

**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 mardi 23 août 2005

**Held at:**

Algonquin Room  
Old City Hall  
111 Sussex Drive  
Ottawa, Ontario

Tuesday, August 23, 2005

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Tuesday, August 23, 2005

3 at 9:07 a.m. / L'audience débute le mardi

4 23 août 2005 à 9 h 07

5 THE REGISTRAR: Please be seated.

6 Veuillez vous asseoir.

7 THE COMMISSIONER: Good morning.

8 PREVIOUSLY SWORN: RICHARD FLEWELLING

9 THE COMMISSIONER: Mr. Cavalluzzo?

10 MR. CAVALLUZZO: Thank you,

11 Commissioner.

12 EXAMINATION

13 MR. CAVALLUZZO: Mr. Flewelling,  
14 when we broke yesterday, we had reached the point  
15 in time where Mr. Arar was detained in New York  
16 City, and I understand from your evidence of  
17 yesterday that you did not learn about Mr. Arar's  
18 detention in the United States until October 2nd.

19 MR. FLEWELLING: That's correct.

20 MR. CAVALLUZZO: And on October  
21 2nd, you learned that information from whom?

22 MR. FLEWELLING: I was informed by  
23 Inspector Richard Roy.

24 MR. CAVALLUZZO: And we're going  
25 to come to that particular date. But prior to

1           doing that, I would like you to look at exhibit  
2           P-83, volume 1, at page 187.

3                           MR. FLEWELLING:   Sorry.  
4           Whereabouts is it?

5                           MR. CAVALLUZZO:   Page 187.

6                           THE COMMISSIONER:   Tab 1?

7                           MR. CAVALLUZZO:   Behind Tab 1,  
8           yes.

9                           Now, this is a fax, which is dated  
10           September 26th of 2002, and it is sent to  
11           headquarters NOC with an informational copy sent  
12           to international liaison as well as headquarters'  
13           attention, and I understand that's to yourself,  
14           Mr. Flewelling, and it's from "A" Division, and  
15           you'll see it says:

16   "Attached pages are suggested  
17   questions for Mr. Arar as per  
18   your request.  The list was  
19   prepared earlier this year,  
20   prior to Arar's sudden  
21   departure from Canada, and as  
22   such some questions are a  
23   little bit dated."  (As read)

24                           It goes on:

25   "Secondly, we appreciate your

1 assistance in interviewing  
2 Arar." (As read)

3 It's from "A" Division, and  
4 appended to the fax are about three pages of  
5 interview questions relating to Mr. Arar.

6 The question I have for you is  
7 that this is sent -- at least a copy is sent for  
8 your attention. Did you see a copy of this  
9 particular fax?

10 MR. FLEWELLING: Not to my  
11 knowledge.

12 MR. CAVALLUZZO: Not to your  
13 knowledge. Even though it says copies go to  
14 Mr. Flewelling?

15 MR. FLEWELLING: Correct.

16 MR. CAVALLUZZO: When did you  
17 first see a copy of these questions which were  
18 forwarded to the United States?

19 MR. FLEWELLING: I don't ever  
20 remember seeing a copy of these questions.

21 MR. CAVALLUZZO: Right. But  
22 certainly in preparation for these hearings,  
23 you've reviewed a copy of those questions.

24 Is that correct? You've seen them  
25 before?



1 MR. FLEWELLING: Yes. Only  
2 through preparation.

3 MR. CAVALLUZZO: Right. Now, in  
4 reviewing those questions, I'd ask you whether  
5 these are the kinds of questions that should have  
6 received CID approval before going to the United  
7 States, to a foreign agency, in particular in the  
8 United States?

9 --- Pause

10 MR. FLEWELLING: I think in having  
11 reviewed our policy, and providing that approval  
12 was sought through the CROPS officer, that these  
13 types of questions could have been exchanged. I  
14 believe that would be the -- would have been  
15 allowed at that time.

16 MR. CAVALLUZZO: Do you not  
17 believe that CID could have had some input in  
18 respect of these questions; for example, in  
19 respect of personal information that may be  
20 involved that is going down without CID's  
21 approval? Are there other inputs that CID could  
22 have had?

23 MR. FLEWELLING: I think, as I  
24 stated before, that it certainly would have been a  
25 prudent thing to have done, to engage CID as well

1 as to inform management at that level that these  
2 types of things were going to take place.

3 MR. CAVALLUZZO: Do you believe  
4 that "A" Division -- or, excuse me, Project  
5 A-OCANADA would have had authorization to send  
6 these questions directly to the Americans without  
7 CID approval?

8 MR. FLEWELLING: I believe with  
9 respect to the policy as it was, that if they had  
10 approval through their CROPS officer, that they  
11 could have sent or -- yes.

12 MR. CAVALLUZZO: You believe that  
13 they could have done this with -- only with the  
14 authorization of a CROPS officer?

15 MR. FLEWELLING: Yes, and that  
16 would have to be verified through investigators  
17 there.

18 MR. CAVALLUZZO: Right. And do  
19 you know if CROPS officers approved this  
20 particular submission of questions to the  
21 Americans?

22 MR. FLEWELLING: No, I have no  
23 idea.

24 MR. CAVALLUZZO: Wouldn't  
25 "A" Division or CROPS say, "What are you talking

1           about, we didn't have CID approval? We sent a  
2           copy through headquarters NOC to be forwarded on  
3           to the Americans, and on top of that, we gave a  
4           copy to Rick Flewelling, who is responsible for  
5           Project A-OCANADA? They knew about it"? What  
6           would you say to that?

7                           MR. FLEWELLING: I don't know if I  
8           have an answer for you. I think perhaps they may  
9           have thought that where they had forwarded a copy,  
10          that they were within existing policy.

11                          MR. CAVALLUZZO: Now, if you had  
12          seen these questions prior to their submission to  
13          the Americans, what would you have done in respect  
14          of the questions as to whether it would be  
15          appropriate to send these questions to the  
16          Americans? Would you have sought advice from  
17          somewhere?

18                          MR. FLEWELLING: Yes.

19                          MR. CAVALLUZZO: Who would you  
20          have sought advice from?

21                          MR. FLEWELLING: I would have  
22          sought advice through our RCMP DOJ to ensure that  
23          everything fit properly and that we were  
24          following -- working within existing policy.

25                          MR. CAVALLUZZO: Okay. Now, I'd

1           like you to review two particular SitReps that we  
2           will file now as new exhibits.

3                           THE COMMISSIONER: 222.

4                                   EXHIBIT NO. 222: SitRep from  
5                                   "A" Division for September  
6                                   26, 2002, dated September 27,  
7                                   2002 and signed by Mr. Cabana  
8                                   and Mr. Callaghan

9                           MR. CAVALLUZZO: Let us look at  
10           the first SITREP, which is exhibit 222. It is  
11           dated September 27th of 2002.

12                           It is from "A" Division, signed by  
13           Mr. Cabana, and the other name -- I'm going to  
14           release that name right now because that name  
15           crops up -- I shouldn't use the word "crops" --  
16           but comes up quite frequently, and that is  
17           Mr. Patrick Callaghan, who is one of the two  
18           supervisors in respect of Project A-OCANADA.

19                           And this particular SITREP goes to  
20           a number of people, once again headquarters, NOC.  
21           What does NOC stand for at headquarters?

22                           MR. FLEWELLING: "National  
23           Operations Centre."

24                           MR. CAVALLUZZO: Then it goes on  
25           to CID, NSID, to your attention, and then it goes

1 to a number of INSETs as well as other people,  
2 including NSIS in "A" Division.

3 THE COMMISSIONER: Are they the  
4 same? Mr. Cavalluzzo, I'm just wondering about  
5 marking the second one.

6 MR. CAVALLUZZO: The second one  
7 should be 223.

8 THE COMMISSIONER: Okay, thank  
9 you. I'm sorry to interrupt.

10 EXHIBIT NO. 223: SitRep from  
11 "A" Division for September  
12 27, 2002, dated September 30,  
13 2002

14 THE COMMISSIONER: Go ahead.

15 MR. CAVALLUZZO: And dealing with  
16 the first one for September 27th, which is for  
17 September 26th, exhibit 222, in essence what it  
18 says -- what we can read from the unredacted  
19 portion is that A-OCANADA was advised by somebody,  
20 and the information there should be an American,  
21 that Maher Arar was to arrive in New York City at  
22 two o'clock via a commercial airline flight. Some  
23 American were to interview him and then refuse  
24 Arar entry into the United States. That American  
25 somebody requested a list of questions from

1 A-OCANADA for their interview. The questions were  
2 faxed as requested.

3 And I ask you whether you saw a  
4 copy of exhibit 222?

5 MR. FLEWELLING: This one I didn't  
6 see until sometime after October the 2nd.

7 MR. CAVALLUZZO: Now, when you  
8 saw -- indeed, if it was after October the 2nd  
9 that Project A-OCANADA had sent out a list of  
10 questions, I assume you didn't ask to see the list  
11 of questions that was faxed out in the previous  
12 week?

13 MR. FLEWELLING: Not that I  
14 recall.

15 MR. CAVALLUZZO: And just to  
16 ensure that -- if your testimony is that they  
17 could have sent these questions out so long as  
18 they had CROPS approval. If we look to the bottom  
19 of that page, we see Mr. Wayne Watson --

20 MR. FLEWELLING: Yes.

21 MR. CAVALLUZZO: -- approved this  
22 situation rep which clearly refers to the  
23 questions, which means that CROPS had given  
24 Project A-OCANADA authorization to do what they  
25 did, presumably?

1 MR. FLEWELLING: It would appear.

2 MR. CAVALLUZZO: Okay. Now, if we  
3 go to exhibit -- and I see if you go to the second  
4 page that at this point in time, in September of  
5 2002, that Project A-OCANADA is inserting the  
6 third party rule.

7 MR. FLEWELLING: Yes.

8 MR. CAVALLUZZO: Now, if we go to  
9 exhibit 223, which is dated September 30th, and  
10 that's for September 27th, and it's sent to the  
11 same persons as exhibit 222, just let me read to  
12 you the unredacted portion in paragraph 2 on  
13 page 2. It says:

14 "This American entity  
15 notified A-OCANADA that Maher  
16 Arar was in custody at an  
17 airport in New York after  
18 flying in from Europe. That  
19 [somebody] advised that Arar  
20 was --"

21 Then there's a pile of words that  
22 are redacted, and then it goes on:

23 "And then refused entry to  
24 the United States. He was  
25 also denied permission to

1                   enter Canada via the U.S.  
2                   Arar was then removed from  
3                   the country."

4                   We will subsequently see that last  
5 bit of information is incorrect as of that point  
6 in time.

7                   But in any event, I ask you  
8 whether you received and reviewed this particular  
9 situation report?

10                  MR. FLEWELLING: Again, I didn't  
11 see this until sometime after October the 2nd.

12                  MR. CAVALLUZZO: And once again I  
13 note that Mr. Wayne Watson, the assistant CROPS  
14 officer, has approved this particular SITREP?

15                  MR. FLEWELLING: I know his name  
16 is there. I don't see his signature. But I'm  
17 assuming.

18                  MR. CAVALLUZZO: I would like to  
19 come now to October 2nd. Could you tell us how it  
20 was that you became aware that Mr. Maher Arar was  
21 detained in the United States?

22                  MR. FLEWELLING: It would have  
23 been, I believe, the afternoon of October the 2nd  
24 when Inspector Richard Roy, our liaison officer  
25 with DFAIT came into our office, approached me,



1 and advised me of the situation.

2 MR. CAVALLUZZO: So this would  
3 have been Mr. Roy coming to headquarters, your  
4 office at headquarters?

5 MR. FLEWELLING: That's correct.

6 MR. CAVALLUZZO: And headquarters  
7 is in a location different than Project A-OCANADA?

8 MR. FLEWELLING: Yes, it is.

9 MR. CAVALLUZZO: And you said he  
10 advised you of the situation. Could you tell us  
11 what he advised you of?

12 MR. FLEWELLING: The exact wording  
13 I don't recall, other than -- to summarize it, he  
14 advised me that Mr. Arar was detained in New York.

15 MR. CAVALLUZZO: I would like to  
16 show you exhibit 209, which was introduced  
17 yesterday through Mr. Roy, and these are the notes  
18 that Mr. Roy took relating to the advice that he  
19 received on October 2nd when he discovered the  
20 situation of Mr. Arar.

21 You will see at the top that date  
22 should be October 2nd, 2002. "Jonathan" is  
23 Jonathan Solomon from DFAIT ISI, and you'll see  
24 "Canadian arrested". And then it says "Canadian,  
25 Montreal or Toronto", and then it says "Syrian."

1 THE COMMISSIONER: Montreal or  
2 Ottawa, do you think?

3 MR. CAVALLUZZO: I'm sorry?

4 THE COMMISSIONER: Montreal or  
5 Ottawa?

6 MR. CAVALLUZZO: What did I say?

7 THE COMMISSIONER: Toronto.

8 MR. CAVALLUZZO: Oh, excuse me.

9 THE COMMISSIONER: You people from  
10 Toronto --

11 MR. CAVALLUZZO: It may show that  
12 I want to get home, but I should have said  
13 "Ottawa".

14 And then it says "Syrian." It  
15 says "arrested at JFK Airport, New York." And  
16 then it says "Tunis." That must mean Tunisian,  
17 "to Mirabel." And then it says:

18 "Arrest not  
19 immigration-oriented.  
20 Consulate not able to see  
21 him. He called parents to  
22 advise."

23 And then Mr. Arar's date of birth.

24 And then it says:

25 "'A' and CID in loop in

1 notebook."

2 The information that is on this  
3 page, is this the information that Mr. Roy related  
4 to you on October 2nd?

5 MR. FLEWELLING: I don't think  
6 that everything that was listed here was presented  
7 to me.

8 MR. CAVALLUZZO: Let's go through  
9 it, then.

10 He obviously told you a Canadian  
11 was detained?

12 MR. FLEWELLING: Yes.

13 MR. CAVALLUZZO: He said he was  
14 either from Montreal or Ottawa?

15 MR. FLEWELLING: No.

16 MR. CAVALLUZZO: He didn't say  
17 that?

18 MR. FLEWELLING: I don't recall  
19 that.

20 MR. CAVALLUZZO: Did he tell you  
21 he was a Syrian?

22 MR. FLEWELLING: I don't recall  
23 that ever being stated.

24 MR. CAVALLUZZO: He didn't say he  
25 was a Syrian?

1 MR. FLEWELLING: Not to my  
2 knowledge. I'm not going to tell you that he  
3 didn't. I just don't recall him telling me that  
4 he was a Syrian at that time.

5 MR. CAVALLUZZO: Obviously if he  
6 is saying that "A" Division and CID are in the  
7 loop, presumably there would be no reason why he  
8 wouldn't tell you that he was Syrian because  
9 that's an important fact, isn't it?

10 MR. FLEWELLING: All I can tell  
11 you is just what I recall.

12 MR. CAVALLUZZO: In Mr. Roy's  
13 notes of that day, he says:

14 "See Rick Flewelling re  
15 Maher Arar's phone number."

16 MR. FLEWELLING: Yes.

17 MR. CAVALLUZZO: Then there is  
18 reference to Almalki, and then he says:

19 "26 September advised of  
20 itinerary of Maher to 'A'  
21 Division. Arrested on the  
22 27th. Re Maher Arar 'A'  
23 supplied questions on the  
24 26th to the American entity."

25 Did he tell you that?

1 MR. FLEWELLING: I don't recall  
2 that.

3 MR. CAVALLUZZO: Did he tell you  
4 on the 27th "less than forthcoming"?

5 MR. FLEWELLING: Less than --  
6 sorry?

7 MR. CAVALLUZZO: "Less than  
8 forthcoming"? The point there being that  
9 Mr. Arar, when being questioned on the 27th, was  
10 less than forthcoming with the Americans.

11 MR. FLEWELLING: And when was this  
12 supposed to have happened?

13 MR. CAVALLUZZO: The notes  
14 indicate that this was done on October 2nd.  
15 --- Pause

16 MR. FLEWELLING: I don't recall  
17 that.

18 MR. CAVALLUZZO: Then there's a  
19 communication problem. A report was sent by fax  
20 to CID noting same. Did he tell you that faxes  
21 had been sent to the CID, in particular the ones  
22 that we have just referred to, exhibit 222 and  
23 223?

24 MR. FLEWELLING: He may have. At  
25 this particular juncture in time, I just don't

1 recall.

2 I know that he stopped by my  
3 office on the way down to see Mr. Pilgrim. I know  
4 that we engaged in a brief conversation where he  
5 did advise me.

6 MR. CAVALLUZZO: Right.

7 MR. FLEWELLING: And shortly  
8 thereafter I left the office to go to a meeting.

9 MR. CAVALLUZZO: And do you know  
10 what time approximately he would have advised you?

11 MR. FLEWELLING: It would have to  
12 have been, I believe, according to my notes,  
13 sometime prior to three o'clock in the afternoon,  
14 I believe.

15 MR. CAVALLUZZO: Well, if we go to  
16 your notes for October 2nd at page 35, you will  
17 see at 1500 hours that there was a meeting with  
18 CSIS.

19 MR. FLEWELLING: Yes.

20 MR. CAVALLUZZO: Where Project  
21 A-OCANADA and Arar was discussed.

22 MR. FLEWELLING: Yes.

23 MR. CAVALLUZZO: And there is no  
24 reference to you having been advised by Mr. Roy on  
25 that day.

1                   Would you have been advised by Mr.  
2                   Roy before 1500 hours?

3                   MR. FLEWELLING: I'm assuming so  
4                   because I know when I was at this meeting, I had  
5                   spoken to an individual at the meeting where I was  
6                   at to confirm Mr. Arar's detention.

7                   MR. CAVALLUZZO: Okay.

8                   MR. FLEWELLING: Which would lead  
9                   me to believe I did know prior to 1500.

10                  MR. CAVALLUZZO: So that you would  
11                  have been advised prior to 1500.

12                  At this meeting at the CSIS  
13                  building, was this with CSIS reps?

14                  MR. FLEWELLING: Yes.

15                  MR. CAVALLUZZO: And obviously you  
16                  discussed Project A-OCANADA, and indeed Mr. Arar.

17                  MR. FLEWELLING: The meeting was  
18                  not with respect to Mr. Arar personally.

19                  MR. CAVALLUZZO: Right.

20                  MR. FLEWELLING: I do know that  
21                  with one of the representatives from CSIS that I  
22                  engaged him -- at least from my recollection, I  
23                  engaged one of the representatives from CSIS and  
24                  asked him to confirm with me whether or not he had  
25                  the same information as I, in that Mr. Arar was

1 being detained.

2 MR. CAVALLUZZO: And was there any  
3 discussion with CSIS that Mr. Arar was refused  
4 entry?

5 MR. FLEWELLING: No. I didn't  
6 become aware that he was refused entry until I  
7 read the SITREPs.

8 MR. CAVALLUZZO: And when did you  
9 read the SITREPs?

10 MR. FLEWELLING: I'm believing it  
11 was sometime after the 2nd.

12 MR. CAVALLUZZO: We are going to  
13 come to a continuation report of the same day,  
14 which will indicate the state of your knowledge.

15 Was there any discussion with the  
16 CSIS rep regarding Mr. Arar being Syrian or being  
17 a dual national?

18 MR. FLEWELLING: I honestly don't  
19 recall where I learned that he was a dual  
20 national.

21 MR. CAVALLUZZO: You honestly  
22 don't recall where you learned. What about how  
23 you learned?

24 MR. FLEWELLING: I can't give you  
25 an exact answer as to how, or when, or where I



1 learned it. Just somewhere in that period of time  
2 I became aware that he was a dual national.

3 MR. CAVALLUZZO: You came back to  
4 the office, obviously, at 5:30 on that date. You  
5 prepared a continuation report?

6 MR. FLEWELLING: Yes.

7 MR. CAVALLUZZO: And I would like  
8 to file that as exhibit 224.

9 THE COMMISSIONER: 224.

10 EXHIBIT NO. 224:

11 Continuation Report, dated  
12 October 2

13 MR. CAVALLUZZO: This is called a  
14 continuation report, which is dated October 2nd at  
15 5:30 in the afternoon.

16 Could you tell me why you would do  
17 a continuation report rather than putting it in  
18 your notes?

19 MR. FLEWELLING: The only response  
20 I can give you is probably I had a pad of these  
21 right next to me at the time.

22 MR. CAVALLUZZO: And could you  
23 tell us -- why don't you read that for us.

24 MR. FLEWELLING: It says:  
25 "Received [blank] --"

1 MR. CAVALLUZZO: Wait a minute.  
2 You received something.  
3 MR. FLEWELLING: "Received call  
4 from."  
5 MR. CAVALLUZZO: Okay.  
6 MR. FLEWELLING: "According to  
7 him, Arar was --"  
8 MR. CAVALLUZZO: Just a minute,  
9 before LEGAT, let's just advise the public what  
10 that is.  
11 This is an American agent  
12 somewhere?  
13 MR. FLEWELLING: It would be a  
14 representative from the American Embassy.  
15 MR. CAVALLUZZO: So you received a  
16 call from that person.  
17 MR. FLEWELLING: Yes.  
18 MR. CAVALLUZZO: Okay, go on.  
19 MR. FLEWELLING: "According to  
20 him, Arar was arrested by  
21 [blank]. He is still being  
22 detained. They are looking,  
23 exploring possible charges.  
24 If no charges are pending,  
25 then he will be removed --"

1 I believe "from the U.S."  
2 "... and as noted by 'A'  
3 Division he will be denied  
4 access to fly directly into  
5 Canada. Therefore, he will  
6 be returned to Switzerland  
7 where he departed from.  
8 Requested that [blank] keep  
9 me in the loop."  
10 MR. CAVALLUZZO: This is the  
11 [blank] individual from the American Embassy?  
12 MR. FLEWELLING: Yes.  
13 MR. CAVALLUZZO: What this  
14 indicates to me is that by this point in time you  
15 had read the SITREPs, because it says in the  
16 second paragraph:  
17 "As noted by 'A' Division he  
18 will be denied access to fly  
19 directly into Canada.  
20 Therefore, he will be  
21 returned to Switzerland where  
22 he departed from."  
23 MR. FLEWELLING: That was my  
24 understanding.  
25 MR. CAVALLUZZO: Right. But it

1 sounds to me like -- well, let me just ask you:  
2 Did you learn those facts or that information from  
3 the SITREPs, or from a telephone call with "A"  
4 Division?

5 --- Pause

6 MR. FLEWELLING: Where I say "as  
7 noted by", I believe that there's a possibility  
8 that we discussed that very issue.

9 MR. CAVALLUZZO: But how did you  
10 discuss it: through reading a SITREP, or through  
11 a discussion on the telephone, or at "A" Division?

12 MR. FLEWELLING: Well, it would  
13 have been through a telephone call, I believe.

14 MR. CAVALLUZZO: So if you had a  
15 telephone call, who would you likely have spoken  
16 to at Project A-OCANADA?

17 MR. FLEWELLING: Oh, I mean, I  
18 would have learned through the SITREP that came  
19 from A-OCANADA.

20 MR. CAVALLUZZO: So that means by  
21 this time, by 5:30 on October 2nd, you had read  
22 the SITREP?

23 MR. FLEWELLING: According to the  
24 note, I would agree.

25 MR. CAVALLUZZO: So that as of

1 5:30 on Tuesday, October the 4th, what you do know  
2 is three things: One, he is being detained in the  
3 United States. Second, he is going to be denied  
4 access to fly directly to Canada. And third, he  
5 is going to be deported or returned to Switzerland  
6 from whence he came?

7 MR. FLEWELLING: Yes.

8 MR. CAVALLUZZO: So those three  
9 things you are aware of by that point in time.

10 Did anything else happen in  
11 respect of Mr. Arar on October 2nd that you can  
12 help us with?

13 MR. FLEWELLING: I informed  
14 Mr. Pilgrim as to what transpired through an  
15 e-mail.

16 MR. CAVALLUZZO: Just one final  
17 thing before we move on to the next day.

18 I'm referring back to exhibit 209,  
19 which is the note of Mr. Roy. Do you have that in  
20 front of you?

21 MR. FLEWELLING: I believe that's  
22 this one.

23 MR. CAVALLUZZO: He makes  
24 reference to "Consulate not able to see him." And  
25 I'm wondering whether Roy told you that the

1 Consulate had not been able to see Mr. Arar at  
2 this point in time, as of October 2nd?

3 MR. FLEWELLING: I wasn't aware of  
4 that at that time. He may have discussed it with  
5 Superintendent Pilgrim, because I know that after  
6 he spoke with me, he walked down and had a  
7 discussion with him.

8 MR. CAVALLUZZO: Now, presumably  
9 Mr. Pilgrim knew that you were responsible for  
10 Project A-OCANADA, as its overseer?

11 MR. FLEWELLING: Yes.

12 MR. CAVALLUZZO: Presumably  
13 Mr. Pilgrim, if he discovered that, would have  
14 told you that information, because once again that  
15 is important information that you should know as  
16 being the overseer of Project A-OCANADA?

17 You would agree with that?

18 MR. FLEWELLING: Yes. I just  
19 don't recall learning that that day.

20 MR. CAVALLUZZO: Is it possible  
21 that Roy or Pilgrim would have told you that?

22 --- Pause

23 MR. FLEWELLING: It's very  
24 difficult for me to put everything back in that  
25 day because of the things that I've learned

1           subsequently.

2                           MR. CAVALLUZZO: I understand.

3                           MR. FLEWELLING: My honest belief  
4           is I didn't know that until later on.

5                           MR. CAVALLUZZO: What do you mean  
6           by "later on"?

7                           MR. FLEWELLING: It would have  
8           been sometime thereafter.

9                           MR. CAVALLUZZO: Well, I don't  
10          know whether you would have learned that sometime  
11          thereafter, because on October the 3rd, which is  
12          the very next day, he did receive consular access.

13                          Did you learn it? Did you learn  
14          that he wasn't getting consular access?

15                          MR. FLEWELLING: I -- at that time  
16          I can tell you that I don't recall that being a  
17          topic of discussion.

18                          MR. CAVALLUZZO: Because if you  
19          did know, then you would have known it before 3:45  
20          on October 3rd or thereabouts. It would have been  
21          before then because that's when at least there's a  
22          report in the DFAIT system that he received  
23          consular access on October 3rd.

24                          MR. FLEWELLING: I learned that he  
25          had access sometime thereafter, and I'm just

1           trying to recall how I learnt it.

2                           MR. CAVALLUZZO: Well, let us take  
3 you through these days step by step and maybe it  
4 will assist in your memory.

5                           If we go to October 3rd -- let's  
6 go to your notes at page 36.

7                           On October 3rd, your notes don't  
8 indicate this, and with the permission of counsel  
9 for the government, I'm going to advise you that  
10 in that redaction at eight o'clock you telephoned  
11 somebody in respect of another matter.

12                           I just want to tell him who he  
13 telephoned, if you agree.

14                           MR. FOTHERGILL: I take it this is  
15 an A-OCANADA investigator whose name has  
16 previously been identified?

17                           MR. CAVALLUZZO: No. This is a  
18 DFAIT liaison officer who testified yesterday.

19                           MR. FOTHERGILL: In that case,  
20 there will be no objection.

21                           MR. CAVALLUZZO: In that  
22 redaction, let me tell you, Mr. Flewelling, that  
23 I've read the redaction, and it is that you called  
24 Mr. Roy on an unrelated matter, okay? So just put  
25 that in context.



1                   Sometime early in the day, you  
2 talked to Mr. Roy, at least, according to your  
3 notes, on an unrelated matter. Okay?

4                   And then if we go down to 1600  
5 hours --

6                   MR. FLEWELLING: Yes.

7                   MR. CAVALLUZZO: Can you just read  
8 that for us.

9                   Once again, it says somebody in  
10 the redaction called...

11                   And that somebody is an American?  
12 Or do you know? You don't know that?

13                   MR. FLEWELLING: Sorry.

14                   MR. CAVALLUZZO: Okay. What about  
15 the next line, the last three lines, if you could  
16 read that for us?

17                   MR. FLEWELLING:

18                   "Re subject Arar. He sent a  
19 message needing urgent  
20 attention."

21                   MR. CAVALLUZZO: Now, you said  
22 "he." I think that's "she". "She sent a  
23 message."

24                   MR. FLEWELLING: Sorry, you're  
25 correct. "She sent a message, needing urgent

1 attention."

2 MR. CAVALLUZZO: Now, who is  
3 "she"?

4 MR. FLEWELLING: Another U.S.  
5 Embassy representative.

6 MR. CAVALLUZZO: Okay. And could  
7 you tell us, without disclosing any redacted  
8 information, what "she" was about to do?

9 MR. FLEWELLING: She had requested  
10 information with respect to our investigation that  
11 we could forward to American authorities for their  
12 assistance in pursuing, I believe, charges.

13 MR. CAVALLUZZO: Criminal charges?

14 MR. FLEWELLING: Criminal charges.

15 MR. CAVALLUZZO: Against Mr. Arar?

16 MR. FLEWELLING: Yes.

17 MR. CAVALLUZZO: Now, she is doing  
18 that through CID?

19 MR. FLEWELLING: That is correct.

20 MR. CAVALLUZZO: And then you  
21 would forward whatever, and we're going to  
22 introduce a new exhibit now. You would forward  
23 that on to Project A-OCANADA?

24 MR. FLEWELLING: That is correct.

25 MR. CAVALLUZZO: Okay. Could we

1 have this document introduced?

2 THE COMMISSIONER: 225.

3 EXHIBIT NO. 225: Document to  
4 Project A-OCANADA from  
5 Mr. Flewelling, dated  
6 October 3, 2002

7 MR. CAVALLUZZO: This is  
8 exhibit 225, it is dated October 3rd of 2002, and  
9 it is to Project A-OCANADA from Mr. Flewelling,  
10 and just let me read the body of the document. It  
11 says:

12 "Re Abdul Hamid Arar," and  
13 then it says: "This  
14 individual, this American,  
15 contacted this office after  
16 hours looking for Project  
17 A-OCANADA's assistance with  
18 information pertaining to  
19 the --"

20 I guess that's the captioned? Cn  
21 is the captioned?

22 MR. FLEWELLING: That's correct.

23 MR. CAVALLUZZO:

24 "On behalf of American law  
25 enforcement (this

1                   organisation or she) is  
2                   seeking any evidence that can  
3                   assist in the support of  
4                   criminal charges. Find  
5                   attached request forwarded by  
6                   this person with a list of  
7                   questions. They would be  
8                   most appreciative of any  
9                   additional information you  
10                  can supply on this subject.  
11                  They further request that any  
12                  response be channelled  
13                  through the [whatever]  
14                  organization for evidentiary  
15                  purposes. Due to time  
16                  restrictions facing  
17                  investigators in the U.S.  
18                  they would be most grateful  
19                  for your attention to this  
20                  matter."

21                               And then you would have received  
22                  this document on October the 3rd after hours?

23                               MR. FLEWELLING: That is correct.

24                               MR. CAVALLUZZO: And the next  
25                  page, what is that? The next page, is that just

1 the fax cover?

2 MR. FLEWELLING: No, that would be  
3 the process by which we would have the document  
4 entered onto our SCIS.

5 MR. CAVALLUZZO: Okay. And then  
6 the next page, you have a third page there.  
7 That's a fax transmittal form?

8 MR. FLEWELLING: That would be the  
9 fax transmittal form that came in from the  
10 embassy.

11 MR. CAVALLUZZO: Okay. And then  
12 the next two pages are redacted questions that  
13 came along with that?

14 MR. FLEWELLING: I believe so.

15 MR. CAVALLUZZO: Now, what is  
16 interesting, and I guess new information for you  
17 in respect of this particular fax, is that it's  
18 clear now that the Americans are looking to  
19 criminally charge Mr. Arar -- first thing. You're  
20 aware of that now.

21 Correct?

22 MR. FLEWELLING: That they're  
23 seeking information for the purposes, yes.

24 MR. CAVALLUZZO: Right. And the  
25 second thing, obviously, is they are seeking

1 Canadian assistance in supporting those criminal  
2 charges?

3 MR. FLEWELLING: Yes.

4 MR. CAVALLUZZO: Now, I'd like to  
5 introduce a new exhibit. This is a time line  
6 which was prepared --

7 MR. FLEWELLING: 226.

8 EXHIBIT NO. 226: Timeline  
9 prepared by Inspector Cabana

10 MR. CAVALLUZZO: -- by Inspector  
11 Cabana.

12 Now, I assume that after receiving  
13 these questions from the Americans that you  
14 forwarded those questions on to Project A-OCANADA?

15 MR. FLEWELLING: It's my  
16 understanding that I forwarded -- actually sent  
17 the fax the following morning.

18 MR. CAVALLUZZO: The following  
19 morning, on October the 4th? Would that have been  
20 the first thing that you did?

21 MR. FLEWELLING: I believe so.

22 MR. CAVALLUZZO: And if you go to  
23 page 38 of your notes for Friday, October 4th, it  
24 says:

25 "Forwarded fax requesting

1 A-OCANADA's assistance in  
2 answering (somebody's)  
3 questions. Request for info  
4 on Arar A-OCANADA."

5 And this was done at, it looks  
6 like eight o'clock in the morning.

7 Is that correct?

8 MR. FLEWELLING: Yes.

9 MR. CAVALLUZZO: And if you refer  
10 to the time line, exhibit 226, on the second page,  
11 for October 4th, you will see the last entry for  
12 eight o'clock, although this is not in your notes.  
13 It says that:

14 "(somebody at Project  
15 A-OCANADA) contacted Rick  
16 FLEWELLING and advised him of  
17 our interest in interviewing  
18 ARAR..."

19 And I'm putting it to you that  
20 that was Mr. Pat Callaghan.

21 MR. FLEWELLING: Sorry. What date  
22 was that again?

23 MR. CAVALLUZZO: This is October  
24 4th. If you go -- this is at page 2. If you go  
25 three lines down, it says 02/10/04?

1 MR. FLEWELLING: Yes.

2 MR. CAVALLUZZO: Okay. And you'll  
3 see the first entry above 11:15, under the eight  
4 o'clock entry:

5 "(somebody from project  
6 A-OCANADA) contacted  
7 FLEWELLING and advised of our  
8 interest in interviewing ARAR  
9 in New York."

10 MR. FLEWELLING: I'm aware of  
11 that.

12 MR. CAVALLUZZO: You're aware of  
13 that?

14 MR. FLEWELLING: Yes.

15 MR. CAVALLUZZO: Okay. But the  
16 point is, the question is, was it Mr. Callaghan  
17 that phoned you in the morning of October 4th  
18 indicating an interest that they want to interview  
19 Arar?

20 MR. FLEWELLING: He was usually  
21 the one I spoke to. He was one of my main  
22 contacts over there, I believe.

23 MR. CAVALLUZZO: Okay. Now, did  
24 you do anything as a result of them indicating an  
25 interest in interviewing Arar? Did he want you to



1 do anything, or were they going to arrange that on  
2 their own and were just keeping you in the loop?

3 MR. FLEWELLING: It was my  
4 understanding at that particular juncture in time  
5 that they were exploring the idea of going down to  
6 interview Mr. Arar.

7 MR. CAVALLUZZO: So that that  
8 wouldn't have called upon you to do anything other  
9 than being aware that they were contemplating  
10 that?

11 MR. FLEWELLING: Not at that time  
12 because they would have had to have gone through a  
13 certain procedure before authorization could be  
14 granted.

15 MR. CAVALLUZZO: Okay. Now, if we  
16 stay in your notes at October 4th, this is Friday  
17 once again, October 4th. It says:

18 "Called Richard Roy to advise  
19 what status is."

20 Do you see that?

21 MR. FLEWELLING: Yes.

22 MR. CAVALLUZZO: Now, do you  
23 recall approximately what time you would have  
24 called Mr. Roy?

25 MR. FLEWELLING: No.

1 MR. CAVALLUZZO: Do you recall  
2 calling Mr. Roy?

3 MR. FLEWELLING: Yes.

4 MR. CAVALLUZZO: Mr. Roy testified  
5 yesterday that he was not at work on October 4th;  
6 he was on leave.

7 MR. FLEWELLING: It wouldn't be in  
8 my notes if I hadn't have called him.

9 MR. CAVALLUZZO: Okay. Is it  
10 likely then you would have called him on his cell  
11 or on his home number?

12 MR. FLEWELLING: Very possible.

13 MR. CAVALLUZZO: So you  
14 specifically recall that conversation with Mr. Roy  
15 on the Friday. It's in your notes --

16 MR. FLEWELLING: I don't recall  
17 the conversation, but this event was in relation  
18 to another matter other than with respect to  
19 Mr. Arar.

20 MR. CAVALLUZZO: Are you sure of  
21 that?

22 MR. FLEWELLING: There is a couple  
23 of other things that were going on at that time  
24 that I was dealing with, and I was dealing with  
25 officials from DFAIT.

1                   MR. CAVALLUZZO: That's very  
2                   strange to me, because if we go on the previous  
3                   page, when you called Mr. Roy in relation to an  
4                   unrelated matter, it was redacted. When we come  
5                   to October the 4th and it says you called Mr. Roy,  
6                   it is still there. It is not redacted. Which  
7                   indicates to me that you talked to Mr. Roy about  
8                   Mr. Arar?

9                   MR. FOTHERGILL: Mr. Commissioner,  
10                  that could be an error on the part of the redactor  
11                  who didn't realise that it concerned an unrelated  
12                  matter.

13                  I note that the entry before is  
14                  blacked out with the notation in the margin of  
15                  unrelated, so that may simply be an error in  
16                  redaction as opposed to anything for which the  
17                  witness could be held responsible.

18                  MR. CAVALLUZZO: Well,  
19                  Mr. Commissioner, we find ourselves in the  
20                  peculiar situation where I am aware that there is  
21                  another forum in which the witness testified about  
22                  speaking to Mr. Roy about Mr. Arar. That  
23                  information, unfortunately, is redacted testimony,  
24                  and I'm in a position where, as a lawyer, I feel  
25                  an obligation that I must confront this witness

1 with that evidence.

2 THE COMMISSIONER: And the reason  
3 that it's redacted is because of an NSC concern.

4 Is that the case?

5 MR. FOTHERGILL: In this  
6 particular document, it's not redacted. I think  
7 that's part of the difficulty. I think --

8 THE COMMISSIONER: Let's just --  
9 on a hypothetical, Mr. Fothergill. If there has  
10 been evidence about this particular phone  
11 conversation in another forum, would it not make  
12 sense, if there's not an NSC claim with respect to  
13 just this specific piece of evidence, that  
14 reference could be made to it? All I'm trying to  
15 do is just get to the bottom of it in public --

16 MR. FOTHERGILL: Yes. And I'm  
17 quite content for Mr. Cavalluzzo to use his  
18 discretion and refer to in-camera evidence. I  
19 think he knows where NSC claims lie, and there is  
20 no NSC claim with respect to the particulars of  
21 this conversation if it occurred.

22 THE COMMISSIONER: Thank you, that  
23 would be helpful.

24 Mr. Cavalluzzo, I'd say to you  
25 that in doing it, if there's any doubt in your

1 mind, if you were going to refer to that about the  
2 NSC claim you should speak to Mr. Fothergill or  
3 handle it appropriately. Thank you.

4 Thank you, Mr. Fothergill.

5 MR. CAVALLUZZO: Now,  
6 Mr. Flewelling, you testified in camera, on or  
7 about January 20th of 2005 --

8 MR. FLEWELLING: That's correct,  
9 yes.

10 MR. CAVALLUZZO: -- which is  
11 about eight months ago, and I did the questioning,  
12 you'll recall.

13 MR. FLEWELLING: Mm-hmm.

14 MR. CAVALLUZZO: And I had your  
15 notes?

16 MR. FLEWELLING: Yes.

17 MR. CAVALLUZZO: And we discussed  
18 you calling Mr. Roy on October 4th. At no time  
19 during that testimony did you ever say that that  
20 telephone conversation did not relate to Mr. Arar.  
21 Can you tell us why?

22 MR. FLEWELLING: When I made the  
23 phone call, it was in relation to a matter that  
24 was unrelated.

25 Now -- if I gave the wrong

1 impression, excuse me, but I know that we -- I  
2 think I used the term, there is a possibility or a  
3 very good possibility that we discussed issues  
4 with respect to Mr. Arar.

5 MR. CAVALLUZZO: That's not what  
6 you said, Mr. Flewelling. You said you didn't  
7 recall the specifics of the conversation.

8 MR. FLEWELLING: That's true.

9 MR. CAVALLUZZO: But you did  
10 recall that you spoke to him about Mr. Arar.

11 MR. FLEWELLING: That's very  
12 true -- that's very possible, yes.

13 MR. CAVALLUZZO: So it's possible  
14 that you would have spoken about Mr. Arar?

15 MR. FLEWELLING: Yes.

16 MR. CAVALLUZZO: Okay. Shortly  
17 after this telephone conversation with Mr. Arar --

18 MR. FLEWELLING: Yes.

19 MR. CAVALLUZZO: -- with Mr. Roy,  
20 in which Mr. Arar was obviously discussed, you  
21 went to the immigration office.

22 Isn't that correct?

23 MR. FLEWELLING: Just prior to  
24 lunch, or in and around lunchtime, yes.

25 MR. CAVALLUZZO: Okay. And do you

1 recall when this telephone conversation with  
2 Mr. Roy was?

3 MR. FLEWELLING: The specifics of  
4 it, no. Not in relation to Mr. Arar.

5 MR. CAVALLUZZO: But how many  
6 telephone conversations did you have with Mr. Roy  
7 on that day?

8 MR. FLEWELLING: One that I can  
9 think of. The only one that I've got written  
10 down.

11 MR. CAVALLUZZO: Right. And I'm  
12 putting it to you that after that telephone call,  
13 you went up to the immigration office of the RCMP.

14 MR. FLEWELLING: It would have  
15 been a short time thereafter, yes.

16 MR. CAVALLUZZO: Right.

17 MR. FLEWELLING: Because I recall  
18 having a meeting, or I think it was with the  
19 ministerial liaison's office.

20 MR. CAVALLUZZO: Well, where do we  
21 see that?

22 MR. FLEWELLING: It wouldn't have  
23 been documented.

24 MR. CAVALLUZZO: It wouldn't have  
25 been documented. In any event, when did you go up

1 to the immigration office?

2 MR. FLEWELLING: It would have  
3 been in around lunch hour.

4 MR. CAVALLUZZO: And lunch hour is  
5 when?

6 MR. FLEWELLING: Around noon.

7 MR. CAVALLUZZO: Okay. And we see  
8 that the entry just before 12:30 says:

9 "Called Roy to advise what  
10 status is."

11 MR. FLEWELLING: So I'm assuming  
12 just sometime prior to 12:30, yes.

13 MR. CAVALLUZZO: Okay. Now, what  
14 did you mean by "Called Roy to advise what status  
15 is"?

16 MR. FLEWELLING: The status is  
17 with respect to or what I thought was the  
18 unrelated issue. Now, with respect to what  
19 exactly we spoke about with Mr. Arar, I don't  
20 recall. But something obviously has prompted me  
21 to go to the immigration office.

22 MR. CAVALLUZZO: And what prompts  
23 me is knowing what you said in January, because  
24 what you said in January was something like you  
25 were concerned about consular access.



1 MR. FLEWELLING: That could be.

2 MR. CAVALLUZZO: So you could have  
3 talked to Roy about consular access?

4 MR. FLEWELLING: Could have been.

5 MR. CAVALLUZZO: Could have been.

6 Then you go to the immigration office.

7 MR. FLEWELLING: Yes.

8 MR. CAVALLUZZO: And why do you go  
9 to the immigration office?

10 MR. FLEWELLING: I wanted to find  
11 out what the term, or what the law was with  
12 respect to removal.

13 MR. CAVALLUZZO: What?

14 MR. FLEWELLING: What the term  
15 "removal" went.

16 MR. CAVALLUZZO: Where did you get  
17 the term "removal" from?

18 MR. FLEWELLING: The term  
19 "removal" was being used throughout in  
20 conversations with my colleagues at A-OCANADA as  
21 well as -- you'll notice, I believe, on the SITREP  
22 and in discussions with the Americans.

23 MR. CAVALLUZZO: And it would seem  
24 to me that logic would dictate that something that  
25 Roy said instigated you going up to the

1 immigration office and asking them some questions.

2 MR. FLEWELLING: It could have  
3 been. I just don't recall the content of that  
4 conversation.

5 MR. CAVALLUZZO: Let me tell you  
6 what I surmise Mr. Roy told you, and that is,  
7 because on October the 3rd, Mr. Arar had consular  
8 access, and during the course of that consular  
9 access, he advised Maureen Girvan, who is the  
10 consulate, that two immigration officers in the  
11 United States told him that he was going to be  
12 deported or removed, whatever the language was, to  
13 Syria. Just listen to the question now.

14 MR. FLEWELLING: Mm-hmm.

15 MR. CAVALLUZZO: I'm putting it to  
16 you that that is what Roy told you and that is  
17 what caused you to go to the immigration office to  
18 ask some questions.

19 MR. FLEWELLING: No.

20 MR. CAVALLUZZO: Isn't that  
21 correct?

22 MR. FLEWELLING: No.

23 MR. CAVALLUZZO: It's not correct?

24 MR. FLEWELLING: No. I don't  
25 recall ever being -- well, I can't say "ever." I

1 don't recall at that time where I was told that  
2 the immigration officers had mentioned something  
3 to the effect of him going to Syria.

4 I didn't learn that until  
5 afterwards, I believe in -- it wasn't until I was  
6 involved in preparations.

7 MR. CAVALLUZZO: Is it possible  
8 that Mr. Roy -- leaving aside the immigration  
9 officers, is it possible that Mr. Roy told you  
10 that Mr. Arar's brother and Mr. Arar were very  
11 concerned that he was going to be deported to  
12 Syria? Is it possible that he told you that at  
13 that time?

14 MR. FLEWELLING: No, because if I  
15 had gone to the immigration, I wouldn't have asked  
16 about removal, I would have asked about the  
17 deportation process.

18 MR. CAVALLUZZO: What are you  
19 talking about? You just told us that the only  
20 reason you went up there was to talk about  
21 removal.

22 MR. FLEWELLING: Yes.

23 MR. CAVALLUZZO: Well, you just  
24 said now that you didn't go up there to talk about  
25 removal, you would have talked about deportation?

1 MR. FLEWELLING: In my opinion,  
2 those are very two distinct procedures, and  
3 removal, in my opinion, and what I was seeking, it  
4 was whether or not the removal would be where he  
5 would be placed on an aircraft. Once he was  
6 placed on that aircraft, he was on his own free  
7 volition to go where he so chose, whereas the  
8 deportation --

9 MR. CAVALLUZZO: Well, presumably  
10 he wouldn't have volition until that plane landed  
11 somewhere?

12 MR. FLEWELLING: Correct.

13 MR. CAVALLUZZO: And where was  
14 that plane going to go?

15 MR. FLEWELLING: It was my  
16 understanding that he was going to be going back  
17 to Zurich.

18 MR. CAVALLUZZO: Right. And you  
19 knew that on October the 2nd because that  
20 continuation report that we just reviewed,  
21 exhibit -- whatever the exhibit number is. Let me  
22 just refer it to you again.

23 MS VERMA: 224.

24 MR. CAVALLUZZO: Thank you.

25 Exhibit 224 says that:

1 "No charges are pending and  
2 that he will be removed from  
3 the United States, and as  
4 noted by 'A' Division, he  
5 will be denied access to fly  
6 directly into Canada.  
7 Therefore, he will be  
8 returned to Switzerland where  
9 he departed from."

10 And obviously Zurich is in  
11 Switzerland.

12 MR. FLEWELLING: Yes.

13 MR. CAVALLUZZO: So what October  
14 2nd tells us is that you knew about removal and  
15 you knew that they were going to remove him to  
16 Switzerland.

17 So the question I have is: Why  
18 would you be going to the immigration office at  
19 twelve o'clock, at lunch, on October 4th?

20 MR. FLEWELLING: Because I wanted  
21 to satisfy in my mind what the law and procedure  
22 was for removal.

23 MR. CAVALLUZZO: Why would you go  
24 to a Canadian immigration office to find what the  
25 law in the United States is about removal?

1 MR. FLEWELLING: Because our  
2 fourth floor dealt with immigration matters, and  
3 quite often they dealt with -- or had exchanges  
4 with immigration matters that dealt with -- or I  
5 thought was with both Canadian and American  
6 officials.

7 MR. CAVALLUZZO: And to be fair to  
8 you, I'm going to have a witness this afternoon  
9 from the immigration and passport office who says  
10 that he would never render an opinion on American  
11 law.

12 MR. FLEWELLING: All I can tell  
13 you, sir, is I did show up at that office, I did  
14 engage in a conversation, and my recollection is  
15 that he provided me with -- actually, there's two  
16 of them. And they provided me with advice.

17 MR. CAVALLUZZO: And we're going  
18 to come to that conversation in a minute. But I  
19 just want to once again be clear in my mind, as we  
20 move on, as to the precise reason why, just after  
21 talking to Roy, you go up to the fourth floor, to  
22 the immigration and passport office --

23 MR. FLEWELLING: It wasn't a  
24 direct -- get off the phone and went up to the  
25 fourth floor.

1 MR. CAVALLUZZO: That's fine.

2 MR. FLEWELLING: I just --

3 MR. CAVALLUZZO: Shortly  
4 thereafter.

5 MR. FLEWELLING: Shortly  
6 thereafter, I took some time out in between  
7 meetings to go and inform myself as to what the  
8 process was.

9 MR. CAVALLUZZO: Right. So what  
10 you are saying is you already knew he was being --  
11 at least you were advised he was being removed.  
12 He is going to be removed to Syria. What you are  
13 saying is you went to the immigration office to  
14 find out what the U.S. law was on removal.

15 MR. FLEWELLING: I'm sorry?

16 MR. CAVALLUZZO: On removal?

17 MR. FLEWELLING: Yes.

18 MR. CAVALLUZZO: That's why you  
19 went up?

20 MR. FLEWELLING: Yes.

21 MR. FOTHERGILL: I don't want to  
22 interrupt Mr. Cavalluzzo's flow, but I think  
23 Mr. Roy told us yesterday that he didn't learn  
24 about Mr. Arar's fears of being sent to Syria  
25 until he read it in a CAMANT note that he received

1 on October 7th. So I think that does in fact  
2 contradict the proposition that Mr. Cavalluzzo has  
3 just put to the witness, that Mr. Roy might have  
4 informed him of this concern on October 3rd.

5 MR. CAVALLUZZO: Well,  
6 Mr. Commissioner, when Mr. Roy found out about  
7 Syria, in my respectful submission, is very much  
8 in play. I heard his evidence. There is other  
9 evidence. And at the end of the day you are going  
10 to have to make a determination as to when Mr. Roy  
11 discovered that --

12 THE COMMISSIONER: There is other  
13 evidence that I haven't heard in public; but in  
14 any event.

15 I think that is a fair comment.  
16 It's a factual issue that will have to be  
17 addressed.

18 MR. CAVALLUZZO: Okay. You went  
19 up to the fourth floor. That is where we  
20 understand the immigration office is?

21 MR. FLEWELLING: That's correct.

22 MR. CAVALLUZZO: Were you looking  
23 for anyone in particular?

24 MR. FLEWELLING: I was looking for  
25 our CID member who works in -- or with immigration



1 matters.

2 MR. CAVALLUZZO: And he wasn't  
3 there, I understand.

4 MR. FLEWELLING: No. I noticed  
5 that there were two other individuals that were in  
6 the immigration department, so I had asked them if  
7 they could assist me, after I introduced myself,  
8 at which point I asked them if they knew what the  
9 international law was or what the procedure would  
10 be for a removal process, at which point I then  
11 turned and I gave them some background  
12 information --

13 MR. CAVALLUZZO: This is very  
14 important now. You asked them. And there were  
15 two gentlemen, there are two men --

16 MR. FLEWELLING: Yes.

17 MR. CAVALLUZZO: They were men  
18 having lunch at a table in the area?

19 MR. FLEWELLING: Yes.

20 MR. CAVALLUZZO: And you don't  
21 recall their names?

22 MR. FLEWELLING: I know one of  
23 their names now. At the time I didn't.

24 MR. CAVALLUZZO: And you met him  
25 two days ago.

1 MR. FLEWELLING: Yes.

2 MR. CAVALLUZZO: And his name  
3 is...?

4 MR. FLEWELLING: Williams, I  
5 believe, is one of them.

6 MR. CAVALLUZZO: Greg Williamson.

7 MR. FLEWELLING: Okay.

8 MR. CAVALLUZZO: I'm sorry, my  
9 partner here is going to correct me.

10 I'm sorry, it's Williams. You are  
11 correct. Greg Williams.

12 So that you find yourself in front  
13 of these two gentlemen, including Mr. Williams,  
14 and you said you gave them the background  
15 situation. Why don't you tell us what you told  
16 them?

17 MR. FLEWELLING: From my  
18 recollection, I advised them that there was a  
19 subject of interest of ours that had flown in from  
20 Switzerland -- I believe I used the word  
21 "Zurich" -- to New York, and that once this  
22 individual landed in New York, he was detained by  
23 American authorities.

24 I believe at that time I was aware  
25 through conversation with American colleagues that

1 the explanation that I got was that he was not  
2 admitted into the United States, and where he was  
3 not legally admitted into the United States, the  
4 process by which they were going to remove him was  
5 a term called "removal".

6 I asked them what the normal  
7 process, procedure or law would be with respect to  
8 removal, at which point I got a reply that the  
9 normal procedure would be that they would place  
10 him on an aircraft, normally the same aircraft  
11 which flew him in, and at the expense of that  
12 airline he would be flown back to the last port of  
13 call prior to entering the United States.

14 MR. CAVALLUZZO: So that clearly  
15 what you told these gentlemen was that -- would  
16 you say a Canadian?

17 MR. FLEWELLING: I don't know  
18 if -- I can't tell you whether or not I mentioned  
19 whether he was Canadian, dual or I made any  
20 reference. I'm not quite sure.

21 MR. CAVALLUZZO: Well, you said a  
22 subject of interest. So it's possible you could  
23 have said a Canadian. It's possible you could  
24 have said a Canadian with Syrian citizenship as  
25 well; a dual national, in other words?

1 MR. FLEWELLING: Honestly, I don't  
2 remember.

3 MR. CAVALLUZZO: It's possible.  
4 In any event, however Mr. Arar's  
5 status was characterized, you asked them what the  
6 removal procedure would be?

7 MR. FLEWELLING: That's correct.

8 MR. CAVALLUZZO: And clearly you  
9 are asking them about what the removal procedure  
10 in the United States would be?

11 MR. FLEWELLING: Yes.

12 MR. CAVALLUZZO: Once again  
13 Mr. Williams is going to testify that -- let me  
14 just tell you, to give you total context here.

15 He does not recall the  
16 conversation at all. He does not recall you. And  
17 what he does say, though, is that he would never  
18 offer an opinion on American law.

19 MR. FLEWELLING: The only thing I  
20 can tell you, sir, is that I did go to the fourth  
21 floor on that day, I did engage those two  
22 individuals, I did solicit a response, and that  
23 was the response that I got.

24 MR. CAVALLUZZO: So the response  
25 that you are telling us that he gave you -- would

1           it be Mr. Williams or was it the other gentleman,  
2           or do you remember?

3                         MR. FLEWELLING:  No, I don't.

4                         MR. CAVALLUZZO:  Whoever it was  
5           said that this individual, this Canadian or this  
6           subject of interest, or however he was  
7           characterized, would be put on a plane and brought  
8           back to Switzerland from where he came --

9                         MR. FLEWELLING:  Yes.

10                        MR. CAVALLUZZO:  -- at the plane's  
11           expense or the airline's expense.

12                        Did they tell you that?

13                        MR. FLEWELLING:  Yes, that was my  
14           understanding.

15                        MR. CAVALLUZZO:  Now that was the  
16           very same information that you already knew in the  
17           sense that you put that in your continuation  
18           report, that he would be removed to Switzerland;  
19           denied entry and confirmed what "A" Division told  
20           you, that he would be removed to Switzerland.

21                        The question I have is:  Once  
22           again, I don't understand why you would go up and  
23           ask that question when you already had that  
24           information.

25                        MR. FLEWELLING:  I don't know.

1                   MR. CAVALLUZZO: Let me suggest  
2 something to you: that Syria came into the play.  
3 That is, this idea that he might be deported to  
4 Syria came into play, which made it a far more  
5 complicated issue. And that as a result of that,  
6 you went up to immigration and posed some  
7 questions.

8                   Is that possible?

9                   MR. FLEWELLING: No, sir.

10                  MR. CAVALLUZZO: And I note for  
11 the record, although you don't recall this, that  
12 in the consular report, which is exhibit P-42, tab  
13 31, there is a specific reference to removal; that  
14 is that Mr. Arar has been charged under section  
15 235(c) of the Immigration Act of the United  
16 States, and sets out certain allegations which may  
17 have raised some questions as to the removal  
18 procedure in your mind.

19                  MR. FLEWELLING: No.

20                  MR. CAVALLUZZO: What did you do  
21 with that information that you got from the  
22 immigration and passport office?

23                  MR. FLEWELLING: After that  
24 meeting with the two gentlemen, I had to run  
25 downstairs and attend another meeting. I believe

1           that meeting was outside the office.

2                           So right afterwards, I didn't do  
3 anything with that information other than -- it  
4 was to inform myself at that particular point in  
5 time.

6                           MR. CAVALLUZZO: You didn't tell  
7 Pilgrim?

8                           MR. FLEWELLING: At that time, no.

9                           MR. CAVALLUZZO: Didn't tell Roy?

10                          MR. FLEWELLING: No. I had to  
11 rush off to another meeting.

12                          MR. CAVALLUZZO: We do know that  
13 on that particular day as well the A-OCANADA  
14 people sent back information pursuant to the  
15 request that you had faxed to them earlier in the  
16 day?

17                          MR. FLEWELLING: I believe so,  
18 yes.

19                          MR. CAVALLUZZO: Let me show you  
20 the exhibit. It's exhibit P-172.

21                          Do you have that in front of you?

22                          MR. FLEWELLING: Yes.

23                          MR. CAVALLUZZO: Let's just  
24 correct certain matters. This is exhibit P-172.

25                          It's dated October 2nd, but we

1           have corrected that. That should be October 4th.  
2           Do you see that in the top right corner?

3                         MR. FLEWELLING: There's a bit of  
4           a sticky here that I can't --

5                         MR. CAVALLUZZO: Okay.

6                         MR. FLEWELLING: Yes, it says  
7           October 2nd?

8                         MR. CAVALLUZZO: Yes, and it  
9           should be October 4th.

10                        MR. FLEWELLING: Okay.

11                        MR. CAVALLUZZO: What A-OCANADA is  
12           saying to you -- and I assume this goes through,  
13           once again, head office and then on to the LO at  
14           headquarters and goes to the Americans from head  
15           office.

16                                 Is that correct?

17                        MR. FLEWELLING: It would have  
18           gone that channel, I believe, yes.

19                        MR. CAVALLUZZO: What it says, if  
20           I can just pick up a portion of it in the second  
21           paragraph in 172, it says -- this is the second  
22           sentence:

23   "We are requesting that our  
24           investigators from Project  
25           A-OCANADA be allowed access



1 to Arar for the purposes of  
2 conducting an interview in  
3 relation to our  
4 investigation.  
5 It is important to note that  
6 the information contained in  
7 the attached report only  
8 addresses the issues raised.  
9 Project A-OCANADA has  
10 significant documentation on  
11 this individual that could be  
12 of assistance in your  
13 investigation."

14 And then it's signed by somebody  
15 from Project A-OCANADA, who I believe is Mr. Pat  
16 Callaghan, once again.

17 What this document indicates is  
18 two things: one, Project A-OCANADA is answering  
19 the questions which have been directed by the  
20 Americans, and the second thing it does is it is  
21 saying to the Americans that we've got a lot more  
22 information on this guy and presumably it could --  
23 and not presumably, it says which could be of  
24 assistance in your investigation.

25 In other words, they are offering

1 more information if asked. Is that correct?

2 MR. FLEWELLING: It would appear  
3 so, yes.

4 MR. CAVALLUZZO: And then if we go  
5 to the second page, we have the RCMP caveat.

6 "This document is the  
7 property of the RCMP. It is  
8 loaned --"

9 And so on?

10 MR. FLEWELLING: Yes.

11 MR. CAVALLUZZO: And then in terms  
12 of the answers, we have some of the unredacted  
13 portions, for example, and paragraph iv) talks  
14 about:

15 "In October 2001, Project  
16 A-OCANADA investigators  
17 conducted surveillance on  
18 Abdullah Almalki and observed  
19 him meeting with Arar at a  
20 local Ottawa restaurant,  
21 Mangos."

22 And so on.

23 Then on the next page, the  
24 unredacted portion in paragraph 5) is:

25 "A link analysis has yet to

1 be completed on Arar and  
2 while he has had contact with  
3 many individuals of interest  
4 to this project we are unable  
5 to indicate links to  
6 al-Qaeda."

7 And then 6):

8 "This service does not hold  
9 any information on this  
10 matter."

11 And 7:

12 "A detailed investigation  
13 into Maher Arar is not  
14 completed to date."

15 So that by Friday afternoon, you  
16 have no idea as to whether this reached the  
17 Americans or whatever. But in any event, it  
18 appears to have been faxed on that day.

19 Is that correct?

20 MR. FLEWELLING: I'm assuming with  
21 the date that that would be a reasonable  
22 assumption, yes.

23 As a matter of fact, in the  
24 transmittal report it says it was at 5:08 p.m.

25 MR. CAVALLUZZO: A-OCANADA, as I

1 say, does two things here. One, they say we've  
2 got a lot more information on this guy, if you  
3 want it. And on top of it, we're interested in  
4 interviewing him, presumably while he's in the  
5 United States.

6 On that day, did you speak to  
7 anybody else about Mr. Arar?

8 MR. FLEWELLING: October 4th?

9 MR. CAVALLUZZO: Yes, Friday,  
10 October 4th?

11 MR. FLEWELLING: That would have  
12 been Friday, October 4th. Yes.

13 MR. CAVALLUZZO: And who did you  
14 speak to?

15 MR. FLEWELLING: I spoke to a  
16 representative from the American Embassy.

17 MR. CAVALLUZZO: What time would  
18 that have been?

19 MR. FLEWELLING: That would have  
20 been, I believe, sometime after six o'clock that  
21 evening.

22 MR. CAVALLUZZO: Your notes for  
23 October 4th, as I pointed out earlier, do not  
24 indicate that there was this phone call with this  
25 American.

1 Do you agree with that?

2 MR. FLEWELLING: That's correct.

3 MR. CAVALLUZZO: And could you  
4 tell us why you didn't enter that phone call?

5 MR. FLEWELLING: It was Friday  
6 afternoon. I had packed up everything, and I was  
7 on my way home when -- and on my way out when the  
8 phone rang.

9 MR. CAVALLUZZO: So you didn't  
10 note that call?

11 MR. FLEWELLING: No, I did not.

12 MR. CAVALLUZZO: And what was the  
13 substance of the call, taking into account that we  
14 can't disclose NSC information? But was it about  
15 Arar?

16 MR. FLEWELLING: Part of the  
17 conversation definitely was, yes.

18 MR. CAVALLUZZO: Could you tell us  
19 what he said about -- was it a he or a she?

20 MR. FLEWELLING: He.

21 MR. CAVALLUZZO: All right. Could  
22 you tell us what he said about Arar?

23 MR. FLEWELLING: Basically after  
24 discussing a couple of unrelated issues, I asked  
25 him what the status was with Mr. Arar, at which

1 point he advised me that he was due to appear  
2 before a hearing on the 9th of October.

3 MR. CAVALLUZZO: That would be the  
4 following Wednesday?

5 MR. FLEWELLING: I believe so.

6 MR. CAVALLUZZO: Right.

7 MR. FLEWELLING: That he would in  
8 all likelihood be removed from the country and  
9 sent back to Switzerland. That was still a  
10 consistent message at that time.

11 Then we discussed that -- I'm just  
12 trying to recall here the sequence of events.

13 I know that we had discussed that  
14 once he arrived in Zurich, he could go just about  
15 anywhere he so chose, whether it be Canada and/or  
16 Syria. So I think at that time was one of the  
17 first times that we actually discussed his dual  
18 nationality in that respect.

19 MR. CAVALLUZZO: It's important.  
20 He discussed Syria?

21 MR. FLEWELLING: Yes, in the  
22 context that he would be free to go to Canada,  
23 Syria, or anywhere for that matter.

24 MR. CAVALLUZZO: Right. That's  
25 rather an odd choice, isn't it?

1 MR. FLEWELLING: Well, that was --

2 MR. CAVALLUZZO: Here we have  
3 someone that didn't perform his military service  
4 in Syria -- in any event, what this person is  
5 saying, is that once he gets to Zurich, he can go  
6 to Canada or he can go to Syria because he is a  
7 dual national. It's his choice.

8 MR. FLEWELLING: Yes. I had no  
9 idea that he had anything about military, whatever  
10 it was that you mentioned.

11 MR. CAVALLUZZO: Right. But you  
12 do know that there are certain human rights  
13 concerns about Syria?

14 MR. FLEWELLING: I knew that they  
15 don't have the same system as we do.

16 MR. CAVALLUZZO: In fact, around  
17 August the 15th of 2002, you had been party to  
18 media lines concerning another Canadian, whose  
19 name was Mr. El Maati, who made allegations that  
20 he had been tortured while he was in Syria.

21 MR. FLEWELLING: On what date?

22 MR. CAVALLUZZO: August the 15th  
23 of 2002.

24 Do you want to go back to your  
25 notes --

1 MR. FLEWELLING: Would it suffice  
2 if we look after what else we discussed on the  
3 4th?

4 MR. CAVALLUZZO: No. I just want  
5 to know the state of your mind on the 4th of  
6 October, and I'm putting it to you that at least  
7 about a month and a half before, you were aware  
8 that something happened to a Canadian while he was  
9 detained in Syria, indeed torture.

10 --- Pause

11 MR. FLEWELLING: I know that we  
12 had a meeting, and I think, as I stated, I don't  
13 totally recall exactly what transpired, what was  
14 discussed in that meeting, but I know that Syria  
15 does not have the same system as we do, or the  
16 same level or standards that we do.

17 MR. CAVALLUZZO: Right. Now, I  
18 wonder if you might just speculate for us? Now,  
19 if the Americans were concerned about Mr. Arar  
20 being a threat to them -- right? Just assume  
21 that.

22 MR. FLEWELLING: Okay.

23 MR. CAVALLUZZO: -- where do you  
24 think they would prefer Mr. Arar to go? Do you  
25 think they would prefer that he went to Canada or



1           that he went to Syria?

2                           MR. FLEWELLING:  I believe that he  
3           was going before a legal system and that  
4           arbitrarily he would have the opportunity to  
5           present his facts before that tribunal.

6                           MR. CAVALLUZZO:  That wasn't the  
7           question.  The question was, once again:  If the  
8           Americans believed that Mr. Arar was a threat to  
9           them, where do you think the Americans would  
10          prefer him to go?  To Canada, who they share a  
11          border with, about 3,000 miles, or to Syria, which  
12          is a few miles away?

13                          MR. FLEWELLING:  I don't know how  
14          I can answer for them.

15                          MR. CAVALLUZZO:  You can't  
16          speculate?

17                          MR. FLEWELLING:  That's right.

18                          MR. CAVALLUZZO:  Okay.

19                          Now, you would agree with me  
20          that -- in fact, you just told us, that one of the  
21          things that Mr. Arar could do, if he went to  
22          Switzerland, is obviously he could come to Canada?

23                          MR. FLEWELLING:  Yes.

24                          MR. CAVALLUZZO:  Right.  And the  
25          Americans to this point in time are telling you

1           that they are going to refuse him, basically,  
2           direct entry into Canada?

3                           MR. FLEWELLING:   Yes.

4                           MR. CAVALLUZZO:   Now, if they're  
5           refusing him direct entry into Canada, why do you  
6           think they would permit indirect entry into Canada  
7           through Switzerland?

8                           MR. FLEWELLING:   I don't know.  I  
9           don't know if I actually thought about that.

10                          MR. CAVALLUZZO:   Do you think it's  
11           fair that the Americans viewed Mr. Arar to be a  
12           threat to them?

13                          MR. FLEWELLING:   The only thing  
14           that I can tell you is that our belief was that we  
15           did not have enough supporting material to support  
16           charges.

17                          MR. CAVALLUZZO:   Well, you didn't.  
18           But I believe we've heard that the American  
19           threshold for criminal charges is much less than  
20           Canada's.

21                          MR. FOTHERGILL:   Commissioner,  
22           could Mr. Cavalluzzo clarify the basis upon which  
23           he asserts that the Americans regarded Arar as a  
24           threat to them?  I know we see that in the removal  
25           order ultimately.  But presumably we're situating

1 his line of questioning in terms of what the  
2 witness knew at the time.

3 THE COMMISSIONER: I think that's  
4 fair.

5 MR. CAVALLUZZO: And I guess what  
6 I could rely on is the CAMANT note, which I've  
7 just referred to, and the CAMANT note makes  
8 specific reference to, on October the 3rd, and  
9 probably earlier than that, they had given  
10 Mr. Arar notice with certain allegations, and let  
11 me read it to you:

12 "You are not a citizen of the  
13 United States. You are a  
14 native of Syria and a citizen  
15 of Syria in Canada."

16 Interesting how they emphasize the  
17 word "Syria," but in any event, we'll come back to  
18 that.

19 "You arrived in the United  
20 States on September the 26th  
21 and applied for admission as  
22 a non-immigrant."

23 And then it goes on in paragraph  
24 4:

25 "You are a member of an

1 organization that has been  
2 designated as the Secretary  
3 of State as a foreign  
4 terrorist organization, to  
5 wit, al-Qaeda."

6 The list that the Secretary of  
7 State has set as terrorist organizations indicate  
8 that, in my respectful submission, that they view  
9 al-Qaeda to be a threat to the United States and  
10 that a member of al-Qaeda is a threat to the  
11 United States.

12 MR. FOTHERGILL: I guess,  
13 Commissioner, my point is, it's not clear that  
14 that information was transmitted to Mr. Flewelling  
15 at the relevant time.

16 THE COMMISSIONER: And I think  
17 that's the point the witness should address,  
18 whether or not what he was aware, how they viewed  
19 him -- he had obviously received a call saying  
20 they were interested in pursuing criminal charges  
21 or looking at him but...

22 MR. CAVALLUZZO: Right.

23 You are aware from the fax that  
24 you received from this American person on October  
25 the 3rd that what the Americans were trying to do

1 was to link Mr. Arar to al-Qaeda because that's  
2 what the answers we've just reviewed indicated.

3 MR. FLEWELLING: It was my  
4 understanding that they were looking for  
5 information in support of criminal charges.

6 MR. CAVALLUZZO: Right. And  
7 there's reference to al-Qaeda. Do you want me to  
8 review that with you?

9 It's the answer that "Project  
10 A-OCANADA says that we cannot establish any links  
11 with al-Qaeda."

12 So clearly the Americans were  
13 asking about information, trying to establish that  
14 he was a member of al-Qaeda.

15 MR. FLEWELLING: That must be a  
16 speculation that they made in their response.

17 MR. CAVALLUZZO: Right, right.  
18 But in any event, whether it's speculation or not,  
19 if they're trying to tie this person in to  
20 al-Qaeda, do you not think that they -- if they  
21 could establish, that they would view him to be a  
22 threat to the United States?

23 MR. FLEWELLING: Any discussions  
24 that I had with the American officials was in  
25 relation to supporting criminal charges.

1 MR. CAVALLUZZO: Right? Criminal  
2 charges for what? Not that he was a bank robber.

3 MR. FLEWELLING: The terms or  
4 reference of the charges that they were looking  
5 at, I don't recall them bringing it forward. We  
6 never discussed the organization or the term  
7 "al-Qaeda" in any of my conversations.

8 MR. CAVALLUZZO: But it was in the  
9 fax.

10 MR. FLEWELLING: Yes.

11 MR. CAVALLUZZO: So you must have  
12 surmised, if they were referring to al-Qaeda in  
13 the fax and they wanted information that Canada  
14 had relating to his association with al-Qaeda, you  
15 must have -- surely you must have understood that  
16 they were trying to charge him criminally as being  
17 a member of al-Qaeda.

18 MR. FLEWELLING: Not necessarily  
19 al-Qaeda but perhaps terrorism, yes.

20 MR. CAVALLUZZO: Did they mention  
21 any other terrorist organizations? Is Hamas  
22 mentioned?

23 MR. FLEWELLING: Pardon me?

24 MR. CAVALLUZZO: Is Hamas  
25 mentioned?

1 MR. FLEWELLING: No.

2 MR. CAVALLUZZO: Is Hezbollah?

3 MR. FLEWELLING: No.

4 MR. CAVALLUZZO: The only one I  
5 see is al-Qaeda.

6 MR. FLEWELLING: In the response  
7 that "A" Division sent, yes.

8 MR. CAVALLUZZO: Well, let's not  
9 play with that one. I've seen the fax that came  
10 from the Americans and I didn't see any terrorist  
11 organization other than al-Qaeda mentioned, unless  
12 I missed something?

13 MR. FLEWELLING: Could very well  
14 have. I'm just going by my recollection and by  
15 the conversation that I had.

16 MR. CAVALLUZZO: But you cannot  
17 recall, anyway, any organization other than  
18 al-Qaeda being mentioned?

19 MR. FLEWELLING: No.

20 MR. CAVALLUZZO: Okay. Let us  
21 come then to Saturday.

22 MR. FLEWELLING: Yes.

23 MR. CAVALLUZZO: On Saturday,  
24 October the 5th, we had a very important telephone  
25 call?

1 MR. FLEWELLING: Again, it was  
2 late in the afternoon on Saturday, I believe,  
3 October the 5th.

4 MR. CAVALLUZZO: Okay. And let us  
5 go to your notes at page 39. Do you see that?

6 MR. FLEWELLING: Yes.

7 MR. CAVALLUZZO: And it says,  
8 Saturday, October 5th. And it says -- is that  
9 1810? The photocopying, it looks like it may  
10 have --

11 MR. FLEWELLING: I believe so.

12 MR. CAVALLUZZO: So it would be  
13 6:10 in the afternoon?

14 MR. FLEWELLING: Yes.

15 MR. CAVALLUZZO: Now, I have a  
16 note at the top, it says PID. Could you tell us  
17 what that stands for? Beside the date?

18 MR. FLEWELLING: RTO.

19 MR. CAVALLUZZO: RTO. That means  
20 "Rotation time off"?

21 MR. FLEWELLING: "Regular time  
22 off."

23 MR. CAVALLUZZO: Okay. And this  
24 is a telephone call?

25 MR. FLEWELLING: Yes.



1 MR. CAVALLUZZO: And it's from  
2 whom?

3 MR. FLEWELLING: It would be from  
4 a representative from the American Embassy.

5 MR. CAVALLUZZO: Same person as  
6 called you at six o'clock the night before?

7 MR. FLEWELLING: Yes.

8 MR. CAVALLUZZO: Very same person?

9 MR. FLEWELLING: Same person.

10 MR. CAVALLUZZO: Why don't you  
11 read that for us because your handwriting is a  
12 little difficult at this part?

13 MR. FLEWELLING:

14 "Received call from ... in  
15 relation to Maher Arar. The  
16 (blank) in New York were  
17 unable to read A-OCANADA  
18 report, and he wanted to have  
19 the report --"

20 I believe it's "refaxed".

21 "Secondly, the (blank)  
22 appeared that they did not  
23 have enough information to  
24 make the charges stick. They  
25 would be looking at deporting

1 Arar. Where Arar has dual  
2 citizenship and that he has  
3 to be deported to Canada,  
4 (blank) wanted to know our  
5 interest in Arar and can the  
6 RCMP refuse Arar's entry into  
7 Canada. I stated that where  
8 he has Canadian citizenship  
9 and that there was not enough  
10 evidence to support charges  
11 in the U.S., let alone  
12 Canada, the likelihood is  
13 that, no, we could not refuse  
14 him entry."

15 MR. CAVALLUZZO: Okay. Now, this  
16 telephone call, in effect what this person, this  
17 American from whatever agency is saying to you is  
18 that -- really two things: One, that we don't  
19 have enough to make criminal charges stick and  
20 convict him; and the other thing he's saying is  
21 that Arar's a dual citizenship -- or Arar's a dual  
22 citizen, he's asked to be deported to Canada, do  
23 you guys have to accept him or can you charge him  
24 criminally?

25 MR. FLEWELLING: I looked at it in

1 the frame that they were wondering whether or not  
2 we had any additional information to assist them,  
3 and then, secondly, I viewed it as an  
4 investigator, or an investigative body,  
5 ascertaining whether or not we had any laws that  
6 would prevent Mr. Arar from coming to Canada or --  
7 how else was it put?

8 MR. CAVALLUZZO: Can you refuse  
9 him entry?

10 MR. FLEWELLING: Can we refuse him  
11 entry? I looked at it as an administrative  
12 question as to what our laws were.

13 MR. CAVALLUZZO: I would agree  
14 with that except for one thing. He says Mr. Arar  
15 has said he would like to be deported to Canada?

16 MR. FLEWELLING: Yes.

17 MR. CAVALLUZZO: And then he says,  
18 "Can you refuse him entry?" Isn't there a signal  
19 there to you?

20 MR. FLEWELLING: I didn't take it  
21 as a signal, no.

22 MR. CAVALLUZZO: But, you see, he  
23 mentions dual citizenship.

24 Right?

25 MR. FLEWELLING: Yes.

1 MR. CAVALLUZZO: That means there  
2 are two options: Canada, Syria?

3 Right?

4 MR. FLEWELLING: I would agree  
5 with that.

6 MR. CAVALLUZZO: Okay. And then  
7 he says, "He's opted for Canada, do you guys have  
8 to take him"?

9 MR. FLEWELLING: It's my  
10 understanding in a deportation hearing, now that  
11 they're using the word, that he has a say in that  
12 process.

13 Now, if I looked at it from the  
14 point of view is that if we had laws, or that we  
15 would want to prevent him from coming to Canada,  
16 that, from an administrative point of view, they'd  
17 have to go elsewhere or make alternate  
18 arrangements, because it is my understanding that  
19 deportation is the host country, or country of  
20 origin or the host country has to accept him.

21 MR. CAVALLUZZO: Right. When did  
22 you learn that?

23 MR. FLEWELLING: That was just my  
24 general understanding of the deportation process.

25 MR. CAVALLUZZO: Right. But he's

1           saying: "Dual national, wants to come to Canada;  
2           do you guys have to accept him?"

3                           And you interpreted that -- you  
4           didn't interpret that to mean: You know what? I  
5           think these guys may want to send him to Syria?

6                           MR. FLEWELLING: No.

7                           MR. CAVALLUZZO: Because what he's  
8           asking us, he's asking us, can we charge him  
9           criminally? Because if we charge him criminally,  
10          we'll get him off the streets and he won't be a  
11          threat to us in the United States, and if they  
12          can't charge him criminally, then, the next  
13          question is, do you have to accept him? And when  
14          you say, yes, we have to accept him, doesn't that  
15          indicate to you that he's going, okay, I guess  
16          where Mr. Arar is going to end up is going to be  
17          his other country of citizenship --

18                          MR. FLEWELLING: I honestly  
19          thought -- I honestly thought by stating that no,  
20          we could not refuse him entry and, no, we did not  
21          have sufficient evidence to support any charges  
22          would assist him in him coming back to Canada.

23                          Secondly, I also thought, at the  
24          time, that he was going before a hearing on  
25          Wednesday, that he had a court process by which he

1           could make whatever argument needed to be made at  
2           that time.

3                           MR. CAVALLUZZO:  But didn't it  
4           seem -- you said -- there's a couple of things you  
5           said that I'd like to ask you about.

6                           You said that you honestly thought  
7           that by us telling him that we couldn't charge him  
8           that that would have assisted Mr. Arar -- is that  
9           what you just told us?

10                          MR. FLEWELLING:  Well, obviously  
11           they are putting together what appeared to me was  
12           a final submission or preparing a file for  
13           whatever case that they were doing.

14                          MR. CAVALLUZZO:  No, but let's  
15           look at that.  You're saying that you thought that  
16           they thought -- that if I told them we couldn't  
17           charge him criminally, that that would assist  
18           Mr. Arar's case.  That's what you said?

19                          MR. FLEWELLING:  Well, obviously  
20           they would have to release him.

21                          MR. CAVALLUZZO:  Yes, but for the  
22           last year, what Americans were doing -- you must  
23           have been aware of this, it's one of their ways of  
24           fighting terrorism -- was getting people off the  
25           street, putting them somewhere, and not even

1 charging them. There are 600 people in Guantanamo  
2 Bay that are still not charged.

3 Weren't you aware that that was an  
4 American policy? To get people off the street  
5 that they thought were terrorists?

6 MR. FLEWELLING: I had never heard  
7 of a process which took place to Mr. Arar ever  
8 occurring in the United States. It did not occur  
9 to me at all.

10 MR. CAVALLUZZO: No, but were you  
11 aware of that American policy, which was called  
12 the clean the streets of terrorist policy? Never  
13 mind what the charges are, just get rid of them  
14 for now? Never heard of that?

15 MR. FLEWELLING: Never crossed my  
16 mind one bit.

17 MR. CAVALLUZZO: Now, the other  
18 question I have is you're, certainly to this point  
19 in time, you've been told on a couple of occasions  
20 at least that the Americans are going to refuse  
21 his direct entry into Canada.

22 MR. FLEWELLING: Yes.

23 MR. CAVALLUZZO: Okay. Did you  
24 not think that because of that information that  
25 this was a very strange question coming from this

1 American individual?

2 MR. FLEWELLING: It did not cross  
3 my mind at the time.

4 MR. CAVALLUZZO: Do you think in  
5 retrospect that this American was sending some  
6 signals to you?

7 MR. FLEWELLING: No.

8 MR. CAVALLUZZO: No?

9 Now, what did you do as a result  
10 of this telephone call? Did you advise anybody  
11 that you had the telephone call on the weekend?

12 MR. FLEWELLING: I recalled two  
13 occasions -- well, one occasion, on that night, I  
14 gave a call to Mr. Ron Lauzon.

15 MR. CAVALLUZZO: And Ron Lauzon  
16 was your supervisor at that time?

17 MR. FLEWELLING: That is correct.

18 MR. CAVALLUZZO: All right. Did  
19 you call anybody else on that weekend?

20 MR. FLEWELLING: No. The  
21 following day, I sent a message to the  
22 investigative team, with A-OCANADA, and then on  
23 the morning of the 7th, I informed Mr. Pilgrim as  
24 well as, again, I informed Mr. Ron Lauzon of what  
25 transpired over the weekend.



1 MR. CAVALLUZZO: Okay. I just  
2 want to clarify something in respect of that, and  
3 then I think we should have a break, but...

4 --- Pause

5 MR. CAVALLUZZO: I just want to  
6 clarify. If you could be shown your statement to  
7 Mr. Garvie, which is exhibit 221.

8 --- Pause

9 If you refer Mr. Flewelling to  
10 page 6, at line 28, I guess, Garvie asks the  
11 question:

12 "Did you have any other  
13 involvement in this file  
14 prior to going on ...  
15 personal leave on the morning  
16 of October 8th?"

17 And then you respond:

18 "I came in to work on Monday,  
19 I notified both Lauzon and  
20 Superintendent Pilgrim of  
21 what transpired over the  
22 weekend, and I can't think of  
23 what else I had done that  
24 day."

25 So if you could just clarify for

1 us? You told us just now that you told Pilgrim on  
2 Monday morning. Is it possible you may have told  
3 him on the weekend?

4 MR. FLEWELLING: At one point I  
5 had thought that I had actually called -- either  
6 it was Superintendent Pilgrim or Ron Lauzon.

7 MR. CAVALLUZZO: Right. What is  
8 your best recollection today?

9 MR. FLEWELLING: My best  
10 recollection as of this time is it was Ron Lauzon.

11 MR. CAVALLUZZO: Okay. But did  
12 you also -- is it possible you also called  
13 Pilgrim, or does your recollection tell you you  
14 told Pilgrim on Monday morning?

15 MR. FLEWELLING: Oh, I had a few  
16 meetings with Pilgrim on the Monday.

17 MR. CAVALLUZZO: Right. So you  
18 didn't call him on the weekend?

19 MR. FLEWELLING: No.

20 MR. CAVALLUZZO: Mr. Commissioner,  
21 it's now 10:40. It may be an appropriate time for  
22 a break.

23 THE COMMISSIONER: Okay. We'll  
24 take a 15-minute break.

25 THE REGISTRAR: Please stand.

1 --- Upon recessing at 10:40 a.m. /

2 Suspension à 10 h 40

3 --- Upon resuming at 10:58 a.m. /

4 Reprise à 10 h 58

5 THE REGISTRAR: Please be seated.

6 Veuillez vous asseoir.

7 MR. CAVALLUZZO: Mr. Flewelling, I  
8 would like to move on to Monday, October 7th. But  
9 before doing that, I just want to bring your mind  
10 back once again to that phone call you had on  
11 Friday, October the 4th, after six o'clock, when  
12 you were leaving the office.

13 MR. FLEWELLING: Yes.

14 MR. CAVALLUZZO: Do you recall  
15 that telephone conversation?

16 I would ask whether you recall  
17 speaking with this American individual about, you  
18 know, rather than sending him to Switzerland, why  
19 don't you drive him up to the Canadian border, or  
20 words to that effect?

21 MR. FLEWELLING: That is correct.

22 MR. CAVALLUZZO: And was that  
23 exactly what you said?

24 Why don't you just, from your  
25 memory, as far as that aspect is concerned, tell

1 us what you said.

2 MR. FLEWELLING: I recall the  
3 individual telling me that Mr. Arar had indicated  
4 that he wished to come to Canada, at which point I  
5 raised the question: Well, why not send him to  
6 Canada?

7 I was left with the impression  
8 that it was a very real possibility that that  
9 indeed may take place.

10 MR. CAVALLUZZO: And this  
11 conversation, was that on the Friday or was that  
12 on the Saturday?

13 MR. FLEWELLING: That would have  
14 been on the Saturday -- hang on here. That would  
15 have been on the Friday night.

16 MR. CAVALLUZZO: So on the Friday  
17 night you said, "Why not send him to Canada?"

18 MR. FLEWELLING: Yes.

19 MR. CAVALLUZZO: You told us that  
20 on the weekend you spoke to Mr. Lauzon about the  
21 phone call on the 5th. And then when you showed  
22 up for work on Monday, October the 7th -- I  
23 understand that that was going to be a vacation  
24 day, but you came in.

25 Why don't you tell us what your

1 status was on that date?

2 MR. FLEWELLING: Initially I was  
3 going to be going away on vacation; however, I  
4 came in to deal with another matter. I can't  
5 recall exactly why I ended up coming in for the  
6 Monday, but my vacation was delayed a day.

7 MR. CAVALLUZZO: Did you send an  
8 e-mail on the Sunday, October 6th?

9 MR. FLEWELLING: Yes, I believe  
10 so.

11 MR. CAVALLUZZO: I would like  
12 to -- introduce an exhibit now, a new exhibit.

13 THE COMMISSIONER: 227.

14 EXHIBIT NO. 227: E-mail to  
15 Pat Callaghan from Richard  
16 Flewelling, dated October 6th

17 MR. CAVALLUZZO: This is an e-mail  
18 that you sent on the Sunday. It is from yourself  
19 and I understand it's to Pat Callaghan, who is one  
20 of the supervisors of Project A-OCANADA?

21 MR. FLEWELLING: I believe so.

22 MR. CAVALLUZZO: And just let me  
23 read it so the public is aware of what we are  
24 talking about.

25 It says:

1 "Apparently your report was  
2 received on Friday, however,  
3 it was received in a  
4 non-legible state. Can you  
5 re-send a copy to --"  
6 Whoever the American person is.  
7 And that is, of course, the report  
8 that was faxed out on the Friday.  
9 And then it goes on. This is  
10 about the phone call the day before:  
11 "This American advised that  
12 the --"  
13 That should be "trial".  
14 "... is slated for  
15 Wednesday --"  
16 Which you told us, October the  
17 9th; right?  
18 MR. FLEWELLING: That's correct.  
19 MR. CAVALLUZZO: "...and it looks  
20 like they do not have enough  
21 evidence to support charges.  
22 It would appear that Arar is  
23 requesting to be deported to  
24 Canada following the trial.  
25 [This American individual]

1 would like to know if we have  
2 any objections or laws that  
3 would prevent Canada from  
4 accepting him into the  
5 country."

6 And then it goes on:

7 "The answer I gave to [this  
8 individual] is where Arar is  
9 a Canadian citizen, we cannot  
10 refuse him entry into the  
11 country. We would most  
12 certainly want to know where  
13 he is coming and any  
14 information obtained by U.S.  
15 authorities that would assist  
16 in building a case against  
17 Arar. We will have to follow  
18 up on this further on  
19 Monday."

20 And then it goes on:

21 "One area of minor concern,  
22 and perhaps you may have  
23 already looked at it  
24 therefore making this  
25 question a moot point.

1                   However, I just want to make  
2                   sure this area is looked  
3                   after so I can answer the  
4                   question Monday: Have you  
5                   touched base with --"

6                   And the name is redacted, but I  
7                   understand that that is a member from CSIS.

8                   MR. FLEWELLING: Correct.

9                   MR. CAVALLUZZO:

10                   "Have you touched base with  
11                   [this particular member of  
12                   CSIS] on this issue? If not,  
13                   we may want to call him to  
14                   fill in him on what is going  
15                   on and let him know that in  
16                   responding to this American  
17                   request information has been  
18                   alluded to in the report. I  
19                   will be in on Monday now. I  
20                   will be leaving on Tuesday in  
21                   lieu. Rick."

22                   So, it would indicate from this  
23                   e-mail -- and in particular I'm looking at the  
24                   third paragraph, second sentence:

25                   "We would most certainly want



1 to know when he is coming and  
2 any information obtained by  
3 U.S. authorities that would  
4 assist in building the case  
5 against Arar."

6 So it would indicate from this  
7 that as of the Sunday, October the 6th, when you  
8 say "we want to know when he is coming" --

9 MR. FLEWELLING: Correct.

10 MR. CAVALLUZZO: -- your view is  
11 that he is coming to Canada?

12 MR. FLEWELLING: I maintain that  
13 view, yes. And if I can go back for just a second  
14 to the conversation that I had with him on -- I  
15 believe it was the Friday evening, I also  
16 suggested that if he does come to Canada, that I'm  
17 quite sure that the investigators from the Project  
18 A-OCANADA team would like to speak to him in order  
19 to clear up their issues that they want to discuss  
20 with him; as well, if need be, that they could  
21 employ any investigative avenues that they so  
22 deemed necessary.

23 MR. CAVALLUZZO: Right. But I  
24 just want to make very clear that when you say  
25 "when he is coming" --

1 MR. FLEWELLING: Yes.

2 MR. CAVALLUZZO: -- clearly you  
3 are saying in your view, on Sunday, October the  
4 6th, he is coming to Canada; not to Syria, not to  
5 Switzerland. He is coming --

6 MR. FLEWELLING: I was still of  
7 the impression -- and I think that that same  
8 message was being conveyed to Mr. Callaghan --  
9 that he was definitely coming to Canada.

10 MR. CAVALLUZZO: And then it goes  
11 on and you say basically:

12 "... and then any information  
13 the Americans have that would  
14 assist us in building a case  
15 against Arar, we should try  
16 to get that information."

17 MR. FLEWELLING: Any information  
18 that they had, we were dearly interested in  
19 finding out what it was.

20 MR. CAVALLUZZO: You received this  
21 e-mail. It went to Pat Callaghan, and I  
22 understand that you received an e-mail from  
23 Mr. Callaghan on the Monday, October 7th.

24 Is that correct?

25 MR. FLEWELLING: I believe so.

1 MR. CAVALLUZZO: And I would like  
2 to introduce now another new exhibit.

3 THE COMMISSIONER: 228.

4 EXHIBIT NO. 228: E-mail from  
5 Pat Callaghan to Rick  
6 Flewelling, dated October 7th

7 MR. CAVALLUZZO: And this e-mail,  
8 if we start at the bottom, it's Mr. Callaghan  
9 at "A" Division. It is sent at 10:40 a.m., and it  
10 says:

11 "Hi, Rick. I spoke with --"  
12 This is an American that he is  
13 referring to.

14 "He indicated that he  
15 received the fax from us on  
16 Friday in illegible state.  
17 It was when he sent it to  
18 [whoever] that they received  
19 an illegible copy. He was  
20 able to have NOC send it  
21 directly to [whoever the  
22 individual is]. This was not  
23 a problem involving  
24 A-OCANADA."

25 And then it goes on:

1 "We are still seeking to  
2 interview Arar. [Somebody]  
3 indicated that [somebody] was  
4 dealing with our request --"  
5 Et cetera, et cetera.  
6 And then you respond at some time  
7 later, at 10:53, and you are referring to a  
8 particular news article in the National Post and  
9 so on, and there is no more reference to Mr. Arar  
10 in that e-mail.

11 Did you have a telephone  
12 conversation with Mr. Callaghan on Monday?

13 MR. FLEWELLING: Through  
14 preparation, I learned that I had one later on  
15 that day, yes.

16 MR. CAVALLUZZO: And was it  
17 about -- was it about Mr. Arar?

18 MR. FLEWELLING: I believe so. I  
19 would have to refresh my memory.

20 MR. CAVALLUZZO: In terms of that  
21 day, if we go back to that timeline that we shared  
22 with you --

23 THE COMMISSIONER: What number was  
24 that again?

25 MR. CAVALLUZZO: I'm just getting

1           it.  It's exhibit 226.

2                           And if we go to page 3 for the  
3           entry for October 7th, we see at 8:30, it says:

4                           "Corporal Rick Flewelling  
5                           sent an e-mail indicating  
6                           that it would appear U.S.  
7                           authorities would not have  
8                           enough evidence to charge  
9                           Arar and therefore would  
10                          release him and they would  
11                          most likely deport him to  
12                          Canada."

13                          And then if you go to page 5,  
14           these are the last entries for that date, October  
15           7th, and I'm referring now to four lines down  
16           where it says -- and this is A-OCANADA talking:

17                          "As such we decided that we  
18                          would cancel our plans to  
19                          travel to New York and await  
20                          Arar's deportation to Canada  
21                          and approach him at that time  
22                          for an interview.  Also  
23                          discussed was the possibility  
24                          of making arrangements for  
25                          somebody to follow Arar for a

1                   few days upon his return to  
2                   Canada after which we would  
3                   endeavour to interview him."

4                   And then it says:

5                   "[Somebody] contacted  
6                   [somebody] and advised that  
7                   we would not be travelling to  
8                   New York to conduct the  
9                   interview. That person was  
10                  asked to provide the  
11                  projected travel itinerary  
12                  for Arar, specifically his  
13                  arrival and location into  
14                  Canada."

15                  And then it says:

16                  "One of the members of  
17                  A-OCANADA contacted Rick  
18                  Flewelling and advised him of  
19                  our position not to travel to  
20                  New York."

21                  So that from this document it  
22                  would appear that when you left -- or around the  
23                  time you were leaving for vacation that you were  
24                  of the view, or at least had been advised by  
25                  Project A-OCANADA, that they had given up their

1 intention to interview Mr. Arar in New York.

2 Is that correct?

3 MR. FLEWELLING: That is correct,  
4 and that there would be a wait and see what  
5 transpired on October 9th once he went through his  
6 proceedings there.

7 MR. CAVALLUZZO: Now, when you  
8 went on vacation on October the 8th, which would  
9 be the Tuesday, who was going to be filling in for  
10 you in respect of your duties and responsibilities  
11 of being overseer of A-OCANADA?

12 MR. FOTHERGILL: Commissioner,  
13 this might be a name that we would prefer to  
14 protect, unless there is a compelling reason why  
15 the name needs to be disclosed. I don't think  
16 it's a name that's been disclosed previously.

17 MR. CAVALLUZZO: I'm prepared to  
18 go along with that. We'll call this Mr. A,  
19 because his name is going to come up the next day  
20 as well.

21 So that Mr. A was going to fill in  
22 for your duties and responsibilities while you  
23 were away?

24 MR. FLEWELLING: As well as  
25 Mr. Lauzon.

1 MR. CAVALLUZZO: Okay. And Mr. A  
2 and Mr. Lauzon would be overseeing Project  
3 A-OCANADA during that period of time?

4 MR. FLEWELLING: Yes.

5 MR. CAVALLUZZO: Did you brief  
6 Mr. A on the status of, if we can call it, the  
7 Arar file?

8 MR. FLEWELLING: We worked quite  
9 extensively together, and it was my belief that he  
10 was aware of what had been going on up to that  
11 point, yes.

12 MR. CAVALLUZZO: And when would  
13 you have left on Monday, the office?

14 MR. FLEWELLING: I would have to  
15 take a look at my notes.

16 MR. CAVALLUZZO: We don't have any  
17 notes for that day as I assume there are no Arar  
18 entries.

19 MR. FLEWELLING: No, I was dealing  
20 actually with the events that you have on that  
21 e-mail. I'm assuming approximately four o'clock,  
22 in around that area.

23 MR. CAVALLUZZO: So that when you  
24 leave for vacation in the evening of Monday,  
25 October 7th, two things -- or at least three



1 things that seem to be important as far as Arar is  
2 concerned.

3 One is he is going to have a  
4 deportation hearing on Wednesday, October the 9th?

5 MR. FLEWELLING: Yes.

6 MR. CAVALLUZZO: Is that correct?

7 MR. FLEWELLING: That's correct.

8 MR. CAVALLUZZO: Second, he is  
9 likely to be returned, removed, whatever, to -- at  
10 this point in time you think it's Canada, or do  
11 you still think it's Switzerland to Canada, or  
12 whatever?

13 MR. FLEWELLING: One of the two.

14 MR. CAVALLUZZO: So you think it's  
15 either going to be Switzerland or Canada?

16 MR. FLEWELLING: I was  
17 anticipating Canada.

18 MR. CAVALLUZZO: Okay. And the  
19 third point is that at least at this point in time  
20 that A-OCANADA has taken off the table, so to  
21 speak, their intent to go to New York to interview  
22 Mr. Arar?

23 MR. FLEWELLING: Yes.

24 MR. CAVALLUZZO: Before we move  
25 on, in respect of Mr. Roy, do you recall Mr. Roy

1 sharing with you at any time any documents from  
2 DFAIT relating to Mr. Arar?

3 MR. FLEWELLING: I don't recall.  
4 However, there would be one way of finding out,  
5 and that would be if there are any documents with  
6 my initials, then that would be the only way I  
7 could determine.

8 MR. CAVALLUZZO: Well, we don't  
9 have -- we have documents that came from DFAIT, so  
10 that they wouldn't have your initials.

11 Perhaps the easiest way is if I  
12 could show them to you.

13 Could you refer to exhibit P-42.

14 THE COMMISSIONER: Volume 1?

15 MR. CAVALLUZZO: Volume 1, yes.

16 MR. FLEWELLING: What number was  
17 that again?

18 MR. CAVALLUZZO: Let's start at  
19 tab 10. This is a CAMANT note dated October 1:

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

1 he was born."

2 Do you recall Mr. Roy sharing that  
3 document with you?

4 MR. FLEWELLING: No, although the  
5 contents I learned at a much later time.

6 MR. CAVALLUZZO: Right. But we  
7 are talking about now before October 7th when you  
8 left for vacation?

9 MR. FLEWELLING: No, not to my  
10 knowledge.

11 MR. CAVALLUZZO: Let's go to tab  
12 22. This is a CAMANT note which is dated October  
13 2nd, and it concerns a call from a friend of  
14 Mr. Arar and them retaining or finding a lawyer.

15 MR. FLEWELLING: I learned  
16 through -- I believe it was Mr. Cabana or  
17 Mr. Callaghan relaying to me a message about the  
18 fact that Mr. Cabana had a discussion with  
19 Mr. Arar's lawyer in Ottawa and that they were  
20 making arrangements for a lawyer.

21 MR. CAVALLUZZO: This refers to a  
22 lawyer in New York, though, not in Ottawa. Were  
23 you --

24 MR. FLEWELLING: This specific --  
25 no, I learned the fact that he was getting a

1 lawyer through Mr. Cabana.

2 MR. CAVALLUZZO: That he was  
3 getting a lawyer in New York --

4 MR. FLEWELLING: In New York.

5 MR. CAVALLUZZO: That's fine. You  
6 didn't see this then.

7 Let us go then to tab 31, which we  
8 referred to earlier as the consular visit. This  
9 is where Mr. Arar receives a document, a factual  
10 allegation of admissibility under section 235(c)  
11 of the Immigration and Nationality Act.

12 Do you recall seeing a copy of  
13 this?

14 MR. FLEWELLING: No.

15 MR. CAVALLUZZO: You never saw  
16 this.

17 And finally tab 35, which is dated  
18 October the 3rd as well, about speaking to a  
19 lawyer who will contact the MDC to arrange to  
20 visit Mr. Arar.

21 MR. FLEWELLING: No, I don't  
22 recall this.

23 MR. CAVALLUZZO: Do you recall  
24 Mr. Roy sharing any documents with you?

25 MR. FLEWELLING: With respect to

1           this, I don't recall him sharing any documents  
2           with me.

3                           MR. CAVALLUZZO:  You are on  
4           vacation from October the 8th until October 16th?

5                           MR. FLEWELLING:  Yes.

6                           MR. CAVALLUZZO:  And when did you  
7           learn that Mr. Arar had been deported from the  
8           United States?

9                           MR. FLEWELLING:  I had learned  
10          that through a phone conversation with Mr. A.

11                          MR. CAVALLUZZO:  And when do you  
12          recall Mr. A having called you?

13                          MR. FLEWELLING:  In exploring my  
14          telephone records, the only plausible date would  
15          have to be May the 11th, and I called him --

16                          MR. CAVALLUZZO:  May...?

17                          MR. FLEWELLING:  -- according to  
18          the records.

19                          MR. CAVALLUZZO:  It certainly  
20          wouldn't be May.

21                          MR. FLEWELLING:  Sorry, not May,  
22          but it would have been October the 11th.  I  
23          believe that's what it is.  I would have to take a  
24          look.

25                          MR. CAVALLUZZO:  Now,

1 Commissioner, I'm going to show the witness some  
2 cell phone records. There is a great deal of  
3 personal information on this, and I will just show  
4 it to him, and the relevant portions will be  
5 shared with counsel for the other parties once we  
6 remove the personal information.

7 THE COMMISSIONER: So we don't  
8 need to enter it as an exhibit now.

9 MR. CAVALLUZZO: That's correct.

10 THE COMMISSIONER: Okay.

11 --- Pause

12 MR. FLEWELLING: It would be 15th  
13 at approximately 12:32, is the only plausible time  
14 I can recall. And that would be where I made a  
15 phone call to -- sorry.

16 MR. CAVALLUZZO: The October 15th,  
17 12:32, is that what you are referring to?

18 MR. FLEWELLING: I'm just trying  
19 to look here.

20 --- Pause

21 MR. FLEWELLING: No, it would have  
22 been the 11th, and I'm looking at the number, and  
23 that would have been at 1406.

24 MR. CAVALLUZZO: At 1406 on the  
25 11th?

1 MR. FLEWELLING: Yes.

2 MR. CAVALLUZZO: You don't have to  
3 tell us what the number is, but would that number,  
4 the prefix is 993, what number is that?

5 MR. FLEWELLING: That would have  
6 been Mr. A's phone number.

7 MR. CAVALLUZZO: Okay. And you're  
8 calling from Welsford?

9 MR. FLEWELLING: Yes.

10 MR. CAVALLUZZO: And that is  
11 where?

12 MR. FLEWELLING: In New Brunswick.

13 MR. CAVALLUZZO: Right.

14 Now, you told us before, and this  
15 certainly isn't privileged information, you told  
16 us before that you were sure that the phone call  
17 was on October the 8th.

18 MR. FLEWELLING: Yes.

19 MR. CAVALLUZZO: And you were also  
20 sure that it was on your way to New Brunswick, and  
21 that, in fact, you mentioned the place that you  
22 were at where you took the own call, it was a  
23 place something Perth --

24 MR. FLEWELLING: Perth-Andover.

25 MR. CAVALLUZZO: Perth-Andover.

1           That's what you told us before.  It was on October  
2           the 8th, it was in Perth-Andover, and there are  
3           indications here on this phone record, for  
4           example, that there were phone calls on October  
5           the 8th.

6                               However, it would appear that it  
7           was, for example, the two bottom calls, incoming  
8           calls from your cell phone record, and the call  
9           location -- I understand that's where the call is  
10          from.  It says Montreal.

11                              MR. FLEWELLING:  Yes.

12                              MR. CAVALLUZZO:  So could you tell  
13          us why you told us before it was October the 8th  
14          and --

15                              MR. FLEWELLING:  I must have had  
16          it mixed up with another trip that I had taken  
17          down -- I had gone down there a couple of times  
18          over the course of the last year or two and...

19                              MR. CAVALLUZZO:  In any event,  
20          you're telling us now that it's October 11th?

21                              MR. FLEWELLING:  After reviewing  
22          my phone bill, that's the only plausible time, and  
23          the only one that makes sense to me is that it  
24          was -- that it was on the 11th at approximately  
25          14 -- it looks like 14 -- 1406 -- 1404, 1406, one



1 of those two.

2 MR. CAVALLUZZO: This was with  
3 Mr. A?

4 MR. FLEWELLING: Yes.

5 MR. CAVALLUZZO: You were just  
6 happening to be calling into the office?

7 MR. FLEWELLING: Yes.

8 MR. CAVALLUZZO: Did he call you  
9 or were you calling him?

10 MR. FLEWELLING: I believe that I  
11 called him, having reviewed my records, that it  
12 was me who called him.

13 MR. CAVALLUZZO: Because  
14 previously you said he called you?

15 MR. FLEWELLING: Yes.

16 MR. CAVALLUZZO: But you're sure  
17 today it was on -- well, at least you say the most  
18 plausible time is October the 11th --

19 MR. FLEWELLING: Yes.

20 MR. CAVALLUZZO: -- and that you  
21 would have called Mr. A, and at that point he  
22 would have told you that Mr. Arar had been  
23 deported?

24 MR. FLEWELLING: Obviously an  
25 error in my recollection.

1                   MR. CAVALLUZZO: In terms of that,  
2                   were you surprised with the information you  
3                   received from Mr. A?

4                   MR. FLEWELLING: Absolutely. I  
5                   had every reason to believe that he was either  
6                   going to -- coming to Canada or going to Zurich.

7                   MR. CAVALLUZZO: Did Mr. A  
8                   indicate anything?

9                   MR. FLEWELLING: He advised me  
10                  that he had received a phone call from one of the  
11                  individuals from the American Embassy notifying  
12                  him that Mr. Arar had been removed from the States  
13                  and taken to Syria.

14                  MR. CAVALLUZZO: Just out of  
15                  interest, I noted that the information that you  
16                  sent to the Americans, at least that A-OCANADA  
17                  sent to the Americans on October 4th had that  
18                  caveat.

19                  Do you know if the Americans, if  
20                  they were going to use any -- if they did use any  
21                  of the information that was received from the  
22                  Canadians on October the 4th, whether they sought  
23                  permission from the RCMP to use that information  
24                  against Mr. Arar?

25                  MR. FLEWELLING: I don't recall

1           seeing any requests coming in to use any of that  
2           information, no.

3                         MR. CAVALLUZZO:  Is it likely, in  
4           your position, that you would have seen that  
5           request?  Although you may have been on vacation,  
6           in retrospect, would you have seen that request  
7           when you came back?

8                         MR. FLEWELLING:  Assuming that it  
9           had arrived, I would have seen it, or I would have  
10          been advised that it came in through my  
11          counterparts at A-OCANADA.

12                        MR. CAVALLUZZO:  Just a couple  
13          of -- one final question before we leave your  
14          phone records.

15                        As I pointed out earlier, there  
16          are two incoming calls to you, one at 11:05 for  
17          five minutes and one at 11:23 for two minutes.

18                        THE COMMISSIONER:  This is on  
19          October 8th?

20                        MR. CAVALLUZZO:  October 8th,  
21          that's correct.  The two bottom entries.

22                        And obviously you receive those  
23          calls.  I guess when you were in the Montreal  
24          area, on your way to New Brunswick.  Is it  
25          possible that those two calls came from Mr. A?

1 MR. FLEWELLING: I don't believe  
2 so.

3 MR. CAVALLUZZO: Do you recall who  
4 those phone calls came from?

5 MR. FLEWELLING: No.

6 MR. CAVALLUZZO: I notice that you  
7 use this phone very infrequently. There's not a  
8 lot of calls on here?

9 MR. FLEWELLING: It's my personal  
10 phone.

11 MR. CAVALLUZZO: Right. Do you  
12 use it for business or just personal calls?

13 MR. FLEWELLING: I would use it  
14 for business from time to time.

15 MR. CAVALLUZZO: And so that Mr. A  
16 would have your cell phone number?

17 MR. FLEWELLING: Yes.

18 MR. CAVALLUZZO: Leaving aside  
19 Mr. A, is it possible that those two calls on  
20 October the 8th came from somebody in the RCMP  
21 relating to a file such as Mr. Arar's?

22 MR. FLEWELLING: Could you repeat  
23 the question, please?

24 MR. CAVALLUZZO: Yes. There are  
25 only two phone calls on October the 8th?

1 MR. FLEWELLING: Yes.

2 MR. CAVALLUZZO: They occurred  
3 when you're travelling to New Brunswick for a  
4 holiday?

5 MR. FLEWELLING: Yes.

6 MR. CAVALLUZZO: And the question  
7 that I have, is it possible that those two calls  
8 came from somebody in the RCMP relating to  
9 Mr. Arar?

10 MR. FLEWELLING: I don't believe  
11 so.

12 MR. CAVALLUZZO: You just have no  
13 recollection of who those calls came from?

14 THE COMMISSIONER: That same  
15 number shows up with incoming calls a number of  
16 times on the next page.

17 MR. CAVALLUZZO: Commissioner,  
18 that's his number.

19 MR. FLEWELLING: That's my number.

20 MR. CAVALLUZZO: When you have an  
21 incoming call with your own --

22 THE COMMISSIONER: Oh, I see.

23 MR. CAVALLUZZO: Obviously you've  
24 never --

25 THE COMMISSIONER: I've got it.

1           It's obvious I've never looked at my cell phone  
2           book.

3                           MR. FLEWELLING:  It could very  
4           well have been my wife calling me.  She didn't  
5           accompany me on that trip.

6                           But I don't recall taking any  
7           calls in and around the Montreal area in relation  
8           to work.

9                           MR. CAVALLUZZO:  Okay then.  If we  
10          could move on, if we look at exhibit P-180, it's a  
11          briefing note for the Commissioner of the RCMP  
12          which is dated October 9th.

13          --- Pause

14                          MR. CAVALLUZZO:  Now, do you know  
15          who drafted -- it is dated October the 9th.  Do  
16          you know who drafted this particular briefing  
17          note?

18                          MR. FLEWELLING:  Exactly, no.  
19          However, it could be one of two people.

20                          MR. CAVALLUZZO:  Okay.  And who  
21          are those individuals?  Mr. A would be one?

22                          MR. FLEWELLING:  I believe Mr. A  
23          and/or Sergeant Lauzon.

24                          MR. CAVALLUZZO:  Okay.  
25          It says, the unredacted portions,

1 in terms of background, and it's under  
2 Mr. Proulx's name for Commissioner Zaccardelli for  
3 October the 9th, it says:

4 "CID NSOS learned --" (As  
5 read)

6 Excuse me, let's me pick up the  
7 previous paragraph:

8 "Arar's present circumstances  
9 are unknown at this time and  
10 CID is attempting to secure  
11 this information. CID  
12 learned that Project  
13 A-OCANADA investigators had  
14 submitted a request to (this  
15 American person) to interview  
16 Arar while he was detained in  
17 New York. RCMP investigators  
18 were concerned as to what  
19 grounds they were holding  
20 Arar, if Arar had volunteered  
21 any information to U.S.  
22 authorities relating to  
23 activities and which country  
24 Arar would be returning to if  
25 he was deported. According

1 to A-OCANADA investigators,  
2 (somebody) had some  
3 unidentified issues regarding  
4 an RCMP interview of Arar.  
5 During this process it was  
6 determined that whatever  
7 (somebody) eventually decided  
8 to return Arar to his country  
9 of birth. Although Arar's  
10 role in the bearing on the  
11 outcome --" (As read)

12 Excuse me.

13 "Although Arar's role in the  
14 A-OCANADA investigation is  
15 still not known,  
16 investigators indicated that  
17 his detainment in Syria has  
18 no bearing on the outcome or  
19 integrity of this  
20 investigation." (As read)

21 So this would have been either  
22 Lauzon or Mr. A who drafted this for Mr. Proulx  
23 for the Commissioner?

24 MR. FLEWELLING: I believe so,  
25 yes.



1 MR. CAVALLUZZO: Now, on  
2 Wednesday -- or excuse me, on Tuesday, October the  
3 8th, although you were on vacation, the evidence  
4 indicates that sometime during the day, that  
5 Mr. Roy indicated to the A-OCANADA investigators  
6 that there's the real possibility of a deport or  
7 removal to Syria? Subsequently you became aware  
8 of that, I assume.

9 MR. FLEWELLING: Correct.

10 MR. CAVALLUZZO: Okay.

11 And at that point in time, when  
12 the real possibility of Syria arose on October the  
13 8th, the assumption as well was that Mr. Arar was  
14 going to deportation court the next day, on  
15 October the 9th.

16 MR. FLEWELLING: That was my  
17 understanding.

18 MR. CAVALLUZZO: And the evidence  
19 also indicates that Project A-OCANADA became very  
20 circumspect about an interview, because they were  
21 concerned -- in fact, let me just read the time  
22 line to you, just to be fair to you. It's once  
23 again exhibit 226.

24 --- Pause

25 MR. CAVALLUZZO: You'll see it for

1           October 8th, if we could start at page 5 of the  
2           exhibit -- or the time line of Mr. Cabana. It  
3           says at 9:45:

4                                 "... ROY arrived at the ...  
5                                 office and was advised of  
6                                 ARAR's situation concerning  
7                                 the interviews and ARAR's  
8                                 potential deportation to  
9                                 Canada on Wednesday."

10                                Then it says:

11                                "Insp. ROY indicated that he  
12                                was not aware of this  
13                                potential deportation to  
14                                Canada. Insp. ROY stated  
15                                that he only knew ARAR was  
16                                still in custody and there  
17                                was a possibility he would be  
18                                sent to Syria."

19                                Do you see that?

20                                Then if we go to twelve o'clock,  
21           it said that:

22                                "(Certain individuals on the  
23                                Project A-OCANADA team) met  
24                                with Insp. CABANA and  
25                                discussed the interview. We

1 discussed a concern that if  
2 U.S. was only holding ARAR so  
3 that we could interview him  
4 and that if there was any  
5 suggestions that he did not  
6 cooperate with Canadian  
7 investigators and would be  
8 sent to Syria, then the  
9 perception would be very  
10 damaging to the RCMP. We  
11 agreed to speak with  
12 (whomever) and advised him of  
13 our concerns up front and  
14 await a response."

15 Then you'll see on the next page,  
16 they set out certain conditions before they would  
17 ever have a meeting in the next -- the 1415 entry,  
18 it says:

19 "We indicated that we need to  
20 know why ARAR was being held,  
21 where he would be sent to  
22 once we had interviewed him,  
23 and what he had already  
24 said..."

25 And so on and so forth.

1                   So what appears to be the case is  
2                   that A-OCANADA is apprised of the fact that Arar  
3                   may be deported to Syria on October the 8th.

4                   They know that -- or they're of  
5                   the knowledge that he is going to go to court the  
6                   next day, on October the 9th.

7                   And as far as an interview is  
8                   concerned, they set down stringent conditions  
9                   because they don't want the RCMP to be embarrassed  
10                  if there is some tie between him and being  
11                  deported to Syria and an interview with the RCMP.

12                  So you're aware of all of that  
13                  knowledge?

14                  MR. FLEWELLING: Well, I am now.

15                  MR. CAVALLUZZO: Yes.

16                  So the question that I have is:  
17                  Did you ever learn that after the RCMP discovered  
18                  that he was going to be deported -- a real  
19                  possibility that he would be deported to Syria,  
20                  and then he, in their view, was going to court the  
21                  next day, on October the 9th, did you ever learn  
22                  of any RCMP protest or objection to the Americans  
23                  on that day saying something like, "You guys  
24                  better not deport him to Syria or you're  
25                  endangering our relationship," or words to that

1 effect? Any kind of protest or objection?

2 MR. FLEWELLING: Not that I  
3 recall, or that I'm aware of.

4 MR. CAVALLUZZO: Now, we do know  
5 that, in fact, Mr. Arar was deported at three  
6 o'clock in the morning on October the 8.

7 However, we didn't discover -- or  
8 the RCMP didn't discover that until the next day.

9 But you're not aware of any  
10 protest or objection proffered to the Americans  
11 from the RCMP respecting the possible deportation?

12 MR. FLEWELLING: I don't know if  
13 anybody from A-OCANADA or CID, or --

14 MR. CAVALLUZZO: We have  
15 absolutely no evidence of that, and just wanted to  
16 know if you have any knowledge.

17 MR. FLEWELLING: No. Not that I'm  
18 aware of.

19 MR. CAVALLUZZO: Okay.

20 Now, you return on October 16th?

21 MR. FLEWELLING: Yes.

22 MR. CAVALLUZZO: And if we go to  
23 your notes, Mr. Flewelling, at page 40, it would  
24 appear that at ten o'clock Mr. Pilgrim called you  
25 into his office?

1 MR. FLEWELLING: That's correct.

2 MR. CAVALLUZZO: And he had a  
3 meeting with DFAIT, and this is -- we've heard a  
4 great deal of evidence on this, and I'm going to  
5 quickly bring you through this.

6 This is when DFAIT raised a number  
7 of questions regarding the RCMP, because on the  
8 previous day, there was some American statements  
9 to the effect that the RCMP knew why Mr. Arar --  
10 knew the situation and knew the conditions under  
11 which Mr. Arar was deported, and as a result of  
12 that, DFAIT, in particular Mr. Pardy, called in  
13 RCMP and threw out a lot of questions.

14 Is that what Pilgrim is talking to  
15 you about upon your return on October 16th?

16 MR. FLEWELLING: Yes, I believe  
17 so.

18 MR. CAVALLUZZO: On October the  
19 18th, we see at page 41, which is -- no, that  
20 would be the next day.

21 But I assume that you were tasked  
22 with the responsibility to help prepare the  
23 briefing note -- or not the briefing note but the  
24 memorandum that went to DFAIT? Let me just show  
25 it to you.

1 MR. FLEWELLING: Yes, please.

2 MR. CAVALLUZZO: It's exhibit  
3 P-137.

4 --- Pause

5 MR. CAVALLUZZO: Do you recall  
6 having assisted in the drafting of this memorandum  
7 which went to DFAIT through Mr. Roy from  
8 Mr. Pilgrim? It's page 5, I'm sorry, of --

9 MR. FLEWELLING: Six pages in.  
10 That's the one we're referring to?

11 MR. CAVALLUZZO: Yes.

12 Do you recall that?

13 MR. FLEWELLING: Yes.

14 MR. CAVALLUZZO: Okay. So just a  
15 couple of questions. So that where it says that,  
16 for example, under question 2, the question is:

17 "How did the U.S. become  
18 aware/interested in ARAR?"

19 It says:

20 "U.S. authorities learned of  
21 ARAR through a sharing of  
22 information between RCMP  
23 investigators and U.S.  
24 Intelligence authorities.  
25 ARAR was connected to an

1                   ongoing RCMP investigation  
2                   that involved individuals  
3                   also of interest to U.S.  
4                   authorities. It is also  
5                   possible that U.S.  
6                   authorities are in possession  
7                   of information relating to  
8                   ARAR's activities during the  
9                   period of time when he lived  
10                  and worked in Boston, Mass.,  
11                  area."

12                   Now, in terms of answering or  
13                  preparing that answer to that question, did you do  
14                  the research on that and prepare that?

15                   MR. FLEWELLING: I discussed with  
16                  a couple of members from the A-OCANADA team.

17                   MR. CAVALLUZZO: So that you  
18                  received the information from A-OCANADA too.

19                   Did anyone from A-OCANADA, after  
20                  having submitted this memorandum to DFAIT, come  
21                  back to you and say: "You're wrong, that  
22                  memorandum is wrong?"

23                   MR. FLEWELLING: I don't even know  
24                  if they've got a copy of this, to be quite honest  
25                  with you.



1 MR. CAVALLUZZO: Assume they did.

2 MR. FLEWELLING: Then I don't  
3 recall anybody coming back.

4 MR. CAVALLUZZO: Okay. In terms  
5 of the answer to question 4, which was:

6 "Did the U.S. approach  
7 Canadian authorities  
8 regarding the possibility of  
9 ARAR's deportation?"

10 Answer:

11 "U.S. authorities requested  
12 the RCMP to provide  
13 information that might assist  
14 in the filing of criminal  
15 charges against ARAR. U.S.  
16 authorities made inquiries as  
17 to the level of interest the  
18 RCMP had in pursuing Arar  
19 criminally. They also made  
20 inquiries regarding the  
21 RCMP's ability to refuse  
22 ARAR's entry into Canada.  
23 The U.S. authorities were  
24 advised that the RCMP was  
25 interested in ARAR from a

1 criminal perspective. They  
2 were also advised that where  
3 ARAR is a Canadian citizen,  
4 the RCMP could not refuse his  
5 entry into Canada."

6 And that of course is that  
7 telephone call that we have reviewed with you.

8 And then it goes on:

9 "What was the level of threat  
10 relating to ARAR's presence  
11 in the U.S.?"

12 And then it says:

13 "The RCMP has no information  
14 concerning any threat  
15 associated with/by ARAR."

16 Did anybody from A-OCANADA ever  
17 come back to you and say that's wrong?

18 MR. FLEWELLING: No.

19 MR. CAVALLUZZO: And then there is  
20 reference to Syria and Jordan that we have dealt  
21 with.

22 --- Pause

23 MR. CAVALLUZZO: On October 21, we  
24 have heard evidence that Mr. Cabana told  
25 Mr. Gould -- Mr. Gould, as you know, is with DFAIT

1           ISI, and that Mr. Cabana told Mr. Gould that  
2           A-OCANADA was prepared to share all of its  
3           information on Mr. Arar and another with the  
4           Syrians.

5                           I am wondering if you had any  
6           knowledge of that offer from Cabana through Gould?

7                           MR. FLEWELLING: I became aware of  
8           it at a later point.

9                           MR. CAVALLUZZO: But was it around  
10          that time?

11                          MR. FLEWELLING: It would have  
12          been following.

13                          MR. CAVALLUZZO: It would have  
14          been following the request?

15                          Did you say anything to Cabana as  
16          to the propriety of making that particular offer?

17                          MR. FLEWELLING: I don't recall.

18                          MR. CAVALLUZZO: Just moving  
19          along, I have a couple of final questions.

20                          In respect of evidence that we  
21          have heard -- and it's exhibit P-138. This is a  
22          fax that the RCMP received from Mr. Pillarella,  
23          who is the Ambassador to Syria at that time.

24          --- Pause

25                          MR. FLEWELLING: Sorry? That was

1           what date again?

2                           MR. CAVALLUZZO:  It's November 3rd  
3           or 4th.  And what this is, this is information  
4           that Mr. Pillarella had received from the Syrian  
5           Military Intelligence relating to Mr. Arar  
6           concerning his possible links with al-Qaeda, and  
7           this information was faxed to the RCMP.

8                           There was a meeting that was held  
9           on November the 6th, an interagency meeting  
10          between DFAIT, the RCMP and others, CSIS included,  
11          concerning this particular information that was  
12          contained in this e-mail.

13                          I am wondering if you attended at  
14          that meeting?

15                          MR. FLEWELLING:  That was what  
16          date, sorry?

17                          MR. CAVALLUZZO:  November 6th.

18          --- Pause

19                          MR. FLEWELLING:  I have no notes  
20          so, no, I wouldn't have been there.

21                          MR. CAVALLUZZO:  I note that on  
22          November the 8th -- this is page 41 -- there is  
23          reference to a meeting at DFAIT.

24                          Do you see that at it looks like  
25          either 1:30 or 1330 entry?

1 MR. FLEWELLING: That's correct.

2 MR. CAVALLUZZO: It says:

3 "Meeting at DFAIT with Don."

4 That would be Don Saunders?

5 MR. FLEWELLING: Ron.

6 MR. CAVALLUZZO: Excuse me, Ron?

7 MR. FLEWELLING: Yes. Mr. Lauzon.

8 MR. CAVALLUZZO: Wayne Pilgrim?

9 MR. FLEWELLING: And myself.

10 MR. CAVALLUZZO: And myself.

11 "Also in attendance was CSIS,

12 DFAIT."

13 Do you recall what that particular

14 meeting was about?

15 MR. FLEWELLING: I can't recall

16 what the topic of that meeting was. I could make

17 assumptions, but I'm afraid that I might be wrong.

18 MR. CAVALLUZZO: If you can't

19 recall it, then it wouldn't be of assistance, any

20 speculation on your part.

21 MR. FLEWELLING: I'm quite sure

22 that Ron, I do believe he might be able to shed a

23 little bit more light on that issue or what

24 transpired during that meeting.

25 MR. CAVALLUZZO: Do you recall

1           having seen, though, this information that  
2           Mr. Pillarella brought back from Syria?

3                           MR. FLEWELLING: Without seeing my  
4           initials on it, I can't tell you that I've seen  
5           it.

6                           MR. CAVALLUZZO: But what it does,  
7           it says that the Syrians, in a very short period  
8           of time, have absolutely -- they are absolutely  
9           positive, and this is General Khalil is absolutely  
10          positive about Arar's links with al-Qaeda. He  
11          said that he had been recruited with the specific  
12          purpose of recruiting others in Canada, et cetera,  
13          et cetera.

14                           Wouldn't you recall if you had  
15          seen that before?

16                           MR. FLEWELLING: I recall that  
17          information coming to light at a later point in  
18          time, yes.

19                           MR. CAVALLUZZO: Well, no matter  
20          how you discovered this information, whether it be  
21          through this document or being advised of it  
22          otherwise, in your role as reviewer-analyst and  
23          being responsible for Project A-OCANADA, did you  
24          ever or are you aware of anybody in the RCMP ever  
25          doing a reliability assessment of this particular

1 statement?

2 MR. FLEWELLING: I can only answer  
3 from our perspective, and I can't recall anybody  
4 being tasked with that at our level.

5 MR. CAVALLUZZO: And is it fair to  
6 say, because last June and July of 2004 we took  
7 Mr. Loeppky through a great deal of policies,  
8 particularly in terms of the criminal intelligence  
9 program, and it would seem to me anyways that one  
10 of the important things that the CID does is a  
11 reliability assessment of statements such as this.

12 And it would seem to me that if a  
13 reliability assessment would have been done in the  
14 RCMP, it would have been done at the CID.

15 MR. FLEWELLING: Or could have  
16 been done with one of the individuals who had an  
17 in-depth knowledge with the entire file with  
18 A-OCANADA.

19 MR. CAVALLUZZO: Right. In any  
20 event, we certainly didn't hear any information  
21 from them. But just from CID's perspective -- you  
22 were the overseer of the Project A-OCANADA file --  
23 you were not aware of CID doing a reliability  
24 assessment of this?

25 MR. FLEWELLING: Not that I can

1 recall right now.

2 MR. CAVALLUZZO: Just a couple of  
3 final things.

4 If you go back to your notes, if  
5 you can help us at page 45, this would appear to  
6 be an entry for Friday, November 22nd of 2002.

7 MR. FLEWELLING: Yes.

8 MR. CAVALLUZZO: At the bottom  
9 there it says:

10 "A-OCANADA to go through LOs.  
11 I am to prepare an e-mail  
12 message on behalf of  
13 Mr. Proulx."

14 Now, what is that all about, that  
15 "A-OCANADA to go through LOs"?

16 MR. FLEWELLING: One of the  
17 investigative team members from the project team  
18 had made a contact with a representative from the  
19 French Embassy.

20 MR. CAVALLUZZO: Right.

21 MR. FLEWELLING: And I believe, if  
22 memory serve me correctly, they posed a question  
23 or they solicited information.

24 MR. CAVALLUZZO: Right.

25 MR. FLEWELLING: And that got back



1 to, I believe, Mr. Proulx.

2 MR. CAVALLUZZO: And basically  
3 Proulx once again saying, "Listen, guys, you don't  
4 deal directly with foreign agencies. You come  
5 through us."

6 Is that fair?

7 MR. FLEWELLING: Correct.

8 MR. CAVALLUZZO: The next page,  
9 page 46, the entry at 1330 says:

10 "Message sent to A-OCANADA re  
11 [the redacted something]."

12 It says:

13 "Message sent replacing  
14 caveats on all  
15 correspondence. Message sent  
16 issue pertaining to the lack  
17 of response as well as our  
18 own."

19 So the message concerning placing  
20 of caveats on all the correspondence in November  
21 of 2002, you are still having a problem with  
22 A-OCANADA not putting caveats on?

23 MR. FLEWELLING: I think they had  
24 appointed a new individual to step in to do the  
25 situation reports, and he either forgot or was

1           unaware, and it was just a reminder that --

2                           MR. CAVALLUZZO:   Okay.

3                           MR. FLEWELLING:   They subsequently  
4           showed up following.

5                           MR. CAVALLUZZO:   If you go down to  
6           1430, it says:

7    >Note prior to [something]  
8   meeting.   Inspector Cabana  
9   called to voice his concern  
10    and displeasure with the  
11    discussion to have them go  
12    through the LOs."

13    So Cabana is phoning saying, "Why  
14           do I have to go through the LOs?"

15                           MR. FLEWELLING:   Well, he had some  
16           concerns, and I believe that the agreement that  
17           apparently he was aware of extended to be able to  
18           deal with all individuals within the National  
19           Capital Region.

20                           MR. CAVALLUZZO:   Were you aware of  
21           that agreement?

22                           MR. FLEWELLING:   I was not aware  
23           of an agreement with respect to other agencies  
24           other than the Americans.

25                           MR. CAVALLUZZO:   Right, okay.

1                   Then if we go to page 54, this is  
2                   the entry for January 22, 2003.

3                   I am wondering if you could just  
4                   read that? I have trouble with the -- it looks  
5                   like the 1330 entry, "Meeting at with [somebody]."

6                   Could you pick it up from there?

7                   MR. FLEWELLING: "Spoke with  
8                   [somebody] re the computer.  
9                   His point was A-OCANADA asked  
10                  for the material, therefore  
11                  it was theirs to act on. I  
12                  should have called and I  
13                  should not have -- and that I  
14                  should have called to advise  
15                  them. I replied that the  
16                  info was not theirs and  
17                  theirs alone. Foreign  
18                  material is given, loaned to  
19                  the Government of Canada, and  
20                  the RCMP is the guardian of  
21                  that material. That's why it  
22                  is addressed to the  
23                  Commissioner and not  
24                  A-OCANADA. It is my job to  
25                  disseminate that information,

1 evaluate it, and have it  
2 uploaded to the system. I  
3 need that information as much  
4 as they in order to properly  
5 advise management."

6 MR. CAVALLUZZO: So this is I  
7 guess another -- I don't want to call it dispute.  
8 It seems like an ongoing debate that doesn't seem  
9 to be resolved as to the proper protocol in  
10 respect of how information comes in from foreign  
11 agencies.

12 Is that fair?

13 MR. FLEWELLING: It was with  
14 respect to an individual who was from a Canadian  
15 agency that was partnering with the team that was  
16 unaware of that aspect.

17 MR. CAVALLUZZO: Right. Okay.

18 Finally, at page 55, if you could  
19 look at page 55, and if you could start reading  
20 six lines from the bottom?

21 MR. FLEWELLING: "I stated that  
22 they continuously break  
23 protocol in dealing with  
24 foreign agencies and  
25 material."

1 MR. CAVALLUZZO: Just before we go  
2 on, you say "they". "They" is Project A-OCANADA?

3 MR. FLEWELLING: I'm referring,  
4 yes.

5 MR. CAVALLUZZO: Go on.

6 MR. FLEWELLING: "I advised that  
7 instead of pointing fingers  
8 at one another, perhaps a  
9 call would solve a lot of  
10 hostility."

11 MR. CAVALLUZZO: And then finally  
12 the next page, it says meeting between --

13 MR. FLEWELLING: "Meeting between  
14 CSIS and RCMP CID."

15 MR. CAVALLUZZO: What does the  
16 next line say?

17 MR. FLEWELLING: "National  
18 security --"

19 That has to do with UC matters and  
20 really doesn't have anything to do with A-OCANADA.

21 MR. CAVALLUZZO: But it has to do  
22 with the divisions, does it not?

23 MR. FLEWELLING: Yes.

24 MR. CAVALLUZZO: So what is the  
25 point there? National security what? Major or

1 minor has to be approved by -- does that mean any  
2 national security investigations, either major or  
3 minor, has to be approved by headquarters?

4 MR. FLEWELLING: Yes.

5 MR. CAVALLUZZO: Next line says:  
6 "Files on national security  
7 belong to the Commissioner  
8 and not the divisions."

9 MR. FLEWELLING: Yes.

10 MR. CAVALLUZZO: Okay. We've seen  
11 that problem in the past and now this is very  
12 clear, as of January 2003 the files belong to the  
13 institution and not the division.

14 So the Commissioner, not the  
15 divisions; correct?

16 MR. FLEWELLING: Yes.

17 MR. CAVALLUZZO: Then it says  
18 foreign agencies.

19 "Divisions will not deal --"

20 MR. FLEWELLING: "...with foreign  
21 agencies without HQ  
22 involvement or knowledge."

23 MR. CAVALLUZZO: So that's  
24 another, certainly, direction that as of January  
25 2003 would be enforced. Is that correct?

1 MR. FLEWELLING: Yes.

2 MR. CAVALLUZZO: Just another  
3 question before a concluding comment is whether  
4 you were aware in November of 2002 of the trip of  
5 CSIS to Syria?

6 MR. FLEWELLING: I became aware of  
7 it, I believe, afterwards.

8 MR. CAVALLUZZO: After? So you  
9 had no participation in the events leading up to  
10 the trip?

11 MR. FLEWELLING: Not to my  
12 knowledge.

13 MR. CAVALLUZZO: Mr. Flewelling,  
14 after taking you through all of these debates and  
15 dialogues you had with A-OCANADA, you must have  
16 found it pretty frustrating being the overseer of  
17 Project A-OCANADA. Is that correct?

18 MR. FLEWELLING: I would say  
19 that's a fair statement, but not unusual.

20 MR. CAVALLUZZO: Well, if it's not  
21 unusual, I'll leave that for others.

22 In any event, I understand that  
23 the structure in respect to A-OCANADA changed  
24 shortly after this last debate we saw in January  
25 of 2003. Is that correct?

1 MR. FLEWELLING: I don't recall  
2 the exact date.

3 MR. CAVALLUZZO: February 4th,  
4 2003.

5 MR. FLEWELLING: February 4th...

6 MR. CAVALLUZZO: 2003.

7 MR. FLEWELLING: I'll take your  
8 word for it. I believe the team folded back into  
9 or under the umbrella of A-INSET.

10 MR. CAVALLUZZO: That's correct.  
11 Mr. Cabana departed the team, the project fell  
12 under the A-INSET?

13 MR. FLEWELLING: Yes.

14 MR. CAVALLUZZO: And a coordinator  
15 by the name of Mr. Jago was appointed, who was  
16 going to coordinate not only Project A-OCANADA but  
17 with O-Canada in Toronto and with C-Canada in  
18 Montreal?

19 MR. FLEWELLING: Yes.

20 MR. CAVALLUZZO: Mr. Flewelling,  
21 thank you. I have no further questions.

22 THE COMMISSIONER: Thank you,  
23 Mr. Cavalluzzo.

24 Mr. Waldman?

25 How long do you think you will be?



1 Let me just take a roll call here.

2 MR. WALDMAN: How long do you  
3 think I'm going to be?

4 THE COMMISSIONER: Yes.

5 MR. WALDMAN: An hour to an hour  
6 and a half.

7 THE COMMISSIONER: Mr. Boxall, you  
8 are going to have questions?

9 MR. BOXALL: I do. An hour?

10 THE COMMISSIONER: All right.  
11 Anybody else here?

12 Mr. O'Brien?

13 MR. O'BRIEN: Possibly a few  
14 minutes.

15 THE COMMISSIONER: Anybody else?  
16 We will wait to see.

17 We will rise for five minutes for  
18 you to get organized.

19 --- Upon recessing at 11:57 a.m. /

20 Suspension à 11 h 57

21 --- Upon resuming at 12:06 p.m. /

22 Reprise à 12 h 06

23 THE REGISTRAR: Please be seated.

24 THE COMMISSIONER: Mr. Waldman?

25 MR. WALDMAN: Yes, I'm going to

1 try to cover one or two areas before lunch, and I  
2 think I have half an hour before and half an hour  
3 after.

4 THE COMMISSIONER: That's great.  
5 Thank you.

6 MR. WALDMAN: At lunch I'll have  
7 an opportunity to reorganize and probably a lot of  
8 the questions I had I see were already covered.

9 THE COMMISSIONER: Mr. Cavalluzzo  
10 covered it.

11 MR. WALDMAN: Covered most of it.

12 EXAMINATION

13 MR. WALDMAN: I want to deal with  
14 one area now, and this is -- if I could ask you to  
15 go to your personal notes, P-211, page 25.

16 THE COMMISSIONER: Twenty-five?

17 MR. WALDMAN: Yes.

18 So at 12:30 on August 13th, you  
19 receive an urgent message, call by so and so.  
20 They have an urgent message.

21 And then a little bit later,  
22 you're called and advised that they had been in  
23 contact with DOJ, media, DFAIT, Gould, and "A"  
24 Division, and they've set up a meeting.

25 So it's quite clear that on the

1 13th of August, 2002, someone with whom you were  
2 working closely advised you that there was  
3 something very urgent going on.

4 Is that correct?

5 MR. FLEWELLING: Obviously if  
6 they're bringing all of these agencies together, I  
7 would assume that there's definitely something.

8 MR. WALDMAN: Right. And you  
9 don't remember being advised at that time of what  
10 the urgent message was that was being given to you  
11 at that time?

12 MR. FLEWELLING: I try to put  
13 myself back in that time frame and try to recall  
14 exactly what the affairs were, and, I'm sorry, I  
15 just keep drawing a blank.

16 MR. WALDMAN: Well, it says that  
17 the meeting is going to be set up with DOJ (that's  
18 the Department of Justice) headquarters, members  
19 of A-OCANADA, media relations, and then following  
20 that there's going to be another meeting with CSIS  
21 and DFAIT.

22 Is that your reading of that?

23 MR. FLEWELLING: Yes.

24 MR. WALDMAN: I'm going to suggest  
25 to you that it would be extremely unusual to have

1 such a meeting.

2 All of a sudden all of these  
3 different partners being brought together,  
4 Justice, media, DFAIT, headquarters, "A" Division,  
5 CSIS, all to discuss an issue.

6 This is not something that  
7 happened very often in your experience?

8 MR. FLEWELLING: Over the course  
9 of my time frame between Project Shock as well as  
10 this one, there were a number of times where a lot  
11 of these Canadian agencies and representatives  
12 would get together.

13 MR. WALDMAN: Yes, but this -- I  
14 could imagine that would happen. But how often  
15 would it be that a meeting was arranged from one  
16 day to the other to getting all of these very busy  
17 individuals together all at once to come together  
18 in a very short period of time?

19 I would suggest to you that that  
20 would be extremely unusual.

21 Correct?

22 MR. FLEWELLING: It was not the  
23 norm, no.

24 MR. WALDMAN: Not the norm.  
25 Right.

1                   So I would suggest to you that it  
2 would suggest that there was something extremely  
3 important and urgent that needed to be discussed.

4                   MR. FLEWELLING: Oh, whenever you  
5 bring these agencies together, there's definitely  
6 something, yes.

7                   MR. WALDMAN: Yes. That's a lot  
8 of resources getting a lot of people together on  
9 one day's notice for a meeting about something  
10 that was very urgent.

11                   Correct?

12                   MR. FLEWELLING: Yes.

13                   MR. WALDMAN: Now, on page 26 of  
14 your notes, the middle of the page, it says -- it  
15 starts:

16                   "Advised by (blank) that  
17 DFAIT officials in Egypt have  
18 seen El Maati. They're  
19 advised of his present  
20 conditions and claims of  
21 mistreatment while in Syrian  
22 custody."

23                   I've read your notes correctly?

24                   MR. FLEWELLING: It's there, yes.

25                   MR. WALDMAN: Right. So what do

1           you think the investigator meant when he said,  
2           "claims of treatment"?

3                         Would you agree with me that that  
4           wording suggests, given that it's put in the form  
5           of "claims of treatment," that Mr. El Maati would  
6           have been treated -- the suggestion was that he  
7           was being treated badly, because it wouldn't make  
8           any sense otherwise to put "claims of treatment,"  
9           would it?

10                        MR. FLEWELLING: Well, obviously  
11           if I put it there in that context, then obviously  
12           that's what -- there's got to be some situation  
13           that's been brought up.

14                        MR. WALDMAN: Yes. There must  
15           have been some allegation or suggestion by the  
16           person that Mr. El Maati was stating that he  
17           wasn't being treated very well.

18                                 Is that fair to say?

19                                 Otherwise, it wouldn't make any  
20           sense to put it in those terms?

21                        MR. FLEWELLING: No. Yes.

22                        MR. WALDMAN: So clearly your  
23           notes suggest that as of this date, which is  
24           August 13th, you were being made aware by some  
25           individuals that Mr. El Maati had made allegations

1           that he was being badly treated in Syria.

2                           Is that correct?

3                           MR. FLEWELLING: I take it from  
4 this entry, yes.

5                           MR. WALDMAN: So presumably you  
6 would have been curious about what all the fuss  
7 was about.

8                           You had just received an urgent  
9 message that a big meeting had been planned where  
10 all the major players are going to be at the  
11 table, something that you acknowledge is quite  
12 unusual, getting all these people together in a  
13 short period of time.

14                           We're talking here about  
15 Mr. El Maati, who we now know was one of the  
16 targets of the A-OCANADA investigation, and he's  
17 making claims of bad treatment while he was in  
18 Syria.

19                           Given your oversight role, don't  
20 you think it's likely that you would have wanted  
21 to know more about the nature of Mr. El Maati's  
22 claims at that time?

23                           Don't you think it would have been  
24 important to you to get more information?

25                           I mean, you are the oversight

1 person for A-OCANADA. This is August 2002.

2 You've already taken over this role.

3 MR. FLEWELLING: Starting, yes.

4 MR. WALDMAN: Right. And Mr. El  
5 Maati we know is one of the targets. You haven't  
6 been able to get any contact with him for months  
7 and all of a sudden you're able to -- DFAIT is  
8 able to get to him. They speak to him. And he  
9 tells DFAIT officials that he's badly treated.

10 Don't you think it would be  
11 important for you at that time to try to get more  
12 information about this?

13 MR. FLEWELLING: From my  
14 understanding, that's what the role of DFAIT is,  
15 is to acquire or to obtain as much information as  
16 possible.

17 MR. WALDMAN: Right. But I'm not  
18 asking you about what DFAIT's role is, sir. I'm  
19 asking you about whether you made further  
20 inquiries, or ought to have made further  
21 inquiries, at that point to get more details about  
22 what Mr. El Maati had said, given your overseeing  
23 role.

24 MR. FLEWELLING: Throughout the  
25 course or the latter part of my tenure, we



1           endeavoured and had discussed amongst the group  
2           the aspect of going over to see Mr. El Maati for  
3           the expressed view of obtaining or acquiring  
4           information as we could glean.

5                         MR. WALDMAN: Right, and don't you  
6           think in that context, if you were thinking about  
7           going to interrogate Mr. El Maati, it would have  
8           be important to know what he said -- how he had  
9           said he had been treated while he was in Syria?

10                        MR. FLEWELLING: Absolutely.

11                        MR. WALDMAN: And here you've got  
12           in your notes that -- there is an indication that  
13           you had been given information he was badly  
14           treated and yet you don't have any recollection of  
15           following up on this, sir? I would suggest to  
16           you, sir, that you ought to have done it and  
17           probably did do it.

18                        MR. FLEWELLING: No, in my note,  
19           it doesn't say "badly treated."

20                        MR. WALDMAN: But we just went  
21           through that, and I think you acknowledged to me  
22           that the wording of it clearly indicated that it  
23           wouldn't have made sense to word it in that manner  
24           unless there was some problem with the treatment  
25           that he had been given.

1 MR. FLEWELLING: Well, obviously  
2 there is a question there as a result of the note.

3 MR. WALDMAN: Right. And it's a  
4 question you should have followed up on given your  
5 role.

6 Correct?

7 MR. FLEWELLING: Well, that's  
8 where we defer to DFAIT in order to provide us  
9 with the necessary information with respect to his  
10 treatment. We don't have feet on the ground  
11 there.

12 MR. WALDMAN: And, in fact, we  
13 know that there was a meeting on August 15th that  
14 you attended, right? And at that meeting, in  
15 fact, there was a representative from DFAIT,  
16 someone by the name of Myra, who we know is Myra  
17 Pastyr-Lupul, who testified here, and, in fact,  
18 she testified about this meeting. In fact, when  
19 she testified about this meeting, sir, she told us  
20 that the RCMP had in its possession P-192.  
21 Perhaps we could show you that.

22 --- Pause

23 MR. WALDMAN: Perhaps you could  
24 just -- have you seen this document before?

25 MR. FLEWELLING: No.

1 MR. WALDMAN: Perhaps you could  
2 just take a second to just familiarize yourself  
3 with it.

4 --- Pause

5 MR. WALDMAN: So if I could ask  
6 you to go -- have you had a chance to read it?

7 MR. FLEWELLING: Your question?

8 MR. WALDMAN: We went through the  
9 middle of the third paragraph. It says:

10 "During his 2 1/2 months of  
11 detention in Syria, subj  
12 advises that he was beaten  
13 (feet/legs) and tortured  
14 (electric shock) and forced  
15 to give false information."

16 So it seems to me that we had a  
17 meeting that you attended on August 15th, whose  
18 purpose was to discuss this case note.

19 The case note was the result of an  
20 interview that took place within -- the interview  
21 was on August 12th, and this meeting occurred  
22 three days later, on August 15th.

23 So obviously this is being given a  
24 very high priority.

25 Would you not agree with me?

1                   And you're at a meeting and you  
2                   said you would rely on DFAIT to get the  
3                   information. Well, DFAIT has given you the  
4                   information, right?

5                   The information is, Mr. El Maati  
6                   says during his two and a half months of detention  
7                   in Syria, he advised he was beaten and tortured.

8                   Now, in your work -- and with  
9                   electric shocks -- in your work with the RCMP,  
10                  have you had very many occasions of hearing  
11                  allegations that people have said they were given  
12                  electric shocks?

13                  MR. FLEWELLING: No.

14                  MR. WALDMAN: Is that something  
15                  that's common?

16                  MR. FLEWELLING: Not at all.

17                  MR. WALDMAN: So would that not be  
18                  something that would stick out in your mind, sir?

19                  MR. FLEWELLING: It should.

20                  MR. WALDMAN: Right. And yet  
21                  you're telling me you went to a meeting for the  
22                  express purpose of discussing P-192, and you're  
23                  not -- and you can't recall there being any  
24                  mention of Mr. El Maati being tortured during this  
25                  meeting?

1 MR. FLEWELLING: Like I said, I  
2 don't recall the contents of that meeting other  
3 than what I have in my notes.

4 MR. WALDMAN: And yet you've just  
5 told us that, you know, information about electric  
6 shocks isn't something that you would normally  
7 hear.

8 Correct?

9 MR. FLEWELLING: No. I believe  
10 you asked me in my normal routine of my job  
11 whether or not I have heard of it.

12 MR. WALDMAN: Right. And have  
13 you?

14 MR. FLEWELLING: No.

15 MR. WALDMAN: Are you familiar  
16 with any person in Canada ever making an  
17 allegation against any police official that  
18 electric shocks were being used in their  
19 interrogations?

20 MR. FLEWELLING: No. Not in  
21 Canada, no.

22 MR. WALDMAN: No. Okay.

23 And have you had a lot of  
24 occasions to work with countries where electric  
25 shocks are normally used as part of the

1           interrogation process, sir?

2                           MR. FLEWELLING: Throughout the  
3 course of my service, I've been required to deal  
4 with a number of countries that perhaps don't  
5 subscribe to the same values as we do.

6                           MR. WALDMAN: Right. So how many  
7 times --

8                           MR. FLEWELLING: And fortunately  
9 for the pursuit of our investigations, sometimes  
10 we have to deal with various countries that don't  
11 have the same values as us.

12                           That is why in our policy that we  
13 will go and we will go through the experts and  
14 utilize or acquire the necessary advice from our  
15 partner agencies.

16                           MR. WALDMAN: Okay. Well, that  
17 wasn't the question I was asking.

18                           What I was asking was whether, you  
19 know, the information about electric shocks is  
20 something that would stand out in your memory.

21                           MR. FLEWELLING: I would think so.

22                           MR. WALDMAN: Right.

23                           So I'm just trying to understand,  
24 sir.

25                           You were at a meeting on August

1 15th. We know from other witnesses that this  
2 document was discussed. We know that the document  
3 now says that Mr. El Maati was subjected to  
4 electric shocks.

5 I mean, the purpose of the meeting  
6 was obviously to have all the partners together to  
7 determine how they were going to go about  
8 obtaining information given this allegation.

9 Right?

10 There was concerns about  
11 admissibility, I think we were told.

12 Correct? Is that correct?

13 MR. FLEWELLING: All I can tell  
14 you, sir, is that I -- I was obviously there  
15 but --

16 MR. WALDMAN: What were you  
17 doing --

18 MR. FLEWELLING: The content --  
19 the content of that meeting, it just escapes me.  
20 I don't know why.

21 MR. WALDMAN: Were you sleeping  
22 through the meeting, sir?

23 MR. FLEWELLING: No.

24 MR. WALDMAN: So you weren't  
25 sleeping through the meeting.

1 MR. FLEWELLING: No.

2 MR. WALDMAN: The purpose was to  
3 discuss this, and you don't remember any mention  
4 of Mr. El Maati being tortured?

5 MR. FLEWELLING: Over the course  
6 of that period of time, I had been to so many  
7 meetings, they all blend, and there's a number of  
8 them that I don't recall.

9 MR. WALDMAN: Okay. But --

10 MR. FLEWELLING: This was not my  
11 only case.

12 MR. WALDMAN: I understand that.  
13 They all blend together. You may not recall the  
14 meeting, but I was more interested in you  
15 recalling the information.

16 MR. FLEWELLING: I'm sorry,  
17 I don't.

18 MR. WALDMAN: But you would agree  
19 with me that given what we all know and given that  
20 Ms Pastyr-Lupul testified she was there and this  
21 document was there and in the possession of the  
22 RCMP, it was likely that this document was  
23 discussed, even if you don't recall it.

24 MR. FLEWELLING: Sorry. There's a  
25 bit of humming. I didn't catch the middle of that



1 part.

2 MR. WALDMAN: What I'm suggesting  
3 to you, sir, is, that at least you will  
4 acknowledge that the document was discussed during  
5 this meeting, even if you don't remember it, given  
6 that that was the reason why the meeting was  
7 called and other witnesses have testified that the  
8 RCMP had the document.

9 --- Pause

10 MR. FLEWELLING: I take a look at  
11 my notes, and the only thing I can tell you is I  
12 was there. Whether or not that document was  
13 discussed or what transpired, I just don't recall.

14 MR. WALDMAN: Could I ask you to  
15 go to page 39 of your notes?

16 MR. FLEWELLING: Yes.

17 MR. WALDMAN: We start talking  
18 about this meeting, and you note that Myra from  
19 Consular Affairs is there.

20 MR. FLEWELLING: Sorry?

21 MR. WALDMAN: Oh, sorry.

22 Twenty-eight, I'm sorry.

23 It is 28 in the round letters, 39  
24 in the other. Twenty-eight. Sorry about that.

25 Talking about a meeting, it says:

1 "Myra, Consular Affairs,  
2 DFAIT. August 9. DFAIT was  
3 advised that El Maati was in  
4 custody in Egypt. The family  
5 has been advised through his  
6 sister. El Maati parents are  
7 in Indonesia. Uncle in Cairo  
8 has contacted the --"

9 And then it runs off. It would  
10 seem, sir, that there is something missing there.

11 The next page of the notes deals  
12 with August 20. Would you not agree with me that  
13 the note ends in the middle of the page, in the  
14 middle of a sentence?

15 MR. FLEWELLING: Yes.

16 MR. WALDMAN: So that there are  
17 more notes that we don't have?

18 MR. FLEWELLING: Not necessarily,  
19 no.

20 MR. WALDMAN: No? You would stop  
21 your note in the middle of a sentence?

22 MR. FLEWELLING: I would be more  
23 than happy to take a look for you, but it's quite  
24 possible.

25 MR. WALDMAN: You just leave a

1 note like that. What good is a note that's left  
2 hanging in the middle of a sentence?

3 MR. CAVALLUZZO: Just to be fair  
4 to the witness, it was our decision to cut that  
5 off at that point in time. We will check to see  
6 if there's anything relevant. It is not the  
7 witness' doing.

8 MR. WALDMAN: Okay.

9 I just want to know whether you  
10 think it would have been important for you to be  
11 aware of the allegation that Mr. El Maati was  
12 tortured in light of your function at CID.

13 MR. FLEWELLING: Would it be --  
14 sorry?

15 MR. WALDMAN: Important to you to  
16 be aware of these allegations. I think you told  
17 us, sir, that one of the functions of CID was  
18 to -- yes, CID, where you were working -- was to  
19 vet requests that might be made by A-OCANADA with  
20 respect to foreign interviews; correct?

21 In other words, if Mr. Cabana,  
22 which he apparently did a few days later, came to  
23 you and said We want to go and interview  
24 Mr. Almalki, who we know at that time was sitting  
25 in detention in Syria in August of 2002, that that

1 request would have to go through you; correct?

2 MR. FLEWELLING: Yes.

3 MR. WALDMAN: And you would have  
4 input in the decision that would be made as to  
5 whether or not a Canadian citizen sitting in Syria  
6 would be interviewed by RCMP officials?

7 MR. FLEWELLING: No, I would not.  
8 Not myself, no.

9 MR. WALDMAN: You wouldn't.

10 MR. FLEWELLING: No. That  
11 wouldn't be my decision.

12 MR. WALDMAN: No, it wouldn't be  
13 your decision. But you would prepare a briefing  
14 note, I would assume.

15 MR. FLEWELLING: Not necessarily.  
16 What I would do is I would prepare the necessary  
17 documentation, and I would take it to the various  
18 individuals and get the authority, if need be.

19 And if it was required or if it  
20 was asked, then a briefing note would be done.

21 MR. WALDMAN: Right. I would  
22 assume, in a delicate matter involving a Canadian  
23 citizen who was detained in a regime that you  
24 acknowledged doesn't have the same system as  
25 ours -- that's as far as you've gone, and we will

1 explore that perhaps a bit after lunch, what you  
2 knew about Syria -- it would be probably necessary  
3 to very carefully weigh whether or not it was in  
4 the interests of the RCMP to send people to  
5 interview someone in such a situation.

6 It's not the same as sending  
7 someone to the U.S. or somewhere like that. Would  
8 you agree with me?

9 It's a much more complex decision;  
10 right?

11 MR. FLEWELLING: Definitely.

12 MR. WALDMAN: So it's likely that  
13 at some point you would be required to at least  
14 have some input into the final decision that we  
15 know that would be made by other people.

16 Is that fair?

17 MR. FLEWELLING: I wouldn't think  
18 that that type of decision would be made  
19 unilaterally; that there would be a number of  
20 individuals that would have input.

21 MR. WALDMAN: So in the context of  
22 that type of decision-making process, where  
23 Mr. Cabana is coming and saying, "I want to go and  
24 interview Abdullah Almaliki in Syria" -- although  
25 he didn't make a formal request at that time,

1           there were suggestions that this was something  
2           they would want to do -- don't you think it would  
3           have been important for you to have awareness of  
4           the allegations of Mr. El Maati that he had been  
5           tortured while he was in Syria, and that would  
6           have been one important fact that ought to have  
7           been factored into your decision-making role, sir?

8                         MR. FLEWELLING:  If we were going  
9           to be making a decision with respect to that, I am  
10          quite sure that that would have been on the table  
11          and it definitely would have been discussed.

12                        MR. WALDMAN:  Right.  So it was an  
13          important fact that you ought to have known in  
14          terms of your role at CID, when Mr. Cabana came to  
15          you and said, "I would like to go to Syria and  
16          share information with them."

17                        MR. FLEWELLING:  Obviously that  
18          would be something that would have to be  
19          discussed, definitely.  I mean, any time anybody  
20          is going abroad, they have to put together an  
21          operation plan, and with that there are various  
22          parameters by which we have to follow.

23                        MR. WALDMAN:  Right.

24                        MR. FLEWELLING:  There are  
25          criteria.

1 MR. WALDMAN: Right. And  
2 obviously, therefore, sir, would you not agree  
3 with me that in light of that fact, the  
4 allegations that were made available to the RCMP  
5 in the briefing note and were discussed on August  
6 15th would have been important information for you  
7 to have; correct?

8 Mr. El Maati saying he was subject  
9 to torture.

10 So how is it now, sir, that in  
11 light of all of this, that it would be important  
12 for you to know -- you were at a meeting where the  
13 briefing note was discussed, you had been given  
14 information days before that Mr. El Maati alleged  
15 that he was treated badly. How is it, sir, that  
16 in light of all of that, you still maintain that  
17 you can't remember Mr. El Maati's allegations of  
18 torture?

19 I find it really hard to believe.

20 It was important information that  
21 was given to you on more than one occasion over a  
22 short period of days. How could it be you don't  
23 remember it now if you were pretending to properly  
24 do your work, sir?

25 MR. FLEWELLING: I don't know what

1 I can say to you.

2 MR. WALDMAN: Mr. Commissioner,  
3 it's 12:30, and I've finished this area. We can  
4 move on to another.

5 THE COMMISSIONER: We will rise  
6 until 1:30.

7 THE REGISTRAR: Please stand.

8 --- Upon recessing at 12:28 p.m. /

9 Suspension à 12 h 28

10 --- Upon resuming at 1:33 p.m. /

11 Reprise à 13 h 33

12 THE REGISTRAR: Please be seated.  
13 Veuillez vous asseoir.

14 THE COMMISSIONER: Mr. Waldman?

15 MR. WALDMAN: I am just going to  
16 pick up on a few points.

17 Sergeant Flewelling, we heard in  
18 testimony from Superintendent Cabana that  
19 A-OCANADA was an open book investigation, that  
20 caveats were down, and that this was his  
21 instruction from his superiors.

22 There is reference in the  
23 transcript at page 8239, but I won't take you to  
24 it.

25 Was the term "caveats are down"



1 one you had heard before 9/11?

2 MR. FLEWELLING: No.

3 MR. WALDMAN: And we know from  
4 other evidence that Assistant Commissioner Proulx  
5 met with both domestic and U.S. law enforcement  
6 partners after 9/11.

7 Were you at that meeting with  
8 Inspector Proulx -- Assistant Commissioner Proulx  
9 when he talked to the U.S. domestic law  
10 enforcement partners about information sharing?

11 MR. FLEWELLING: Sorry, when was  
12 that again?

13 MR. WALDMAN: It was sometime  
14 after 9/11, shortly after 9/11. I think in  
15 September.

16 MR. FLEWELLING: And the question  
17 was?

18 MR. WALDMAN: Were you at the  
19 meeting when Assistant Commissioner Proulx was  
20 there with the foreign and domestic law  
21 enforcement partners talking about  
22 information-sharing?

23 Do you recall being at such a  
24 meeting?

25 MR. FLEWELLING: Not to my

1 knowledge, no.

2 MR. WALDMAN: At any time after  
3 that meeting was it ever communicated to you by  
4 the Assistant Commissioner or anyone else that  
5 caveats are down and that RCMP policies are not to  
6 be respected with respect to U.S.  
7 information-sharing?

8 MR. FLEWELLING: I personally have  
9 not heard of the term "the caveats are down".

10 MR. WALDMAN: Would it not be fair  
11 to say, sir, given your role at CID, that if there  
12 was going to be disclosure without caveats, that  
13 you should have known about it?

14 MR. FLEWELLING: I would hope so.

15 MR. WALDMAN: And who would have  
16 the authority to decide to share information  
17 without caveats? Would that have to come from CID  
18 in a national security investigation?

19 MR. FLEWELLING: I am assuming  
20 that that would be discussed and arranged at, I  
21 would suggest, much higher levels than at mine.  
22 So it would definitely have to be either at -- I'm  
23 assuming here that the Assistant Commissioner  
24 would have that authority or above.

25 MR. WALDMAN: At any time while

1           you were the project coordinator for A-OCANADA did  
2           Inspector Cabana ever call you up and say,  
3           "Listen, you're wrong about the caveats. The  
4           superiors have told us that caveats are down."

5                           Did you ever have such a  
6           conversation with Inspector Cabana?

7                           MR. FLEWELLING: Not that I can  
8           recall.

9                           MR. WALDMAN: I just want to  
10          understand about caveats because it's a big word.

11                           Am I not correct that it's just  
12          putting a stamp or two stamps on a document, like  
13          it's just a few sentences that are added to a  
14          document?

15                           MR. FLEWELLING: There are  
16          standard wordings that you would find in the  
17          policy that you would either have to retype or  
18          there would be a stamp, I'm assuming, yes.

19                           MR. WALDMAN: Or you could, I  
20          guess, format that into your document that you are  
21          sending; right?

22                           MR. FLEWELLING: I mean, your  
23          computer or whatever your working copy, paste it  
24          on.

25                           MR. WALDMAN: Right. So it's not

1 a terribly difficult and onerous task to put a  
2 caveat on, is it?

3 MR. FLEWELLING: No.

4 MR. WALDMAN: It wouldn't take a  
5 lot of time and add extra time to someone's work  
6 to add the caveat? Cutting and pasting could be  
7 done in a few seconds; correct?

8 MR. FLEWELLING: Correct.

9 MR. WALDMAN: So putting caveats  
10 on documents wouldn't slow down the flow of  
11 information. Would you agree with me?

12 MR. FLEWELLING: It should not.

13 MR. WALDMAN: I would ask you to  
14 go to P-221, the Garvie transcript, page 3.

15 Just to save time, I would ask you  
16 just to read between lines 20 and 33.

17 MR. FLEWELLING: Sorry, that was  
18 what again?

19 MR. WALDMAN: On page 3, if you  
20 could read, starting at about line 18.

21 MR. FLEWELLING: That's page 3?

22 MR. WALDMAN: Page 3 of 11, yes,  
23 and going to about 36.

24 MR. FLEWELLING: So it would be  
25 line 18?

1 MR. WALDMAN: The question from  
2 Mr. Garvie and then...

3 MR. FLEWELLING: Is that, "Now I'm  
4 showing you --"

5 MR. WALDMAN: Yes, "I'm showing  
6 you the documents."

7 MR. FLEWELLING: Okay.

8 "Now, I'm showing you the  
9 four attach book into --"

10 MR. WALDMAN: There's an outline  
11 of a number of questions. This is the questions  
12 that we referred to that were sent down by  
13 A-OCANADA. I think that is what he is referring  
14 to here.

15 MR. FLEWELLING: Okay.

16 MR. WALDMAN: There are no caveats  
17 and he is asking you your opinion about the  
18 caveats and whether they should be on.

19 MR. FLEWELLING: Sorry, I lost you  
20 there for a second.

21 MR. WALDMAN: Well, in the  
22 transcript Superintendent Garvie was asking you  
23 about the four questions, and he was noting that  
24 there was no caveats, and then he is asking you  
25 whether caveats should be put on.

1 I just want you to review your  
2 answer to that.

3 MR. FLEWELLING: That's correct.

4 MR. WALDMAN: So, in other words,  
5 you would have expected there to have been caveats  
6 on the questions that were sent down to the United  
7 States.

8 MR. FLEWELLING: The questions  
9 that were sent down to the United States?

10 MR. WALDMAN: Right. That is what  
11 he was asking about, sir, the four pages of  
12 questions.

13 You this morning, I think,  
14 suggested to Mr. Cavalluzzo that it might not have  
15 been necessary to put caveats on that?

16 MR. FLEWELLING: Yes, that's  
17 correct.

18 MR. WALDMAN: In your evidence to  
19 Mr. Garvie, you said the opposite, sir.

20 MR. FLEWELLING: In reviewing, I  
21 mean, if you have questions that are being sent  
22 down and you have them caveated, then it wouldn't  
23 make sense to caveat questions that you want to  
24 have put to somebody.

25 What I would suggest is any

1 background information or any information that was  
2 third party or subject to third party rule should  
3 have those caveats.

4 MR. WALDMAN: Right. Now,  
5 obviously we don't know, because all we have is a  
6 redacted document. So we don't know whether there  
7 was any other information there.

8 So that may be what you are  
9 referring to.

10 MR. FLEWELLING: I will agree with  
11 you, initially I stated that I thought that the  
12 caveats should be on, and then I think throughout  
13 the course of discussions, it just doesn't make  
14 sense. And on reflection, you're right. I mean,  
15 it doesn't make sense to put a caveat on a  
16 question you want somebody to ask.

17 MR. WALDMAN: Right, except that  
18 undoubtedly with the questions I would have  
19 expected there was other information attached to  
20 it that would have been subject to the caveats;  
21 correct?

22 MR. FLEWELLING: I think if there  
23 is contextual information or background  
24 information, that type of thing, then I think if  
25 they draw attention to that and say that it's

1 subject to third party rule or subject to caveats,  
2 then to me that makes sense.

3 MR. WALDMAN: I want to move on to  
4 another area.

5 Would it be fair to say, sir, that  
6 in the period between September 26th and October  
7 8th, you were not the only person being contacted  
8 by U.S. authorities about Mr. Arar's detention?  
9 There were several points of contact; right?

10 MR. FLEWELLING: In terms of --  
11 sorry?

12 MR. WALDMAN: Mr. Arar's  
13 detention.

14 MR. FLEWELLING: There would have  
15 been myself and those over at Project A-OCANADA.

16 MR. WALDMAN: Right. So you  
17 weren't the only person?

18 MR. FLEWELLING: No.

19 MR. WALDMAN: And given that there  
20 was direct communication between A-OCANADA and the  
21 American authorities, you don't know, in fact,  
22 what type of communication was going on.

23 Is that fair to say?

24 MR. FLEWELLING: Other than that  
25 information that was relayed to me.



1 MR. WALDMAN: Right. So on page 7  
2 of the Garvie transcript, the same document, just  
3 to confirm your evidence, on line 25 you stated:

4 "It was through that time  
5 line that I also learned that  
6 they had further --"

7 I can't read the word.

8 "...contacts with US  
9 authorities and with DFAIT  
10 that I wasn't privy to..."

11 So it's fair to say that there was  
12 direct communication going on between A-OCANADA  
13 and the U.S. authorities that you weren't aware  
14 of?

15 MR. FLEWELLING: True.

16 MR. WALDMAN: And one example  
17 would have been that an A-OCANADA investigator  
18 received a call advising them that Mr. Arar was  
19 arriving before he arrived and asking for the  
20 questions.

21 You weren't privy to that and  
22 didn't know that until October 2nd; correct?

23 MR. FLEWELLING: Or sometime  
24 thereafter, yes.

25 MR. WALDMAN: Right. Well, I

1 think we established this morning that it was at  
2 the end of the day on October 2nd, I think.

3 So would you not agree with me,  
4 sir, that you, not knowing all of the nature of  
5 all of the communications that all the people had  
6 with the U.S. authorities, that it is certainly  
7 possible that one of the persons who was a point  
8 of contact might have acquiesced directly or  
9 indirectly with the U.S. authorities about  
10 Mr. Arar being sent to Syria?

11 You have no way of knowing that  
12 that is not the case?

13 MR. FLEWELLING: I have no  
14 knowledge that that took place.

15 MR. WALDMAN: But you can't say  
16 that it didn't because you don't have information  
17 with respect to all the communications; correct?

18 MR. FLEWELLING: That's fair.

19 MR. WALDMAN: You told us that --  
20 you are now aware that Mr. Arar was deported on  
21 September 26; correct -- sorry, detained on  
22 September 26, 2002.

23 MR. FLEWELLING: Sorry, what date  
24 was that again?

25 MR. WALDMAN: Twenty-sixth of

1 September in the U.S.?

2 MR. FLEWELLING: That he was...?

3 MR. WALDMAN: Detained by the U.S.  
4 authorities on that day.

5 MR. FLEWELLING: No, I didn't know  
6 on the 26th.

7 MR. WALDMAN: But you are now  
8 aware of that fact; right?

9 MR. FLEWELLING: Yes.

10 MR. WALDMAN: And you found out  
11 later on, first from Inspector Roy on the 2nd, I  
12 think you told us?

13 MR. FLEWELLING: Yes.

14 MR. WALDMAN: Okay. But A-OCANADA  
15 investigators found out before he is landed.

16 This morning, P-222 is a situation  
17 report. It is dated --

18 MR. FLEWELLING: I'm sorry, I just  
19 find it very difficult to hear you.

20 MR. WALDMAN: I'm sorry. P-222 is  
21 a situation report.

22 MR. FLEWELLING: Okay.

23 MR. WALDMAN: It's dated  
24 2002/09/27?

25 MR. FLEWELLING: Yes.

1 MR. WALDMAN: The priority is  
2 routine.

3 Could you explain to me how a  
4 decision is made as to what priority a document  
5 should get? Is there another priority besides  
6 routine?

7 MR. FLEWELLING: There would be  
8 routine, urgent.

9 MR. WALDMAN: Could there be very  
10 urgent, too?

11 MR. FLEWELLING: I suppose if the  
12 individual felt that it was something that they  
13 needed to qualify it even further, I suppose they  
14 could.

15 MR. WALDMAN: So this document was  
16 classified as routine, yet it is a document  
17 advising you of the detention of someone who is in  
18 some way involved in the A-OCANADA investigation  
19 of an alleged al-Qaeda sleeper cell in New York.

20 Do you think this was just a  
21 routine SITREP, or do you think maybe it might  
22 have been better if it was marked "urgent" too?

23 MR. FLEWELLING: I don't know what  
24 was in the mind of the individual who wrote this.

25 MR. WALDMAN: But I'm asking your

1 opinion.

2 MR. FLEWELLING: I think that it  
3 would have been something that we should have been  
4 made aware of right away.

5 MR. WALDMAN: Right. So perhaps  
6 marking it "routine" was possibly not a good  
7 choice, in your view?

8 I mean, the fact is, sir, you told  
9 us that you didn't read it until at least sometime  
10 after October 2nd; right?

11 MR. FLEWELLING: Yes.

12 MR. WALDMAN: Can you provide us  
13 with any -- I mean, my understanding was that  
14 these SITREPs were supposedly done almost on a  
15 daily basis, if not a daily basis. Is that  
16 correct?

17 MR. FLEWELLING: Yes.

18 MR. WALDMAN: To keep you informed  
19 of what was going on?

20 MR. FLEWELLING: Correct.

21 MR. WALDMAN: What was the purpose  
22 of giving you a daily SITREP if it was sent to you  
23 on September 27th and you didn't read it until  
24 sometime after October 2nd?

25 MR. FLEWELLING: The process that

1 the SITREPs went through would be that it would be  
2 written by whoever the writer was that was tasked.  
3 I'm assuming here that it would be approved by one  
4 of the project team leaders and then forwarded to  
5 their CROPS office within "A" Division. Then once  
6 read and approved, it would be forwarded to  
7 headquarters.

8 MR. WALDMAN: All right. Let me  
9 make sure I understand.

10 You are saying that even though  
11 this document was dated September 27th, it may not  
12 have arrived in your office until several days  
13 later?

14 MR. FLEWELLING: I don't know if  
15 it would be fair to say several days later, but  
16 there is the potential for delay, depending on,  
17 again, if all the players are in place.

18 MR. WALDMAN: All right.

19 Could we just get September up for  
20 a second so we could try to figure out whether the  
21 weekend intervened?

22 THE COMMISSIONER: The 27th was a  
23 Friday.

24 MR. WALDMAN: So the 27th would  
25 have been the Friday, and the 30th would have been

1 the Monday. If this was prepared on the Friday,  
2 you didn't see it until the Wednesday, the 2nd, at  
3 the earliest.

4 Is that correct?

5 MR. FLEWELLING: Yes.

6 MR. WALDMAN: So given the nature  
7 of what was going on, do you think that you ought  
8 to have seen this more quickly, and do you have  
9 any explanation as to why -- I guess I'm asking  
10 you: Was this sitting in CROPS at "A" Division  
11 between the 27th and the 2nd, or was it sitting in  
12 an in-box in your office?

13 MR. FLEWELLING: It could very  
14 well have been.

15 MR. WALDMAN: It could have  
16 been --

17 MR. FLEWELLING: By the time it  
18 was approved over at "A" Division, came over to  
19 our office, it could have gone through the various  
20 levels within our office. I know at that time,  
21 sir, that I was looking after a couple of very  
22 important issues or projects at that time as well.

23 So it's quite conceivable that  
24 that information or that piece of paper sat on my  
25 desk for a day before me getting to it.

1                   MR. WALDMAN: Right. So the delay  
2 between the 27th, the Friday and the Wednesday,  
3 can be explained either by delays in getting it  
4 from "A" Division over to you -- that's probably  
5 part of it -- and possibly on the other hand it  
6 could have been sitting in your in-box for a day  
7 or two.

8                   MR. FLEWELLING: It could have  
9 been a combination, or a whole host of all of  
10 them.

11                  MR. WALDMAN: Well, how are you  
12 going to be able to keep on top of a very  
13 important national security investigation if it's  
14 going to take you four or five days to review a  
15 daily SITREP which was dealing with something on  
16 September 26?

17                   Let's look at this. September 26  
18 was a Wednesday. You didn't read it -- you didn't  
19 see it until the following Wednesday at the  
20 earliest. A whole week had gone by. So what's  
21 the point of getting daily SITREPs if you don't  
22 see them until a day later? It would have made  
23 more sense to give you weekly ones.

24                   I don't understand why one would  
25 ask for daily reports if it takes a week for you



1 to see them.

2 MR. FLEWELLING: I don't have an  
3 answer for you.

4 --- Pause

5 MR. WALDMAN: I just want to cover  
6 another area of testimony that you gave us this  
7 morning.

8 I am an immigration lawyer, so I  
9 was a bit intrigued by some of your answers with  
10 respect to -- and I just want to make sure that  
11 you and I are on the same page here.

12 If I recall your testimony  
13 correctly, you said that on October 4th, you went  
14 up to the fourth floor to speak to someone in the  
15 immigration section of the RCMP because you had  
16 been told that Mr. Arar was going to be removed as  
17 opposed to deported, and you wanted to understand  
18 the difference.

19 Did I understand your testimony  
20 correctly?

21 MR. FLEWELLING: Yes.

22 MR. WALDMAN: So in your mind  
23 there was a distinction between removal and  
24 deportation; correct?

25 MR. FLEWELLING: As I understood

1           it, yes.

2                           MR. WALDMAN:  And what did you  
3           understand the distinction to be?

4                           MR. FLEWELLING:  Removal was that  
5           they would actually place the individual, or an  
6           individual, on an aircraft and then that subject  
7           would be returned to the last port of call.

8                           MR. WALDMAN:  Right.  So removal  
9           is right at the airport, right there, they are put  
10          back on a plane?

11                          MR. FLEWELLING:  Correct.

12                          MR. WALDMAN:  And that's what you  
13          understand --

14                          MR. FLEWELLING:  That was my  
15          impression, or that is what I was led to believe.

16                          MR. WALDMAN:  Right.  And  
17          deportation is different?

18                          MR. FLEWELLING:  Well, deportation  
19          would mean that you would be going through a  
20          process.  You would be ordered, that there would  
21          be an actual physical escort and that person  
22          would, first of all, have the opportunity to  
23          decide where to go.  That was my understanding.  
24          That the person would be physically escorted to a  
25          final destination, so he would be accompanied by

1 somebody.

2 MR. WALDMAN: So in your mind  
3 removal was immediate return back to the --

4 MR. FLEWELLING: The last port of  
5 call.

6 MR. WALDMAN: Last port. And you  
7 went upstairs, and you spoke to someone upstairs  
8 and basically they confirmed that information --

9 MR. FLEWELLING: Well, I didn't  
10 know that at the time. It was after this exchange  
11 that I learned that that's what -- or that's what  
12 I perceived that removal to be.

13 MR. WALDMAN: Okay. So before you  
14 went upstairs, you thought there might be a  
15 difference, and you weren't sure what the  
16 difference is.

17 MR. FLEWELLING: Correct.

18 MR. WALDMAN: So removal is going  
19 back to last port of call?

20 MR. FLEWELLING: Yes.

21 MR. WALDMAN: Which in Mr. Arar's  
22 case was Switzerland; right?

23 MR. FLEWELLING: Yes.

24 MR. WALDMAN: And deportation is  
25 something else. There is a process and, you know,

1 other countries come into play?

2 MR. FLEWELLING: Yes.

3 MR. WALDMAN: You receive a phone  
4 call from the American official on Saturday,  
5 October 5th at six o'clock. Is that right?

6 MR. FLEWELLING: That's October  
7 5th at approximately 6:10.

8 MR. WALDMAN: And you would agree  
9 with me that it was extremely unusual for an  
10 American official to call you on a Saturday, or is  
11 that something --

12 MR. FLEWELLING: No, it -- I  
13 wouldn't say it was the norm, but we called one  
14 another quite frequently throughout the course of  
15 the last year in order to deal with various events  
16 that occurred or things that had to be arranged.

17 MR. WALDMAN: So it wasn't the  
18 norm but it was unusual on a Saturday?

19 MR. FLEWELLING: Well, I mean, I  
20 know that I have physically called them on  
21 numerous occasions on weekends and vice versa.

22 MR. WALDMAN: Okay.

23 MR. FLEWELLING: If that makes  
24 sense.

25 MR. WALDMAN: Right. I guess it

1 makes sense.

2 But you would agree with me that  
3 it is -- it is also indicative, I think you said,  
4 that you had a fairly close working relationship  
5 with this individual for her to feel comfortable  
6 calling you on a Saturday, and vice versa.

7 Is that fair to say?

8 MR. FLEWELLING: Yes.

9 MR. WALDMAN: If we could ask you  
10 to go to your notes, page 39, P-211, I will do my  
11 best at trying to go through this quickly.

12 "We received a call from a  
13 U.S. official in relation to  
14 Mr. Arar. The official --  
15 [somebody] in New York was  
16 unable to reach A-OCANADA."

17 That part I'm not concerned about.

18 "The official feared that  
19 they did not have enough  
20 information to make the  
21 charges stick. Therefore,  
22 they would be looking at  
23 deporting Mr. Arar. Where  
24 Arar has dual citizenship and  
25 he asked to be deported to

1                   Canada, the official wanted  
2                   to know our interest in Arar.  
3                   Can we refuse Arar's entry?"

4                   So I note, sir, will you agree  
5                   with me, that now all of a sudden we are not  
6                   talking any more about removal; we are talking  
7                   about deportation.

8                   Is that correct?

9                   MR. FLEWELLING: Yes.

10                  MR. WALDMAN: So you understood  
11                  from that, given that the day before you had a  
12                  conversation with these immigration officials,  
13                  that this was now a different procedure; fair?

14                  MR. FLEWELLING: I always had in  
15                  the back of my mind that he had a hearing or a  
16                  legal process on October the 9th.

17                  MR. WALDMAN: Right, okay. You  
18                  understood that. We understand that you were told  
19                  that he had a process on October the 9th.

20                  But I just want to be clear on one  
21                  of the implications of that. The removal was  
22                  shipping him back on a plane right away to  
23                  Switzerland.

24                  So is it fair to say that once we  
25                  are into a deportation process, as far as you

1           understood, Switzerland wasn't on the table any  
2           more, correct, because it was now a deportation  
3           process where other countries would come into  
4           play?

5                           MR. FLEWELLING: I still believed  
6           Switzerland was still on the table.

7                           MR. WALDMAN: So then what would  
8           be the difference between a removal -- you told us  
9           your understanding about the removal process, you  
10          just said, was put him back on the plane right  
11          away back to Switzerland.

12                           So if that wasn't happening any  
13          more, why would Switzerland still be on the table?  
14          It's not consistent with what you just told us a  
15          minute ago, I would think.

16                           MR. FLEWELLING: In my mind I  
17          still had the impression that it was either going  
18          to be Switzerland, Canada, which would ultimately  
19          be the end.

20                           MR. WALDMAN: But you also  
21          acknowledged to Mr. Cavalluzzo this morning that  
22          Syria clearly was a hypothetical possibility at  
23          this time because the dual nationality was raised?

24                           MR. FLEWELLING: No. Quite  
25          obviously I didn't -- I knew that he was a dual

1 national, but I never thought that Syria was in  
2 play.

3 I think I mentioned in the  
4 conversation that I had with the American  
5 official -- I'm losing my train of thought here.  
6 --- Pause

7 MR. FLEWELLING: Sorry. I just  
8 lost it there for a second.

9 Do you recall what your question  
10 was? Sorry.

11 MR. WALDMAN: I will move on to  
12 another area. We were talking about whether Syria  
13 was in play. That was my question and you were  
14 giving an answer --

15 MR. FLEWELLING: I just --

16 MR. WALDMAN: You didn't see Syria  
17 as being an issue?

18 MR. FLEWELLING: I never saw Syria  
19 as being an issue, and I know that Mr. Arar had  
20 asked to go to Canada. So therefore by saying  
21 that we didn't have any reason to charge him, (a),  
22 and (b), that they couldn't refuse him, I just  
23 thought that it solidified his return home.

24 MR. WALDMAN: I'm going to suggest  
25 one thing to you, sir. Wasn't it rather strange



1           that -- I mean, dealing with what was really an  
2           immigration question, whether Canada could refuse  
3           him entry, they would call you as opposed to  
4           trying to check with someone at the Canadian  
5           Border Service? Wouldn't that have been the more  
6           appropriate question for such a question?

7                           This wasn't a police matter at  
8           this point, refusal of entry. And surely the U.S.  
9           embassy must have, through its INS contacts,  
10          contacts in the CBSA as well, wouldn't you think?

11                          MR. FLEWELLING: I was of the  
12          impression that it was more for investigators from  
13          the American agency who were doing a final  
14          checklist, so to speak, and preparing  
15          themselves --

16                          MR. WALDMAN: Did you ever ask --

17                          MR. FLEWELLING: -- and preparing  
18          themselves for a hearing. Any person or any  
19          investigator that is doing an investigation, when  
20          faced with a deadline, will often phone and seek  
21          those types of -- those pieces of information.

22                          MR. WALDMAN: Did you ask this  
23          person, this U.S. official, why she was asking  
24          these questions about refusal of entry to Canada?

25                          MR. FLEWELLING: Actually, he.

1 MR. WALDMAN: I thought it was a  
2 she. I'm sorry; he. Why the questions were  
3 asked?

4 MR. FLEWELLING: No. I thought it  
5 was being asked on behalf of investigators.

6 MR. WALDMAN: I will take you back  
7 to your notes.

8 You said:

9 "I stated that where he has  
10 Canadian citizenship and  
11 there wasn't enough evidence  
12 to support charges in the  
13 U.S. let alone Canada likely  
14 because we could not refuse  
15 him entry."

16 I'm a bit curious about this. You  
17 are sort of basing your refusal of entry on two  
18 premises: one, he has Canadian citizenship; and,  
19 two, that there is not enough evidence to support  
20 charges in Canada or the U.S.

21 Why would the fact that there was  
22 not enough evidence to support charges in Canada  
23 or the U.S. be relevant to the issue of refusal of  
24 entry to Mr. Arar?

25 MR. FLEWELLING: Sorry, go again.

1 MR. WALDMAN: Your answer to the  
2 question, sir, was:

3 "I stated that where he has  
4 Canadian citizenship and  
5 there wasn't enough evidence  
6 to support charges --"

7 So "and".

8 "... we couldn't refuse him  
9 entry."

10 Now, I understand the Canadian  
11 citizenship. If he is Canadian, under the Charter  
12 he has a right. But what I don't understand is  
13 why you would have said:

14 "Because we don't have enough  
15 evidence to support charges  
16 we can't refuse him entry."

17 What is the connection between the  
18 charges and the refusal of entry?

19 MR. FLEWELLING: Really nothing.

20 MR. WALDMAN: I would agree with  
21 you.

22 I would suggest to you that the  
23 charges was relevant to whether or not Canada  
24 could hold Mr. Arar. Isn't that true?

25 That is what they were asking.

1           Isn't that not correct?

2                           MR. FLEWELLING: I never thought  
3 of it that way.

4                           MR. WALDMAN: But you were the one  
5 who gave the answer. I'm just asking why you gave  
6 an answer --

7                           MR. FLEWELLING: The question was,  
8 do we have any additional information, or do we  
9 have any information to support charges?

10                           I mean, the answer is, "No. We  
11 don't have any information to support charges."

12                           I'm looking at it from their point  
13 of view that they want to support charges within  
14 their system.

15                           MR. WALDMAN: All I'm saying is  
16 that in your notes you clearly made a connection  
17 between not having enough evidence and supporting  
18 charges, and I'm just wondering -- and refusal of  
19 entry, rather. And I'm just wondering what that  
20 connection is.

21                           You would agree with me there is  
22 none, right?

23                           MR. FLEWELLING: There is none.

24                           MR. WALDMAN: So it's not relevant  
25 to whether he could be denied entry or not,

1           whether there's evidence for charges?

2                           MR. FLEWELLING:  That has nothing  
3           to do with it.

4                           MR. WALDMAN:  Right.  I would  
5           agree with you.  But it is relevant to whether the  
6           Americans would feel safe if Mr. Arar was on the  
7           street or not.  If you could charge him, he would  
8           be detained, presumably as a suspected terrorist.

9                           Right?

10                          MR. FLEWELLING:  In hindsight,  
11           probably.

12                          MR. WALDMAN:  Yes.

13                          Now, I'd like to go on to  
14           something else that's in this note.  It says:

15                                   "The U.S. feared that they  
16                                   did not have enough  
17                                   information to make charges."

18                          Now, these are your words, not  
19           mine.

20                          Right?

21                          MR. FLEWELLING:  True.

22                          MR. WALDMAN:  So I'm quite  
23           intrigued by the use of the word "fear."  So would  
24           you agree with me that it was your assessment of  
25           the state of mind of the Americans that they were

1 fearful they couldn't address Mr. Arar. Those  
2 were the words that you used.

3 Correct?

4 MR. FLEWELLING: Correct.

5 MR. WALDMAN: Why would they be  
6 afraid of not being able to charge Mr. Arar?

7 Presumably if they didn't have  
8 enough evidence to charge him, that means that  
9 they didn't have a case and that he should be let  
10 free.

11 Isn't that the way the criminal  
12 justice system works, normally?

13 MR. FLEWELLING: Yes.

14 MR. WALDMAN: Like, when you're  
15 involved in a criminal investigation of a fraud,  
16 you might be upset -- you know, you'd like to get  
17 the person, but it's not very often -- or usual to  
18 be afraid that you're going to be.

19 Isn't that suggesting something  
20 else in the state of mind of the Americans --

21 MR. FLEWELLING: I think it's a  
22 play on words. I didn't infer anything --

23 MR. WALDMAN: Well --

24 MR. FLEWELLING: I didn't infer  
25 anything from it.

1 MR. WALDMAN: Well, I suppose  
2 these must have been the words that were used by  
3 the official, or that this is the impression that  
4 was given to you.

5 Correct?

6 MR. FLEWELLING: Yes, correct.

7 MR. WALDMAN: So I would suggest  
8 to you perhaps, sir, that the Americans were  
9 concerned about Mr. Arar and were afraid they  
10 couldn't charge him because they were concerned  
11 that if they couldn't charge him and he came back  
12 to Canada, that would be problematic for them?

13 MR. FLEWELLING: Again, I -- I  
14 didn't -- I didn't get that from the conversation.

15 MR. WALDMAN: But the word  
16 "feared" was clearly used?

17 MR. FLEWELLING: Or I wouldn't  
18 have used it.

19 MR. WALDMAN: Right.

20 So the American official was  
21 afraid that he couldn't charge Mr. Arar. And you  
22 didn't draw anything from that --

23 MR. FLEWELLING: That -- no.

24 MR. WALDMAN: Now, in retrospect  
25 don't you think it might have been wise for you to

1 draw something from that? Why would they use the  
2 word fear if they weren't concerned?

3 MR. FLEWELLING: I mean,  
4 hindsight, you can look at it from whatever angle  
5 you wish.

6 MR. WALDMAN: Right, and  
7 hindsight --

8 MR. FLEWELLING: But at the time,  
9 sir, I'm telling you, if it weren't for the fact  
10 that there wasn't that legal process on the 9th of  
11 October --

12 MR. WALDMAN: We know that --

13 MR. FLEWELLING: That played very  
14 heavily in my mind.

15 MR. WALDMAN: We know that that  
16 legal process got put up to the 7th -- you didn't  
17 know.

18 MR. FLEWELLING: Well, sir, I --  
19 unfortunately, I had no idea that that was even  
20 part of their legal process.

21 MR. WALDMAN: Now, were you aware  
22 of the concept -- Mr. Cavalluzzo asked you some  
23 questions. I'm just going to pick up one or two  
24 points here.

25 Were you aware of the idea of



1 rendition at this point? Had you heard about  
2 rendition?

3 MR. FLEWELLING: Like I said just  
4 a minute ago, I never knew that that was even in  
5 their system, no.

6 MR. WALDMAN: You had no knowledge  
7 of --

8 MR. FLEWELLING: The term? No.

9 MR. WALDMAN: No.  
10 But you were aware of what was  
11 going on in Guantanamo Bay, I assume?

12 MR. FLEWELLING: Sorry?

13 MR. WALDMAN: You were aware that  
14 there was a place called Guantanamo Bay, I assume?

15 MR. FLEWELLING: Oh, yes.

16 MR. WALDMAN: Yes.

17 And you were aware that there were  
18 a large number of people in Guantanamo, suspected  
19 terrorists, who were there without charges and  
20 without due process?

21 MR. FLEWELLING: What happened in  
22 the States, in my opinion, was a case-precedenting  
23 situation.

24 I had no experience or anything to  
25 draw off of with respect to them being able to do

1           that. Unfortunately, I did not have that  
2           experience to draw off of.

3                       MR. WALDMAN: I understand that.  
4           But I'm not asking -- I'm not asking what you  
5           think is right or wrong, I'm just asking whether  
6           you were aware --

7                       MR. FLEWELLING: I'm trying to  
8           give you an explanation as to where I was at the  
9           time.

10                      MR. WALDMAN: Right, okay.

11                      But you were aware that there was  
12           Guantanamo Bay and you were aware that there were  
13           people being detained there, I guess?

14                      MR. FLEWELLING: Yes.

15                      MR. WALDMAN: And that the people  
16           there were being held, you know, without any due  
17           process, without being brought to trial?

18                      MR. FLEWELLING: I believed that  
19           that was under their military law.

20                      MR. WALDMAN: Right. They were  
21           allegedly --

22                      MR. FLEWELLING: Something,  
23           non-combatants or something.

24                      MR. WALDMAN: Whatever the word.  
25           I can't remember the legal term that they tried to

1 use.

2 "Unlawful combatants," my friend,  
3 Mr. Fothergill, reminds me.

4 Exhibit P-85, volume 5, tab 27,  
5 page 9. Sorry. It's just this e-mail.

6 MR. FLEWELLING: Sorry, which tab  
7 is it? Sorry.

8 MR. WALDMAN: P-85, volume 5, tab  
9 27...

10 --- Pause

11 MR. WALDMAN: Sorry. I forget.  
12 Time is going on, it's not that important. It's  
13 going to take us too long to find this.

14 Now, I have one more question in  
15 this area. I just want to be clear of one thing.

16 In this e-mail that I couldn't  
17 find it says, "most likely deported to Canada." I  
18 just want to be clear.

19 Was there ever a commitment at any  
20 time from any of the U.S. officials where they  
21 said to you, "We guarantee you Mr. Arar's going to  
22 be deported to Canada"? Were you ever given  
23 such --

24 MR. FLEWELLING: Was there ever a  
25 concrete commitment that he would be deported to

1 Canada?

2 MR. WALDMAN: Right, in any of  
3 your conversations.

4 MR. FLEWELLING: Nothing concrete  
5 other than I took his word at ...

6 MR. WALDMAN: No, I'm just saying.  
7 "We're going to likely." That was the words you  
8 used in the e-mail to Mr. Cabana. "We are likely  
9 going to deport him to Canada."

10 So was it ever -- did he say we  
11 are definitely -- in any of your conversations did  
12 any of the people say: "This guy's coming back to  
13 Canada, you don't have to worry about it. After  
14 the hearing on October 9th he's on his way"?

15 Was there anything concrete?

16 MR. FLEWELLING: No. Other than I  
17 know that it was reiterated with the investigators  
18 at A-OCANADA --

19 MR. WALDMAN: I was just asking  
20 you, sir, in any of your conversations.

21 MR. FLEWELLING: No.

22 MR. WALDMAN: I'd like you to go  
23 to P-223 just for a second. Paragraph 2.

24 I would suggest to you -- could  
25 you read this -- I'll read it. Do you have it in

1 front of you?

2 MR. FLEWELLING: Yes.

3 MR. WALDMAN:

4 "They notified A-OCANADA that  
5 Maher Arar was in custody at  
6 the airport in New York after  
7 flying from Europe. The U.S.  
8 authorities advised that Arar  
9 was ... and then refused  
10 entry to the U.S. He was  
11 also denied permission to  
12 enter Canada by the U.S."

13 So this document, sir, suggests to  
14 me that a decision was made on that date, and it  
15 was repeated in other documents too, that Mr. Arar  
16 was not -- in fact the decision was taken as early  
17 as that date to deny Mr. Arar the right to come to  
18 Canada.

19 You had seen that document, right?

20 MR. FLEWELLING: They're just  
21 saying they're not going to allow him to pass  
22 through the United States to Canada.

23 MR. WALDMAN: Right. They're not  
24 going to allow him.

25 So the option that you -- you were

1 told on this report that you read sometime after  
2 October 2nd, according to this report, the  
3 Americans had already decided that they weren't  
4 going to do what you seemed to believe they were  
5 going to do, which is to allow him to come  
6 directly to Canada. This report is saying that  
7 there was a decision to take him -- to deny him  
8 permission to enter Canada via the U.S. on that  
9 date.

10 So you had, I would suggest to  
11 you, clear evidence in the sit report that  
12 contradicted your belief?

13 MR. FLEWELLING: Following contact  
14 after this, the writing of this document and the  
15 exchange had with my colleagues at the American  
16 Embassy caused me to believe that after this date  
17 that that was a distinct possibility.

18 MR. WALDMAN: But I'm just  
19 suggesting to you that the documents you received,  
20 and the advice that you were given, from your  
21 A-OCANADA investigators, that you read sometime  
22 after October 2nd, told you --

23 MR. FLEWELLING: That the  
24 possibility was he was going to go back to Zurich.

25 MR. WALDMAN: Right. But what was

1 clearly told to you at that time was that he  
2 wasn't going to be able to enter Canada via the  
3 United States?

4 MR. FLEWELLING: It's written  
5 there, so I --

6 MR. WALDMAN: So I'm suggesting to  
7 you this was just another piece of information  
8 that you had that should have set off alarm bells  
9 in your mind when you had this conversation on  
10 October --

11 MR. FLEWELLING: I don't see it  
12 that way at all.

13 MR. WALDMAN: You don't see it  
14 that way?

15 MR. FLEWELLING: No.

16 MR. WALDMAN: Okay.

17 MR. FLEWELLING: And the reason  
18 why I don't is the subsequent conversations that I  
19 had with my American colleagues.

20 MR. WALDMAN: I'm just going to  
21 try and -- I promised the Commissioner I would be  
22 done in an hour and a half, so I'm going to try to  
23 cover a few quick areas. I'm cognizant of the  
24 time.

25 Now, you went on vacation on

1           October 8th.

2                           Correct?

3                           MR. FLEWELLING:   Yes.

4                           MR. WALDMAN:   And before you went  
5           on vacation, you communicated to Mr. --

6                           MR. FLEWELLING:   Sergeant Lauzon.

7                           MR. WALDMAN:   Sergeant Lauzon and  
8           Superintendent Pilgrim at CID about the  
9           conversation that you had on Saturday.

10                           Correct?

11                           MR. FLEWELLING:   Yes.

12                           MR. WALDMAN:   Did you tell anyone  
13           else about the conversation?

14                           MR. FLEWELLING:   Investigators  
15           from A-OCANADA.

16                           MR. WALDMAN:   Right.

17                           You sent them that e-mail, right?

18                           MR. FLEWELLING:   Correct.

19                           MR. WALDMAN:   Now, could I ask you  
20           to go to P-116.   P-116.

21           --- Pause

22                           MR. WALDMAN:   It's a newspaper  
23           report.

24                           MR. FLEWELLING:   P-116?

25                           MR. WALDMAN:   One one six.   I



1 think this is a Toronto Star newspaper report,  
2 October 9th, 2003. If I could just ask you to  
3 read the first column?

4 MR. FLEWELLING: The first column?

5 MR. WALDMAN: Well, perhaps I can  
6 just read you the relevant parts. This is a --  
7 this talks about Mr. Arar being arrested, then it  
8 says:

9 "When it was noted that Arar  
10 was a Canadian, Canadian  
11 security was contacted. "They  
12 asked, 'Do you have anything  
13 on him,'" an official closely  
14 involved in the case, said  
15 ...

16 'Yes indeed,'... 'He is  
17 watched because he has been  
18 to Afghanistan ...'.

19 On the basis of that, the  
20 official said, Arar was  
21 arrested when the plane  
22 landed in New York.

23 "They then said to the  
24 Canadians 'If we transfer  
25 that man to you, can you give

1                   us the assurance that you  
2                   will lay charges against  
3                   him?" ... And the Canadian  
4                   police told them 'No, we  
5                   don't have anything to lay  
6                   against him. We can't bring  
7                   any charges.'

8                   And the Americans said 'If  
9                   you aren't going to do  
10                  anything, if you're going to  
11                  let him go free ...'"

12                  And then -- and so I'm suggesting  
13                  to you, sir, that some Canadian official had this  
14                  conversation with Mr. Fraser and it sounds  
15                  remarkably like the telephone conversation you had  
16                  with the American official.

17                  Is that correct? Quite close in  
18                  its content. Would you agree with me?

19                  MR. FLEWELLING: And you're  
20                  suggesting what, sir?

21                  MR. WALDMAN: I'm asking whether  
22                  you were the source of this leak?

23                  MR. FLEWELLING: Categorically,  
24                  no.

25                  MR. WALDMAN: Do you have any idea

1 who could have been the source of this leak?

2 MR. FLEWELLING: I have no idea.

3 MR. WALDMAN: Because at this time  
4 this was not public information. It's now public.  
5 But on October 9th, 2003, it wasn't.

6 You don't have any idea. Would  
7 you not agree with me that this information would  
8 have only been available to only a small -- of  
9 your conversation would only have been available  
10 to a small group of people?

11 MR. FLEWELLING: I would suggest  
12 to you that following the events that occurred,  
13 that my conversation and my words had been  
14 projected to numerous individuals and a number of  
15 government agencies around Ottawa.

16 MR. WALDMAN: So these words were  
17 easily accessible, you are saying?

18 MR. FLEWELLING: Yes.

19 MR. WALDMAN: So the source of the  
20 leak could have been anyone, not necessarily  
21 someone from the A-OCANADA investigation or from  
22 CID?

23 MR. FLEWELLING: I wouldn't begin  
24 to -- to suggest who, if anybody, may have  
25 mentioned anything.

1 MR. WALDMAN: I'd like you to go  
2 to P-184. Okay, sorry. No. Actually, give me a  
3 minute. We're finding it so ...

4 Let me ask you some other  
5 questions. We were told about this April 2nd data  
6 dump. That's the expression that we've used.

7 That was when, if I remember  
8 correctly, the CDs were given -- well, the whole  
9 information that was in the database of A-OCANADA  
10 was given to the Americans.

11 Now, that occurred before you came  
12 on as the supervisor of A-OCANADA.

13 Correct?

14 MR. FLEWELLING: As a coordinator  
15 overseer, yes.

16 MR. WALDMAN: But were you aware  
17 of that, that that had happened?

18 MR. FLEWELLING: I became aware,  
19 yes.

20 MR. WALDMAN: Okay.

21 And would you agree with me that  
22 the type of data dumping, the mirroring of  
23 databases, and giving copies of the entire  
24 investigative report is something that should have  
25 required the consultation of CID before it was

1 done?

2 MR. FLEWELLING: I think what I  
3 had mentioned was -- is that I was not privy to  
4 any discussion or arrangements that were made by  
5 any official or any management at that time, and I  
6 think it was a hypothetical question whereby, what  
7 did I think.

8 MR. WALDMAN: Okay, but --

9 MR. FLEWELLING: And based on my  
10 view from the present day without the knowledge of  
11 whether or not there were any special arrangements  
12 or authorization, my answer was, no, that it  
13 should have come through CID.

14 MR. WALDMAN: And it should have  
15 then been reviewed by CID to determine what  
16 evidence should be released and what shouldn't,  
17 and you've explained that process of --

18 MR. FLEWELLING: Well, the ability  
19 to be able to go through and see what was what and  
20 transfer the information -- the appropriate  
21 information.

22 MR. WALDMAN: Right. So obviously  
23 the concerns -- it says circumstances of  
24 protecting the privacy of Canadians, protecting  
25 the sources of information, and ensuring that the

1 information is only used in a manner consistent  
2 with the use for which it was intended.

3 Correct?

4 MR. FLEWELLING: There's policy in  
5 place in order to deal with those events.

6 MR. WALDMAN: Okay.

7 So when did you become aware that  
8 this April 2nd transfer had taken place, like the  
9 CDs and all that?

10 MR. FLEWELLING: Oh, the date, I  
11 have no idea.

12 MR. WALDMAN: Okay. Was it after  
13 you started in June as coordinator or before?

14 MR. FLEWELLING: I believe so.

15 MR. WALDMAN: Right. Did you  
16 discuss with your superiors at any point your  
17 concerns about this decision to holus-bolus give  
18 all the information to the Americans without  
19 consultation with CID?

20 MR. FLEWELLING: It was my belief  
21 that management was already aware of it and  
22 dealing with it.

23 MR. WALDMAN: Okay. Now, can I  
24 ask you to go to P-184?

25 THE COMMISSIONER: One eighty ...

1 MR. WALDMAN: Four.

2 --- Pause

3 MR. WALDMAN: So if I could ask  
4 you to go to the section in this -- well, this is  
5 a briefing note.

6 Correct?

7 MR. FLEWELLING: Correct.

8 MR. WALDMAN: And it was sent to  
9 the Commissioner. It says on the bottom left,  
10 "(something) Inspector Rick Reynolds"?

11 MR. FLEWELLING: Yes.

12 MR. WALDMAN: Right.

13 So he was above Sergeant Lauzon in  
14 the hierarchy?

15 MR. FLEWELLING: No.

16 MR. WALDMAN: No?

17 MR. FLEWELLING: Inspector  
18 Reynolds was in charge of a totally different unit  
19 at the time.

20 MR. WALDMAN: So did anyone in  
21 your unit have anything to do with the drafting of  
22 this briefing note?

23 MR. FLEWELLING: I have no idea.  
24 I wasn't there then.

25 MR. WALDMAN: You weren't there.

1           It's April --

2                               MR. FLEWELLING: 2003.

3                               MR. WALDMAN: Right. April 30th,  
4           2003 --

5                               MR. FLEWELLING: I was in Alberta,  
6           sir, or on my way.

7                               MR. WALDMAN: Okay. Now, I'm  
8           just -- with respect to this, you were aware that  
9           Mr. Edelson approached Inspector Cabana about a  
10          letter, correct, in October 2004?

11                              MR. FLEWELLING: I'll be honest  
12          with you and say most of that conversation I'm  
13          aware of as a result of preparation.

14                              MR. WALDMAN: Okay. So you  
15          weren't aware of it at the time?

16                              MR. FLEWELLING: I was aware that  
17          he had a meeting with him sometime in October, I  
18          believe it was the 3rd, if my memory serves me  
19          correctly.

20                              MR. WALDMAN: That's correct. I  
21          think that's what someone's note said.

22                              Were you aware at any time of your  
23          office being approached with respect to the  
24          request to approve such a letter that Mr. Edelson  
25          had requested?



1 MR. FLEWELLING: Not to my  
2 knowledge.

3 MR. WALDMAN: Did you ever receive  
4 any information from the RCMP liaison officer from  
5 Rome? We know he went on a trip to Syria. Were  
6 you aware of whether he shared any operational  
7 information with -- I gather my friend is going to  
8 object.

9 MR. FOTHERGILL: Yes.  
10 Commissioner, you may recall that we asserted a  
11 claim of National Security Confidentiality with  
12 respect to information we may have received  
13 through foreign intelligence channels with respect  
14 to any of the principal targets of the  
15 investigation.

16 THE COMMISSIONER: Thank you.

17 MR. WALDMAN: Well, did the  
18 liaison officer, to your knowledge, seek any  
19 approval to seek any information from Syria? We  
20 are not asking about the information; we are  
21 asking about the procedures.

22 Were you at any time privy to any  
23 conversations with the liaison officer, or that  
24 any information came to you that the liaison  
25 officer was seeking approval to travel to Syria

1 with respect to Mr. Almalki or Mr. El Maati or  
2 Mr. Arar?

3 MR. FOTHERGILL: Again,  
4 Commissioner, we assert National Security  
5 Confidentiality with respect to whether these  
6 investigative steps were taken with respect to  
7 particular individuals. Certainly Mr. Waldman is  
8 at liberty to explore the policy or procedure just  
9 by the use of reasonable hypotheticals.

10 THE COMMISSIONER: Thank you.

11 MR. WALDMAN: I would like you to  
12 go to page 9 to 10 of your notes. This is a  
13 notation in --

14 MR. FLEWELLING: Sorry, what page?

15 MR. WALDMAN: Nine, at the bottom.

16 It says:

17 "'A' Division investigators  
18 recently spoke to 'X'. They  
19 said we should know where he  
20 is. His parents just  
21 returned from Syria. They  
22 know he is in custody and  
23 they are concerned. Mother  
24 called brother in Germany who  
25 advised them to contact an

1 individual in Syria for  
2 additional info. It will  
3 appear that we will have to  
4 bring the Americans on  
5 board."

6 MR. FLEWELLING: Sorry, what page  
7 is that again?

8 MR. WALDMAN: Nine to 10.

9 MR. FLEWELLING: Nine to 10.

10 MR. WALDMAN: That's on the next  
11 page, sorry.

12 MR. FLEWELLING: Are you sure?

13 MR. WALDMAN: The next page is  
14 still part -- I'm not sure if the notation on page  
15 11, "it would appear we have to bring the  
16 Americans on board", is still in relation to the  
17 same matter.

18 MR. FLEWELLING: I'm sorry, I'm  
19 having a tough time following you.

20 MR. WALDMAN: Maybe we can leave  
21 the Americans on board out of it.

22 Start at the bottom of page 9.

23 MR. FLEWELLING: Page 9? Which  
24 line?

25 MR. WALDMAN: Four lines from the

1 bottom.

2 "'A' Division investigators  
3 recently spoke to 'X.' They  
4 said we should know where he  
5 is. His parents just  
6 returned from Syria. They  
7 know he's in custody and they  
8 are concerned. Mother called  
9 brother in Germany who  
10 advised them to contact an  
11 individual in Syria."

12 So this notation is about an  
13 individual who is a subject of interest to you who  
14 was detained in Syria at this time. Is that  
15 correct, based upon your notes?

16 MR. FLEWELLING: Yes.

17 MR. WALDMAN: I mean, we know from  
18 other sources that the only Canadian -- the only  
19 person of interest at that time was Mr. Almalki.

20 MR. FOTHERGILL: If he is asking  
21 the witness to confirm his assumption, he cannot  
22 do so.

23 MR. WALDMAN: If we go to page 21,  
24 at the very bottom of the page, this is a notation  
25 from June 21st, 2002:

1 "Solicit the assistance of  
2 CSIS, LEO Rome and DFAIT to  
3 apply the necessary process  
4 in order to gain access.  
5 Questions: I think it's  
6 intelligence versus  
7 criminal?"

8 MR. FLEWELLING: Yes.

9 MR. WALDMAN: "Do we want him  
10 back? Do we have enough to  
11 charge? 'A' Division would  
12 really want him back for the  
13 purpose of laying charges  
14 under Bill C-36. The  
15 question is really how Syria  
16 is going to play. We may  
17 have to --"

18 I can't read that.

19 MR. FLEWELLING: "Be satisfied".

20 MR. WALDMAN: "...be satisfied  
21 with the prevention side of  
22 the mandate and hope that  
23 additional information can be  
24 gleaned with respect to his  
25 other plans we are not aware



1                   Someone asked that question: "Do  
2 we want him back?" I'm not saying it was you, but  
3 it's in your notes; right? Someone asked that.

4                   MR. FLEWELLING: Obviously, or it  
5 wouldn't be there.

6                   MR. WALDMAN: Would you agree with  
7 me that one of the easiest ways of fulfilling the  
8 mandate with respect to protection of people that  
9 are suspected of possibly being al-Qaeda suspects  
10 is to not get them back, to keep them out, from a  
11 prevention point of view; fair enough?

12                  MR. FLEWELLING: I would suggest  
13 to you, sir, that the role at DFAIT weighs  
14 extremely heavily in acquiring an individual's  
15 access to consular visits and to be able to gain  
16 their freedom in a foreign country. It is very  
17 difficult to align that with a strategy session  
18 where somebody is just posing a question.

19                  MR. WALDMAN: Right. I agree with  
20 you, sir, that at the end of the day, the people  
21 who are having the strategy session were not the  
22 final policymakers.

23                  But I'm suggesting to you that it  
24 was in the mind of somebody in that room that it  
25 might be better if this Canadian, this person, who

1 I would submit to you is Mr. Almalki, was not  
2 allowed to come back to Canada.

3 That is what the inference of this  
4 is?

5 MR. FLEWELLING: I don't know what  
6 the inference was in the person's mind.

7 MR. WALDMAN: But would you not  
8 agree with me that "Do we want him back?", it is a  
9 reasonable inference to suggest the person was  
10 thinking maybe it would be better if he weren't  
11 back?

12 MR. FLEWELLING: I don't know.

13 MR. WALDMAN: You don't know.

14 MR. FLEWELLING: I can see where  
15 you would think that, yes.

16 MR. WALDMAN: You could see where  
17 I might think that.

18 MR. FLEWELLING: Yes.

19 MR. WALDMAN: Do you think  
20 Canadians watching this on CPAC might reasonably  
21 think that, sir, when somebody asked, "Do we want  
22 him back" --

23 THE COMMISSIONER: That would be a  
24 hard question for him to answer.

25 MR. WALDMAN: I would agree. I



1 was just being a bit --

2 MR. FLEWELLING: I would hope that  
3 they would think that we would try and cover all  
4 the bases.

5 MR. WALDMAN: Right, in protecting  
6 Canadians.

7 MR. FLEWELLING: Yes.

8 MR. WALDMAN: Including possibly  
9 letting a Canadian citizen sit in a jail in Syria  
10 as opposed to being allowed to come back to Canada  
11 and --

12 MR. FLEWELLING: I'm not  
13 suggesting that, sir.

14 MR. WALDMAN: Mr. Commissioner, I  
15 do have other areas but I promised you an hour and  
16 a half.

17 THE COMMISSIONER: I don't want  
18 you to leave out anything that you think is  
19 crucial, but take a quick look.

20 MR. WALDMAN: One quick look.

21 --- Pause

22 MR. WALDMAN: I'm done. I kept my  
23 word.

24 THE COMMISSIONER: Thank you.

25 Mr. Boxall?

1 EXAMINATION

2 MR. BOXALL: Mr. Flewelling,  
3 sorry, I didn't get your current rank.

4 MR. FLEWELLING: Sergeant.

5 MR. BOXALL: Sergeant. But you  
6 were a corporal at the time?

7 MR. FLEWELLING: That's correct.

8 MR. BOXALL: All right. And you  
9 are aware that I represent Superintendent Cabana?

10 MR. FLEWELLING: That's correct.

11 MR. BOXALL: All right. Sir,  
12 briefly with the reporting structure here, at the  
13 time did Inspector Cabana report to Corporal  
14 Flewelling?

15 MR. FLEWELLING: No.

16 MR. BOXALL: All right. Who did  
17 Inspector Cabana report to?

18 MR. FLEWELLING: He would have  
19 reported to the "A" Division CROPS officer.

20 MR. BOXALL: So he would report to  
21 the Assistant CROPS Officer, who would report to  
22 the "A" Division CROPS Officer, who would report  
23 to the commanding officer of "A" Division?

24 MR. FLEWELLING: That's correct.

25 MR. BOXALL: Did Inspector Cabana

1 report to Mr. Proulx?

2 MR. FLEWELLING: He had a  
3 reporting line with CID, which ultimately would  
4 have been Mr. Proulx.

5 MR. BOXALL: Reporting through  
6 who?

7 MR. FLEWELLING: Through CID.

8 MR. BOXALL: Where's the line?

9 MR. FLEWELLING: It's my  
10 understanding that with a national security  
11 investigation there is that reporting line.  
12 Ultimately it's an investigation that is run by  
13 "A" Division, but there is that side reporting.

14 MR. BOXALL: Well, sir, this was a  
15 criminal investigation being run out of "A"  
16 Division; correct? You are aware of that?

17 MR. FLEWELLING: A criminal  
18 investigation under the auspices of national  
19 security.

20 MR. BOXALL: It was being run out  
21 of "A" Division with "A" Division reporting, was  
22 it not?

23 MR. FLEWELLING: Yes.

24 MR. BOXALL: Because normally, a  
25 national security investigation wouldn't report to

1 the CROPS officer, would it?

2 MR. FLEWELLING: In the field it  
3 would. They still oversee a national security  
4 investigation.

5 MR. BOXALL: We say oversee.  
6 There is still some liaison between the two;  
7 correct?

8 MR. FLEWELLING: Yes.

9 MR. BOXALL: All right. But it  
10 would be Inspector Cabana's duty, would it not, to  
11 take his instructions from the CROPS officer?

12 MR. FLEWELLING: Yes.

13 MR. BOXALL: And the commanding  
14 officer at "A" Division would instruct the CROPS  
15 officer?

16 MR. FLEWELLING: Yes.

17 MR. BOXALL: And it would be  
18 Inspector Cabana's duty, is it not, to follow the  
19 instructions of his superior officers?

20 MR. FLEWELLING: Yes.

21 MR. BOXALL: Sir, are you aware of  
22 the instructions Inspector Cabana received from  
23 the Assistant CROPS Officer, from the CROPS  
24 Officer or from the Commanding Officer?

25 MR. FLEWELLING: That's why I

1           stated earlier that I wasn't aware when I first --

2                           MR. BOXALL: Right.

3                           MR. FLEWELLING: I wasn't aware of  
4 the agreements or the arrangements.

5                           MR. BOXALL: Right. And what  
6 Mr. Cavalluzzo described to you, sir, is battles  
7 between A-OCANADA and CID and that A-OCANADA won  
8 those battles. Sir, would you agree that there  
9 was management-level meetings, at a higher level  
10 than you --

11                           MR. FLEWELLING: Yes.

12                           MR. BOXALL: -- and a higher level  
13 than Inspector Cabana --

14                           MR. FLEWELLING: Yes.

15                           MR. BOXALL: -- that set out the  
16 rules for Inspector Cabana's reporting?

17                           MR. FLEWELLING: I'm assuming so.

18                           MR. BOXALL: In fact, although you  
19 weren't personally happy with the results of some  
20 of those meetings, the results were clear to you?

21                           MR. FLEWELLING: Sorry, they were  
22 clear what?

23                           MR. BOXALL: That Inspector Cabana  
24 was reporting through CROPS?

25                           MR. FLEWELLING: Yes.

1 MR. BOXALL: There was other  
2 persons prior to you that had this position that  
3 you had at CID relative to A-OCANADA?

4 MR. FLEWELLING: That's correct.

5 MR. BOXALL: Do you know who they  
6 were?

7 MR. FLEWELLING: Yes, I do.

8 MR. FOTHERGILL: Commissioner, as  
9 you know, we would prefer not to name individuals  
10 if it's not necessary.

11 MR. BOXALL: I'm not going to ask  
12 for their names.

13 When you took over your role, were  
14 you briefed by any of them?

15 MR. FLEWELLING: Was I given a  
16 formal briefing on the project overall?

17 MR. BOXALL: Yes.

18 MR. FLEWELLING: No.

19 MR. BOXALL: Did you take a look  
20 at any of their notes or reports or anything?

21 MR. FLEWELLING: I did a review.  
22 Unfortunately, I don't recall reviewing any notes.

23 MR. BOXALL: Okay. So although  
24 there had been CID involvement for some eight  
25 months perhaps by the time you became involved --

1 MR. FLEWELLING: Yes.

2 MR. BOXALL: -- did you review any  
3 CID notes, reports or anything before you became  
4 involved?

5 MR. FLEWELLING: Before I became  
6 involved?

7 MR. BOXALL: Or on becoming  
8 involved with A-OCANADA?

9 MR. FLEWELLING: I read a number  
10 of situation reports in order to bring myself up  
11 to speed but --

12 MR. BOXALL: Sit reports, SITREPs?

13 MR. FLEWELLING: SITREPs.

14 MR. BOXALL: Yes, but they are  
15 from A-OCANADA. What did you read from CID about  
16 it, if anything?

17 MR. FLEWELLING: Just what was  
18 readily available, sir.

19 MR. BOXALL: What is the extent of  
20 that?

21 MR. FLEWELLING: What may have  
22 been on SCIS or at my disposal.

23 MR. BOXALL: Do you even know why  
24 there was three persons in the position before  
25 you?

1 MR. FLEWELLING: Not to a full  
2 extent, no.

3 MR. BOXALL: So you don't even  
4 know if it had to do with conflict or just  
5 staffing issues or anything such as that?

6 MR. FLEWELLING: That's correct.

7 MR. BOXALL: So any suggestion  
8 that the fact that there was three persons in your  
9 position before you somehow reflects some type of  
10 problem, that's not necessarily accurate, is it,  
11 sir?

12 MR. FLEWELLING: Not totally, no.

13 MR. BOXALL: I'm curious to know  
14 how you would describe it. We have heard you  
15 described as an overseer, project manager,  
16 different terms by counsel today.

17 Corporal Flewelling, review  
18 analyst at CID, what was your role and duties with  
19 respect to A-OCANADA?

20 MR. FLEWELLING: My duties and  
21 role were to acquire information and to ensure  
22 that policies with respect to the acquiring of  
23 information and so on and so forth was respected,  
24 as well as to inform management as to what the  
25 investigation was.



1 MR. BOXALL: Right. So you had a  
2 role to assist them, if need be, with respect to  
3 policy?

4 MR. FLEWELLING: Yes.

5 MR. BOXALL: And you had a role to  
6 help inform management?

7 MR. FLEWELLING: Yes.

8 MR. BOXALL: Okay. You didn't  
9 have an operational role?

10 MR. FLEWELLING: No, not per se.

11 MR. BOXALL: Not per se. And with  
12 respect to -- I will come back to that.

13 Sir, with respect to  
14 information-sharing pre-9/11, you described a  
15 process that would take place, the sharing of  
16 information with the RCMP and foreign countries.

17 MR. FLEWELLING: Yes.

18 MR. BOXALL: And would you agree  
19 with me, sir, that the process was slow,  
20 cumbersome?

21 MR. FLEWELLING: In dealing with a  
22 number of intelligence and/or foreign countries,  
23 yes, the information retrieval was slow, yes.

24 MR. BOXALL: All right. And even  
25 dealing with the United States, the number of

1 steps, the bureaucracy that you described to go  
2 from the Embassy to the LO and then -- it goes  
3 through an awful lot of hands; correct?

4 MR. FLEWELLING: Yes.

5 MR. BOXALL: And it would be in  
6 writing, each time, I take it, too?

7 MR. FLEWELLING: There would be  
8 your formal letters and things of that nature,  
9 yes.

10 MR. BOXALL: And they may sit in  
11 somebody's in-basket who is busy?

12 MR. FLEWELLING: Our ability  
13 pre-9/11, in order to deal with an awful lot of  
14 the issues, wasn't a problem.

15 MR. BOXALL: Was a problem?

16 MR. FLEWELLING: Was not a  
17 problem.

18 MR. BOXALL: Was not a problem.

19 But in 9/11 the world changed,  
20 didn't it, sir?

21 MR. FLEWELLING: Absolutely.

22 MR. BOXALL: All right. And there  
23 was a new reality?

24 MR. FLEWELLING: Yes.

25 MR. BOXALL: There was a new

1 reality with respect to the potential threat to  
2 Canadians?

3 MR. FLEWELLING: Yes.

4 MR. BOXALL: There was a new  
5 reality with respect to the speed which the police  
6 forces had to respond to that threat; correct?

7 MR. FLEWELLING: I would agree  
8 with that assessment.

9 MR. BOXALL: Right. And  
10 accordingly, preexisting paper procedures for the  
11 sharing of information were not seen as adequate  
12 to protect Canadians against a potential terrorist  
13 threat?

14 MR. FLEWELLING: The only thing I  
15 can tell you, sir, is that the orders that were  
16 given was that sharing was paramount.

17 MR. BOXALL: Right.

18 MR. FLEWELLING: Timely.

19 MR. BOXALL: Yes.

20 MR. FLEWELLING: And that was to  
21 be done still with the existing policy in mind.

22 MR. BOXALL: Was it given in  
23 writing to you, sir?

24 MR. FLEWELLING: No.

25 MR. BOXALL: Okay. So this little

1 rider on it, with existing policy, did you ever  
2 see that in writing?

3 MR. FLEWELLING: No.

4 MR. BOXALL: But you do recall the  
5 message being sharing is paramount?

6 MR. FLEWELLING: Yes.

7 MR. BOXALL: You are to share as  
8 much as possible?

9 MR. FLEWELLING: I don't know if I  
10 recall that term; but timely sharing, yes.

11 MR. BOXALL: And timely sharing  
12 means as close to instantaneous sharing as you can  
13 have; correct?

14 MR. FLEWELLING: I suppose it  
15 depends on the person that is receiving the  
16 message.

17 MR. BOXALL: Was not the concern  
18 that there might be a piece of paper sitting in  
19 somebody's in-basket that might have prevented a  
20 building from being blown up or something?

21 MR. FLEWELLING: I think it would  
22 be fair to say that we all had that fear.

23 MR. BOXALL: Right. And the  
24 instructions coming from management to deal with  
25 that, to deal with this new reality, is that to

1 prevent occurrences, not to try to and investigate  
2 them after the fact, when a lot of people are  
3 dead, to investigate them, you need to get that  
4 information shared right away, in real time;  
5 correct?

6 MR. FLEWELLING: Where there was a  
7 need or a viewpoint that there was going to be a  
8 threat of that nature, I don't think any one of us  
9 ever had an issue with that. I don't think that  
10 would be an issue.

11 MR. BOXALL: Right. But this was  
12 a new reality of the type of thing that could  
13 happen. Do you not agree, sir?

14 MR. FLEWELLING: Yes.

15 MR. BOXALL: And do you not agree  
16 that the -- perhaps the RCMP in general, but in  
17 particular CID lacked the resources to deal with  
18 this new reality?

19 MR. FLEWELLING: I would suggest  
20 to you that we all did.

21 MR. BOXALL: Right. So we may all  
22 have, but CID lacked the resources, with perhaps  
23 numerous other agencies in this country and around  
24 the world?

25 MR. FLEWELLING: Given the added

1 pressures with the G-8, G-21 and everything else,  
2 there is a definite pressure on manpower.

3 MR. BOXALL: And it was beyond  
4 pressure. The number of tips, the amount of  
5 material, the requirement to respond to it, to  
6 this unforeseen, unprecedented event, meant that  
7 CID lacked the resources to handle the situation?

8 MR. FLEWELLING: I would say we  
9 all did.

10 MR. BOXALL: And in this new era,  
11 the message was given that information-sharing was  
12 to be paramount, and information-sharing was the  
13 way one would protect and prevent future  
14 occurrences. Do you agree?

15 MR. FLEWELLING: I think the  
16 sharing of information was stressed and was vital.

17 MR. BOXALL: Right. And what was  
18 stressed as being vital about it was that it would  
19 assist in prevention?

20 MR. FLEWELLING: That's always a  
21 part of our mandate.

22 MR. BOXALL: Right. It's always  
23 part of your mandate, but there's an awful lot of  
24 RCMP investigations that are involved on crimes  
25 that have already been committed; correct?

1 MR. FLEWELLING: Correct.

2 MR. BOXALL: And putting the focus  
3 clearly on prevention is a change, to a certain  
4 extent, in the mandate too, isn't it?

5 MR. FLEWELLING: Prevention has  
6 always been part of our mandate.

7 MR. BOXALL: But now it was put at  
8 the top of the list?

9 MR. FLEWELLING: I would say after  
10 9/11, yes, definitely.

11 MR. BOXALL: And that is a change,  
12 too; correct?

13 MR. FLEWELLING: It was definitely  
14 a change in mindset, yes.

15 MR. BOXALL: Right. And so in  
16 response, in part -- I won't get into all the  
17 details -- it was in the aftermath of 9/11 that  
18 A-OCANADA was formed; correct, sir?

19 MR. FLEWELLING: Yes.

20 MR. BOXALL: And you were not  
21 present, sir, with the meeting that Mr. Proulx had  
22 with domestic and foreign agencies, when there was  
23 an agreement with respect to information-sharing;  
24 correct?

25 MR. FLEWELLING: That's correct.

1 MR. BOXALL: You are not aware of  
2 what was agreed there?

3 MR. FLEWELLING: That's correct.

4 MR. BOXALL: And you never  
5 received anything in writing from Mr. Proulx  
6 personally about what was agreed there?

7 MR. FLEWELLING: Not in writing,  
8 no.

9 MR. BOXALL: No. You are aware,  
10 sir, that a decision was made by senior management  
11 that A-OCANADA would report through "A" Division;  
12 correct?

13 MR. FLEWELLING: Sorry. Repeat  
14 the question.

15 MR. BOXALL: That A-OCANADA would  
16 have a reporting structure through "A" Division?

17 MR. FLEWELLING: I think that was  
18 the normal course.

19 MR. BOXALL: Okay. Are you aware,  
20 sir, of any instructions that were given to them  
21 with respect to information-sharing?

22 MR. FLEWELLING: I think I've  
23 already mentioned in my testimony that I wasn't  
24 aware.

25 MR. BOXALL: Was it obvious to



1           you, working in CID, that A-OCANADA was having  
2           direct dealings with American authorities?

3                       MR. FLEWELLING:   Yes.

4                       MR. BOXALL:   And on the face of  
5           that, that would appear to be a violation of  
6           policy?

7                       MR. FLEWELLING:   Yes.

8                       MR. BOXALL:   And as the Corporal,  
9           you are aware of that?

10                      MR. FLEWELLING:   That is correct.

11                      MR. BOXALL:   Mr. Pilgrim was aware  
12           of that?

13                      MR. FLEWELLING:   Yes, he was.

14                      MR. BOXALL:   Mr. Proulx was aware  
15           of that?

16                      MR. FLEWELLING:   As you know, we  
17           did have several discussions over that precise  
18           issue.

19                      MR. BOXALL:   Well, we'll get to  
20           the discussions.   But they were all aware of that  
21           in October and November and December, January?  
22           They were all aware of that?

23                      MR. FLEWELLING:   Yes.

24                      MR. BOXALL:   Have you seen any  
25           memos from Mr. Proulx with respect to that?

1 MR. FLEWELLING: No.

2 MR. BOXALL: There was various  
3 discussions, but in different words in your notes,  
4 that things weren't going to change. For example,  
5 there was a meeting on September 26, 2002;  
6 correct, sir?

7 MR. FLEWELLING: That is correct.

8 MR. BOXALL: Right. In which the  
9 CO of "A" Division met with Mr. Pilgrim; correct?

10 MR. FLEWELLING: And there were a  
11 few others that were at the meeting as well, yes.

12 MR. BOXALL: And others. And,  
13 again, the open line and direct communication was  
14 confirmed at that meeting for A-OCANADA with U.S.  
15 authorities?

16 MR. FLEWELLING: As a result of  
17 discussions and where Mr. Hovey alluded to a  
18 conversation with Mr. Proulx, Mr. Pilgrim backed  
19 away from his original position in order to be  
20 able to discuss it further with Mr. Proulx. The  
21 directives were that they would continue dealing  
22 with American agencies, with the exception that a  
23 member of CID would attend.

24 MR. BOXALL: Right. And as  
25 described in your notes at page 34 for September

1 27th:

2 "The lines of communication  
3 were open again."

4 MR. FLEWELLING: Yes.

5 MR. BOXALL: And, in fact, except  
6 for a short period prior to September 26th, the  
7 lines of communication between A-OCANADA were open  
8 with the American authorities, and this was with  
9 the full knowledge of CID; right?

10 MR. FLEWELLING: Yes.

11 MR. BOXALL: Clearly in the manner  
12 in which the RCMP works, if you have got a  
13 concern, you can go to your boss or Mr. Pilgrim,  
14 and Mr. Pilgrim can go to Mr. Proulx, and if  
15 Mr. Proulx has a concern, he can take it up the  
16 ladder too; correct?

17 MR. FLEWELLING: Yes.

18 MR. BOXALL: All right. And it  
19 appears that the instructions, at least -- you  
20 have indicated that Mr. Pilgrim backed off because  
21 of Commanding Officer Hovey's opinion; correct?

22 MR. FLEWELLING: It was as a  
23 result of Mr. Hovey alluding to a conversation  
24 that he had with Mr. Proulx.

25 MR. BOXALL: Right. And that was

1 with respect to an agreement that this was how  
2 A-OCANADA was to operate; correct?

3 MR. FLEWELLING: There was some  
4 sort of discussion or agreement that apparently he  
5 alluded to that none of us were privy to.

6 MR. BOXALL: You weren't aware of  
7 it?

8 MR. FLEWELLING: None of us in the  
9 room except apparently Mr. Hovey and Mr. Proulx  
10 were aware of it.

11 MR. BOXALL: Mr. Hovey and  
12 Mr. Proulx. And you don't know what instructions  
13 were coming from Mr. Hovey to the CROPS Officer to  
14 the Assistant CROPS Officer to Mr. Cabana;  
15 correct?

16 MR. FLEWELLING: No.

17 MR. BOXALL: Would it be  
18 reasonable to infer that the instructions that he  
19 would be receiving would be the ones coming  
20 directly down his line of command?

21 MR. FLEWELLING: Yes. Again,  
22 under the auspices of national security, there  
23 should have been that information or that  
24 informing role.

25 MR. BOXALL: All right. And we

1 will get to that informing role.

2 It was clear for many, many  
3 months, before you became involved with A-OCANADA,  
4 that A-OCANADA had an open line of communication  
5 with the American authorities. Would you agree?

6 MR. FLEWELLING: Yes.

7 MR. BOXALL: And it was known to  
8 CID that they were sharing information directly?

9 MR. FLEWELLING: That's my  
10 understanding.

11 MR. BOXALL: And this was pursuant  
12 to a mandate to share, the importance of sharing,  
13 and to share information in a timely way to save  
14 lives?

15 MR. FLEWELLING: I would say  
16 ultimately that that's the way it was designed,  
17 yes.

18 MR. BOXALL: Right. And  
19 throughout this period of time, particularly in  
20 the early months, CID was overwhelmed with the  
21 amount of work they had to do?

22 MR. FLEWELLING: I would suggest  
23 to you all of us were.

24 MR. BOXALL: All right. And you  
25 have indicated that it is important that the

1           headquarters be informed with respect to the  
2           investigation that was going on by A-OCANADA?

3                         MR. FLEWELLING:   Yes.

4                         MR. BOXALL:   And you are aware of  
5           the fact -- in fact, you read some of them -- that  
6           the SITREPs were coming on a daily basis?

7                         MR. FLEWELLING:   Yes.

8                         MR. BOXALL:   And not every  
9           investigation sends over SITREPs on a daily basis,  
10          does it?

11                        MR. FLEWELLING:   No.

12                        MR. BOXALL:   So that would be an  
13          extraordinary step to inform headquarters?

14                        MR. FLEWELLING:   That would be one  
15          of the requirements under the national security  
16          umbrella.

17                        MR. BOXALL:   It's an extraordinary  
18          step, though, sir?  It doesn't happen in every  
19          investigation?

20                        MR. FLEWELLING:   No.

21                        MR. BOXALL:   It doesn't even  
22          happen in every investigation which has national  
23          security overtones, does it, that there be daily  
24          SITREPs?

25                        MR. FLEWELLING:   I think the

1 minimum is 14, I believe.

2 MR. BOXALL: Every 14 days?

3 MR. FLEWELLING: Something like  
4 that.

5 MR. BOXALL: This is every day;  
6 right?

7 MR. FLEWELLING: Yes.

8 MR. BOXALL: And you are aware  
9 that when they had the ability to do so, your  
10 predecessors were attending meetings with the  
11 A-OCANADA team?

12 MR. FLEWELLING: Yes.

13 MR. BOXALL: You are also aware  
14 that your predecessors didn't have the ability to  
15 attend every meeting; correct?

16 MR. FLEWELLING: Not every  
17 meeting; no, that's true.

18 MR. BOXALL: In fact, it appears  
19 that on one of the most important days, January  
20 22nd, when there were searches taking place, you  
21 were sent over to fill in for one of your  
22 predecessors, and you really knew nothing about  
23 the case?

24 MR. FLEWELLING: That's true.

25 MR. BOXALL: So your predecessor

1           wasn't even available on that day?

2                           MR. FLEWELLING:  No.

3                           MR. BOXALL:  So that would be  
4           indicative of how overwhelmed they were, that they  
5           weren't even available on the day the searches  
6           were being taken place?

7                           MR. FLEWELLING:  I would agree  
8           with that.

9                           MR. BOXALL:  And they would  
10          certainly be aware that those searches were taking  
11          place that day?

12                          MR. FLEWELLING:  Yes.

13                          MR. BOXALL:  Sir, you indicated  
14          that when you were given the role of being the CID  
15          person that would have what I would suggest is  
16          effectively liaison with A-OCANADA, that one of  
17          the things you were asked to do, or tasked to do,  
18          was to try to bring them back to the pre-9/11  
19          procedure?

20                          MR. FLEWELLING:  Yes.

21                          MR. BOXALL:  So clearly it was  
22          acknowledged that they were not following the  
23          pre-9/11 procedure?  That was known to your  
24          supervisors.

25                          MR. FLEWELLING:  Yes.



1 MR. BOXALL: Right. What I'm  
2 suggesting to you is that for all of that period  
3 of time, that it had been accepted that they were  
4 not following the procedure, and that the need to  
5 share information expeditiously was seen as an  
6 appropriate response given the situation, the  
7 reality of the situation?

8 MR. FLEWELLING: Would you repeat  
9 the first part, please?

10 MR. BOXALL: I will rechange the  
11 question. I will break it down into several  
12 parts.

13 Your supervisors were aware of the  
14 direct contact between A-OCANADA and the American  
15 authorities?

16 MR. FLEWELLING: Yes.

17 MR. BOXALL: Your supervisors were  
18 aware of the fact that the information was being  
19 shared directly?

20 MR. FLEWELLING: I believe so.

21 MR. BOXALL: Right. And they were  
22 aware that it was essentially an open line of  
23 communication?

24 MR. FLEWELLING: Yes.

25 MR. BOXALL: That these were seen

1 as partner agencies in a very important  
2 investigation?

3 MR. FLEWELLING: Yes.

4 MR. BOXALL: In fact, it was seen  
5 as one of the most important investigations in  
6 Canada at the time?

7 MR. FLEWELLING: One of them, yes.

8 MR. BOXALL: Right. And the need  
9 for information in real time was accepted?

10 MR. FLEWELLING: Yes.

11 MR. BOXALL: The need to share  
12 with the United States was accepted?

13 MR. FLEWELLING: Yes.

14 MR. BOXALL: And it's important to  
15 note that we are talking here about the United  
16 States, which I take it would be our most  
17 important foreign partner in law enforcement and  
18 security matters?

19 MR. FLEWELLING: I would say one  
20 of them.

21 MR. BOXALL: Would you agree the  
22 most important?

23 MR. FLEWELLING: On par with the  
24 U.K.

25 MR. BOXALL: Well, it seems to me

1 we share a common border that's pretty long here,  
2 sir.

3 MR. FLEWELLING: Yes.

4 MR. BOXALL: And given the events  
5 that occurred in New York City, which was less  
6 than a day's drive from this country, it was seen  
7 to be very important to work together with the  
8 Americans, was it not?

9 MR. FLEWELLING: Let's put it this  
10 way: There was a vast majority, I think there  
11 were over 2,000 resources that were mobilized to  
12 assist.

13 MR. BOXALL: All right. And  
14 so the need and the importance of sharing with the  
15 Americans was known and accepted?

16 MR. FLEWELLING: Oh, without  
17 question.

18 MR. BOXALL: The need for the  
19 Americans to know the information that we were  
20 gathering was known and accepted?

21 MR. FLEWELLING: I think it was  
22 encouraged that we shared.

23 MR. BOXALL: So they clearly had a  
24 need to know what information A-OCANADA was  
25 gathering?

1                   MR. FLEWELLING: I think they had  
2 a reasonable need, yes.

3                   MR. BOXALL: And through all of  
4 this period, this process, this procedure was  
5 accepted by CID?

6                   MR. FLEWELLING: I think that the  
7 officers within CID, I think initially agreed that  
8 the direct reporting and the sharing of  
9 information was extremely important, yes.

10                   However, after a year, as  
11 Mr. Superintendent Pilgrim had mentioned to me on  
12 numerous occasions, it was time to re-establish,  
13 to re-establish the normal protocols, if you will.

14                   MR. BOXALL: So it was recognized  
15 that this was the procedures that we are  
16 following, but after a year it was seen as let's  
17 see if we can now work back and try to get the  
18 prior procedure in place?

19                   MR. FLEWELLING: The urgency was  
20 slowly diminishing and that the need to  
21 re-establish the normal and proper procedures were  
22 needed to be put back into play.

23                   MR. BOXALL: Okay. But that seems  
24 to me to acknowledge, sir, that for that period  
25 prior to that time, that it was appropriate to

1 proceed in the way that had been agreed.

2 MR. FLEWELLING: I think with  
3 respect that they could exchange back and forth  
4 one-on-one, yes.

5 MR. BOXALL: All right. Sir, even  
6 with the year, with the meeting on September 26th,  
7 2002, there was still to be maintained open lines  
8 of communication with some new additions, such as  
9 that there would be informing of headquarters when  
10 they were meeting, for example.

11 MR. FLEWELLING: That there was --  
12 sorry?

13 MR. BOXALL: Well, I will ask you  
14 what they were then, sir.

15 You note on September 27th you say  
16 that you notified project -- this is September  
17 27th, 2002, page 34 of your notes:

18 "Notified Project A-OCANADA  
19 of our meeting with [blank]  
20 and that the lines of  
21 communication were open again  
22 with the new ground lines."

23 MR. FLEWELLING: Yes.

24 MR. BOXALL: What were the "new"  
25 ground lines?

1 MR. FLEWELLING: Well, as I stated  
2 before, apparently there was a discussion that  
3 Superintendent Pilgrim was unaware that Mr. Hovey  
4 and Mr. Proulx had, as I stated before. That is  
5 one of the reasons why Mr. Pilgrim at that time  
6 did not pursue that avenue.

7 However, he did make it very clear  
8 that what he wanted was to have a member of CID  
9 attend those meetings where there was an exchange  
10 of information with our U.S. counterparts.

11 MR. BOXALL: Right. And so  
12 that --

13 MR. FLEWELLING: And I think that  
14 was the biggest difference, is where there was an  
15 exchange of information.

16 MR. BOXALL: But that was a new  
17 ground line; correct?

18 MR. FLEWELLING: Well, from what  
19 was transpiring, yes.

20 MR. BOXALL: Right. Is it not  
21 true also, sir, that at that meeting on September  
22 26th -- you were present at the meeting on  
23 September 26th?

24 MR. FLEWELLING: Sorry?

25 MR. BOXALL: Were you present at

1 the meeting on September 26th, 2002?

2 MR. FLEWELLING: Yes, I was.

3 MR. BOXALL: Is it not true, sir,  
4 that there was an offer of A-OCANADA that perhaps  
5 Corporal Flewelling should be seconded over to  
6 A-OCANADA so that he would have the time to do  
7 this role and not have all the other things on his  
8 plate; that he could come right over to A-OCANADA  
9 and be right there in the office with them on a  
10 daily basis?

11 That is the offer A-OCANADA made;  
12 is it not, sir?

13 MR. FLEWELLING: I think they did.

14 MR. BOXALL: Pardon me?

15 MR. FLEWELLING: I think they did.

16 MR. BOXALL: Right. And CID  
17 didn't give you that secondment. They kept you  
18 doing a multitude of things; correct?

19 MR. FLEWELLING: Yes.

20 MR. BOXALL: What were some of the  
21 other things that you had responsibility to do?

22 MR. FLEWELLING: I was at the time  
23 monitoring several major investigations that were  
24 occurring around the country, around the world, as  
25 well as acting as a coach/mentor for the newer

1 individuals coming into the unit.

2 MR. BOXALL: Right. And so the  
3 reality of the responsibility at CID meant that it  
4 would be impossible, given your workload, for you  
5 to have the time to be able to read every SITREP  
6 every day, attend every briefing, and to have the  
7 complete in-depth knowledge that you could have if  
8 that was the only file on your desk?

9 MR. FLEWELLING: True. As a  
10 matter of fact, I ultimately ended up being moved  
11 to a different unit in order to be able to  
12 concentrate solely on this project.

13 MR. BOXALL: And I take it that  
14 your predecessors to the position also had  
15 numerous other responsibilities other than just  
16 A-OCANADA?

17 MR. FLEWELLING: Yes.

18 MR. BOXALL: Sir, with respect to  
19 caveats, the essential purpose of a caveat is so  
20 that the person receiving the information will not  
21 use the information beyond the purpose for which  
22 it is given without asking.

23 Would you agree?

24 MR. FLEWELLING: Yes.

25 MR. BOXALL: All right. And this



1 is basically known as the third party rule.

2 MR. FLEWELLING: Yes.

3 MR. BOXALL: All right. This  
4 would be a concept that would be well-known to  
5 U.S. authorities?

6 MR. FLEWELLING: I would say those  
7 who are used to and deal normally with foreign  
8 agencies, yes.

9 MR. BOXALL: Right. In fact, it  
10 is not even just foreign agencies. This idea of a  
11 third party rule applies in criminal investigation  
12 generally, doesn't it, sir?

13 MR. FLEWELLING: Yes, it does.

14 MR. BOXALL: And the American  
15 legal system is remarkably similar to ours?

16 MR. FLEWELLING: Yes.

17 MR. BOXALL: And so persons from  
18 the FBI, or other American agencies, would be well  
19 aware of the third party rule?

20 MR. FLEWELLING: Should be, yes.

21 MR. BOXALL: Certainly every  
22 person that you dealt with would have the  
23 experience and expertise to be aware of this rule?

24 The American persons that you were  
25 dealing with, they would be well aware of it?

1                   MR. FLEWELLING: The vast majority  
2 of people that I dealt with would, yes.

3                   MR. BOXALL: And with respect to  
4 the use of caveats, sometimes a document would  
5 have a caveat stamped right on it?

6                   MR. FLEWELLING: Yes.

7                   MR. BOXALL: Would you agree with  
8 me, sir, that it would be just -- and this is a  
9 hypothetical question. Would it be just as  
10 effective to ask or to receive from the person who  
11 is getting the information to put in writing that  
12 they acknowledge the existence of the rule and  
13 that they would honour it?

14                   For example, what I'm going to say  
15 is, in a hypothetical situation, if information  
16 was to be supplied to the United States, would it  
17 not be equally effective, if not more effective,  
18 to receive from the Americans a letter saying, "I  
19 acknowledge the third party rule and we are  
20 receiving this information." It's being received  
21 for whatever purpose?

22                   MR. FLEWELLING: I dare say  
23 nowadays that that would be something that would  
24 be.

25                   MR. BOXALL: Right. So in a

1           hypothetical question, if the sharing of the  
2           SUPERText material was on the basis that the  
3           Americans had supplied a letter, that would be in  
4           fact, in my submission, more effective and more  
5           meaningful than any caveat put on by a Canadian  
6           authority.

7                                 Would you agree?

8                                 MR. FLEWELLING: In terms of the  
9           sharing as you put it, yes.

10                                MR. BOXALL: Because giving  
11           somebody a letter where you stamp on it its  
12           purpose, unless they sign or agree, all you have  
13           really done is remind them of the third party  
14           rule, haven't you?

15                                MR. FLEWELLING: It should bring  
16           to their attention that that information is  
17           strictly for intelligence purposes for themselves,  
18           period.

19                                MR. BOXALL: And that should bring  
20           to their attention something they already know?

21                                MR. FLEWELLING: Yes.

22                                MR. BOXALL: With respect to the  
23           material that was sent on October 4th, 2002, that  
24           material was caveated; correct, sir?

25                                MR. FLEWELLING: Which?

1 MR. BOXALL: The reply from  
2 A-OCANADA on October 4th, 2002, replying to the  
3 American authorities, pursuant to your  
4 instructions of October 3rd to supply the  
5 information.

6 MR. FLEWELLING: It is my  
7 understanding it did have a caveat on it.

8 MR. BOXALL: Would you agree with  
9 me, sir, that if the information was caveated and  
10 if the Americans used it for a process -- used it  
11 for another purpose, that the use of it would be  
12 improper?

13 MR. FLEWELLING: Yes, because they  
14 should be --

15 MR. BOXALL: Absent request.

16 MR. FLEWELLING: They should be  
17 coming back to us for the appropriate  
18 authorization to use it, whether it be for a  
19 judicial process or to pass it to another agency.

20 MR. BOXALL: I think you were  
21 already asked, but did you ever see any request  
22 from the Americans with respect to the use of the  
23 material forwarded to them on October 4th for INS  
24 proceedings?

25 MR. FLEWELLING: Not to my

1 knowledge.

2 MR. BOXALL: So would it be your  
3 evidence that if it was used in that manner, that  
4 it was inappropriate and improper?

5 MR. FLEWELLING: I would say they  
6 should have come back to us.

7 MR. BOXALL: Would you have  
8 expected that knowledgeable foreign authorities,  
9 such as you were dealing with here and who  
10 received that material on October 4th, 2002, you  
11 would have expected them to have come back if they  
12 were going to use it for INS proceedings?

13 MR. FLEWELLING: Yes, as I  
14 understand it.

15 MR. BOXALL: Now, you were asked  
16 if placing caveats, which would be so simple, just  
17 stamping a document, would slow any investigation  
18 down or slow the flow of information down, and  
19 your initial response was, no, it's just simple to  
20 stamp it, so it wouldn't slow the process down.

21 MR. FLEWELLING: Yes.

22 MR. BOXALL: However, sir, if we  
23 are talking a situation where there is more than  
24 two partner agencies, and we are talking a  
25 situation where there is three or four partner

1 agencies, would you agree with me, sir, that if  
2 you caveat the information when you send it to  
3 one, that prevents that agency from dealing with  
4 it with respect to the other agency?

5 MR. FLEWELLING: If it's caveated  
6 and you are giving that information to one, then  
7 you would have to go back and seek authorization  
8 to share that information with a third.

9 MR. BOXALL: Each and every time?

10 MR. FLEWELLING: Each and every  
11 time.

12 MR. BOXALL: And this would make  
13 the logistics of dealing in an investigation that  
14 has multiple partners very difficult?

15 MR. FLEWELLING: Unless there is a  
16 written agreement amongst them, it can slow things  
17 down, yes.

18 MR. BOXALL: Right. And so it  
19 would slow things down unless there was an  
20 agreement amongst the partner agencies that  
21 anything shared with one could be shared with all  
22 in the partnership; correct?

23 MR. FLEWELLING: Correct.

24 MR. BOXALL: And so it would make  
25 sense, in an environment where you are dealing

1 with partner agencies, post 9/11, in a prevention  
2 mandate where you wish to share information as  
3 quickly as possible, that you wouldn't require  
4 caveats within the group.

5 Would you agree?

6 MR. FLEWELLING: I would say  
7 provided that all agencies were of the  
8 understanding that their information was going to  
9 be shared and allowed to be shared.

10 MR. BOXALL: Right. And if that  
11 was the agreement, then it would make sense to  
12 share it without the caveats; correct?

13 MR. FLEWELLING: If that agreement  
14 was in place.

15 MR. BOXALL: Right. You weren't  
16 present when Mr. Proulx made whatever agreement he  
17 made post-9/11, were you?

18 MR. FLEWELLING: As I said, no.

19 MR. BOXALL: All right.

20 Sir, with respect to the Arar  
21 timeline, you are aware that there were searches  
22 conducted on January 22nd, 2002?

23 MR. FLEWELLING: Yes.

24 MR. BOXALL: In fact, we have  
25 already been through the fact that you were the

1 CID representative on that day, even though you  
2 knew nothing about the file?

3 MR. FLEWELLING: Correct.

4 MR. BOXALL: And you are aware,  
5 though, sir, that there was a large amount of  
6 material seized in those searches?

7 MR. FLEWELLING: I'm not exactly  
8 sure how much, no.

9 MR. BOXALL: Well, let's just get  
10 to that. You are eventually the person who has  
11 overseer responsibility of this file, and you  
12 familiarized yourself with the file, and you are  
13 not aware if there was even a large amount of  
14 material seized on January 22nd?

15 MR. FLEWELLING: I was aware that  
16 there was computer equipment, but the detail of  
17 all of that which was seized, no.

18 MR. BOXALL: But are you aware  
19 that there was a large amount of material --

20 MR. FLEWELLING: Yes.

21 MR. BOXALL: So you were aware of  
22 that?

23 MR. FLEWELLING: Yes.

24 MR. BOXALL: Are you aware of the  
25 fact that there were subsequent meetings involving



1 partner agencies, including CID representatives,  
2 to discuss what to do with all this material?

3 MR. FLEWELLING: In what --

4 MR. BOXALL: How to analyze it,  
5 how to review it? Are you aware of that?

6 MR. FLEWELLING: No.

7 MR. BOXALL: So you have no  
8 knowledge of what meetings, or agreements, or  
9 instructions there were with respect to the  
10 sharing or the use of the information that was  
11 received on the searches?

12 MR. FLEWELLING: I believe I  
13 stated that before.

14 MR. BOXALL: Okay. And would you  
15 agree with me, sir, also, that in an investigation  
16 where material is obtained by way of search  
17 warrant, that it would be important to look at the  
18 information and review it in a timely and thorough  
19 way?

20 MR. FLEWELLING: Yes.

21 MR. BOXALL: Would you agree with  
22 me that in order to determine the information's  
23 relevance, it would also be necessary to compare  
24 that information with all the other information  
25 that had been gleaned in the investigation to

1 date?

2 MR. FLEWELLING: Yes.

3 MR. BOXALL: And that's  
4 particularly true in a circumstantial case, that  
5 you don't look at one isolated piece in of itself.  
6 But in a circumstantial case, to know the  
7 significance of each piece of the puzzle, you have  
8 to know everything?

9 MR. FLEWELLING: Yes.

10 MR. BOXALL: Because what may  
11 appear innocent as one particular circumstance,  
12 when you know all the circumstances may no longer  
13 be innocent?

14 MR. FLEWELLING: I would agree  
15 with that.

16 MR. BOXALL: And so that the  
17 importance of sharing the information obtained on  
18 the searches, in conjunction with the prior  
19 information, would be critically important in  
20 order to carry out a thorough and diligent  
21 investigation with this preventative mandate.

22 Do you agree?

23 MR. FLEWELLING: I don't have an  
24 issue with that.

25 MR. BOXALL: Right. And clearly

1 the United States would have a need to know, given  
2 the international implications and common interest  
3 in some of these persons?

4 MR. FLEWELLING: Yes.

5 MR. BOXALL: So the sharing of all  
6 the information, the sharing of all the  
7 information that had been obtained in the  
8 investigation would then be appropriate?

9 MR. FLEWELLING: Provided that it  
10 was done in a responsible manner and done with the  
11 appropriate approval.

12 MR. BOXALL: You have indicated  
13 that there were some communication problems  
14 between A-OCANADA and CID?

15 MR. FLEWELLING: Yes.

16 MR. BOXALL: And would you  
17 acknowledge that there is at least some  
18 responsibility on CID's part with respect to that?

19 MR. FLEWELLING: Absolutely.

20 MR. BOXALL: And that CID lacked  
21 the resources, we have already heard, to handle  
22 all of the work that they had; correct?

23 MR. FLEWELLING: I think in  
24 any issue or an investigation of that magnitude,  
25 if there are any issues, there is an awful lot

1 that goes both ways.

2 MR. BOXALL: And even the  
3 magnitude of information that was being given to  
4 headquarters, with the daily SITREPs, the  
5 investigative file was being uploaded into SCIS,  
6 was it not?

7 MR. FLEWELLING: Where, sorry?

8 MR. BOXALL: The A-OCANADA file  
9 was being uploaded into SCIS?

10 MR. FLEWELLING: Not totally, no.

11 MR. BOXALL: But you would have  
12 access to the portions that were uploaded?

13 MR. FLEWELLING: Yes.

14 MR. BOXALL: And you would have  
15 access to the SITREPs?

16 MR. FLEWELLING: As a matter of  
17 fact, I took on a large part of that myself.

18 MR. BOXALL: Oh, that's  
19 interesting. Which large part did you take on  
20 yourself?

21 MR. FLEWELLING: The information  
22 that was shared or handed over by foreign  
23 agencies, and I had it uploaded.

24 MR. BOXALL: Who had been doing it  
25 before you got on?

1 MR. FLEWELLING: It was left up to  
2 the receiving agency or the receiving division in  
3 order to upload it.

4 MR. BOXALL: And why did you take  
5 it on?

6 MR. FLEWELLING: Because it wasn't  
7 getting uploaded.

8 MR. BOXALL: And why wasn't CID,  
9 your predecessors, ensuring that that was the  
10 case?

11 MR. FLEWELLING: I have no idea.  
12 I can't answer for them.

13 MR. BOXALL: And clearly, even  
14 attending at all of the meetings was difficult for  
15 CID?

16 MR. FLEWELLING: At times, yes.

17 MR. BOXALL: Right. We also see,  
18 for example, that you were concerned because CID  
19 was unable to even give you a simple clearance to  
20 travel to the United States for a meeting in a  
21 timely way?

22 MR. FLEWELLING: That one time,  
23 yes.

24 MR. BOXALL: So you couldn't even  
25 get something processed like that in a day?

1 MR. FLEWELLING: At that  
2 timeframe, yes.

3 MR. BOXALL: Now, sir, one of your  
4 concerns you talked about was having caveats on  
5 SITREPs?

6 MR. FLEWELLING: Yes.

7 MR. BOXALL: Where were the  
8 SITREPs being circulated?

9 MR. FLEWELLING: They were being  
10 circulated to the Americans.

11 MR. BOXALL: Okay. And you were  
12 well aware that they were being circulated to the  
13 Americans?

14 MR. FLEWELLING: Yes.

15 MR. BOXALL: You were then content  
16 that they be circulated to the Americans?

17 MR. FLEWELLING: That was  
18 something that was apparently agreed upon.

19 MR. BOXALL: Do you know who was  
20 supplying them to the Americans and on what  
21 frequency?

22 MR. FLEWELLING: Initially it was  
23 being forwarded by way of the division themselves.

24 MR. BOXALL: All right. And --

25 MR. FLEWELLING: And then, at the

1 end, it was the responsibility that was taken over  
2 by CID and FIB.

3 MR. BOXALL: So your evidence is,  
4 then, that the SITREPs were being supplied to the  
5 Americans, and this would have been with the  
6 knowledge and consent of CID?

7 MR. FLEWELLING: At that time,  
8 yes.

9 MR. BOXALL: According to you, you  
10 asked them to start putting the caveats on the  
11 SITREPs?

12 MR. FLEWELLING: Yes.

13 MR. BOXALL: And they did, in  
14 response to your request?

15 MR. FLEWELLING: Yes.

16 MR. BOXALL: So the logical  
17 inference is no one at CID asked them to do that.  
18 None of your predecessors asked them to do it  
19 before?

20 MR. FLEWELLING: To do what, sir?

21 MR. BOXALL: To it put caveats on  
22 the SITREPs?

23 MR. FLEWELLING: I don't know.

24 MR. BOXALL: Certainly when you  
25 made the request, they did every effort to comply

1 with that?

2 MR. FLEWELLING: Yes.

3 --- Pause

4 MR. BOXALL: Sir, you were asked  
5 questions with respect to an offer, either an  
6 offer or a consideration, I will put it, being  
7 given by Inspector Cabana to share information  
8 with the Syrians around August 20th, 2002.

9 Do you recall that?

10 MR. FLEWELLING: To share what,  
11 sorry?

12 MR. BOXALL: To share information.

13 MR. FLEWELLING: Okay.

14 MR. BOXALL: Correct? And  
15 Inspector Cabana is an investigator?

16 MR. FLEWELLING: Yes.

17 MR. BOXALL: And it would be his  
18 duty and responsibility to investigate the matter  
19 under investigation, the perceived threat or  
20 criminal violation to determine if there is in  
21 fact one?

22 MR. FLEWELLING: Yes.

23 MR. BOXALL: And it was his duty  
24 to do a thorough and complete investigation?

25 MR. FLEWELLING: Absolutely.



1                   MR. BOXALL:  Would you agree with  
2                   me, sir, that it would be his duty to at least  
3                   consider the possibility of sharing with foreign  
4                   agencies as an investigator?

5                   MR. FLEWELLING:  That would have  
6                   to be a decision that he along with his managers  
7                   would have to consider as to what level and to how  
8                   much that he wanted to share.

9                   MR. BOXALL:  Right.  And they  
10                  would have to make --

11                  MR. FLEWELLING:  Given the  
12                  guidelines that are in place.

13                  MR. BOXALL:  We will come to it.

14                  MR. FLEWELLING:  Okay.

15                  MR. BOXALL:  It would be his duty  
16                  and responsibility to at least consider it.  
17                  Whether it takes place or not would require  
18                  consultation outside the investigative team;  
19                  correct?

20                  MR. FLEWELLING:  Absolutely.

21                  MR. BOXALL:  But absolutely the  
22                  investigator should at least put his mind to the  
23                  possibility of sharing, to see if it would further  
24                  his investigation?

25                  MR. FLEWELLING:  Yes.

1 MR. BOXALL: And then the  
2 investigator should consult with the experts at  
3 DFAIT, DOJ, CID to determine if sharing is  
4 appropriate?

5 MR. FLEWELLING: Yes.

6 MR. BOXALL: Right. Because the  
7 investigator wouldn't be expected to know all the  
8 particular circumstances that are relevant to  
9 DFAIT and to CID?

10 MR. FLEWELLING: And to consult  
11 all the various agencies to ensure that they are  
12 complying with not only our policies but the  
13 policy of government.

14 MR. BOXALL: Right. And that is  
15 what Inspector Cabana did here. He considered the  
16 possibility of sharing. CID was aware. You were  
17 aware that he was considering the possibility of  
18 sharing?

19 MR. FLEWELLING: Yes.

20 MR. BOXALL: DFAIT was aware of  
21 that?

22 MR. FLEWELLING: Yes.

23 MR. BOXALL: You are aware that  
24 the Department of Justice had lawyers working  
25 closely with A-OCANADA; right?

1 MR. FLEWELLING: Yes.

2 MR. BOXALL: And you are aware  
3 that Inspector Cabana was in consultation with  
4 them?

5 MR. FLEWELLING: Yes.

6 MR. BOXALL: So there certainly  
7 would be nothing improper about an investigator  
8 considering the possibility of sharing with  
9 foreign authorities and discussing that with  
10 Canadian authorities.

11 Would you agree?

12 MR. FLEWELLING: I would suggest,  
13 if it's a sharing of information, that as long as  
14 he was given the appropriate approval through the  
15 Assistant Commissioner of CID and consideration  
16 with the partner agencies, then I think that that  
17 should not be an issue.

18 MR. BOXALL: Let's just start  
19 here. If he is talking with Canadian authorities  
20 about the possibility of sharing --

21 MR. FLEWELLING: I have no problem  
22 with that.

23 MR. CAVALLUZZO: Just to be fair  
24 to the witness, my friend is posing a number of  
25 questions relating to the entry of August the 20th

1 in terms of sharing information. That's not what  
2 the entry for August 20th says.

3 The entry for August 20th says  
4 that Mr. Cabana wanted to invite the Syrians to  
5 come to Canada to review all of the information  
6 that A-OCANADA had, and that's what the witness  
7 was responding to before.

8 So my friend's premise, in terms  
9 of these questions, in my respectful submission,  
10 are unfair to the witness.

11 MR. BOXALL: Let's just deal with  
12 two issues to make clear. If my reference to the  
13 notes is unhelpful, I apologize.

14 However, would you agree with me  
15 then, in dealing with an information-sharing, that  
16 there is nothing wrong with a Canadian  
17 investigator exploring the possibility with  
18 Canadian officials about the sharing of  
19 information with foreign authorities?

20 MR. FLEWELLING: No.

21 MR. BOXALL: That is perfectly  
22 appropriate; correct?

23 MR. FLEWELLING: I think looking  
24 at the possibility --

25 MR. BOXALL: Right. Is

1 appropriate.

2 MR. FLEWELLING: -- the  
3 appropriateness and the level, I think that would  
4 be incumbent upon the individual to explore.

5 MR. BOXALL: Right. Now, with  
6 respect to the reference of inviting someone to  
7 come -- all right?

8 MR. FLEWELLING: Yes.

9 MR. BOXALL: Assuming that was  
10 ever contemplated, because it wasn't Inspector  
11 Cabana that told you that; correct?

12 MR. FLEWELLING: He personally,  
13 no.

14 MR. BOXALL: But with respect to  
15 considering a meeting with foreign authorities,  
16 once again, consideration of that amongst the  
17 Canadian officials, if it did occur, would not be  
18 improper either, would it?

19 MR. FLEWELLING: In order for that  
20 to occur, or for the individual to make the  
21 invitation, that invitation has to be made through  
22 the Assistant Commissioner's -- the appropriate  
23 director wherever that investigation is taking  
24 place.

25 MR. BOXALL: Obviously, if you

1 want to carry the thought process out, there's a  
2 number of steps that have to be followed?

3 MR. FLEWELLING: Absolutely.

4 MR. BOXALL: But once again,  
5 speaking about it to Canadian officials, there's  
6 nothing wrong with that, that you can see, is  
7 there?

8 MR. FLEWELLING: The possibility,  
9 I think it's another avenue that one can explore.

10 MR. BOXALL: As an investigator?

11 MR. FLEWELLING: As an  
12 investigator.

13 MR. BOXALL: And the experts, if  
14 they think it's inappropriate, can tell you so?

15 MR. FLEWELLING: Exactly.

16 MR. BOXALL: Thank you.

17 The American request for  
18 information on October the 3rd, 2002, came to your  
19 attention?

20 MR. FLEWELLING: Yes.

21 MR. BOXALL: And you forwarded it  
22 to A-OCANADA and instructed them to reply to it?

23 MR. FLEWELLING: Yes.

24 MR. BOXALL: And they did reply to  
25 it?

1 MR. FLEWELLING: Yes.

2 MR. BOXALL: It seems to me that  
3 that is the appropriate process, that you are  
4 talking about, is that the request came to CID.  
5 CID instructed the division to answer.

6 You received a copy of the answer?

7 MR. FLEWELLING: Yes.

8 MR. BOXALL: You, in fact, read  
9 that copy?

10 MR. FLEWELLING: That is correct.

11 MR. BOXALL: And you, in fact,  
12 instructed it to be re-sent when you were under  
13 the impression that the Americans had been unable  
14 to read it?

15 MR. FLEWELLING: Yes.

16 MR. BOXALL: And I take it from  
17 having read it and instructing it to be re-sent,  
18 that you were satisfied that the sending of the  
19 response was appropriate?

20 MR. FLEWELLING: The only issue  
21 that I raised or wanted to raise was the fact that  
22 it included a partner agency's information.

23 MR. BOXALL: Right. But you saw  
24 that as a minor issue in the circumstances?

25 MR. FLEWELLING: One that I would

1           have thought that he would have -- and, again, I  
2           don't know whether he did -- should have sought to  
3           acquire the necessary approval.

4                       MR. BOXALL:   But it wasn't  
5           important enough for you to hold it up because you  
6           instructed it to be re-sent in any event?

7                       MR. FLEWELLING:  After bringing it  
8           to their attention, I didn't think that I needed  
9           to go back and to reinforce it or to check it.

10                      MR. BOXALL:  All right.  And the  
11           response was caveated?

12                      MR. FLEWELLING:  I believe so,  
13           yes.

14                      MR. BOXALL:  In your instructions  
15           on replying to the request, you placed no  
16           limitations on what they were to include in their  
17           reply?

18                      MR. FLEWELLING:  No limitations in  
19           terms of what?

20                      MR. BOXALL:  Of the content to be  
21           included?

22                      MR. FLEWELLING:  No.

23                      MR. BOXALL:  All right.  And you  
24           clearly were of the view that the American  
25           authorities had a need to know the information?



1 MR. FLEWELLING: I knew that the  
2 investigators had a timeline. It was a request  
3 that I put forward that I, in turn, passed on to  
4 A-OCANADA.

5 MR. BOXALL: Well, it was for more  
6 than a timeline, sir.

7 MR. FLEWELLING: No, I'm saying  
8 the American investigators had a timeframe --

9 MR. BOXALL: Right.

10 MR. FLEWELLING: -- upon which to  
11 prepare --

12 MR. BOXALL: They needed the  
13 answer.

14 MR. FLEWELLING: Exactly.

15 MR. BOXALL: But what I'm saying  
16 is it was your opinion -- I'm going to try this  
17 again.

18 When you were asked questions  
19 yesterday about information-sharing, you said that  
20 these things would have to be looked at.  
21 Need-to-know would be one?

22 MR. FLEWELLING: Yes.

23 MR. BOXALL: And clearly you  
24 thought the persons had a need to know?

25 MR. FLEWELLING: Yes.

1 MR. BOXALL: Okay. It's important  
2 to know the purpose?

3 MR. FLEWELLING: Yes.

4 MR. BOXALL: And you were  
5 satisfied that the purpose was given and  
6 appropriate?

7 MR. FLEWELLING: That it was for  
8 information purposes, yes.

9 MR. BOXALL: So you were satisfied  
10 with that.

11 Important to know that the  
12 response is relevant?

13 MR. FLEWELLING: Yes.

14 MR. BOXALL: And you believe the  
15 response was relevant?

16 MR. FLEWELLING: From what I could  
17 see, yes.

18 MR. BOXALL: All right.

19 MR. FOTHERGILL: Commissioner, I  
20 note that we have been going for approximately two  
21 hours since the break, and I wonder if we could  
22 just inquire if the witness is in need of a break?

23 THE COMMISSIONER: How much longer  
24 do you think you will be, Mr. Boxall?

25 MR. BOXALL: You know what? I

1 think I would appreciate five minutes, and I  
2 promise I would be shorter than longer. It may be  
3 that I'm just winding down here.

4 THE COMMISSIONER: Okay. You  
5 don't know yet how much longer you will be?

6 MR. BOXALL: I think five to ten  
7 minutes.

8 THE COMMISSIONER: Okay. We do  
9 have three more witnesses scheduled for today.  
10 Will ten minutes be a sufficient  
11 break for you, Sergeant?

12 MR. FLEWELLING: Fine.

13 THE COMMISSIONER: All right. We  
14 will break for ten minutes.

15 THE REGISTRAR: Please stand.

16 --- Upon recessing at 3:26 p.m. /

17 Suspension à 15 h 26

18 --- Upon resuming at 3:38 p.m. /

19 Reprise à 15 h 38

20 THE REGISTRAR: Please be seated.  
21 Veuillez vous asseoir.

22 MR. BOXALL: Sir, I will try and  
23 find the reference, if need be, but I think it was  
24 around January of 2003, there was material that  
25 was received that you sent off for forensic

1 examination and this caused a discussion between  
2 you and an A-OCANADA investigator?

3 MR. FLEWELLING: That's correct.

4 MR. BOXALL: All right. This was  
5 material that had been requested by A-OCANADA from  
6 the foreign source?

7 MR. FLEWELLING: I believe so,  
8 yes.

9 MR. BOXALL: Right. And  
10 A-OCANADA's concern was several with that. One,  
11 that when the material was received by CID, that  
12 they had not been advised promptly and it took  
13 them some, I think, weeks before they were aware  
14 that you had received it?

15 MR. FLEWELLING: I don't think it  
16 was that long but --

17 MR. BOXALL: That was their  
18 concern, that there had been a delay in advising  
19 them?

20 MR. FLEWELLING: I will take that  
21 responsibility, yes.

22 MR. BOXALL: And they were also  
23 concerned because they were conducting an  
24 investigation. They were concerned whether there  
25 could be continuity or admissibility issues if the

1 material was received and sent out for an  
2 examination beyond their control?

3 MR. FLEWELLING: Then I would have  
4 been called anyway.

5 MR. BOXALL: But would you agree  
6 that those were concerns that they had?

7 MR. FLEWELLING: I think it might  
8 have been a concern for them, but there again, I  
9 would have touched that material, so I would have  
10 been called to testify on it anyway.

11 MR. BOXALL: But we put another  
12 party in place once you have sent it out  
13 elsewhere; correct?

14 MR. FLEWELLING: It would have  
15 happened anyway.

16 MR. BOXALL: In any event,  
17 A-OCANADA perceived that CID had such enormous  
18 responsibilities that CID's involvement would slow  
19 down their investigation? That was their sense of  
20 it?

21 MR. FLEWELLING: That may have  
22 been their perception.

23 MR. BOXALL: Right. In fact,  
24 their perception, that CID was busy and overworked  
25 was accurate?

1                   MR. FLEWELLING: I would daresay  
2                   that approximately January, late December, I had  
3                   been seconded to FIB, and as a matter of fact the  
4                   additional resources that were mobilized to assist  
5                   them was that much greater, so there were no more  
6                   backlogs at that particular point in time.

7                   MR. BOXALL: That is 14 months  
8                   into this investigation?

9                   MR. FLEWELLING: Even prior to  
10                  that, I wouldn't daresay that all the backlog was  
11                  a result of CID's inability, but more so the  
12                  ability of other agencies to supply an awful lot  
13                  of their information in a timely fashion.

14                 MR. BOXALL: But we see that even  
15                 in September of 2002, although SITREPs are being  
16                 sent daily to you, you are not reading them daily?

17                 MR. FLEWELLING: When, sorry?

18                 MR. BOXALL: Even by September of  
19                 2002, when SITREPs are being sent daily to you,  
20                 you are not reading them daily?

21                 MR. FLEWELLING: The reason why  
22                 they were not being read daily is only because of  
23                 my being required to deal with other urgent  
24                 matters.

25                 MR. BOXALL: That's the whole

1 point, yes.

2 Sir, you had expressed concern  
3 that A-OCANADA wasn't keeping CID in the loop, and  
4 I just want to go through a list of things that  
5 they did do.

6 One, there was SITREPs sent;  
7 correct?

8 MR. FLEWELLING: Yes.

9 MR. BOXALL: Two, CID was invited  
10 to attend meetings; correct?

11 MR. FLEWELLING: Yes.

12 MR. BOXALL: There was telephone  
13 discussions between CID and A-OCANADA; correct?

14 MR. FLEWELLING: Yes.

15 MR. BOXALL: Their offices are  
16 just down the road and you could attend and visit  
17 when you so chose?

18 MR. FLEWELLING: And vice versa.

19 MR. BOXALL: And vice versa. And  
20 those visits occurred?

21 MR. FLEWELLING: From time to  
22 time, yes.

23 MR. BOXALL: And what more could  
24 have been done to keep CID informed? They are  
25 informing them in writing, they are informing them

1 over the telephone, and they are meeting with them  
2 in person.

3 Is there something else?

4 MR. FLEWELLING: My opinion would  
5 be that, yes, there could have been a greater  
6 communication in terms of our ability to exchange  
7 phone calls, to ensure that we were in the loop on  
8 major events.

9 MR. BOXALL: Right. In fact, they  
10 made the offer to have you seconded.

11 MR. FLEWELLING: Yes.

12 MR. BOXALL: And the offer was  
13 declined?

14 MR. FLEWELLING: And like I said  
15 in one of my notes, I do have a telephone, I do  
16 have a pager.

17 MR. BOXALL: Right. Those are my  
18 questions.

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

21 Mr. O'Brien?

22 MR. O'BRIEN: Mr. Commissioner,  
23 Mr. Boxall is getting like Mr. Bayne. He has a  
24 tendency to steal your thunder. All my questions  
25 have been asked in a different way, and I'm



1 content that anything now would just simply be  
2 repetitive.

3 Thank you, sir.

4 THE COMMISSIONER: Thank you very  
5 much.

6 Mr. Fothergill?

7 EXAMINATION

8 MR. FOTHERGILL: Sergeant  
9 Flewelling, I would like to begin by asking you to  
10 elaborate a bit on the information-sharing  
11 protocol, because Mr. Boxall suggested to you this  
12 is a very cumbersome and bureaucratic system, and  
13 he referred to the need to send information  
14 through CID and the LOs, et cetera, et cetera.

15 And I'm wondering: Is there a  
16 distinction to be made between the initial contact  
17 between a Canadian investigator and a foreign  
18 investigator and subsequent contacts?

19 MR. FLEWELLING: It is my  
20 understanding that once a Canadian investigator is  
21 introduced to a foreign official, that they can  
22 carry on the free exchange of information.

23 MR. FOTHERGILL: So once the  
24 initial contact is established and the direct  
25 dealing is taking place, what does CID expect in

1 terms of your role?

2 MR. FLEWELLING: We are expecting  
3 at that particular point in time to be informed as  
4 to what's transpiring with respect to that  
5 investigation so that we can ensure that the  
6 necessary policies and management is informed.

7 MR. FOTHERGILL: Did you notice  
8 any change in CID's approach to the management of  
9 national security investigations from 9/11 until  
10 the time that you left the National Security  
11 Offences Section?

12 MR. FLEWELLING: In 2002, there  
13 was a conscious decision, if you will, to try  
14 and -- or to establish or insert more central  
15 control.

16 MR. FOTHERGILL: Can you comment  
17 on what impact that had on your personal  
18 responsibilities?

19 MR. FLEWELLING: It certainly  
20 created a situation where -- how can I put it? It  
21 was deemed that headquarters was now becoming  
22 involved and trying to implicate themselves in  
23 their normal routine, which ultimately, I believe,  
24 caused some friction.

25 MR. FOTHERGILL: Did you encounter

1           this friction in other investigations other than  
2           Project A-OCANADA?

3                           MR. FLEWELLING:  Oh, yes.

4                           MR. FOTHERGILL:  Without giving us  
5           any operational information, can you elaborate on  
6           that, give us a sense of how other projects  
7           reacted to CID's increased role in centralization?

8                           MR. FLEWELLING:  A lot of them  
9           found it to be a little bit -- I think they looked  
10          at it and resented it to a certain bit, that we  
11          were starting to exert a little bit more control,  
12          and they voiced their concerns and we were able to  
13          discuss some of the issues that were going on and  
14          resolve and get around them and move on and have  
15          them comply with what it is that Superintendent  
16          Pilgrim was trying to establish.

17                          MR. FOTHERGILL:  In response to  
18          one of Mr. Cavalluzzo's questions, you said that  
19          you found the experience of dealing with Project  
20          A-OCANADA frustrating but not unusual.

21                          MR. FLEWELLING:  That is correct.

22                          MR. FOTHERGILL:  Can you explain  
23          what you meant by that?

24                          MR. FLEWELLING:  Normally when you  
25          are dealing with an investigation of that

1 magnitude, investigators want to pursue all angles  
2 as quickly and as fast as they possibly can, and  
3 once you start to put some outside influence or a  
4 corporate entity in place trying to exert certain  
5 controls, then there's bound to be that normal  
6 friction.

7 That's not necessarily a bad thing  
8 all the time either. It causes each of us to look  
9 inward and look at our own home to determine which  
10 policies actually need change, what different  
11 direction we need to go in, those types of things.

12 MR. FOTHERGILL: So when you said  
13 that the experience was not unusual, were you  
14 referring to your experiences with Project  
15 A-OCANADA or your experiences with other projects  
16 as well?

17 MR. FLEWELLING: I would say with  
18 both.

19 MR. FOTHERGILL: You have  
20 mentioned a few times that during the period that  
21 Mr. Arar was detained in New York -- and I'm  
22 referring specifically to the period September  
23 26th of 2002, to October 8th, 2002 -- you were  
24 especially busy.

25 Isn't that correct?

1 MR. FLEWELLING: That is correct.

2 MR. FOTHERGILL: So again without  
3 giving us operational information, can you give us  
4 a sense of what it was specifically that made you  
5 so busy during that period?

6 MR. FLEWELLING: I had a major  
7 project that was going on at that time outside the  
8 country.

9 MR. FOTHERGILL: Can you give us a  
10 sense of how much of your time that other project  
11 consumed during that period?

12 MR. FLEWELLING: During that time,  
13 it was deemed to be a priority.

14 MR. FOTHERGILL: A priority over  
15 Project A-OCANADA?

16 MR. FLEWELLING: Yes, for that  
17 short duration of time.

18 MR. FOTHERGILL: I don't know if  
19 this is a fair way to characterize it, but can you  
20 try to give us a sense of how much of your time as  
21 a proportion was devoted to this other project  
22 that was considered to be a priority?

23 MR. FLEWELLING: I was going to  
24 say somewhere upwards of 75 to 80 per cent.

25 MR. FOTHERGILL: I would like to

1 ask you a few questions about the telephone calls  
2 you had with the U.S. Embassy representative  
3 during this period.

4 I think you have told us --  
5 actually, let me approach this slightly  
6 differently.

7 Mr. Waldman referred you to  
8 Guantanamo Bay.

9 MR. FLEWELLING: Yes.

10 MR. FOTHERGILL: As perhaps an  
11 event that might inform your conversations with  
12 the American officials. Do you recall that?

13 MR. FLEWELLING: Yes, I do.

14 MR. FOTHERGILL: Did you make any  
15 connection between what was happening to Mr. Arar  
16 and what had happened to the detainees at  
17 Guantanamo Bay?

18 MR. FLEWELLING: I considered  
19 those to be totally two and distinct -- or two  
20 separate and distinct issues. One involved  
21 military law and one that involved U.S. law within  
22 the continental United States.

23 MR. FOTHERGILL: So before  
24 Mr. Arar, had you ever been involved in a case  
25 where somebody had tried to enter the United

1 States from Canada and had been stopped due to  
2 suspicions of terrorism?

3 MR. FLEWELLING: Yes, prior to  
4 September 11th, I dealt with the Ressay file.

5 MR. FOTHERGILL: I think this is a  
6 fairly publicly known file, but again I'm going to  
7 have to caution you. Without giving us  
8 operational information that isn't already in the  
9 public domain, can you tell us approximately what  
10 the situation was with Mr. Ressay?

11 MR. FLEWELLING: Mr. Ressay was  
12 arrested by U.S. officials trying to enter into  
13 the United States in Washington State, was  
14 subsequently detained for some period of time  
15 before being charged with terrorist-related  
16 offences.

17 MR. FOTHERGILL: Do you recall  
18 whether Mr. Ressay was a citizen of a country  
19 other than Canada?

20 MR. FLEWELLING: Yes, he was.

21 MR. FOTHERGILL: Do you recall  
22 what that country was?

23 MR. FLEWELLING: I believe it's  
24 Algeria.

25 MR. FOTHERGILL: And do you know

1           whether Mr. Ressam was ever sent by the Americans  
2           to Algeria for questioning?

3                         MR. FLEWELLING:  No, he was not.

4                         MR. FOTHERGILL:  Do you know how  
5           long it was, approximately, before Mr. Ressam's  
6           legal status in the United States was resolved?

7                         MR. FLEWELLING:  It's my  
8           understanding it was only recently that he was  
9           convicted and sentenced in the United States.

10                        MR. FOTHERGILL:  So it's something  
11           that took a fair amount of time to resolve?

12                        MR. FLEWELLING:  Let's see.  We  
13           are 2005.  I would daresay four, four and a half  
14           years.

15                        MR. FOTHERGILL:  So prior to  
16           Mr. Arar's circumstances, had you ever encountered  
17           any other situation that was similar to what  
18           subsequently transpired with him?

19                        MR. FLEWELLING:  No.

20                        MR. FOTHERGILL:  I want to ask you  
21           a few questions about your relationship with the  
22           U.S. Embassy representative with whom you spoke on  
23           October 4th and again on October 5th.

24                        Now, obviously you can't tell us  
25           his name and you can't tell us the organization



1 with which he was affiliated beyond the fact that  
2 he worked in the U.S. Embassy. But bearing those  
3 constraints in mind, can you give us some sense of  
4 what his function was within the U.S. Embassy?

5 MR. FLEWELLING: I deemed his to  
6 be very similar in nature to the position that I  
7 held, in that we were required to process  
8 information, acquire information, and then  
9 disseminate it.

10 MR. FOTHERGILL: Can you comment  
11 on his approximate seniority within the  
12 organization? Was it comparable to yours or was  
13 he senior or junior?

14 MR. FLEWELLING: What I know of  
15 the organization's structure, I believe that it  
16 would be similar to my position.

17 MR. FOTHERGILL: And had you dealt  
18 with him before?

19 MR. FLEWELLING: Quite frequently  
20 over the past year.

21 MR. FOTHERGILL: In relation just  
22 to Project A-OCANADA or in relation to all  
23 projects --

24 MR. FLEWELLING: Oh, numerous.

25 MR. FOTHERGILL: Pardon?

1 MR. FLEWELLING: Numerous.

2 MR. FOTHERGILL: Numerous. How  
3 would you categorize your working relationship  
4 with this individual?

5 MR. FLEWELLING: I thought that we  
6 had a very good working relationship in that much  
7 of our exchange I found him to be open, honest and  
8 straightforward. We relied on one another in many  
9 cases.

10 MR. FOTHERGILL: If I can address  
11 your attention to the October 4th telephone call,  
12 this is the one that you took when you were  
13 already set to leave the office and then the phone  
14 rang, as I understand it.

15 I think you have told us that  
16 there was a discussion about the possibility that  
17 Mr. Arar might be sent to Switzerland, and you  
18 also raised the possibility that he might come to  
19 Canada.

20 MR. FLEWELLING: Yes.

21 MR. FOTHERGILL: My question is:  
22 Was there ever any discussion in that telephone  
23 call about the possibility that the United States  
24 might send Mr. Arar directly to Syria?

25 MR. FLEWELLING: No. In any of my

1           conversations, it was never brought up.

2                       MR. FOTHERGILL: I think  
3 Mr. Cavalluzzo established in his questions with  
4 you that the Canadian Department of Foreign  
5 Affairs managed to arrange a consular visit with  
6 Mr. Arar on October 3rd.

7                       MR. FLEWELLING: Yes.

8                       MR. FOTHERGILL: Do you know  
9 whether you were aware of that at the time of your  
10 calls on October 4th or 5th?

11                      MR. FLEWELLING: I don't know if I  
12 was absolutely aware at the time. Unfortunately,  
13 as a result of preparing and so on and so forth, I  
14 do know. But I think it was reasonable to assume,  
15 where DFAIT was involved, that he had access to  
16 consular visits.

17                      MR. FOTHERGILL: Did you know at  
18 that time whether Mr. Arar had been able to retain  
19 a lawyer in the United States?

20                      MR. FLEWELLING: It was my  
21 understanding, through a discussion with A-OCANADA  
22 investigators, that arrangements were being made  
23 for him to acquire legal representation in New  
24 York.

25                      MR. FOTHERGILL: And you have

1 mentioned -- I think we have heard it variously  
2 referred to as a hearing or even deportation  
3 court. I think your e-mail refers to it as a  
4 trial of some kind for October 9th?

5 MR. FLEWELLING: Yes.

6 MR. FOTHERGILL: I would like you  
7 to convey to us, if you can, precisely what you  
8 understood that hearing to entail.

9 MR. FLEWELLING: I understood that  
10 that hearing would be somewhat similar to what we  
11 have here in Canada in that it would be a hearing  
12 to determine his stature and what they were going  
13 to do based on whatever evidence that was  
14 presented. I figured that it would be something  
15 whereby if there was any objections, that there  
16 would be an appeal process in place that an appeal  
17 could be made.

18 MR. FOTHERGILL: I'm going to try  
19 and break it down a little bit more closely.

20 Did you expect that Mr. Arar would  
21 attend this hearing?

22 MR. FLEWELLING: Yes, absolutely.

23 MR. FOTHERGILL: Did you think  
24 that his lawyer would attend the hearing?

25 MR. FLEWELLING: Yes.

1 MR. FOTHERGILL: Did you think  
2 that consular affairs would have the opportunity  
3 to monitor the hearing?

4 MR. FLEWELLING: Absolutely.  
5 That's their mandate.

6 MR. FOTHERGILL: And I think you  
7 have answered this. If Mr. Arar was dissatisfied  
8 with the outcome of the hearing, did you think  
9 that he would have the opportunity to do anything  
10 about it?

11 MR. FLEWELLING: Absolutely. I  
12 figured that he would have several avenues of  
13 appeal open to him. If it's anything like our  
14 Canadian immigration system, he would have ample  
15 opportunity to voice his objections.

16 MR. FOTHERGILL: Did you have a  
17 sense at that time how long it would take to  
18 resolve Mr. Arar's status in the United States?

19 MR. FLEWELLING: If it was going  
20 to be going that route, it could be some time. So  
21 I felt there was going to be a decision made or  
22 rendered on the 9th or it was going to take some  
23 time.

24 MR. FOTHERGILL: On the October  
25 5th telephone call with the U.S. Embassy

1 representative, am I right in saying that he  
2 reported to you that Mr. Arar had indicated a  
3 preference to come to Canada?

4 MR. FLEWELLING: Yes.

5 MR. FOTHERGILL: At that time, did  
6 you think that Mr. Arar had some say in where he  
7 would be sent?

8 MR. FLEWELLING: My understanding  
9 was that he did.

10 MR. FOTHERGILL: And in the same  
11 telephone call the U.S. Embassy representative  
12 asked you something about whether Mr. Arar could  
13 in fact return to Canada, and I would like to  
14 refer you to two documents that others have  
15 already referred you to.

16 The first is your notes, Exhibit  
17 P-211, page 39.

18 This is your note for Saturday,  
19 October 5th of 2002, at 1810 or 6:10 in the  
20 evening.

21 MR. FLEWELLING: Yes.

22 MR. FOTHERGILL: And there you  
23 wrote, at the bottom of the first full paragraph:

24 "Can the RCMP refuse Arar's  
25 entry into Canada?"

1 Do you see that?

2 MR. FLEWELLING: Yes.

3 MR. FOTHERGILL: Can I ask you now  
4 to refer to what has been marked as Exhibit P-227.  
5 This is your e-mail message to, I believe,  
6 Mr. Callaghan and I think we are dating this  
7 either October 6 or October 7. It's probably  
8 October 6.

9 MR. FLEWELLING: Yes.

10 MR. FOTHERGILL: And could you  
11 just read to us the final two lines of the second  
12 paragraph, "Would like to know," after the  
13 redacted portion.

14 MR. FLEWELLING: "Would like to  
15 know if we have any  
16 objections or laws that would  
17 prevent Canada from accepting  
18 him into the country."

19 MR. FOTHERGILL: So in your notes  
20 we have the language can the RCMP refuse Arar's  
21 entry into Canada, and in your e-mail record of  
22 the same conversation you say they want to know if  
23 we have any objections or laws that would prevent  
24 Canada from accepting him into the country.

25 So with reference to either of

1           these documents, can you recreate for us as  
2           precisely as possible the wording of the question  
3           asked by the American official?

4           --- Pause

5                           MR. FLEWELLING: I don't know if I  
6           have a precise answer for you, other than to say  
7           is I don't know as I would have used that language  
8           unless it came up somewhere along the line.

9                           MR. FOTHERGILL: And when you say  
10          that, are you referring to your notes or to the  
11          e-mail or to both?

12                          MR. FLEWELLING: My recollection.

13                          MR. FOTHERGILL: All right. So  
14          between these two accounts of the same  
15          conversation, you are unable to choose between  
16          them?

17                          MR. FLEWELLING: No, other than  
18          the way I perhaps perceived the way they were  
19          looking at it.

20                          MR. FOTHERGILL: I'm just going to  
21          finish with a couple of points raised by  
22          Mr. Waldman in his questioning.

23                          I'm hoping you can clarify for us  
24          your entry in your notes at pages 21 and 22 that  
25          Mr. Waldman took you to.



1 MR. FLEWELLING: Yes.

2 MR. FOTHERGILL: Just to give you  
3 the context, this is the portion of the notes that  
4 Mr. Waldman suggested might indicate that somebody  
5 thought it might be consistent with the  
6 preventative mandate to leave a detainee in a  
7 foreign country rather than bring them home.

8 Do you recall that discussion with  
9 Mr. Waldman?

10 MR. FLEWELLING: Yes.

11 MR. FOTHERGILL: If we look at  
12 page 21 of your notes, at the bottom, you have the  
13 entry "questions, intel versus criminal".

14 MR. FLEWELLING: Yes.

15 MR. FOTHERGILL: Can you explain  
16 that particular entry for us?

17 MR. FLEWELLING: If memory serves  
18 me correctly and the individual we are talking  
19 about, it was how do we want to approach to go and  
20 meet the individual and how we were going to  
21 approach an interview process; whether we were  
22 going to go by way of trying to solicit the  
23 information and be satisfied with the intelligence  
24 side of things or whether or not we were going to  
25 try and recreate the Canadian system when we went

1 to go see him. In other words, afford him his  
2 full Charter of Rights under the Canadian system.

3 MR. FOTHERGILL: So if you were  
4 unable to gain access to the individual to  
5 question him yourself, and if instead questions  
6 were submitted, for the sake of argument, for a  
7 foreign authority to ask the individual, would  
8 that make a difference to you concerning the  
9 subsequent use?

10 MR. FLEWELLING: If we forwarded  
11 the questions to a foreign agency to ask  
12 questions?

13 MR. FOTHERGILL: Yes.

14 MR. FLEWELLING: Yes.

15 MR. FOTHERGILL: Over the page  
16 then, at the bottom of page 22, you wrote:

17 "We may have to take and be  
18 satisfied --"

19 Correct me if I'm reading this  
20 incorrectly.

21 "We may have to take and be  
22 satisfied with the prevention  
23 side of the mandate and hope  
24 that additional information  
25 can be gleaned with respect

1 to --"

2 And then you identify a number of  
3 things.

4 MR. FLEWELLING: Yes.

5 MR. FOTHERGILL: Can you assist us  
6 in understanding what is meant here by the need to  
7 be satisfied with the prevention side of the  
8 mandate? As opposed to what?

9 MR. FLEWELLING: As opposed to  
10 going after either a criminal, or information that  
11 would assist us in supporting criminal charges;  
12 that it may have been prudent at that time to be  
13 satisfied to solicit information in order to  
14 prevent a furtherance of any real attack or  
15 anything of that nature.

16 MR. FOTHERGILL: Do you agree with  
17 Mr. Waldman's supposition that these notes reflect  
18 a discussion where somebody says it might assist  
19 the preventative mandate to leave somebody  
20 detained rather than bring them back to Canada?

21 MR. FLEWELLING: Sorry, go again?

22 MR. FOTHERGILL: Do you agree with  
23 Mr. Waldman's supposition, his interpretation of  
24 your notes, that they reflect a conversation where  
25 somebody said it would assist the prevention

1 mandate if we left the detainee in a foreign  
2 country rather than bringing them home?

3 --- Pause

4 MR. FLEWELLING: Sorry. I don't  
5 know if I understand the question.

6 MR. FOTHERGILL: I'm sorry. It  
7 may be somewhat complicated.

8 MR. FLEWELLING: It's late in the  
9 day.

10 MR. FOTHERGILL: I will try and  
11 break it down.

12 Do you recall Mr. Waldman  
13 suggested to you that these notes recorded a  
14 conversation or discussion where somebody  
15 suggested that the preventative mandate of the  
16 police might be best served by leaving a detainee  
17 in a foreign country rather than bringing them  
18 home?

19 MR. FLEWELLING: Yes, I recall  
20 that.

21 MR. FOTHERGILL: Do you agree that  
22 that is what these notes reflect?

23 MR. FLEWELLING: It's very hard  
24 for me to be definitive in my answer. But, no,  
25 none of us were really looking at that as being a

1 concrete option.

2 MR. FOTHERGILL: I would like to  
3 conclude with a reference to Exhibit P-116. This  
4 is the news article that Mr. Waldman referred you  
5 to.

6 You will recall that Mr. Waldman  
7 suggested that what was recounted in this news  
8 article sounded a bit like your conversation with  
9 the American official, and then he asked you if  
10 you were in fact the source for the journalist's  
11 article.

12 Do you recall that?

13 MR. FLEWELLING: Yes, I do.

14 MR. FOTHERGILL: The opening  
15 paragraph reads:

16 "U.S. officials seized Maher  
17 Arar when he was changing  
18 planes in New York last year  
19 and sent him to Syria because  
20 Canada would not guarantee he  
21 would be detained when he  
22 returned to Ottawa."

23 That's the opening paragraph.

24 MR. FLEWELLING: Yes.

25 MR. FOTHERGILL: And I'm wondering

1 if you can tell us whether at any time any U.S.  
2 official said to you that Mr. Arar would be  
3 returned to Canada if only we would guarantee that  
4 he would be detained when he got here?

5 MR. FLEWELLING: Not to my  
6 knowledge. That was never on the table. It was  
7 never discussed.

8 MR. FOTHERGILL: And then if we  
9 continue in the news article, we come to a  
10 paragraph which begins with a quotation, "Then  
11 they said to the Canadians."

12 Do you see that?

13 MR. FLEWELLING: Sorry, how far  
14 down again, sorry?

15 MR. FOTHERGILL: It's probably  
16 two-thirds of the way down the left-hand column?

17 MR. FLEWELLING: Yes.

18 MR. FOTHERGILL: The quotation  
19 attributed to somebody who apparently is in the  
20 know is:

21 "If we transfer that man to  
22 you, can you give us the  
23 assurance that you will lay  
24 charges against him? And the  
25 Canadian police told them,

1                                   no, we don't have anything to  
2                                   lay charges against him. We  
3                                   can't bring any charges."

4                                   It's really the first portion I'm  
5                                   interested in. Did any American official say to  
6                                   you if we transfer the man to you, can you give us  
7                                   the assurance that you will lay charges against  
8                                   him?

9                                   MR. FLEWELLING: No. That was  
10                                   never brought up.

11                                   MR. FOTHERGILL: Thank you. Those  
12                                   are my questions.

13                                   THE COMMISSIONER: Mr. Cavalluzzo?  
14                                   EXAMINATION

15                                   MR. CAVALLUZZO: Sergeant  
16                                   Flewelling, just a couple of questions in  
17                                   re-examination.

18                                   Mr. Boxall, throughout his  
19                                   questioning in terms of sharing information with  
20                                   foreign agencies, kept referring to the threat of  
21                                   Canadians losing their lives and basically most of  
22                                   his questions were premised on that idea, that  
23                                   Canadians would lose their lives. And of course  
24                                   no one wants that.

25                                   But let's just deal with the world

1 as it existed at the material time with A-OCANADA.

2 I understand that A-OCANADA, at  
3 most, had two targets. One was Mr. Almalki; is  
4 that correct?

5 MR. FOTHERGILL: Commissioner, we  
6 are not prepared to acknowledge in this forum the  
7 precise number of targets of Project A-OCANADA.  
8 Two have been confirmed, but beyond that, I would  
9 assert a claim of NSC.

10 MR. CAVALLUZZO: Okay.

11 There were two targets that we  
12 have heard about.

13 Mr. Almalki. Where was  
14 Mr. Almalki after November of 2001? I understand  
15 that he had left Canada.

16 MR. FLEWELLING: I believe so.

17 MR. CAVALLUZZO: And I understand,  
18 in fact the public record is Mr. Almalki did not  
19 return to Canada until August of 2004.

20 MR. FLEWELLING: I will take your  
21 word for it.

22 MR. CAVALLUZZO: Okay. The other  
23 target that we have heard about is Mr. El Maati.  
24 I understand that Mr. El Maati left Canada in  
25 November of 2001.



1 MR. FLEWELLING: I believe  
2 thereabouts.

3 MR. CAVALLUZZO: And I understand  
4 that Mr. El Maati returned to Canada in March of  
5 2004.

6 MR. FLEWELLING: Again, I will  
7 take your word for it.

8 MR. CAVALLUZZO: So that is the  
9 real context that we are dealing with with  
10 A-OCANADA. Now I would like to ask you some  
11 questions relating to that.

12 The RCMP policy in respect of  
13 caveats in respect of the sharing of information,  
14 and so on, deals with a number of interests other  
15 than quick sharing of information. Isn't that  
16 correct?

17 MR. FLEWELLING: Yes.

18 MR. CAVALLUZZO: The RCMP policy  
19 is concerned about the sharing of and protecting  
20 personal information. Isn't that correct?

21 MR. FLEWELLING: Yes.

22 MR. CAVALLUZZO: The RCMP policy  
23 is concerned about the Privacy Act?

24 MR. FLEWELLING: Yes.

25 MR. CAVALLUZZO: The RCMP policy

1 is concerned about human rights?

2 MR. FLEWELLING: Definitely.

3 MR. CAVALLUZZO: And the RCMP  
4 policy in respect of dealings with countries with  
5 poor human rights records is very restrictive in  
6 terms of what you can do with those countries.  
7 Isn't that correct?

8 MR. FLEWELLING: There is  
9 definitely a structure upon which one has to deal  
10 with.

11 MR. CAVALLUZZO: So that there are  
12 other considerations other than "Let's quickly  
13 share the information". Isn't that correct?

14 MR. FLEWELLING: Yes.

15 MR. CAVALLUZZO: In terms of the  
16 real world, there was, it seems to me, one time at  
17 which the Americans wanted information on an  
18 urgent basis that I can find in the record, and  
19 that is on October the 3rd; correct?

20 When you got that message late in  
21 the afternoon, and it was a she -- it was a  
22 she-American. That is as far as we can go,  
23 unfortunately, in this proceeding. She wanted  
24 information urgently, basically to support  
25 criminal charges in respect of Mr. Arar; correct?

1 MR. FLEWELLING: Yes.

2 MR. CAVALLUZZO: So that that was  
3 an urgent need. You sent it to A-OCANADA?

4 MR. FLEWELLING: Yes.

5 MR. CAVALLUZZO: A-OCANADA did  
6 their homework, got the information, and sent it  
7 through head office to the Americans. Isn't that  
8 correct?

9 MR. FLEWELLING: Yes.

10 MR. CAVALLUZZO: And on that  
11 occasion, they used a caveat, didn't they?

12 MR. FLEWELLING: Yes. I  
13 believe -- oh, sorry. The response to the  
14 questions? Yes.

15 MR. CAVALLUZZO: On that occasion  
16 they used a caveat?

17 MR. FLEWELLING: Yes.

18 MR. CAVALLUZZO: And all a caveat  
19 is is a stamp.

20 MR. FLEWELLING: Yes.

21 MR. CAVALLUZZO: It doesn't take a  
22 lot of time.

23 MR. FLEWELLING: No.

24 MR. CAVALLUZZO: You were asked a  
25 question by Mr. Boxall saying well, wouldn't it

1           have been all right if the Americans had sent a  
2           letter saying, "We will abide by the caveats with  
3           respect to the information that you have sent us."  
4           And it seemed to be the idea being that that would  
5           be appropriate in the circumstances.

6                         MR. FLEWELLING:  Of taking it in  
7           the context that there would be that written  
8           agreement on how to share that information and  
9           deal with it.

10                        MR. CAVALLUZZO:  Okay.  If we get  
11           that letter in respect of, hypothetically  
12           speaking, the data dump, that may be all right in  
13           respect of how they are going to use the  
14           information, but there are other problems, aren't  
15           there, that that doesn't deal with?

16                        First of all, would that letter  
17           deal with your obligation or the RCMP's obligation  
18           to ensure that there is a need to know, that  
19           personal information is protected, and that no  
20           national security information is given that  
21           shouldn't be?

22                        MR. FLEWELLING:  Yes.

23                        MR. CAVALLUZZO:  It would deal  
24           with that?

25                        MR. FLEWELLING:  Oh.  I think that

1           you would still have to ensure that that is all  
2           looked after and respected.

3                         MR. CAVALLUZZO:   Okay.   So you  
4           would still have to do that, even if you had that  
5           letter.   Isn't that correct?

6                         MR. FLEWELLING:   I believe that  
7           that should be scrutinized for those types of  
8           things, yes.

9                         MR. CAVALLUZZO:   And as well, if  
10          any information in the data dump was from another  
11          agency that had caveated that information, just  
12          because the Americans had sent this letter of  
13          approval or saying we are going to follow the  
14          caveats, would not give the RCMP the permission to  
15          release that information without getting the  
16          consent?

17                        MR. FLEWELLING:   Unless they were  
18          involved in that mutual agreement.

19                        MR. CAVALLUZZO:   Right.   And in  
20          looking at that mutual agreement, if we look at  
21          your e-mail to Callaghan on October 6th, Sunday,  
22          October 6th, after that phone call, one of your  
23          concerns you expressed was did we get in touch  
24          with the CSIS representative; right?

25                        MR. FLEWELLING:   That's correct.

1 MR. CAVALLUZZO: And your concern  
2 there was that maybe some information may have  
3 been released without CSIS' consent?

4 MR. FLEWELLING: Yes. I wanted to  
5 ensure that they were approached, or that they  
6 were notified, or that they were aware.

7 MR. CAVALLUZZO: So that even if  
8 CSIS was one of these partner agencies, the fact  
9 is you still had to get their consent if you were  
10 going to share information that they had caveated.

11 Isn't that correct?

12 MR. FLEWELLING: Yes.

13 MR. CAVALLUZZO: You were asked  
14 certain questions relating to Mr. Proulx's  
15 attendance at this meeting with all these partners  
16 shortly after 2001, and you were asked whether you  
17 were given anything in writing that the policy  
18 still applied.

19 The question I would have is: The  
20 policies are in writing. Isn't that correct?

21 MR. FLEWELLING: Yes, they are  
22 existing.

23 MR. CAVALLUZZO: They are  
24 existing. They were never changed?

25 MR. FLEWELLING: I was referring

1 or I thought that it referred to any written  
2 instruction that was different than the existing  
3 policy.

4 MR. CAVALLUZZO: And what you are  
5 saying is there was no written policy that caveats  
6 are down, free flow of information, forget about  
7 human rights, forget about personal information  
8 and so on; nothing like that?

9 MR. FLEWELLING: Like I said, I  
10 didn't see anything in writing that suggested  
11 caveats were down.

12 MR. CAVALLUZZO: I just want to  
13 clarify in my own mind something that is very  
14 important that you said, and that is that you said  
15 that the situation reports were going to the  
16 Americans.

17 We are aware that some situation  
18 reports went to the Americans in respect of the  
19 data dump.

20 MR. FLEWELLING: Yes.

21 MR. CAVALLUZZO: Now, I was not  
22 aware that situation reports were going  
23 automatically to the Americans whenever they were  
24 created by Project A-OCANADA.

25 Are you sure of that?

1                   MR. FLEWELLING: Am I absolutely  
2                   sure that they were going down? It was my  
3                   understanding that there were a few. I know that  
4                   there were a few from Toronto that were going  
5                   down, and then at that point we ended up  
6                   soliciting that information and putting together  
7                   reports, vetting them, sanitizing them, and then  
8                   at that point, I would say probably sometime in  
9                   December, those were being shared.

10                  MR. CAVALLUZZO: But the question  
11                  that I have is were the American agencies -- and  
12                  you need not name them. Were the American  
13                  agencies getting the situation reps, the SITREPs,  
14                  on a regular basis like CID was, or were they  
15                  getting -- periodically they would get ones that  
16                  may be of interest to them?

17                  MR. FLEWELLING: I can't honestly  
18                  answer that.

19                  MR. CAVALLUZZO: Okay. Would it  
20                  surprise you to know that the evidence that we  
21                  have heard so far is that the Americans were not  
22                  getting the situation reps on a regular basis,  
23                  like CID?

24                  MR. FLEWELLING: That they were  
25                  not?



1 MR. CAVALLUZZO: Were not.

2 MR. FLEWELLING: Would it surprise  
3 me?

4 MR. CAVALLUZZO: Yes.

5 MR. FLEWELLING: No, not  
6 necessarily.

7 MR. CAVALLUZZO: Just a couple of  
8 final questions regarding some questions of  
9 Mr. Fothergill.

10 In terms of the Ressay case there  
11 is a crucial difference there, isn't there,  
12 between that and Mr. Arar's case? And that is in  
13 the Ressay case, they had sufficient evidence to  
14 criminally charge and convict Mr. Ressay?

15 MR. FLEWELLING: He was a much  
16 greater threat.

17 MR. CAVALLUZZO: Just two final  
18 questions.

19 You told Mr. Fothergill that you  
20 were under the impression, as of October the 8th,  
21 that the process relating to Mr. Arar was going to  
22 take a long time in the United States before  
23 anything happened to him.

24 MR. FLEWELLING: No, that that  
25 might be a possibility in the back of my mind.

1 MR. CAVALLUZZO: Right. But  
2 certainly as far as A-OCANADA is concerned, they  
3 thought it was going to happen quickly because  
4 they were setting up surveillance teams --

5 MR. FLEWELLING: Yes.

6 MR. CAVALLUZZO: -- on October the  
7 9th. So they knew something was going to happen  
8 like that, at least they thought something was  
9 going to happen.

10 MR. FLEWELLING: Actually I shared  
11 the same thought, but also in the back of my mind  
12 knowing immigration --

13 MR. CAVALLUZZO: But it was way  
14 back in your mind because I hope we are not  
15 wasting taxpayers' dollars by setting up  
16 surveillance teams on a remote possibility.

17 MR. FLEWELLING: I would share  
18 that.

19 MR. CAVALLUZZO: And finally, in  
20 regard to the handwritten notes you took on  
21 October 5th, and your e-mail of October the 6th,  
22 if you can help us, I assume that the notes of the  
23 telephone call on October the 5th, that you made  
24 those notes right after the telephone  
25 conversation?

1 MR. FLEWELLING: October the 5th,  
2 yes.

3 MR. CAVALLUZZO: You did. Thank  
4 you. I have no further questions.

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

7 That completes your evidence,  
8 Sergeant. Let me thank you for the time and  
9 effort -- it has been a long day and a half -- and  
10 the very patient way that you have answered the  
11 questions. I appreciate the time and effort you  
12 put into it.

13 MR. FLEWELLING: Thank you.

14 THE COMMISSIONER: Thank you very  
15 much.

16 I will just say a couple things to  
17 the group and then we might take a short break.

18 There are three further witnesses  
19 scheduled. They are each relatively short. It  
20 would be my preference, if possible, to complete  
21 them today, so that we stick to our schedule this  
22 week. The estimate I have from counsel is that if  
23 we are going to do that, it is probably going to  
24 take us until 6:30 to do it. I'm prepared to do  
25 it.

1                   During this break, if any of the  
2 people who are essential to this carrying on have  
3 other thoughts or other difficulties, could they  
4 please speak to Commission counsel. And I include  
5 in that the interpreters, the sound people, the  
6 people who operate the cameras, and counsel.

7                   We will go as long as we can and  
8 hopefully be able to complete these witnesses.

9                   So right now we will take a  
10 10-minute break, and we will resume then.

11                  MR. FOTHERGILL: Commissioner,  
12 before we rise, may I raise one issue that  
13 pertains to the third of our three remaining  
14 witnesses, Mr. Lauzon?

15                  THE COMMISSIONER: Yes.

16                  MR. FOTHERGILL: I have discussed  
17 with Commission counsel a concern that he has,  
18 which is that he will shortly be embarking on an  
19 undercover operation and he doesn't wish his image  
20 to be publicized.

21                  There's no objection to his name  
22 being broadcast or his voice or his words, but we  
23 do not wish his image to be broadcast, or for him  
24 to be photographed, and I understand that  
25 arrangements have been made with the television

1 crew, but I'm wondering if a direction from you  
2 could be made respecting the still photography?

3 THE COMMISSIONER: Right. Does  
4 anybody else have other submissions with respect  
5 to that?

6 The request, just so that we're  
7 clear, as I understand it, Mr. Fothergill, is that  
8 there be no photographs taken of this witness  
9 because of the undercover concern.

10 But his evidence will be given in  
11 public, his name would be known, it would simply  
12 be no publication of his pictures?

13 Anybody else have any submissions  
14 as to why that shouldn't happen?

15 Okay. No, I think it makes sense,  
16 and I think it's a reasonable approach to the  
17 issue, Mr. Fothergill, so that I will direct that  
18 there be no photographs taken of this witness,  
19 either in the hearing room or as he approaches the  
20 hearing room, and I'm sure with cooperation that  
21 shouldn't be a difficulty.

22 Go ahead. Yes, Mr. Cavalluzzo?

23 MR. CAVALLUZZO: One other aspect,  
24 and that is, if this proceeding is being  
25 televised, that the camera will not project his

1 image so that the camera would be on you rather  
2 than the witness throughout the questioning?

3 --- Laughter / Rires

4 THE COMMISSIONER: Especially late  
5 in the day, that's dangerous.

6 MR. CAVALLUZZO: That should be  
7 part of the order as well.

8 THE COMMISSIONER: Okay.

9 --- Laughter / Rires

10 THE COMMISSIONER: I didn't hear  
11 the last comment. I'm not sure I want to. Okay.  
12 We'll rise for ten minutes.

13 THE REGISTRAR: Please stand.

14 --- Upon recessing at 4:20 p.m. /

15 Suspension à 16 h 20

16 --- Upon resuming at 4:28 p.m. /

17 Reprise à 16 h 28

18 LE COMMISSAIRE : Bonjour,  
19 Sénateur.

20 TECHNICIAN: Mr. Commissioner, I  
21 just want to ensure the system is working  
22 properly.

23 THE COMMISSIONER: Okay. We  
24 should be on number two. Is that right?

25 TECHNICIAN: Yes.

1 THE COMMISSIONER: All right.

2 Thank you.

3 Mr. David?

4 ASSERMENTÉ PRÉCÉDEMMENT: PIERRE DE BANÉ

5 INTERROGATOIRE

6 Me DAVID : Bon après-midi,

7 Monsieur le Commissaire.

8 Nous avons le plaisir encore une  
9 fois d'avoir parmi nous le sénateur De Bané. Le  
10 sénateur est ici essentiellement pour clarifier un  
11 point, Monsieur le Commissaire, par rapport à son  
12 témoignage.

13 Je vous rappelle que le sénateur a  
14 déjà témoigné le 1<sup>er</sup> juin 2005, devant vous, et a  
15 livré un témoignage exhaustif.

16 C'est simplement pour revenir sur  
17 un point, comme j'ai dit.

18 Monsieur le Sénateur, je vous  
19 rappelle que lorsque vous avez témoigné le 1<sup>er</sup>  
20 juin vous avez fait une révélation, à savoir que  
21 vous étiez présent lors d'une rencontre au bureau  
22 du ministère des Affaires extérieures le 11  
23 juillet 2003 en préparation de votre voyage, qui  
24 vous amenait entre autres en Syrie afin de livrer  
25 une lettre signée par notre premier ministre au

1           président de la Syrie concernant monsieur Arar.

2                           C'est dans ce contexte là que  
3           j'aimerais vous ramener brièvement sur un aspect  
4           de votre témoignage.

5                           Vous avez expliqué au commissaire  
6           à cette époque là que monsieur Pardy, qui  
7           présidait cette rencontre préparatoire à votre  
8           voyage, vous avait fait une révélation.

9                           Votre témoignage -- d'ailleurs, on  
10          y est revenu à trois reprises, en chef et avec les  
11          questions de monsieur Waldman, ainsi que les  
12          questions de monsieur Baxter.

13                          Il s'agissait d'une information  
14          que monsieur Pardy vous a livrée à l'effet que  
15          plus ou moins la GRC avait reçu un appel d'une  
16          agence américaine alors que monsieur Arar était  
17          détenu aux États-Unis, selon votre compréhension  
18          des choses.

19                          Les Américains se seraient posé la  
20          question ou auraient posé la question à la GRC  
21          « Êtes-vous en mesure de procéder soit à  
22          l'arrestation ou soit à des accusations et détenir  
23          monsieur Arar? ».

24                          Vous avez expliqué exactement ce  
25          que monsieur Pardy a dit en ce sens.



1                   Nous avons tous compris de votre  
2                   témoignage, Monsieur le Sénateur, que  
3                   essentiellement la GRC a répliqué, a répondu, que,  
4                   à cause qu'ils n'avaient pas suffisamment de  
5                   preuves, ils n'étaient pas en mesure d'acquiescer  
6                   à ce genre de scénario ou à ce genre de demande de  
7                   la part des Américains.

8                   Est-ce que cela résume en gros  
9                   votre témoignage le 1<sup>er</sup> juin 2005 ?

10                  L'HON. PIERRE DE BANÉ : En effet.  
11                  C'est exactement cela.

12                  Et cette information m'a tellement  
13                  saisi que, lorsque vous m'avez demandé : « De quoi  
14                  vous souvenez-vous au sujet du briefing que vous  
15                  avez eu ? », ça c'est la chose qui a été pour moi  
16                  le point le plus important.

17                  Me DAVID : Merci.

18                  Je vais vous référer -- et ce  
19                  n'est pas nécessaire de visionner la page en  
20                  question -- mais à la page 4611 de votre  
21                  témoignage, je vous ai posé la question : « Est-ce  
22                  que vous avez, Monsieur le Sénateur, pris des  
23                  notes lors de cette rencontre là, des notes  
24                  personnelles ? »

25                  Votre réponse est la suivante --

1 et je lis votre réponse : « Oui, j'ai pris des  
2 notes. Malheureusement, je n'arrive pas à  
3 retrouver mon calepin dans lequel j'avais pris des  
4 notes. »

5 C'était votre témoignage le 1<sup>er</sup>  
6 juin 2005.

7 Voulez-vous nous expliquer, suite  
8 à votre témoignage le 1<sup>er</sup> juin, qu'est-ce qui est  
9 arrivé, qu'est-ce que vous avez fait ?

10 L'HON. PIERRE DE BANÉ : Avec grand  
11 plaisir.

12 Alors, tout d'abord, voyez-vous,  
13 au cours de l'année qui a précédé ma comparution,  
14 j'ai vu à plusieurs reprises mon avocat à mon  
15 bureau au Sénat pour lui faire part de mon  
16 intervention dans ce dossier.

17 Et, évidemment, j'ai un système de  
18 classification à mon bureau au Sénat qui est très,  
19 très complet.

20 Et je lui ai dit : « Je cherche  
21 vainement ces documents là. », parce que je me  
22 souviens comme c'était hier que j'avais un cahier.  
23 J'ai pris des notes pendant tout le temps --  
24 durant tout le briefing. Mais j'ai dit : « Je ne  
25 trouve pas mon cahier. »

1 Et c'est pour ça quand vous m'avez  
2 posé la question « Avez-vous pris des notes ? »,  
3 j'ai dit « Absolument, j'ai pris des notes. »

4 Quand vous m'avez dit « Où sont  
5 ces notes ? », je vous ai dit « Malheureusement,  
6 j'ai beau chercher dans mon bureau au Sénat, je  
7 n'ai pas trouvé mes notes. »

8 Lorsque j'ai fait ce témoignage,  
9 mon épouse était dans la salle, et Élisabeth(ph)  
10 s'est dit : « Bien, lorsqu'il a été là-bas c'était  
11 durant l'été. Le Parlement ne siégeait pas. Donc,  
12 il se peut que les documents soient à la maison. »

13 Moi, ce qui m'aurait bien étonné,  
14 parce que je n'ai même pas pensé à regarder dans  
15 la maison.

16 Et le soir, lorsque nous sommes  
17 partis vers la maison, j'ai entendu aux nouvelles  
18 à la radio que une personne en autorité mettait en  
19 doute la véracité de ce que j'avais dit,  
20 l'exactitude de mon souvenir, et cetera. Bon.

21 À ce moment là, bon, on est arrivé  
22 à la maison et Élisabeth(ph) ne m'en a pas parlé,  
23 mais elle a cherché, parce qu'elle connaît la  
24 maison très bien.

25 Et ce n'est que le lendemain à

1 sept heures le matin qu'elle m'a dit : « Voilà,  
2 j'ai trouvé tes notes. »

3 Je regarde ça et je dis : « C'est  
4 exactement ça. »

5 Me DAVID : Alors, c'est donc le  
6 lendemain, le 2 juin --

7 L'HON. PIERRE DE BANÉ : Le 2 juin,  
8 à sept heures le matin.

9 Me DAVID : -- que vous avez  
10 retrouvé votre calepin de notes --

11 L'HON. PIERRE DE BANÉ :  
12 Absolument, absolument.

13 Me DAVID : Et vous avez  
14 retrouvé -- vous avez été capable de répertorier  
15 les notes que vous avez prises --

16 L'HON. PIERRE DE BANÉ :  
17 Exactement.

18 Me DAVID : -- lors de votre  
19 briefing de monsieur Pardy.

20 L'HON. PIERRE DE BANÉ :  
21 Exactement.

22 Et la plupart de ces notes là,  
23 évidemment, j'avais oubliées. Mais le point le  
24 plus important qui est resté vivace dans ma  
25 mémoire -- il y avait deux points -- ce qui m'a

1           été dit sur ce sujet là, sur mes « talking points  
2           » au sous-ministre des affaires étrangères de  
3           Syrie, puisque j'avais écrit moi-même les  
4           arguments que j'allais développer devant lui.

5                           Parce que, comme on dit en  
6           anglais, « I knew I would have only one kick at  
7           the can, I'd better do it right to win his  
8           release. »

9                           Me DAVID : Alors, si vous le  
10          permettez, Monsieur le Sénateur, nous allons  
11          déposer à ce stade ci un extrait, une photocopie,  
12          de vos notes.

13                          Monsieur le Commissaire, je peux  
14          vous dire que vos procureurs ont lu et révisé les  
15          notes au complet de monsieur le sénateur, et nous  
16          avons identifié cinq pages que nous estimons  
17          pertinentes à votre mandat.

18                          C'est dans ce sens là que  
19          j'aimerais déposer les notes du sénateur à ce  
20          stade.

21   PIÈCE P-229 : Notes du L'Hon.

22   Pierre De Bané

23   THE COMMISSIONER: Two  
24          twenty-nine (229).

25   MR. DAVID: Thank you.

1                   Monsieur le Sénateur, si je  
2                   pouvais vous référer à la page 19 de 34.

3                   C'est vraiment l'extrait qui, je  
4                   crois, est le plus pertinent par rapport au  
5                   témoignage que vous avez déjà livré.

6                   Voulez-vous faire lecture du  
7                   premier paragraphe ?

8                   L'HON. PIERRE DE BANÉ : Avec  
9                   plaisir. Mais, si vous permettez, seulement une  
10                  phrase.

11                  Me DAVID : Oui.

12                  L'HON. PIERRE DE BANÉ : Donc, mon  
13                  épouse a trouvé ça à sept heures le matin. À huit  
14                  heures, j'ai appelé un avocat senior au ministère  
15                  de la Justice pour lui dire « Écoutez, on vient de  
16                  trouver le document », et il m'a dit « Parfait,  
17                  nous allons en discuter ensemble vers neuf heures  
18                  et demi. »

19                  Et là, j'ai tout de suite  
20                  téléphoné au conseiller juridique du Sénat et je  
21                  lui ai dit « Écoutez, je viens de trouver ces  
22                  documents là. Je vous demande de venir à mon  
23                  bureau. »

24                  Et là, nous avons eu une  
25                  conférence avec l'avocat du ministère de la

1 Justice où je lui ai raconté évidemment les  
2 choses. Voilà.

3 Donc, dès qu'on a trouvé les  
4 documents, j'ai attendu huit heures, une heure  
5 plus tard, pour pouvoir faire mes appels. Et voilà  
6 ce qui est arrivé.

7 Maintenant, si je peux vous lire  
8 cela à la page 19, je dis :

9 « (Un tel organisme  
10 américain) a demandé à la GRC  
11 si on vous le confie  
12 pouvez-vous le mettre en  
13 prison et la GRC a dit non. »

14 Et donc -- et l'autre phrase qui  
15 m'a également très étonné, c'est celle qui suit :

16 « CSIS aurait dit aux Syriens  
17 gardez-le. »

18 Gardez monsieur Arar.

19 Alors, voilà deux déclarations  
20 évidemment que j'ai entendues, que -- qui sont  
21 dans mes notes et qui m'ont --

22 Le deuxième, je l'avais oublié.  
23 C'est pour ça que je n'en avais pas parlé lorsque  
24 j'ai témoigné.

25 Mais, le premier, lui, m'a saisi

1           quand j'ai entendu cela.

2                           Me DAVID : Pour que le dossier  
3           soit très clair, Monsieur le Sénateur, il s'agit  
4           évidemment de notes que vous avez prises, de  
5           paroles dites, prononcées par monsieur Pardy ?

6                           L'HON. PIERRE DE BANÉ : Oui, oui.  
7           Oui, exactement.

8                           Me DAVID : Merci, Monsieur.

9                           L'HON. PIERRE DE BANÉ : Moi,  
10          j'écrivais rapidement ce que j'entendais, et j'ai  
11          pris --

12                           Le gros du briefing a porté sur le  
13          cas Sampson, mais il y a eu plusieurs -- une bonne  
14          partie aussi de la réunion, pas autant que sur  
15          Sampson, qui a porté sur le cas Arar.

16                           Et voilà.

17                           Me DAVID : Merci, Monsieur le  
18          Sénateur. Ce sont mes questions. Merci.

19                           L'HON. PIERRE DE BANÉ : C'est moi  
20          qui vous remercie.

21                           THE COMMISSIONER: Is there any  
22          cross-exsamination? There is nothing new other  
23          than the notes tend to confirm the earlier  
24          evidence so...

25                           Anybody have any questions?



1                   Okay. Well, thank you very much,  
2                   Senator, for coming. We appreciate your coming  
3                   back and bringing the notes to our attention.

4                   HON. PIERRE DE DANÉ: Thank you,  
5                   Your Lordship. Thank you very much, And I'm very  
6                   embarrassed I didn't have those notes prior.

7                   THE COMMISSIONER: It's fully  
8                   understandable. That's not something you should  
9                   concern yourself with.

10                  HON. PIERRE DE DANÉ: But I never  
11                  thought that they were at home. I was looking in  
12                  vain in my office.

13                  THE COMMISSIONER: I understand.  
14                  Don't you worry about that. And thank you very  
15                  much for your assistance.

16                  HON. PIERRE DE DANÉ: Thank you.

17                  THE COMMISSIONER: Should we take  
18                  a break?

19                  MR. DAVID: Perhaps -- I know that  
20                  Mr. Cavalluzzo is outside so ...

21                  THE COMMISSIONER: Okay. We'll  
22                  take a five-minute break and we'll have the next  
23                  witness.

24                  MR. DAVID: Thank you.

25                  THE REGISTRAR: Please stand.

1 --- Upon recessing at 4:40 p.m. /

2 Suspension à 16 h 40

3 --- Upon resuming at 4:46 p.m. /

4 Reprise à 16 h 46

5 THE REGISTRAR: Please be seated.

6 Veuillez vous asseoir.

7 MR. CAVALLUZZO: Mr. Commissioner,  
8 we have now Mr. Gregg Williams.

9 THE COMMISSIONER: Mr. Williams,  
10 would you like to be sworn or affirmed? Would you  
11 like to swear on the Bible or just take an  
12 affirmation?

13 MR. WILLIAMS: I can swear on the  
14 Bible, sir.

15 THE COMMISSIONER: Would you stand  
16 and take the Bible in your right hand and I will  
17 administer the oath.

18 SWORN: ALEXANDER GREGGORY WILLIAMS

19 THE COMMISSIONER: Your full name?

20 MR. WILLIAMS: Alexander Gregory  
21 Williams.

22 THE COMMISSIONER: Thank you. You  
23 may be seated.

24 Mr. Cavalluzzo?

25 MR. CAVALLUZZO: Thank you, sir.

1 EXAMINATION

2 MR. CAVALLUZZO: Mr. Williams, you  
3 are currently employed by the RCMP?

4 MR. WILLIAMS: That's correct.

5 MR. CAVALLUZZO: What position do  
6 you presently hold?

7 MR. WILLIAMS: I'm a regional  
8 planner in the "O" Division which is located in  
9 London, Ontario.

10 MR. CAVALLUZZO: I understand that  
11 you have been employed by the RCMP for 32 years.

12 MR. WILLIAMS: That's correct.

13 MR. CAVALLUZZO: And during the  
14 period of time that we are talking about, and that  
15 is in September and October of 2002, I understand  
16 that you were employed in the immigration and  
17 passport branch at the RCMP headquarters in  
18 Ottawa.

19 MR. WILLIAMS: That's correct.

20 MR. CAVALLUZZO: And how long were  
21 you employed in the immigration and passport  
22 branch?

23 MR. WILLIAMS: Fifteen years.

24 MR. CAVALLUZZO: And in October of  
25 2002, could you tell us what your position was in

1 the immigration and passport branch?

2 MR. WILLIAMS: I was a senior  
3 reviewer analyst and my area of responsibility was  
4 Western Canada.

5 MR. CAVALLUZZO: Now, on October  
6 4, 2002, I understand that you were working and  
7 you were working the day shift.

8 MR. WILLIAMS: I would have to  
9 look at a calendar, but if that's a day during the  
10 week, very possibly I was.

11 MR. CAVALLUZZO: Okay. It's  
12 Friday, October the 4th in 2002.

13 MR. WILLIAMS: According to my  
14 shift, normally I would be working that day, yes.

15 MR. CAVALLUZZO: And your shift  
16 was Monday to Friday, 7:30 to 4:30?

17 MR. WILLIAMS: I was off every  
18 second Monday. It was a compressed work week.

19 MR. CAVALLUZZO: But your hours of  
20 work on the Friday, if you were working, would be  
21 between 7:30 a.m. and 4:30 p.m.?

22 MR. WILLIAMS: Correct.

23 MR. CAVALLUZZO: Briefly, if you  
24 could tell us, what is your job? What are your  
25 duties and responsibilities as being the senior

1 reader in this particular branch?

2 MR. WILLIAMS: Again, like I said,  
3 I was responsible for Western Canada, and I would  
4 monitor any high-level investigations that were  
5 taking place in Western Canada. Also, I was a  
6 manager of fairly high-profile files such as the  
7 Canada-China working group, which was a result of  
8 the illegal Chinese ships that arrived on the West  
9 Coast of Canada in 1999. Also the trafficking in  
10 human beings, and particularly sexual exploitation  
11 of women and children. I was dealing with that as  
12 my major file.

13 MR. CAVALLUZZO: Now, in October  
14 of 2002, were there other readers or senior  
15 readers in the branch?

16 MR. WILLIAMS: Yes, I would  
17 imagine most staff would be there except for the  
18 ones that were working compressed or be off for  
19 holidays.

20 MR. CAVALLUZZO: And how many  
21 employees would there be in this branch?

22 MR. WILLIAMS: Ten to twelve, I  
23 guess? I'm not sure.

24 MR. CAVALLUZZO: And who would be  
25 the supervisors or manager of the branch?

1 MR. WILLIAMS: It would be an  
2 officer at the rank of superintendent.

3 MR. CAVALLUZZO: And who was that?

4 MR. WILLIAMS: At that time I  
5 believe it was Superintendent Ray Lang.

6 MR. CAVALLUZZO: Superintendent  
7 Ray Lang?

8 MR. WILLIAMS: Yes.

9 MR. CAVALLUZZO: And did you  
10 report directly to anybody before Mr. Lang?

11 MR. WILLIAMS: This is at a time  
12 of transition and downsizing. At one point I was  
13 reporting directly to Staff Sergeant Roger Paris,  
14 now whether at that particular time whether it was  
15 through Roger Paris or was directly to Ray Lang, I  
16 can't say for certain.

17 MR. CAVALLUZZO: Now, in October  
18 of 2002, I understand there was also a Roger Paré  
19 who retired in April of 2005, but he was working  
20 in the branch in October of 2002?

21 MR. WILLIAMS: Yes.

22 MR. CAVALLUZZO: Okay. And we've  
23 tracked down through RCMP records as to two people  
24 that would have been there perhaps having lunch at  
25 a desk at or around noontime on Friday, October

1 4th, and the two individuals would be you and  
2 Mr. Roger Paré. Do you know Mr. Roger Paré?

3 MR. WILLIAMS: Yes, very well.

4 MR. CAVALLUZZO: And would it be  
5 usual or not unusual, if I could put it that way,  
6 for you and he to be sitting down at a desk having  
7 lunch?

8 MR. WILLIAMS: Oh, very common.

9 MR. CAVALLUZZO: Okay. Now, do  
10 you know Mr. Rick Flewelling?

11 MR. WILLIAMS: I know him now, or  
12 I know him to see him, but I didn't know him back  
13 then.

14 MR. CAVALLUZZO: Now, you saw him  
15 or you met him a couple of days ago?

16 MR. WILLIAMS: Yes.

17 MR. CAVALLUZZO: Okay. Did you  
18 remember Mr. Flewelling?

19 MR. WILLIAMS: When I saw his  
20 face, it looked familiar. I had seen him around  
21 headquarters, but I had not recalled meeting him.

22 MR. CAVALLUZZO: So you never  
23 recalled meeting him before. Do you ever recall  
24 speaking to him before while you were in the  
25 immigration and passport branch?

1 MR. WILLIAMS: No, not that I can  
2 recall.

3 MR. CAVALLUZZO: So that you do  
4 not recall any occasion upon which Mr. Flewelling  
5 would have come up to the fourth floor, to the  
6 immigration and passport branch, and asked a  
7 question of both you gentlemen sitting there  
8 having lunch?

9 MR. WILLIAMS: No, I do not recall  
10 it.

11 MR. CAVALLUZZO: Okay. Then let  
12 me give you a hypothetical, and that is, if  
13 Mr. Flewelling came upstairs and wanted to know  
14 about a Canadian who had been detained in New York  
15 City, an airport in New York City, and was seeking  
16 information about what he referred to as the  
17 removal process in New York City, you don't recall  
18 that question, I understand, but would you have  
19 answered that question if it had been put to you?

20 MR. WILLIAMS: Not likely, because  
21 I don't have any knowledge of the removal process  
22 that would take place in another country.

23 MR. CAVALLUZZO: What if someone  
24 was to ask you a question of a Canadian who was a  
25 dual national detained in New York City and asked



1           you about the removal process of that particular  
2           Canadian from New York City?  Would your answer be  
3           the same?

4                           MR. WILLIAMS:  It would be the  
5           same.  It wouldn't have any bearing.

6                           MR. CAVALLUZZO:  What about if the  
7           question was put to you that, we have a Canadian  
8           who has flown in to New York City.  The Americans  
9           have refused him entry into the United States.  
10          And what happens if they refuse him entry?  What  
11          will they do?

12                          MR. WILLIAMS:  From my previous  
13          experience dealing with CIC, Citizenship &  
14          Immigration Canada, and the process that's  
15          involved there, it is my understanding that the  
16          airline that flew that person to the country to  
17          which they were not admissible is responsible to  
18          return them from which -- from whence he came.

19                          MR. CAVALLUZZO:  So, in other  
20          words, if this Canadian had been flown to New York  
21          City from Switzerland, you're saying in that  
22          circumstance, your understanding from your  
23          experience at CIC, that if he was refused entry  
24          into the United States, he would be sent back to  
25          Switzerland at the airline's expense?

1 MR. WILLIAMS: That's my  
2 understanding of the procedure, yes.

3 MR. CAVALLUZZO: Right. And the  
4 CIC procedure, now, that would -- that -- of  
5 course we're talking about a situation in the  
6 United States, but you feel that you might answer  
7 that question even though it is an American act  
8 which would be sending the individual back?

9 MR. WILLIAMS: If I knew the  
10 person was coming from another country, I don't  
11 know how I would have answered the question  
12 because I don't think I've ever dealt with that  
13 before. I don't know if I would have been given  
14 that information, to say that they were coming in  
15 from somewhere else. Now, if someone told me that  
16 there was a person, a Canadian arriving at a port  
17 of entry in the U.S. of A. and was refused entry,  
18 well, it's just standard procedure that they would  
19 be going back to Canada because they came from  
20 Canada. Now, when you throw Europe into the mix,  
21 I don't think I would have answered that.

22 MR. CAVALLUZZO: So you would have  
23 answered the question, if the person going to New  
24 York was coming from Canada?

25 MR. WILLIAMS: Yes.

1 MR. CAVALLUZZO: And you were  
2 saying your response would be, well, he would be  
3 coming back to Canada, but you wouldn't proffer an  
4 opinion if a European country was mentioned as the  
5 point of departure?

6 MR. WILLIAMS: No, I can't see --  
7 I would have said it's the responsibility of the  
8 airline to have the documentation for immigration  
9 purposes required in the country to which they are  
10 arriving, and if they don't have that, they would  
11 be returned.

12 MR. CAVALLUZZO: But in any event,  
13 you do not recall any such questions being put?

14 MR. WILLIAMS: You mean the  
15 conversation?

16 MR. CAVALLUZZO: Yes.

17 MR. WILLIAMS: No.

18 MR. CAVALLUZZO: Do you recall any  
19 mention of Mr. Arar? You know who Mr. Arar is,  
20 obviously?

21 MR. WILLIAMS: Oh, I know now,  
22 yes.

23 MR. CAVALLUZZO: But you don't  
24 recall anybody coming up and asking a question  
25 about Mr. Arar?

1 MR. WILLIAMS: No.

2 MR. CAVALLUZZO: Or a few days  
3 later, saying, "Holy god, that must have been  
4 Mr. Arar that he was talking about"?

5 MR. WILLIAMS: No, I don't recall  
6 that --

7 MR. CAVALLUZZO: You don't recall  
8 anything like that?

9 MR. WILLIAMS: No.

10 --- Pause

11 MR. WILLIAMS: For someone to  
12 come -- just to follow up -- for someone to come  
13 to our office and ask, that is a fairly routine  
14 question, so I wouldn't have given it a whole lot  
15 of thought, just to ask what the standard  
16 procedure was.

17 MR. CAVALLUZZO: But just to be  
18 fair, I want to be sure that it is -- even though  
19 you didn't know Mr. Flewelling and you just  
20 recognized him a couple of days ago, it is  
21 possible that you may have spoken to  
22 Mr. Flewelling in the past --

23 MR. WILLIAMS: Oh, yes. I didn't  
24 say I didn't do it. I just don't recall it.

25 MR. CAVALLUZZO: I have no further

1 questions. Thank you.

2 THE COMMISSIONER: Thank you.  
3 Cross-examination?

4 Okay, Mr. Waldman.

5 EXAMINATION

6 MR. WALDMAN: Just to make sure  
7 that you and I are on the same page on one thing.  
8 Is it not fair, based upon your understanding of  
9 Canadian immigration law that, at any time, a  
10 country has the right to remove a person to a  
11 country of citizenship, that's pretty basic,  
12 right? In other words, if I'm a Canadian  
13 travelling in Europe, any European country that  
14 refuses me admission, Canada has an obligation to  
15 take me back if I'm a Canadian citizen; is that  
16 your understanding of the law?

17 MR. WILLIAMS: To take you -- to  
18 accept you back into the country. Absolutely.  
19 You're a Canadian citizen.

20 MR. WALDMAN: And that applies to  
21 any other country as well. In other words, the  
22 basic principle of international law and  
23 immigration law is the country of citizenship must  
24 take you back?

25 MR. WILLIAMS: Yes, that's my

1 understanding.

2 MR. WALDMAN: So in the case of a  
3 dual national like Mr. Arar, in Canada, in any  
4 event, Canada would be legally entitled to send a  
5 dual national, Syrian-American citizen, either to  
6 the United States or to Syria?

7 MR. WILLIAMS: That's my  
8 understanding of the law.

9 MR. WALDMAN: The country of  
10 citizenship is basic.

11 And with respect to the question  
12 about return to other country from which he came,  
13 that would depend upon the circumstances; is that  
14 fair?

15 MR. WILLIAMS: Yes, I guess. Like  
16 I say, the standard procedure, the airline has the  
17 ultimate responsibility when they're taking --

18 MR. WALDMAN: But that's if it's  
19 done at the port of entry. If the person's  
20 admitted --

21 MR. WILLIAMS: That's right.  
22 That's the difference, if he's admitted or if he  
23 was refused entry.

24 MR. WALDMAN: Right. So if he's  
25 refused entry he can be sent back to the country,

1 and once he's inside ...

2 Okay. Thank you, those are my  
3 questions.

4 THE COMMISSIONER: Mr. Boxall, any  
5 questions?

6 MR. BOXALL: No questions.

7 THE COMMISSIONER: Mr. Fothergill?

8 MR. FOTHERGILL: Briefly. Perhaps  
9 I can do it from here.

10 EXAMINATION

11 MR. FOTHERGILL: Mr. Williams, you  
12 agree with Mr. Cavalluzzo that although you don't  
13 recall speaking with Mr. Flewelling on this date,  
14 it's possible that you did?

15 MR. WILLIAMS: Oh, absolutely.

16 MR. FOTHERGILL: And is it also  
17 possible that you had some sort of discussion with  
18 Mr. Flewelling about removal and the obligation of  
19 the airline to return an individual to the point  
20 from which they departed?

21 MR. WILLIAMS: Oh, it's very  
22 possible, yes.

23 MR. FOTHERGILL: Those are my  
24 questions, thank you.

25 THE COMMISSIONER: Thank you.

1 Mr. Cavalluzzo?

2 MR. CAVALLUZZO: I have no  
3 questions.

4 THE COMMISSIONER: Thank you very  
5 much, Mr. Williams. That completes your evidence.  
6 Thank you for coming.

7 Should we take a break before the  
8 next witness?

9 --- Off microphone / Sans microphone

10 MR. CAVALLUZZO: I guess the  
11 cameras -- yeah. Perhaps a five-minute break and  
12 we'll work out the mechanics.

13 THE COMMISSIONER: Okay. We'll  
14 rise for five minutes.

15 THE REGISTRAR: Please stand.

16 --- Upon recessing at 5:00 p.m. /

17 Suspension à 17 h 00

18 --- Upon resuming at 5:06 p.m. /

19 Reprise à 17 h 06

20 MR. CAVALLUZZO: Commissioner, we  
21 have Mr. Ron Lauzon with us.

22 THE COMMISSIONER: All right.  
23 Would you like to be sworn or affirmed?

24 MR. LAUZON: I'll swear.

25 THE COMMISSIONER: Would you stand



1 and take the Bible in your right hand and I'll  
2 administer the oath?

3 SWORN: JOSEPH RONALD LAUZON

4 THE COMMISSIONER: Your full name?

5 MR. LAUZON: Joseph Ronald Lauzon.

6 THE COMMISSIONER: Thank you. You  
7 may be seated.

8 MR. CAVALLUZZO: Mr. Commissioner,  
9 just before we begin the questioning of  
10 Mr. Lauzon, just to apprise counsel that in  
11 respect of Mr. Paré, Mr. Roger Paré who was the  
12 other person who worked in Immigration and  
13 Passport Section, we are not calling him because  
14 his recollection of events was even less than that  
15 of Mr. Williams and it was assessed between  
16 counsel that if anyone would have answered the  
17 question, it would have been Mr. Williams rather  
18 than Mr. Paré. So we will not be calling  
19 Mr. Paré.

20 THE COMMISSIONER: Thank you.

21 EXAMINATION

22 MR. CAVALLUZZO: Mr. Lauzon, you  
23 are employed by the RCMP?

24 MR. LAUZON: Yes.

25 MR. CAVALLUZZO: And what is your

1 position?

2 MR. LAUZON: I'm a Sergeant, and I  
3 am presently attached to the Integrated Proceeds  
4 of Crime section of Montreal, working on a special  
5 project.

6 MR. CAVALLUZZO: And you have been  
7 employed by -- let's first circulate your résumé,  
8 or curriculum vitae, and then we'll briefly take  
9 you through that.

10 THE COMMISSIONER: 230.

11 EXHIBIT NO. 230: Curriculum  
12 vitae of Ron Lauzon

13 MR. CAVALLUZZO: Now, it looks  
14 like you joined the RCMP in 1987, you graduated  
15 with a Bachelor of Commerce degree from the  
16 University of Toronto in June of 1987?

17 MR. LAUZON: Yes.

18 MR. CAVALLUZZO: As I say, you  
19 joined the RCMP in August of 1987, and you're  
20 going to have to say "Yes" to this because it has  
21 to be on the record.

22 MR. LAUZON: Yes.

23 MR. CAVALLUZZO: Okay. Rather  
24 than taking you through everything, there are just  
25 a couple of highlights that I'd like to deal with.

1                   Between October 1988 to February  
2                   1990, you worked as an investigator in the  
3                   Immigration and Passport Section?

4                   MR. LAUZON:   That's correct.

5                   MR. CAVALLUZZO:   Between March  
6                   1990 and September 1996, you worked in covert  
7                   operations?

8                   MR. LAUZON:   That's correct.

9                   MR. CAVALLUZZO:   Were you involved  
10                  in terrorism, or was this organized crime, or was  
11                  it a combination of both?

12                  MR. LAUZON:   It was not involved  
13                  in terrorism, it was involved in organized crime.

14                  MR. CAVALLUZZO:   Between October  
15                  of 1996 and March 2002, you worked with the  
16                  Integrated Proceeds of Crime Section as an  
17                  investigator in Montreal?

18                  MR. LAUZON:   That's correct.

19                  MR. CAVALLUZZO:   Between April --  
20                  and this is the period, of course, we're concerned  
21                  about -- between April of 2002 and March of 2003,  
22                  you were with the National Security Offences  
23                  Section as a Team Leader / Sunni Islamic Extremism  
24                  at headquarters?

25                  MR. LAUZON:   That's correct.

1 MR. CAVALLUZZO: Subsequent to  
2 that, you went and became an NCO policy and  
3 project development, national security program,  
4 between April 2003 to June of 2005; is that at  
5 headquarters?

6 MR. LAUZON: That's correct,  
7 that's at headquarters.

8 MR. CAVALLUZZO: And then you've  
9 told us what your present position in Montreal is.  
10 Now, just a couple of questions in respect of your  
11 training that is not on the résumé or CV.

12 Did you take the national security  
13 investigation course -- it's a ten-day course that  
14 is given in Regina?

15 MR. LAUZON: No, I did not.

16 MR. CAVALLUZZO: Have you taken  
17 any terrorism-related courses at the RCMP?

18 MR. LAUZON: Yes, I had the C-36  
19 workshop.

20 MR. CAVALLUZZO: Okay. That's  
21 Bill C-36 workshop?

22 MR. LAUZON: That's correct.

23 MR. CAVALLUZZO: Now, the only  
24 other question in respect of your training is  
25 whether you have taken any tutorial seminars,

1 workshops, or whatever, in respect of Muslim  
2 culture, values, or traditions?

3 MR. LAUZON: No, I have not.

4 MR. CAVALLUZZO: Okay. Then let  
5 us focus in on when you were at the NSOS in -- I  
6 guess it started in April of 2002, and I  
7 understand that your responsibility was in a  
8 supervisory capacity?

9 MR. LAUZON: That's correct.

10 MR. CAVALLUZZO: And who would you  
11 supervise and how many officers would you be  
12 supervising?

13 MR. LAUZON: I initially  
14 supervised eight to ten members, and then, if my  
15 memory serves me correctly, in June there was  
16 another sergeant that came on board and we split  
17 up the members. I took five or six and he took  
18 five or six members.

19 MR. CAVALLUZZO: Okay. Now, as of  
20 June 2002, the five or six members over which you  
21 had supervisory responsibility included Rick  
22 Flewelling?

23 MR. LAUZON: That's correct.

24 MR. CAVALLUZZO: And I understand  
25 that in respect of your office that you would have

1 reported directly to Superintendent Wayne Pilgrim.

2 MR. LAUZON: That's correct.

3 MR. CAVALLUZZO: Throughout that  
4 whole period of time that you were there?

5 MR. LAUZON: Until Superintendent  
6 Pilgrim's retirement, yes.

7 MR. CAVALLUZZO: Okay. Now, can  
8 you give -- I had forgotten that fact, but can you  
9 ballpark that, when Mr. Pilgrim retired?

10 MR. LAUZON: He retired in the  
11 spring of -- I believe it was in the spring of  
12 2004.

13 MR. CAVALLUZZO: But didn't you  
14 leave NSOS in March of 2003?

15 MR. LAUZON: Yes, but I still  
16 reported to Superintendent Pilgrim when I was  
17 heading up the Policy and Project Development  
18 Section.

19 MR. CAVALLUZZO: Right. But I'm  
20 just concerned about that period between -- when  
21 you're in the NSOS as the Non-Commissioned Officer  
22 in Charge between April of 2002 and March of 2003;  
23 then you would have reported to Mr. Pilgrim  
24 throughout that whole time period?

25 MR. LAUZON: That is correct,

1 during that whole time period, yes.

2 MR. CAVALLUZZO: And I understand  
3 that when you left NSOS in March of 2003, that you  
4 had nothing to do with Project A-OCANADA after  
5 that time? You went on to do other things?

6 MR. LAUZON: That's correct.

7 MR. CAVALLUZZO: Okay. Now,  
8 before we come to the specific situation of  
9 Mr. Arar, I would like to ask you a question about  
10 information-sharing, and we've heard certain  
11 evidence that as a result of 9/11, that there  
12 was -- it's been described in many ways, the  
13 impact being that you didn't have to put caveats  
14 on documents which were being shared with partner  
15 agencies, it's been described that caveats are  
16 down, the no-caveats rule, free flow of  
17 information, open-book investigation -- whatever  
18 way you want to characterize it.

19 Now, during your period that you  
20 were in NSOS, were you aware of such a rule, that  
21 caveats were down, so to speak?

22 MR. LAUZON: No.

23 MR. CAVALLUZZO: Your view was  
24 that existing policy continued to apply?

25 MR. LAUZON: That's correct.

1 MR. CAVALLUZZO: Now, if we come  
2 to the Arar chronology, I understand that if we go  
3 to your notes now, and I'd like to perhaps  
4 introduce two exhibits. Now, one would be your  
5 statement to Mr. Garvie, which is dated January  
6 15th of 2004.

7 THE COMMISSIONER: That would be  
8 231.

9 EXHIBIT NO. P-231: Statement  
10 given by Ron Lauzon to Brian  
11 Garvie on January 15, 2004

12 MR. CAVALLUZZO: Okay. The next  
13 document that I would ask to be introduced would  
14 be your redacted personal notes, which is a  
15 green-covered document.

16 THE COMMISSIONER: 232.

17 EXHIBIT NO. P-232: Personal  
18 notes of Ron Lauzon  
19 (redacted)

20 THE COMMISSIONER: Do you have  
21 another document?

22 MR. CAVALLUZZO: Yes, these are  
23 additional personal notes, so we should make these  
24 a separate exhibit as well.

25 THE COMMISSIONER: 233.



1 EXHIBIT NO. P-233:  
2 Additional personal notes of  
3 Ron Lauzon

4 MR. CAVALLUZZO: Okay. Now,  
5 that -- I would like to now refer to your personal  
6 notes, the green-covered document or Exhibit 232,  
7 and if we go to page 10, we see what appears to be  
8 an entry for October 3rd. Now, Mr. Lauzon, I have  
9 done a very careful assessment, and I have  
10 concluded that your handwriting is perhaps the  
11 worst of any of the witnesses that we have had so  
12 far, so you're going to have to be very helpful in  
13 this regard.

14 --- Laughter / Rires

15 MR. CAVALLUZZO: Perhaps if you  
16 could just start on page 10 and read whatever you  
17 have there. I believe it says October 3rd, 2002.

18 MR. LAUZON: Yes, it says October  
19 3rd, 2002, Thursday, shift 730 to 1530.

20 MR. CAVALLUZZO: Then it goes on?

21 MR. LAUZON: Nine -- some of it is  
22 in French (French) "A" Division, CROPS, Project  
23 A-OCANADA.

24 MR. CAVALLUZZO: Now at this  
25 meeting here on October 3rd at "A" Division

1           dealing with Project A-OCANADA, was Mr. Arar's  
2           situation discussed at this particular meeting?

3                       MR. LAUZON:   Very briefly.

4                       MR. CAVALLUZZO:   Okay.  And was  
5           this the first occasion upon which you became  
6           aware of Mr. Arar's situation?

7                       MR. LAUZON:   According to my  
8           notes, it was the first occasion that I had heard  
9           that Mr. Arar was actually -- and my note here is,  
10          "Arar detained, New York."

11                      MR. CAVALLUZZO:   And that can be  
12          found at page 10?

13                      MR. LAUZON:   Twelve.

14                      MR. CAVALLUZZO:   Or, excuse me,  
15          page 12, correct.

16                      And just if you could share with  
17          us, do you recall who was at this particular  
18          meeting at "A" Division?

19                      MR. LAUZON:   Yes, it was a meeting  
20          hosted by the CROPS officer of "A" Division.  It  
21          included the OIC, INSETs of all three, "O," "A,"  
22          and "C" INSET.

23                      MR. CAVALLUZZO:   Right.

24                      MR. LAUZON:   And it also involved  
25          members in those respective divisions that

1 attended, as well as members from headquarters.

2 MR. CAVALLUZZO: And were you  
3 given much information about Mr. Arar? Obviously,  
4 at page 12, it says that he's detained in New  
5 York. But were you given other information about  
6 Mr. Arar?

7 MR. LAUZON: No. That's it.

8 MR. CAVALLUZZO: Were you -- and  
9 before I ask you some questions about that, let's  
10 look at what you said to Mr. Garvie. This can be  
11 found at Exhibit 231. This is the statement given  
12 to Mr. Garvie on January 15th, and around line 30,  
13 Mr. Garvie says:

14 "Now, did you become aware  
15 that information about an  
16 individual by the name of  
17 Maher Arar came to be shared  
18 with U.S. authorities and at  
19 the very least Arar was a  
20 person of interest in the  
21 A-OCANADA investigation?"

22 And your response apparently was:

23 "Yes, I became aware of that.  
24 I have here in my notes dated  
25 October 3rd where I attended

1 a meeting with 'A' Division  
2 with all the heads of the  
3 projects 'A' and OCANADA,  
4 with the respective CROPS  
5 and, among other things, were  
6 the fact that Arar was  
7 detained in New York, and  
8 that's all I have in my notes  
9 on that day."

10 So that -- and it goes on on the  
11 next page. Mr. Garvie says:

12 "Now, during that meeting on  
13 October 3rd, was there any  
14 discussion, to your  
15 recollection, of why Arar had  
16 been detained in New York or  
17 any comments from any of the  
18 people attending the meeting  
19 above that?"

20 And you said:

21 "I don't remember, but I  
22 don't think so. I would have  
23 had it in my notes if that  
24 was the case."

25 So it would be fair to say that as

1 of this date -- this would be the first time that  
2 you became aware of Mr. Arar's situation?

3 MR. LAUZON: That's correct.

4 MR. CAVALLUZZO: And that on this  
5 occasion you were given very limited information  
6 regarding Mr. Arar's situation?

7 MR. LAUZON: That's correct.

8 MR. CAVALLUZZO: Was it discussed  
9 at this particular meeting, for example -- let me  
10 throw out a couple of things -- as to whether  
11 Mr. Arar was a dual national, he was a Syrian and  
12 a Canadian citizen?

13 MR. LAUZON: Not to my knowledge.

14 MR. CAVALLUZZO: Was it discussed  
15 at this meeting whether Mr. Arar had consular  
16 access or whether DFAIT was involved?

17 MR. LAUZON: Not to my knowledge.

18 MR. CAVALLUZZO: Had you had any  
19 dealings with Inspector Richard Roy at this point  
20 in time as to Mr. Arar's situation?

21 MR. LAUZON: No, I did not.

22 MR. CAVALLUZZO: And, once again,  
23 you told us that you became responsible in June of  
24 2002 for a number of people, including Mr. Rick  
25 Flewelling.

1                   Now, Mr. Rick Flewelling, around  
2                   that point in time, told us that he was, in  
3                   effect, given instructions to oversee, liaise,  
4                   whatever you want to call it, Project A-OCANADA?

5                   MR. LAUZON: Monitor, coordinate  
6                   the project, and make sure that the project  
7                   adheres to policy.

8                   MR. CAVALLUZZO: And that's what  
9                   he told us. He said he was given instructions by  
10                  Mr. Pilgrim, and perhaps you, and that one of his  
11                  goals was to -- one of his objectives would be to  
12                  bring policy back to the fray in terms of Project  
13                  A-OCANADA; in other words, get them working with  
14                  the policy, in accordance with the policies again.

15                  MR. LAUZON: And that was a  
16                  direction that came not only from Superintendent  
17                  Pilgrim but it came from higher up, from senior  
18                  management.

19                  MR. CAVALLUZZO: Do you know how  
20                  high up that went?

21                  MR. LAUZON: I wouldn't be  
22                  surprised if it went all the way up to the DCO,  
23                  because there was a movement at that point in time  
24                  to centrally coordinate our investigations.

25                  MR. CAVALLUZZO: Right. And by

1 "DCO," you're talking about Mr. Loeppky?

2 MR. LAUZON: That's correct.

3 MR. CAVALLUZZO: Okay. Now, were  
4 you aware at this time, when you assume this  
5 responsibility in June of 2002, that in April of  
6 2002, that Project A-OCANADA had shared with a  
7 couple of American agencies their whole SUPERText  
8 file, the whole investigative file?

9 MR. LAUZON: Yes, I became aware  
10 of that.

11 MR. CAVALLUZZO: Were you aware of  
12 it at the time, in April of 2002, or did you  
13 become aware of it after you assumed the  
14 responsibility in June?

15 MR. LAUZON: Subsequent to April  
16 2002, I definitely became aware of that.

17 MR. CAVALLUZZO: Now, did you --  
18 was it your view that that -- some people have  
19 been calling it that data dump was inconsistent  
20 with policy?

21 MR. LAUZON: It was my  
22 understanding that that data dump, as you refer to  
23 it, was shared with our U.S. partners for  
24 analytical purposes.

25 MR. CAVALLUZZO: Right. But the

1 question is whether that was consistent with  
2 policies. In other words, if the information went  
3 down without caveats, without people looking at  
4 what information was going -- to assess the need  
5 to know the information, to assess whether there  
6 was confidential or national security information  
7 that should be going, and to assess, for example,  
8 whether information from other organizations that  
9 had caveated information; do you agree that that  
10 should have been done before the data was shared  
11 with the Americans?

12 MR. LAUZON: In order to adhere to  
13 policy, for sure, yes.

14 MR. CAVALLUZZO: But you don't  
15 have specific information as to what, in fact, was  
16 entailed in that sharing of information; you just  
17 were told, presumably, that the whole SUPertext  
18 file went downtown?

19 MR. LAUZON: That's correct.

20 MR. CAVALLUZZO: Now, if we can  
21 move, then, in terms of the time. Now, we've  
22 dealt with October the 3rd, when you become -- and  
23 that was a Thursday. The next day, obviously, is  
24 Friday, October 4th, and the question that I would  
25 have would relate to whether you had any



1 recollection of any direct dealings with the Arar  
2 file on October the 4th. I could find no entry in  
3 your notes.

4 MR. LAUZON: That's correct.

5 MR. CAVALLUZZO: Now, I do want to  
6 show you, though, to give you a chance to comment  
7 on it, Exhibit P-225, which is a fax.

8 Let me explain to you what this  
9 is. We've heard evidence that on the late  
10 afternoon of October the 3rd, that Mr. Flewelling  
11 received an urgent request from an American  
12 requesting information on an urgent basis to  
13 support criminal charges in respect of Mr. Arar  
14 who was at that time being detained in New York,  
15 and he tasked Project A-OCANADA with answering a  
16 number of questions, and you will see on the  
17 second page of that document, he was faxing this  
18 to Project A-OCANADA, and it would appear it at  
19 the bottom, it says, "Approved by Sergeant Ron  
20 Lauzon," and I want to give you the opportunity to  
21 comment on that.

22 This, Mr. Flewelling told us, was  
23 faxed about eight o'clock in the morning on  
24 October the 4th, and I ask if you have any  
25 recollection of approving this request that was

1 sent to Project A-OCANADA?

2 MR. FOTHERGILL: To be fair to the  
3 witness, before he answers, Mr. Flewelling told us  
4 that the second page is a standard upload form for  
5 SCIS, and I think that's where Mr. Lauzon's name  
6 appears, as opposed to the first page which is the  
7 facsimile transmission.

8 MR. LAUZON: If I could just go  
9 further on that? The uploads to SCIS are not  
10 necessarily done that day. They could be done a  
11 week after. He might keep several documents and  
12 do it all at once, and then my name would appear  
13 on the bottom, I would initial it, and then it  
14 would be uploaded to SCIS.

15 MR. CAVALLUZZO: So the question  
16 is then, just so you have an opportunity to  
17 address this, you don't recall approving this on  
18 October the 4th. It may have been done after in  
19 terms of the procedures relating to the uploading  
20 of SCIS?

21 MR. LAUZON: That's correct.

22 MR. CAVALLUZZO: Okay then. Let  
23 us move on.

24 We'll move now to Saturday,  
25 October 5th, and on this day the evidence is that

1 Mr. Flewelling was at home, and around six o'clock  
2 in the evening, he received a call from his normal  
3 contact, American contact, who was engaged at the  
4 Embassy in Ottawa and was employed by a particular  
5 agency, American agency, and if I could just  
6 summarize the phone call for you.

7 It was to the effect that the  
8 Americans do not have enough evidence or  
9 sufficient evidence to criminally charge and  
10 convict Mr. Arar, and it went on to say that, in  
11 light of his dual nationality, Mr. Arar has  
12 preferred or has decided that he wants to go to  
13 Canada, and then the telephone conversation went  
14 on with a couple of questions, and that is: What  
15 is the status of Mr. Arar with you? Can you  
16 criminally charge him? And the second question  
17 was: If we send him to Canada, must you accept  
18 him, or can you refuse entry? And the evidence is  
19 that Mr. Flewelling responded that there wasn't  
20 enough evidence to charge him criminally in Canada  
21 and that, secondly, that Mr. Arar, as a Canadian  
22 citizen, cannot be refused entry into Canada. And  
23 that, I think, fairly captures the telephone call  
24 which occurred on Saturday, October the 5th.

25 Now, Mr. Flewelling has also

1 testified that he made a telephone call that  
2 weekend to advise his superior of that telephone  
3 call, and he told us that he called you, and I'm  
4 wondering if you recall that conversation?

5 MR. LAUZON: I don't have a  
6 recollection of that conversation; however, my  
7 subordinates do call me on the weekends to advise  
8 me if there's anything particular that may be  
9 going on with a file. It's important for me to be  
10 apprised of the investigations as they go on so I  
11 can inform my own supervisors of what's going on  
12 in these national security investigations.

13 MR. CAVALLUZZO: Now, I would  
14 venture to say that Mr. Arar's file is the most  
15 notorious file that you dealt with, "notorious" in  
16 the sense that it was highly publicized file that  
17 you dealt with probably during your stay in NSOS,  
18 and I'm putting it to you that in light of the  
19 highly -- the high visibility or public nature of  
20 the Arar file, that that is a telephone  
21 conversation that you would have remembered?

22 MR. LAUZON: I don't remember the  
23 telephone conversation, and I also -- I was  
24 involved in several other investigations at that  
25 time where my subordinates were also involved in

1 several other national security investigations  
2 that were of probably equal importance or more at  
3 the time.

4 MR. CAVALLUZZO: But could you  
5 tell us, were you involved in any that were as  
6 politically sensitive or as highly public as  
7 Mr. Arar's case?

8 MR. LAUZON: Obviously, in the  
9 aftermath -- at that point in time, probably not.  
10 But obviously now ...

11 MR. CAVALLUZZO: Right. Well,  
12 let's look at that in terms of timing, because we  
13 heard that shortly thereafter, on October 15th,  
14 Americans were publicly saying that the Canadians,  
15 in particular law enforcement, Canadian law  
16 enforcement, knew why Mr. Arar was deported to  
17 wherever, to Syria, and we also know that because  
18 of this information, that on October the 16th that  
19 Mr. Pilgrim was called over to DFAIT, and DFAIT  
20 gave him a number of questions relating to the  
21 sharing of information, and as a result of that,  
22 on October the 18th, RCMP, through Mr. Pilgrim,  
23 prepared a memorandum, sending it back to DFAIT.

24 Are you aware of that process?  
25 Were you involved in that process with

1 Mr. Pilgrim?

2 --- Pause

3 MR. LAUZON: I'm not sure of the  
4 exact date, but I remember that Superintendent  
5 Pilgrim did attend a meeting at DFAIT, and  
6 subsequent to that meeting I was called in to his  
7 office and I was told that Rick had to prepare a  
8 briefing package --

9 MR. CAVALLUZZO: Right.

10 MR. LAUZON: -- with respect to  
11 the time lines, et cetera, involving the Arar  
12 file.

13 MR. CAVALLUZZO: I wonder if the  
14 witness might be shown Exhibit 137, which is the  
15 memorandum that we're referring to, of October  
16 18th, 2002.

17 MR. FOTHERGILL: Commissioner, I  
18 think there's also a reference in his hand notes  
19 which have just been filed, pages 16 and 17, which  
20 is his entry for October 16th of 2002.

21 THE COMMISSIONER: Thank you,  
22 Mr. Fothergill.

23 MR. LAUZON: There's also in my  
24 statement to Superintendent Garvie that I did have  
25 a notation in my notebook on October 16th, where

1 Corporal Flewelling and myself met Superintendent  
2 Pilgrim.

3 MR. CAVALLUZZO: It says "re  
4 Arar," if we go on to page 17, and then it says  
5 "DFAIT," if you could read that, sent something, a  
6 diplomatic note? This is at page 17 of your  
7 notes?

8 MR. LAUZON: Page seventeen of my  
9 notes?

10 MR. CAVALLUZZO: Yeah. If you  
11 could just read that for us just to give context.  
12 If you go back to 16 and just read from the  
13 bottom. This is for October 16th. Okay? If you  
14 can just read that for us?

15 MR. LAUZON:  
16 "Rick Flewelling et moi  
17 rencontrons Wayne..."

18 MR. CAVALLUZZO: That means you  
19 met Wayne?

20 MR. LAUZON: That's correct.

21 MR. CAVALLUZZO: See? I'm  
22 bilingual. Go on.

23 MR. LAUZON:  
24 "...re Arar."

25 MR. CAVALLUZZO: Okay.

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MR. LAUZON:

"DFAIT sent diplomatic note to Syrians asking what status is on Arar."

Then this is Wayne asking:

"We need to know what information has been shared with the U.S., what triggered U.S. to deport him to Syria. Was Canada involved in that decision? What level of threat did Arar pose to Canada? Is there a mistaken identity? Need a complete briefing package. What have we given to U.S.? Rick and ... will take care of this. Wayne needs package ASAP."

MR. CAVALLUZZO: Now, during this meeting, was there -- you and Rick and Wayne Pilgrim were meeting. You don't recall any discussion of Rick saying, "You know what? Remember that call I got on October the 5th from the Americans." You don't recall that?

MR. LAUZON: No, I do not.



1 MR. CAVALLUZZO: And in terms of  
2 the -- in terms of Exhibit 137, you'll see that  
3 one of the responses at the bottom of the page  
4 really mirrors that telephone call where it says.  
5 "U.S. authorities requested  
6 RCMP to provide information  
7 that might assist in the  
8 filing of criminal charges  
9 against Arar. U.S.  
10 authorities made inquiries as  
11 to the level of interest the  
12 RCMP had in pursuing Arar  
13 criminally. They also made  
14 inquiries regarding the  
15 RCMP's ability to refuse  
16 Arar's entry into Canada.  
17 They were advised that the  
18 RCMP was interested in  
19 Arar from a criminal  
20 perspective. They were also  
21 advised that where Arar is a  
22 Canadian citizen, the RCMP  
23 could not refuse his entry  
24 into Canada."  
25 So that when you saw that, and I'm

1           assuming you would have read this memorandum, that  
2           didn't bring to mind -- or did you read this  
3           memorandum?

4                           THE COMMISSIONER:   It's at the  
5           bottom of page 515.

6           --- Pause

7                           MR. LAUZON:    Oh, 515.

8           --- Pause

9                           MR. LAUZON:    I don't remember.

10                          MR. CAVALLUZZO:   So that didn't  
11           raise any question in your mind saying, "Oh, yeah,  
12           that was the phone call that we talked about"?

13                          MR. LAUZON:    I don't remember.

14                          MR. CAVALLUZZO:   Now at page 4 of  
15           the Garvie statement you were asked at line 13 by  
16           Mr. Garvie:

17    "Are you aware of anyone else  
18    asking any U.S. authority at  
19    any time to deport Maher Arar  
20    to Syria or implying that  
21    such actions should be  
22    taken?"

23   And your answer is "no".   And then  
24           it goes on.

25   "Were you, or was anyone else

1 to your knowledge contacted  
2 by any U.S. authority asking  
3 if Maher Arar should be  
4 returned to Canada or  
5 conversely deported to  
6 Syria?"

7 And your answer is "no". And I  
8 assume that is still your answer today.

9 --- Pause

10 MR. LAUZON: My answer is still  
11 no.

12 MR. CAVALLUZZO: Moving in terms  
13 of time, if we go back to your notes for October  
14 7th, which as you can see from the calendar is the  
15 Monday --

16 THE COMMISSIONER: Which page in  
17 the notes, Mr. Cavalluzzo?

18 MR. CAVALLUZZO: This is page 5.  
19 This is typed.

20 THE COMMISSIONER: In the typed  
21 notes; okay.

22 MR. CAVALLUZZO: No. It is page 5  
23 of this package. There is some typescript.

24 THE COMMISSIONER: All right.

25 MR. CAVALLUZZO: This says that on

1           October 7th your shift was, once again, 7:30 to  
2           3:30, and it says at 9:25:

3                               "Briefing from Rick  
4                               Flewelling with respect to  
5                               article in the National  
6                               Post..."

7                               By Stewart Bell. We have heard  
8           testimony on that already.

9                               "... alluded to information  
10                              that was pertinent to the  
11                              OCANADA investigation;  
12                              therefore..."

13                             That should be Ben Soave and Mr.  
14           McQuarrie:

15                             "...authorized ... to speak  
16                             with Bell."

17                             And then it goes on down the page  
18           and it says "Note A1 (see below)".

19                             Can you tell us what that means?

20                             MR. LAUZON: Yes. I made an error  
21           in my notes with respect to the date here. What  
22           in fact happened is that that briefing I did have  
23           with Rick Flewelling did occur on Monday morning.  
24           However, at 1420 I went to "A" Division to meet  
25           with investigators with the Project A-OCANADA and

1           also with an American partner.

2                               However, this was not on Monday.  
3           It was actually on Tuesday the 8th, at 20 after  
4           2:00.

5                               MR. CAVALLUZZO: How did that  
6           mistake occur? We only have the typescript and we  
7           have your handwritten notes. It appears to be on  
8           the same page for October 7th.

9                               I am wondering how that occurred.  
10          Did you just continue on on October 7th in your  
11          notebook, or how did that occur?

12                              MR. LAUZON: There is a very  
13          simple explanation. A lot of times I will do my  
14          notes at the end of the day of what transpired  
15          during the day. On this occasion here, I made  
16          some notes when I met with Rick that morning.

17                              Then on Tuesday, I didn't finish  
18          my notebook that day. On the following day I was  
19          working at the office and all of a sudden, around  
20          2 o'clock, I received a call from one of the  
21          investigators from Project A-OCANADA telling me  
22          that he was meeting with the American partner. I  
23          had basically five minutes to get there because  
24          the person was on the way there. So I grabbed my  
25          notebook as is and I left. I attended the meeting

1 and made notes at the meeting.

2 MR. CAVALLUZZO: So you are sure,  
3 though, that it is October 8th. I notice in your  
4 statement to Mr. Garvie that you refer to it as  
5 October 7th.

6 When did you discover that you  
7 made a mistake in your notes?

8 Let me show you the Mr. Garvie --

9 MR. LAUZON: I discovered that I  
10 made a mistake in my notes on April 27, 2004.

11 My next entry was Wednesday,  
12 October 9th. So there was a time period that was  
13 missing out of my notes. So I am absolutely  
14 positively sure that this meeting occurred on  
15 October 8th at 20 after 2:00.

16 MR. CAVALLUZZO: That explains, in  
17 respect of your statement to Mr. Garvie, you were  
18 talking in terms of it occurring on October 7th.  
19 That statement was given in January of 2004, so  
20 you had not discovered the mistake at that point  
21 in time.

22 MR. LAUZON: That is correct.

23 Also in my notes my pen is  
24 different on those two days.

25 MR. CAVALLUZZO: Then let us come

1 to the notes. That explains the discrepancy.

2 You are telling us that you are  
3 sure that the meeting occurred on October 8th.

4 MR. LAUZON: That is correct.

5 MR. CAVALLUZZO: And it occurred,  
6 you told us, at "A" Division?

7 MR. LAUZON: Yes.

8 MR. CAVALLUZZO: You can't tell us  
9 the agency, but there was an American partner at  
10 the meeting?

11 MR. LAUZON: That is correct, and  
12 several members of Project A-OCANADA.

13 MR. CAVALLUZZO: What your notes  
14 say -- and I am just picking it up after 14:20.  
15 It says:

16 "Syrian/Canadian --"

17 That is obviously Mr. Arar's dual  
18 nationality.

19 And then it says:

20 "Where will he go, Syria /  
21 Canada?"

22 What does that entry mean: "Where  
23 will he go, Syria / Canada"?

24 MR. LAUZON: This was a  
25 hypothetical conversation we were having with

1           respect to Mr. Arar.

2                           MR. CAVALLUZZO:  What was the  
3           discussion; that it is because he is a dual  
4           national he could end up going to Canada or he  
5           could end up going to Syria?

6                           MR. LAUZON:  That is correct.

7                           MR. CAVALLUZZO:  Do you know how  
8           this possibility of Syria came to the attention of  
9           Project A-OCANADA?

10                          MR. LAUZON:  The fact that he was  
11           a dual citizen made that a possibility, period.

12                          MR. CAVALLUZZO:  So you would say  
13           the fact that he was a dual citizen, because of  
14           the ramification or implications of dual  
15           citizenship, meant that right from September 28th  
16           that Syria was a possibility.

17                          MR. LAUZON:  And there was also a  
18           third possibility: that he would have been  
19           returned to Switzerland.

20                          MR. CAVALLUZZO:  Right.  But on  
21           October 8th it would appear that just two  
22           possibilities are being discussed: Syria and  
23           Canada.

24                          MR. LAUZON:  Yes.  But the other  
25           one was always understood as well.



1 MR. CAVALLUZZO: You don't note it  
2 on this. It doesn't appear.

3 MR. LAUZON: That is correct.

4 MR. CAVALLUZZO: It looks like it  
5 wasn't discussed on the 8th.

6 MR. LAUZON: No, it wasn't  
7 discussed on the 8th.

8 MR. CAVALLUZZO: From Project  
9 A-OCANADA, I understand that there were members  
10 from Project A-OCANADA. There was this American  
11 partner. Was there anybody else from CID at this  
12 meeting?

13 MR. LAUZON: No, just myself. I  
14 was replacing Corporal Rick Flewelling because he  
15 was on holidays.

16 MR. CAVALLUZZO: Then it goes on  
17 and your note is:

18 "What's he in custody for?

19 What has he said?"

20 We have heard evidence that on  
21 this day, October 8th, there was still a request  
22 for an interview on the table and that because of  
23 the possibility that he may be deported to Syria  
24 there was a discussion or concern that if the RCMP  
25 went down there to interview Mr. Arar prior to a

1           deportation to Syria that this would cause  
2           embarrassment for the RCMP.

3                       As a result of that, they said  
4           before we get an interview we want to find out  
5           what is he in custody for, what has he said and,  
6           finally, where are you going to send him before an  
7           interview would take place.

8                       Do you recall discussions to that  
9           effect?

10                      MR. LAUZON:  Those questions were  
11           definitely raised during the conversation, during  
12           that meeting in the conversation that we had with  
13           respect to Mr. Arar, yes.

14                      MR. CAVALLUZZO:  We see that there  
15           is a discussion about possible embarrassment to  
16           the RCMP in front of the American partner.

17                      Did anybody --

18                      MR. LAUZON:  I never said that  
19           there was a possible embarrassment.

20                      MR. CAVALLUZZO:  Let's look at the  
21           timeline.

22                      MR. LAUZON:  I don't think that  
23           was discussed that day.

24           --- Pause

25                      MR. CAVALLUZZO:  Could you show

1 the witness Exhibit 226, please.

2 This is a timeline that was  
3 created by Mr. Mike Cabana, who as you know was  
4 the project manager of A-OCANADA.

5 If you look at the entry for 12  
6 o'clock, it says -- this is a member of A-OCANADA.

7 "... met with Insp. CABANA  
8 and discussed the interview.  
9 We discussed a concern that  
10 if the US was only holding  
11 ARAR so that we could  
12 interview him and that if  
13 there was any suggestions  
14 that he did not cooperate  
15 with Canadian investigators  
16 and would be sent to Syria,  
17 then the perception would be  
18 very damaging to the --"

19 I'm sorry?

20 MR. LAUZON: What page?

21 MR. CAVALLUZZO: This is page 5,  
22 at the very bottom, the entry for 12 o'clock.

23 MR. LAUZON: All right.

24 MR. CAVALLUZZO: Somebody within

25 A-OCANADA:

1 "...met with Insp. CABANA and  
2 discussed the interview. We  
3 discussed a concern that if  
4 the US was only holding ARAR  
5 so that we could interview  
6 him and that if there was any  
7 suggestions that he did not  
8 cooperate with Canadian  
9 investigators and would be  
10 sent to Syria, then the  
11 perception would be very  
12 damaging to the RCMP. We  
13 agreed to speak with  
14 [somebody, an American] and  
15 advised him of our concerns  
16 up front and await a  
17 response."

18 Then if we go to 14:15 on the next  
19 page, we see that you attended and it goes on.

20 Do you see Sgt. Ron LAUZON on the  
21 second line there?

22 "We discussed issues  
23 concerning the interview of  
24 ARAR. We indicated that we  
25 need to know why ARAR is

1                   being held, where he would be  
2                   sent once we had interviewed  
3                   him and what has he already  
4                   said --"

5                   And so on.

6                   That is what Mr. Cabana captures  
7                   took place at that meeting.

8                   MR. LAUZON:   And I agree with what  
9                   happened at this meeting.  However, the question  
10                  of embarrassment never came up at this meeting.

11                  MR. CAVALLUZZO:  Actually, he uses  
12                  a more pejorative word.  He doesn't say  
13                  embarrassment.  He said it would be very damaging  
14                  to the RCMP.

15                  MR. FOTHERGILL:  Commissioner, it  
16                  is clear from this document that the meeting in  
17                  which the question of perception arose took place  
18                  at 12 noon, whereas the meeting that Mr. Lauzon  
19                  attended took place at 2:15.

20                  MR. CAVALLUZZO:  But the meeting  
21                  at 2:15 said that they discussed the issues  
22                  relating to the possible interview.

23                  I assume what that meant is that  
24                  Cabana may have told you why he was imposing these  
25                  three conditions prior to an interview.

1 MR. LAUZON: He wasn't at the  
2 meeting.

3 MR. CAVALLUZZO: Well, whoever was  
4 at the meeting for A-OCANADA.

5 Who was at the meeting? You told  
6 us that Mr. Callaghan was there.

7 MR. LAUZON: That is correct.

8 MR. CAVALLUZZO: You can also tell  
9 us that the chief investigator was there.

10 MR. FOTHERGILL: He can identify  
11 Cabana, Callaghan or Corcoran if they were there.  
12 Otherwise, I think we would assert NSC.

13 MR. LAUZON: Yes. Kevin Corcoran  
14 was there.

15 MR. CAVALLUZZO: All right. And  
16 there was a third person that was there.

17 You don't have to mention the  
18 name, but the person who always swears the  
19 affidavits.

20 Do you know that person?

21 MR. LAUZON: Yes.

22 MR. CAVALLUZZO: And he was there?

23 MR. LAUZON: Yes.

24 MR. CAVALLUZZO: I am putting it  
25 to you that obviously Cabana had made the decision

1           around 12 o'clock that before an interview would  
2           take place, these three conditions had to be met.

3                       I am putting it to you that if  
4           they are discussing those three conditions, they  
5           also would have said to you the reason why we are  
6           imposing these conditions now is that it would be  
7           damaging to the RCMP if he was sent off to Syria  
8           after we interviewed him, words to that effect.

9                       MR. LAUZON: I don't disagree with  
10          that.

11                      What I am telling you is that at  
12          the meeting that I attended, there was no  
13          discussion with respect to damaging the RCMP's  
14          reputation, nor embarrassing ourselves.

15                      MR. CAVALLUZZO: Did you question  
16          why they wanted to impose these three conditions  
17          before interviewing Arar?

18                      MR. LAUZON: No, I did not.

19                      MR. CAVALLUZZO: You didn't.  
20          Didn't it seem strange to you, since they wanted  
21          to interview Mr. Arar, that they were coming up  
22          with these three conditions?

23                      MR. LAUZON: No.

24                      MR. CAVALLUZZO: All right.

25                      The question I have relates to one

1 very simple one. You are at this meeting at 2:15.  
2 You are with Corcoran, Callaghan and another  
3 person from Project A-OCANADA. You have an  
4 American partner there; right?

5 The possibility of Syria is  
6 mentioned. The question that I have is: Did  
7 anyone at that meeting raise with this American  
8 partner that you guys better not send this guy,  
9 this Canadian citizen, to Syria because if you do,  
10 there are going to be grave ramifications, or  
11 words to that effect?

12 MR. LAUZON: Are you asking me if  
13 somebody said that at the meeting?

14 MR. CAVALLUZZO: Yes.

15 MR. LAUZON: No, because it was  
16 nobody's belief that he was actually going to  
17 Syria. Everybody that was sitting at that table  
18 believed that he would probably be coming back to  
19 Canada.

20 MR. CAVALLUZZO: But there was the  
21 possibility of Syria.

22 MR. LAUZON: The mere fact that he  
23 is a Syrian citizen, yes. But if Mr. Arar would  
24 have the choice of going to Syria or Canada -- and  
25 I believed at one point that he probably would



1           have the choice -- then he would choose Canada  
2           over Syria.

3                           MR. CAVALLUZZO: I think the  
4           answer to the question is that, for whatever  
5           reason, nobody objected to the possibility of him  
6           going to Syria.

7                           MR. LAUZON: Because it was never  
8           a possibility for any of those people that were  
9           actually attending that meeting that he would --

10                          MR. CAVALLUZZO: Why would Cabana  
11           impose those three conditions if it wasn't a  
12           possibility?

13                          MR. LAUZON: I'm not sure.

14                          MR. CAVALLUZZO: You never  
15           questioned it.

16                          MR. LAUZON: No, I didn't question  
17           it.

18                          MR. CAVALLUZZO: All right.

19                          At this point in time, on October  
20           8th when this meeting occurred, did you have any  
21           idea of extraordinary rendition, what that  
22           American policy was?

23                          MR. LAUZON: No, I did not.

24                          MR. CAVALLUZZO: Did you have any  
25           idea at this point in time that just a month and a

1 half before a Canadian, whose name was Mr. El  
2 Maati, had made allegations that he had been  
3 tortured while he was in Syrian detention, in  
4 particular as of August 15th of 2002?

5 MR. LAUZON: I may have read a  
6 SITREP to that effect. When, I don't remember.

7 When I came across that, I don't  
8 remember for sure.

9 MR. CAVALLUZZO: The only other  
10 questions -- we have dealt with October 16th and  
11 18th -- is in regard to your additional notes,  
12 Exhibit 233.

13 Just so that you can identify  
14 certain things very quickly, on the first page is  
15 a meeting on September 26th. We have heard  
16 evidence of that.

17 This is a meeting in respect of  
18 A-OCANADA and their contacts with foreign agencies  
19 and a resolution to that.

20 Is that correct?

21 MR. LAUZON: That is correct.

22 MR. CAVALLUZZO: Did you attend  
23 that meeting or did you just get information about  
24 the meeting?

25 MR. LAUZON: No, I did not.

1 MR. CAVALLUZZO: You didn't  
2 attend.

3 MR. LAUZON: I called Rick  
4 Flewelling and I asked him what was the results of  
5 the meeting.

6 MR. CAVALLUZZO: If we go to the  
7 next page, to the entry for Friday, February 28,  
8 2003, it says:

9 "1530 DFAIT with Insp. Rick  
10 Reynolds"

11 What is the first entry? It says  
12 "D-E-C". What is that "D-E-C"?

13 MR. LAUZON: It says "DEC".

14 MR. CAVALLUZZO: What is that?

15 MR. LAUZON: As in a presentation.

16 MR. CAVALLUZZO: So that DEC would  
17 be presented to DFAIT:

18 "... to demonstrate that  
19 there is coherence in the  
20 gov't when these issues  
21 arise."

22 That is with Arar and other.

23 So somebody at DFAIT make a DEC  
24 presentation about these particular issues?

25 MR. LAUZON: Either they made or

1 they were planning to make one.

2 MR. CAVALLUZZO: Then it goes on  
3 and it says:

4 "ARAR - minister has approved  
5 visit 11-14 March to Syria.  
6 Easter --"

7 Who, of course, was the Solicitor  
8 General at the time.

9 "... gave green light on  
10 visit. Easter apparently  
11 spoke with CSIS & RCMP  
12 - see ARAR & gov't of Syria  
13 humanitarian plea  
14 - will ask Syrians for Visas  
15 - Ms Catterall & MP  
16 ASSEDORIAN (familiar with  
17 Syrian community in Canada)"

18 The question I have is: Is this  
19 reference here to a visit to Syria, "minister has  
20 approved visit", does that mean that Solicitor  
21 General Easter had approved a visit of the RCMP to  
22 Syria?

23 MR. LAUZON: I am not sure is this  
24 entry means that the minister has approved the  
25 RCMP to go to Syria or if it means that he has

1 approved the ministerial visit by Ms Catterall and  
2 Mr. Assadourian.

3 MR. CAVALLUZZO: Certainly  
4 Assadourian and Catterall would not need Solicitor  
5 General Easter's okay to go to Syria.

6 We have heard evidence that around  
7 this time the RCMP had agreed to delay their visit  
8 to Syria as a result of the politicians -- i.e.,  
9 Catterall and Assadourian -- going over.

10 Do you recall that discussion?

11 MR. LAUZON: Then it would mean  
12 that CSIS and the RCMP would go to Syria after the  
13 ministerial visit. That is what my notes would  
14 imply.

15 MR. CAVALLUZZO: What this is  
16 recognizing is that there was going to be an RCMP  
17 visit and it would be deferred or delayed until  
18 such time as the politicians went.

19 MR. LAUZON: That is correct.

20 MR. CAVALLUZZO: Do you recall who  
21 was at this meeting for that discussion?

22 MR. LAUZON: There was inspector  
23 Rick Reynolds and myself.

24 Who else was there, I don't know.

25 MR. CAVALLUZZO: So that would be

1 the people from the RCMP, you and Reynolds?

2 MR. LAUZON: Yes.

3 MR. CAVALLUZZO: Okay. There may  
4 be one final question.

5 --- Pause

6 MR. CAVALLUZZO: Just to be fair,  
7 finally, could you please show the witness  
8 Exhibit P-183?

9 --- Pause

10 MR. CAVALLUZZO: This is an e-mail  
11 from Anthony Ritchie to Lawrence Dickenson, both  
12 people being in the PCO. You will see the subject  
13 matter is "DFAIT Det Consular Services Relating to  
14 Terrorist Cases". Then it says:

15 "Attended a meeting at DFAIT  
16 on Friday to discuss the  
17 above. The RCMP were  
18 present." (As read)

19 Then it goes on:

20 "Dan Livermore, DFAIT,  
21 chaired the meeting. The  
22 purpose of the meeting was to  
23 get more clarify from RCMP  
24 concerning ... to talk to  
25 Maher Arar ..." (As read)

1 Et cetera.

2 At the meeting that you  
3 attended -- you will note it goes on in the second  
4 paragraph. It says:

5 "Discussions with Arar will  
6 be in the context of him as a  
7 witness." (As read)

8 Then it goes on:

9 "In the case of Arar,  
10 Catterall will also be  
11 visiting him from a  
12 humanitarian perspective. It  
13 was agreed that RCMP would  
14 delay their visit until two  
15 weeks after the Catterall  
16 visit." (As read)

17 So this is obviously the meeting  
18 at which you attended?

19 MR. LAUZON: That is correct.

20 MR. CAVALLUZZO: And it was Dan  
21 Livermore who chaired that meeting you recall?

22 MR. LAUZON: I don't recall.

23 MR. CAVALLUZZO: Okay.

24 Okay, Mr. Lauzon, I have no  
25 further questions. Thank you.

1 THE COMMISSIONER: Mr. Waldman, do  
2 you have any questions?

3 EXAMINATION

4 MR. WALDMAN: I just want to  
5 clarify a few points on information-sharing.

6 If there was going to be a  
7 decision to disclose without caveats, who would  
8 have the authority to make that decision,  
9 according to your understanding?

10 MR. LAUZON: It could be the  
11 Assistant Commissioner of CID, it could be the  
12 Deputy Commissioner of Operations.

13 MR. WALDMAN: So it has to be  
14 very senior?

15 MR. LAUZON: I would think so.

16 MR. WALDMAN: So you wouldn't have  
17 the authority yourself to waive caveat?

18 MR. LAUZON: No.

19 MR. WALDMAN: Someone at the level  
20 of Inspector Cabana wouldn't have the authority to  
21 waive caveats either?

22 MR. LAUZON: No.

23 --- Pause

24 MR. WALDMAN: I'm just trying to  
25 get some understanding here of your knowledge of



1 the A-OCANADA investigation.

2 I gather Sergeant -- Corporal  
3 Flewelling at the time was the coordinator for CID  
4 and he was reporting to you. You had several  
5 other files on your desk, right, so the A-OCANADA  
6 was one of several for you.

7 Is that correct?

8 MR. LAUZON: That is correct. I  
9 had five or six members under my supervision who  
10 also had five or six files each of major national  
11 security importance.

12 MR. WALDMAN: Did Corporal  
13 Flewelling have other files besides A-OCANADA then  
14 as well?

15 MR. LAUZON: He did. At one  
16 point I redistributed some of Rick's work to  
17 other members to strictly concentrate on  
18 Project A-OCANADA.

19 MR. WALDMAN: Right. So I am just  
20 trying to get some idea of how "au courant" you  
21 were of what was going on with the A-OCANADA  
22 investigation.

23 I just want to clarify one point.  
24 Mr. Arar's name, was the first time you heard that  
25 on October 3rd at the meeting at A-OCANADA or had

1           you heard his name before?

2                           MR. LAUZON:   That's correct.  No,  
3           October 3rd where I have in my notes that I heard  
4           his name.

5                           MR. WALDMAN:  You never heard  
6           Mr. Arar's name prior to that time?

7                           MR. LAUZON:  I may have, I don't  
8           remember.

9                           MR. WALDMAN:  Okay.  So based upon  
10          your best recollection October 3rd would be the  
11          first time?

12                          MR. LAUZON:  That is correct.

13                          MR. WALDMAN:  But you had heard  
14          the name Almalki before that?  You were familiar  
15          with his name I assume?

16                          MR. LAUZON:  Yes, I did.

17                          MR. WALDMAN:  And Mr. El Maati's  
18          name, you would have been familiar with that name?

19                          MR. LAUZON:  That is correct.

20                          MR. WALDMAN:  But Mr. Arar's name  
21          hadn't come up?

22                          MR. LAUZON:  Not to my knowledge.

23                          MR. WALDMAN:  Okay.  Now,  
24          according to Sergeant Flewelling, he first found  
25          out about the possibility of Mr. Arar -- well,

1 Mr. Arar's detention in the United States from  
2 Inspector Roy on October 2nd?

3 MR. LAUZON: Right.

4 MR. WALDMAN: Was that something  
5 that he should have reported to you immediately  
6 that day, given the importance of the fact that  
7 there was a Canadian citizen detained in the  
8 United States who was the subject of an A-OCANADA  
9 investigation?

10 MR. LAUZON: Not necessarily.

11 MR. WALDMAN: So it wouldn't be  
12 that important that he would have been expected to  
13 report something like that to you immediately?

14 MR. LAUZON: I imagine if we had a  
15 water cooler talk that day that he might have  
16 given me that information. Other than that, no.

17 MR. WALDMAN: With respect to the  
18 October 5th phone call that we know that Sergeant  
19 Flewelling had with one of his American colleagues  
20 from the U.S. Embassy, isn't that the type of  
21 conversation that you would have expected being  
22 told about right away? It was pretty important,  
23 Americans --

24 MR. LAUZON: Yes, and I'm glad  
25 and -- I don't remember the phone call, but as a

1 matter of practice my subordinates do call me on  
2 the weekends to apprise me of any developments  
3 with respect to their investigations. Whether I  
4 make a notation of that in my notebook or not  
5 would depend if I even had my notebook at home at  
6 that point in time.

7 But no, I don't remember the  
8 phone call.

9 MR. WALDMAN: But it could have  
10 happened?

11 MR. LAUZON: Absolutely.

12 MR. WALDMAN: Right. But it  
13 wasn't so significant in your mind at that time  
14 that you have a recollection of it as of today?

15 Correct?

16 MR. LAUZON: Can you pose --

17 MR. WALDMAN: You don't have a --

18 MR. LAUZON: Can you pose the  
19 question again?

20 MR. WALDMAN: It is not so  
21 significant that you would have -- it didn't  
22 strike you at the time as being so significant  
23 that you recall it now or that you are sure that  
24 you had it? You don't recall whether you --

25 MR. LAUZON: I don't recall the

1 conversation. I'm not denying that it didn't  
2 happen.

3 MR. WALDMAN: Right. Do you  
4 recall a conversation you had with Corporal  
5 Flewelling on Monday, because he went on personal  
6 leave on Tuesday?

7 According to Corporal Flewelling,  
8 he had a conversation with you on Monday.

9 MR. LAUZON: Yes, that is correct.  
10 We had a briefing. According to my notes, I think  
11 it was about 20 after 9:00 in the morning where we  
12 discussed an article that was in the newspaper.

13 MR. WALDMAN: Right. But the  
14 thing that surprises me about the briefing is  
15 there is absolutely no mention of Mr. Arar in that  
16 briefing.

17 Could I ask you to go to page 5 of  
18 your notes?

19 --- Pause

20 MR. WALDMAN: It says:  
21 "9:25 briefing with Rick  
22 Flewelling with respect to  
23 article National Post  
24 October 5th. Back on  
25 September 21st. ... Post

1 alluded to info ... This  
2 article is as a result of  
3 that meet. In return ...  
4 Bill ...

5 Note: This is why we  
6 shouldn't go to Interpol.  
7 Rick will provide a full  
8 report." (As read)

9 Is there any mention of Mr. Arar  
10 in these notes?

11 MR. LAUZON: No, there isn't.

12 MR. WALDMAN: So do you have any  
13 recollection of being briefed by Sergeant  
14 Flewelling about Mr. Arar on that day?

15 MR. LAUZON: No.

16 MR. WALDMAN: Sergeant Flewelling  
17 seems to say that he did, but you don't have any  
18 recollection of that either?

19 MR. LAUZON: He may have, I just  
20 don't remember now.

21 MR. WALDMAN: Is it not true that  
22 you put into your notes the information that you  
23 think is significant, right? So if you had a  
24 briefing from Mr. Flewelling obviously it didn't  
25 strike you as being significant enough at that

1 time to include it in your notes, correct, or else  
2 it would be here?

3 --- Pause

4 MR. LAUZON: That's fair.

5 MR. WALDMAN: Right. I just  
6 asked you, Corporal Flewelling told us that he  
7 gave you a briefing in which he related to you  
8 again the conversation he had had over the weekend  
9 about this Canadian citizen subject to this  
10 A-OCANADA investigation involving an alleged  
11 al-Qaeda sleeper cell and the Americans asking  
12 whether -- considering whether they could deport  
13 him back to Canada and whether there is enough  
14 information for criminal charges, and you are  
15 telling me that wasn't significant enough to be  
16 put into your notes?

17 MR. LAUZON: It wasn't in  
18 my notes.

19 MR. WALDMAN: Do you have any  
20 explanation why it wouldn't have been?

21 MR. LAUZON: No, I don't have an  
22 explanation.

23 MR. WALDMAN: So you don't recall  
24 anything about any conversation you have with  
25 Corporal Flewelling on the 7th because it is not

1 in your notes?

2 MR. LAUZON: That is correct.

3 MR. WALDMAN: Now, you told us  
4 that at this meeting on the 8th that you went to  
5 at 1420 which had investigators from A-OCANADA and  
6 yourself representing -- Corporal Flewelling was  
7 away -- there was an American partner there.

8 Did the presence of an American  
9 partner cause you any concern in terms of sharing  
10 of information, caveats and things like that?

11 MR. LAUZON: Not at all. The  
12 reason I was there is because the American partner  
13 was there.

14 MR. WALDMAN: Was it routine for  
15 American partners to come to meetings where  
16 operational details about a Canadian investigation  
17 were discussed?

18 MR. LAUZON: I think in this  
19 context, yes, it was normal, especially the  
20 relationship with Project A-OCANADA and this  
21 particular American partner. However, the deal  
22 was if there was an American partner at a meeting  
23 with the members for Project A-OCANADA that there  
24 would be a member of CID present. It should be  
25 Rick Flewelling, however he was on holidays so I



1 attended in his place.

2 MR. WALDMAN: I think we heard  
3 some evidence that this was an arrangement that  
4 came -- a deal you called it -- that came about as  
5 a result of negotiations because of concerns about  
6 caveats not being put in place. So there was an  
7 arrangement where someone from CID would be  
8 present whenever an American partner is there.

9 Is that correct? That was how  
10 that happened?

11 MR. LAUZON: I don't think it has  
12 anything to do with caveats per se. It just has  
13 to do with being at the table when there is an  
14 American partner at a meeting with Project  
15 A-OCANADA.

16 MR. WALDMAN: I gather your notes  
17 would have reflected the discussions that took  
18 place between the group that was there, including  
19 the American partner.

20 Is that correct?

21 MR. LAUZON: Yes.

22 MR. WALDMAN: The American  
23 partner, I assume, would have participated in the  
24 meeting as well?

25 MR. LAUZON: Yes.

1 MR. WALDMAN: I find it a bit  
2 surprising that we have an American partner at a  
3 meeting where we are speculating about the actions  
4 of the Americans and someone just didn't turn to  
5 your American partner and say, "Well, what are you  
6 guys going to do"?

7 Did that happen? Did one of you  
8 go and talk to the American partner and say, "What  
9 are you going to do with Arar?"

10 Was that discussed or that  
11 question posed to the partner?

12 MR. LAUZON: Not to my knowledge.

13 MR. WALDMAN: If you are  
14 speculating about what the Americans are going to  
15 do about a Canadian citizen sitting in jail in the  
16 United States, wouldn't it make sense to ask the  
17 American partner?

18 You may not be able to tell me if  
19 the American partner gave you an answer, but I  
20 think I can ask if you asked the question.

21 Wouldn't it have made sense to ask  
22 the American what plans they had for Mr. Arar?

23 MR. LAUZON: I think the plan that  
24 they had is he was scheduled for an immigration  
25 hearing the following day.

1 MR. WALDMAN: But at this point  
2 you are speculating, "Where are we" -- your note  
3 says:

4 "Arar Syrian-Canadian.

5 Where will he go ?

6 Syria?

7 Canada?" (As read)

8 Clearly Syria and Canada are on  
9 the table. Why don't you just turn to the  
10 American partner and say, "Well, what are you guys  
11 going to do? Are you going to send him to Syria  
12 or send him to Canada?" That might have helped us  
13 resolve the issue at that time.

14 That question wasn't asked,  
15 though, as far as you recall?

16 MR. LAUZON: No.

17 MR. WALDMAN: In terms of the RCMP  
18 proposed trip to Syria, which I gather got  
19 approval, right, but didn't -- from your notes it  
20 seems that the Minister approved the trip that was  
21 going to happen, but I gather it never happened,  
22 as far as you know.

23 MR. LAUZON: No, that trip  
24 never occurred.

25 MR. WALDMAN: But it was approved

1 to go ahead? That's what the notes say, Minister  
2 approval and that it was postponed because of the  
3 MPs visit.

4 MR. LAUZON: I would say yes.

5 MR. WALDMAN: So this decision to  
6 send the RCMP to Syria to interview Mr. Arar, were  
7 you involved in any way in the discussions about  
8 how this -- the approval for the trip?

9 We are told that there is a  
10 process in place where there are consultations  
11 inside the RCMP and you look at a series of  
12 factors and it would be done by the national  
13 security group.

14 Did you participate in any way in  
15 the discussions that led up to the approval for  
16 the trip?

17 MR. LAUZON: I don't remember.

18 MR. WALDMAN: You don't remember.

19 Were you aware of the human rights  
20 record of Syria at the time, sir?

21 MR. LAUZON: Perhaps not with this  
22 detention in New York, but certainly afterwards,  
23 yes.

24 MR. WALDMAN: So by the time we  
25 are discussing an RCMP trip to Syria, which is

1 March of 2003, by that time you would have a  
2 pretty good idea that Syria has a bad human rights  
3 record.

4 Correct?

5 MR. LAUZON: That's correct.

6 MR. WALDMAN: And that conditions  
7 in the prison are very bad and that torture is  
8 used in interrogations.

9 Right?

10 MR. LAUZON: I wasn't aware that  
11 torture was being used in interrogations in Syria.

12 MR. LAUZON: I'm not saying in  
13 Mr. Arar's interrogation, but generally it is part  
14 of the practice. That is what the Department of  
15 State report says.

16 You weren't aware that they use  
17 torture when they question people in Syria?

18 MR. LAUZON: I realized that they  
19 didn't have a human rights record or standard that  
20 was the same as Canada, but no, I didn't realize  
21 that they use torture as a means of treating their  
22 prisoners.

23 MR. WALDMAN: So knowing that  
24 Mr. Arar was in detention in Syria, in a country  
25 that didn't have a very good human rights record,

1           and given your position as a supervisor of the  
2           A-OCANADA project, did you at any time say to any  
3           of the people that were discussing this trip to  
4           Syria, "Hey, I don't think this is a good idea.  
5           We have a Canadian citizen sitting in jail in a  
6           country that doesn't respect human rights and I  
7           don't think we should be sending our officers  
8           there to question him in that context."

9                            Did you ever make that kind of  
10           statement, sir?

11                           MR. LAUZON: No.

12                           MR. WALDMAN: What do you think,  
13           do you think it is a good idea to send people to  
14           interrogate Canadian citizens detained in foreign  
15           jurisdictions with poor human rights record?

16                           MR. LAUZON: In furtherance of a  
17           criminal investigation, yes.

18                           MR. WALDMAN: How reliable would  
19           you think the information you could obtain under  
20           those circumstances would be?

21                           MR. LAUZON: The information is  
22           only as reliable as you can corroborate it, right.

23                           MR. WALDMAN: Right. Wouldn't you  
24           be concerned that in the context of providing  
25           information or trying to obtain information in

1           such a context you might put the Canadian citizen  
2           at risk of having his human rights abused?

3                           Wouldn't that be a concern to you?

4                           MR. LAUZON:    Would it be not the  
5           concern of Foreign Affairs perhaps?

6                           MR. WALDMAN:    But the RCMP are the  
7           people that are going.  They are the ones that are  
8           going to be asking the questions.  They are the  
9           ones that are going to be in the jail with the  
10          Canadian citizen.  I would suggest it to be the  
11          concerns of the RCMP as well.

12                          You are the ones -- Mr. Pardy told  
13          me, and I hope I am not misstating his evidence,  
14          but he told me that at the end of the day the RCMP  
15          were the ones who made the decision about whether  
16          to go over the objections of DFAIT.

17                          So you were the ones who would  
18          make the decision.  You decided to go.  Don't you  
19          think there is a problem about sending inspectors  
20          to countries that violate human rights to question  
21          Canadian citizens?

22                          MR. LAUZON:    In furtherance to a  
23          national security criminal investigation I think  
24          that we have a duty to get as much information as  
25          possible to complete our investigation, to have a

1           fulsome, wholesome investigation and the  
2           information that would be provided would have to  
3           be obviously corroborated elsewhere.

4                       MR. WALDMAN:   But in Canada before  
5           a person gives a statement he has a choice, he has  
6           a right to a lawyer and you can't compel -- except  
7           now under the Criminal Code in exceptional  
8           circumstances -- you can't compel a person to give  
9           a statement.

10                      Right?  Is that correct?

11                      MR. LAUZON:   That is correct.

12                      MR. WALDMAN:   So do you think that  
13           we should apply a different standard to Canadian  
14           citizens sitting in jails in terrible conditions  
15           overseas where you go there and you show up and  
16           force them to give statements because they are in  
17           detention in Syria and ignore their Charter rights  
18           to not give statements?

19                      MR. LAUZON:   Are you getting a  
20           statement from that person?  Are you merely  
21           getting information?  Are you getting information  
22           that will be used eventually for evidence in a  
23           court of law?  What --

24                      MR. WALDMAN:   Well, the RCMP,  
25           according to the information we have, says it was



1 approval of a trip to get information and to  
2 question Mr. Arar. That is what the notes say.

3 So the intent, it would seem, was  
4 to question Mr. Arar while he is sitting in jail  
5 in a country where he didn't have access to a  
6 lawyer and in deplorable conditions.

7 You think that is all right to  
8 further an investigation?

9 MR. LAUZON: Yes, I do.

10 --- Pause

11 MR. WALDMAN: Thank you.

12 THE COMMISSIONER: Mr. Fothergill?

13 --- Pause

14 MR. FOTHERGILL: Commissioner,  
15 I'll be brief. But I think it's still easier for  
16 me to speak from here than my desk.

17 THE COMMISSIONER: Sure.

18 EXAMINATION

19 MR. FOTHERGILL: Mr. Lauzon, if I  
20 can ask you to turn to your notes for October 8th.  
21 This is exhibit 232. It's the green-covered one.  
22 And it's page 5, if you're going by the  
23 handwritten page numbers in the lower right hand  
24 corner.

25 Do you have that in front of you?

1 MR. LAUZON: Yes, I do.

2 MR. FOTHERGILL: Now, your note  
3 reads:

4 "ARAR: - Syrian / CDN  
5 - where will he go,  
6 Syria / Canada"

7 Did you believe that Mr. Arar had  
8 some choice in where he would be sent?

9 MR. LAUZON: Yes, I did.

10 MR. FOTHERGILL: Can you elaborate  
11 on that in any way? What your think was about the  
12 role of Arar's own volition in the outcome?

13 MR. LAUZON: There were several  
14 factors.

15 It was my understanding that he  
16 was facing an immigration hearing on -- on the  
17 9th. Subsequent to that hearing if  
18 he -- I thought that he might have a choice of  
19 where to go, you know, so...

20 And obviously, if his two choices  
21 are Syria or Canada, he would choose Canada over  
22 Syria.

23 MR. FOTHERGILL: Now there was an  
24 American official present at this meeting.

25 Correct?

1 MR. LAUZON: That's correct.

2 MR. FOTHERGILL: You can't tell us  
3 the organization he was affiliated with and you  
4 can't tell us his name, but was he somebody who is  
5 employed at the U.S. Embassy here in Ottawa?

6 MR. LAUZON: Yes, he is.

7 MR. FOTHERGILL: Can you tell us  
8 in general terms what his function in the embassy  
9 was? What did he do there?

10 MR. LAUZON: Somewhat the same  
11 role as what Corporal Rick Flewelling was doing at  
12 that same time, was monitoring, coordinating...

13 MR. FOTHERGILL: This might  
14 help -- and I don't know if you know the answer to  
15 this, but we've heard some evidence about  
16 Mr. Flewelling's dealings with a certain American  
17 official on October 4th and October 5th.

18 Is it the same American official  
19 who attended this meeting? Do you recall?

20 MR. LAUZON: I'm not a hundred per  
21 cent sure, but in all likelihood.

22 MR. FOTHERGILL: All right.

23 But regardless, it's somebody who  
24 fulfills the same sort of function?

25 MR. LAUZON: Yes.

1                   MR. FOTHERGILL:  Again I'm going  
2                   to ask you to speculate, and if you're not  
3                   prepared to answer, say so, but can you comment on  
4                   to what extent this individual who was in the room  
5                   with you would be able to determine or tell you  
6                   where Arar would be sent following this October  
7                   9th hearing you mentioned?

8                                 Would he know?

9                   MR. LAUZON:  I don't think he  
10                  would have a clue.

11                  MR. FOTHERGILL:  Okay.

12                  Can I then ask you to turn to the  
13                  other set of your notes.  This is the loose one.

14                                 It's -- I don't think I noted the  
15                  exhibit number.

16                  --- Off microphone comment / Remarque hors  
17                  microphone

18                  MR. FOTHERGILL:  Two  
19                  thirty-three (233).  Thank you.

20                                 I'd like to ask you about the  
21                  meeting you attended on February 28th, I think.  
22                  This is on page 2 of 2 of the transcript, of the  
23                  typewritten version.

24                                 So if you have exhibit 233 in  
25                  front of you and if you turn two pages in you

1 should see an entry for February 28th of 2003.

2 Do you see that?

3 MR. LAUZON: Yes.

4 MR. FOTHERGILL: In the right hand  
5 corner you see first 121 and 129. It's the  
6 portion there the others have asked you about that  
7 I'd like to speak to you about.

8 "ARAR: - minister has  
9 approved visit"

10 Do you see that?

11 MR. LAUZON: Yes.

12 MR. FOTHERGILL: Now Mr. Waldman  
13 put to you, and I think you agreed with him, that  
14 this meant that the minister, Solicitor General  
15 Easter, had in fact approved a visit by the RCMP  
16 to travel to Syria.

17 Do you know for certain whether in  
18 fact Minister Easter approved of such a trip?

19 MR. LAUZON: No. I was just  
20 taking notes at that meeting.

21 MR. FOTHERGILL: Mr. Waldman asked  
22 you some questions about the propriety of  
23 Canadians interviewing people in other countries.

24 Do you know -- if Canadian  
25 officials, members of the RCMP, interview somebody

1           who is detained in another country, do they take  
2           the Charter with them in the sense that, is it  
3           RCMP policy to apply Charter standards when they  
4           are abroad?

5           --- Pause

6                         MR. LAUZON: I would tend to think  
7           so, that you would apply the same judicial  
8           principles as you would in another country.

9                         However I'm not sure if you can do  
10          that or not. I'm not sure of the process.

11                        But it would seem prudent to  
12          certainly try and apply the Charter, for what it's  
13          worth, when you're in fact interview somebody in a  
14          foreign country.

15                        MR. FOTHERGILL: Do you know  
16          whether the consent of the person interviewed  
17          would be required before he could be interviewed  
18          by the RCMP?

19                        MR. LAUZON: I think that's a  
20          standard procedure that if you're going to  
21          interview somebody, that there's some element of  
22          consent.

23                        MR. FOTHERGILL: All right, thank  
24          you. Those are my questions.

25                        THE COMMISSIONER: Mr. Cavalluzzo?

1 MR. CAVALLUZZO: Now, in terms of  
2 the element of consent, do you think it would be  
3 an informed and viable consent if I'm a Canadian  
4 languishing away in a cell that's six by eight by  
5 seven and I have a Canadian agency coming to see  
6 me and saying "We'd like to interview you" -- what  
7 do you think the Canadian would say?

8 MR. LAUZON: Yes.

9 MR. CAVALLUZZO: Do you think that  
10 would be a voluntary expression on their part, or  
11 do you think circumstances would dictate that they  
12 would love to see a Canadian agency?

13 MR. LAUZON: Can you ask the  
14 question again?

15 MR. CAVALLUZZO: Yes, okay.

16 I'm a Canadian, right?

17 MR. LAUZON: Yes.

18 MR. CAVALLUZZO: I have been in  
19 Syria for six months. My cell is six by seven by  
20 six. Known as the grave, because I never get to  
21 see the sunlight. Right? A Canadian agency comes  
22 over and says "We would like to interview you."

23 What do you think the Canadian in  
24 those circumstances would say?

25 MR. LAUZON: He would jump at the

1 opportunity.

2 MR. CAVALLUZZO: Absolutely.

3 And you don't think that that's an  
4 informed consent within the meaning of the Charter  
5 of Rights, do you?

6 MR. LAUZON: It would be a  
7 hard --consent is a state of mind. So how --

8 MR. CAVALLUZZO: -- believe it.

9 MR. LAUZON: I don't know how you  
10 would be able to ascertain whether it was -- if he  
11 was just -- if he was truly consenting to the --  
12 the questioning or not.

13 MR. CAVALLUZZO: We'll leave that  
14 to the average Canadian as to what their view  
15 would be as to whether that's an informed consent.

16 MR. FOTHERGILL: Better yes, we  
17 would leave it to a court because it's a legal  
18 decision, and it's something that would be argued  
19 if such a statement were ever to be entered in  
20 evidence.

21 THE COMMISSIONER: Go ahead.

22 MR. CAVALLUZZO: I would prefer to  
23 leave it to the average Canadian.

24 --- Laughter / Rires

25 MR. CAVALLUZZO: The only other



1 question is, you said that the United States rep  
2 present at this meeting -- and once again you  
3 can't tell us which agency he or she came from,  
4 but you said, you used the words "this U.S. rep  
5 wouldn't have a clue where he would be sent",  
6 referring to Mr. Arar.

7 That's not the case, is it?

8 MR. LAUZON: What I meant to say  
9 is that he would have no more knowledge than we  
10 would have into where -- what happened to him at  
11 that point in time.

12 MR. CAVALLUZZO: I guess the other  
13 question that I would have, since you're dealing  
14 and you keep referring to the deportation hearing  
15 that was going to take place the next day on  
16 Wednesday October the 9th, did anybody in the RCMP  
17 seek any kind of expert legal advice as to what  
18 might happen to Mr. Arar on October the 9th?

19 MR. LAUZON: Not to my knowledge.

20 MR. CAVALLUZZO: Okay.

21 MR. LAUZON: And I was referring  
22 to it as an immigration hearing --

23 MR. CAVALLUZZO: An immigration  
24 hearing or whatever.

25 MR. LAUZON: I don't think I was

1 using the word deportation.

2 MR. CAVALLUZZO: Okay, Mr. Lauzon,  
3 I have no further questions.

4 Thank you.

5 THE COMMISSIONER: That completes  
6 your evidence, Sergeant.

7 Thank you very much for coming,  
8 for answering questions and the time you spent  
9 preparing and coming to give evidence.

10 Thank you.

11 MR. LAUZON: You're welcome.

12 THE COMMISSIONER: That completes  
13 a long day.

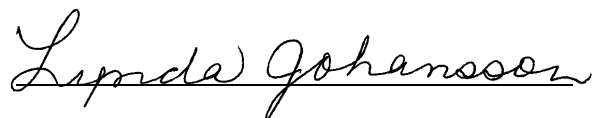
14 Let me just express my thanks to  
15 everybody who was involved in allowing us to  
16 maintain our schedule: counsel and particularly  
17 the translators, the camera crew, sound, court  
18 reporter, all the administrative staff.

19 There are a lot of people involved  
20 in this inquiry proceeding, and it takes a good  
21 deal of cooperation and hard work. So I'm  
22 indebted to everybody for that.

23 Hopefully we don't have very many  
24 more net days to go, and hopefully we won't have  
25 any more days that are as long as today.

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So we'll rise and we'll resume  
tomorrow morning at 9 o'clock.  
--- Whereupon the hearing adjourned at 6:30 p.m.,  
to resume on Wednesday, August 24, 2005  
at 9:00 a.m. / L'audience est ajournée à  
18 h 30 pour reprendre le mercredi  
24 août 2005 à 9 h 00

  
Lynda Johansson,  
C.S.R., R.P.R.

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