencies to  
24 obtain copies of the information and also to  
25 assign resources to our team to help us analyze

1 this.

2 MR. CAVALLUZZO: So in effect, in  
3 light of the context, that is the open-book  
4 investigation, what was done is that there was an  
5 offer to share all of the information from the  
6 fruits of the search and, at the same time, there  
7 was a request that these other partner agencies,  
8 or stakeholder agencies, participate in the  
9 analysis to give you assistance?

10 MR. CABANA: That's correct, sir.

11 MR. CAVALLUZZO: At this  
12 particular point in time, at this multi-agency  
13 meeting on January 31st of 2002, was there any  
14 suggestion from anybody at RCMP headquarters that  
15 what you were doing was inappropriate, that is,  
16 sharing all of this information with the  
17 stakeholder agencies, or seeking their assistance  
18 in respect of analysing it?

19 MR. CABANA: No, sir. Like I  
20 said, headquarters, CID, were participants at the  
21 January 31st meeting and were also involved in  
22 discussions following the searches themselves, so  
23 they were fully aware of what we were proposing to  
24 do.

25 MR. CAVALLUZZO: In respect of,

1 first of all, sharing the information -- and we  
2 will come to a particular sharing. But I assume  
3 the sharing was done in respect of all the partner  
4 agencies, the sharing of this information?

5 MR. CABANA: I'm not sure I  
6 understand the question.

7 MR. CAVALLUZZO: Well, for  
8 example, if you had 26 hard drives, what did you  
9 do with those 26 hard drives?

10 MR. CABANA: Well, the 26 hard  
11 drives were mirror-imaged as quickly as possible.  
12 I suggest probably within a week, everything was  
13 mirror-imaged, and copies were available for  
14 agencies if they wanted to pick them up.

15 The documents themselves were a  
16 longer process, to make sure that the scanning and  
17 the digitizing of the documents was done in a  
18 proper fashion to make sure that it was  
19 coordinated properly. So that took a little  
20 longer.

21 MR. CAVALLUZZO: And the documents  
22 themselves, were they uploaded into the SUPERText  
23 system subsequently?

24 MR. CABANA: Yes, they were.

25 MR. CAVALLUZZO: In respect of the

1 assistance, did you get the assistance you were  
2 seeking from these partner agencies or stakeholder  
3 groups in respect of analysing the material and so  
4 on?

5 MR. CABANA: We received the  
6 assistance we were seeking from the majority of  
7 the stakeholder agencies, yes.

8 MR. CAVALLUZZO: Now at this point  
9 in time, once again in or about January the 22nd,  
10 it was decided that there would be no warrant  
11 executed in respect of Mr. Arar.

12 Is that correct?

13 MR. CABANA: Yes, that's correct.  
14 Mr. Arar was not a target.

15 MR. CAVALLUZZO: I also understand  
16 that around this time Project A-OCANADA was  
17 interested in interviewing or speaking to  
18 Mr. Arar. Is that correct?

19 MR. CABANA: Yes, very much so.

20 MR. CAVALLUZZO: And on January  
21 22nd -- and maybe it may assist counsel and the  
22 witness if we refer now to Exhibit P-83, tab 2, at  
23 page 3.

24 We have before us something called  
25 a transit slip.

1 Do you see that, Mr. Cabana?

2 MR. CABANA: Yes, sir.

3 MR. CAVALLUZZO: What is a transit  
4 slip, if you can just help us?

5 MR. CABANA: We refer to them as  
6 A-5; that's the form number. It is just internal  
7 communication within the RCMP.

8 MR. CAVALLUZZO: And on the other  
9 side of the page, if you turn it over, we see a  
10 task detail report. Is this the kind of task  
11 detail report or tasking that would go into the  
12 E&R system?

13 MR. CABANA: Yes, sir, that would  
14 be an E&R report.

15 MR. CAVALLUZZO: So this is an E&R  
16 report.

17 What about the previous page, the  
18 transit slip. Is this an E&R report, or would  
19 this go into SUPERText?

20 MR. CABANA: This would normally  
21 go into SUPERText.

22 MR. CAVALLUZZO: So that the clear  
23 tasking with times and so on, and duties assigned,  
24 go into E&R and the more general reports go  
25 into SUPERText.

1                   We can follow this along, because  
2                   it says on Tuesday, January 22nd, at 7:30,  
3                   somebody approached Mr. Arar's house.

4                   Why don't you tell us, from your  
5                   knowledge, what happened on that day?

6                   MR. CABANA: Well, the day of the  
7                   searches, in preparation for searches there was a  
8                   search plan that was developed with respect to the  
9                   different sites that we were planning on  
10                  searching, identifying resource requirements and  
11                  everything.

12                  In the planning process we also  
13                  identified a number of individuals that we were  
14                  interested in speaking to as potential witnesses,  
15                  or to clarify some of the information that had  
16                  developed over the previous months.

17                  MR. CAVALLUZZO: Right.

18                  MR. CABANA: Mr. Arar was one of  
19                  those individuals. So to that end, in the morning  
20                  at all of these locations we sent investigators to  
21                  meet these individuals and attempt to have an  
22                  interview with them.

23                  MR. CAVALLUZZO: I understand that  
24                  somebody did approach, as it says at page 3 here;  
25                  that at 7:30, one of the investigators approached

1 Mr. Arar's house?

2 MR. CABANA: That's correct.

3 MR. CAVALLUZZO: And he was  
4 not available at that time.

5 Is that correct?

6 MR. CABANA: The investigators  
7 were advised that Mr. Arar was away.

8 MR. CAVALLUZZO: Who met the  
9 investigators at the door?

10 MR. CABANA: Mr. Arar's wife.

11 MR. CAVALLUZZO: Did she indicate  
12 where Mr. Arar was?

13 MR. CABANA: Yes, I believe she  
14 did. She advised the investigators that Mr. Arar  
15 was in Tunisia.

16 MR. CAVALLUZZO: Later on that  
17 day, did the investigators attempt to contact  
18 Mr. Arar while he was in Tunisia?

19 MR. CABANA: I believe that the  
20 investigators received a page from the NSIS office  
21 advising that Mr. Arar had apparently attempted to  
22 contact the investigator and left a number in  
23 Tunisia where he could be reached. The  
24 investigator at the time was on a search and could  
25 not return the call immediately, but upon

1           returning to the office he did attempt to get hold  
2           of Mr. Arar, but there was no answer, probably  
3           because of the time difference.

4                       MR. CAVALLUZZO:   That was Tuesday,  
5           January the 22nd.  I understand that on Wednesday,  
6           January the 23rd, Mr. Edelson contacted A-OCANADA  
7           investigators and talked about whether his client  
8           would be speaking to the police?

9                       Were you aware of that call?

10                      MR. CABANA:   Yes, sir, I am.

11                      MR. CAVALLUZZO:   And would  
12           Mr. Edelson have made that call to you directly or  
13           to anyone else?

14                      MR. CABANA:   No.  Mr. Edelson  
15           usually contacted Ann Alder, who was our senior  
16           legal counsel.

17                      MR. CAVALLUZZO:   And did Ms Alder  
18           indicate to you that Mr. Edelson had said that if  
19           Mr. Arar was to be interviewed, there would be a  
20           number of conditions imposed?

21                      MR. CABANA:   Yes, sir.

22                      MR. CAVALLUZZO:   Did you note that  
23           Mr. Edelson represented others than Mr. Arar?

24                      MR. CABANA:   In fact, sir,  
25           Mr. Edelson represented, I would say, all of the



1 witnesses and the targets of Project A-OCANADA.

2 MR. CAVALLUZZO: Do you know if  
3 and when any contact was made between the RCMP  
4 investigators and Mr. Arar?

5 MR. CABANA: I believe it was on  
6 the 25th where the investigator contacted  
7 Mr. Arar's residence, because there had been no  
8 direct contact with him, just to see when he would  
9 be returning, and I believe Mr. Arar actually  
10 answered the phone.

11 MR. CAVALLUZZO: Could you recount  
12 to us or relate to us what the conversation was?

13 MR. CABANA: Could I refer to  
14 the task report?

15 MR. CAVALLUZZO: Yes, please do.

16 MR. CABANA: It says:

17 "Called the Arar residence  
18 just to confirm if his wife  
19 had been contacted by him and  
20 when he was scheduled to  
21 return from Tunisia. When  
22 number was called, Maher Arar  
23 answered the phone. He was  
24 then spoken to and stated  
25 that he had attempted to

1 contact us from Tunisia and  
2 was somewhat perturbed as to  
3 why we had attended his  
4 residence in his absence  
5 without prior notice and  
6 disturbed his pregnant wife.  
7 It was explained to Mr. Arar  
8 that we did not know he was  
9 away, and when we discovered  
10 this we only spoke briefly  
11 with his wife, gave her a  
12 business card and requested  
13 to have him contact  
14 investigators upon his  
15 return."

16 MR. CAVALLUZZO: Okay.

17 MR. CABANA: "Arar was then asked  
18 if he would attend the RCMP  
19 office in Vanier this day to  
20 be interviewed. He  
21 immediately asked as to the  
22 reason and circumstances as  
23 to how we got his name. He  
24 was advised that we do not  
25 discuss ongoing

1 investigations over the phone  
2 and that we would like to  
3 meet with him in person to  
4 simply clarify some issues  
5 concerning him which have  
6 surfaced as a result of our  
7 inquiries. Mr. Arar said  
8 that as he had been away for  
9 three weeks and just returned  
10 from a long trip, he was  
11 fatigued and wished to sleep  
12 and spend time with his  
13 family."

14 Of course, this is the  
15 investigator that is writing this. It is his  
16 notes.

17 MR. CAVALLUZZO: Right.

18 MR. CABANA: "I continued to  
19 negotiate with him to have  
20 him attend the office on this  
21 date but he was insistent  
22 that he was too fatigued but  
23 would be willing to attend  
24 perhaps on Monday. He was  
25 told to sleep this date,

1 catch up with his family, and  
2 to contact writer via pager  
3 on Saturday, the 26th, for  
4 proposed interview at three  
5 o'clock. This time was  
6 confirmed also with ..."

7 And it's redacted.

8 MR. CAVALLUZZO: The investigator  
9 did not hear back from Mr. Arar but his lawyer.  
10 Is that correct?

11 MR. CABANA: That's correct.

12 MR. CAVALLUZZO: Could you tell us  
13 what message was left by Mr. Arar's lawyer,  
14 Mr. Edelson?

15 MR. CABANA: Well, if I remember  
16 correctly, the message that was left by Mr. Arar's  
17 counsel at the time was that no interview was to  
18 take place without his presence at the interview,  
19 and there was also some conditions that were  
20 attached to any interview with Mr. Arar.

21 MR. CAVALLUZZO: And what happened  
22 in respect of those conditions? Did you accept  
23 the invitation from Mr. Edelson?

24 MR. CABANA: No, sir. I was of  
25 the belief that given the conditions that were

1 attached to any interview, it would render the  
2 interview pointless.

3 MR. CAVALLUZZO: And what, in  
4 particular, were the conditions that you were  
5 concerned about in respect of --

6 MR. CABANA: One of the  
7 conditions, if memory serves me right, was that  
8 the interview was to occur at Mr. Edelson's  
9 office.

10 And the other one, the one that  
11 was most problematic in my view, was the fact that  
12 any interview could not be -- or the information  
13 flowing from any interview with Mr. Arar could not  
14 be used against him or against anybody else in any  
15 proceedings.

16 MR. CAVALLUZZO: You found that  
17 condition intolerable?

18 MR. CABANA: In, like I say, 24  
19 years in law enforcement, it was the first time  
20 that such conditions were put on any interview  
21 that I was involved in. So, like I said, it would  
22 render the interview pointless.

23 MR. CAVALLUZZO: Mr. Edelson  
24 testified in public, though, that those are the  
25 normal kinds of conditions that he usually seeks.

1                   Had you never seen anything like  
2                   that?

3                   MR. CABANA: I had never seen  
4                   anything like that, and neither had any of the  
5                   other investigators, including Ms Alder.

6                   MR. CAVALLUZZO: And as a result,  
7                   I understand that the RCMP never tried to contact  
8                   Mr. Arar again for an interview prior to his  
9                   detention in the United States.

10                   Is that correct?

11                   MR. CABANA: No, sir. Our focus  
12                   was on other areas.

13                   MR. CAVALLUZZO: I would like to  
14                   move on a bit in time to February 26th of 2002.

15                   If we could look at your notes,  
16                   starting at page 34, beginning with the entry for  
17                   1425 February 26th and moving into the next page,  
18                   34A, we see that there is a discussion between you  
19                   and CID respecting, I guess, information that they  
20                   are getting.

21                   I wonder if you might read the  
22                   first part there for us since your writing is a  
23                   little difficult at this point.

24                   MR. CABANA: "Meeting with ... and  
25                   ... of CID. Discussed

1 problems with info flow  
2 between project and CID. The  
3 writer explained that the  
4 project was submitting on a  
5 daily basis SITREPs to keep  
6 CID informed. Furthermore,  
7 until CID changed priorities  
8 for NSIS they were  
9 responsible to upload daily  
10 our database to SCIS. SCIS  
11 uploads stopped when CID  
12 directed NSIS to review and  
13 'clean' all Shock SCIS data.  
14 The writer advised that the  
15 project team met all  
16 requirements and would  
17 conduct a briefing today to  
18 assist CID but in the future  
19 they would have to first  
20 review the info submitted..."

21 THE COMMISSIONER: "Emanating from  
22 the process ..."

23 MR. CABANA: Emanating. Thank  
24 you, Mr. Commissioner.

25 "...emanating from the

1 project on a daily basis."

2 MR. CAVALLUZZO: Rather than going  
3 on, we can leave counsel to read that.

4 What was the problem that was  
5 being discussed on February 26th, 2002, between  
6 Project A-OCANADA and head office?

7 MR. CABANA: Actually the first  
8 part of the meeting was spent trying to identify  
9 what the problem was. CID had approached us  
10 identifying issues that they perceived with the  
11 flow of information emanating from our project and  
12 were seeking daily briefings of the developments  
13 in the project.

14 MR. CAVALLUZZO: Right. And was  
15 this a constant problem in respect of CID, which  
16 was responsible for national security operations,  
17 dealing with you, trying to get more information  
18 or you trying to get information from them?

19 Was there a problem?

20 MR. CABANA: Well the problem, and  
21 it wasn't specific to CID, or I guess I should say  
22 CID weren't the only ones experiencing this  
23 problem, is the influx of information post-9/11  
24 was such that really nobody was equipped to  
25 properly coordinate and ensure the timely flow of



1           this information.

2                           CID, because they were trying to  
3           coordinate on a national level, had quite a bit of  
4           information coming in there, and there was delays  
5           being created in this information being  
6           disseminated to the appropriate divisions.

7                           MR. CAVALLUZZO:   Right.

8                           MR. CABANA:   At the same time,  
9           they were having difficulty keeping track of the  
10          developments of the different investigative  
11          efforts across the country, and there was a  
12          perception that seemed to exist within CID that  
13          they didn't have a good understanding on how the  
14          projects were being developed, "A" Division more  
15          specifically.

16                          MR. CAVALLUZZO:   So there appeared  
17          to be a need, at least from CID's perspective, of  
18          more either control or coordination in respect of  
19          all of the activities which were taking place  
20          across the country?

21                          MR. CABANA:   I believe at the time  
22          it wasn't an issue of control; it was an issue of  
23          coordination of information.

24                          MR. CAVALLUZZO:   I am going to ask  
25          you if you could identify a couple of documents

1           which seem to signify this problem that we are  
2           talking about.

3                                If you go to Exhibit P-85, Volume  
4           5, at tab 24 --

5                                MR. CABANA:   I'm sorry, which tab?

6                                MR. CAVALLUZZO:  Tab 24 of Volume  
7           5.

8                                This is a memorandum from Deputy  
9           Commissioner Loepky, who as Deputy Commissioner  
10          of Operations would be responsible, as you know,  
11          for CID and national security investigations and  
12          so on.  And it goes to Mr. Hovey, who is your  
13          officer in charge, or the officer in charge of the  
14          "A" Division in which your project is.

15                               MR. CABANA:   Yes.

16                               MR. CAVALLUZZO:  I'm just going to  
17          read part of it to you.

18                               It says:

19                                "This is further to our  
20                                telephone discussion and  
21                                subsequent meeting of  
22                                02-05-02 which related to  
23                                investigators ...  In your  
24                                comments at that time, you  
25                                pointed out that Criminal

1 Intelligence Directorate had  
2 been less than forthcoming  
3 about providing information  
4 which related to this file,  
5 and were not providing the  
6 assistance required to  
7 advance the file. At that  
8 point, there was some urgency  
9 to address the ... issue,  
10 given that ... and I did not  
11 take the opportunity to  
12 explore the concern that you  
13 raised, although you will  
14 recall my animated response  
15 that it was not acceptable  
16 that there were gaps in  
17 communication between the  
18 Division and the Policy  
19 Center."

20 Were you aware of these kinds of  
21 problems between your particular division and CID?

22 MR. CABANA: I would submit, sir,  
23 that the impetus for this correspondence was our  
24 project and the issue of the coordination or  
25 communication issues between CID and the division

1 was raised. I raised it with Mr. Couture and  
2 Mr. Hovey on a number of occasions and that is  
3 probably where this document comes from.

4 MR. CAVALLUZZO: Mr. Loeppky goes  
5 on to explain the mandate of CID.

6 He says:

7 "As you are aware, I expect  
8 that Criminal Intelligence  
9 Directorate will have a  
10 comprehensive overview of the  
11 current status and progress  
12 in national security files."

13 Just stopping there, certainly  
14 Mr. Loeppky at that point in time, if you caused  
15 this exchange of correspondence and meeting -- we  
16 are talking about Project A-OCANADA -- certainly  
17 Mr. Loeppky at least feels that you have a  
18 national security file.

19 That is what he is saying here?

20 MR. CABANA: Yes.

21 MR. CAVALLUZZO: Okay. He goes  
22 on:

23 "This is the Directorate that  
24 I, and ultimately the  
25 Commissioner, look to when

1 determining the overall  
2 intelligence profile on  
3 national security threats and  
4 updates with respect to  
5 ongoing files. They are the  
6 primary contact point with  
7 international law enforcement  
8 and intelligence  
9 organizations as it relates  
10 to national security, and are  
11 clearly responsible for  
12 corporate liaison with CSIS."

13 And then he goes on to talk about  
14 they play a critical role in the:

15 "Coordination from a  
16 corporate perspective as it  
17 relates to senior management  
18 needs at Headquarters;  
19 Provision of guidance,  
20 advice, and support to  
21 Divisions...  
22 Senior level liaison with  
23 CISC and foreign agencies  
24 present in Canada."

25 I'm assuming that's CSIS there and

1 not CISC. Is that fair?

2 MR. CABANA: I assume it is.

3 MR. CAVALLUZZO: "This is not to  
4 say that Division personnel  
5 do not have working  
6 relationships with other  
7 agencies, but merely that the  
8 policy center is tasked with  
9 the overall relationship,  
10 management and coordination  
11 of information."

12 Once again, these kinds of words,  
13 "needing more coordination", and so on, from your  
14 perspective, did you have trouble getting  
15 information out of headquarters which you needed  
16 in order to fulfil your mandate in your view?

17 Was that one of the problems?

18 MR. CABANA: Yes, we did. On  
19 several occasions there was delays and, in fact,  
20 we would learn of the existence of this  
21 information from partner agencies and had to go  
22 back to our headquarters to locate it.

23 MR. CAVALLUZZO: And this  
24 reference in the memorandum about CID having the  
25 relationship with international organizations, was

1           that another concern that CID had with Project  
2           A-OCANADA: that they should be the interlocutor  
3           with these foreign agencies and not Project  
4           A-OCANADA?

5                           MR. CABANA: It was a concern that  
6           was raised by CID periodically, yes.

7                           MR. CAVALLUZZO: Also around that  
8           time, I want to deal with another issue, and I'm  
9           talking now about in April of 2002, at which time  
10          there was a sharing of databases with American  
11          agencies.

12                          MR. CABANA: Yes, sir.

13                          MR. CAVALLUZZO: I understand that  
14          on the 2nd of April, 2002, you provided American  
15          agencies with three compact disks.

16                          Is that correct?

17                          MR. CABANA: Yes, we did.

18                          MR. CAVALLUZZO: And what was  
19          contained in the three compact disks? Don't tell  
20          me the numbers, just what in fact was contained  
21          there.

22                          MR. CABANA: The fruits of the  
23          searches, for the most part, as well as other  
24          correspondence and reports that were generated up  
25          to that point.

1                   MR. CAVALLUZZO: I understand that  
2 the entire SUPERText database was shared with the  
3 American agencies on these three compact disks?

4                   MR. CABANA: That is what was on  
5 the CDs.

6                   MR. CAVALLUZZO: If you could just  
7 give us some idea again, in terms of the SUPERText  
8 system, we would have situation reports that we  
9 talked about earlier?

10                  MR. CABANA: Yes.

11                  MR. CAVALLUZZO: We would have --  
12 well, why don't you tell us was normally found in  
13 the SUPERText database?

14                  MR. CABANA: Any correspondence,  
15 piece of documentary evidence, that reached the  
16 project is supposed to be scanned and uploaded  
17 into SUPERText.

18                  So as of -- and I'm not sure when  
19 the CDs were actually burned or cut. But as of  
20 that date, whatever was in SUPERText was included  
21 on the CDs.

22                  I should mention that the work  
23 product of the investigators and the project would  
24 not have been included. So the vast majority of  
25 the information contained in there was the fruits



1 of the search.

2 MR. CAVALLUZZO: I understand the  
3 CDs were burned on April 2nd of 2002?

4 MR. CABANA: That's possible. I  
5 know it was in April.

6 MR. CAVALLUZZO: In terms of the  
7 SUPERText file, apart from the fruits of the  
8 search, I understand that there might be documents  
9 from other agencies?

10 MR. CABANA: Yes, there was.

11 MR. CAVALLUZZO: Or correspondence  
12 from other agencies?

13 MR. CABANA: Yes, there was.

14 MR. CAVALLUZZO: And I understand  
15 that these CDs were given to the American agencies  
16 without any caveats attached?

17 MR. CABANA: The release of the  
18 CDs -- again, there was a process that took place  
19 prior to the release of the CDs where the  
20 managers, project managers, had meetings with  
21 representatives of these agencies and reiterated  
22 the fact that the sharing was being done in the  
23 context of the agreement that was in place.

24 The purpose for the sharing was  
25 highlighted and they were reminded again of the

1 procedure to follow should they wish or require to  
2 use any of the information that was being shared.

3 MR. CAVALLUZZO: Right.

4 MR. CABANA: I should also point  
5 out -- and I think it's important to note -- that  
6 the sharing was not in relation to Mr. Arar. It  
7 was in the context of the investigation of the  
8 targets that we were looking at at the time.

9 MR. CAVALLUZZO: Would there not  
10 be any information relating to Mr. Arar in the  
11 SUPERText that was scanned and given to the  
12 Americans?

13 MR. CABANA: There would be based  
14 on the background investigations that were  
15 conducted in relation to Mr. Arar, yes.

16 MR. CAVALLUZZO: And which could  
17 be, for example, if Mr. Arar was referred to on a  
18 situation report. Correct?

19 MR. CABANA: Yes.

20 MR. CAVALLUZZO: If there was  
21 another kind of important report relating to  
22 Mr. Arar, it could have been --

23 MR. CABANA: Yes. But aside from  
24 the fruits of the searches, the information that  
25 was contained in any of the reports or SITREPs had

1 already been shared prior to the sharing of the  
2 CDs.

3 MR. CAVALLUZZO: Would that  
4 include all of the documents and information that  
5 Project A-OCANADA received from other agencies,  
6 Canadian and domestic?

7 MR. CABANA: I submit to you that,  
8 yes, it would, because the mandate we were given  
9 and the direction we received was to share  
10 everything that we had with these agencies. So as  
11 the information was reaching the project, there  
12 was periodic meetings -- actually, regular  
13 meetings, inter-agency meetings, where all of this  
14 information was discussed in these open meetings  
15 with all of these agencies sitting around the  
16 table.

17 MR. CAVALLUZZO: I assume that  
18 since you felt it was part of the free-flow  
19 arrangement that Project A-OCANADA, or you, did  
20 not seek the consent of any of these agencies that  
21 had given Project A-OCANADA documents,  
22 correspondence, reports, or whatever.

23 MR. CABANA: Well, like I say, the  
24 majority of these other documents were discussed  
25 in open meetings, and those agencies had

1 representation for the most part.

2 Some of them, I agree with you,  
3 there was no representation at the table. But for  
4 the majority of those documents, agencies were  
5 sitting at the table when the information was  
6 being discussed and shared.

7 MR. CAVALLUZZO: Right. But you  
8 haven't answered the question.

9 The question was: You didn't seek  
10 the consent of these other agencies to release the  
11 documents.

12 MR. CABANA: We didn't go back to  
13 these agencies and advise them this was the date  
14 we would be sharing. It was discussed at the  
15 January 31st. It was discussed in subsequent  
16 meetings. We didn't go back and ask them for  
17 specific authority.

18 MR. CAVALLUZZO: Even though this  
19 was part of the free-flow arrangement, to your  
20 knowledge, was the CID aware that the entire  
21 SUPERText file had been sent to the Americans at  
22 the time?

23 MR. CABANA: Yes, I believe they  
24 were because one of the directions that we gave to  
25 these agencies during our meeting leading to this

1 sharing, we requested that they make an official  
2 request. In other words, we wanted a request on  
3 paper for us to disclose this information.

4 Those requests were channelled  
5 through CID and the requests themselves were very  
6 clear that they were seeking all information.

7 MR. CAVALLUZZO: I don't think,  
8 Commissioner, we can go any further because of NSC  
9 concerns.

10 If you go to Volume 1 of Exhibit  
11 P-85, tab 25 -- excuse me, 24.

12 This is the C-085 document which  
13 indicates -- it is redacted to a certain extent,  
14 Commissioner. But this, once again, for counsel,  
15 would indicate the kind of documentation that was  
16 in the SUPERText file that was burned onto those  
17 three CDs.

18 We cannot be any more specific  
19 than that.

20 Also, if you go to tab 25, the  
21 next tab, I understand that these officers' notes  
22 as well were part of the three CDs which were  
23 exchanged.

24 THE COMMISSIONER: In any event,  
25 that is the maximum disclosure that is permitted

1 according to the Government's NSC claims.

2 MR. CAVALLUZZO: That's correct.

3 Just a couple of final questions  
4 before we get to Mr. Arar's detention in September  
5 of 2002.

6 The first is I understand that  
7 Project A-OCANADA would make PowerPoint  
8 presentations to different agencies, stakeholder  
9 groups, in respect of your investigation?

10 MR. CABANA: Yes. Like I said,  
11 periodically, we would have joint management team  
12 meetings or multi-agency meetings, whatever you  
13 want to call them, where we would conduct these  
14 presentations to update everybody as far as the  
15 progress of the investigation and the direction of  
16 the investigation.

17 MR. CAVALLUZZO: And these  
18 PowerPoint presentations would summarize the  
19 investigation of Project A-OCANADA?

20 MR. CABANA: Yes, they would.

21 MR. CAVALLUZZO: The presentations  
22 would review the targets of Project A-OCANADA with  
23 these other agencies and groups?

24 MR. CABANA: Yes, it would.

25 MR. CAVALLUZZO: Would they all --

1 and just wait for an objection, if there is one; I  
2 don't think there will be.

3 Would they also include possible  
4 witnesses of A-OCANADA?

5 MR. CABANA: Oh, most definitely,  
6 yes.

7 MR. CAVALLUZZO: Okay. So is it  
8 fair to say that Mr. Arar would have been part of  
9 these presentations given to these other agencies?

10 MR. CABANA: Yes, and he would  
11 have been identified as a potential witness.

12 MR. CAVALLUZZO: Would it also  
13 identify why he was a potential witness, because  
14 of relationships with other people?

15 MR. CABANA: Yes.

16 MR. CAVALLUZZO: And did you make  
17 any of these presentations in Canada or the United  
18 States?

19 MR. CABANA: The vast majority of  
20 the presentations were conducted in Canada. To my  
21 knowledge, there was one presentation that was  
22 conducted in the U.S.

23 MR. CAVALLUZZO: And when was  
24 that?

25 MR. CABANA: Pardon me?

1 MR. CAVALLUZZO: When was that?

2 MR. CABANA: I believe it was in  
3 March.

4 MR. CAVALLUZZO: May 31st?

5 MR. CABANA: May?

6 MR. CAVALLUZZO: May 31st of 2002?

7 MR. CABANA: May 31st, 2002, yes.

8 MR. CAVALLUZZO: Just before  
9 Mr. Arar's detention, we have heard evidence --  
10 and perhaps you could go to the RCMP hearing  
11 documents, which is Exhibit P-83, at tab 1.

12 At page 182 of tab 1, this says --  
13 and I'm not going to mention the individual. It  
14 is dated August 15th, 2002. It's minutes of a  
15 meeting of Project A-OCANADA which started at 1:30  
16 in the CO's boardroom, and then about halfway  
17 down, it says:

18 "This was a proactive measure  
19 to discuss media lines to be  
20 used when an individual's  
21 allegations about torture in  
22 Syrian authorities. The  
23 media attention is expected  
24 to be intense."

25 And then it goes:



1 "The ... will coordinate  
2 media lines by attending  
3 agencies. This will ensure  
4 that the various department  
5 Ministers be briefed so they  
6 are not ambushed by media  
7 questions. The attending  
8 agencies all are agreed that  
9 minimal information will be  
10 put out due to the ongoing  
11 police investigation."

12 I understand at this time,  
13 Mr. Cabana, that you were out of town on August  
14 15th, 2002.

15 MS JACKMAN: Could I just  
16 interrupt for a minute, Mr. Commissioner?

17 You know, the concern about the  
18 identity of our clients is warranted, I think, but  
19 when we are talking about Mr. El Maati being  
20 tortured in Syria, it's not hurting his  
21 reputation. He is a victim.

22 I don't think you need to carry it  
23 to the extent that Mr. Cavalluzzo and the witness  
24 are carrying it to. I need to know who they are  
25 talking about because there is an overlap in terms

1 of time. I certainly don't want my client's  
2 reputation wrecked, but if they are talking about  
3 him being tortured, say it.

4 THE COMMISSIONER: I think that is  
5 a reasonable point.

6 --- Laughter / Rires

7 MR. CAVALLUZZO: I will tell you  
8 what. Throw some water on me when you want to  
9 give me a sign. Just get my attention.

10 So that was Mr. El Maati?

11 MR. CABANA: Yes, it was.

12 MR. CAVALLUZZO: That we are  
13 talking about on August the 15th?

14 MR. CABANA: Yes, sir.

15 MR. CAVALLUZZO: You were out of  
16 town, I understand, on that particular day?

17 MR. CABANA: Yes, I was. I did  
18 not attend this meeting.

19 MR. CAVALLUZZO: But when you did  
20 return, I understand you did become aware that in  
21 the summer of 2002 Mr. El Maati had made  
22 allegations that he had been tortured while he was  
23 in detention in Syria.

24 Is that correct?

25 MR. CABANA: Yes, sir, I was made

1           aware of that.

2                           MR. CAVALLUZZO: I would like to  
3           move on to September 26th of 2002, which was the  
4           day that Mr. Arar was initially detained in the  
5           United States.

6                           I am wondering if you could  
7           perhaps tell us how Project A-OCANADA became aware  
8           that Mr. Arar might be detained?

9                           MR. CABANA: Project A-OCANADA  
10          became aware through a phone call from a  
11          representative from the U.S. Embassy, who  
12          contacted one of our investigators advising that  
13          Mr. Arar was expected to arrive, I believe it was  
14          at JFK, within the hour, if I remember correctly,  
15          and at which time he would be refused entry and  
16          returned to his point of origin. And they were  
17          seeking our assistance in providing them with a  
18          series of questions that they were aware had been  
19          prepared for the interview that had been planned  
20          the day of the searches on January 22nd. They  
21          were asking us to provide them with these  
22          questions to help them prepare for the interview.

23                          MR. CAVALLUZZO: When you say  
24          "point of origin", what do you mean by that?

25                          MR. CABANA: My understanding was

1 he was flying in from Zurich, and he would be  
2 returned to Zurich.

3 MR. CAVALLUZZO: In respect of the  
4 contact between this person at the U.S. Embassy  
5 and somebody in Project A-OCANADA, I understand  
6 that it was not you; it was someone else?

7 MR. CABANA: No, it was not me.

8 MR. CAVALLUZZO: And that person  
9 would have reported or someone would have reported  
10 that particular telephone conversation to you?

11 MR. CABANA: Later that day, yes.  
12 Exactly at what time, I have no recollection, and  
13 it's not reflected in my notes.

14 MR. CAVALLUZZO: So you say that  
15 this American official or representative requested  
16 a list of interview questions for Mr. Arar.

17 Do you know how the decision was  
18 made that if interview questions were sent that  
19 they would be sent to the Americans? Do you know  
20 who made the decision, how it was made, what  
21 factors were taken into account?

22 MR. CABANA: I -- and this would  
23 be speculation on my part. I would assume it  
24 would be the project managers that made the  
25 decision to send the questions.

1                   The questions were not in relation  
2                   to Mr. Arar per se. Again, the questions were in  
3                   relation to the target, the main target of our  
4                   investigation and the relationship Mr. Arar had  
5                   with that person.

6                   MR. CAVALLUZZO: I am wondering --

7                   MR. COPELAND: I rise,  
8                   Mr. Commissioner, again I would be interested in  
9                   knowing the identity of that particular person.  
10                  It seems to me relevant.

11                  THE COMMISSIONER: You want to  
12                  know the name of that person?

13                  MR. COPELAND: Yes.

14                  MR. CAVALLUZZO: Do you know the  
15                  identity of that person that you just referred to,  
16                  the prime target?

17                  MR. CABANA: Yes, Mr. Abdullah  
18                  Almalki.

19                  MR. CAVALLUZZO: Then let us go  
20                  then to Exhibit P-83, tab 1, page 187.

21                  We have a fax which is dated  
22                  September 26th.

23                  MR. CABANA: Yes, sir.

24                  MR. CAVALLUZZO: And it's sent  
25                  to -- maybe you can interpret this for us. It

1 says, "Headquarters NOC".

2 What is that?

3 MR. CABANA: That's NOC, our  
4 National Operations Centre at headquarters, and  
5 communications are channelled through that centre.

6 MR. CAVALLUZZO: And then it says:  
7 "For the information of international liaison  
8 person headquarters CID".

9 Who would that be? Do you know  
10 who that is?

11 MR. CABANA: Who it was sent to?

12 MR. CAVALLUZZO: Yes.

13 MR. CABANA: No, actually, I don't  
14 remember.

15 MR. CAVALLUZZO: But in any event,  
16 headquarters would have been aware, obviously,  
17 that these questions were being sent to the  
18 Americans because it was being sent through  
19 headquarters?

20 MR. CABANA: Very much so, yes.

21 MR. CAVALLUZZO: And what it says  
22 is:

23 "Re: Project A-OCANADA.

24 The attached pages are  
25 suggested questions for Maher

1 Arar as per your request.  
2 The list was one prepared  
3 earlier this year prior to  
4 Arar's sudden departure from  
5 Canada and as such some  
6 questions are a little bit  
7 dated. We appreciate your  
8 assistance in interviewing  
9 Arar."

10 And then it's signed by two  
11 individuals, and if you go -- well, there's a  
12 signature for two individuals. And if we go to  
13 Exhibit P-84, we have a less redacted volume or  
14 fax.

15 One says "A" Division, the right  
16 one, "A" Division IPOC, Project A-OCANADA, and the  
17 left side it's OIC Project A-OCANADA/A-IPOC.

18 This is in Exhibit P-84 at page  
19 26.

20 MR. CABANA: I believe what you  
21 are referring to is the signature block.

22 MR. CAVALLUZZO: Right.

23 MR. CABANA: But I don't believe I  
24 signed that correspondence.

25 MR. CAVALLUZZO: That's what I was

1 going to ask you. Did you sign this?

2 MR. CABANA: No.

3 MR. CAVALLUZZO: So you didn't see  
4 this fax with the list of questions before it went  
5 out?

6 MR. CABANA: No, I don't believe  
7 so.

8 MR. CAVALLUZZO: If we look at the  
9 questions, the interview questions that were sent  
10 down to New York, this is the next page, it says:

11 "The following questions were  
12 prepared for interview that  
13 was slated to be conducted  
14 with Arar in January of 2002.  
15 Due to the urgent need to  
16 transmit this to New York  
17 this outline for questions to  
18 be asked was not edited."

19 And then the first ten questions  
20 would appear to relate to biographical  
21 information?

22 MR. CABANA: Yes, sir.

23 MR. CAVALLUZZO: His background,  
24 his passport, whether he has a Syrian passport,  
25 and so on and so forth?



1 MR. CABANA: Yes.

2 MR. CAVALLUZZO: The next six  
3 questions appear to relate to occupation and  
4 employment.

5 "What's your occupation?  
6 What company do you work for  
7 in Canada, the United  
8 States?"

9 And so on. The next series of  
10 questions relate to police.

11 "Do you have a criminal  
12 record in Canada or abroad?  
13 Have you had any previous  
14 contact with police or  
15 government agencies in Canada  
16 or abroad?"

17 And then the next series of  
18 questions seem to be personal like:

19 "Where were you on September  
20 11th?"

21 Are you affiliated to any  
22 political groups or  
23 movements?

24 Did you contribute to any  
25 charitable organization?

1 Do you know any individuals  
2 who are affiliated to  
3 charities of this nature?  
4 Have you, or anyone you know,  
5 had any military training or  
6 training of this nature?"

7 And then there is a redacted  
8 portion with, I assume, other questions as well as  
9 a conclusion on the last page which is also  
10 redacted.

11 In any event, you feel that the  
12 questions related to his association with --  
13 because much of it seems to be related to  
14 Mr. Arar?

15 MR. CABANA: No, it goes to the  
16 background inquiries that were conducted. If you  
17 were to look at the packages that were prepared  
18 for the searches of January 22nd, you would see  
19 similar interview questions in relation to other  
20 potential targets -- or not targets, I'm sorry,  
21 witnesses that we were seeking to interview.

22 MR. CAVALLUZZO: Right.

23 MR. CABANA: But all of them  
24 related to the main target, or the main focus of  
25 our investigation and their association.

1                   So we were seeking to confirm some  
2 of the background biographical data that we had on  
3 each of the individuals. But the focus of these  
4 questions, and I would submit to you that the  
5 important questions for us are the ones that have  
6 been redacted in relation to the target of our  
7 investigation.

8                   MR. CAVALLUZZO: Okay. While we  
9 are still on September the 26th, RCMP gets notice  
10 that a Canadian is coming into New York City in an  
11 hour or so. He is obviously going to be  
12 questioned or whatever. And then, according to  
13 the source, he would be turned back to Zurich.

14                   Did you notify DFAIT at all, or  
15 did anyone in the RCMP notify DFAIT that we have  
16 this Canadian coming in and he may need consular  
17 access or consular assistance while he is in New  
18 York City?

19                   MR. CABANA: No, because the  
20 information that we were provided with was that he  
21 would be refused entry and returned to his point  
22 of entry. So it is not a situation where we were  
23 made aware of the fact that the individual,  
24 Mr. Arar, was going to be incarcerated for a  
25 lengthy period of time or anything like that.

1                   It was a process by which, when he  
2                   appeared at Customs, the decision obviously had  
3                   already been made that he would be refused and  
4                   returned. So we did not advise DFAIT. We  
5                   provided the questions that were requested.

6                   MR. CAVALLUZZO: If I was  
7                   Mr. Arar, what I would say to you is, "What are  
8                   you guys doing? I had a lawyer. The lawyer  
9                   talked to you on January the 25th, was very clear  
10                  with you that I will be interviewed, but I want my  
11                  lawyer with me when I'm interviewed."

12                  And here you are sending questions  
13                  down to the Americans for them to ask Mr. Arar.

14                  MR. CABANA: No, sir.

15                  MR. CAVALLUZZO: The question I  
16                  would have is: Aren't you doing an end-run on my  
17                  right to counsel?

18                  MR. CABANA: No, sir. The  
19                  questions were not sent down to the Americans for  
20                  us to ask. The Americans asked us the questions  
21                  because of the small period of time -- the small  
22                  window that they had to prepare for this  
23                  interview.

24                  They knew we already had questions  
25                  prepared because they had already looked at the

1           questions in the context of the searches. They  
2           knew we had packages, and they asked us to provide  
3           that as a basis for their interview.

4                       Of course if we are going to be  
5           providing them questions and if Mr. Arar is  
6           inclined to answer those questions, well of course  
7           we would like to know what he has to say.

8                       At that point in time, what we  
9           were advised was that he would be returned to  
10          Zurich, and potentially we would never have an  
11          opportunity to speak to him again.

12                      MR. CAVALLUZZO: But if that's  
13          right, wouldn't the Americans already have these  
14          questions? In other words, these surveillance  
15          packages with these questions presumably would  
16          have been part of the SUPERText database that you  
17          had already sent down.

18                      MR. CABANA: Maybe they were.  
19          They might have been in possession of those  
20          questions. But there is some indication that some  
21          of the U.S. agencies never opened or never were  
22          able to access the information. Maybe that's the  
23          case.

24                      MR. CAVALLUZZO: It is important  
25          to -- I just want to be very, very clear, because

1 obviously we are dealing with the right to  
2 counsel, which is a Charter right here. I want to  
3 be very, very clear.

4 Your view, when these questions  
5 were sent down, although you didn't sign it -- and  
6 presumably you thought about it.

7 But from the perspective of  
8 A-OCANADA, did they not think that by sending  
9 those questions that those questions may have been  
10 asked of Mr. Arar, and that the information they  
11 got from Mr. Arar as a result of those questions  
12 would have come back to Canada?

13 MR. CABANA: Well, I would submit  
14 that that is probably what was hoped, was that if  
15 the questions -- the purpose of sending the  
16 questions, obviously the Americans wanted to ask  
17 those questions of Mr. Arar.

18 MR. CAVALLUZZO: Right.

19 MR. CABANA: Like I said, if he  
20 was inclined to answer the questions, we would  
21 hope to get his responses back.

22 MR. CAVALLUZZO: Right.

23 MR. CABANA: Now, Mr. Arar at the  
24 time was not a suspect; he was a witness. He was  
25 considered to us as a witness. And being in the

1 United States, which is a country that shares a  
2 lot of our values, Mr. Arar would be free to  
3 answer or to refuse to answer.

4 So his right to counsel was still  
5 there; it was still present. But maybe his  
6 inclination had changed.

7 I would submit that this is not a  
8 situation, sir, where we were aware that Mr. Arar  
9 was coming back and we advised the Americans he is  
10 coming through your country and we are going to be  
11 sending you a series of questions. Can you please  
12 ask them? Not at all.

13 It was the other way around. The  
14 Americans advised us he was coming back and they  
15 asked for the questions.

16 MR. CAVALLUZZO: They asked for  
17 the questions --

18 MR. CABANA: It was their  
19 interview.

20 MR. CAVALLUZZO: But it would seem  
21 to me that if the questions were posed -- if the  
22 questions were answered, the information would  
23 come back to Canada.

24 In other words, you would have got  
25 information that you couldn't have gotten in

1 Canada the previous January, for the most part the  
2 very same questions --

3 MR. CABANA: Yes.

4 MR. CAVALLUZZO: -- that he in  
5 effect refused to answer through his lawyer. Yet  
6 through this, on September the 26th, you sent down  
7 the very same questions.

8 MR. CABANA: Yes, because we were  
9 asked by our partners to send down the questions,  
10 so we did.

11 MR. CAVALLUZZO: But don't you  
12 find there is something inappropriate about that  
13 in the sense that when he is in Canada, he refused  
14 to answer those very same questions without his  
15 lawyer, yet if he is in New York you send the same  
16 questions down and hope to get the information.

17 You don't find that inappropriate?

18 MR. CABANA: I don't find that  
19 inappropriate. Not at all.

20 MR. CAVALLUZZO: Okay. And I  
21 guess I come back to that question: Is that a  
22 situation where the Charter of Rights would apply?

23 Remember we talked about if you go  
24 down to interview, does the Charter apply? The  
25 next question was: If you send questions down,



1 does the Charter apply?

2 MR. CABANA: Well, like I said  
3 earlier, it would be a legal question to be  
4 debated by the courts.

5 MR. CAVALLUZZO: Okay. Then let  
6 us move to September 27th, the next day in the  
7 week.

8 MR. CABANA: Certainly.

9 MR. CAVALLUZZO: I think September  
10 the 27th was a Friday.

11 MR. CABANA: Yes, it was.

12 MR. CAVALLUZZO: If we go to your  
13 notes now at page 48, at 11:15, it says: "Briefed  
14 Mr. Couture" -- who is the CROPS officer at the  
15 time -- "on the events of yesterday involving  
16 CID."

17 And then it goes on:

18 "Also informed him of contact  
19 between Ms Alder and Mr. Mike  
20 Edelson with respect to  
21 Almalki. Advised Couture  
22 that we would be meeting with  
23 Mr. Edelson next week to  
24 bring ..."

25 MR. CABANA: To discuss his

1 concern.

2 MR. CAVALLUZZO: To discuss his  
3 concern.

4 In this conversation with Alder at  
5 this time, do you know if Mr. Edelson also raised  
6 Mr. Arar's situation?

7 MR. CABANA: Yes, he did.

8 MR. CAVALLUZZO: He did?

9 MR. CABANA: Yes.

10 MR. CAVALLUZZO: And did Alder  
11 tell Edelson, "Oh, by the way, we sent the  
12 questions down that you refused to have your  
13 client answer six months ago"?

14 MR. CABANA: I have no knowledge  
15 of the conversation, or the nature of the  
16 conversation, between Ms Alder and Mr. Edelson.

17 MR. CAVALLUZZO: Now September --  
18 just let me make sure of this.

19 This is a high-tech operation,  
20 Mr. Cabana.

21 --- Laughter / Rires

22 MR. CAVALLUZZO: You are correct,  
23 September 27th was a Friday. So September 28th  
24 and 29th would have been the weekend.

25 Did anything in relation to

1 Mr. Arar come to your knowledge during that  
2 weekend period?

3 MR. CABANA: In relation to  
4 A-OCANADA?

5 MR. CAVALLUZZO: Yes.

6 MR. CABANA: In relation to  
7 A-OCANADA, no. But I am aware that there was  
8 communication between representatives of the U.S.  
9 Embassy and CID.

10 MR. CAVALLUZZO: And CID.

11 MR. CABANA: And one of our  
12 members at CID, yes.

13 MR. CAVALLUZZO: During that  
14 weekend that we are talking about, September 27th  
15 and 28th?

16 MR. CABANA: Oh, 27th, 28th, 29th,  
17 no.

18 MR. CAVALLUZZO: That is what I'm  
19 talking about.

20 MR. CABANA: No, no.

21 MR. CAVALLUZZO: Okay, that's  
22 fine.

23 The Monday then, presumably you  
24 returned to work on Monday, October -- sorry.

25 MR. CABANA: September 30th.

1                   MR. CAVALLUZZO: On September 30th  
2 you would have returned to work. Did anything in  
3 respect of Mr. Arar occur, to your knowledge, on  
4 September 30th?

5                   MR. CABANA: On September 30th, we  
6 were still of -- actually, we were of the belief  
7 that Mr. Arar had been returned to Zurich on the  
8 27th, which is the day following his arrival in  
9 New York. We believed early on in the morning  
10 that he had already been returned.

11                   Our understanding was that it was  
12 going to be a process that was going to be fairly  
13 quick. In other words, next flight out, Mr. Arar  
14 would be put on that flight and returned to his  
15 point of origin.

16                   MR. CAVALLUZZO: What gave you the  
17 impression that on the morning of the 27th, which  
18 would have been the Friday, that he would have  
19 left JFK for Zurich?

20                   MR. CABANA: Because we didn't  
21 have any other information reaching us in the  
22 morning indicating that that had not occurred.

23                   MR. CAVALLUZZO: So you were  
24 relying upon the previous day's information that  
25 he was going to be turned around?

1 MR. CABANA: Exactly.

2 MR. CAVALLUZZO: Okay.

3 MR. CABANA: Now, later during the  
4 day, actually I think it was early afternoon,  
5 there was a phone call that was received from U.S.  
6 Embassy representatives to one of the team  
7 managers advising that Mr. Arar was still in  
8 custody; that investigators were being flown in to  
9 conduct an interview, and that he would be refused  
10 entry.

11 So, again, it was the same story;  
12 he would be sent back to his point of origin.

13 MR. CAVALLUZZO: So by the time  
14 you leave work on the 27th, you know that he is  
15 still in custody and there are going to be some  
16 interviews done.

17 MR. CABANA: By early afternoon we  
18 know that he is still in custody, but again we are  
19 under the belief, the impression, that it is a  
20 matter of hours before he is put on the next  
21 flight out.

22 MR. CAVALLUZZO: And once again I  
23 assume as a result of that no one in the RCMP  
24 notified DFAIT that, "We have got this guy. It's  
25 his second day now in New York. He may require

1 consular assistance"?

2 MR. CABANA: Nobody from  
3 A-OCANADA. In relation to CID, I don't believe so  
4 either.

5 MR. CAVALLUZZO: So nothing  
6 happens on the weekend in relation to Mr. Arar.

7 September the 30th is the Monday.  
8 At this point in time do you have any idea as to  
9 Mr. Arar's whereabouts?

10 MR. CABANA: We were under the  
11 impression he was back in Zurich.

12 MR. CAVALLUZZO: And when did you  
13 discover that Mr. Arar in fact was still in the  
14 United States?

15 MR. CABANA: Well, the first  
16 indications came to us actually on October 1st,  
17 when one of the team managers of Project A-OCANADA  
18 had a conversation with a representative from the  
19 U.S. Embassy and the representative was  
20 indicating, or didn't seem to be sure, but he was  
21 indicating that Mr. Arar might still be in the  
22 U.S.

23 But our understanding, our belief  
24 was that he had been returned the previous Friday.

25 MR. CAVALLUZZO: Right.

1 MR. CABANA: So this person, this  
2 representative, was asked to verify and confirm  
3 with us what the status was at the time.

4 On that date, on the 1st of  
5 October, we didn't get any return from this  
6 person.

7 MR. CAVALLUZZO: And this was on  
8 the Tuesday?

9 MR. CABANA: That would be on the  
10 Tuesday, sir.

11 MR. CAVALLUZZO: On October the  
12 1st?

13 MR. CABANA: Yes, sir.

14 MR. CAVALLUZZO: Was it clear to  
15 you in terms of this representative coming, was he  
16 saying that, yes, he was still in the States but  
17 he was going to be sent back? Was it ambiguous  
18 like that, or was he clear on that?

19 MR. CABANA: Well, he said that he  
20 believed that Mr. Arar was still in the States and  
21 was going to be sent back. Our belief was that he  
22 had already been sent back.

23 MR. CAVALLUZZO: So I assume that  
24 the American representative basically disabused  
25 you of that notion. He is still in the States but

1 he is going to be sent back.

2 MR. CABANA: He didn't -- no, I  
3 wouldn't go that far, because he didn't seem to be  
4 sure himself as to what Mr. Arar's status was.  
5 That is why the team manager asked him to confirm  
6 and get back to us.

7 MR. CAVALLUZZO: Okay. Was there  
8 any involvement at that point of headquarters, of  
9 DFAIT, saying, "We have got to find out where this  
10 guy is"?

11 MR. CABANA: No, sir, I don't  
12 believe so, not as of October 1st, not that I'm  
13 aware.

14 MR. CAVALLUZZO: Now, what happens  
15 on October 2nd?

16 MR. CABANA: On October 2nd, we  
17 had -- our liaison officer to DFAIT visited the  
18 team managers.

19 MR. CAVALLUZZO: Right.

20 MR. CABANA: And inquired as to  
21 whether we knew the status of Mr. Arar. He was  
22 advised that the last we had heard, he had been  
23 detained by Americans in New York City,  
24 interviewed, refused entry and had been returned  
25 to Zurich.



1                   That was in the morning of -- it  
2                   would have been the morning of October 2nd.

3                   MR. CAVALLUZZO: Right.

4                   MR. CABANA: Later that day, our  
5                   liaison officer to DFAIT contacted the team --

6                   MR. CAVALLUZZO: That's the same  
7                   person, obviously.

8                   MR. CABANA: That's the same  
9                   person, obviously.

10                  MR. CAVALLUZZO: Right.

11                  MR. CABANA: Contacted the team  
12                  and advised the team manager that that wasn't the  
13                  case; that Mr. Arar was still in U.S. custody.

14                  MR. CAVALLUZZO: Okay. What did  
15                  you do as a result of finding out that Mr. Arar  
16                  was still in U.S. custody as of October the 2nd,  
17                  which would have been, I guess, the fifth day he  
18                  was in town?

19                  MR. CABANA: Well, first of all,  
20                  we are trying to understand what the situation is,  
21                  what the status of Mr. Arar is, how come he is  
22                  still in the U.S. We are looking, again, at what  
23                  investigative options are available to us, and  
24                  discussions started.

25                  And exactly at what stage during

1           this 2nd or 3rd of October these discussions took  
2           place, I couldn't tell you. All I know is during  
3           this period of time, we started considering the  
4           possibility of travelling to New York to conduct  
5           an interview with Mr. Arar.

6                         MR. CAVALLUZZO: So it would  
7           appear from what you are saying that either on the  
8           2nd or 3rd discussions start about investigative  
9           steps, including the possibility of going down to  
10          New York.

11                        MR. CABANA: Yes, the  
12          investigators and the managers are looking at all  
13          the available options to us to try to make sure  
14          that we select the best available options.

15                        It also included, of course,  
16          because we are looking at the possibility of  
17          interviewing somebody abroad, it involved  
18          extensive consultation with Justice.

19                        MR. CAVALLUZZO: Does anything  
20          happen on October 3rd?

21                        MR. CABANA: On October 3rd I  
22          believe there is a request from U.S. agency that  
23          is forwarded to us by CID, by our headquarters,  
24          and American authorities are seeking further  
25          information in relation to Mr. Arar and

1 specifically any aliases that we would be aware  
2 of.

3 MR. FOTHERGILL: Excuse me.  
4 Before the witness continues, we can acknowledge  
5 that there was a request for information, but the  
6 specifics about the information sought is subject  
7 to national security confidentiality.

8 MR. CAVALLUZZO: In any event, you  
9 did receive a request for something?

10 MR. CABANA: We received a request  
11 for further information.

12 MS EDWARDH: Sorry,  
13 Mr. Commissioner, I just want to draw to  
14 Mr. Cavalluzzo's attention that the subject matter  
15 of his questions is clearly set out in our  
16 documents. Otherwise I wouldn't have expected the  
17 question asked, including the use of aliases -- in  
18 unredacted form.

19 THE COMMISSIONER: It is set out  
20 in the documents you received.

21 Does the Government still claim  
22 national security confidentiality?

23 MR. FOTHERGILL: To the extent  
24 that it's obviously disclosed already, no. But I  
25 don't think we will find that the entire request

1 is disclosed.

2 THE COMMISSIONER: Do we handle it  
3 this way: that it is open to bring out the  
4 content of the request as disclosed in the  
5 document Mr. Edwardh refers to.

6 MR. FOTHERGILL: Yes.

7 MR. CAVALLUZZO: Well, let us find  
8 that.

9 While we are doing that, I want to  
10 file as an exhibit a less redacted response to  
11 that request.

12 THE COMMISSIONER: This is the  
13 response that goes on October 4th?

14 MR. CAVALLUZZO: Yes.

15 --- Pause

16 THE COMMISSIONER: 172.

17 EXHIBIT NO. P-172: Fax dated  
18 10 October 2002 to HQ NOC  
19 from OIC Project A-OCANADA

20 MR. CAVALLUZZO: We will find the  
21 request but let's move on with 172, which is the  
22 response to the request.

23 It should be noted -- you can  
24 clarify this, Mr. Cabana -- on the top right-hand  
25 portion of the fax it states October 2nd. I

1 understand that's incorrect?

2 MR. CABANA: That's incorrect.

3 MR. CAVALLUZZO: The appropriate  
4 date --

5 MR. CABANA: The correspondence  
6 was forwarded on October 4th.

7 MR. CAVALLUZZO: That should be  
8 October 4th?

9 MR. CABANA: Yes, sir.

10 MR. CAVALLUZZO: Okay.

11 What the fax states -- once again,  
12 it's through headquarters, NOC, and it is "Re:  
13 Project A-OCANADA, response to [somebody's]  
14 request for information on Maher Arar and also  
15 request to interview Maher Arar".

16 MR. CABANA: Yes, sir.

17 MR. CAVALLUZZO: And it states:

18 "Project A-OCANADA received a  
19 facsimile this date through  
20 RCMP headquarters requesting  
21 information on Maher Arar.  
22 A-OCANADA's investigators  
23 have responded to each of the  
24 requests contained in the  
25 facsimile. The information

1 is being provided to the ..."  
2 It's redacted.  
3 "... who are coordinating the  
4 requests for information.  
5 The supporting documents will  
6 be forwarded on a later date.  
7 Project A-OCANADA was also  
8 made aware of the detention  
9 of Maher Arar by U.S.  
10 authorities on September  
11 26th. We were advised that  
12 this individual was still in  
13 the custody of U.S.  
14 authorities as of October 4.  
15 We are requesting that our  
16 investigators from Project  
17 A-OCANADA be allowed access  
18 to Arar for the purposes of  
19 conducting an interview in  
20 relation to our  
21 investigation. It is  
22 important to note that the  
23 information contained in the  
24 attached report only  
25 addresses the issues raised.

StenoTran

1 Project A-OCANADA has  
2 significant documentation on  
3 this individual that could be  
4 of assistance to your  
5 investigation."

6 And this is signed by -- was this  
7 signed by you, or signed by somebody else?

8 MR. CABANA: No, I believe that's  
9 signed by somebody else.

10 MR. CAVALLUZZO: What this fax  
11 does, before we get to the information, it does a  
12 number of things.

13 One, it says, "We want to  
14 interview Arar for our own investigation"?

15 MR. CABANA: That's correct.

16 MR. CAVALLUZZO: So you are saying  
17 for your investigation you want to go down there  
18 to interview Arar?

19 MR. CABANA: Our position at the  
20 time was that Mr. Arar, although we were surprised  
21 he was still in custody in the U.S., was still  
22 being returned to Zurich and this basically, or  
23 potentially, was going to be our last chance to  
24 have a face-to-face.

25 MR. CAVALLUZZO: Okay. And we

1 will come back to that.

2 It goes on to say, second, you are  
3 supplying the information which addresses the  
4 questions that have been posed by this American  
5 agency?

6 MR. CABANA: That's correct.

7 MR. CAVALLUZZO: And then it goes  
8 on to say, "And by the way, we have significant  
9 documentation on this individual that could be of  
10 assistance in your investigation."

11 So that you are inviting the  
12 Americans, saying, "If you want to investigate  
13 further, we have a lot of information on this guy  
14 that we are prepared to share with you"?

15 MR. CABANA: Yes, sir.

16 MR. CAVALLUZZO: Are you sure this  
17 guy is still only a witness?

18 MR. CABANA: Yes. He is a person  
19 of interest.

20 MR. CAVALLUZZO: Is that elevated?  
21 Like, is it witness a person of interest, target?

22 MR. CABANA: Well, based on what  
23 was happening in the U.S. at the time, and based  
24 on some of the information we had received, he was  
25 not a target but he was a person of interest.



1 MR. CAVALLUZZO: In terms of the  
2 responses, as you can see, much of it is redacted.

3 There is one point of  
4 clarification that I want to point out, and that  
5 is in the last paragraph at page 5, where it says:

6 "A link analysis has yet to  
7 be completed on Arar and  
8 while he has contact with  
9 many individuals of interest  
10 to this project, we are  
11 unable to indicate links to  
12 al-Qaeda."

13 I think we have seen in Exhibit  
14 20, which is the ruling, if we can call it that,  
15 of the INS judge removing Mr. Arar on or about  
16 October the 7th, that as of October 1st, the  
17 Americans were alleging that Mr. Arar was a member  
18 of al-Qaeda.

19 Is that correct?

20 MR. CABANA: Yes, sir. And  
21 basically our response to them was we cannot show  
22 any links right now.

23 MR. CAVALLUZZO: Once again, just  
24 to be clear, this further information that is  
25 being sent in relation to Mr. Arar is going

1 through headquarters so that headquarters is quite  
2 aware that Project A-OCANADA is sending this  
3 further information down.

4 MR. CABANA: Very much so.  
5 Actually, the request was forwarded to us by  
6 headquarters and we were directed to respond to  
7 the request.

8 The reply was, of course,  
9 channelled through headquarters. In fact, if I  
10 remember correctly, there was a problem with the  
11 transmission, the original transmission of our  
12 reply, and headquarters retransmitted it after.

13 MR. CAVALLUZZO: At this point in  
14 time what I would like to do is deal with a  
15 discrete part of the events, and that is the  
16 request for an interview.

17 It would appear that as of October  
18 2nd or 3rd, after you discover that Mr. Arar is  
19 still in New York City, you start considering the  
20 possibility of an interview. Certainly as of  
21 October the 4th you put that in writing to the  
22 Americans, that you are interested, Project  
23 A-OCANADA is interested in interviewing Mr. Arar  
24 in relation to your own investigation.

25 MR. CABANA: Yes, sir. We made an

1 official request, if you want to call it that, to  
2 American authorities for access to Mr. Arar. Like  
3 I said, we viewed this as probably the last  
4 opportunity to have a face-to-face.

5 MR. CAVALLUZZO: We saw in the  
6 policies, and I just want to be sure that I know  
7 the policies -- and once again, I can read it to  
8 you. You don't have to refer back to the Book of  
9 Documents of Mr. Loepky.

10 It is tab 29 for counsel's  
11 benefit.

12 THE COMMISSIONER: P-12?

13 MR. CAVALLUZZO: Yes, P-12, tab  
14 29. And this is at page 7 of 14.

15 As far as interviews of Canadians  
16 abroad, it says:

17 "Do not contact or interview  
18 Canadians in custody in a  
19 foreign country unless:  
20 1. the interview was  
21 requested through a Canadian  
22 government representative, or  
23 consent to the interview is  
24 given in writing, and  
25 2. the interview has been

1                                   approved by the head of the  
2                                   foreign post."

3                                   Just dealing with the second  
4 point, did you need the approval of the head of  
5 the foreign post, or does this apply when --

6                                   MR. CABANA: Yes, sir, it applies.

7                                   MR. CAVALLUZZO: Okay. So the  
8 head of the foreign post would be who? The head  
9 of the consulate in New York?

10                                  MR. CABANA: In New York or  
11 Washington.

12                                  MR. CAVALLUZZO: So if the  
13 interview was to take place, before it happened  
14 you would have got the approval of the head of  
15 post.

16                                  MR. CABANA: The proper process  
17 would have been for us, once we received  
18 confirmation that the interview was a possibility,  
19 a formal request would be made through channels to  
20 our headquarters seeking permission.

21                                  MR. CAVALLUZZO: Okay. And the  
22 first point is that the interview was requested  
23 through a Canadian government representative.

24                                  Is that the case here, or do you  
25 have to go to the next line, which says, you need

1 the consent of Mr. Arar in writing for the  
2 interview?

3 MR. CABANA: We would have  
4 required the consent of Mr. Arar for the interview  
5 to occur, yes.

6 MR. CAVALLUZZO: So what you are  
7 saying is before you would interview Mr. Arar that  
8 you would have needed his approval or consent in  
9 writing?

10 MR. CABANA: Yes.

11 MR. CAVALLUZZO: Do you think that  
12 would have been a fair consent? If I am a  
13 Canadian in jail, the Americans have held me now  
14 for five or six days, I'm at some detention centre  
15 and these guys are interviewing me left, right and  
16 centre, and finally I see a wonderful Canadian  
17 before me and saying, "Will you consent to an  
18 interview?" Do you think that is a fair consent  
19 in those circumstances?

20 MR. CABANA: That would not be up  
21 to me to determine whether it is a fair consent or  
22 not. If a consent is given, then we would have  
23 been prepared to meet with Mr. Arar.

24 I would say whether the consent is  
25 fair or not would be a subject of argument in

1 court.

2 But again, at that point in time,  
3 Mr. Arar was not being viewed as a suspect but as  
4 a potential witness at that point in time.

5 MR. CAVALLUZZO: And what about  
6 Arar's right to counsel, once again going back to  
7 January the 25th of 2002, where he said, "I'll  
8 meet you. I'll be interviewed by you guys, but I  
9 want to be with my lawyer"?

10 What would you have said if he  
11 said that?

12 MR. CABANA: Well, I believe being  
13 in the United States, Mr. Arar would have had  
14 access to counsel in the U.S. Now, whether his  
15 lawyer at the time would have been prepared to  
16 travel to New York to attend the interview, that's  
17 something that would have been subject to  
18 discussion and would have been up to him, I guess.

19 MR. CAVALLUZZO: I guess I can't  
20 ask whether you discussed this with Justice.

21 In any event, were there  
22 discussions about the Charter implications of  
23 doing this, of going down to interview a Canadian  
24 in detention in the United States, knowing that  
25 virtually within half a year of that time he had

1 refused to be interviewed without his lawyer?

2 Were there any discussions like  
3 that that were held in the project?

4 MR. CABANA: There were  
5 discussions ongoing, and I would submit long  
6 before Mr. Arar was detained or incarcerated in  
7 the U.S. These discussions started a long time  
8 before in relation to other individuals in this  
9 project, which involved input from representatives  
10 from Justice as well as DFAIT and other  
11 organizations.

12 MR. CAVALLUZZO: No, but was there  
13 any particular discussion about Mr. Arar's Charter  
14 rights?

15 MR. CABANA: Yes, sir, there was.

16 MR. CAVALLUZZO: With whom?

17 MR. CABANA: With the legal  
18 advisors that were assigned to the investigative  
19 team.

20 MR. CAVALLUZZO: And this was at  
21 this time?

22 MR. CABANA: This would have been  
23 around that time, yes.

24 MR. CAVALLUZZO: Okay.

25 Commissioner, it is 3:45. It may

1 be an appropriate time to break.

2 If we resume at 4 o'clock, I would  
3 hope to be finished by about 5:30.

4 THE COMMISSIONER: Okay. We will  
5 break for 15 minutes and resume at 4:00.

6 THE REGISTRAR: Please stand.

7 --- Upon recessing at 3:46 p.m. /

8 Suspension à 15 h 46

9 --- Upon resuming at 4:05 p.m. /

10 Reprise à 16 h 05

11 THE REGISTRAR: Please be seated.

12 Veuillez vous asseoir.

13 MR. CAVALLUZZO: Commissioner,  
14 during the break, we did check. There is no  
15 document for October 3rd which requests the  
16 information. There are a couple of documents  
17 which indicate certain aspects of the information  
18 from that document, but there is no document from  
19 the American agencies requesting -- at least that  
20 we have in the public documents.

21 THE COMMISSIONER: In the public  
22 documents.

23 MR. CAVALLUZZO: That is correct.

24 We obviously thoroughly  
25 reviewed it in camera, but we did not in public.



1                   That was a very sly way to have my  
2 partner here retrieve my --

3                   THE COMMISSIONER: Sort of a  
4 time-filler.

5                   MR. CAVALLUZZO: Absolutely.  
6 --- Laughter / Rires

7                   MR. CAVALLUZZO: As they say, we  
8 are getting old.

9                   But there is one other matter  
10 before we proceed and I want to give my friend the  
11 opportunity to object. That is, if we refer to  
12 Exhibit P-117 at tab 25 there is reference to the  
13 document of October 3rd.

14                   THE COMMISSIONER: Your "friend"  
15 being Mr. Fothergill.

16                   MR. CAVALLUZZO: Yes,  
17 Mr. Fothergill. Tab 25.

18                   What I would refer to is, there is  
19 a public document here, it is a Briefing Note to  
20 the Solicitor General. It is dated June 27, 2003,  
21 but in the second paragraph it refers to the  
22 agencies that requested the RCMP's assistance.

23                   You will note in the second  
24 paragraph, second sentence, it says:

25                   "On 2002.10.03, both the CIA

1 and the FBI requested RCMP  
2 assistance in acquiring any  
3 information to support  
4 criminal charges in the US  
5 against Arar. We confirmed  
6 information that previously  
7 had been provided relative to  
8 Arar's activity in Canada and  
9 linkages to suspected  
10 terrorists in Canada and  
11 abroad."

12 I guess the point that I would  
13 make, it would appear, at least as far as the  
14 October 3rd request is out, that both agencies  
15 are identified.

16 I don't know if my friend has any  
17 position --

18 MR. FOTHERGILL: I'm grateful  
19 to Mr. Cavalluzzo for giving me an opportunity to  
20 comment.

21 My instructions are that this  
22 paragraph was released in error, but it is now in  
23 the public domain so obviously there can be no  
24 objection to the identification of the agencies  
25 involved in this particular exchange.

1                   We would continue to maintain  
2                   generally our objection to the identification of  
3                   either U.S. officials or their agencies in all  
4                   other places.

5                   THE COMMISSIONER: Other than  
6                   the FBI.

7                   MR. FOTHERGILL: That is correct.

8                   THE COMMISSIONER: You don't  
9                   object to reference to the FBI?

10                  MR. FOTHERGILL: It depends,  
11                  unfortunately, on the context. So in general, I  
12                  cannot say.

13                  THE COMMISSIONER: Okay.

14                  MR. CAVALLUZZO: Okay.

15                  Mr. Cabana, I would like to  
16                  just leave October 4th in a state of abeyance  
17                  and then just once again deal with the discrete  
18                  issue of the request for an interview. I think  
19                  the best way, the most expeditious way to deal  
20                  with the request for an interview -- because, as  
21                  you know, it evolves over time, and I think the  
22                  best way to deal with it is perhaps if we refer to  
23                  Exhibit P-85, volume 5.

24                  MR. CABANA: At what tab?

25                  MR. CAVALLUZZO: I'm trying to

1 find it.

2 --- Pause

3 MR. CAVALLUZZO: Thank you. It is  
4 behind tab 27.

5 It is a lengthy time line, which  
6 I understand was created by Project A-OCANADA  
7 people?

8 MR. CABANA: I believe it was,  
9 yes, sir.

10 MR. CAVALLUZZO: Okay. If we go  
11 then to page 8. If you look in the bottom  
12 right-hand portion of the page, you will see there  
13 is pagination, page 8 of 12, and October 4th we  
14 see there are redactions. You will see just above  
15 the 11:15 entry that somebody was contacted:

16 "...and advised him of our  
17 interest in interviewing ARAR  
18 in New York."

19 Which is consistent with what we  
20 have just seen.

21 Then at 11:15 somebody met with  
22 somebody:

23 "...and advised him of our  
24 interest in interviewing  
25 ARAR. ... agreed that the

1 interview should take place."

2 Now, apart from the writing that  
3 we have seen in the document October 4th fax, it  
4 would appear that there were meetings on October  
5 the 4th about interviewing Mr. Arar.

6 Is that correct?

7 MR. CABANA: That is correct, sir.

8 MR. CAVALLUZZO: Okay. And then  
9 it goes on at 11:45:

10 "...that we would request an  
11 interview with ARAR in New  
12 York. ... indicated that he  
13 did not see the interview  
14 taking place this weekend."

15 Then if you go on to the next  
16 page, just before the entry of October the 7th,  
17 you will see in the second paragraph above that  
18 entry that somebody:

19 "... advised her of our  
20 interest in interviewing  
21 ARAR."

22 So clearly on October the 4th it  
23 is a clear and unambiguous topic of debate that  
24 you want to interview Mr. Arar.

25 Correct?

1                   MR. CABANA: As I have testified,  
2                   sir, as of October 4th the decision had been made  
3                   that if we had the opportunity -- considering the  
4                   context under which we were operating, considering  
5                   the mandate we were given, if we had the  
6                   opportunity to meet with Mr. Arar, we would.

7                   MR. CAVALLUZZO: The next, I  
8                   guess, work day, would be October 7th, which would  
9                   be the Monday. We will see in the entry at 8:30  
10                  that there is still that interest.

11                  The second entry at the  
12                  second-last line says somebody:

13                                 "... asked him about the  
14                                 possibility of interviewing  
15                                 ARAR. He stated that ... was  
16                                 dealing with the interview  
17                                 request."

18                  And the next one, somebody spoke  
19                  to somebody and:

20                                 "... stated that he needed to  
21                                 know if we could link ARAR to  
22                                 al Qaida or any other  
23                                 terrorist group. ... stated  
24                                 that ARAR had a hearing this  
25                                 date and a final one on

1 Wednesday (02-10-09). He  
2 added that if there were no  
3 further information received  
4 ARAR would most likely be  
5 deported to CANADA on  
6 02-10-09). ... was aware of  
7 our interest in interviewing  
8 ARAR and would pursue our  
9 request..."

10 Presumably the person that is  
11 being referred to is an American who is going to  
12 be pursuing your request for the interview of  
13 Mr. Arar?

14 MR. CABANA: I believe so, yes.

15 MR. CAVALLUZZO: Okay. Then at  
16 12 o'clock, it says:

17 "... discussed the interview  
18 of ARAR with .... was advised  
19 that it was extremely  
20 important to find out the  
21 results of the ... with Arar.  
22 We needed to speak with  
23 the ...

24 ... made numerous calls  
25 to RCMP Air Services to fly

1 to New York. No flights were  
2 available and inquiries were  
3 made commercially but no  
4 tickets were booked.

5 (Somebody) contacted ...  
6 and advised him of the need  
7 to know the results of the  
8 interview..."

9 Now, the request or the decision  
10 to interview is evolving now. There appears to be  
11 something saying that we need the results of the  
12 interview.

13 Now, was that tied into whether  
14 you were going to go down and interview Mr. Arar?

15 MR. CABANA: Very much so.

16 Well, first of all, starting on  
17 October 7th -- which October 7th is the first day  
18 where we are being advised that Canada is a  
19 possibility. So Mr. Arar, rather than being  
20 returned to Zurich, now we are being told that  
21 there is a possibility he is being returned to  
22 Canada. So from that point on there are numerous  
23 discussions amongst the investigators and with  
24 legal counsel and stakeholders as far as what is  
25 the best approach.



1                   Also, at that point in time we  
2 weren't confident that Canada -- we weren't sure  
3 any more. Is Canada really where Mr. Arar is  
4 going to go or is Zurich still a possibility, but  
5 one thing we were being told --

6                   MR. CAVALLUZZO: What about Syria?

7                   MR. CABANA: At that point in time  
8 Syria had not surfaced, I don't believe.

9                   MR. CAVALLUZZO: Okay. Go on.

10                  MR. CABANA: I have lost my train  
11 of thought here.

12                  MR. CAVALLUZZO: We were talking  
13 about October the 7th. You say that things had  
14 changed now, we now knew that he was coming to  
15 Canada?

16                  MR. CABANA: Yes.

17                  MR. CAVALLUZZO: Therefore the  
18 results of the interview --

19                  MR. CABANA: And also what we were  
20 being advised is that on, I believe it was the  
21 Wednesday, on October 9th, there was supposed to  
22 be a hearing.

23                  MR. CAVALLUZZO: Right.

24                  MR. CABANA: Our understanding  
25 was, following that hearing Mr. Arar would be

1 going somewhere and we needed to determine whether  
2 it was Canada or whether it was Zurich. So still  
3 we weren't sure which location he was going to go.

4 We had made an official request to  
5 interview him. Initially the reaction was, we  
6 have to start making arrangements. If we are  
7 going to be allowed to go down, we have to make  
8 sure that everything is lined up so that  
9 investigators can actually go down. Before we  
10 actually make an official request for approval at  
11 our headquarters, we have to make sure that  
12 everything is prepared.

13 MR. CAVALLUZZO: Go on.

14 MR. CABANA: I'm sorry. Go ahead.

15 MR. CAVALLUZZO: Well, what comes  
16 to my mind is that if he is going to be returned  
17 to Canada, right --

18 MR. CABANA: Yes, sir.

19 MR. CAVALLUZZO: -- I would say  
20 that as an RCMP officer I could save the Canadian  
21 taxpayers a ton of money because he is coming back  
22 to Canada, and when he comes back to Canada I will  
23 interview him then. We don't have to go down to  
24 New York.

25 MR. CABANA: If you look at the

1 evidence that is been submitted so far, I think  
2 that is what you are seeing, is right now we are  
3 still looking at all options, we are not confident  
4 he is coming back to Canada, but in our mind now  
5 we are saying: Well, if he is coming back to  
6 Canada, what we should be doing is waiting for him  
7 to come to Canada.

8 MR. CAVALLUZZO: No, but you are  
9 still talking about going to New York on the 7th?

10 MR. CABANA: Yes. Canada hasn't  
11 been confirmed. We don't know where he is going.

12 MR. CAVALLUZZO: Yes, but even  
13 if he goes to Zurich -- you said he was going  
14 to Zurich. If he goes to Zurich, he is still  
15 going to get back to Canada, presumably. Zurich  
16 is not a --

17 MR. CABANA: You are presuming.

18 For us right now, again, you have  
19 to look at the context. We were of the belief  
20 that Mr. Arar had information that could be of  
21 assistance to our investigation. The mandate we  
22 were given is to do everything legally and humanly  
23 possible to prevent further attacks.

24 If we had an opportunity to meet  
25 with Mr. Arar, we were going to take that

1 opportunity. That is why we were pursuing this.  
2 But, of course, when the prospect of Canada  
3 surfaced, then discussion started occurring within  
4 the investigative team and within the managers  
5 looking at the possibility: If he is coming back  
6 to Canada, well, then we are going to wait for him  
7 to come to Canada.

8 But there was still no  
9 confirmation as of the 7th where Mr. Arar  
10 is going.

11 MR. CAVALLUZZO: From what you are  
12 saying it would appear to me that what you were  
13 looking for, as a result of your mandate, is any  
14 information which you could get about Mr. Arar,  
15 which would be of assistance to you in your  
16 investigation?

17 MR. CABANA: The information we  
18 were looking was not about Mr. Arar. The  
19 information we were looking was in relation to the  
20 main target of the project.

21 MR. CAVALLUZZO: So are you saying  
22 at this point in time that the RCMP was not  
23 interested in getting information about Mr. Arar  
24 so that it may ultimately charge him?

25 MR. CABANA: No. We were very

1 much interested in speaking to Mr. Arar to see if  
2 he had any information that would allow us to  
3 prosecute the main subject of our investigation,  
4 which was not Mr. Arar.

5 MR. CAVALLUZZO: Well, let me just  
6 show you an e-mail in Exhibit P-84.

7 --- Pause

8 MR. CAVALLUZZO: If you go to  
9 Exhibit P-84, page 32 -- just wait for the  
10 Commissioner to get his volume. It is on the  
11 right part of your desk. That's it.

12 THE COMMISSIONER: No, that is  
13 not -- oh, okay, great. Sorry.

14 MR. CAVALLUZZO: Page 32.

15 This is an e-mail, and the  
16 evidence will establish that this e-mail was on or  
17 about the same date, October 7th. This is an  
18 internal e-mail and you will see that the subject  
19 matter is "Arar".

20 It says:

21 "Apparently your report was  
22 received on Friday. However,  
23 it was received in a  
24 non-legible state. Can you  
25 resend a copy of your report

1 too?"

2 Remember you said that about half  
3 an hour ago?

4 MR. CABANA: This is a message  
5 emanating from CID.

6 MR. CAVALLUZZO: Okay, from CID.

7 MR. CABANA: Yes.

8 MR. CAVALLUZZO: In any event,  
9 this is CID's view.

10 MR. CABANA: Yes.

11 MR. CAVALLUZZO: Look at the next  
12 paragraph.

13 MR. CABANA: Yes, sir.

14 MR. CAVALLUZZO: It says:

15 "Where Arar is a Canadian  
16 citizen we cannot refuse him  
17 entry into the country. We  
18 would most certainly want to  
19 know where he is coming and  
20 any information obtained by  
21 U.S. authorities that would  
22 assist in building a case  
23 against Arar."

24 This seems to clearly  
25 indicate that the RCMP, on this date, October 7th,

1 is interested in building a case against Arar, not  
2 that he is a witness or he is related to  
3 somebody else.

4 Or is that CID's view and not  
5 your view?

6 MR. CABANA: I would submit to  
7 you, sir, that that is CID's interpretation.

8 Of course, like I said earlier,  
9 Mr. Arar, by that point in time, especially  
10 considering what was happening in the U.S., was  
11 now a person of interest for us. We are still  
12 viewing him as a witness. Our main focus -- and I  
13 believe in previous conversations that we have  
14 had I have explained that in conducting major  
15 investigations one of the biggest dangers is  
16 that you start investigating in 50 different  
17 directions --

18 MR. CAVALLUZZO: Yes.

19 MR. CABANA: -- which, in  
20 effect, prevents you from focusing on what you  
21 should be doing.

22 In this project here, although  
23 there was information, interesting information  
24 that surfaced in relation to a lot of different  
25 individuals, we maintained our focus, at least

1           until the time that I left the project.

2                       So as of this date here, CID's  
3           perception -- and I would submit to you it might  
4           be based on conversations with U.S. authorities  
5           that CID had. I was not privy to those  
6           conversations. This is CID's interpretation.

7                       For us, at that point in time he  
8           was clearly a person of interest, but our focus  
9           was still Mr. Almalki and other targets, other  
10          main targets of our project, and we viewed  
11          Mr. Arar as potentially having possession of  
12          information that might assist us in our  
13          investigation.

14                      MR. CAVALLUZZO: Okay. Then  
15          continuing on with the time line for, once again,  
16          the request for the interview.

17                      We are at October 7th, in  
18          particular at page 10 of 12, at 4:25 in the  
19          afternoon. This is at the bottom of the page.

20                      MR. CABANA: Yes, sir.

21                      MR. CAVALLUZZO: It says --  
22          unfortunately these names are redacted, but  
23          somebody and somebody:

24                               "... discussed with ... the  
25                               time element involved in



1 driving to New York to do the  
2 interview in the morning of  
3 02-10-08 (as no RCMP flight  
4 was available and a  
5 commercial flight was cost  
6 prohibitive). We were  
7 concerned that by  
8 interviewing Arar in the USA,  
9 there could be a perception  
10 that we were trying to  
11 circumvent ARAR's  
12 constitutional rights. We  
13 also discussed the fact that  
14 ... had not concluded their  
15 discussions on our travel to  
16 New York. As such, we  
17 decided that we would cancel  
18 our plans to travel to New  
19 York and await ARAR's  
20 deportation to Canada and  
21 approach him at that time for  
22 an interview."

23 MR. CABANA: Yes, sir. This time  
24 line was of course prepared subsequent to the  
25 calling of this inquiry, but I believe, with the

1 evidence that has been submitted through the  
2 in-camera hearing, supports the comments that are  
3 found at 16:25.

4 So as of that day at 16:25, we  
5 decided to cancel our request to go to New York  
6 and to wait for Mr. Arar's return to Canada.

7 Now, I submit to you that if  
8 Mr. Arar was so important to us as a target, the  
9 cost aspect of travel to New York would not be a  
10 major consideration.

11 MR. CAVALLUZZO: Okay.

12 At 4:30, if you go to the  
13 next page, somebody contacted somebody:

14 "... and advised him that we  
15 would not be travelling to  
16 New York to conduct the  
17 interview. ... was asked to  
18 provide the projected travel  
19 itinerary for ARAR,  
20 specifically his arrival time  
21 and location in Canada."

22 MR. CABANA: Yes, sir.

23 MR. CAVALLUZZO: Now, the next  
24 day, 9:45, because somehow the -- you see, this is  
25 the confusion to me, because it looks like you

1           have cancelled the idea of an interview on Monday  
2           at 4:30 and then it revives itself.

3                           In any event, at 9:45, what  
4           happens, Inspector Roy, who is your Liaison  
5           Officer --

6                           MR. CABANA:    Yes.

7                           MR. CAVALLUZZO:  He:

8                                   "... arrived at the  
9                                   A-O Canada office and was  
10                                  advised of ARAR's situation  
11                                  concerning the interviews and  
12                                  ARAR's potential deportation  
13                                  to Canada on Wednesday.  
14                                  Insp. ROY indicated that he  
15                                  was not aware of this  
16                                  potential deportation to  
17                                  Canada.  Insp. ROY stated  
18                                  that he only knew that ARAR  
19                                  was still in custody and  
20                                  there was a possibility that  
21                                  he would be sent to Syria."

22                           MR. CABANA:  I believe what  
23           Mr. Roy -- and I can probably address also why on  
24           the 8th there are still discussions about the  
25           prospect of going to New York.

1 MR. CAVALLUZZO: We will come  
2 to that.

3 MR. CABANA: Okay.

4 MR. CAVALLUZZO: If you could just  
5 confirm that evidence?

6 MR. CABANA: In relation to the  
7 evidence, or in relation to the conversation with  
8 Mr. Roy, what was related to us was in the context  
9 of a consular visit that Mr. Arar had raised the  
10 issue of Syria being a possibility for his  
11 deportation and Mr. Roy related that to us.

12 MR. CAVALLUZZO: Was that the  
13 first occasion upon which Roy told you that Arar  
14 was concerned that he may be deported to Syria?

15 MR. CABANA: I believe that was  
16 the first occasion where Syria was raised, the  
17 prospect of Syria was raised. I believe so.

18 MR. CAVALLUZZO: Did you not think  
19 of it, in light of the fact that you knew that  
20 Mr. Arar was a dual national, that Syria was a  
21 possibility?

22 MR. CABANA: No, sir. I have been  
23 dealing with U.S. authorities for the best part of  
24 the past 25 -- 24 years, and in my experience if a  
25 deportation was to occur Mr. Arar should have been

1           deported to either his point of origin, Zurich, or  
2           to his country, Canada.

3                         MR. CAVALLUZZO:  Yes.

4                         MR. CABANA:  Syria for me was  
5           not an option, had never been.  When Mr. Roy  
6           raised the prospect of Syria, personally I  
7           understood Mr. Arar's concerns that he related to  
8           the consular officer, but I didn't put any weight  
9           to it.

10                        MR. CAVALLUZZO:  But, once  
11           again, what I don't understand is that if your  
12           belief before October the 8th was that Arar was  
13           either going to be deported to Canada or deported  
14           to Zurich --

15                        MR. CABANA:  Yes, sir.

16                        MR. CAVALLUZZO:  -- it would seem  
17           to me that he was going to end up in Canada.

18                        MR. CABANA:  Well, sir, I am  
19           actually surprised because there is evidence that  
20           I am not allowed to refer to which led us to  
21           believe that that might not be the case.

22                        MR. CAVALLUZZO:  So you felt that  
23           if he went to Zurich, the point of origin, that he  
24           may not come back to Canada?

25                        MR. CABANA:  Our --

1 MR. CAVALLUZZO: You can't go into  
2 it but I just want to know if that is your --

3 MR. CABANA: Our belief at the  
4 time was that if he went to Zurich he would not be  
5 coming back to Canada.

6 MR. CAVALLUZZO: Okay.

7 In any event, on the morning of  
8 the 7th you are advised Syria is a possibility.  
9 You know he is a dual national.

10 Right?

11 MR. CABANA: Yes, sir.

12 THE COMMISSIONER: The morning of  
13 the 8th I think.

14 MR. CAVALLUZZO: Excuse me, the  
15 morning of the 8th.

16 You know he is a dual national?

17 MR. CABANA: Yes, sir.

18 MR. CAVALLUZZO: Roy tells you  
19 Syria is a possibility --

20 MR. CABANA: Yes.

21 MR. CAVALLUZZO: -- at 9:45.

22 At 12 o'clock -- once again  
23 staying at page 11 -- at 12 o'clock somebody and  
24 somebody met with somebody:

25 "... and discussed the

1 interview."

2 Now, why would you be discussing  
3 the interview if you had, 12 hours before,  
4 cancelled it?

5 MR. CABANA: Which page are you  
6 at, sir?

7 MR. CAVALLUZZO: This is page 11  
8 of 12?

9 MR. CABANA: Page 11 of 12.

10 MR. CAVALLUZZO: The 12 o'clock  
11 entry for October 8th. You see in the 12 o'clock  
12 entry it says somebody and somebody met with  
13 somebody:

14 "... and discussed the  
15 interview."

16 MR. CABANA: Yes. Like I said,  
17 sir, by the 8th in the morning it still wasn't  
18 clear to us where Mr. Arar was going to end up.  
19 We were getting conflicting information from  
20 American authorities whether it was going to be  
21 Zurich or Canada, and now we had DFAIT, or our  
22 liaison officer to DFAIT who was advising us that  
23 Syria might be a possibility now.

24 Granted, at that point in time  
25 Syria for me -- and I'm speaking on my behalf

1 here, because I didn't retain the possibility of  
2 Syria. Based on my experience, it wasn't  
3 reasonable.

4 MR. CAVALLUZZO: But what I'm  
5 asking you, what I'm suggesting to you, it would  
6 appear that the appearance of Syria as a  
7 possibility revived your interest in an interview  
8 with Arar?

9 MR. CABANA: No. On the 7th we  
10 are making arrangements initially for an interview  
11 of Mr. Arar in New York. On the 7th we find out  
12 that Canada is a possibility.

13 Then we have discussions on the  
14 prospect if he is coming back to Canada the  
15 interview should occur in Canada and the  
16 perception that us going to New York would have,  
17 but we still do not have clear confirmation from  
18 anybody as far as where he is going.

19 So on the 8th this is still in the  
20 mind of investigators.

21 MR. CAVALLUZZO: Right. But on  
22 the 7th at 4:30, it specifically states somebody  
23 contacted somebody:

24 "... and advised him that we  
25 would not be travelling to



1                                   New York to conduct the  
2                                   interview."

3                                   MR. CABANA:    Yes.

4                                   MR. CAVALLUZZO:  So it was  
5 cancelled?

6                                   MR. CABANA:    That was based on our  
7 discussion with Canada.

8                                   I would have to actually go back  
9 to the actual notes of all the investigators, but  
10 I would submit to you, sir, that the information  
11 we were getting from U.S. agencies at that point  
12 in time was confusing, because we were getting  
13 conflicting information.

14                                   When Canada was raised as a  
15 prospect, the perception attached to us going to  
16 New York, the reaction we had to that is:  We are  
17 going to cancel the trip to New York.  That,  
18 coupled with the fact that on the 9th there was  
19 supposed to be a hearing and we understood that  
20 following that hearing Mr. Arar would be deported  
21 wherever, and the impossibilities of travelling  
22 down there.

23                                   This is why on the 7th, at the end  
24 of the day, the decision was made, we are not  
25 going.  But on the 8th we are still not sure he is

1 coming back to Canada and the question is: If he  
2 is not coming to Canada and he is going to Zurich,  
3 we might be missing the opportunity. So according  
4 to this there was still conversations ongoing  
5 amongst the investigators as far as the prospect  
6 of going to New York.

7 MR. CAVALLUZZO: But I am putting  
8 it to you, Mr. Cabana, the only intervening event  
9 between the cancellation of the trip at 4:30 in  
10 the afternoon on October 7th and the revival of  
11 the discussion about an interview at 12 o'clock on  
12 October 8th is the information that he may be  
13 deported to Syria.

14 MR. CABANA: Yes.

15 MR. CAVALLUZZO: I am putting it  
16 to you that when you got that information, you  
17 said, "You know what, if he is going to be  
18 deported to Syria, then perhaps we should  
19 interview him"?

20 MR. CABANA: No, sir, I don't  
21 believe that is the case, because if that would  
22 have been our belief we would have been liaising  
23 with CID on that issue.

24 MR. CAVALLUZZO: In any event,  
25 let's see what happens at 12 o'clock. We can

1 continue on.

2                                   Somebody and somebody met with  
3 somebody:

4                                   "... and discussed the  
5 interview. We discussed a  
6 concern that if the US was  
7 only holding ARAR so that we  
8 could interview him and that  
9 if there was any suggestions  
10 that he did not cooperate  
11 with Canadian investigators  
12 and would be sent to Syria,  
13 then the perception would be  
14 very damaging to the RCMP.  
15 We agreed to speak with ...  
16 and advised him of our  
17 concerns up front and await a  
18 response."

19                                   MR. CABANA: In reading that text  
20 here, sir, I would suggest that that is not a  
21 request or consideration for still going down.  
22 This is a request, consideration, that if they are  
23 holding Mr. Arar based on a request that we have  
24 previously made, then that could be problematic,  
25 and if there were any innuendos to Mr. Arar that

1 if he doesn't meet with us he will be deported to  
2 Syria, that would be very problematic.

3 MR. CAVALLUZZO: That's what you  
4 are saying, and the evidence is clear, that if  
5 somehow the RCMP was involved in any way publicly  
6 to Mr. Arar's removal to the United States, it  
7 would be, as the person drafting this time line  
8 says, would be very damaging to the RCMP?

9 MR. CABANA: Yes, sir.

10 MR. CAVALLUZZO: Okay.

11 At 1415 in the afternoon, or  
12 2:15 in the afternoon somebody.

13 "... attended the A-O Canada  
14 office and met with ... and  
15 ... of HQ CID. We discussed  
16 issues concerning the  
17 interview of ARAR. We  
18 indicated that we need to  
19 know why ARAR is being held,  
20 where would he be sent once  
21 we had interviewed him and  
22 what he has already said to  
23 the ... and ... was not aware  
24 of where ... was holding  
25 Arar."

1                   So what seems to be taking  
2           place here is that you are saying -- or  
3           Project A-OCANADA is saying that we will not go  
4           down to interview Mr. Arar unless we find out  
5           three things: Why is he being held? What  
6           information has he given? And where is he going  
7           to be sent to?

8                   MR. CABANA: Exactly.

9                   MR. CAVALLUZZO: Why did those  
10          three conditions come to the fore at this  
11          particular point in time?

12                  MR. CABANA: Because of the  
13          conflicting information we were getting and we  
14          needed to obtain clear confirmation as to the  
15          status of Mr. Arar. We needed to be able to  
16          establish whether he was cooperative, whether he  
17          was coming back to Canada, so that we can make  
18          plans and consequence.

19                  MR. CAVALLUZZO: Okay. The final  
20          entry that I would refer you to is for 1800 hours.  
21          Somebody:

22                               "... made a return call to  
23                               ... advised ... that we  
24                               needed to know why ARAR was  
25                               being held, what has he

1                   already been said in  
2                   interviews and where is he  
3                   going after the process is  
4                   completed. ... was advised  
5                   of the concern of any  
6                   perception that the RCMP  
7                   caused ARAR to be deported to  
8                   Syria. ... indicated that he  
9                   would look into the matter  
10                  and call back on 02-10-09."

11                  So that it is quite clear that as  
12                  of this date the RCMP was very concerned about  
13                  having any kind of identification or relationship  
14                  to Mr. Arar's removal to Syria, if that is where  
15                  he ended up.

16                  MR. CABANA: Well, at that point  
17                  in time we were still of the belief that he would  
18                  be having a hearing on the 9th, the following day.  
19                  We didn't have any clear idea of where he was  
20                  going to be sent following that. Unbeknownst to  
21                  us, he had already left.

22                  MR. CAVALLUZZO: When did you find  
23                  out that he had already left?

24                  MR. CABANA: I found out the  
25                  following day, on the 9th.

1 MR. CAVALLUZZO: October the 9th,  
2 right.

3 MR. CABANA: October the 9th.

4 MR. CAVALLUZZO: How did you  
5 find out?

6 MR. CABANA: On October 9th I  
7 found out actually from one of the team leaders  
8 who came to my office and advised me that he had  
9 received a call from a representative from the  
10 U.S. Embassy advising him that Mr. Arar was no  
11 longer in New York and would not be available for  
12 any interview, and I believe there was no further  
13 information.

14 MR. CAVALLUZZO: Okay.

15 MR. CABANA: Following that  
16 meeting, I immediately called another  
17 representative of the U.S. Embassy to try to  
18 determine what was going on and the status of  
19 Mr. Arar.

20 MR. CAVALLUZZO: Yes.

21 MR. CABANA: That person advised  
22 me they would be getting back to me. I did  
23 receive a call from somebody else from the U.S.  
24 Embassy later on that afternoon, I believe it  
25 was -- I believe it was about 2 o'clock in the

1           afternoon, where I received a call and I was  
2           advised that Mr. Arar had arrived in Syria earlier  
3           that day.

4                         MR. CAVALLUZZO:  What time would  
5           this have been on October the 9th when you were  
6           advised that Mr. Arar had arrived in Syria?

7                         MR. CABANA:  I believe it was  
8           approximately 2 o'clock in the afternoon.

9                         MR. CAVALLUZZO:  Okay.  Was that  
10          confirmed by any other American representatives,  
11          or any other people in your office, that he was in  
12          Syria on that day?  In other words, from other  
13          sources that Mr. Arar --

14                        MR. CABANA:  On that day?  No, not  
15          that I'm aware of.

16                        MR. CAVALLUZZO:  So that the only  
17          information you had was that source in the  
18          American Embassy who told you --

19                        MR. CABANA:  Well, we had the  
20          source from the American Embassy in the morning  
21          that advised us that Mr. Arar was no longer in New  
22          York, and then in the afternoon I had contact from  
23          another representative from the U.S. Embassy  
24          advising me of the location of Mr. Arar, I believe  
25          confirming that Mr. Arar was in custody.



1                   That is about the extent of it,  
2           I believe.

3                   MR. CAVALLUZZO:   Okay.

4                   MR. CABANA:   I couldn't get any  
5           other information.

6                   MR. CAVALLUZZO:   What did you do  
7           as a result of getting the information that  
8           Mr. Arar was in Syria on October 9th?

9                   MR. CABANA:   I immediately briefed  
10          my supervisors, criminal operations officers, of  
11          the situation.

12                  MR. CAVALLUZZO:   I assume that  
13          they would have or you notified CID headquarters  
14          that Mr. Arar was in Syria?

15                  MR. CABANA:   Well, CID obviously  
16          was -- well, actually, you know, I don't know  
17          whether we directly advised CID of this or not.

18                  I assume during the course of the  
19          9th there would have been communication between  
20          the team and CID, but the reporting line was  
21          immediately advised.

22                  Now, what took place after that  
23          from CROPS' perspective, I don't know.

24                  MR. CAVALLUZZO:   The evidence from  
25          Exhibit P-20, which is the removal order, is that

1 Mr. Arar was served with the removal order, left  
2 New York sometime around 3 or 4 o'clock on the  
3 morning of October 8th.

4 MR. CABANA: Yes, sir.

5 MR. CAVALLUZZO: Right?

6 MR. CABANA: Yes.

7 MR. CAVALLUZZO: So it would  
8 appear that for a whole day and a bit the RCMP  
9 were scurrying around, right, trying to decide  
10 whether you were going to interview Mr. Arar in  
11 New York, and then you find out on October 9th at  
12 2 o'clock that the guy is in Syria.

13 MR. BAYNE: Can I just intervene,  
14 Mr. Commissioner.

15 I don't know if by inadvertence  
16 my friend in focusing on this has forgotten the  
17 part of the will-say that he intended to canvas  
18 about the RCMP attempting to set up surveillance  
19 on the 8th in Montreal, so suggesting the focus  
20 was to pursue an interview in New York is not  
21 quite fair.

22 I don't know if he just  
23 inadvertently forgot that or --

24 MR. CAVALLUZZO: He didn't  
25 inadvertently forget that. He is coming to that,

1           because he was only focusing on the interview and  
2           now is going to go back to October the 5th and  
3           take him through that time.

4                         THE COMMISSIONER:   In any event,  
5           Mr. Bayne, you will have an opportunity to ask  
6           questions.  If anything is overlooked that you  
7           think should be brought out you will have the  
8           opportunity at the end.

9                         MR. BAYNE:  Fair enough, sir.  I  
10          just thought it might be out of context a day  
11          later.

12                        THE COMMISSIONER:  Right.

13                        MR. CAVALLUZZO:  Coming back to  
14          the question -- and I don't know if you want me to  
15          repeat it for you.

16                        MR. CABANA:  Please do.

17                        MR. CAVALLUZZO:  Okay.  It is a  
18          situation that concerns me as a Canadian and this  
19          is the question:

20                        Here we have our national Canadian  
21          police force for a whole day in contact with the  
22          Americans throughout that day -- this is October  
23          the 8th -- asking about whether we should  
24          interview, "Can you guys facilitate the interview  
25          of Mr. Arar in New York", and so on and so forth,

1 spent the whole day doing that, according to the  
2 time line here, right?

3 MR. CABANA: Well, I would  
4 submit to you, sir, that this is a very -- this is  
5 a small part of what we did during those days,  
6 but, yes.

7 MR. CAVALLUZZO: In any  
8 event, there seemed to be some time spent by a  
9 number of people.

10 MR. CABANA: Yes.

11 MR. CAVALLUZZO: Okay. Then you  
12 find out in the morning of the next day, which is  
13 October the 9th -- finalized in terms of where he  
14 was at 2 o'clock in the afternoon of October 9th.

15 Did anybody in the RCMP say  
16 to these American representatives, "What are  
17 you people doing? We have a close sharing of  
18 information relationship. We are partners.  
19 We are all stakeholders in this. Why didn't  
20 you level with us, because we have wasted a lot  
21 of time? Why did you tell us, more than 24 hours  
22 after the fact, that a Canadian citizen has been  
23 removed and sent to Syria? Why did it take  
24 that long?"

25 Did anyone in the RCMP ask the

1 Americans that?

2 MR. CABANA: At a higher level  
3 than myself, I don't know what kind of  
4 conversations or discussions took place with  
5 American agencies. I would suspect that there was  
6 some phone calls that were made.

7 Myself, in the afternoon of the  
8 9th, when I spoke to the representative from the  
9 U.S. Embassy, that was basically the gist of the  
10 conversation, wanting to know what was going on,  
11 why this had happened, and identifying to them  
12 that what they had done was very significant and  
13 had some very serious DFAIT issues attached to it.

14 MR. CAVALLUZZO: Very serious...?

15 MR. CABANA: DFAIT issues.

16 MR. CAVALLUZZO: Oh, Department of  
17 Foreign Affairs issues?

18 MR. CABANA: Yes, the way that  
19 they handled a Canadian citizen.

20 So those types of discussions from  
21 my perspective took place with a counterpart at  
22 the U.S. Embassy.

23 How much weight that would have...

24 MR. CAVALLUZZO: Did that make you  
25 feel like a full partner with the Americans, when

1           they did this to you?

2                           MR. CABANA:  No, no.  Clearly not.

3                           MR. CAVALLUZZO:  As I say, we were  
4           suspending in time October the 4th.  Let us get  
5           back to the chronology.

6                           October the 5th.  There was a  
7           telephone call on Saturday, October the 5th.

8                           MR. CABANA:  Yes, sir.

9                           MR. CAVALLUZZO:  You were not  
10          party to the telephone call?

11                          MR. CABANA:  No, I was not.

12                          MR. CAVALLUZZO:  But you do have  
13          knowledge that the telephone call was made with a  
14          person from CID?

15                          MR. CABANA:  Between a  
16          representative from U.S. Embassy and a person from  
17          CID, yes, sir.

18                          MR. CAVALLUZZO:  The person from  
19          CID is Mr. Flewelling, who will be testifying  
20          later?

21                          MR. CABANA:  Yes, sir.

22                          MR. CAVALLUZZO:  Can you give us  
23          the essence of the conversation between this  
24          American representative and Mr. Flewelling on  
25          Saturday, October 5th?

1                   MR. CABANA: Certainly. From my  
2 understanding the conversation that took place  
3 between the two individuals, the American  
4 authorities were seeking confirmation from  
5 Canadian authorities on what options were  
6 available to Canadian authorities and whether,  
7 should Mr. Arar return to Canada, any charges  
8 would be laid against Mr. Arar or if Canadian  
9 authorities were in a position to refuse  
10 Mr. Arar's entry to Canada.

11                   That was, in a nutshell, the gist  
12 of the conversation.

13                   MR. CAVALLUZZO: With that  
14 knowledge -- I assume that this was shared with  
15 you on or about -- in fact, if we go back to the  
16 chronology, this book, Exhibit P-84, at page 30 --  
17 or, excuse me, it is not page 30, it is page 32.

18                   This is an e-mail relating to that  
19 particular conversation. Some of it is redacted.

20                   But when you heard about that  
21 conversation, when the Americans are asking some  
22 questions, three questions in fact, of:

23                   What is your interest in Arar? I  
24 guess your response would be: He is a person of  
25 interest in an ongoing investigation.

1                   Second: Do you have sufficient  
2 evidence to charge Arar with a criminal offence?

3                   Third, can you refuse him entry?

4                   Did that raise in your mind the  
5 possibility, the real possibility, that the  
6 Americans may not be sending Arar back to Canada,  
7 because if the response is: If we send him up  
8 there can you refuse his entry" and the answer is  
9 "No, we can't refuse his entry. He is a Canadian  
10 citizen." Did an idea come to mind saying, "You  
11 know what? These guys may be thinking of not  
12 sending him to Canada, but sending him elsewhere"?

13                  MR. CABANA: No, sir. No, sir.

14                  For me the only options in a  
15 deportation process was still either Canada or  
16 Zurich. If they were looking at whether Canada  
17 could refuse him, the only other available option,  
18 as far as I was concerned, was Zurich.

19                  So no, that was not a concern  
20 for me.

21                  MR. CAVALLUZZO: On October 7th,  
22 which was the Monday -- and that e-mail indicates  
23 that although Mr. Flewelling was going to be on  
24 holidays that he was going to be at work on that  
25 day, on the Monday, October 7th.



1                   Did you meet with Mr. Flewelling  
2                   on Monday, October 7th?

3                   MR. CABANA: I don't believe I  
4                   did, no, sir.

5                   MR. CAVALLUZZO: October 7th as  
6                   well -- or October the 8th, we have dealt with the  
7                   discussions of the interview. We have also dealt  
8                   with the information from Mr. Roy. But there is  
9                   also information that there was a surveillance put  
10                  on Mr. -- or a decision to put a surveillance on  
11                  Mr. Arar and a number of the members of his family  
12                  were interviewed on October the 8th?

13                  MR. CABANA: Yes, sir.

14                  MR. CAVALLUZZO: That decision to  
15                  do that was made when?

16                  MR. CABANA: The decision to...?

17                  MR. CAVALLUZZO: To surveil him.  
18                  To put surveillance on and to interview his family  
19                  members on October the 8th?

20                  MR. CABANA: I would submit it was  
21                  made sometime on the 8th, either late on the 7th  
22                  or early on the 8th where in discussions amongst  
23                  investigators, looking at all the available  
24                  options again, and at that point in time, on the  
25                  7th, Canada had been identified as a potential

1 destination for Mr. Arar. Then investigators look  
2 at the possibility of if he is coming back to  
3 Canada let's put surveillance and see what  
4 Mr. Arar does.

5 So arrangements -- and these  
6 arrangements are quite intricate in the sense that  
7 you are dealing with a large number of resources  
8 that you have to redirect and remove from other  
9 priorities, so we were looking at putting  
10 surveillance should he be coming back to Montreal  
11 or should he be going to "O" Division, because we  
12 still didn't have a final destination.

13 MR. CAVALLUZZO: Now, a number  
14 of the members of his family were interviewed on  
15 October 8th to your knowledge?

16 MR. CABANA: That is correct, sir.  
17 That is my understanding, yes.

18 MR. CAVALLUZZO: Assuming that  
19 Mr. Arar would be coming back to Canada on October  
20 9th, if you can help me, I just don't understand  
21 if you are going to be surveilling Mr. Arar when  
22 he comes back on October 9th, surely he will have  
23 spoken to his family who were interviewed by the  
24 RCMP on October 8th, what kind of a surveillance  
25 would that be? He would know you were --

1 MR. CABANA: It would be an oral  
2 kind of surveillance. The purpose of meeting with  
3 family members, very simply, to our knowledge,  
4 Mr. -- we didn't know the reason for Mr. Arar's  
5 return to Canada.

6 To our knowledge at the time,  
7 Mr. Arar -- we didn't have a residence for him in  
8 Canada and it was an idea of sitting down with the  
9 family and trying to find out the reason for his  
10 return, what his plans were, where was he going.  
11 There had to be a reason why he was coming back to  
12 Canada. That is what we were trying to determine.

13 MR. CAVALLUZZO: So you -- sorry.

14 MR. CABANA: The fact that we were  
15 meeting with family members does not mean that  
16 necessarily we were going to be having  
17 surveillance on a certain individual. It is just  
18 normal investigative steps that are being taken.

19 MR. CAVALLUZZO: So that obviously  
20 if Mr. Arar returned to Canada on October the 9th,  
21 you wouldn't be concerned that he would become  
22 aware that the RCMP were interviewing his family  
23 about himself --

24 MR. CABANA: No.

25 MR. CAVALLUZZO: -- the day

1 before?

2 MR. CABANA: No.

3 MR. CAVALLUZZO: Okay. You did  
4 receive a surveillance report, including all of  
5 the interviews with Mr. Arar's family --

6 MR. CABANA: What we received  
7 wasn't a surveillance report because, as we know  
8 now, surveillance never did take place.

9 MR. CAVALLUZZO: Or a report of  
10 some kind.

11 MR. CABANA: We received an  
12 investigator's report from our investigators in  
13 Montreal.

14 MR. CAVALLUZZO: The next  
15 day, October the 9th, is when you discover once  
16 again that Mr. Arar has been deported or removed  
17 to Syria.

18 Did anything happen on the 9th,  
19 after you found out that Mr. Arar had been  
20 found -- or was in Syria? Did anything else  
21 happen in relation to Mr. Arar on the 9th, which  
22 would be the Wednesday of that week?

23 MR. CABANA: I can't remember.

24 MR. CAVALLUZZO: Okay.

25 Now the next thing, according to

1 the records that we have, relating to Mr. Arar is  
2 a fax which is sent to the LO in Rome. I would  
3 like to file a newly redacted package which is  
4 presently Exhibit P-85, volume 4, tab 117, but  
5 this has been newly redacted.

6 THE COMMISSIONER: Exhibit P-173?  
7 EXHIBIT NO. P-173: Newly  
8 redacted Exhibit P-85,  
9 Volume 4, tab 117

10 --- Pause

11 MR. CAVALLUZZO: Mr. Cabana, if  
12 you go to the last two pages of this package --

13 MR. CABANA: Yes, sir.

14 MR. CAVALLUZZO: -- you will see a  
15 fax which is dated October 17, 2002. So this  
16 would have been the week after.

17 MR. CABANA: Yes.

18 MR. CAVALLUZZO: The fax is sent  
19 to the LO in Rome and it is about Mr. Arar.

20 What it is, it seems to be a  
21 summary of the information. You will see it says:

22 "Further to our telephone  
23 conversation of this date,  
24 the following are the  
25 circumstances relating to

1 Project A-OCanada's interest  
2 in subject Maher ARAR."

3 So it would seem that this fax  
4 with this information was instigated by a call  
5 from the LO in Rome?

6 MR. CABANA: Yes, sir. I  
7 received a call earlier that day from Mr. Fiorido,  
8 our LO in Rome.

9 MR. CAVALLUZZO: Mr. Fiorido  
10 requested some information about Mr. Arar?

11 MR. CABANA: Mr. Fiorido advised  
12 he was aware that a Canadian was now incarcerated  
13 in Syria and he was seeking information on the  
14 circumstances.

15 MR. CAVALLUZZO: Now, I just  
16 want to ask you a question so that you can clarify  
17 this.

18 At the second page, in the second  
19 paragraph -- or the paragraph under the redaction,  
20 it says -- this is the way I read it:

21 "On October 8, 2002, Project  
22 A-OCanada managers were  
23 advised by U.S. authorities  
24 that ARAR had been deported  
25 to Syria."

1 MR. CABANA: Yes, sir. That is an  
2 error in the date.

3 MR. CAVALLUZZO: So that is an  
4 error in the date?

5 MR. CABANA: I believe it is, yes.

6 MR. CAVALLUZZO: Okay.

7 Now, in terms of his location, the  
8 last sentence says:

9 "Project A-OCanada has not  
10 been informed of ARAR's exact  
11 whereabouts or his custodial  
12 status in Syria."

13 So that as of October 17th the  
14 information which Project A-OCANADA had was he is  
15 in Syria?

16 MR. CABANA: As of the 17th  
17 of October?

18 MR. CAVALLUZZO: Right.

19 MR. CABANA: Yes.

20 MR. CAVALLUZZO: Right. So as of  
21 October the 9th you are told by the Americans he  
22 is in Syria. October the 17th, for whatever more  
23 information you had, he is still in Syria?

24 MR. CABANA: Yes.

25 MR. CAVALLUZZO: Okay.

1                   Just for clarification of counsel,  
2           there is some confusion in this document and I  
3           would like to clarify it without having the  
4           witness speak to it.

5                   But on the third page, you will  
6           see, this is Mr. Fiorido -- who is the LO in Rome  
7           at this point in time -- Mr. Fiorido's statement  
8           to the Public Complaints Commission.

9                   You will see on the first page,  
10          page 1 of 3, he states, October 22nd, 2002 -- you  
11          will see he says:

12                   "I observe a media article in  
13                   the top story section of the  
14                   daily DFAIT Internet News..."

15                   And so on. Then, just before the  
16          redaction he says:

17                   "I then contacted Division  
18                   member of ... to obtain any  
19                   background information  
20                   available."

21                   Then in the next entry on the  
22          second page, October 23rd, you will see he says:

23                   "Upon arriving to work this  
24                   morning I note that we had  
25                   received a secure fax and the



1 fax is dated October 17."

2 So the October 22nd date must be  
3 incorrect, of Mr. Fiorido must be incorrect. If  
4 anyone is reading this there will be confusion  
5 raised and I thought I would clarify that.

6 Now I would like to move on to  
7 October 21st, which is a Monday, and I would like  
8 to refer to your notes.

9 Just in terms of the correct date,  
10 do you recall the date that Mr. Fiorido called you  
11 for the information? Was it October the 17th, the  
12 same date as you sent the fax out?

13 MR. CABANA: Yes. Yes, it  
14 would be.

15 MR. CAVALLUZZO: I wonder if you  
16 might refer to page 54 of your notes. In  
17 particular I'm looking at the entry for -- I  
18 guess, is that 3:30 in the afternoon or 3:50 in  
19 the afternoon? It is 1550?

20 MR. CABANA: 1550, I believe, yes.

21 MR. CAVALLUZZO: I wonder if  
22 you might read that entry and on to the next page  
23 as well.

24 MR. CABANA: Certainly.

25 "Received a call from Mr. Jim

1 Gould of DFAIT advising that  
2 Syrian authorities had  
3 acknowledged the fact they  
4 had Maher Arar in custody.  
5 Mr. Gould advised the writer  
6 that the Canadian Ambassador  
7 to Syria was scheduled to  
8 meet with Syrian authorities  
9 tomorrow and wanted to  
10 confirm whether we were  
11 interested in Arar as well as  
12 AlMalki, and whether charges  
13 were pending.

14 The writer advised that  
15 in relation to..."

16 This is redacted:

17 "In relation to Maher Arar,  
18 the writer explained that we  
19 were interested simply  
20 because of his association  
21 to..."

22 That is redacted:

23 "...and would like to speak  
24 to him but at this time, no  
25 charges were being

1 contemplated.

2 Mr. Gould asked whether  
3 there was any other message  
4 we would like conveyed. The  
5 writer advised that we  
6 have..."

7 It is redacted.

8 "...that we would be prepared  
9 to share with..."

10 MR. CAVALLUZZO: Just a minute.

11 It says:

12 "The writer advised that we  
13 have intelligence/evidence."

14 MR. CABANA: Not on mine.

15 MR. CAVALLUZZO: You have the  
16 unredacted?

17 It was newly redacted so that  
18 what the words should be -- let me just read this  
19 page then.

20 "...messages we would like  
21 conveyed. The writer advised  
22 that we have  
23 intelligence/evidence ...  
24 that we would be prepared to  
25 share with Syrian authorities

1 if they felt it could be of  
2 assistance to their  
3 investigation. This is in  
4 light of the sharing info  
5 ..."

6 If you could read that last point.

7 MR. CABANA: Certainly.

8 "...if they felt it could be  
9 of assistance to their  
10 investigation. This in light  
11 of their sharing info with us  
12 in past."

13 MR. CAVALLUZZO: Jim Gould is the  
14 ISI person from DFAIT?

15 MR. CABANA: Yes, sir, he is.

16 MR. CAVALLUZZO: Now, what I would  
17 ask you is: If Mr. Arar is only a person of  
18 interest, a witness or a person of interest, why  
19 would you offer information to the Syrians, Syrian  
20 authorities, which would be of assistance to their  
21 investigation?

22 Why would you do that?

23 MR. CABANA: This offer was not  
24 strictly in relation to Mr. Arar. The offer was  
25 in relation to two individuals.

1 THE COMMISSIONER: You said the  
2 offer was in relation to two individuals?

3 MR. CAVALLUZZO: But certainly  
4 part of the offer related to Mr. Arar?

5 MR. CABANA: Yes. And this offer  
6 was made in the context of a lengthy consultation  
7 process that we went through earlier today  
8 involving different agencies, including Justice,  
9 including CSIS, including DFAIT, over the prospect  
10 of sharing information with Syrians. During those  
11 discussions it had been supported.

12 This offer is not made to Syrian  
13 authorities. This is discussions between DFAIT  
14 and myself.

15 MR. CAVALLUZZO: But were you  
16 aware of the human rights record of Syria at  
17 this time?

18 MR. CABANA: Personally aware?

19 MR. CAVALLUZZO: Yes.

20 MR. CABANA: No. I knew probably  
21 like every other Canadian citizen that watches the  
22 news that Syria might not necessarily share the  
23 same human rights concerns as Canada does, but as  
24 far as what the specifics of their practices were,  
25 no, I had no knowledge of that.

1 MR. CAVALLUZZO: Did it not  
2 concern you that Mr. Arar was clearly brought to  
3 Syria against his will, and here we have a  
4 Canadian institution or agency offering  
5 information or evidence, intelligence or  
6 evidence --

7 MR. CABANA: Sir, first of all,  
8 the circumstances surrounding Mr. Arar's arrival  
9 in Syria was as much a concern to us as probably  
10 every other Canadian that heard about this.

11 The circumstances at the time were  
12 that there was lengthy discussions that took place  
13 amongst agencies, and like I said earlier, I  
14 relied on the experts.

15 If my supervisors and if the  
16 people from DFAIT and CSIS and Justice are in  
17 agreement with this, my mandate was an  
18 investigative mandate and to do everything I could  
19 to prevent any further attack.

20 So that was one of the  
21 investigative options that was available to us.

22 This particular conversation here  
23 did not make any offer to Syrian authorities.  
24 This is discussions with DFAIT.

25 MR. CAVALLUZZO: But the offer

1 through DFAIT would be, "We're prepared to share  
2 with Syrian authorities if they felt it would be  
3 of assistance to their investigation"?

4 MR. CABANA: Yes, sir.

5 MR. CAVALLUZZO: So in effect you  
6 were throwing the offer out through DFAIT?

7 MR. CABANA: Based on the previous  
8 conversations we had had with DFAIT where this  
9 very issue was discussed.

10 MR. CAVALLUZZO: We will come to a  
11 subsequent meeting where you are going to be  
12 relying on experts as to the human rights record  
13 of Syria, and I assume one of the experts would be  
14 Mr. Pillarella?

15 MR. CABANA: Yes, sir.

16 MR. CAVALLUZZO: But once again I  
17 come back to the situation, the way the Americans  
18 removed this Canadian --

19 MR. CABANA: Yes.

20 MR. CAVALLUZZO: Unbeknownst to us  
21 for 24 hours, bring him to this country against  
22 his will, where he's detained in detention.

23 MR. CABANA: Yes, sir.

24 MR. CAVALLUZZO: The Americans  
25 don't didn't have enough information to charge

1 him. The Canadians don't have enough to charge  
2 him, right? He is just a person of interest.

3 MR. CABANA: Right.

4 MR. CAVALLUZZO: And here we have,  
5 whether it's the RCMP itself or through DFAIT,  
6 offering information to the Syrians.

7 Don't you find that inappropriate  
8 in retrospect?

9 MR. CABANA: Sir, personally, I  
10 don't think it makes any difference whether I find  
11 it inappropriate or not.

12 My personal opinion at the time,  
13 no, I didn't find it inappropriate, and personally  
14 I still don't today.

15 The directives that I had received  
16 was to conduct a criminal investigation and do  
17 everything I could to prevent attacks. If the  
18 individuals, if the persons that are responsible  
19 for this type of sharing are in agreement with it,  
20 I'm certainly not going to raise my arms and say,  
21 "No, this is wrong." If people are saying it's  
22 appropriate, fine.

23 MR. CAVALLUZZO: Okay. We will  
24 come to this, but I understand that Mr. Gould  
25 never came back to you to say, "I've made the



1 deal. Give me the information"? That was never  
2 done?

3 MR. CABANA: No.

4 MR. CAVALLUZZO: So that to your  
5 knowledge the RCMP did not offer any information  
6 to the Syrian authorities about Mr. Arar?

7 MR. CABANA: Well, the offer  
8 wouldn't come from the RCMP. The offer would be  
9 channelled through DFAIT. So to my knowledge, no.

10 MR. CAVALLUZZO: And to your  
11 knowledge did the RCMP ever in fact give  
12 information to the Syrian authorities through  
13 DFAIT about Mr. Arar?

14 MR. CABANA: I don't believe so.  
15 Not at the time that I left the project, I don't  
16 believe so.

17 MR. CAVALLUZZO: That's fair. As  
18 of February 2003, you are not aware of any  
19 information that the RCMP gave Syrian authorities?

20 MR. CABANA: In relation to  
21 Mr. Arar?

22 MR. CAVALLUZZO: In relation to  
23 Mr. Arar.

24 MR. CABANA: No.

25 MR. CAVALLUZZO: The only other

1 question I have in respect of this date is the  
2 last line in the entry says -- just to give it  
3 context:

4 "The writer advised that we  
5 have intelligence/evidence  
6 ... that we would be prepared  
7 to share with Syrian  
8 authorities if they felt it  
9 would be of assistance to  
10 their investigation."

11 Then it says:

12 "This in light of the sharing  
13 of information in the past."

14 MR. CABANA: Yes, sir.

15 MR. CAVALLUZZO: What are you  
16 talking about here? What sharing of information  
17 in the past?

18 MR. FOTHERGILL: I'm not sure what  
19 answer the witness may give, but I think that  
20 there is a substantial risk that the answer he  
21 gives may be subject to a claim of national  
22 security confidentiality.

23 MR. CAVALLUZZO: That's fair. We  
24 will -- if that is being asserted.

25 Would your answer to the question

1           rely upon NSC evidence?

2                           MR. CABANA:   Yes, I believe it  
3           would.

4                           THE COMMISSIONER:   And the  
5           Government is asserting a claim then?

6                           MR. FOTHERGILL:   Yes, sir.

7                           MR. CAVALLUZZO:   All right.

8                           If we move on then, Mr. Cabana, to  
9           October 30th, could you show the witness Exhibit  
10          P-97, please?

11          --- Pause

12                           MR. CAVALLUZZO:   Just for your  
13          benefit, Mr. Cabana, this is an e-mail that was  
14          sent to the Syrian embassy from Mr. Pardy, and the  
15          second paragraph, at the bottom there, I would  
16          refer you to.

17                           It says:

18                                   "With respect to paragraph 6  
19                                   of referenced message would  
20                                   appreciate if Ambassador  
21                                   could report if there has  
22                                   been any contact with RCMP  
23                                   and CSIS liaison officials  
24                                   indicating interest in  
25                                   visiting Syria or contact

1 with Syrian officials with  
2 respect to the case."

3 And of course the case relates to  
4 Mr. Arar.

5 "There have been indications  
6 of this from the RCMP and  
7 letter is being prepared..."

8 Now, are you aware of anything  
9 relating to this, any RCMP contacts which were  
10 attempted regarding Mr. Arar --

11 MR. CABANA: With Syrian  
12 authorities?

13 MR. CAVALLUZZO: Yes.

14 MR. CABANA: No.

15 MR. CAVALLUZZO: You are not aware  
16 of this at this time?

17 MR. CABANA: No.

18 MR. CAVALLUZZO: As far as the  
19 status of Mr. Arar is concerned, I would like to  
20 refer now to Exhibit P-85, Volume 5, at tab 27.

21 We looked at the timeline before,  
22 but this is a facsimile message dated October  
23 22nd, 2002, to Deputy Commissioner Loepky from  
24 the CROPS officer Antoine Couture.

25 It says:

1 "Re: Maher Arar  
2 Project A-OCANADA Overview  
3 As per our conversation of  
4 this date, please find  
5 attached the investigative  
6 time line in relation to  
7 Maher ARAR. This is a brief  
8 overview from an  
9 investigative perspective and  
10 it also includes specific  
11 tracking of our  
12 communications with American  
13 authorities upon his  
14 detention in New York City.  
15 Our investigative efforts on  
16 this individual continue and  
17 while we have no evidence to  
18 pursue a prosecution, we are  
19 of the opinion that he has  
20 significant involvement with  
21 targets of this project and  
22 his activities are of  
23 concern.  
24 His detention and subsequent  
25 deportation to Syria by

**StenoTran**

1 American authorities was done  
2 solely at their discretion  
3 and without any input or  
4 involvement from this office.  
5 We have made every effort to  
6 share information with the  
7 American authorities just as  
8 we have with our Canadian  
9 counterparts."

10 This reference that "the  
11 investigative efforts continue, we don't have any  
12 evidence to pursue a prosecution, however, in our  
13 opinion, he has significant involvement with  
14 targets of this project and activities of concern"  
15 would seem to indicate that the investigation in  
16 respect of Mr. Arar will continue, and that any  
17 further information about Mr. Arar will be used in  
18 respect of these investigative efforts.

19 That was Mr. Couture's view on  
20 October 22nd of 2002, and I assume you shared that  
21 view, since he was your supervisor?

22 MR. CABANA: Yes, sir, very much  
23 so.

24 MR. CAVALLUZZO: Once again we see  
25 Mr. Edelson surfacing around this time, and I

1 would like to bring you to Exhibit P-83, at tab 1,  
2 page 228.

3 This is a letter dated October  
4 31st, 2002, from Mr. Edelson, and we have heard a  
5 great deal of evidence about this.

6 This is through his discussions  
7 with Mr. Pardy. It was suggested to him that in  
8 terms of DFAIT's efforts to have Mr. Arar returned  
9 to Canada that if he could get the RCMP to make  
10 four statements that that would be of great  
11 assistance in getting Mr. Arar's return.

12 This letter is directed to Ann  
13 Alder, who is the DOJ person assisting Project  
14 A-OCANADA. Did it subsequently come to your  
15 attention?

16 MR. CABANA: Yes, it did.

17 MR. CAVALLUZZO: If we go to the  
18 next page, at page 230, we see that you write a  
19 memo to the OIC of the "A" Division criminal  
20 operations. That would be Mr. Couture?

21 MR. CABANA: That's correct.

22 MR. CAVALLUZZO: And you state in  
23 respect of Mr. Edelson's letter:

24 "It would appear that  
25 Mr. Pardy suggested than an

1 official letter from the RCMP  
2 letter attesting to the  
3 points listed in  
4 Mr. Edelson's correspondence  
5 would greatly assist DFAIT in  
6 returning Mr. Arar to Canada.  
7 While at this juncture our  
8 project is aloof to  
9 Mr. Arar's status, the  
10 suggestions and comments of  
11 Mr. Pardy are highly  
12 problematic in that they seek  
13 to shift the responsibility  
14 of Arar's future status  
15 squarely on the RCMP. I  
16 believe DFAIT has to be  
17 sensitized on the possible  
18 impact these types of  
19 discussions can have on  
20 ongoing investigations."

21 Before I ask any questions, what  
22 did you mean by the word "aloof"?

23 MR. CABANA: Unaware. Unaware of  
24 his situation.

25 MR. CAVALLUZZO: Your concern



1           presumably was with paragraph number 4 of this  
2           letter, and it states that Mr. Arar is not a  
3           suspect with respect to any terrorist-related  
4           crime?

5                           MR. CABANA: Well, the concern  
6           went further than that.

7                           MR. CAVALLUZZO: Okay.

8                           MR. CABANA: First of all it  
9           was -- and this is my personal view -- it was  
10          highly inappropriate for a request like this, for  
11          DFAIT to suggest that a request like this be  
12          channelled through counsel to the RCMP.

13                           First of all, the request should  
14          have been made by DFAIT to the RCMP, not through  
15          counsel.

16                           Secondly, as a matter of policy,  
17          the RCMP is not in the habit or even in a position  
18          to be able to confirm the majority of these points  
19          here.

20                           Understanding the circumstances,  
21          there was a response that was prepared.

22                           MR. CAVALLUZZO: But did you not  
23          feel some bit of responsibility for Mr. Arar's  
24          plight in the sense that perhaps some of the  
25          information that the Americans got from the RCMP

1 was relied upon in -- listen to the question.

2 MR. CABANA: Yes.

3 MR. CAVALLUZZO: -- in their  
4 removal proceedings which rendered him to Syria?

5 Didn't that make the RCMP at least  
6 somewhat responsible for Mr. Arar's plight in  
7 Syria?

8 MR. CABANA: No, sir.

9 MR. CAVALLUZZO: No?

10 MR. CABANA: I would submit to you  
11 that, first of all, the information that was  
12 shared with American authorities in relation to  
13 Mr. Arar was insufficient for us to obtain any  
14 type of legal authorization in Canada, let alone  
15 lead to this type of action by American  
16 authorities.

17 I would also submit to you that  
18 there is a significant body of evidence that is  
19 available that has been introduced in camera that  
20 clearly indicates that the decision of the  
21 Americans was just that, an American decision.

22 So, no, I didn't feel any  
23 responsibility.

24 MR. CAVALLUZZO: Well, if we look  
25 at Exhibit P-20, which is the document that we

1 have, which is the removal order --

2 MR. CABANA: Yes, sir.

3 MR. CAVALLUZZO: -- it makes  
4 specific reference to matters that must have come  
5 to the knowledge of the Americans by the RCMP.

6 It talked about the Mango's walk,  
7 talked about his relationship with certain people.

8 I am not saying all of the  
9 information the Americans relied upon in respect  
10 of removing Arar came from Canada. What I'm  
11 suggesting to you, sir, is that at least some of  
12 the information that they relied upon, on the face  
13 of the document itself, Exhibit P-20, the removal  
14 order --

15 MR. BAYNE: Mr. Commissioner, on  
16 the basis of fairness, I object. This was a  
17 matter canvassed thoroughly with you about  
18 suggestions that this caused Mr. Arar's fate.  
19 There is a very lengthy and complete body of  
20 evidence that deals with this.

21 Canadians could make up their  
22 minds if he could answer this question fully, and  
23 he can't. He can't possibly fairly answer this so  
24 Canadians can make up their minds.

25 It is Mr. Cavalluzzo's proposition

1           that surely some part of this must have played  
2           some role.  And he has tried as best he can with  
3           the confines of what he is allowed to say to  
4           explain, no, there is a body of evidence.

5                         That was canvassed distinctly with  
6           you and you agreed there would not, on this issue  
7           of causation, be any innuendo about this, given  
8           that body of evidence.

9                         MR. CAVALLUZZO:  Well, just to  
10          respond to my friend, the question relates to the  
11          Americans relying upon some information coming  
12          from Canadians.  And I am referring now to Exhibit  
13          P-20, which is the removal order, which  
14          specifically makes reference to information which  
15          must have come from Canada.

16                        And the question was:  In light of  
17          that, do you not feel some responsibility?

18                        THE COMMISSIONER:  Why don't you  
19          put the question in light of the reference in the  
20          removal order, which is public, does he feel  
21          responsibility?

22                        I think the point is that we ought  
23          not to canvass -- we can't canvass the issue of  
24          the causation in this hearing because, as  
25          Mr. Bayne points out, there is a considerable

1 volume of evidence. We have heard all of that  
2 evidence, and I will draw my conclusions and they  
3 will be in the report.

4 So I think if the question is  
5 confined to just referring to what is in Exhibit  
6 P-20 and asking him if he felt any responsibility,  
7 and leave it at that.

8 MR. CAVALLUZZO: Yes, and it's a  
9 very simple question. The fact that there are  
10 pieces of information in Exhibit P-20, which is  
11 the removal order --

12 MR. CABANA: May I see P-20?

13 MR. CAVALLUZZO: Absolutely. This  
14 is the removal order from the INS in respect of  
15 Mr. Arar.

16 --- Pause

17 MR. CABANA: Yes, sir.

18 MR. CAVALLUZZO: Okay. So what I  
19 would be referring to is the unclassified portion  
20 of the decision wherein information relating to  
21 Mr. Arar?

22 MR. CABANA: Which would be at  
23 what page?

24 MR. CAVALLUZZO: Page 5.

25 MR. CABANA: Page 5.

1 MR. CAVALLUZZO: For example, it  
2 says:  
3 "The FBI interviewed Arar on  
4 September 27, 2000, at JFK  
5 International Airport.  
6 During the interview, Arar  
7 admitted his association with  
8 Abdullah Almalki and Abdullah  
9 Almalki's brother, Nazih  
10 Almalki. Arar advised the  
11 FBI that he was friendly  
12 with..."  
13 It says Nazih.  
14 "... [that person] in Syria  
15 while they were in school  
16 together and he [Arar] worked  
17 with [that person] at Nex  
18 Link Communications. Arar  
19 also advised..."  
20 Et cetera, et cetera, about  
21 someone who exports radios and so on and so forth.  
22 MR. CABANA: Yes.  
23 MR. CAVALLUZZO: I am putting it  
24 to you that this information that came out of his  
25 questioning with the FBI was likely related to

1 information that the FBI got from Canada.

2 MR. CABANA: No, I believe that  
3 the information that is referred to here might be  
4 the result of Mr. Arar's answer to the question  
5 from the FBI.

6 Some of those questions likely  
7 originated from Project A-OCANADA, yes.

8 MR. CAVALLUZZO: But assuming  
9 that -- that's the only point I'm making.

10 Assuming that the Americans relied  
11 upon -- or it's not relied upon, but assuming that  
12 there is reference in this document, which is the  
13 removal order, to information that may have come  
14 from Canada, and knowing how the Americans removed  
15 and rendered Mr. Arar, did that not make you feel  
16 responsible in some way for Mr. Arar?

17 MR. CABANA: No, sir.

18 MR. CAVALLUZZO: Okay. In any  
19 event, coming back to the letter, Mr. Couture  
20 writes Mr. Proulx -- this is at page 232, and  
21 basically making the same points that you do about  
22 the inappropriateness of DFAIT working through  
23 counsel and overstepping their bounds and so on.

24 You saw a copy of that?

25 MR. CABANA: Yes, I did, sir.

1 MR. CAVALLUZZO: And then finally  
2 at page 233, you wrote a letter to Mr. Edelson,  
3 which is dated November 16th of 2002?

4 MR. CABANA: Yes, sir.

5 MR. CAVALLUZZO: And this is  
6 Exhibit P-150, which has been recently redacted  
7 with Mr. Cabana's signature as well as the  
8 reference number.

9 Was that the last involvement you  
10 had with Mr. Edelson concerning his request that  
11 the RCMP write this letter?

12 MR. CABANA: No, I don't believe  
13 so.

14 MR. CAVALLUZZO: You were involved  
15 again later than that?

16 MR. CABANA: I believe I was,  
17 towards the end of November; November 28, I  
18 believe.

19 MR. CAVALLUZZO: And that was a  
20 meeting that we will come to.

21 MR. CABANA: Exactly.

22 MR. CAVALLUZZO: We are in  
23 November now of 2002, and on or about November the  
24 4th of 2002, ISI/DFAIT sends a fax to A-OCANADA,  
25 and I'm referring to Exhibit P-42, tabs 164 and



1 165.

2 --- Pause

3 MR. CABANA: Which tab, sir?

4 MR. CAVALLUZZO: Start at 164.

5 This is a fax once again from  
6 Scott Heatherington of ISI to RCMP headquarters  
7 "A" Division, and enclosing this e-mail which has  
8 been newly redacted.

9 And then 165 -- 165 has been newly  
10 redacted. This is an entry for November 3rd.

11 Just let me read you what the  
12 redactions are. I am referring now to  
13 Mr. Pillarella's book, which is Exhibit P-134 at  
14 tab 6, and what it states is:

15 "On November 3rd, 2002, the  
16 Canadian Ambassador to Syria  
17 received a document (written  
18 in Arabic) from Syrian  
19 Military Intelligence. The  
20 Ambassador brought the  
21 document to Canada personally  
22 and gave it to ISI on  
23 November 6. ISI sent it to  
24 CSIS for translation. The  
25 document, an undated

1 three-paragraph bout de  
2 papier, was translated on  
3 November 7. The document  
4 alleges that Arar had spent  
5 time in Afghanistan in  
6 Mujaheddin camps and that he  
7 knew ... The document was  
8 sent to CSIS for translation  
9 by the CSIS LO officer in  
10 ISI. The translated document  
11 was returned to ISI and the  
12 information was shared with  
13 JPD, the RCMP and CSIS."

14 In terms of this information that  
15 is coming from DFAIT, I understand that on or  
16 about November the 6th there was a meeting?

17 MR. CABANA: Yes, sir, there was,  
18 at DFAIT.

19 MR. CAVALLUZZO: And you attended  
20 the meeting?

21 MR. CABANA: Yes, I did.

22 MR. CAVALLUZZO: And who else  
23 attended the meeting?

24 MR. CABANA: On November 6th, I  
25 believe Chief Superintendent Couture was there; I

1 believe Wayne Pilgrim was there. I'm trying to  
2 remember who else was there.

3 There were representatives from  
4 CSIS that were there as well, and ISI  
5 representatives as well as Mr. Pillarella.

6 MR. CAVALLUZZO: What was the  
7 purpose of the meeting?

8 MR. CABANA: The purpose of the  
9 meeting was, first of all, for Mr. Pillarella to  
10 provide us with a briefing of the results of his  
11 meetings with Syrian authorities; general  
12 discussion with respect to the information that  
13 flowed from that meeting, and focus basically on  
14 the need to obtain more detailed information,  
15 because the information that was provided,  
16 although interesting, could not really be  
17 verified.

18 So there was a determination that  
19 more information was required.

20 MR. CAVALLUZZO: Was there any  
21 other discussion?

22 This was about Mr. Arar, I assume,  
23 that this discussion is going on?

24 MR. CABANA: Yes, it was about  
25 Mr. Arar. I'm trying to remember whether there

1           was any discussions about other Canadians, but  
2           Mr. Arar was the focus of the conversation, yes.

3                       MR. CAVALLUZZO: I am putting it  
4           to you that you were still -- and this is November  
5           the 6th, which is a week or so after the Couture  
6           memo. You are still in your investigative mode as  
7           far as Mr. Arar is concerned, as of November the  
8           6th?

9                       MR. CABANA: Well, it depends on  
10          your definition of "investigative mode". Mr. Arar  
11          was definitely -- especially given the actions  
12          taken by the Americans, it was clear that there  
13          was information that we were not privy to, so that  
14          was of interest to us. Our focus remained the  
15          main target of our investigation.

16                      MR. CAVALLUZZO: But as far as  
17          Mr. Arar is concerned, the more information that  
18          you could get about him, as Mr. Flewelling would  
19          say, the stronger your case was going to be  
20          against Mr. Arar.

21                      Isn't that correct?

22                      MR. CABANA: Yes.

23                      MR. CAVALLUZZO: So when  
24          Mr. Pillarella, or anybody from DFAIT, is giving  
25          you information about Mr. Arar, you are going to

1 use that information to pursue your mandate?

2 MR. CABANA: First of all, the  
3 information that is provided to us by  
4 Mr. Pillarella is not being provided in an  
5 admissible format. If what you mean is that we  
6 are going to be relying on this information, we  
7 are definitely going to be analysing the  
8 information and we are going to be trying to  
9 verify as many points as we can to see if the  
10 information is accurate or not.

11 MR. CAVALLUZZO: I'm putting it to  
12 you, very simply, that the information that you  
13 get from DFAIT is not going to be used to assist  
14 Mr. Arar but is going to be used against Mr. Arar.  
15 Isn't that correct?

16 That is your mandate.

17 MR. CABANA: It is going to be  
18 used in the context of our investigation, yes.

19 Specifically against Mr. Arar? At  
20 the time Mr. Arar was not in Canada.

21 MR. CAVALLUZZO: But if you got in  
22 touch --

23 MR. CABANA: I understand what you  
24 are saying, yes.

25 MR. CAVALLUZZO: So certainly when

1           DFAIT is giving you this information, whether it  
2           be Mr. Pillarella or anybody, should be under no  
3           illusions that they are giving you this  
4           information to assist Mr. Arar?

5                       MR. CABANA: I don't think they  
6           were under any illusion, sir.

7                       MR. CAVALLUZZO: Now, at this  
8           meeting that Mr. Pillarella, CSIS and the others  
9           attended, was there any discussion whatever about  
10          the possibility of torture in respect of the  
11          statement that Mr. Arar allegedly gave the  
12          Syrians?

13                      MR. CABANA: On November 6th?

14                      MR. CAVALLUZZO: Yes.

15                      MR. CABANA: No, sir, not that I  
16          can recall.

17                      MR. CAVALLUZZO: Was there any  
18          discussion about the reliability of the statement  
19          because of the tactics which may be used by the  
20          Syrians?

21                      MR. CABANA: Well, the reliability  
22          of any statements -- and I would submit not  
23          strictly statements obtained in the existing  
24          context in Syria; any statement is always tested,  
25          and the same process would be implemented in

1 relation to statements originating from interviews  
2 conducted in Syria.

3 Like I said, the practice for  
4 investigators, for our team, was to look at the  
5 statement, analyze it, and try to corroborate as  
6 many of the points as possible, specifically for  
7 that purpose, to try to establish whether there  
8 was any credibility to the statement.

9 MR. CAVALLUZZO: But was there any  
10 suggestion that the reliability of the statement  
11 was in question as a result of the tactics or  
12 methods of interrogation which may be used by the  
13 Syrians?

14 MR. CABANA: No, sir.

15 MR. CAVALLUZZO: Commissioner,  
16 it's 5:30. I was hoping to finish the testimony  
17 today, but I'm going to be about another probably  
18 45 minutes.

19 It is a long day for the witness.

20 MR. CABANA: I'm fine.

21 THE COMMISSIONER: What is your  
22 wish? Let me just canvass and see what we are  
23 looking at because we have to finish by tomorrow  
24 evening.

25 Ms Edwardh, what do you anticipate

1 at this point?

2 MS EDWARDH: Mr. Cavalluzzo  
3 promised me that he would be finished, he hoped,  
4 no later than mid-afternoon, Mr. Commissioner.

5 I find it hard to predict. I will  
6 of course review my notes carefully and try and  
7 make sure that I don't cover areas that  
8 Mr. Cavalluzzo has covered, except to bring a  
9 different perspective to them. But I'm going to  
10 be some hours with this witness.

11 THE COMMISSIONER: I would like to  
12 actually have estimates, and I will hold people to  
13 them. I really would like to finish this witness  
14 tomorrow.

15 If necessary, we can keep going  
16 tonight and we can start at eight o'clock tomorrow  
17 morning so that there is that opportunity. But I  
18 don't hold that out in any way to try to be unfair  
19 to people.

20 MS EDWARDH: I was going to ask to  
21 proceed with my cross-examination after Government  
22 counsel, which is what we did with Mrs. Girvan  
23 because she was independently represented as well,  
24 which would leave Mr. Bayne to go last.

25 THE COMMISSIONER: Right.



1 MS EDWARDH: And I know there are  
2 now then at least five cross-examiners tomorrow.

3 THE COMMISSIONER: Right.

4 MS EDWARDH: I can't see doing  
5 this under four to four-and-a-half hours,  
6 Mr. Commissioner.

7 THE COMMISSIONER: Okay.

8 Ms McIsaac, how long do you think  
9 you will be -- or Mr. Fothergill, sorry.

10 MR. FOTHERGILL: Mr. Commissioner,  
11 it depends a bit on the order of  
12 cross-examination, which I think you still have to  
13 provide direction on.

14 Our preference would be that we  
15 adopt what we once referred to as the modified  
16 procedure, which is to say that if there are new  
17 areas not canvassed by Commission counsel, we  
18 bring that to the attention of Commission counsel,  
19 but that we occupy the normal position, which  
20 would be after counsel for Mr. Arar, for the  
21 simple reason that Superintendent Cabana, although  
22 separately represented, is also a representative  
23 of an institution that we represent, namely the  
24 RCMP.

25 If I am to ask questions after

1 Mr. Cavalluzzo, I expect I can complete in 20  
2 minutes to half an hour. But I suspect that,  
3 depending on how effective Ms Edwardh is, I may  
4 have more questions after her cross-examination  
5 than before.

6 THE COMMISSIONER: Thank you.

7 Ms McIsaac, I'm going to be going  
8 to others. Do you have submissions about  
9 standing, the standing ruling, provisional  
10 standing ruling?

11 MS McISAAC: I do, thank you sir.

12 I took the opportunity since this  
13 morning to quickly review your original ruling on  
14 standing, and contrary to recollections this  
15 morning, we did in fact make submissions.

16 THE COMMISSIONER: I recall that,  
17 yes.

18 MS McISAAC: And we did object to  
19 standing for Mr. El Maati and Mr. Almalki.

20 That having been said, your ruling  
21 clearly contemplated that as events unfolded it  
22 may be necessary to give them some level of  
23 standing, and we are not objecting to some level  
24 of standing.

25 I simply do not understand at this

1 stage what questions they would ask because this  
2 is not an inquiry, as we have said on a number of  
3 other occasions, and particularly in my original  
4 submissions, about the actions of Canadian  
5 officials with respect to either Mr. El Maati or  
6 Mr. Almalki. It is the actions of Canadians  
7 officials with respect to Mr. Arar.

8 It is inevitable, given the public  
9 nature of this aspect of the inquiry, the decision  
10 that Mr. Cabana would testify publicly, the  
11 insistence of Mr. Arar's counsel and the  
12 Commission counsel, that after the inadvertent  
13 release of documents, we allow those documents to  
14 be made public.

15 And I think, sir, you will recall  
16 my reluctance to do that, once again because of  
17 the unfairness to Mr. El Maati and Mr. Almalki and  
18 the Government position that it is not usually the  
19 position of the Government or the RCMP that the  
20 subjects of investigations will be identified.

21 Having said all of that, I will  
22 put ourselves in your hands, sir, on the  
23 assumption that you will only allow questioning if  
24 absolutely necessary to protect the interests of  
25 those gentlemen, not to allow either of their

1           counsel -- and I say this with respect, because I  
2           would do the same thing -- to take the opportunity  
3           to conduct a discovery with respect to the  
4           investigation against their clients.

5                           THE COMMISSIONER: Well, the  
6           indication that I gave this morning was that the  
7           grant of standing that I indicated this morning,  
8           and in view of what you have now said will  
9           confirm, is for the purposes of dealing with  
10          reputational interests of the two that may be  
11          affected by the evidence.

12                           So with that in mind, do either  
13          Ms Jackman or Mr. Copeland anticipate  
14          cross-examining this witness; and if so, for how  
15          long?

16                           MR. COPELAND: I anticipate  
17          cross-examining but it's very difficult for me to  
18          say how long. I would really have to do some work  
19          over the evening to try to figure out where I can  
20          go with the parameters that you have presented.

21                           My very great preference would be  
22          to do it on some other day so that I can actually  
23          analyze and collate the material that I am  
24          becoming aware of as this proceeding goes ahead.

25                           So it is very difficult for me to

1 give you a time frame.

2 THE COMMISSIONER: Mr. Copeland,  
3 I'm sure you appreciate, as you say, the limit of  
4 the grant is with respect to the reputational  
5 interest, and it is not to pursue or examine  
6 events other than as they affect Mr. Almalki's  
7 reputation.

8 MR. COPELAND: Yes. But the  
9 material that went to the Syrian officials, if it  
10 went from the RCMP -- and my very strong belief  
11 is, based on the information from Mr. Almalki, is  
12 it arrives in a very timely fashion after the RCMP  
13 do various things.

14 I want to ask questions in  
15 relation to that because it relates very much to  
16 the damage to his reputation, I think. Now, you  
17 may disagree with me.

18 THE COMMISSIONER: I will hear you  
19 when we get to the questioning. I can see this is  
20 going to take a while.

21 But the reputational interests  
22 that I am referring to is the reputational  
23 interests that may be damaged as a result of the  
24 evidence that is given from the box in this  
25 inquiry. It is not a general interest to pursue

1 the public record other references to Mr. Almalki  
2 where his reputation may have been injured. It is  
3 to protect, to the extent possible, further  
4 damage, if I can put it that way, not being caused  
5 by the evidence being given in this inquiry.

6 MR. COPELAND: Okay. But I'm  
7 really unable to give you an estimate. I will be  
8 in a better position tomorrow morning.

9 THE COMMISSIONER: Ms Jackman?

10 MS JACKMAN: I'm sort of in the  
11 same position as Mr. Copeland. I feel somewhat,  
12 in terms of my client's interests, completely  
13 short-changed.

14 We haven't looked at any of the  
15 documents, and to be in a position now where we  
16 are expected to examine, there may be some  
17 document that he has referenced today that I  
18 haven't even gone through that may refer to my  
19 client I don't even know about.

20 I don't think it's fair to put us  
21 in a position where we were notified just a very  
22 short period of time ago that we could come in, in  
23 respect of this witness.

24 THE COMMISSIONER: And, again, I  
25 make the same comment to you that I did to

1 Mr. Copeland: that the limits on your  
2 cross-examination will relate solely to damage  
3 that has been caused to your client's reputation  
4 as a result of evidence heard --

5 MS JACKMAN: Today, from this  
6 witness.

7 THE CHAIRPERSON: -- from this  
8 witness today.

9 MS JACKMAN: And I don't know how  
10 you can divorce it from the documents he has  
11 talked about.

12 THE COMMISSIONER: Okay.

13 MS JACKMAN: I just have a concern  
14 about it.

15 THE COMMISSIONER: Let me think  
16 about that. I must say -- and I'm not doing this  
17 to preclude your cross-examination -- myself  
18 sitting here, I have a hard time envisioning that  
19 there would be a lot of cross-examination on that  
20 issue. If there is, that's fine.

21 I am sympathetic to your comment  
22 about not an opportunity to prepare, and let me  
23 just think about that and I will deal with it in  
24 the morning.

25 Are there any other counsel in the

1 room who are going to want to ask this witness  
2 questions?

3 MR. BRYANT: Mr. Commissioner,  
4 with respect to the client that I represent, I  
5 don't anticipate asking any questions based on the  
6 evidence I have heard, but I don't want to  
7 completely waive my right depending on what may  
8 come out in cross-examination.

9 THE COMMISSIONER: At this stage.  
10 All I'm trying to do is plan our schedule.

11 So at this stage, Mr. Bryant, you  
12 don't have any questions.

13 The other two are the same?

14 MR. WALLACE: Same position.

15 MR. BELL: Same position.

16 THE COMMISSIONER: Mr. Bayne, how  
17 long do you expect to be at this stage?

18 MR. BAYNE: Seven to ten minutes.

19 THE COMMISSIONER: Can you keep it  
20 to the bottom end of that range?

21 --- Laughter / Rires

22 MR. CAVALLUZZO: Maybe I should  
23 proceed and complete the witness.

24 THE COMMISSIONER: Okay. Do you  
25 want to take a five- or ten-minute break?



1 MR. CAVALLUZZO: No, I can go  
2 ahead.

3 THE COMMISSIONER: Is everybody  
4 okay? We have been going for a while.

5 I have one hand for five minutes.

6 MR. CAVALLUZZO: Do we have the  
7 facility after six o'clock?

8 THE COMMISSIONER: We will arrange  
9 that too.

10 Why don't we take a five-minute  
11 break?

12 THE REGISTRAR: Please stand.

13 --- Upon recessing at 5:40 p.m. /

14 Suspension à 17 h 40

15 --- Upon resuming at 5:45 p.m. /

16 Reprise à 17 h 45

17 THE COMMISSIONER: I guess we had  
18 better wait before we start.

19 MR. CAVALLUZZO: Are we waiting  
20 for any one?

21 THE COMMISSIONER: There is other  
22 counsel outside.

23 MS EDWARDH: Ms Davis will conduct  
24 a search.

25 THE COMMISSIONER: Thank you.

1 --- Pause

2 Just a couple of things before we  
3 start that might help out.

4 With respect to Mr. Copeland and  
5 Ms Jackman's request to put their  
6 cross-examination over, I think it is fair they  
7 have had insufficient notice. We will complete  
8 all the other cross-examinations, including  
9 re-examination tomorrow. We will pick up a day  
10 that is convenient to the witness and to both  
11 counsel in August.

12 There is a half day,  
13 Mr. Cavalluzzo, in --

14 MR. CAVALLUZZO: There is a half  
15 day in the morning of August 10.

16 THE COMMISSIONER: We will get a  
17 time. Again I don't want this to be taken the  
18 wrong way. I do not anticipate it should take  
19 along time, but that is something counsel can work  
20 out with the witness. We will not try to work out  
21 people's schedules here. What I envision is those  
22 two counsel coming back, if they deem necessary,  
23 to cross-examination with respect to the issue.  
24 And we will get a time that is suitable.

25 MR. COPELAND: Let me warn you,

1           sir, that right now I am scheduled to appear and  
2           sit on discipline hearings at the Law Society. I  
3           presume I am recruited -- somebody else to do  
4           that, but --

5                           THE COMMISSIONER: You can use me  
6           as an excuse, now, Mr. Copeland. You owe me one.  
7           --- Laughter / Rires

8                           THE COMMISSIONER: Second thing,  
9           with respect to the order of cross-examination as  
10          between the government and Mr. Arar, the way we  
11          will do it, Ms Edwardh, we will have you  
12          cross-examine first -- you are more likely to  
13          raise new matters than the government would be.  
14          Then, if after Mr. Fothergill has examined, if  
15          there are any matters he raised from that had not  
16          been raised before you would be given a further  
17          chance to address those specific matters.

18                          But I think the logic of the  
19          situation is that you are likely to raise new  
20          matters than he is, so we will handle it that way,  
21          then followed by Mr. Bayne for tomorrow.

22                          MS EDWARDH: Thank you.

23                          THE COMMISSIONER: With the timing  
24          I think we can probably start at 9:00 tomorrow on  
25          the estimates, and my guess is we will make it --

1 We will make it, it is not a guess.

2 Mr. Cavalluzzo.

3 MR. CAVALLUZZO: Thank you. My  
4 wife thanks you.

5 --- Laughter / Rires

6 MR. CAVALLUZZO: Mr. Cabana -- I  
7 wonder if you might show Mr. Cabana Exhibit P-134  
8 which is the book of documents of Ambassador  
9 Pillarella.

10 THE COMMISSIONER: Sorry, there is  
11 one other comment I would like to make: It gets  
12 hot in here. I do not have any objection if  
13 people wish to take off their jackets. Under  
14 these lights it does get warm.

15 MR. CAVALLUZZO: I am just showing  
16 you, Mr. Cabana, at tab 9, it is a note dated  
17 November 25, which we have reviewed with other  
18 witnesses. It relates to that meeting on  
19 November 6. It is from Scott Heatherington.

20 This is an internal DFAIT  
21 document. But there is a reference there I would  
22 ask your comments on, very last reference states:

23 "...CSIS made no comments  
24 about the credibility of the  
25 document, but said that even

1                   if true, it was not  
2                   necessarily damning evidence  
3                   against him."

4                   Do you recall CSIS making those  
5                   comments?

6                   MR. CABANA: No, sir, I don't  
7                   recall CSIS making the comments, but I agree with  
8                   the comment.

9                   MR. CAVALLUZZO: You agree with  
10                  the comment but you don't recall CSIS making it?

11                  MR. CABANA: No, sir, I don't.

12                  MR. CAVALLUZZO: Now, the next  
13                  event that you would testify to would be your  
14                  knowledge of a CSIS visit to Syria in or about  
15                  late November, November 18 of 2002?

16                  MR. CABANA: Yes, sir.

17                  MR. CAVALLUZZO: And what you can  
18                  testify to is that the visit occurred. You are  
19                  aware that it occurred?

20                  MR. CABANA: Yes, sir.

21                  MR. CAVALLUZZO: That CSIS did not  
22                  interview Mr. Arar. You are not aware of that?

23                  MR. CABANA: Not to my knowledge,  
24                  no.

25                  MR. CAVALLUZZO: And that you

1 can't tell us, but you are aware of the purpose of  
2 the trip. You cannot tell us what it was?

3 MR. CABANA: Yes, sir I am.

4 MR. CAVALLUZZO: Okay.

5 Was the RCMP consulted about the  
6 trip?

7 MR. CABANA: Prior to the type  
8 occurring?

9 MR. CAVALLUZZO: Yes?

10 MR. CABANA: Yes, sir we were.

11 MR. CAVALLUZZO: Was there  
12 discussion about the trip at the meeting on  
13 November 6?

14 MR. CABANA: Yes, sir, there was.

15 MR. CAVALLUZZO: I would like to  
16 move to this meeting you had with Mr. Edelson on  
17 or about November 28, you made reference to that  
18 earlier.

19 MR. CABANA: Yes.

20 MR. CAVALLUZZO: I would like to  
21 just read to you a certain portion of  
22 Mr. Edelson's testimony and ask whether you agree  
23 with it or not. This is it evidence he gave on  
24 June 16 before this commission. And I am  
25 referring in particular to the transcript at

1 page 7344, at line 4, and this is Mr. Edelson's  
2 evidence recounting the meeting that he had at  
3 "A" Division.

4 And he starts:

5 "We would have had a  
6 discussion as well during  
7 that period of time about the  
8 detention of Mr. Arar,  
9 whether or not, I believe,  
10 the RCMP had had access to  
11 him. In other words, they had  
12 indicated an interest in  
13 interviewing him on a number  
14 of occasions. 'Did you go and  
15 actually have access to him?'  
16 And they indicated no, that  
17 they would like to interview  
18 him, but were not able to  
19 obtain access to him for an  
20 interview in Syria.

21 I can't recall whether it  
22 was at this meeting or a  
23 later meeting, I believe in  
24 December, where there was  
25 also discussion about CSIS

1                   having gone to Syria and  
2                   having obtained some form of  
3                   statement -- I don't know  
4                   whether it was the  
5                   interrogation statement or  
6                   some transcript of Mr. Arar's  
7                   interview in Syria."

8                   Now, we have heard that, to your  
9                   knowledge, there was no interview of Mr. Arar in  
10                  Syria, but do you recall that discussion in a  
11                  Mr. Edelson testified to on June 16?

12                  MR. CABANA: I recall the meeting,  
13                  and I recall discussions with respect to the  
14                  situation of Mr. Arar. But specifics, no, sir, I  
15                  would have to refer to my notes.

16                  MR. CAVALLUZZO: He goes on, I  
17                  will ask you this:

18                         "My best recollection of it  
19                         is that the RCMP, at that  
20                         stage at least, had not been  
21                         given access to that  
22                         interrogation, and that part  
23                         was discussed at that point."

24                  Do you recall discussing the fact  
25                  that CSIS was going with Mr. Edelson or had gone



1 by that time?

2 MR. CABANA: Looking at the  
3 timing, I would assume that, yes, it would have  
4 been discussed at that meeting.

5 MR. CAVALLUZZO: And it goes on,  
6 the question is at line one of page 7345:

7 "Indicating they were  
8 interested obtaining the  
9 fruits?"

10 Answer:

11 "Well, indicating that they  
12 wanted to see it. I remember  
13 saying, "What use would the  
14 statement be anyway if he was  
15 tortured? How credible,  
16 reliable, would that  
17 statement be if this man was  
18 tortured in order to get a  
19 statement from him in Syria?"  
20 I was generally fairly  
21 dismissive about anything  
22 that they had obtained from  
23 him in Syria as being  
24 reliable at that point."

25 Do you recall Mr. Edelson making

1 statements to that effect?

2 MR. CABANA: Yes, sir, I actually  
3 do.

4 MR. CAVALLUZZO: Finally, the next  
5 question at line 12 of page 7345:

6 "MR. DAVID: They  
7 indicated to you that they  
8 wished to go to Syria, the  
9 RCMP did?

10 MR. EDELSON: I think they  
11 indicated that they had a  
12 desire to speak to him, and  
13 if they could be given to  
14 access, they were, I think,  
15 prepared to go. I knew that  
16 they -- I don't know if I can  
17 mention this or not --"

18 And then there is a discussion of  
19 a certain issue.

20 The question didn't would have for  
21 you, to your knowledge, did the RCMP ever send  
22 anyone to Syria?

23 MR. CABANA: Not to my knowledge.

24 MR. CAVALLUZZO: To interview  
25 Mr. Arar?

1 MR. CABANA: Not to my knowledge.

2 MR. CAVALLUZZO: Now, there is a  
3 clarification in your notes that I think you  
4 should comment on. I am referring to page 61.  
5 This is December 11. Perhaps you can read it, the  
6 entry for 11:30?

7 MR. CABANA: Certainly.

8 "Contacted ... LO Rome, who  
9 advised the writer that he  
10 will be travelling to Syria  
11 very shortly. He advises  
12 that from his discussion with  
13 ... he feels that our best  
14 approach at this stage would  
15 be to share our list of  
16 questions with Syrian  
17 authorities."

18 Then there is a redaction:

19 "...also suggested that our  
20 document should be translated  
21 in Arab if possible."

22 Do you want me to continue?

23 --- Pause

24 MR. CAVALLUZZO: No. The next  
25 point is something else.

1 In respect of that particular  
2 entry, did it relate to Mr. Arar?

3 MR. CABANA: No sir, it didn't.

4 --- Pause

5 MR. CAVALLUZZO: If you go to the  
6 next page of your notes, page 62, we move now to  
7 January 10, 2003.

8 MR. CABANA: Yes, sir.

9 MR. CAVALLUZZO: Could you just  
10 read us the entry that looks like 12:05?

11 MS EDWARDH: What page?

12 MR. CAVALLUZZO: Page 62?

13 MR. CABANA: Okay.

14 "12:05 Received copy of  
15 further correspondence  
16 emanating from CID and  
17 addressed to Insp. Jagoe and  
18 project O-Canada in Toronto  
19 outlining A/Comm. Proulx's  
20 position relative to ..."

21 It is redacted:

22 "... and fact that...."

23 It is redacted again:

24 "In this correspondence there  
25 is also reference to fact

1                   that CID will dictate  
2                   composition of interview  
3                   teams and that same will be  
4                   composed or have RCMP  
5                   representatives."

6                   MR. CAVALLUZZO: Then there is a  
7                   meeting later on that day?

8                   MR. CABANA: There is a meeting at  
9                   20 after 3:00 in the afternoon, 1510:

10                   "Meeting with C/Supt. Watson  
11                   ..."

12                   Who was the CROPS officer at  
13                   that time:

14                   "...and advised him of above  
15                   and reason for withdrawal.  
16                   The writer requested that in  
17                   light of the fact  
18                   investigation is in relation  
19                   to National Security issues,  
20                   file should be transferred to  
21                   INSET. This should address  
22                   CID's concerns and hopefully  
23                   minimize their involvement in  
24                   the development of the  
25                   investigation. Mr. Watson

1                    advised we would discuss  
2                    further on Monday."

3                    MR. CAVALLUZZO: At this point in  
4 time you are deciding that you are going to be  
5 leaving Project A-OCANADA?

6                    MR. CABANA: Yes, sir. It is time  
7 for me to move on.

8                    MR. CAVALLUZZO: At this point in  
9 time, when you do leave on February 4th, a few  
10 weeks later, is the project than assigned to the  
11 INSET at the "A" Division?

12                   MR. CABANA: Yes, sir, but I would  
13 suggest the discussion started actually in  
14 December.

15                   MR. CAVALLUZZO: Right.

16                   MR. CABANA: Of the potential  
17 migration of the file back to INSET. The INSET  
18 unit by that time was I believe pretty well fully  
19 staffed. They had the necessary expertise within  
20 the team at that time to take over management of  
21 the file.

22                   MR. CAVALLUZZO: And so by the  
23 time you leave, Project A-OCANADA comes under the  
24 umbrella of INSET, A-INSET, and you move back to  
25 your position as the project manager of IPOC?

1 MR. CABANA: I had never left that  
2 function.

3 MR. CAVALLUZZO: You continued on?

4 MR. CABANA: Exactly.

5 MR. CAVALLUZZO: You continued on  
6 in that position.

7 MR. CABANA: Yes, sir.

8 MR. CAVALLUZZO: What would appear  
9 to be one of the problems at least you seemed to  
10 be discussing on this date is the intervention of  
11 head office in respect of the investigations that  
12 were carried on by Project A-OCANADA.

13 Is that a fair assessment?

14 MR. CABANA: Yes, sir, it would  
15 be.

16 MR. CAVALLUZZO: And head office  
17 by this point in time felt that more coordination  
18 or control was needed over Project A-OCANADA. Is  
19 that correct?

20 MR. CABANA: Well, by that point  
21 in time, Project OCanada had resumed its focus in  
22 the fall of 2002, and there was a need to  
23 coordinate between the two teams that were  
24 operating. So headquarters implemented certain  
25 steps to make sure coordination would occur.

1 MR. CAVALLUZZO: As I say, you  
2 left on February. There is a discussion in your  
3 notes, if we move on in your notes, in respect of  
4 the move, at page 67.

5 There is a discussion with  
6 Mr. Killam. Do you see that page 67?

7 MR. CABANA: Yes, I do.

8 MR. CAVALLUZZO: Can you read that  
9 just to close this issue out.

10 MR. CABANA: It says:

11 "During conversation with  
12 C/Supt. Killam the issue of  
13 accountability was raised by  
14 the writer in support of need  
15 to ensure the timely  
16 dissemination of information.  
17 Mr. Killam informed the  
18 writer that since the file is  
19 a National Security matter,  
20 the accountability in fact  
21 did not rest with the  
22 Division but with A/Comm.  
23 Proulx."

24 MR. CAVALLUZZO: Did anything  
25 happen in December or January of 2003 which



1 suddenly turned the file into a national security  
2 file, or was it a long evolution?

3 How did that happen that it became  
4 a national security file in January?

5 MR. CABANA: The file was always a  
6 national security file but it was primarily a  
7 criminal investigation. If you look at it the  
8 focus of the INSET units, which were created in  
9 spring, April of 2002, the INSET units now, these  
10 new units, are responsible to conduct criminal  
11 investigations of national security issues.

12 MR. CAVALLUZZO: Maybe at this  
13 point it might be useful if you could share with  
14 us what is the difference between a criminal  
15 investigation in relation to national security  
16 matters and a national security investigation.

17 Is there a difference?

18 MR. CABANA: Not really. I mean,  
19 the difference between a criminal investigation  
20 and a national security type of investigation, I  
21 would say the first and foremost is the reporting  
22 structure of the investigation, of the team. A  
23 criminal investigation reports to the Division  
24 level, whereas national security investigations  
25 report or are being coordinated at the

1           Headquarters level.

2                           INSETs now, I must state that the  
3           INSET units in relation to criminal investigations  
4           are reporting to the criminal operations officer  
5           in each division.

6                           The other difference I would  
7           submit is in the use of the information in  
8           national security types of investigations. Pre  
9           INSET days the national security types of  
10          investigations were more intelligence types of  
11          investigations. The flow of information, or the  
12          fluidity of the flow of information was not as  
13          crucial as with criminal investigations where the  
14          information has to be shared right away.

15                          As well, the methodology in  
16          securing this information, in the context of an  
17          intelligence probe you don't have to source the  
18          information the same way, where in the context of  
19          a criminal investigation you have to make sure the  
20          information you are getting is properly sourced  
21          and is obtained in an admissible format.

22                          Those I guess would be the main  
23          differences.

24                          MR. CAVALLUZZO: Just a couple of  
25          final things.

1 I would ask you to refer to  
2 Exhibit 173, which should be in front of you. I  
3 don't know if it has been filed already.

4 If you go five page in, you will  
5 see a fax. This fax is dated January 10, 2003.  
6 It is to NOC Headquarters. It appears to be from  
7 Project A-OCANADA. It is being sent to the LO in  
8 Rome, who is Mr. Fiorido at this time?

9 MR. CABANA: Yes.

10 MR. CAVALLUZZO: It says:

11 "Hello ... Please find  
12 attached a copy of the  
13 Synopsis Time Line that we  
14 prepared for HQ on Maher ARAR  
15 on October 21, 2002. It is  
16 more than you asked for but  
17 provides a greater picture on  
18 this individual. If you  
19 require anything else, please  
20 call me. Thanks again and  
21 good luck in your travels."

22 And then appended to that fax is a  
23 time line, much of which is redacted, but several  
24 pages of time line.

25 On January 10, 2003, Mr. Arar is

1 in detention in Syria for three or four months by  
2 that time. I am wondering why is Project  
3 A-OCANADA sending the LO in Rome this synopsis  
4 time line?

5 Are you aware of this? Did you do  
6 it?

7 MR. CABANA: Well, I signed the  
8 fax transmission. So obviously I was aware of it.

9 As far today to tell you what this  
10 is in relation to, I would submit to you that the  
11 LO Rome was probably planning on attending Syria.  
12 He was likely travelling to Syria and wanted to  
13 obtain more information.

14 MR. CAVALLUZZO: You don't recall  
15 exactly why you would have sent this information  
16 to him, other than that speculation.

17 MR. CABANA: No, sir, I don't.

18 --- Pause

19 MR. CAVALLUZZO: Okay.

20 Finally, Mr. Cabana, I just want  
21 to return to the training aspects what I asked you  
22 earlier regarding the training that the members of  
23 A-OCANADA had. You told us they had if any, very  
24 limited training in Muslim values, cultures  
25 traditions.

1                   Did they have any training on the  
2 relevant sharing of information policies of the  
3 RCMP, the ones that we reviewed this morning with  
4 you. Did the members of A-OCANADA have any  
5 training on that?

6                   MR. CABANA: The members that we  
7 selected to participate in this project were all  
8 experienced investigators and would have received  
9 training during the course of their career in the  
10 context of other courses.

11                  MR. CAVALLUZZO: What about the  
12 non-RCMP members of A-OCANADA, including the two  
13 co-managers? Were they trained on RCMP policies?

14                  MR. CABANA: The members of  
15 municipal or provincial agencies that were  
16 attached to our group that were working with the  
17 investigative team, I have no knowledge whether  
18 they were provided, prior to becoming members of  
19 this team, with any form of training on RCMP  
20 policies.

21                  The two team leaders, one of them  
22 had been with the RCMP at that time for probably  
23 longer than I would suggest the majority of the  
24 members on the team so he is fully aware of RCMP  
25 policies. He had received RCMP training over the

1 course of many, many years.

2 MR. CAVALLUZZO: As you say, apart  
3 from the two co-managers there were a number of  
4 other non-RCMP people that were --

5 MR. CABANA: Yes, sir.

6 MR. CAVALLUZZO: -- from the  
7 Sûreté, from the OPP, from municipal police  
8 forces, and so on and so forth.

9 MR. CABANA: Yes, sir.

10 MR. CAVALLUZZO: You are not aware  
11 of any training they specifically got on RCMP  
12 policies?

13 MR. CABANA: After joining  
14 our group?

15 MR. CAVALLUZZO: Yes?

16 MR. CABANA: No, sir.

17 Our focus -- I guess the only way  
18 I can describe it, this team was a task force that  
19 was put in place. It wasn't a permanent unit. My  
20 responsibility toward these members was not to  
21 ensure their development for their future career.  
22 Our sole purpose was to conduct this  
23 investigation.

24 MR. CAVALLUZZO: Okay.

25 MR. CABANA: For us to take

1 members and provide them with extended training,  
2 it clearly was not appropriate at that time.

3 MR. CAVALLUZZO: You also told us  
4 that in respect of training on human rights  
5 issues, such is the human rights records of  
6 countries they may deal with, there just was no  
7 such training?

8 MR. CABANA: Not to my  
9 knowledge, sir.

10 MR. CAVALLUZZO: You also told us  
11 that in respect of the National Security Program  
12 that the RCMP did have available, that very few  
13 people took that program?

14 MR. CABANA: That is correct.

15 What we were faced with was -- and  
16 again, we look at it type of investigation we were  
17 conducting, which was a international financial  
18 type of investigation, and the training in  
19 relation to national security would be of very  
20 little use actually.

21 MR. CAVALLUZZO: That is it final  
22 question. The final question is: If the members  
23 of this team had the kind of training that I have  
24 just referred to you, do you think that it would  
25 have been of any benefit to them in carrying out

1 the mandate of Project A-OCANADA?

2 MR. CABANA: With respect to the  
3 development of the investigation, and the  
4 investigation of specific financial offenses, no.  
5 It might have been a benefit to them simply  
6 because of the context of the national security  
7 context of this investigation, yes.

8 MR. CAVALLUZZO: So that there  
9 would have been some benefit?

10 MR. CABANA: There could have been  
11 some benefit. But we addressed these requirements  
12 through the actual composition of the team by  
13 ensuring that we had people with the right  
14 expertise that were there so if there was need for  
15 consultation to take place we had people we could  
16 consult with.

17 MR. CAVALLUZZO: What you seem to  
18 be saying is that because of the people you  
19 choose, you choose them on the basis that they  
20 wouldn't need any training --

21 MR. CABANA: Yes, sir.

22 MR. CAVALLUZZO: -- to carry out  
23 the mandate?

24 MR. CABANA: We are talking here  
25 in a perfect world. In a perfect world it would



1           have been great to be able to take all the  
2           investigators on the team and say we are going for  
3           extended training for the next three weeks and  
4           then we are going to look at this emergency. But  
5           really, the situation that we were under at the  
6           time, it was a crisis situation, basically it was  
7           a race against the clock and we couldn't take a  
8           two or three week break to train everybody.

9                       MR. CAVALLUZZO: Do you think the  
10           emergency lasted until you left in February of --

11                      MR. CABANA: Sir, although for the  
12           Canadian public post-9/11 -- immediately post-9/11  
13           it was very traumatic for everybody and I would  
14           submit to you that it is still the case for a lot  
15           of the law enforcement officers that were attached  
16           to this project. The emergency, the urgency still  
17           exists and in my functions I still deal with it on  
18           a daily basis.

19                      MR. CAVALLUZZO: Right. Although  
20           you are not part of the A-INSET Project A-OCANADA,  
21           it still continues I understand?

22                      MR. CABANA: Yes, sir, it does.

23                      MR. CAVALLUZZO: Thank you,  
24           Mr. Cabana. I have no further questions?

25                      MR. CABANA: Thank you very

1 much, sir.

2 THE COMMISSIONER: Thank you,  
3 Mr. Cavalluzzo.

4 That completes it for today. We  
5 will start tomorrow morning 9 o'clock and we will  
6 rise until then.

7 THE REGISTRAR: Please stand.

8 --- Whereupon the hearing adjourned at 6:16 p.m.,  
9 to resume on Thursday, June 30, 2005,  
10 at 9:00 a.m. / L'audience est ajournée à  
11 18 h 16, pour reprendre le jeudi 30 juin 2005  
12 à 9 h 00

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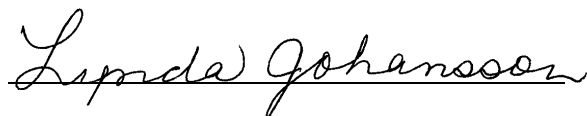
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Lynda Johansson,

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

A				
<b>Abdullah</b> 7749:13	7734:1 7920:21	8047:17 8057:21	7965:20 7974:14	7772:25 7773:19
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<b>ability</b> 7743:14	<b>accumulated</b>	<b>addressing</b> 7751:11	7988:6,21	7787:11,16
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7858:21	<b>acquiring</b> 7958:2	7816:7 7856:19	<b>advising</b> 7891:21	7885:7,23 7886:7
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7942:17 7951:16	7829:25	<b>admonitions</b>	<b>advisors</b> 7817:15	7906:21 7907:3
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