

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



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

Audience publique

Public Hearing

Commissaire

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

Commissioner

Tenue à:

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

le mercredi 24 août 2005

Held at:

Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario

Wednesday, August 24, 2005

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Mr. Steven Shrybman	Canadian Labour Congress/Council of Canadians and the Polaris Institute
Mr. Emelio Binavince	Minority Advocacy and Rights Council
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TABLE OF CONTENTS / TABLE DES MATIÈRES

	Page
<u>Motion</u>	10194
<u>PREVIOUSLY SWORN: Dan Livermore</u>	10223
<u>Examination by Mr. David</u>	10223
<u>Examination by Ms Edwardh</u>	10252
<u>Examination by Ms McIssac</u>	10292
<u>Examination by Mr. Shore</u>	10307
<u>Examination by Mr. David</u>	10313
<u>PREVIOUSLY SWORN: Jim Gould</u>	10324
<u>Examination by Mr. David</u>	10324
<u>Examination by Ms Edwardh</u>	10380
<u>Examination by Mr. Boxall</u>	10427
<u>Examination by Ms McIssac</u>	10442
<u>Examination by Mr. Shore</u>	10450
<u>Examination by Mr. David</u>	10478
<u>PREVIOUSLY SWORN: Kathryn McCallion</u>	10485
<u>Examination by Mr. David</u>	10485
<u>Examination by Ms Edwardh</u>	10528
<u>Examination by Ms McIssac</u>	10555
<u>Examination by Mr. Shore</u>	10556
<u>Examination by Mr. David</u>	10561
<u>PREVIOUSLY SWORN: Jim Gould</u>	10566
<u>Examination by Mr. Shore</u>	10566

LIST OF EXHIBITS / PIÈCES JUSTICATIVES

No.	Description	Page
P-234	<u>Transcript of testimony of Barbara Burns, dated April 18, 2005</u>	10208
P-235	<u>Transcript of testimony of Dave Dyet, dated April 18, 2005</u>	10210
P-236	<u>Compilation of Jim Gould's personal notes</u>	10210
P-237	<u>Book of Documents entitled "Newly Redacted Documents for the testimony of Jim Gould, Kathryn McCallion and David Livermore</u>	10210

1 Ottawa, Ontario / Ottawa (Ontario)
2 --- Upon commencing on Wednesday, August 24, 2005
3 at 9:04 a.m. / L'audience reprend le mercredi
4 24 août 2005 à 9 h 04

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

7 MR. CAVALLUZZO: Good morning,
8 Commissioner.

9 Prior to the testimony, there are
10 a couple of points I would like to make.

11 One is that we have prepared a
12 very general CSIS public chronology which relates
13 to events and information coming from the public
14 record as well as public documents that have been
15 introduced, and that will be available to the
16 parties if they want to pick it up from our
17 administrative office.

18 Second, there are going to be, if
19 we can call them, two applications or motions, I
20 understand, this morning. One will be dealing
21 with the testimony of Mr. Hooper tomorrow.

22 In particular, I understand that
23 counsel for Mr. Arar will be asking for access to
24 certain in-camera evidence, but I would leave that
25 for my friend to articulate in terms of what she

1 will be requesting.

2 Second, Mr. Shore, who represents
3 Mr. Hooper, will be making suggestions in respect
4 of the order of witnesses today. We have
5 indicated what the order of witnesses is. He
6 indicates that that is unfair to Mr. Hooper and
7 will be making certain suggestions as to the
8 appropriate order.

9 So perhaps if we could start with
10 Mr. Arar's counsel's motion, we can get going.

11 THE COMMISSIONER: Good morning,
12 Ms Edwardh.

13 MOTION

14 MS EDWARDH: Thank you very much,
15 Mr. Commissioner.

16 It is a pleasure to be here.

17 My motion is very, very brief. As
18 you know, your counsel has provided to us the
19 testimony of Dave Dyet in respect of a certain
20 conversation that will be the subject matter
21 largely of today's proceedings.

22 THE COMMISSIONER: Right.

23 MS EDWARDH: And that has been
24 most useful. We don't have to waste your time, or
25 anyone's time, as I understand this will be filed

1 as an exhibit.

2 However, it is my understanding,
3 or guess as much as anything, that in the same
4 in-camera proceedings, Ms McCallion also gave her
5 account of the conversation. We have a very, very
6 general will-say, and as this has now fallen into
7 the public domain and will be explored in the
8 public domain, I would request that at least the
9 excerpts of her testimony in camera, as it relates
10 to today's proceedings, be made available to
11 counsel, should there be some questions that arise
12 from that.

13 THE COMMISSIONER: Is there any
14 objection to that? Is there anything NSC about
15 Ms McCallion's evidence in camera?

16 MS McISAAC: My recollection, sir,
17 is there is not, but I thought the whole point was
18 that we were releasing, or we were asked to
19 provide and the decision was made to provide
20 Mr. Dyet's testimony -- I think perhaps Ms Burns'
21 testimony as well -- from the in-camera
22 proceedings to avoid having to call them publicly.

23 Ms McCallion is here and will be
24 testifying today publicly, and I don't see any
25 need to release her other transcript in the

1 circumstances.

2 THE COMMISSIONER: Would there be
3 anything unfair to -- let's assume, I don't
4 suggest it to be the case, but let's assume her
5 evidence here was different from what it was
6 previously. It would be helpful to me to have her
7 questioned on that.

8 MS McISAAC: That is true, sir,
9 but it has been an issue that I've raised with
10 counsel on several occasions about witnesses
11 testifying in camera first and then being called
12 to testify about exactly the same things in
13 public.

14 THE COMMISSIONER: Well, it is the
15 Government that suggested we call all the evidence
16 in camera first, and we initially resisted the
17 idea --

18 MS McISAAC: I don't want to
19 debate that with you, sir, but it is not
20 absolutely true with all of the witnesses.

21 In any event, it seems to me that
22 we have to make a decision as to how we are
23 treating this in-camera evidence. And this isn't
24 suggesting that we are going to start releasing
25 all sorts of transcripts of the in-camera

1 evidence, because that obviously will be a huge
2 undertaking.

3 THE COMMISSIONER: I don't think
4 that is the suggestion, is it? You are not
5 implying that?

6 MS EDWARDH: No, Mr. Commissioner.
7 As you know, we have not had the privilege of
8 joining you in the in-camera process and have
9 always harboured under the belief, rightly or
10 wrongly, that the reason they are going on is to
11 assist you in the resolution of National Security
12 Confidentiality.

13 To the extent that this can be
14 made public and it will assist us in further
15 disclosure of what is to be said as well as to
16 potentially ask questions and clarification from
17 Mr. Arar's perspective, unless there is some
18 unfairness here, it should be granted and will
19 enhance the public component of the process.

20 THE COMMISSIONER: I guess the
21 only point, Ms Edwardh, that Ms McIsaac is making
22 is that -- I don't suggest she is necessarily
23 agreeing to this, but to embark upon a process
24 that would have us now looking at in-camera
25 transcripts with a view to making them public to

1 the extent we can, that would be -- and you are
2 not asking that. That is not where you are
3 headed.

4 MS EDWARDH: No, that is not my
5 request. I'm asking for those portions of her
6 testimony that relate to the subject matter of
7 today's proceedings.

8 THE COMMISSIONER: And it is
9 simply with respect to that one witness and
10 nothing more?

11 MS EDWARDH: That is what I'm
12 asking.

13 THE COMMISSIONER: Right. And do
14 you envision that type of request arising with
15 respect to any other witnesses? We now know the
16 finishing line in terms of the evidence.

17 MS EDWARDH: Yes. And quite
18 frankly, Mr. Commissioner, I don't even know who
19 testified in camera.

20 THE COMMISSIONER: Right.

21 MS EDWARDH: It just struck me as
22 obvious, when we got the excerpt from Dave Dyet,
23 that there must be another side to this coin, and
24 I would be ill of serving my client's interests to
25 not request it.

1 I do not even have a list of who
2 has provided evidence before you, so I'm not
3 making a request that was broader than the one I
4 am putting before you now.

5 THE COMMISSIONER: Mr. Cavalluzzo?

6 MR. CAVALLUZZO: My concern,
7 Mr. Commissioner, is one of fairness. Both
8 Ms McCallion's counsel and Mr. Hooper's counsel,
9 who will be testifying tomorrow, have had full
10 access to Ms McCallion's in-camera evidence. It
11 just seems, as a matter of fairness, that if there
12 are no NSC concerns in respect of Ms McCallion's
13 evidence -- and there clearly isn't relating to
14 this one particular situation that we are going to
15 be discussing today -- I say as a matter of
16 fairness counsel for Mr. Arar should have access.

17 THE COMMISSIONER: My concern, on
18 the other hand -- I hear what Ms Edwardh says --
19 is just one of establishing a precedent. We
20 haven't been doing this, I think for good reason,
21 because in most instances, virtually all
22 instances, in-camera evidence had components of it
23 that had to remain in camera, so we haven't set
24 about the exercise of parsing it as to what would
25 be and what wouldn't be. That would be yet

1 another incumbrance on this inquiry.

2 This, it seems to me, if I recall
3 correctly, is a different situation.

4 MR. CAVALLUZZO: It is a much
5 different situation. This is a situation in which
6 we have already released certain transcripts of
7 the in-camera evidence.

8 There was a question as to -- you
9 may recall that one of the counsel didn't have top
10 security at the particular point in time and
11 couldn't cross-examine one of the witnesses and as
12 a result of that the procedure had to be
13 accommodated along the way. This event has turned
14 out to be a public event.

15 I should advise counsel that
16 Mr. Hooper did not testify on this point in
17 camera. We were unaware of this particular
18 conversation when he did testify, so there's no
19 concern about his in-camera evidence. We are only
20 talking about Ms McCallion's evidence, which
21 obviously is very important, if we look at the
22 public transcripts that are about to be released
23 now in respect of Mr. Dyet and Ms Burns.

24 THE COMMISSIONER: Thank you.

25 Ms McIsaac, do you have anything

1 further?

2 MS McISAAC: Yes, sir. Just in
3 the circumstances, I don't believe there is
4 anything that raises a national security concern
5 in Ms McCallion's testimony. I have not read it
6 with that in view. It would have been rather
7 helpful if somebody had raised this earlier,
8 because I know that Mr. Shore's motion deals with
9 the order of witnesses, and I don't know whether I
10 can have it read and reviewed and provided in time
11 for --

12 THE COMMISSIONER: Ms McCallion is
13 currently scheduled to testify this afternoon,
14 isn't she? It is a very short transcript.

15 MS McISAAC: Yes, it is, sir.

16 THE COMMISSIONER: At least as I
17 recall the evidence.

18 MS McISAAC: Perhaps you should
19 hear Mr. Shore's motion. I understand your ruling
20 is that it will be made public and we will review
21 it as quickly as possible.

22 THE COMMISSIONER: Yes, that is
23 what I'm inclined to do in the circumstance. I
24 can't see anything unfair to Ms McCallion or
25 Mr. Hooper in doing so.

1 MR. CAVALLUZZO: Just one final
2 comment on timing.

3 As Commission counsel, we were
4 spoken to, I understand, earlier this week by
5 Mr. Shore about the public release of
6 Ms McCallion's transcript. We said to Mr. Shore
7 that we would agree to its public release so long
8 as the Government agreed to it. I thought that
9 that was going to take place, and I assume it
10 didn't. But certainly there was a discussion
11 between Commission counsel and Mr. Shore about
12 releasing that evidence.

13 THE COMMISSIONER: Thank you,
14 Mr. Cavalluzzo.

15 Let me hear your suggestion,
16 Mr. Shore.

17 MR. SHORE: Yes, thank you. If I
18 may come forward?

19 THE COMMISSIONER: Please do.

20 MR. SHORE: Mr. Commissioner, I
21 understand that my friend intends to call
22 Mr. Livermore, Mr. Gould and Ms McCallion, in that
23 order.

24 THE COMMISSIONER: And they are
25 all going to be called today.

1 MR. SHORE: All going to be called
2 today, dealing with the Hooper-McCallion phone
3 call.

4 THE COMMISSIONER: Right.

5 MR. SHORE: My concern is this:
6 Mr. Livermore, whatever information he received
7 with regard to that phone call, received it third
8 hand. Mr. Gould's information, which resulted in
9 his note, which gives rise to this whole aspect of
10 the hearing, was received from Mr. Dyet.

11 Mr. Dyet, according to him, and
12 his transcript that is released or is presently
13 about to be released, indicates that he spoke to
14 Ms McCallion prior to the phone call with
15 Mr. Hooper and he will indicate that during his
16 conversation with Ms McCallion, Ms McCallion
17 advised him that she was going to sign off on the
18 memo even before she returned Mr. Hooper's phone
19 call. We understand this is June 5th or June 6th.

20 Mr. Dyet goes on to say that he is
21 not sure where he got the information that he gave
22 to Mr. Gould that ends up in Gould's notebook, and
23 it is based on Mr. Gould's notebook that all this
24 other evidence is being called.

25 So we are going to have

1 Mr. Livermore, who heard it from Mr. Gould, talk
2 about the phone call. We are going to have
3 Mr. Gould, who heard about it from Mr. Dyet, talk
4 about the phone call, and we are not going to hear
5 from the person who actually was involved in the
6 phone call until all the other witnesses --
7 Livermore and Gould -- have speculated with regard
8 to that phone call.

9 THE COMMISSIONER: Well, not
10 necessarily speculate. They will tell what they
11 heard.

12 MR. SHORE: Well, they are going
13 to tell what they heard, but they are going to be
14 asked more than that.

15 And what they heard is -- I
16 realize this is not a court of law and the rules
17 of evidence don't apply, but there's hearsay and
18 there's hearsay, and reliable hearsay, I suggest,
19 can be admitted with ease. But this hearsay is
20 unreliable.

21 THE COMMISSIONER: You are not
22 suggesting we don't hear the evidence?

23 MR. SHORE: Not at all. Not at
24 all. I'm suggesting that we hear from
25 Ms McCallion first, because she is the one who was

1 involved in the phone call, and that will reduce,
2 in my submission, the amount of time we are going
3 to need with regard to Mr. Gould and
4 Mr. Livermore, because we will already know what
5 the phone call was about.

6 That is my submission.

7 THE COMMISSIONER: Is that it?

8 Commission counsel, I take it,
9 have looked at this issue and decided that this is
10 a sensible order to call it, as what is now
11 proposed?

12 MR. CAVALLUZZO: Exactly the way
13 we called it in camera.

14 THE COMMISSIONER: Right.

15 Does anybody else have something?

16 MS McISAAC: I would like to add,
17 sir, the fact that this evidence was called in
18 this order in camera is, in my view, of no import
19 to how it should be called publicly. It was
20 called in camera in this order because the fact of
21 the Gould note first came to the attention of the
22 Commission when Mr. Gould testified.

23 It was then deemed necessary to
24 call Ms McCallion and Mr. Dyet. The evidence from
25 Mr. Dyet's testimony, which is now public, is

1 quite clear: No one spoke to Ms McCallion after
2 the phone call with Mr. Hooper.

3 It strikes me as being unhelpful
4 in the extreme, particularly to the public, to
5 have a great discourse about what people thought
6 the telephone call was about rather than starting
7 by having the individual who participated in the
8 telephone call get on the stand, tell you, and
9 more importantly the public, since you have
10 already heard it, what they talked about, and then
11 the other individuals can testify.

12 That, in my submission, is the
13 fair and proper way to proceed.

14 THE COMMISSIONER: Well, the
15 public will hear all the evidence today. I think
16 we are getting to a new level of trying to
17 micromanage this inquiry through suggestions.
18 There is more than one way to call evidence, and
19 typically in proceedings like this, there is a
20 great deal of discretion left to parties,
21 Commission counsel, to hear the order they call
22 evidence.

23 I must say I can't conceive that
24 there be any unfairness. I think the evidence
25 will be called, it will be fully tested and it

1 will all be heard today.

2 We will proceed as proposed.

3 I also direct that the transcript
4 of Ms McCallion's evidence be made available to
5 Ms Edwardh and the Government have a chance to
6 review it for NSC first.

7 But that should take place over
8 the course of the day so that we complete
9 Ms McCallion's evidence this afternoon.

10 Anything else?

11 Mr. David?

12 MR. DAVID: Good morning,
13 Mr. Commissioner.

14 Today you will hear the evidence
15 from three witnesses. You will hear the evidence
16 of Mr. Daniel Livermore, who you have already had
17 the opportunity of hearing both in camera and in
18 public. Following Mr. Livermore's testimony,
19 Mr. Jim Gould will testify. And finally, Ms
20 Kathryn McCallion will testify.

21 Essentially the issue that will be
22 dealt with is a phone call that was placed between
23 Jack Hooper, who was the ADO, the Assistant Deputy
24 Director of Operations at CSIS, and Kathryn
25 McCallion who was at the relevant time Assistant

1 Deputy Minister within DFAIT. And the timing of
2 the call was approximately on June 5th of the year
3 2003.

4 So before we hear the testimony of
5 Mr. Livermore and his involvement in this phone
6 call, I would like to file a number of documents
7 that will be useful for today's proceedings.

8 The first will be -- and we have
9 referred to it already -- the transcript of
10 Barbara Burns' testimony.

11 Ms Burns was, at the relevant
12 time, the executive assistant of Kathryn
13 McCallion.

14 Could we file her document?

15 THE COMMISSIONER: 234.

16 EXHIBIT NO. 234: Transcript
17 of testimony of Barbara
18 Burns, dated April 18, 2005

19 THE COMMISSIONER: I note this is
20 a transcript, Mr. David. Should it be placed on
21 the Commission's website with the other
22 transcripts of proceedings?

23 MR. DAVID: I think that that
24 would be appropriate --

25 THE COMMISSIONER: -- rather than

1 have it entered as an exhibit?

2 MR. DAVID: I would suggest both,
3 Mr. Commissioner.

4 The reason why I think it is
5 useful to file it as an exhibit is, one, it is a
6 redacted version of her testimony.

7 THE COMMISSIONER: Okay.

8 MR. DAVID: Though there are no
9 redactions that I know of. But it has been
10 reviewed for NSC concerns.

11 And second, it is simply for ease
12 of reference during today's proceedings.

13 THE COMMISSIONER: All right.

14 MR. DAVID: The second document
15 would be a transcript of Mr. Dyet's testimony,
16 in-camera testimony.

17 And in both cases, for both
18 Mr. Dyet and Ms Burns, they testified on April
19 18th, 2005, in camera.

20 Again, concerning Mr. Dyet's
21 transcripts, this is a version that has been
22 reviewed for NSC concerns. It is a redacted
23 version, but to my knowledge there are no
24 redactions.

25 THE COMMISSIONER: 235.

1 MR. DAVID: 235. Thank you.

2 EXHIBIT NO. 235: Transcript
3 of testimony of Dave Dyet,
4 dated April 18, 2005

5 MR. DAVID: The next document I
6 would like to file are a compilation of Mr. Jim
7 Gould's personal notes.

8 THE COMMISSIONER: 236.

9 EXHIBIT NO. 236: Compilation
10 of Jim Gould's personal notes

11 MR. DAVID: And finally, I would
12 like to file a Book of Documents that will be
13 useful to today's proceedings. It is entitled
14 "Newly Redacted Documents for the Testimony of Jim
15 Gould, Kathryn McCallion and David Livermore", and
16 that will be P-237, I believe.

17 THE COMMISSIONER: Yes, 237.

18 EXHIBIT NO. 237: Book of
19 Documents entitled "Newly
20 Redacted Documents for the
21 Testimony of Jim Gould,
22 Kathryn McCallion and David
23 Livermore"

24 MR. DAVID: Before beginning with
25 the testimony per se of Mr. Livermore, for the

1 public's benefit, Mr. Commissioner, given that
2 Mr. Dyet and Ms Burns will not be testifying viva
3 voce, by agreement of all counsel their testimony
4 will be in the form of these transcripts that have
5 been filed today.

6 I would like to summarize for you
7 both their testimony.

8 In the case of Mr. Dyet --

9 THE COMMISSIONER: Just before you
10 do that, this is a summary you prepared of the --

11 MR. DAVID: It is a summary of
12 what I believe are the most salient points out of
13 the testimony.

14 THE COMMISSIONER: That's fine.

15 If any others that have seen it --
16 I guess everybody has seen these transcripts --
17 thinks that the summary that is about to be given
18 is not complete or is inaccurate, please let me
19 know and add to it.

20 But, yes, go ahead.

21 MR. DAVID: In the case of
22 Mr. Dyet, there are 17 points I would like to
23 raise or flag for the public's benefit.

24 The first is that at the time of
25 the -- there was a memo that was being processed.

1 The final version of this memo is dated June 5th
2 of the year 2003 and has been filed already before
3 this Commission as an exhibit. It is Exhibit No.
4 P-117, tab 75.5.

5 So at the time that this memo was
6 being processed by Ms McCallion, Mr. Pardy was
7 away. That is the first point.

8 Second, Mr. Dyet, when he -- the
9 testimony reveals that he went to see
10 Ms McCallion. The memo was in the possession of
11 Ms McCallion at that time.

12 Third, Mr. Pardy, as he had to
13 leave and knew he had to leave, asked Mr. Dyet to
14 reassure Kathryn McCallion that in terms of the
15 content of the memo, it had been arrived at with a
16 consensus amongst CSIS, the RCMP and DFAIT. So
17 the product of the June 5th memo was a product of
18 a consensus amongst Canadian government agencies.

19 THE COMMISSIONER: That is what
20 Mr. Pardy said?

21 MR. DAVID: This is what Mr. Pardy
22 says, and this is what Mr. Pardy asked Mr. Dyet to
23 say to Ms McCallion.

24 THE COMMISSIONER: And
25 Ms McCallion, just for the record, her position

1 was?

2 MR. DAVID: She was the Assistant
3 Deputy Minister in charge of consular affairs,
4 passports and corporate services.

5 THE COMMISSIONER: At the
6 Department of Foreign Affairs?

7 MR. DAVID: At the Department of
8 Foreign Affairs.

9 THE COMMISSIONER: She was being
10 asked to approve the memo?

11 MR. DAVID: The memo was in terms
12 of an approval process and therefore on her desk
13 to be then forwarded to the Deputy Minister's desk
14 for eventual review by the Minister.

15 THE COMMISSIONER: Okay.

16 MR. DAVID: The fourth point is
17 that Kathryn McCallion requested Dave Dyet to come
18 to her office before calling Mr. Hooper and that
19 Mr. Dyet, in being so called to Kathryn
20 McCallion's office, made the link between the call
21 and the processing of the memo.

22 THE COMMISSIONER: Was
23 Ms McCallion going to call Mr. Hooper of her own
24 initiative or was she returning a call?

25 MR. DAVID: The circumstances of

1 the phone call is that it was initiated by
2 Mr. Hooper.

3 Number 5 is that the meeting
4 between Ms McCallion and Mr. Dyet lasted for
5 approximately ten minutes.

6 The sixth point is that Mr. Dyet
7 had heard a rumour -- and this is how he
8 characterized it, a rumour -- that CSIS was not
9 thrilled with the fact that Mr. Graham's letter,
10 or the project that Mr. Graham sign a letter to be
11 issued to his counterpart in Syria, the Foreign
12 Minister of Syria, was going forward. So there
13 was a rumour that there was discontent that CSIS
14 was not thrilled, is the way he put it, that the
15 Graham letter was going forward.

16 The seventh point is that Kathryn
17 McCallion clearly indicated to Dave Dyet that she
18 was processing and going ahead with the memo even
19 before calling Jack Hooper; that her decision was
20 made in that regard.

21 The eighth point raised by
22 Mr. Dyet's testimony is that he agreed, or he
23 acknowledged, that if Mr. Hooper was to identify
24 where the memo was, he had identified the right
25 person, and his timing was appropriate in terms of

1 speaking to the person on whose desk the memo was
2 being assessed. So both he had the right person
3 and he had the right time.

4 The ninth point is that after the
5 meeting between Mr. Dyet and Ms McCallion,
6 Mr. Dyet met Jim Gould, who is the Assistant
7 Director of ISI at DFAIT.

8 The tenth point is that
9 Mr. Gould's notes, as reviewed by Mr. Dyet,
10 accurately reflect what Mr. Dyet said to him, and
11 we will review those notes, quite obviously.

12 The eleventh point, and in
13 reference to Mr. Gould's notes -- and I think for
14 clarity of the record I will read you the portion
15 that is concerned by Mr. Dyet's testimony.

16 Mr. Gould's notes state the
17 following at page 9 of 16: that there was a call
18 from Jack Hooper to Kathryn McCallion saying that:

19 "CSIS didn't want us to get
20 Arar back in the country as
21 they would have to devote too
22 many resources to watching
23 him."

24 Mr. Dyet, in regard to those
25 notes, to what is noted in Mr. Gould's notes, says

1 that he is unsure as to who said that to him; that
2 it is possibly Kathryn McCallion and it is
3 possibly somebody else within DFAIT.

4 The twelfth point,
5 Mr. Commissioner, is that Mr. Gould, following
6 Mr. Dyet's disclosure, pursued his inquiry
7 concerning the phone call and the processing of
8 the memo on Monday, the 9th of June.

9 The thirteenth point is that
10 Mr. Dyet was upset in his reaction in terms of
11 what he perceived CSIS was making representations
12 that the Graham letter should not go forward.

13 And the fourteenth point is
14 Mr. Dyet confirmed to Mr. Gould that the memo was
15 in fact on the Minister's desk on the 9th of June.

16 The fifteenth point is that
17 Mr. Dyet says -- and I think this has already been
18 referred to, but he reiterated this in his
19 cross-examination -- that there is nothing that
20 Jack Hooper could have said that would have
21 influenced Kathryn McCallion's decision with
22 regard to the processing of the memo.

23 The sixteenth point is that Dave
24 Dyet did not witness firsthand the phone call
25 between Mr. Hooper and Ms McCallion.

1 And the final point is that the
2 issue, as referred to in Mr. Gould's notes about
3 resources, CSIS resources, or lack of CSIS
4 resources to monitor Mr. Arar, related to the
5 phone call, in his mind.

6 So those are the points I wish to
7 flag in terms of Mr. Dyet's testimony.

8 THE COMMISSIONER: Anybody else
9 wish to add anything with respect to what is in
10 Mr. Dyet's testimony?

11 Mr. Shore?

12 MR. SHORE: If I can address you?

13 THE COMMISSIONER: Sure, please
14 do.

15 MR. SHORE: Mr. Dyet also
16 indicated, sir, that this was a rumour that he had
17 heard, and he had heard it only within the
18 confines of CSIS. He had never spoken to
19 anybody -- within the confines of DFAIT, I'm
20 sorry. He had never spoken with anybody from CSIS
21 with regard to that rumour.

22 He also indicated, as my friend
23 had said, that he is not sure where he heard it,
24 but that it was a rumour floating around.

25 He indicated that he had no idea

1 at all what Ms McCallion and Mr. Hooper discussed
2 during her return call to him. He indicates that
3 what he said to Mr. Gould could have been
4 speculation. He indicated that he was speculating
5 on the conversation because, of course, he didn't
6 hear it, and he indicates very clearly that he had
7 no idea whatsoever what the conversation was
8 about.

9 THE COMMISSIONER: Thank you.

10 MR. SHORE: He also indicates, if
11 I can just conclude with part of his testimony,
12 that he doesn't know whether or not there was any
13 truth to the rumour which he had heard, which
14 resulted in his discussion with Mr. Gould.

15 Thank you, sir.

16 THE COMMISSIONER: Ms McIsaac, do
17 you have anything else?

18 MS McISAAC: No, I don't, sir,
19 thank you.

20 THE COMMISSIONER: I'm sorry, I
21 didn't ask you, Ms Edwardh. You have read this
22 transcript.

23 MS EDWARDH: I did. But I'm
24 content with the summary of Commission counsel.

25 THE COMMISSIONER: All right.

1 Thank you.

2 Mr. David?

3 MR. DAVID: The second testimony I
4 would like to summarize, again for the public
5 benefit, as the testimony of Ms Burns will only be
6 by way of transcript, filing of a transcript -- is
7 to provide you with a summary of her testimony.
8 And Ms Burns' testimony was very brief in camera,
9 Mr. Commissioner.

10 As I said before, she was the
11 executive assistant of Kathryn McCallion, and we
12 have already filed two pages of phone slips, phone
13 message slips, that she drafted, she wrote,
14 concerning the phone call between Mr. Hooper and
15 Ms McCallion. We will be reviewing those with the
16 testimony of today's witnesses. She also wrote a
17 second phone slip concerning a call from Mr. Gould
18 to Ms McCallion, again concerning the phone call.

19 So the essence of her testimony
20 concerned those slips, and her drafting of those
21 slips, and the circumstances of her drafting of
22 those slips.

23 But other than that, Ms Burns did
24 say, did testify to the fact that she did not have
25 any recollection of the processing per se of the

1 June 5th memo by Ms McCallion, except that she
2 does remember -- or she did remember about a phone
3 call about it, and she does remember that
4 Ms McCallion was waiting for the memo to arrive in
5 her office. And she made the point that
6 Ms McCallion, before returning Mr. Hooper's call,
7 wanted and wished to see the memo first.

8 So that, in essence, is the
9 summary of Ms Burns' testimony.

10 THE COMMISSIONER: Does anybody
11 have anything to add to that?

12 MS EDWARDH: My only request is I
13 am unaware that these phone slips have already
14 been filed --

15 MR. DAVID: They have already been
16 filed and they are at P-85, volume 5, tab 15.

17 THE COMMISSIONER: Is there a
18 phone slip particularly -- a phone slip, I take
19 it, is a message to call back?

20 MR. DAVID: Correct.

21 THE COMMISSIONER: Is there a
22 message that relates to this particular call?

23 MR. DAVID: There are two phone
24 slips that relate to this call.

25 THE COMMISSIONER: I think you

1 should provide them to Ms Edwardh.

2 MS EDWARDH: P-85, tab what?

3 MR. DAVID: P-85, volume 5, tab
4 15.

5 THE COMMISSIONER: What do the
6 phone slips say?

7 MR. DAVID: As I say, there are
8 two pages of phone slips. The first --

9 THE COMMISSIONER: You have those?
10 You are operating at a disadvantage here.

11 MS EDWARDH: I do. My apologies.

12 THE COMMISSIONER: Go ahead.

13 MR. DAVID: The first page,
14 Mr. Commissioner, we have to refer to the third
15 slip because there are four slips that are
16 photocopied on this page.

17 The third slip is not dated. It
18 says, "For KEM", and KEM is Kathryn Elizabeth
19 McCallion.

20 THE COMMISSIONER: Right.

21 MR. DAVID: There is no date or
22 time indicated. It says "from Jack Hooper, CSIS",
23 and the phone number has been redacted in
24 question. And then the message is "Re: Arar".

25 So the message that Ms Burns noted

1 for Ms McCallion is that Jack Hooper was calling
2 Ms McCallion about Arar.

3 Again, the testimony of Ms Burns
4 concerned the date that she may have drafted this
5 slip, because there is no date indicated on it.
6 But on the slip that is previous to that, which is
7 fully redacted in terms of its content, we know
8 that the date is June 3rd of 2003. And then the
9 date that follows that, again it is fully redacted
10 because it is not relevant to the phone call in
11 question, the date indicated is June 5th, 2003.

12 THE COMMISSIONER: So this
13 was between the 3rd and --

14 MR. DAVID: Which led Ms Burns to
15 think that this was on or about June 5th, the slip
16 that she wrote.

17 THE COMMISSIONER: Okay.

18 MR. DAVID: I'm sorry. What she
19 said is that it was no later than June 5th.

20 On the second page, the first slip
21 is relevant to the phone call, and again it is for
22 Kathryn McCallion. There is a date on this slip,
23 and it is June the 6th, 2003.

24 It is from Jim Gould, identified
25 as being from ISI, with the phone number in

1 question, and then the message is: "Re: your
2 phone call with CSIS on Arar".

3 THE COMMISSIONER: Is that it?
4 If you will proceed with the first
5 witness then.

6 MR. DAVID: Yes, Mr. Livermore,
7 please.

8 MR. SHORE: Excuse me,
9 Mr. Commissioner.

10 Mr. David, if I can just add one
11 note to Ms Burns' testimony, she indicated as well
12 in her testimony, sir, that she knew nothing about
13 the phone call -- nothing about the contents of
14 the phone call, excuse me, and that Ms McCallion
15 didn't talk to her about the call.

16 MR. DAVID: Mr. Livermore?

17 PREVIOUSLY SWORN: DAN LIVERMORE

18 THE COMMISSIONER: Good morning,
19 Mr. Livermore. You are still under oath.

20 MR. LIVERMORE: Thank you very
21 much, sir.

22 EXAMINATION

23 MR. DAVID: Good morning

24 Mr. Livermore.

25 Could we show Mr. Livermore

1 Exhibit P-117, volume 2, tab 75.5, please.

2 MR. LIVERMORE: Could I have that
3 number again, please, Mr. David.

4 MR. DAVID: 75.5.

5 Simply to put you in context,
6 Mr. Livermore, you are aware of the contents of
7 the June 5th Pardy memo.

8 MR. LIVERMORE: I am, yes.

9 MR. DAVID: And you were aware of
10 the contents of the June 5th memo at the relevant
11 time, that is, in the month of June of 2003.

12 MR. LIVERMORE: Yes, I was.

13 MR. DAVID: And you were consulted
14 or you were involved, put it that way, in the
15 drafting or in the preparation of the memo at the
16 time with Mr. Pardy.

17 MR. LIVERMORE: Yes, I was.

18 MR. DAVID: And you supported the
19 contents of this memo and indicated so to
20 Mr. Pardy?

21 MR. LIVERMORE: Yes, I did.

22 MR. DAVID: You were aware,
23 furthermore, Mr. Livermore, and I remind you
24 perhaps that this was a final product of a draft
25 memo that had a previous life, that is dated May

1 the 5th, 2003.

2 If you wish, you can refer to it
3 at tab 3.

4 There was an initial version of
5 this memo, dated May the 5th, and you were aware
6 of that initial version and that it eventually
7 evolved into the June 5th version?

8 MR. LIVERMORE: I believe I was.
9 I can't say for sure at what point I was involved
10 in the various drafts.

11 MR. DAVID: You were aware also,
12 Mr. Livermore, that the May 5th version led to
13 discussions and meetings with your partner
14 Canadian agencies, CSIS and the RCMP, amongst
15 others?

16 MR. LIVERMORE: Yes, I am.

17 MR. DAVID: And you were also
18 aware that the June 5th memo was a compromise of
19 positions between CSIS, the RCMP and DFAIT?

20 MR. LIVERMORE: Yes, I am.

21 MR. DAVID: This is a memo, the
22 June 5th version is a memo that ended up on the
23 Minister's desk. It was drafted and prepared by
24 Mr. Pardy?

25 MR. LIVERMORE: Yes, it was.

1 MR. DAVID: Can you explain how a
2 memo prepared by a director general -- what is the
3 flow to end up on the Minister's desk?

4 MR. LIVERMORE: Well, the norm in
5 our department is to, first of all it is the
6 responsibility of the drafting official -- in this
7 case it would have been Gar Pardy or one of his
8 staff -- to consult widely to make sure that all
9 views in the department have been taken into
10 account. And usually on what is called the
11 transmittal slip, which is the first piece of
12 paper, usually you see the record of consultation.

13 It is also the responsibility of
14 the drafting officer to ensure that there is
15 interdepartmental consultation so that the
16 consultation line, if you wish to call it that,
17 reflects consensus. In other words, putting down
18 the list of individuals, or divisions, or bureaus
19 consulted more or less means that they have been
20 taken on board the particular line of reasoning in
21 a memo, unless there are contrary opinions
22 expressed either in the transmittal slip, or
23 possibly in the memo itself.

24 MR. DAVID: And so you are
25 referring, in fact, to the first page of tab 5?

1 MR. LIVERMORE: Yes.

2 MR. DAVID: It is entitled
3 "Transmittal Slip", and we see in terms of
4 consultation for the contents of the memo involved
5 were GMR, which is within DFAIT.

6 MR. LIVERMORE: That is the Middle
7 East Division.

8 MR. DAVID: Geographic office or
9 bureau, we could say?

10 MR. LIVERMORE: Yes.

11 MR. DAVID: There is ISD, which is
12 your box.

13 MR. LIVERMORE: That's me.

14 MR. DAVID: That's you. And then
15 there is ISI, which is or was Mr. Heatherington's
16 box at the time, as well as RCMP, CSIS and PCO?

17 MR. LIVERMORE: That's right.

18 MR. DAVID: So they were involved
19 in the contents, in the development of the
20 contents of this memo that went up to Minister
21 Graham's office?

22 MR. LIVERMORE: They presumably
23 would have been, yes. I think they were.

24 MR. DAVID: We understand from
25 previous testimony, Mr. Livermore, if you look

1 underneath where there is two black -- there is
2 F-something, I-U, I believe, and there in a box,
3 and just below that there is a stamp. It is my
4 understanding that stamp indicates the date it
5 arrived in the Minister's office.

6 You see there is a -- it is in
7 the --

8 MR. LIVERMORE: I really am not
9 the best authority on that.

10 MR. DAVID: All right. That's
11 fine.

12 The distribution box on the
13 left-hand side simply indicates to whom the memo
14 was distributed?

15 MR. LIVERMORE: That's correct.

16 MR. DAVID: And so we see that it
17 was distributed, among other people, to the Deputy
18 Minister, USS?

19 MR. LIVERMORE: Yes.

20 MR. DAVID: MKM, which is Kathryn
21 McCallion?

22 MR. LIVERMORE: That's right.

23 MR. DAVID: And to yourself, ISD?

24 MR. LIVERMORE: That's right.

25 MR. DAVID: And to

1 Mr. Heatherington of ISI?

2 MR. LIVERMORE: That's right.

3 MR. DAVID: And JPO is Dave Dyet?

4 MR. LIVERMORE: That would be him,
5 yes.

6 MR. DAVID: So Mr. Dyet also
7 received a copy of this memo.

8 MR. LIVERMORE: Yes.

9 MR. DAVID: In terms of
10 authorization, if Mr. Pardy drafts a memo it
11 doesn't go directly to the Minister's office?

12 MR. LIVERMORE: The norm in our
13 department is that a director or director general
14 signs off the memo, and you can see Mr. Pardy's
15 signature block and his signature in the memo. It
16 is then sent up through the line.

17 You see at "To" at the top, it
18 normally -- it always goes to USS, who is the
19 Deputy Minister of Foreign Affairs, and then
20 usually you have a bracketed section which
21 indicates the routing of the memo. In this case,
22 the routing is through Kathryn McCallion, who is
23 the Assistant Deputy Minister to whom Gar Pardy
24 reports.

25 MR. DAVID: Essentially the flow

1 follows the hierarchy of DFAIT?

2 MR. LIVERMORE: That's right.

3 MR. DAVID: So it went from the
4 Director General's office.

5 MR. LIVERMORE: That's right.

6 MR. DAVID: To the Assistant
7 Deputy Minister, Kathryn McCallion.

8 MR. LIVERMORE: That's right.

9 MR. DAVID: And then to the Deputy
10 Minister, and then it is permitted to go on to the
11 Minister's office?

12 MR. LIVERMORE: The norm is then
13 on the on the second page you see the Deputy
14 Minister's sign-off. If the Deputy Minister
15 agrees with the line of argument and the
16 recommendations that are put forth, the Deputy
17 Minister signs the memo and it is sent to the
18 Minister's office.

19 MR. DAVID: And the initials that
20 we see on the transmittal slip on the "To" line,
21 MKM, we see initials -- there's a slash through
22 MKM and there are initials KEM above that. That
23 indicates to you that Kathryn McCallion has read
24 and approved this memo?

25 MR. LIVERMORE: Yes, it does.

1 MR. DAVID: And the fact that
2 there is a similar annotation on USS also
3 indicates to you that the Deputy Minister has read
4 and approved the contents of this memo.

5 MR. LIVERMORE: Yes.

6 MR. DAVID: For processing, for
7 final reading by the Minister?

8 MR. LIVERMORE: Yes.

9 MR. DAVID: In terms of content,
10 let's go to paragraph 11, which is on page 4.

11 You were aware that CSIS officials
12 had visited Syria earlier this year and discussed
13 Mr. Arar with their counterparts? You were aware
14 of that?

15 MR. LIVERMORE: Yes.

16 MR. DAVID: And you were also
17 aware that they did not meet Mr. Arar?

18 MR. LIVERMORE: That's correct.

19 MR. DAVID: And you were also
20 aware that subsequent to these discussions, Syrian
21 officials informed us that they were informed by
22 CSIS officials that Canada did not want to have
23 Mr. Arar returned?

24 MR. LIVERMORE: That's right.

25 MR. DAVID: And that the CSIS

1 officials denied that they had said this to the
2 Syrians?

3 MR. LIVERMORE: That's right.

4 MR. DAVID: This was information
5 that was to your knowledge?

6 MR. LIVERMORE: Yes.

7 MR. DAVID: Finally in paragraph
8 13, Mr. Livermore, it says:

9 "In recent days, we have
10 discussed the case with both
11 CSIS and the RCMP. They have
12 maintained their positions
13 that Mr. Arar, while not
14 under investigation in
15 Canada, is a person of
16 interest to them because of
17 the evidence of his
18 connections with others who
19 are. In these circumstances,
20 they will not provide any
21 direct support in having
22 Mr. Arar returned to Canada.
23 Should Mr. Arar return to
24 Canada, CSIS and the RCMP
25 have both indicated they want

1 to interrogate him. As such,
2 the best we can do in these
3 circumstances is to again
4 raise the matter direct with
5 the Syrian Foreign Minister
6 and to that end we have
7 attached a letter for your
8 signature. We would also
9 recommend that you call in
10 the Syrian Ambassador and
11 deliver the letter."

12 So clearly what is being proposed
13 here by Mr. Pardy and his superiors to the
14 Minister is a compromise; it is a diluted
15 solution?

16 MS McISAAC: Excuse me, that's not
17 clear at all from that sentence.

18 THE COMMISSIONER: Perhaps
19 rephrase the question?

20 MR. DAVID: Mr. Livermore, you are
21 aware that previous to this final version, the
22 original intent of Mr. Pardy was for the Solicitor
23 General of Canada and the Minister of Foreign
24 Affairs to jointly sign a letter that would have
25 been addressed to the Syrian Foreign Minister?

1 MR. LIVERMORE: Yes, I am.

2 MR. DAVID: And that the Solicitor
3 General, on the advice of his people, refused to
4 do so?

5 MR. LIVERMORE: I'm not aware of
6 the precise channel of communications on that
7 issue. I am aware that both CSIS and the RCMP
8 were reluctant to pursue that course, but I'm not
9 sure to what extent that reached the Minister's
10 office.

11 MR. DAVID: But in the end, the
12 only thing that was possible was for your
13 Minister, the Minister of Foreign Affairs, to sign
14 a letter to the Syrian Foreign Minister?

15 MR. LIVERMORE: Yes, that's
16 correct.

17 MR. DAVID: In that context,
18 Mr. Livermore, you understood that there was an
19 environment where CSIS, RCMP and DFAIT were not
20 necessarily seeing how things should proceed at
21 this time in terms of further actions and further
22 efforts to get Mr. Arar back to Canada. There
23 wasn't exactly unanimity amongst the three
24 agencies?

25 MR. LIVERMORE: I wouldn't

1 characterize it quite that way. There was
2 unanimity within Foreign Affairs, and there had
3 been since the beginning of course, that we wanted
4 Mr. Arar back, and that had been communicated
5 quite clearly to the Syrians.

6 At this stage, my recollection was
7 at this stage, in the month of May, Mr. Pardy had
8 mooted the suggestion, put forward the suggestion,
9 that it would be a good idea for the Solicitor
10 General to put his signature on a letter and that
11 the phraseology of the letter would indicate that
12 Mr. Arar had no connection at all to international
13 terrorist activities.

14 My recollection is that the RCMP
15 and CSIS -- first of all, they were reluctant to
16 get their Minister involved in these activities
17 because I think, quite rightly, they said that
18 consular affairs don't fall within the mandate of
19 CSIS and the RCMP. But that was relatively minor.

20 More importantly they didn't agree
21 with the letter that Gar Pardy had drafted. And
22 that was the substance of the disagreement. It
23 wasn't do we want Mr. Arar back? How should we
24 press the case? At no time did anyone object to
25 the Foreign Minister making representations. I

1 think that they simply felt that, to the extent
2 that their agencies were going to be involved in
3 the démarche, or in the phraseology put forward,
4 it had to be accurate, and what Gar Pardy had
5 drafted was simply not accurate.

6 So my recollection is that in the
7 month of May, that is more or less what the tenor
8 of debate was.

9 MR. DAVID: So the language which
10 is the compromise language we can find at tab 439
11 of volume 5 of the DFAIT collection, C-42.

12 MR. LIVERMORE: 432?

13 MR. DAVID: 439.

14 And in the second paragraph, the
15 language that has been accepted is:

16 "I can assure you that there
17 is no Canadian government
18 impediment to Mr. Arar's
19 return to Canada."

20 MR. LIVERMORE: That among other
21 things. There was another sentence which had been
22 suggested in an earlier draft by Mr. Pardy which
23 was taken out.

24 MR. DAVID: And do you recall the
25 gist of that sentence?

1 MR. LIVERMORE: The draft letter
2 should be in the material somewhere. I don't
3 recall the exact gist of it. But my recollection
4 of the phraseology was something to the effect
5 that: I can assure you that Mr. Arar has no
6 connection to something.

7 THE COMMISSIONER: Am I right,
8 Ms McIsaac, that that was actually a suggestion
9 from the Minister's office, the sentence that
10 Mr. Livermore is referring to?

11 I'm not sure anything turns on it
12 at this point.

13 MS McISAAC: I think perhaps what
14 Mr. Livermore is referring to is there was some
15 draft wording in the body of the May 5th memo.
16 That may be it, that Mr. Pardy --

17 THE COMMISSIONER: And that it was
18 a suggestion from the Minister's office to
19 strengthen --

20 MS McISAAC: Subsequently, yes.

21 MR. LIVERMORE: My recollection,
22 though, is that the Minister's office was changing
23 the phraseology of something that was already in a
24 draft letter.

25 THE COMMISSIONER: Okay.

1 MR. DAVID: If you go to the May
2 5th draft version of the memo at tab 3,
3 Mr. Livermore, and if you go to page 4 of 5 --

4 MR. LIVERMORE: Page 3?

5 MR. DAVID: Four of 5, if you go
6 to the bottom right-hand corner.

7 You will see at the very top that
8 Mr. Pardy is saying:

9 "There is a need for an
10 unambiguous statement by the
11 government of Canada,
12 preferably signed by the
13 Solicitor General and the
14 Foreign Minister, to the
15 effect that we have no
16 evidence in Canada, or from
17 foreign sources, that
18 Mr. Arar is or was a member
19 of al-Qaida, that we do not
20 believe that such information
21 exists and that Mr. Arar
22 should be permitted to return
23 to Canada."

24 Is that what you were referring
25 to?

1 MR. LIVERMORE: That is the gist
2 of the disagreement, yes.

3 MR. DAVID: So in that context,
4 Mr. Livermore, you are visited upon by Mr. Jim
5 Gould, Assistant Director of ISI in the early part
6 of June.

7 Do you recall when that visit was,
8 what date?

9 MR. LIVERMORE: I don't recall the
10 date, but it would have been around the 5th or 6th
11 of June. It was around the time when the final
12 memorandum was proceeding up the line.

13 He didn't exactly visit me. His
14 office physically was next to mine, and my
15 recollection is either he popped into my office
16 and said something to me or I popped out of the
17 office and he was there. But it was more or less
18 one of those meetings.

19 MR. DAVID: And what did he tell
20 you?

21 MR. LIVERMORE: He told me that --
22 the gist of it, and I can't remember his exact
23 words, but the gist of it was --

24 MR. DAVID: Let me ask you first,
25 Mr. Livermore. I'm sorry to interrupt you. Did

1 you take any notes in regard to what he told you?

2 MR. LIVERMORE: No.

3 MR. DAVID: So you have no notes?

4 MR. LIVERMORE: No.

5 MR. DAVID: Thank you.

6 MR. LIVERMORE: Could my memory be
7 refreshed on where I could find the memo of July
8 30?

9 MR. DAVID: Yes. We have filed a
10 new document today, and that is P-237, if we could
11 show that to Mr. Livermore. And I will bring you
12 to tab 3.

13 It is today's document, P-237, and
14 if you go to tab 3 you will have the July 30th
15 memo.

16 The relevant paragraph that you
17 are looking for is paragraph 5 on page 2.

18 MR. LIVERMORE: Yes. That's the
19 gist of what I recall Jim Gould told me on that
20 occasion.

21 MR. DAVID: Let's read that. It
22 says:

23 "Another senior CSIS officer
24 told MKM --"

25 MKM is Kathryn McCallion.

1 "...that DFAIT should curtail
2 its efforts to have Arar
3 released as it was CSIS's
4 preference that Arar not
5 return."

6 MR. LIVERMORE: That's right.

7 MR. DAVID: This in summary
8 reflects what Mr. Gould told you?

9 MR. LIVERMORE: I believe it does,
10 yes.

11 MR. DAVID: I would like to refer
12 you, Mr. Livermore, to Mr. Gould's notes, because
13 Mr. Gould took some notes down about what he found
14 out from Mr. Dyet.

15 I would refer you to P-236, which
16 we filed today.

17 THE COMMISSIONER: P-236, that's
18 Mr. Gould's notes?

19 MR. DAVID: These are Mr. Gould's
20 notes, yes.

21 If you go to tab 1 and go to page
22 9 of 16, at the very top there's an "i" and a
23 double "ii", and this is what Mr. Gould noted from
24 Mr. Dyet's statement to him.

25 It says:

1 "First of all, the memo from
2 JPD, Gar Pardy, about
3 Arar --"

4 And then he notes:

5 "Status: Did it go to MKM?
6 Probably up today."

7 And just for your reference, the
8 record clearly indicates that these notes are
9 dated June the 5th, 2003.

10 MR. LIVERMORE: Right.

11 MR. DAVID: So one is there is a
12 concern about the memo and where it's at. The
13 second point in Mr. Gould's notes is that:

14 "Call from Jack Hooper,
15 ADDO --"

16 Which is not entirely accurate; it
17 is ADO.

18 "...to MKM saying that CSIS
19 doesn't want us to get Arar
20 back into the country as they
21 would have to devote too many
22 resources to watching him."

23 Did Mr. Gould, in his conversation
24 with you, say anything that resembles any of those
25 two entries?

1 MR. LIVERMORE: That was the gist
2 of what he told me, yes.

3 MR. DAVID: So that also reflects
4 what he said to you.

5 And how did you react,
6 Mr. Livermore?

7 First of all, let me ask you, how
8 did you sense Mr. Gould was reacting to what he
9 was saying to you?

10 MR. LIVERMORE: Well, he will have
11 an opportunity to speak for himself --

12 MR. DAVID: I'm asking you for
13 your perception of it.

14 MR. LIVERMORE: My perception is
15 that what -- and my perception myself, I think we
16 both probably shared the same perception. What
17 was interesting was not particularly these
18 comments; what was interesting was that Jack
19 Hooper would call Kathryn McCallion because this
20 issue had been handled for months personally by
21 Gar Pardy and that Ms McCallion, although
22 notionally she is in the line of hierarchy above
23 the consular bureau, she did not deal with
24 consular cases per se, or she dealt with the
25 management of the bureau perhaps but not consular

1 cases per se. So it struck us odd that there
2 would be a phone call between Jack Hooper and
3 Kathryn McCallion.

4 That was about the only thing
5 unusual that struck me about this conversation.

6 MR. DAVID: I think there are two
7 concerns, Mr. Livermore: One is the message that
8 Mr. Gould is giving you is that CSIS doesn't want
9 Arar back in Canada; that CSIS cannot handle the
10 situation because of resources, or an issue of
11 resources, if Arar does come back to Canada.

12 So they are indicating that they
13 are content with where he is, Syria? That's the
14 message?

15 MR. LIVERMORE: Well, I'm not sure
16 that was the message, but I take it that --

17 MR. DAVID: Well, did you not
18 understand that to be the message?

19 MR. LIVERMORE: I took that to be
20 the message that Jim Gould gave to me.

21 MR. DAVID: Correct.

22 MR. LIVERMORE: I cannot attest
23 that that indeed was the message.

24 MR. DAVID: I fully agree with
25 you. But I'm sure that when Mr. Gould told you

1 this, you didn't think that Mr. Gould was making
2 this up?

3 MR. LIVERMORE: Oh, no. Not at
4 all.

5 MR. DAVID: You took Mr. Gould to
6 be acting professionally and seriously?

7 MR. LIVERMORE: Absolutely. He is
8 a first class officer, and I have no reason to
9 doubt that what he told me was entirely in good
10 faith.

11 MR. DAVID: So my first concern is
12 this information is very significant. On one hand
13 you have been spending months and months and
14 months in efforts to get Mr. Arar back. It is
15 DFAIT's mandate to do so. And here you are
16 finding out from Mr. Gould that CSIS is not
17 online, that CSIS is in fact perhaps working
18 against that objective.

19 MR. LIVERMORE: Well --

20 MR. DAVID: So I'm asking you:
21 How do you deal with that information?

22 MR. LIVERMORE: In fact, our view
23 at the time was that it was not significant and
24 not very important, and I will tell you why. At
25 the very time that the phone call took place, or I

1 guess took place, the memo going forward with the
2 strategy that we had proposed all along and that
3 in fact we had worked with CSIS to propose, was
4 gone. It had gone to the Minister's office.
5 There was a letter to be signed. The strategy had
6 been set. And that was it.

7 If there were a possibility of
8 reservations on the part of another government
9 agency, that was too bad. That was not going to
10 be taken into account at that time.

11 So it didn't worry me at all, and
12 it was not particularly significant because a
13 different course of action had already been
14 entered into.

15 MR. DAVID: And the second area
16 where you seem to have expressed surprise is the
17 fact that Kathryn McCallion is dealing with Jack
18 Hooper. That surprised you.

19 MR. LIVERMORE: On a consular
20 case, yes. Not of itself. I'm not saying that a
21 call between a senior member of CSIS and Kathryn
22 McCallion would have been unusual, but on a
23 consular case, yes.

24 MR. DAVID: Now, clearly Arar is a
25 consular case.

1 MR. LIVERMORE: Yes.

2 MR. DAVID: But clearly the memo
3 is addressing an approach that the Government of
4 Canada is going to take.

5 MR. LIVERMORE: Yes.

6 MR. DAVID: And clearly the memo
7 is addressing concerns of different parties in
8 terms of coming to an agreement on a course of
9 action?

10 MR. LIVERMORE: That's right, and
11 we had already agreed with CSIS on a course of
12 action. You saw that their name was put down on
13 the transmittal slip as being consulted and in
14 agreement, and the memo had gone forward with that
15 in mind. And that memo, as far as I was
16 concerned, had been signed off and was on its way
17 to the Minister. We had agreed on it.

18 MR. DAVID: As I understand how
19 DFAIT operates, or operated at this time, is that
20 Mr. Pardy in fact could answer to two different
21 Assistant Deputy Ministers: one was for the
22 geographic region of Syria; and, two, it was to
23 Kathryn McCallion, who was in charge of consular
24 affairs?

25 MR. LIVERMORE: Formally it is to

1 Kathryn McCallion rather than to the geographic
2 Assistant Deputy Minister, yes. But in fact
3 everyone was on board the approach taken in that
4 memo. GMR represents the Middle East Division,
5 which is part of the geographic branch headed by
6 the person who was at the time John McNee -- I
7 think it was John McNee -- who was in charge of
8 Europe and Middle East. So all of the parties
9 within Foreign Affairs were on board that
10 particular memo at the time.

11 MR. DAVID: So I'm not quite
12 understanding then why you thought it to be
13 surprising that Jack Hooper would be phoning
14 Kathryn McCallion about the memo.

15 MR. LIVERMORE: Because if someone
16 wanted to talk to the person in charge of this
17 particular consular issue, the person to talk to
18 was Gar Pardy.

19 MR. DAVID: And if Gar Pardy was
20 not around?

21 MR. LIVERMORE: Presumably you
22 would have to find a Deputy Minister. You would
23 have to take it to a deputy, or presumably someone
24 else could have handled it. But it was unusual
25 that Kathryn McCallion would have been involved.

1 MR. DAVID: But Kathryn McCallion
2 was an Assistant Deputy Minister. Jack Hooper was
3 No. 3 in his organization.

4 MR. LIVERMORE: That's right.

5 MR. DAVID: So they are basically
6 the same level.

7 MR. LIVERMORE: Basically.

8 MR. DAVID: So Mr. Hooper, if he
9 is going to call somebody within DFAIT, the
10 appropriate person to address would be the person
11 of his same rank?

12 MR. LIVERMORE: One might argue
13 this, but I had never heard of that happening
14 before. That's my point.

15 MR. DAVID: Had you ever heard of
16 Mr. Hooper ever calling anybody else about a
17 consular matter within DFAIT?

18 MR. LIVERMORE: I can't recall,
19 no.

20 MR. DAVID: Did you ever speak to
21 Ms McCallion about what you had heard from
22 Mr. Gould?

23 MR. LIVERMORE: No, I didn't.

24 MR. DAVID: Did you ever think of
25 raising the matter with her?

1 MR. LIVERMORE: Not at all.

2 MR. DAVID: Did you ever speak to
3 Mr. Hooper or anybody else at CSIS about the
4 matter?

5 MR. LIVERMORE: Not at all, no.

6 MR. DAVID: Did you ever speak to
7 your people internally at DFAIT, Scott
8 Heatherington?

9 MR. LIVERMORE: I can't recall
10 whether I spoke to Scott Heatherington about it,
11 but he would have been possibly part of the
12 preparation of that memo of July 30, so he
13 probably would have known.

14 I can't recall whether I spoke to
15 him about it at all.

16 MR. DAVID: And we have seen this
17 in P-237, tab 3, the July 30th memo. Clearly, the
18 call, and what the call concerned, was on or about
19 June the 5th, 2003.

20 MR. LIVERMORE: Yes.

21 MR. DAVID: And so two months
22 after, at the end of July, in a memo that is being
23 prepared for the Deputy Minister, the substance of
24 what you understood the call to be is reflected in
25 this memo?

1 MR. LIVERMORE: Yes.

2 MR. DAVID: So you felt that even
3 two months after, that what Mr. Gould had
4 described as being the reason for the call was
5 accurate?

6 MR. LIVERMORE: Yes.

7 MR. DAVID: And that remains so,
8 Mr. Livermore, until the time that DFAIT prepared
9 a chronology in November of 2003 for PCO?

10 MR. LIVERMORE: Yes.

11 MR. DAVID: Thank you. Those are
12 my questions.

13 THE COMMISSIONER: What happened
14 in the November chronology? Did that change then?

15 MR. DAVID: Yes. I was going to
16 deal with that with Mr. Gould, but I would be
17 happy to do so with Mr. Livermore.

18 THE COMMISSIONER: No, that's
19 fine.

20 MR. DAVID: Mr. Gould is more
21 hands-on in terms of the preparation of the
22 chronology.

23 But for your understanding,
24 Mr. Commissioner, in November of 2003, all
25 involved Canadian agencies are being requested to

1 prepare detailed chronologies for PCO, and
2 Mr. Gould suggested that the entry about the phone
3 call between Ms McCallion and Mr. Hooper be
4 included in the DFAIT chronology. In the end it
5 was not included, and that's in November of 2003.

6 THE COMMISSIONER: Okay.

7 MR. DAVID: I'm sorry, one last
8 thing.

9 Did you ever discuss the matter
10 with the CSIS liaison officer within your office?

11 MR. LIVERMORE: I don't recall
12 doing so, no.

13 MR. DAVID: Okay. Thank you.

14 THE COMMISSIONER: Just before we
15 start the cross-examinations, it strikes me that
16 the need to review Ms McCallion's transcript for
17 NSC, could that take place now so that -- what I
18 envision is that Ms Edwardh have a chance to
19 review it over the lunch hour so we don't delay.

20 MS EDWARDH: It is being done
21 right now.

22 THE COMMISSIONER: Thank you.

23 Ms Edwardh?

24 EXAMINATION

25 MS EDWARDH: I will be brief,

1 Mr. Commissioner.

2 Mr. Livermore, you have testified
3 at length before, but it is clear that the
4 building of a consensus, as we have heard about
5 it, was a consensus that could only be reached
6 once no reference was made to the RCMP, or to
7 CSIS, and their "position" in respect of
8 Mr. Arar's return. In other words, they wanted
9 nothing said about whether they had any evidence
10 or didn't have any evidence; they simply wanted to
11 be written out of the equation?

12 MR. LIVERMORE: I wouldn't put it
13 precisely that way. As I indicated earlier, there
14 was on the part of both of them a reluctance to
15 play a role in consular matters for the very
16 reason that consular issues don't fall within
17 their mandate.

18 MS EDWARDH: And they were
19 reluctant, sir, though, with respect to more than
20 that. They were reluctant to have any statements
21 made about assertions that fell directly within
22 their mandate?

23 MR. LIVERMORE: The assertions --
24 it is hard to answer that question, forgive me.
25 But to go back a bit, the type of discussions that

1 took place were on an initial draft letter that
2 Gar Pardy had drafted.

3 MS EDWARDH: And if you want to
4 refer to it, it is in the exhibit that my friend
5 first referred you to, in the Wayne Easter
6 documents, P-117.

7 MR. LIVERMORE: P-117.

8 MS EDWARDH: At 75. I think we
9 start at --

10 MR. LIVERMORE: Which?

11 MS EDWARDH: I think it is tab 3,
12 75.3.

13 This is the May 5th initial
14 attempt to build an interdepartmental approach, as
15 I understand it.

16 MR. LIVERMORE: But in some place
17 in the documents is the initial draft document by
18 Mr. Pardy.

19 MS EDWARDH: Yes. And he wanted
20 to make statements about the absence of evidence
21 linking Mr. Arar to terrorist activity.

22 MR. LIVERMORE: That's on page 4
23 of 5. But there is also the draft letter itself
24 that he drafted.

25 MS EDWARDH: But that was the

1 issue, was it not?

2 MR. LIVERMORE: The issue was, as
3 reflected in page 4 of 5, at the top there. He
4 wanted what he called an unambiguous statement of
5 non-involvement in terrorist activities.

6 MS EDWARDH: Yes.

7 MR. LIVERMORE: CSIS and the RCMP
8 came back and told us that they could not give
9 that statement.

10 MS EDWARDH: No. And indeed at
11 the same time that CSIS and the RCMP, and
12 particularly CSIS, was taking that position, the
13 Department of Foreign Affairs was aware that CSIS
14 had travelled to Syria?

15 MR. LIVERMORE: Oh, yes, yes.

16 MS EDWARDH: That CSIS had met
17 with Syrian Military Intelligence?

18 MR. LIVERMORE: Yes.

19 MS EDWARDH: And that CSIS had
20 either directly or indirectly with its
21 counterpart, the RCMP, received information in the
22 past from Syrian Military Intelligence?

23 MS McISAAC: I'm not sure that
24 that is on the record.

25 MS EDWARDH: It certainly is.

1 MS McISAAC: And the extent of any
2 information received by CSIS is a matter of --

3 MS EDWARDH: I am not at all
4 concerned about what was received or the extent of
5 it, but we do know from the conversation held with
6 Mr. Cabana, et cetera, that in making his offer to
7 provide information to Syrian Military
8 Intelligence, he did so on the basis that they had
9 been helpful in the past in providing information
10 to the RCMP.

11 MS McISAAC: To the RCMP.

12 MS EDWARDH: We also have been
13 given a document, as of two or three days ago,
14 Mr. Commissioner, that has as part of a chronology
15 the fact that DFAIT, on December 16th, 2002,
16 through ISI, is the way I translate the document,
17 receives a memo summarizing CSIS' liaison visit to
18 Syria, and further, CSIS' message to ISI providing
19 translated transcript of Arar's statement during
20 interrogation and interviews with Syrian Military
21 Intelligence.

22 THE COMMISSIONER: Okay.

23 MS McISAAC: I think that was the
24 one the Ambassador brought back.

25 MS EDWARDH: There's no suggestion

1 it is. That's November the 3rd. This seems to be
2 an entirely different "document" relating to a
3 transcript of Mr. Arar's statement, not the
4 three-paragraph bout de papier.

5 THE COMMISSIONER: I don't have
6 the document in front of me, but as I listen to
7 it, that does seem what it seems to be.

8 MS EDWARDH: That's my
9 understanding, yes.

10 THE COMMISSIONER: Something
11 different than the three paragraph --

12 MS McISAAC: It is the
13 translation.

14 MS EDWARDH: Mr. Commissioner, let
15 me argue by at least referring you to the document
16 that I have.

17 If you look at Exhibit 237, and
18 turn to tab 4, under page 2, at the bottom of page
19 2 you will see two references to the date of
20 December 16th, 2002. You will recall we have
21 already heard ample evidence about Ambassador
22 Pillarella's removal or return to Canada on or
23 about November the 3rd, his bringing a very short
24 three-paragraph document called a bout de papier,
25 it being handed at that time, almost immediately,

1 over for translation to CSIS, but it being the
2 subject matter of meetings in the early part of
3 November, well before CSIS travels to Syria.

4 THE COMMISSIONER: Yes.

5 MS EDWARDH: So I took this as
6 clearly being a reference to other information.

7 We also have Mr. Edelson's
8 testimony. You will recall, when he met with the
9 RCMP, he was told by the RCMP that they believed
10 CSIS had further information from Syria, and the
11 RCMP were anxiously awaiting it. And this was
12 well after the November 3rd date.

13 THE COMMISSIONER: But I think
14 this refers, though, the first reference under
15 December 16th refers to a memo to USS summarizing
16 CSIS' liaison visit to Syria.

17 MS EDWARDH: Yes.

18 THE COMMISSIONER: But it doesn't
19 then go on to say what was included in --

20 MS EDWARDH: It is the next entry,
21 Mr. Commissioner.

22 THE COMMISSIONER: I think
23 Ms McIsaac's point, the translated transcript -- I
24 want to be careful how I say this, Ms McIsaac --
25 but that refers to the November 3rd document.

1 Is that your point?

2 MS McISAAC: That's what I believe
3 that refers to, sir.

4 The point is we know Ambassador
5 Pillarella brought back the document --

6 THE COMMISSIONER: That was
7 translated.

8 MS McISAAC: That needed to be
9 translated. That document, unfortunately, is not
10 part of the public record, or the summary of it is
11 not, because my friend has refused to allow that
12 to be made public, the summary that Mr. Atkey
13 prepared.

14 THE COMMISSIONER: Right.

15 MS McISAAC: That has been
16 acknowledged that that information was brought
17 back about Mr. Arar by the Ambassador. The
18 Government has not provided any further
19 information and claims National Security
20 Confidentiality with respect to any other
21 information received from the Syrian government by
22 anyone, including CSIS, with respect to this or
23 related matters.

24 I don't know where this goes with
25 my friend's question, if she can just rephrase it.

1 THE COMMISSIONER: I was just
2 going to come back to it. The question that
3 struck me was that it indicated that he was aware
4 that CSIS had visited, and he was aware that the
5 RCMP had received information, and I guess to the
6 extent that it is referred in this document that
7 CSIS had as well.

8 Why don't we just leave it at that
9 and without getting --

10 MS EDWARDH: Well, with respect
11 then, do I take it -- Mr. Commissioner, let me
12 just go through this process.

13 In Ambassador Pillarella's
14 materials that are marked as Exhibit P-134, at tab
15 6 in those materials we have a description. I am
16 not precisely concerned with accurately describing
17 who it generates from, but this clearly comes out
18 of ISI and it may come from Donald Saunders, just
19 so my friend can follow along.

20 It is dated November 3rd, 2002,
21 Sunday, and it then describes:

22 "On November 3rd, 2002, the
23 Canadian Ambassador to Syria
24 received a document (written
25 in Arabic) from Syrian

1 Military Intelligence. The
2 Ambassador brought the
3 document to Canada personally
4 and gave it to ISI on
5 November 6th."

6 THE COMMISSIONER: Right.

7 MS EDWARDH: "ISI sent it to CSIS
8 for translation. The
9 document, an undated
10 three-paragraph bout de
11 papier, was translated on
12 November 7th. The document
13 alleges that Mr. Arar spent
14 time in Afghanistan in
15 Mujahedin camps and that he
16 knew [redacted]. The
17 document was sent to CSIS for
18 translation by the CSIS
19 liaison officer in ISI. The
20 document was returned to ISI,
21 and the information was
22 shared with the RCMP and
23 CSIS."

24 THE COMMISSIONER: Right.

25 MS EDWARDH: Then a month later,

1 we have reference both to -- and of course this
2 statement is made well before CSIS goes.

3 THE COMMISSIONER: Right. I
4 understand that.

5 MS EDWARDH: A month later, on
6 December 16th, we have a record in the chronology
7 as put forward by ISI that ISI now has a summary
8 of the CSIS liaison visit to Syria.

9 THE COMMISSIONER: Right.

10 MS EDWARDH: Point 1.

11 And point 2, CSIS' message to ISI,
12 providing translated transcript of Arar's
13 statements during interrogations/interviews with
14 Military Intelligence.

15 So in my respectful submission
16 what I have before me is totally consistent with
17 the evidence of Mr. Edelson and also with the
18 potential inferences available that CSIS received
19 further transcripts of the interrogation.

20 MS McISAAC: My friend can
21 speculate all she wants, sir. We are not
22 confirming what, if anything, CSIS may or may not
23 have received from the Syrians.

24 THE COMMISSIONER: I think what I
25 can say fairly, having listened to the evidence,

1 that I think the reference at the very bottom of
2 the page, whether it is accurately drafted and the
3 timing, refers to the one Mr. Pillarella received
4 on November 6th.

5 MS EDWARDH: I'm content with
6 that. But the purpose of my question -- let me go
7 back to the purpose of my questioning.

8 THE COMMISSIONER: Okay.

9 MS EDWARDH: Obviously, from your
10 perspective, both CSIS and the RCMP had an
11 interest in maintaining relations with Syrian
12 Military Intelligence for their own purposes and
13 their own mandate.

14 MR. LIVERMORE: I can't answer
15 that question. One has to assume yes, but in
16 fairness, we know that Syrian Military
17 Intelligence was less interested in talking to the
18 RCMP than CSIS.

19 MS EDWARDH: Then let's talk about
20 CSIS. From your dealings with them in trying to
21 build a consensus, and given your involvement in
22 the world of intelligence, it became apparent to
23 you that in the discharge of their own mandate
24 that their interest in relationships was with
25 Syrian Military Intelligence, and they did not

1 want to undermine their position by signing on to
2 a letter?

3 MR. LIVERMORE: No, I don't think
4 that was quite the situation. The situation had
5 nothing to do with -- well, let me go back,
6 because there are two different phases, and I
7 think there is a mixture of two different phases
8 being entered into.

9 There was a phase when there was
10 some confusion allegedly on the Syrian side as to
11 Canadian intentions, and that was --

12 MS EDWARDH: No, not Canadian
13 intentions.

14 MR. LIVERMORE: Yes.

15 MS EDWARDH: There was allegedly
16 confusion with respect to CSIS' intentions.

17 MR. LIVERMORE: No, I would call
18 it Canadian intentions because they were arguing
19 that they were getting mixed messages. You are
20 getting one message from one department, one
21 message from another. So that's Canadian
22 intentions.

23 MS EDWARDH: Just for the purpose
24 of clarifying the record and to refresh everyone's
25 memory, the Syrians said that they had received a

1 message from CSIS that CSIS did not want Mr. Arar
2 back in Canada.

3 Is that not fair?

4 MR. LIVERMORE: Not quite, with
5 respect.

6 MS EDWARDH: Okay.

7 MR. LIVERMORE: They said that
8 someone in CSIS, or CSIS had told them. Not that
9 they had received a message. Someone had told
10 them.

11 MS EDWARDH: Someone had told
12 them.

13 MR. LIVERMORE: Someone had told
14 them.

15 MS EDWARDH: And the message that
16 they were told, sir?

17 MR. LIVERMORE: Someone had told
18 them that CSIS did not want Arar back. That was
19 the message that we had been given in Damascus.
20 We didn't know where that came from. We didn't
21 know the routing of that. That was reported back
22 by Ambassador Pillarella.

23 MS EDWARDH: Let me just stop you.
24 You knew who it came from in the sense of what
25 Syrian spoke for us.

1 MR. LIVERMORE: Yes, absolutely.

2 MS EDWARDH: High-ranking Syrians
3 involved in military intelligence?

4 MR. LIVERMORE: Yes, absolutely.
5 Yes.

6 MS EDWARDH: What you didn't know,
7 with the greatest of respect, was who in CSIS may
8 have said that, unless it was in the course of
9 their visit?

10 MR. LIVERMORE: Well, more than
11 that. That is one thing we didn't know, but
12 another thing we didn't know was whether it had
13 been said at all. There were lots of things we
14 didn't know about that.

15 MS EDWARDH: Fair enough. And
16 when you learned that CSIS had failed to comply
17 with their obligations of reporting in to
18 Ambassador Pillarella after their visit and simply
19 vanished from Damascus, do you recall there being
20 anything on your part you did in order to get a
21 briefing about those events and what had
22 transpired and what had been said during the
23 meeting that should have gone to Franco Pillarella
24 at the time?

25 MR. LIVERMORE: Well, what had

1 happened -- we understand what had happened was
2 that Franco Pillarella, quite rightly, as Head of
3 Mission, had insisted on a debriefing from the
4 team, and the team had left Damascus without
5 phoning him.

6 So my understanding is that -- and
7 I'm recalling -- I don't think this was in my
8 will-say, so I wasn't looking at it. My
9 recollection is that Franco sent us a message and
10 said it didn't happen; it was supposed to happen.

11 We then contacted CSIS to inquire
12 why. And they said the circumstances of their
13 departure, whatever they were, did not allow them
14 to contact Ambassador Pillarella.

15 MS EDWARDH: Or send a written
16 briefing after the fact to the Ambassador?

17 MR. LIVERMORE: Yes. A written --

18 MS EDWARDH: Excuse me. Are you
19 aware of a written briefing by CSIS to the
20 Ambassador, an account to him as Head of Mission?

21 MR. LIVERMORE: I don't recall
22 that myself, no.

23 MS EDWARDH: So all my point to
24 you, sir, is: It was apparent to you that CSIS
25 had a relationship. However primitive, it had a

1 relationship with Syrian Military Intelligence?

2 It had been to Syria --

3 MR. LIVERMORE: Yes.

4 MS EDWARDH: It had met with
5 Syrian Military Intelligence. You are clear about
6 that?

7 MR. LIVERMORE: Yes, absolutely.

8 MS EDWARDH: And I'm simply going
9 to suggest to you that it is obvious to anyone
10 looking at the involvement of CSIS that they would
11 not want to undermine their asset by saying
12 anything that made them look foolish.

13 I want to put this proposition to
14 you. If the RCMP gave information, including CSIS
15 information, to the Americans, and we didn't know
16 what the Americans made of that information except
17 to send Mr. Arar to Syria, then any statement by
18 CSIS or any statement by the RCMP could make them
19 look very foolish if the U.S. had handed on all
20 that information?

21 MR. LIVERMORE: I don't think that
22 was the issue, with all due respect.

23 And if I could return,
24 Mr. Commissioner, to my recollection of events?

25 The confusion of messaging is very

1 important because you are suggesting, it seems to
2 me, that the confusion of messaging continues on
3 until June and the confusion of messaging is part
4 of the June -- leading up to the June
5 deliberations.

6 Well, the confusion ended very
7 quickly. We had heard of the confusion through
8 the reporting of Ambassador Pillarella. Within
9 about a month a memo was prepared by the Middle
10 East Division, which advised the Minister as to
11 how we should approach the subject with the Syrian
12 Foreign Minister.

13 A call might have taken place in
14 that pre-Christmas period, but for a variety of
15 reasons -- logistical, I think, I recall -- it
16 didn't take place. It took place, I think, in the
17 middle of January. I don't recall the date, but
18 around the 15th or 16th. Mr. Graham spoke to the
19 Syrian Foreign Minister, and that was the end of
20 the confusion.

21 There was no more confusion in the
22 minds of the Syrians about Canadian intentions. I
23 say Canadian because we are talking here about
24 Foreign Affairs, CSIS the RCMP. Confusion over as
25 of January the 15th.

1 What you are talking about, it
2 seems to me, is a different issue: namely, what
3 is it that we put into the letter that we write to
4 the Syrians?

5 MS EDWARDH: Let me stop you,
6 because you make a very interesting point, sir,
7 that the confusion was resolved vis-à-vis the
8 Syrian Foreign Minister by Minister Graham's clear
9 statements.

10 But I am a little puzzled then
11 about why that same confusion appears when MPs
12 from Canada travelled to Syria --

13 MR. LIVERMORE: Well, remind me of
14 the occasion.

15 MS EDWARDH: I'm just going to
16 look to see if I can find it.

17 --- Pause

18 MS EDWARDH: I'm looking at
19 Exhibit P-99, if the witness could be provided
20 with that.

21 This is a document that originates
22 under the hand of Myra Pastyr-Lupul, who of course
23 you know as someone who was working with
24 Mr. Pardy?

25 MR. LIVERMORE: Yes.

1 MS EDWARDH: Now we move forward
2 from the complete resolution of any confusion in
3 January, as you have described it, to March 24th,
4 2003.

5 There is a telcon, which I take it
6 to be a telephone conference call, between Marlene
7 Catterall, the Member of Parliament, and
8 Ms Pastyr-Lupul.

9 In the second paragraph -- well,
10 perhaps we have to refer to the first paragraph --
11 Ms Catterall and Sarkis Assadourian have met with
12 the Syrian Ambassador and they did so Wednesday,
13 March 21st, as reflected in this memorandum;
14 correct?

15 MR. LIVERMORE: Yes.

16 MS EDWARDH: And in the course of
17 their meeting, the Ambassador makes some
18 observations, and they are:

19 "They learned that --"

20 And I take that to mean Ms
21 Catterall and Mr. Assadourian.

22 "They learned that initially
23 during this case that CSIS
24 officials told the Syrians
25 that they have 'no interest

1 in Mr. Arar'. The Syrians
2 took this to mean that CSIS
3 have no interest in having
4 Mr. Arar back. They may have
5 meant that they had no
6 security reason to
7 investigate Mr. Arar in
8 Canada. Due to the
9 miscommunication, the Syrians
10 believed the Canadians did
11 not want Mr. Arar back in
12 Canada and therefore decided
13 to detain him, keep him in
14 Syria."

15 Let me go on.

16 "What we need to do now is
17 send a clear message in
18 writing to the Syrians --"

19 Now, this is March 24th, sir.

20 "-- clear message in writing
21 to the Syrians from CSIS that
22 outlines clearly that we have
23 no information that led us to
24 believe that Mr. Arar poses a
25 security threat to Canada.

StenoTran

1 Furthermore, the Syrians need
2 to hear from the security
3 people and DFAIT in writing
4 that if we do have any
5 information that shows any
6 involvement in terrorist
7 activities that we will
8 charge him in Canada and deal
9 with his case through the
10 usual law enforcement
11 channels."

12 So at least one inference from
13 this, sir -- and I take it you weren't present at
14 the meeting -- is that the alleged confusion has
15 not been in any final dispositive way cleared up
16 by mid-January?

17 MR. LIVERMORE: Absolutely not.
18 The confusion was cleared up January the 16th.
19 This memo says even they learned that initially
20 during this case, past tense; initially they
21 learned during this case --

22 MS EDWARDH: But there still needs
23 to be -- on March 24th it is very clear that the
24 effect of the communication from the Syrian
25 Ambassador to the two Mps communicated to DFAIT is

1 there needs to be clarification of CSIS' position?

2 MR. LIVERMORE: Not on that point.
3 Not at all. That is not what the memo says.

4 Now, the second paragraph, it's a
5 bit unclear who is saying what here. But the
6 logic -- it's clearly a compilation of
7 misunderstandings that Myra Pastyr-Lupul is
8 talking about, which is almost total speculation.

9 "What we need to do now is send a
10 clear message" was about a statement which
11 eventually found its way into an initial draft of
12 a Gar Pardy letter --

13 MS EDWARDH: Quite so, sir. My
14 only point is this --

15 MR. LIVERMORE: Excuse me,
16 Ms Edwardh, may I be permitted just to finish.

17 THE COMMISSIONER: Please, yes.

18 MR. LIVERMORE: What is important
19 to note is that the initial draft of the letter
20 that the Foreign Minister would sign had a
21 sentence to the effect that Mr. Arar had no
22 connections to terrorist activity. That is the
23 letter that Gar Pardy, to my recollection,
24 attempted to have agreement on throughout the
25 interdepartmental community. And that's what this

1 thing refers to.

2 The difficulty was how do we
3 describe in a letter to the Syrians what his
4 involvement in terrorist activity was, and on the
5 CSIS and RCMP side -- or this is my
6 recollection -- they will have to speak for
7 themselves on this issue. My recollection is they
8 said quite clearly to us, "If you want us to say
9 in a letter what his position is, we have to be
10 entirely accurate about what that is. We cannot
11 say there are no connections."

12 MS EDWARDH: My point is simply
13 this, sir: In March of 2003, a senior person,
14 Myra Pastyr-Lupul, at the Department of Foreign
15 Affairs, having met with Marlene Catterall and
16 Sarkis Assadourian, concludes on the basis of
17 their conversation with the Syrian Ambassador that
18 there is a need for a clear statement, which
19 includes a statement from CSIS. Fair enough?

20 MR. LIVERMORE: A clear statement,
21 yes.

22 MS EDWARDH: Including a statement
23 from CSIS.

24 MR. LIVERMORE: That's her
25 conclusion, yes.

1 MS EDWARDH: That's her
2 conclusion. Fine.

3 And that is indeed what causes
4 Mr. Pardy to try and build an interdepartmental
5 consensus and is reflected in his May 5th
6 memorandum?

7 MR. LIVERMORE: I assume so. I
8 have not -- prior to a few weeks ago, I had never
9 seen this memo, so I'm not sure what caused Gar
10 Pardy to do so.

11 MS EDWARDH: Well, it's this kind
12 of thinking.

13 MR. LIVERMORE: I don't object to
14 the kind of thinking, yes.

15 MS EDWARDH: All right. And we do
16 know that the only letter that ever came into
17 existence is the one that makes no reference to
18 information from the RCMP or CSIS?

19 MR. LIVERMORE: Yes.

20 MS EDWARDH: In effect, as I think
21 Inspector Cabana said, the letter proposed, of
22 course, was counterproductive. It wouldn't have
23 got Mr. Arar anywhere?

24 MR. LIVERMORE: Absolutely.

25 MS EDWARDH: In your dealings with

1 CSIS, was it not apparent to you that they had no
2 interest in taking positive steps to facilitate
3 Mr. Arar's return?

4 MR. LIVERMORE: The mandate of
5 CSIS is completely different. They have nothing
6 to do with consular issues. They certainly never
7 posed a hindrance to his returning.

8 MS EDWARDH: We will leave that
9 for the Commissioner. None that you know of?

10 MR. LIVERMORE: None that I'm
11 aware of, yes.

12 MS EDWARDH: Let me go back to the
13 question. From your conversations with persons in
14 CSIS, was it not apparent to you that they wanted
15 to take no step that would facilitate Mr. Arar's
16 return to Canada and indeed took none?

17 MR. LIVERMORE: I think that the
18 way the question is posed, I would have difficulty
19 answering it in a yes-or-no fashion. They did not
20 see their mandate as a consular mandate. They
21 don't have a role in returning Canadians to
22 Canada. If Gar Pardy was successful, if Foreign
23 Affairs was successful in seeking Mr. Arar's
24 return to Canada, they had no problems with that.
25 But, in fact, they are not a facilitator --

1 MS EDWARDH: Who did you speak to
2 that conveyed that they had no difficulty in
3 having Mr. Pardy do whatever he felt like doing in
4 order to discharge his mandate under consular
5 affairs? Who in CSIS said that?

6 MR. LIVERMORE: You are saying
7 something that is pretty exaggerated, with all due
8 respect.

9 MS EDWARDH: I thought I was
10 paraphrasing what you said.

11 MR. LIVERMORE: No. You said do
12 whatever -- whatever you said.

13 What they were always insistent
14 on, and they were very insistent on this, was
15 absolute accuracy in any letter. They didn't have
16 any problem with the letter per se, and the letter
17 clearly was designed to help secure his release.
18 No one ever said to me, "We don't like the letter.
19 The letter is impossible. We are not accepting
20 the letter." No one ever said that to me.

21 But, as initially drafted by Gar
22 Pardy, the letter was unacceptable to them,
23 because Gar Pardy was attempting to speak for
24 security officials in Canada in his initial draft,
25 and they took exception to what he said.

1 MS EDWARDH: Do you recall anyone
2 ever suggesting that someone write the Syrians and
3 say, "Mr. Arar may be an important witness in a
4 Canadian criminal case, and we would like to
5 effect his return in order that that case can go
6 forward"?

7 MR. LIVERMORE: No one said
8 anything along those lines to me, no.

9 MS EDWARDH: No. So let me go
10 back to my question.

11 It would be fair to conclude that
12 CSIS' insistence on its mandate meant nothing more
13 or less, in this case, that they would take no
14 step of any kind to assist DFAIT in effecting
15 Mr. Arar's return. And I'm talking about
16 assistance.

17 MR. LIVERMORE: Again, I think the
18 question is a bit unfair to what the import was.
19 I sat through a number of sessions -- and I was of
20 course bouncing in and out of the country, so I
21 can't say I was in all of them -- where Gar
22 Pardy's letter was being discussed. No one ever
23 said, "We are not helping you at all. We are not
24 helping you with this process. This process is
25 not going forward." No one ever said that.

1 They basically said, "If you want
2 to do a letter, Mr. Pardy, go ahead with the
3 letter. The letter must be accurate. The letter
4 must state the CSIS position, or the RCMP
5 position, accurately. And, by the way, you
6 haven't done so in your initial draft." That's
7 basically the position.

8 I didn't regard that -- no one
9 ever said, "We're not going to help you with his
10 return." So I think that would almost be a
11 speculative leap of faith on my part, and possibly
12 on your part, to say they were not prepared to
13 help.

14 They cooperated in the
15 interdepartmental process. It was clearly the
16 intention of the interdepartmental process to get
17 Mr. Arar back to Canada. They simply insisted
18 upon accuracy.

19 MS EDWARDH: When CSIS sat at the
20 table, was there any suggestion made to them, "All
21 right, if you can't sign on to this kind of
22 letter, will you speak to your counterparts and
23 tell them that we would like Mr. Arar to be
24 returned and he will be dealt with under Canadian
25 law if there is any evidence that justifies a

1 criminal prosecution"?

2 MR. LIVERMORE: I don't recall
3 that we did but there was a very good reason for
4 that, and that is that we regarded -- and I would
5 love to put this question to CSIS too. We
6 regarded the CSIS relationship with Syrian
7 Military Intelligence as a pretty preliminary one.
8 They didn't have much of a relationship.

9 The strongest relationship among
10 Canadian government officials to Syrian Military
11 Intelligence was Ambassador Pillarella. We
12 mandated Ambassador Pillarella to say to Syrian
13 Military Intelligence, "We want Mr. Arar back."

14 He had the strongest link to
15 General Khalil. He told General Khalil quite
16 clearly, "I, Ambassador Pillarella, am the
17 spokesman for the entire Canadian government, and
18 we want him back."

19 MS EDWARDH: Well, I have no way
20 of evaluating that statement, Mr. Livermore,
21 because I don't know what the CSIS relationship
22 was, other than to know that there was some
23 relationship.

24 I accept -- well, I hear your
25 view.

1 But certainly there was nothing
2 said. We have heard that Syrian Military
3 Intelligence preferred to deal with CSIS. I think
4 that statement has been made by a number of
5 individuals.

6 MR. LIVERMORE: As opposed to the
7 RCMP, not as opposed to Franco Pillarella.

8 MS EDWARDH: In any event, I take
9 it you were never at a table where it was
10 suggested CSIS go through its own channels and
11 communicate the position of the Government of
12 Canada?

13 MR. LIVERMORE: No, not at all.

14 MS EDWARDH: I just don't
15 understand the message that Mr. Gould gave you.
16 The message that Mr. Gould gave is accurately
17 reflected in your memorandum -- I'm sorry, the
18 memorandum of Scott Heatherington on July 30th.

19 Is that fair?

20 MR. LIVERMORE: Yes, it would have
21 been, yes.

22 MS EDWARDH: I just want to make
23 some observations and have you comment about this
24 memorandum -- I'm sorry, I've just lost the
25 reference.

1 THE COMMISSIONER: It's tab 3
2 of the newly redacted documents.

3 MS EDWARDH: Do you have that in
4 front of you, Mr. Livermore?

5 MR. LIVERMORE: Yes, I do.

6 MS EDWARDH: Certainly there was
7 nothing about Mr. Gould that in any way caused you
8 to be suspicious or sceptical about the
9 information he provided to you?

10 MR. LIVERMORE: Not at all.

11 MS EDWARDH: And I take it you had
12 absolute confidence in Mr. Gould that he was
13 reporting not just something that he picked up by
14 gossip and rumour but something that he felt was
15 newsworthy and important for officials in DFAIT to
16 know?

17 MR. LIVERMORE: I would not
18 characterize it as newsworthy and important. I
19 would characterize it as interesting.

20 MS EDWARDH: Fair enough. But it
21 was the kind of thing a man in Mr. Gould's
22 position wanted to make sure that other senior
23 officials in the department knew?

24 MR. LIVERMORE: Well, yes.
25 Certainly me. He wanted me to know.

1 MS EDWARDH: And I take it that
2 not only did he want you to know, he wanted
3 Mr. Heatherington to know?

4 MR. LIVERMORE: I would assume so,
5 yes.

6 MS EDWARDH: And subsequently we
7 have learned he had conversations with others, and
8 I take it we can assume that he wasn't about the
9 business of simple gossip but felt that the
10 information ought to be conveyed to persons who
11 ought to know?

12 MR. LIVERMORE: Yes. And we in
13 fact, as you can see in the memo, we put that
14 subsequently into a memo.

15 MS EDWARDH: Yes. And this goes
16 to the Deputy Minister?

17 MR. LIVERMORE: Yes.

18 MS EDWARDH: So I would take it
19 that matters that are brought to the Deputy
20 Minister's attention are brought not on the basis
21 of rumour but on the basis of matters the deputy
22 must be aware of in order to conduct the affairs
23 of the department?

24 MR. LIVERMORE: Yes, I would think
25 so.

1 MS EDWARDH: So at least it is
2 clear that on July 30th there was still a view
3 held by Mr. Heatherington, and indeed yourself,
4 that this information, that CSIS would like the
5 department to curtail its efforts to have Mr. Arar
6 released, was a matter you felt ought to be
7 brought to the deputy's attention?

8 MR. LIVERMORE: To be fair to the
9 memo, it has to be put into some kind of context.
10 The subject of the memo is really about a
11 newspaper article which appeared, I think, that
12 morning, possibly the day before, which quoted the
13 then Solicitor General as saying that there were
14 rogue elements in the RCMP that were responsible.

15 MS EDWARDH: Yes.

16 MR. LIVERMORE: So we were trying
17 to address what appeared to be a rather odd
18 situation in the media. We dealt with that
19 particular part in part of the memo, and then
20 later on we dealt with the other one.

21 This, by the way, was long after
22 the fact. It was almost three or four weeks after
23 the course of action that we had decided on in the
24 June 5th memo that had already gone up.

25 MS EDWARDH: I appreciate that.

1 What is interesting, though, from the perspective
2 of the reader of this memorandum, once the rogue
3 element story comes out, the tenor of this memo,
4 as reflected in paragraph 5 by Mr. Heatherington,
5 is nothing more or less to say that it's odd that
6 the media is blaming the Mounties for passing
7 intelligence. We have information that CSIS may
8 have done little to assist us or, in fact,
9 actively curtailed the efforts.

10 That is what this memo says.

11 MR. LIVERMORE: Well, not exactly.
12 What it says is -- it expresses some curiosity,
13 and that's how the paragraph 5 starts. It is
14 curiosity in the media about the relative
15 attention paid to the RCMP as opposed to CSIS.

16 But it does clearly state that the
17 Syrians have maintained.

18 MS EDWARDH: Yes.

19 MR. LIVERMORE: So we tried to
20 describe the situation fairly.

21 MS EDWARDH: And it is also
22 interesting, sir, that when you say that the
23 Syrians have maintained that a senior CSIS officer
24 told them we did not want Arar back in Canada --

25 MR. LIVERMORE: Yes.

1 MS EDWARDH: -- although CSIS
2 denies this, one thing that you don't say to the
3 deputy in your writing in July of 2003, you don't
4 say to the deputy but of course the Minister made
5 a telephone call in January, and any suggestions
6 that the Syrians could harbour such a belief is
7 ill-conceived, ill-founded and was set to rest.

8 I am going to suggest to you it
9 was obvious that there were elements in the
10 community, including the Syrians, who may well
11 have continued on with this "misunderstanding" and
12 that the origins of this misunderstanding have yet
13 to be certainly placed clearly into this public
14 domain.

15 MR. LIVERMORE: I think your
16 latter comment is probably fair enough, but with
17 respect to the first half I would say
18 categorically no. The misunderstanding was put to
19 rest definitively and finally within weeks of it
20 occurring.

21 Now, reporting on it -- yes,
22 reporting on it continued to take place, but it's
23 in the past tense.

24 MS EDWARDH: And as of July, of
25 course, you are still reporting to your superiors

1 that there is this outstanding concern at least of
2 CSIS' interest or lack of interest in having
3 Mr. Arar returned. All you can say is it is
4 there. We can read it. You approved it and it
5 went to the deputy.

6 MR. LIVERMORE: And one of the
7 reasons we did so, if I may just add a
8 supplementary note, I think it was in June the
9 deputies changed. We had a new deputy coming in.
10 So by and large there were more notes going to an
11 incoming new deputy than there were normally.

12 He had been, of course, I think,
13 briefed on the issue. I wouldn't have been
14 responsible for that. But we did send him the
15 occasional note to keep him up to speed on new
16 things that he might not have known from his
17 previous function in the public service.

18 --- Pause

19 MS EDWARDH: I would like to ask
20 the witness one other question, and of course this
21 has happened as a result of the changes in
22 redaction policy as we have gone along.

23 I will give my friend an
24 opportunity to consider her position.

25 It might be helpful,

1 Mr. Commissioner, if you have in front of you
2 Ambassador Pillarella's material, P-134; also the
3 DFAIT documents, volume 1 of 9, tab 61.

4 These are memorandums that are
5 essentially the same, but the version has become
6 less redacted since the witness first testified.

7 MS McISAAC: I'm sorry, 134,
8 tab...?

9 MS EDWARDH: Volume 1 of DFAIT,
10 tab 61.

11 So when Mr. Livermore first came
12 to testify, we had before us a document that was
13 redacted in the form of volume 1, tab 61,
14 Mr. Commissioner.

15 THE COMMISSIONER: Right.

16 MS EDWARDH: And there is a
17 paragraph -- the second-last paragraph in this
18 document is of interest because it is authored, of
19 course, by Mr. Livermore:

20 "At the direction of JPD, JPE
21 Harris has contacted Léo
22 Martel and asked that he make
23 official inquiries about Arar
24 as well as asking the
25 immigration control officer

1 to use his contacts to gather
2 information. Martel has also
3 been asked to locate Arar and
4 determine as quickly as
5 possible his condition and
6 situation."

7 That's all we had when
8 Mr. Livermore was here, and he was very, as I
9 recall -- and I don't have all of his testimony in
10 front of me. He did not discuss at length at all
11 his concerns about the conditions of confinement
12 in Syria.

13 The new document that is now
14 available to us is identical in all respects
15 except that the phrase -- and let me just read it
16 in context:

17 "Martel has also been asked
18 to locate Arar and determine
19 as quickly as possible his
20 condition and situation.
21 There are concerns that Arar
22 may be aggressively
23 questioned by Syrian security
24 services."

25 And then Mr. Livermore signs off.

1 I appreciate that this is not an
2 area that is on the list, but I would like to ask
3 Mr. Livermore, in light of his quite narrow
4 testimony on the first occasion on this specific
5 issue, a few questions about that statement.

6 May I?

7 THE COMMISSIONER: Yes.

8 MS EDWARDH: Mr. Livermore, do you
9 see the document in question that I'm referring
10 to?

11 MR. LIVERMORE: Yes.

12 MS EDWARDH: This was written by
13 you, and sent on Thursday, October 10th, 2002?

14 MR. LIVERMORE: I can't guarantee
15 that I wrote it, but I accept responsibility for
16 its contents, certainly.

17 MS EDWARDH: All right. And it
18 goes back to a period when Mr. Arar has not
19 clearly been found by the Department of Foreign
20 Affairs.

21 MR. LIVERMORE: Yes.

22 MS EDWARDH: I take it, sir, that
23 when Mr. Martel -- and we will hear from him -- is
24 being tasked to locate Mr. Arar, the reason you
25 use the language "as quickly as possible" is you

1 are in fact concerned about the nature of the
2 interrogation he may be undergoing?

3 MR. LIVERMORE: I think that's
4 fair to say, yes.

5 MS EDWARDH: And that the language
6 that you choose in your memo, or that you have
7 certainly adopted here today, the language
8 "aggressive questioning" also includes
9 interrogation, where the use of physical force,
10 improper interrogation techniques and even torture
11 might happen?

12 MR. LIVERMORE: I think if you
13 phrase it that way, I would agree with you.

14 MS EDWARDH: Those are my
15 questions then.

16 Thank you very much,
17 Mr. Commissioner.

18 THE COMMISSIONER: Mr. Shore? No,
19 the Government is next? Mr. Shore goes last.

20 I think that is probably the
21 proper way.

22 EXAMINATION

23 MS McISAAC: Could I ask you to go
24 to the June 5th memorandum, which is P-117, volume
25 2, tab 3, I believe?

1 THE COMMISSIONER: I think it's
2 75.5.

3 MS McISAAC: Pardon me, 75.5.

4 Mr. Livermore, what is being
5 contemplated here is that the Minister of Foreign
6 Affairs will write a letter to his counterpart in
7 Syria with respect to the Canadian government
8 position that Mr. Arar should be released from
9 custody.

10 In your experience with the
11 Department of Foreign Affairs, is that an event
12 which would be considered unusual, or would it be
13 a commonplace event to have such a letter written?

14 MR. LIVERMORE: I can speak based
15 on my experience but not as, of course, head of
16 the consular bureau.

17 It would be fairly unusual, but
18 it's not unheard of.

19 MS McISAAC: And before such a
20 letter is written by a Minister of the Government
21 of Canada on a highly public issue, what is the
22 process in order to ensure that the Minister is
23 acting in accordance with government priorities as
24 opposed to simply his own priorities?

25 MR. LIVERMORE: Well, the dominant

1 feature of any consultation that takes place prior
2 to a Ministerial letter is consultation across
3 departments and agencies to make sure that what is
4 put forward to the Minister is accurate.

5 MS McISAAC: And when we look at
6 the first page of the document at tab 5 -- or at
7 tab 75.5, which is the June 5th memorandum, and
8 the cover transmittal slip, under the consultation
9 we have the references that Mr. David took you to
10 for the RCMP, CSIS and PCO.

11 What is that information under
12 "Consultation" conveying to, first of all, the
13 Deputy Minister, who must approve this, and then
14 the Minister and his officials, with respect to
15 those government-wide consultations?

16 MR. LIVERMORE: Under the
17 "Consultation" line of the transmittal slip, it
18 conveys concurrence in the recommendations which
19 are contained in the memorandum that goes forward,
20 and by and large it also conveys concurrence in
21 the line of argument that is contained in the
22 memorandum.

23 In other words, people who are
24 consulted are assumed to be in agreement with the
25 course of action recommended.

1 MS McISAAC: So we can take from
2 it that the RCMP, CSIS and the Privy Council
3 Office, PCO, as institutions, were in agreement
4 with the recommendation that Minister Graham sign
5 the proposed letter?

6 MR. LIVERMORE: Yes.

7 MS McISAAC: Now in terms of the
8 process for arriving at the wording of the letter,
9 what would be the concerns with respect to the
10 wording of the letter on the part of the
11 Department of Foreign Affairs itself as to
12 accuracy?

13 MR. LIVERMORE: Well, basically,
14 of course, the contents of the letter would have
15 to vary enormously from situation to situation,
16 but it would be the responsibility of the consular
17 bureau to make sure that the entire background
18 which is described in the letter is factually
19 correct. And then there might be additional
20 elements that go into the letter.

21 Again, it might be the consular
22 bureau that takes a first stab at a draft,
23 suggesting other elements that might usefully be
24 engaged in this exercise, and then the draft would
25 usually come back to the interdepartmental

1 community to make sure that everyone is happy with
2 the language chosen.

3 MS McISAAC: And forgive me if
4 this is a leading question, but I think it is
5 fairly obvious: Would it be unwise for the
6 bureaucracy, or the Department of Foreign Affairs
7 as an institution, to recommend to the Minister
8 that he sign a letter which was not completely
9 accurate, as best they could assess accuracy for
10 him?

11 MR. LIVERMORE: Well, it would be
12 more than unwise, it would be irresponsible of
13 officials to put forward a letter which contained
14 inaccuracies, and it would be doubly irresponsible
15 to place the Minister in a position where he was
16 to sign a letter that somehow were to cause
17 difficulty. One could easily visualize a letter
18 going forward where, in other circumstances, the
19 situation looked fairly straightforward but it
20 wasn't, and the Minister got into the soup, so to
21 speak, because his signature was on that letter.

22 MS McISAAC: And indeed that goes
23 back to the reason for the need for extensive
24 consultation to ensure that all aspects of a
25 matter are fully discussed before a final

1 recommendation is made?

2 MR. LIVERMORE: Yes, yes.

3 MS McISAAC: Thank you.

4 With respect to the initial
5 suggestion that the Solicitor General participate
6 in signing a letter to the Syrians in some manner,
7 along with Mr. Graham, the Minister of Foreign
8 Affairs, in your experience -- and, again, I'm
9 only asking you to speak from your own
10 experience -- would it be usual or is it something
11 that you would contemplate the Solicitor General
12 would participate in a communication of this
13 nature with a foreign government?

14 MR. LIVERMORE: I would think it's
15 relatively unusual. But to put it in some
16 context, it's relatively unusual to have two
17 Ministers sign any letter, in part for simple
18 bureaucratic reasons; it's pretty cumbersome to
19 try to get two ministerial signatures on the same
20 letter.

21 It's doubly difficult in this area
22 because the authority for Canada to speak abroad
23 is the Foreign Minister. That is the individual,
24 that is the office that speaks on behalf of
25 Canada. It would be odd to have another Minister

1 with a signature block on a letter. It's not
2 unheard of, I would imagine, but it's unusual.

3 MS McISAAC: Now, with respect to
4 the issue of a separate communication on the part
5 of CSIS to the Syrian Foreign Ministry or, pardon
6 me, the Syrian Foreign Intelligence, whichever the
7 case may be, to your knowledge was CSIS ever
8 requested to provide some kind of separate letter
9 or to independently communicate with the Syrian
10 authorities as to the Canadian government's
11 position with respect to Mr. Arar?

12 MR. LIVERMORE: I don't believe
13 so.

14 MS McISAAC: I would like to put
15 to the witness, if I may, sir, and ask him whether
16 he agrees with it or not, evidence of Mr. Pardy
17 with respect to a separate communication on the
18 part of CSIS.

19 Perhaps -- do we have transcripts
20 here? Oh. I thought we did. I'm sorry. I would
21 have brought an additional copy.

22 Actually, maybe we do.

23 THE COMMISSIONER: I think if you
24 summarize it --

25 MS McISAAC: All right. Actually,

1 I was going to read it, sir, so I'll do it that
2 way.

3 THE COMMISSIONER: If anybody has
4 difficulty following, let me know.

5 MS McISAAC: All right. This is
6 the examination of Mr. Pardy at pages 4969 of the
7 transcript, and the date, I believe -- let's just
8 clarify -- I'll give you the date after, sir.

9 This is a question by
10 Mr. Cavalluzzo at line 16, page 4969:

11 "...certainly as a Canadian,
12 I'm very concerned that we
13 have a Canadian lingering in
14 jail in a foreign country
15 such as Syria, with, as I
16 said before, not a stellar
17 human rights record, while it
18 would seem to me a simple
19 letter of three lines, or no
20 more, could have clarified
21 this confusion in the
22 Syrians' minds and could have
23 activated them in some way so
24 that Mr. Arar could have
25 returned to Canada earlier

1 than he did --

2 MR. PARDY: That's one
3 inter -- I'm sorry, I'm
4 interrupting you.

5 MR. CAVALLUZZO: No.

6 MR. PARDY: That is one
7 interpretation.

8 Another interpretation, I
9 mean, over a long experience
10 of dealing with governments.
11 Governments interpret
12 information to their maximum
13 advantage.

14 My view would have been,
15 or one element in certainly
16 my views on all of this, is
17 that the Syrians themselves
18 found it advantageous to
19 establish some ambiguity as
20 far as the position of the
21 Government of Canada was
22 concerned.

23 I don't think they were
24 ready to release Mr. Arar
25 much before they actually did

1 so, for a variety of reasons
2 that we went over in my
3 direct testimony.

4 And so in the sense of
5 whether or not a, as you put
6 it, a three-line letter from
7 CSIS to the Syrian Military
8 Intelligence would have made
9 much difference, I'm -- I'm
10 not sure.

11 The Syrians were quite
12 comfortable, I think, in
13 terms of where they found
14 themselves and whether or not
15 they overinterpreted or
16 misinterpreted a comment by
17 CSIS officials, well, maybe
18 next week or the week after
19 you might have a chance to
20 examine some of this."

21 That was June 2nd in terms of the
22 testimony.

23 Do you have any comments on
24 Mr. Pardy's interpretation of the Syrian position
25 vis-à-vis Canadian efforts to have Mr. Arar

1 returned to Canada?

2 MR. LIVERMORE: Well, the only
3 difficulty I would have with that -- I don't
4 really have much difficulty with his testimony,
5 nor do I have too much difficulty with the way Gar
6 Pardy handled the entire management of the case
7 from the outset, but I would think that there are
8 a couple of minor nuances in that that I wouldn't
9 quite agree with.

10 The one that I would say is
11 useful, and I would agree with, is that it might
12 have benefitted the Syrians momentarily to have
13 some ambiguity. In other words, we're not sure of
14 where matters stood.

15 But as I said, by January 16th or
16 17th, the ambiguities cleared up and there is no
17 ambiguity anymore.

18 What I would disagree with though
19 is in saying that the Syrians were comfortable --
20 I'm not sure of the context of that statement in
21 Mr. Pardy's testimony, but I don't think the
22 Syrians were comfortable at all with the
23 situation.

24 I think the Syrians were being
25 squeezed in important ways, and we will never

1 know, I'm afraid, how much pressure was exerted on
2 them in ways that were diametrically opposed to
3 the way the Canadian government was pressuring
4 them.

5 So I don't think they were
6 comfortable at all with the situation.

7 MS McISAAC: All right. Would, in
8 your assessment, assuming somebody had asked CSIS
9 to write a letter, and, again, we realize you're
10 speculating, what effect, in your assessment,
11 would that have had, if any?

12 THE COMMISSIONER: I just
13 wondered, do you feel qualified to answer this? I
14 mean, have you had contact with the Syrians in
15 this type of situation?

16 MR. LIVERMORE: I have never put
17 this question to the Syrians myself.

18 THE COMMISSIONER: From your
19 position and your experience. All I'm asking you
20 is, Ms McIsaac said we want you to speculate --
21 actually we don't on an issue like that. If you
22 feel you have an expertise or an experience that
23 would enable you to answer the question, then go
24 ahead.

25 MR. LIVERMORE: My experience

1 leads me to conclude that it would not be useful,
2 for reasons I addressed in a previous question.
3 We had a much better line in to General Khalil
4 than through CSIS, and I could go on about that.

5 But in different countries, the
6 systems work in different ways. That are lines
7 that are established.

8 In some countries, you can't have
9 contacts with officials until you've taken those
10 officials out to lunch or had dinner with them
11 because what you need is a personal rapport before
12 you can conduct business.

13 It comes as a bit of a shock
14 sometimes for Canadians to realize that, and it
15 comes often as a surprise to our department
16 because we're asked to make appointments for
17 visiting officials to go to other countries and
18 conduct business with people in other countries.

19 Very often they don't get very far
20 because it's almost like a cold call. They show
21 up on the doorstep of someone, and they expect
22 that right away you'll get into the business end
23 of whatever you're interested in.

24 Well, in some countries, it
25 doesn't happen that way. Unless you have an

1 established relationship of some kind, it goes no
2 further than that.

3 We felt, and I certainly -- it was
4 my view, that Ambassador Pillarella's relationship
5 with General Khalil was the strongest relationship
6 the Canadian government had.

7 CSIS had nothing to parallel that,
8 even though they had visited, and the RCMP had
9 nothing at all, that I'm aware of, of any
10 significance.

11 So the channel to be used was
12 Ambassador Pillarella.

13 MS McISAAC: And what was the
14 message that Ambassador Pillarella was instructed
15 to convey to the Syrians regarding Mr. Arar?

16 MR. LIVERMORE: Well, it was a
17 pretty unequivocal message which he did quite
18 effectively on the ground to everyone, namely,
19 that the Canadian government wanted Mr. Arar
20 returned to Canada.

21 MS McISAAC: Thank you.

22 MS EDWARDH: If my friend would
23 refer us to the document that supports that -- I'm
24 sure there are some, or there may be some.

25 THE COMMISSIONER: Certainly.

1 MS EDWARDH: The instructions
2 given by the department in respect of the
3 communication.

4 MS McISAAC: Well, the
5 instructions were being given by Mr. Livermore and
6 others, and I refer actually to Mr. Pillarella's
7 transcript, where he said that was his instruction
8 as well.

9 THE COMMISSIONER: I guess in
10 answer to Ms Edwardh's question, if there's any
11 documents that support that, if you could just
12 advise her? Would that be satisfactory?

13 Mr. Shore, are you going to be
14 long? I notice we've been sitting for a while,
15 but I'd just as soon complete the witness, if we
16 could.

17 MR. SHORE: I shouldn't be too
18 long.

19 THE COMMISSIONER: How are you
20 doing, Mr. Livermore? Is everybody okay? Not too
21 long is how not too long?

22 Okay. I'd be inclined, unless
23 there are contrary objections, to get the witness
24 done.

25 MR. SHORE: It will depend on his

1 answers.

2 EXAMINATION

3 MR. SHORE: Mr. Livermore, my
4 interest is in the phone call between Mr. Hooper
5 and Kathryn McCallion.

6 What we understand is that you
7 learned of that phone call through Mr. Gould.

8 MR. LIVERMORE: That's my
9 recollection.

10 MR. SHORE: Either outside your
11 office or outside his office.

12 And when he told you about that,
13 did he tell you where he had heard about it?

14 MR. LIVERMORE: I don't recall
15 precisely, no.

16 MR. SHORE: Did he tell you that
17 he had spoken to Kathryn McCallion, and this is
18 what she said?

19 MR. LIVERMORE: He did not say
20 that, but from whatever source, I did not infer
21 that he had spoken to her directly, yes.

22 MR. SHORE: Do you understand, or
23 did you understand at the time, that it was
24 through Mr. Dyet that he had heard about the
25 conversation --

1 MR. LIVERMORE: I don't think I
2 had inquired as to the routing of this
3 information. As I said, inferred that it was not
4 directly --

5 MR. SHORE: That it was at least
6 secondhand from him, and to you it's then third
7 hand, basically.

8 And you indicated that you both
9 expressed concern, not about the substance of the
10 call, but about the fact that it was made to
11 Kathryn McCallion, who was not involved in this
12 particular matter?

13 MR. LIVERMORE: Well, it wasn't
14 concern that we expressed, it was interest. It
15 was just a matter of interest that --

16 MR. SHORE: Isn't it interesting
17 that Mr. Hooper called Kathryn as opposed to
18 Mr. Wright?

19 MR. LIVERMORE: Yes.

20 MR. SHORE: Do you know whether
21 Jim Wright was there at that time, that day?

22 MR. LIVERMORE: The only memory
23 jogger that I have, if we could go back to the
24 June the 5th memo -- well, that may not be the
25 right -- excuse me. That will not be the memory

1 jogger. No, I'm not aware whether Jim Wright was
2 there or not.

3 MR. SHORE: How would you describe
4 Mr. Gould's demeanour when he told you that?

5 MR. LIVERMORE: I think it was
6 rather matter-of-fact.

7 MR. SHORE: So he wasn't outraged,
8 wasn't upset, wasn't astonished. Just "Isn't it
9 interesting"?

10 MR. LIVERMORE: It was
11 interesting, yes.

12 MR. SHORE: And that's as high as
13 you'd put it?

14 MR. LIVERMORE: Yes.

15 MR. SHORE: To you it had, as
16 you've indicated, no significance whatsoever.

17 MR. LIVERMORE: It had no
18 operational significance, no.

19 MR. SHORE: I think as you said on
20 another occasion, the train was out of the
21 station, the matter was going forward. Even if it
22 happened the way Gould said it happened, did it --

23 MR. LIVERMORE: No.

24 MR. SHORE: Did you in your own
25 mind have any reservations whether in fact the

1 conversation even happened the way it was reported
2 to you?

3 MR. LIVERMORE: Not -- if Jim
4 Gould reported it to me, I took it on faith,
5 because he's a first-class officer, that he got it
6 from someone.

7 MR. SHORE: Right. The fact that
8 he got it from someone else didn't lead you to ask
9 Mr. Gould, "Well, check with Kathryn McCallion
10 whether this actually happened"?

11 MR. LIVERMORE: No, I think in --
12 we found it curious, we found it interesting. Had
13 we found it of any significance at all, we would
14 have checked it out, but, in fact, it wasn't.

15 MR. SHORE: Right. And so you
16 didn't even ask him to check with Ms McCallion
17 whether it even occurred the way the person
18 reported it to him?

19 MR. LIVERMORE: I don't recall
20 asking him, no.

21 MR. SHORE: Right. And was there
22 any suggestion of checking with Mr. Hooper
23 whether --

24 MR. LIVERMORE: No.

25 MR. SHORE: -- this is how the

1 conversation went down?

2 MR. LIVERMORE: No.

3 MR. SHORE: Therefore, it had no
4 impact whatsoever, apparently --

5 MR. LIVERMORE: Not on the course
6 of action that we had already chosen.

7 MR. SHORE: -- on either of you
8 with regard to what was happening?

9 MR. LIVERMORE: That's right.

10 MR. SHORE: And I think you
11 indicated also earlier that it was a question
12 of -- it was noise. There was noise around, and
13 this was another piece of noise as to --

14 MR. LIVERMORE: It was
15 interesting. That was about it.

16 MR. SHORE: Okay. And I think you
17 said that the decision with regard to the letter
18 had been taken much before this time, much before
19 June 5. We're assuming it's June 5th because of
20 the --

21 MR. LIVERMORE: Well, the decision
22 within the department, and the decision
23 interdepartmentally to send a letter had been
24 taken.

25 MR. SHORE: Right.

1 MR. LIVERMORE: The memo I think
2 is dated June the 5th.

3 MR. SHORE: Your understanding is
4 that there was never a problem with the letter
5 going to the Syrians; the only issue was how it's
6 languaged?

7 MR. LIVERMORE: That's my
8 understanding, yes.

9 MR. SHORE: Right. And DFAIT was
10 interested in languaging so that they can include
11 RCMP, CSIS, PCO into their decision-making?

12 MR. LIVERMORE: Yes.

13 MR. SHORE: As you indicated --

14 MR. LIVERMORE: Yes.

15 MR. SHORE: -- do the responsible
16 thing. If DFAIT wanted to send a letter on their
17 own without consultation, not responsible, but
18 they could have done it?

19 MR. LIVERMORE: Well, they might
20 have been able -- we might have been able to do
21 it, but it's not a very good practice to do that.

22 MR. SHORE: No. Of course not.
23 And the role of CSIS here was simply to advise
24 DFAIT on these types of issues, on security
25 intelligence issues?

1 MR. LIVERMORE: On the particular
2 letter, it was to advise on what was acceptable to
3 them in the contents of that letter.

4 MR. SHORE: All right. I think
5 that's all, sir. Thanks, Mr. Livermore.

6 THE COMMISSIONER: Mr. David.

7 MR. DAVID: Two brief areas,
8 Mr. Commissioner.

9 EXAMINATION

10 MR. DAVID: Concerning the call,
11 Mr. Livermore. When Mr. Gould spoke to you, did
12 he indicate to you that he was going to follow up
13 in any way on what he had been telling you about?
14 Did he indicate to you that on June 6th or June
15 9th he had been pursuing the matter concerning the
16 memo, the processing of the memo, and the phone
17 call?

18 MR. LIVERMORE: I don't -- I don't
19 recall that he did, no.

20 MR. DAVID: Okay.

21 MR. LIVERMORE: But the memo --
22 the memo had already gone up by that stage.
23 That's my recollection.

24 MR. DAVID: Our understanding is
25 that the memo went up on June 9th.

1 MR. LIVERMORE: My understanding
2 is it went up earlier than that, but --

3 MR. DAVID: Well, if you want to
4 look at tab 5.

5 MR. LIVERMORE: Okay.

6 MR. DAVID: And this is the stamp
7 I was telling you about and what has been
8 explained to us through other testimony, and
9 that's P-117.

10 MR. LIVERMORE: Mm-hmm.

11 MR. DAVID: Go to tab 5, the front
12 page. You'll see that it's a bit -- it's poor in
13 quality in terms of -- but there is a -- some sort
14 of stamp with a date below the box, and it says
15 03, 6 and then the 9 and then there's the hour.

16 MR. LIVERMORE: Yeah.

17 MR. DAVID: And our understanding
18 is that that is the stamp that indicates the day
19 and the time that the Minister's office receives
20 the memo.

21 MR. LIVERMORE: It could be the
22 time of receipt. I'm referring to the time that
23 it was signed off by Gar Pardy and others.

24 MR. DAVID: All right.

25 MR. LIVERMORE: But in any event,

1 it certainly wasn't coming back to us. We had
2 already agreed on a course of action and we had
3 lent our concurrence to the memo that was going
4 forward.

5 MR. DAVID: And had Kathryn
6 McCallion decided that she wanted additional
7 information, additional background, she wanted to
8 clarify an issue, it was within her authority to
9 do so?

10 MR. LIVERMORE: Absolutely.
11 Anyone up the line, so to speak, can send a memo
12 back and ask for clarification of certain
13 portions, or ask why something has been left out,
14 or why something is included --

15 MR. DAVID: And she can, in fact,
16 contribute to the memo?

17 MR. LIVERMORE: She could, yes.

18 MR. DAVID: The second area,
19 Mr. Commissioner, has to do with your testimony
20 concerning how the matter was resolved about the
21 information coming from Syria, from Syrian -- from
22 Syrian authorities that CSIS had somehow informed
23 the Syrian authorities, "Let's keep Arar in
24 Syria."

25 And your testimony has been that

1 this ambiguity was cleared up on January 16th,
2 2003.

3 MR. LIVERMORE: Yes.

4 MR. DAVID: And that it was
5 definitely resolved as of that date.

6 MR. LIVERMORE: Yes.

7 MR. DAVID: And it was resolved
8 insofar as your Minister phoned the Syrian Foreign
9 Minister to address the issue.

10 MR. LIVERMORE: Yes.

11 MR. DAVID: And that's how it was
12 resolved.

13 MR. LIVERMORE: Yes.

14 MR. DAVID: And it was resolved,
15 therefore, at a political level.

16 MR. LIVERMORE: Yes.

17 MR. DAVID: However, the
18 information per se that was coming from Syria that
19 went to Ambassador Pillarella was not from a
20 political source. It was from the Syrian Military
21 Intelligence.

22 MR. LIVERMORE: I don't -- I'm not
23 sure that in Syria you can separate the two levels
24 that neatly. In Canada it's a fairly clear
25 separation. In Syria, it's a little less clear.

1 MR. DAVID: But my question,
2 again, Mr. Livermore, is that your understanding
3 was that the information that was coming from
4 Syria was not coming from the Syrian Foreign
5 Minister, it was coming from the Syrian Military
6 Intelligence organization?

7 MR. LIVERMORE: I think initially
8 that's where Ambassador Pillarella picked up that
9 information. I think so.

10 MR. DAVID: Correct. I think that
11 that is the case.

12 MR. LIVERMORE: Yes.

13 MR. DAVID: So would you agree
14 with me, as a general proposition, that in terms
15 of the Syrian Military Intelligence organization,
16 that they would lend greater ear, they would be
17 more responsive to a counterpart to CSIS than to a
18 politician? Is that a general proposition that
19 you're willing to accept?

20 MR. LIVERMORE: I can't accept
21 that, no. First of all, I don't -- I can't speak
22 authoritatively on Syria, but also we had a
23 relationship -- I don't think the Syrians regarded
24 Ambassador Pillarella as belonging to Foreign
25 Affairs as opposed to any other ministry. He

1 represented the Government of Canada in Damascus,
2 and therefore when he said that he spoke with one
3 voice for the Government of Canada and was
4 informing them of something, I think he took
5 their -- they took his word at face value.

6 MR. DAVID: But clearly,
7 Mr. Livermore, it's been your testimony that the
8 RCMP was not in the good books of the Syrian
9 Military Intelligence?

10 MR. LIVERMORE: Well, not exactly.
11 We had heard --

12 MR. DAVID: Let me put it to you
13 differently then.

14 MR. LIVERMORE: Yeah.

15 MR. DAVID: That the Syrian
16 Military Intelligence preferred to deal with an
17 intelligence organization in Canada --

18 MR. LIVERMORE: That's right, yes.

19 MR. DAVID: -- which is CSIS,
20 rather than the RCMP?

21 MR. LIVERMORE: That's the
22 preference they expressed to us.

23 MR. DAVID: That's a proposition
24 you agree with?

25 MR. LIVERMORE: Yes.

1 MR. DAVID: And so it's a cultural
2 aspect in terms of the relationship?

3 MR. LIVERMORE: Yes.

4 MR. DAVID: And there's simply --
5 it's like if you're stopped on the street for a
6 speeding violation, if you're a cop, you're more
7 likely to be able to convince your police officer
8 not to issue the ticket than if you're just Dan
9 Livermore?

10 MR. LIVERMORE: I hope not.

11 MR. DAVID: So the point I'm
12 simply trying to understand and to elicit from you
13 is that, in fact, to well-communicate the issue,
14 the message, that Canada has no objection to
15 Arar's return, would it not have been preferable,
16 would the Syrian Military Intelligence not have
17 lent a better, more attentive ear, had CSIS issued
18 the statement rather than a Canadian politician?

19 MR. LIVERMORE: Frankly, I don't
20 believe so. I would accept your argument if CSIS
21 had had a mature relationship of several years'
22 standing, which possibly had been cemented over
23 the years with visits back and forth between the
24 head of the Syrian organization and the head of
25 CSIS, establishing a dialogue and the basis of

1 relationship. But, in fact, they had none. The
2 basis of their relationship was basically one
3 visit to establish the relationship. So it wasn't
4 there.

5 MR. DAVID: Thank you. Those are
6 my questions.

7 THE COMMISSIONER: Are you
8 familiar with the relationship between the Syrian
9 Foreign Minister and the SMI? Is that -- we've
10 heard some evidence from others. All I'm worried
11 about is you're treading on areas that -- and it's
12 not fair to you -- you're not --

13 MR. LIVERMORE: Well, the
14 difficulty is, I'm familiar with some things but I
15 have to claim National Security Confidentiality
16 over --

17 THE COMMISSIONER: Okay. In --

18 MR. LIVERMORE: -- in this
19 particular area.

20 THE COMMISSIONER: Okay. Let's
21 leave it at that.

22 We'll rise and take the morning
23 break for 15 minutes.

24 MR. SHORE: Mr. Commissioner?
25 Sorry. May I just, before the break, address one

1 issue?

2 THE COMMISSIONER: Sure. Please
3 do.

4 MR. SHORE: It's similar to what
5 Ms Edwardh addressed with regard to the release of
6 the Kathryn McCallion transcript before she
7 testifies?

8 I think it only fair as well that
9 Mr. Gould's transcript, with regard to the phone
10 call only, be released as well.

11 THE COMMISSIONER: No problem.
12 Anybody have any objection to
13 that? It will have to be reviewed for NSC. I
14 think if it's in respect of the phone call only,
15 there's not going to be any NSC problem --

16 MR. SHORE: Oh, no. Absolutely,
17 only the phone call. That's my only interest, and
18 it's not a lot of transcript with regard to the
19 phone call.

20 THE COMMISSIONER: Ms Edwardh will
21 join wholeheartedly --

22 MR. SHORE: I'm sure she would.

23 THE COMMISSIONER: More rather
24 than less. I'm concerned about delays.

25 Can I suggest this: Is Mr. Gould

1 the next witness?

2 MR. DAVID: Yes.

3 --- Off microphone / Sans microphone

4 THE COMMISSIONER: Okay. So we'll
5 deal with Mr. Gould next. We'll carry out with
6 the cross-examinations. People can look at the
7 transcript, once it's released, over lunch hour.
8 This will ruin your lunch, Ms Edwardh. And if
9 there's any further questions that arise as a
10 result of the release of the transcript, then we
11 could deal with those after lunch.

12 But we will carry on.

13 MR. SHORE: Sure.

14 THE COMMISSIONER: Okay. Fifteen
15 minutes.

16 THE REGISTRAR: Please stand.

17 --- Upon recessing at 11:23 a.m. /

18 Suspension à 11 h 23

19 --- Upon resuming at 11:40 a.m. /

20 Reprise à 11 h 40

21 THE REGISTRAR: Please be seated.

22 Veuillez vous asseoir.

23 THE COMMISSIONER: Good morning.

24 Before we begin, Commission

25 counsel raised with me the issue of the

1 transcripts for Mr. Gould and Ms McCallion.

2 They, of course, were heard in
3 camera, so the Commission has our copies within a
4 secure situation so that it's not easy for us here
5 to make copies of that.

6 I am wondering if the Government
7 has facilities here, that copies could be made?

8 MS McISAAC: The problem is that
9 I'm not sure I have clean copies to make copies
10 from, sir.

11 MS EDWARDH: You know, this could
12 all have been resolved if somebody had raised it
13 earlier and it could be dealt with.

14 THE COMMISSIONER: Yes, it could.
15 Unfortunately, we are all doing our best.

16 Actually when these things
17 happened, at least as I sit in this objective
18 chair, sometimes it is one person's difficulty,
19 sometimes it is another. I don't think anybody is
20 in a glass house here.

21 MS McISAAC: I will certainly
22 facilitate. My concern is that I'm not sure that
23 we have available clean copies of the transcripts
24 in order to make copies, but I will make inquiries
25 and see what we can do.

1 THE COMMISSIONER: If we can do
2 it. Otherwise, they can be produced when they can
3 be produced. Having made the direction, if we
4 need to recall the witnesses on another day, we
5 will do that -- and I'm not being critical of you,
6 Ms Edwardh.

7 I think the facilities may be here
8 in this building that we can get copies made and
9 hopefully that we can do it that way.

10 Thank you.

11 Mr. David, please proceed.

12 Mr. Gould, welcome back. You are
13 still under oath.

14 PREVIOUSLY SWORN: JIM GOULD

15 EXAMINATION

16 MR. DAVID: Mr. Gould, we haven't
17 had the opportunity of having your public
18 testimony, so for the benefit of the public, I
19 will refer you to your CV, which has been filed at
20 P-85, volume 3, tab 113.

21 So just to introduce you, if you
22 will, I will refer you briefly to your CV.

23 MR. GOULD: What tab is it?

24 MR. DAVID: I'm sorry, tab 113.

25 First thing. In terms of

1 education, you have a Bachelor of Arts in Middle
2 Eastern Studies from the University of Toronto.
3 You have a Masters of Arts in Islamic History from
4 the American University in Cairo, and you have a
5 doctorate, a Ph.D., in Islamic History from the
6 University of Edinburgh.

7 MR. GOULD: Right.

8 MR. DAVID: And you presently
9 teach at the University of Ottawa.

10 MR. GOULD: Part-time. Sessional.

11 MR. DAVID: Sessional lecturer.

12 MR. GOULD: Yes.

13 MR. DAVID: You teach in Middle
14 Eastern affairs.

15 MR. GOULD: I have given courses
16 on Modern Middle Eastern History, 20th century. I
17 will be giving a course on politics in the Middle
18 East in January, and Medieval Middle East as well.

19 MR. DAVID: You are recently
20 retired from the Department of Foreign Affairs.
21 You have worked in the Department of Foreign
22 Affairs since 1975.

23 MR. GOULD: Correct.

24 MR. DAVID: You lived in the
25 Middle East for about 15 years.

1 MR. GOULD: Somewhere around
2 there, yes.

3 MR. DAVID: You also worked in
4 various Canadian embassies in the Middle East?

5 MR. GOULD: Correct.

6 MR. DAVID: Cairo, for instance,
7 Maghreb?

8 MR. GOULD: No, no.

9 MR. DAVID: Maybe just ...

10 MR. GOULD: Cairo, Saudi Arabia,
11 and Iraq.

12 MR. DAVID: Okay. You, at the end
13 of your tenure at DFAIT, were the Assistant
14 Director of ISI.

15 MR. GOULD: Deputy Director.

16 MR. DAVID: Deputy Director of
17 ISI, and you were a close collaborator of Scott
18 Heatherington at the time.

19 MR. GOULD: Correct.

20 MR. DAVID: Thank you.

21 Mr. Gould, first let me ask you to
22 describe the role and responsibilities of the
23 Deputy Director of ISI?

24 MR. GOULD: The full title, if I
25 recall correctly, was Deputy Director (Policy).

1 (Policy) at the end of the Deputy Director. That
2 meant a variety of things.

3 I was required to provide policy
4 advice through Mr. Heatherington, through
5 Mr. Livermore, through Mr. Wright, up to the
6 Deputy Minister on intelligence matters when
7 required.

8 Under my purview came such matters
9 as liaison -- within the division, we had a CSIS
10 liaison officer, an RCMP liaison officer. I was
11 responsible for managing, in a loose sense, that
12 relationship, correspondence, et cetera, back and
13 forth between the department and the two agencies.

14 It's been a long time.

15 Pretty much that kept me busy.
16 I'm sure there were other things.

17 MR. DAVID: Coming to Project
18 A-OCANADA, which you became familiar with, you
19 were involved with the project --

20 MR. GOULD: For a short time, yes,
21 I was.

22 MR. DAVID: For a short time. I
23 understand that the name of Maher Arar came across
24 your desk approximately July 29th of 2002?

25 MR. GOULD: I think that was the

1 date it was.

2 MR. DAVID: And that basically we
3 have reconstructed from your personal notes that
4 have been filed.

5 MR. GOULD: Yes.

6 MR. DAVID: And you had a
7 relationship with Superintendent Cabana of the
8 project?

9 MR. GOULD: Correct.

10 MR. DAVID: There was a
11 consultational relationship between the both of
12 you?

13 MR. GOULD: Yes. He and I had met
14 on one matter, when the A-OCANADA task force was
15 struck, when it was deemed the division -- or
16 consultation within the division, we thought we
17 should inquire as to whether Foreign Affairs had a
18 role or something. I suggested that I call
19 Mr. Cabana because I knew him. That's how I did
20 it.

21 MR. DAVID: Mr. Gould, just to
22 advise you, I will be dealing with two issues with
23 you today in your testimony: One is the phone
24 conversation as you have well heard and
25 understand.

1 MR. GOULD: Yes.

2 MR. DAVID: The other, though,
3 before I get to the phone conversation and your
4 notes, has to do with a conversation that you had
5 with Mr. Cabana on October 21st of 2002, and let
6 me put you in context.

7 MR. GOULD: Okay.

8 MR. DAVID: October 21st, as you
9 recall, 2002, the Syrians confirm in a definite
10 way that they hold Mr. Arar. You were advised of
11 that and you called Mr. Cabana to advise him of
12 that also. So there was official notification,
13 put it that way, that Mr. Arar was in Syria.

14 There was also a question of you
15 having been mandated or were requested to assist
16 your ambassador in Syria in a meeting that he was
17 about to have with General Khalil in Syria, and in
18 that context, you called Mr. Cabana and you wanted
19 information from --

20 MR. GOULD: Oh, I'm sorry.

21 MR. DAVID: Is that --

22 MR. GOULD: As I recall
23 correctly -- you had me wondering whether I was
24 flying to Syria.

25 MR. DAVID: No, no.

1 MR. GOULD: Yes, I think the --

2 MR. DAVID: And let me, for your
3 reference, refer you to page -- first of all, the
4 document is P-236. These are an extract of your
5 personal notes.

6 Let me refer you to page 2 of 16
7 in tab 1.

8 They were a challenge in camera;
9 they are more of a challenge in public because of
10 the redactions. These are basically your notes
11 for that day, so I'm just putting them in front of
12 you. I don't want you to read them. I just want
13 you to have them in front of you if you care to
14 refer to them.

15 You essentially asked Mr. Cabana
16 three questions --

17 MR. GOULD: Excuse me, Mr. David.
18 Is there any merit -- given as you say they are a
19 challenge and I'm assuming everyone has got
20 them -- for me to explain to people, because I
21 think I had to explain in camera how I used my
22 little black book.

23 MR. DAVID: Sure.

24 THE COMMISSIONER: Just before we
25 proceed with this, I notice Superintendent

1 Cabana's counsel is not here today. Was there --

2 MR. DAVID: This was on the
3 will-say, Mr. Commissioner.

4 THE COMMISSIONER: And those were
5 distributed, were they?

6 MR. DAVID: Yes. And there are
7 four bullets that deal with the issue.

8 THE COMMISSIONER: Carry on.

9 MR. DAVID: So...

10 --- Off microphone / Sans microphone

11 THE COMMISSIONER: The difficulty
12 is when you speak, if you don't speak into the
13 microphone, the court reporter can't hear you.

14 MR. DAVID: I'm sorry.

15 THE COMMISSIONER: So that I'm
16 clear, this is in the will-say. There were four
17 bullet points dealing with this area.

18 MR. DAVID: Let me just read you
19 those bullets if it --

20 THE COMMISSIONER: It's not
21 necessary, but the will-say was circulated to all
22 counsel, including Superintendent Cabana's
23 counsel.

24 MR. DAVID: I can only assume,
25 Mr. Commissioner.

1 THE COMMISSIONER: Let's go ahead
2 and hear the evidence, and if there is any
3 difficulty with Superintendent Cabana's counsel
4 not being here, we can address it later.

5 MR. DAVID: I understand.

6 Mr. Gould, you were proposing in
7 terms of your notes --

8 MR. GOULD: Just to clarify,
9 perhaps, and it came up in earlier testimony.
10 Typical of all books, there is a right and a left
11 when you open the book. I tended to keep notes on
12 the right-hand side. And what you have on 2 of 16
13 is a right-hand page.

14 The left-hand page was left blank,
15 and that is where I usually took telephone voice
16 messages off my machine. I would write down
17 telephone numbers. That made them faster for me
18 to find.

19 And we get confused later because
20 I would make notes there which supplemented things
21 that I had written on the right-hand page. But
22 don't expect to be flipping from page to page.

23 When you get things like this page
24 with arrows, I made points that I wished to
25 discuss with Mr. Cabana, and obviously didn't

1 leave enough room, and that is the reason for the
2 arrows. So I apologize. That's the way I use it.

3 These were very transitory notes
4 that were there. They are not complete in any
5 way, shape or form. They are just things to keep
6 me directed and hopefully jog my memory when I
7 needed to have it jogged.

8 MR. DAVID: Certainly you never
9 expected them to end up in the public domain.

10 MR. GOULD: It is normal for me to
11 shred them when I leave a division. You asked me
12 before I left the division.

13 MR. DAVID: Mr. Gould, if you want
14 to refer to your notes, you asked three questions
15 to Mr. Cabana, and these questions were asked to
16 him concerning both Mr. Arar and Mr. Almalki?

17 MR. GOULD: Correct.

18 MR. DAVID: The first is: Is he
19 wanted in Canada? The second is: If he is, why?
20 And third: Will charges be laid in Canada?

21 And I would like to understand how
22 Mr. Cabana responded to your questions.

23 First of all, let me ask you:
24 What did Mr. Cabana inform you of in terms of
25 Mr. Arar's status as of this date, October 21st,

1 2002?

2 MR. GOULD: My notes indicate to
3 me, and I have -- I remember the call because I
4 paged him and he called me back. The details of
5 the call are long gone. So I'm going to be
6 dependent upon the notes that we all have before
7 us.

8 Mr. Cabana came up, commented that
9 Mr. Arar came up in an investigation, but they
10 were a long way from any charges. He was just a
11 person of interest, I think was the phrase. They
12 are still trying to figure out who he is. They
13 would like to talk to him.

14 The problem is his associations, I
15 mean, who he was connected with. It wasn't him
16 directly so much as who he was associated with,
17 but being police, you follow all leads. That was
18 the context.

19 MR. DAVID: Okay. Second, there
20 is an issue that was raised and discussed that day
21 about sharing information with the Syrians about
22 these two individuals.

23 MR. GOULD: Yes.

24 MR. DAVID: And my question to you
25 is, Mr. Gould: Had DFAIT, had ISI sanctioned

1 then, on this date or before, such a possibility?

2 MS McISAAC: Commissioner, could I
3 ask the witness, please, to confine his answers to
4 matters relating to Mr. Arar rather than any
5 discussions that might have taken place regarding
6 Mr. Almalki?

7 MR. DAVID: That's fine.

8 MR. GOULD: Yes. And on this -- I
9 recall from earlier testimony that this was an
10 issue. I cannot recall -- I do not recall any
11 occasion where we sanctioned the sharing of
12 information on Mr. Arar with the Syrians.

13 MR. DAVID: In other words, I'm
14 asking --

15 MR. GOULD: I don't think they
16 asked us, I don't think we said yes. I don't
17 think we said -- I don't think it came up.

18 I notice here, it obviously came
19 up -- there was something in this conversation
20 because there is a "possibly already transmitted
21 to them" reference. I think that is what that may
22 have been. Some information may already have
23 gone, but I don't know.

24 MR. DAVID: And my third question
25 to you concerning this date is: What was the

1 follow-up in terms of this raised possibility of
2 sharing information on Mr. Arar with the Syrians?
3 Did anything come of it? Was there anything that
4 was pursued in that line?

5 MR. GOULD: Not that I recall.

6 MR. DAVID: Thank you. Those were
7 my questions, Mr. Commissioner, concerning October
8 21st.

9 THE COMMISSIONER: Thank you.

10 MR. DAVID: We move now to the
11 telephone conversation that you have heard already
12 described. You were present in the room when
13 Mr. Livermore testified, Mr. Gould, so I'm not
14 going to give you a very lengthy introduction in
15 that regard.

16 I'm going to ask you to refer to
17 your notes once again, and I ask you to go to page
18 9 of 16. There are five pages of your notes that
19 concern this phone call, and it goes from pages 9
20 to 13.

21 There is an entry, and we have
22 seen this before in your previous testimony, but
23 page 9 of 16 is essentially dated June the 5th.

24 Is that correct?

25 MR. GOULD: As I understand it,

1 yes.

2 MR. DAVID: And you have certain
3 inscriptions. In what context did you make these
4 notes and these inscriptions?

5 MR. GOULD: Again, I was going to
6 speak to Dave Dyet from JPO. Has he testified
7 already?

8 MR. DAVID: Well, we filed his
9 testimony.

10 MR. GOULD: You discussed -- you
11 summarised his testimony this morning.

12 And number (i) and number (ii) --
13 which is (i) and (ii) -- are notes that I took.
14 The first question --

15 MR. DAVID: First of all, let me
16 ask you: Do you recall approximately when in the
17 day you met Mr. Dyet?

18 MR. GOULD: No.

19 MR. DAVID: Do you recall how it
20 is that you met Mr. Dyet about the contents of
21 your notes: that is, the memo; the processing of
22 the memo; and, thirdly, the phone call between
23 Mr. Hooper and Ms McCallion?

24 MR. GOULD: I called on
25 Mr. Dyet -- and I'm quite certain in my own mind I

1 called on him -- to determine the status of the
2 memo. Excuse me, we refer to it as a memo. It's
3 the memorandum which covered the draft letter for
4 the Minister's signature.

5 MR. DAVID: For your benefit, I
6 would like to refer you to that document so you
7 can have it in front of your eyes.

8 That is at P-117, volume 2, tab 5.

9 THE COMMISSIONER: 75.5?

10 MR. DAVID: 75.5, yes, or 5.

11 MR. GOULD: Thank you.

12 MR. DAVID: This is the memo in
13 question?

14 MR. GOULD: It may indeed be. I
15 will make a random jump in assumption and say yes,
16 it is.

17 MR. DAVID: Okay. So you were
18 saying --

19 MR. GOULD: We, the division. I
20 wanted to know how did it stand. Has it gone
21 from -- because there had been at one point
22 considerable to-ing and fro-ing with CSIS over the
23 wording. Has it gone forward?

24 MR. DAVID: We know that there was
25 a meeting, for instance, on May 8th. There was a

1 meeting on May 12th.

2 MR. GOULD: I was rarely involved
3 in those meetings, if ever. I was aware they were
4 going on. I knew there was a controversy going
5 on -- a controversy -- a discussion over the
6 wording.

7 For whatever reason, I said I am
8 going to see David. It could have been as simple
9 a matter as I'm walking past there, or I know
10 David and I will go over and see him and ask him
11 where it stands. So that was the idea.

12 MR. DAVID: So your concern
13 basically is: Where is the memo?

14 MR. GOULD: Where's the memo?

15 MR. DAVID: Where is it at?

16 MR. GOULD: And it was in that
17 conversation that he said it had gone up to MKM,
18 Kathryn McCallion, and then he commented on this
19 telephone call, that there was to be a telephone
20 call with Mr. Hooper.

21 MR. DAVID: So he indicated to you
22 that the call had not taken place?

23 MR. GOULD: My notes indicate that
24 he indicated that the call had taken place, and as
25 far as I know that was my first notification that

1 the call was in train.

2 MR. DAVID: When you met Mr. Dyet,
3 your impression was that Mr. Hooper had already
4 spoken to Ms McCallion, and in effect you are
5 noting the contents of that conversation?

6 MR. GOULD: Yes.

7 MR. DAVID: And the contents of
8 the conversation were being relayed to you by
9 Mr. Dyet?

10 MR. GOULD: Correct.

11 MR. DAVID: So my next question to
12 you is: Do you know what Mr. Dyet's source was?
13 Did you ask him? Did he tell you? Was it
14 discussed?

15 MR. GOULD: I don't think it was
16 discussed. My notes indicate to me that there was
17 to have been a call at 1100 hours that day. So
18 your timing question? Obviously it was after
19 1100. Gar was to be there, that's Mr. Pardy, was
20 to be there, but probably wasn't, so it's in the
21 past. So it's after that. It's not clear from my
22 notes as to whether Mr. Dyet was there or whether
23 he was recounting. I have no idea what his source
24 was.

25 MR. DAVID: When you're affirming

1 that the call was to have taken place at eleven,
2 you're now reading further on, you're about
3 halfway down your notes for that day.

4 MR. GOULD: Yes I am. The notes
5 on this section are probably more for that day.

6 MR. DAVID: Let's take the very
7 top of the page and it says Dave Dyet, JPO, and
8 there's a phone number. That's Mr. Dyet's phone
9 number, I gather.

10 MR. GOULD: Correct.

11 MR. DAVID: And there's an (i),
12 and it says, "memo from JPD about Arar ? status.
13 Did it go to MKM probably up today."

14 So was this the fundamental basis
15 for you contacting Mr. Dyet that day.

16 MR. GOULD: That's correct.

17 MR. DAVID: And then the (ii)
18 "call from Jack Hooper ADDO to MKM saying that
19 CSIS doesn't want us to get Arar back in the
20 country as they would have to devote too many
21 resources to working --"

22 MR. GOULD: To watching.

23 MR. DAVID: "To watching him." I'm
24 sorry.

25 Again, this is something that is

1 coming to you from Mr. Dyet?

2 MR. GOULD: Mm-hmm.

3 MR. DAVID: And the way you draft
4 it, is it drafted in a way that reflects that the
5 call has taking place or is about to take place?

6 MR. GOULD: I understand that the
7 call had taken place. This was Mr. Dyet's
8 recounting to me of the substance of the call.

9 MR. DAVID: And moving down the
10 page now, it says -- and you tell me if it's
11 "done" or "Dave"?

12 MR. GOULD: We've been on this one
13 before, sir. I do not know.

14 MR. DAVID: You're not sure. It's
15 either one.

16 MR. GOULD: Let me guess. I think
17 it's probably "Dave." It's reflecting a note.
18 My -- and, again, I go back. These are sketchy
19 notes. I seem to recall I called back just to
20 clarify, was there -- what time was the call, that
21 sort of thing, and "Dave (ii)" because it's a
22 reference back to the (ii) above, "there was to
23 have been a call at 1100 today. Gar was to have
24 been there but probably wasn't."

25 MR. DAVID: Okay. So now I just

1 want to be clear about that. The note that says
2 "Dave" or "done" is not contemporaneous with the
3 first annotations?

4 MR. GOULD: I do not think so.

5 MR. DAVID: It was a follow-up
6 that you gave?

7 MR. GOULD: I think it is.

8 MR. DAVID: Let me ask you how you
9 reacted to the information at the top of the page,
10 when you first got it?

11 MR. GOULD: The first information
12 about the fact that the memo had gone up, that's
13 fine. The question, of course, has to do with the
14 Hooper telephone call.

15 Surprise. CSIS had been very
16 involved with the drafting of the letter, so why
17 are they calling? Why are they calling Ms
18 McCallion? Why are they not going through the
19 liaison function? Remember I said that I -- I
20 don't like to use the word but I think it's the
21 government word, manage the liaison function which
22 CSIS did as far as the division went. The
23 day-to-day to and fro-ing. They have a liaison
24 officer in the division. Would that have been the
25 appropriate channel? Just, what happened? Why is

1 CSIS going to Kathryn? What's the issue? And
2 some surprise at the substance of it.

3 MR. DAVID: And Mr. Dyet
4 volunteers this information to you?

5 MR. GOULD: Oh, yes.

6 MR. DAVID: You knew nothing about
7 it beforehand?

8 MR. GOULD: I don't recall knowing
9 about it beforehand. I'm sure he's the one that
10 told me about it.

11 MR. DAVID: And what was
12 Mr. Dyet's attitude or reaction to the information
13 he was giving you?

14 MR. GOULD: Matter-of-fact. I
15 mean, he was just passing on information.

16 MR. DAVID: Okay. So you're
17 surprised.

18 MR. GOULD: Surprised,
19 interested -- I don't -- I don't want to put too
20 strong a word on it. I don't want to put
21 "alarmed." Even "concerned" would probably be too
22 strong a word. But surprised and interested and
23 what's this mean? What's happening here?

24 MR. DAVID: And did you understand
25 that you had to follow up on this information, or

1 that you should --

2 MR. GOULD: I thought I should
3 just to confirm, has it slowed this letter down,
4 which I know that my Director and my Director
5 General, that's Mr. Heatherington and
6 Mr. Livermore, were very involved in the
7 drafting -- not necessarily the drafting, but the
8 approvaling --

9 MR. DAVID: The processing?

10 MR. GOULD: The processing of the
11 letter. Again, back to my policy work, to advise
12 them if I thought there was something. If it was
13 coming back down, for whatever reason, then it
14 might be up to me to advise. I didn't know.

15 MR. DAVID: To your knowledge was
16 ISI or ISD, or both for that matter, involved in
17 the negotiation or in the processing of the memo
18 in terms of its dealings with the RCMP and CSIS
19 and coming to a consensus?

20 MR. GOULD: In the sense of
21 facilitating the arrival at consensus or --

22 MR. DAVID: Yes.

23 MR. GOULD: I would think their
24 role was more peripheral in that being party to
25 the consensus and ensuring that the right -- that

1 people did communicate, but you'd have to speak to
2 either Mr. Heatherington or Mr. Livermore on that
3 one.

4 MR. DAVID: When you take these
5 notes concerning (i), the first (i), was it
6 understood by you that the first memo had been
7 authorized by Kathryn McCallion at this point, or
8 was it still in her hands?

9 MR. GOULD: It's not clear from my
10 notes. When it says they probably went up to
11 today, that could mean it went to Kathryn today --
12 excuse me, Ms McCallion -- or it could mean that
13 it moved past. But it's not clear to me what's
14 meant by that.

15 MR. DAVID: Then, as you say, you
16 called back Mr. Dyet to follow up. You try to get
17 more detail, and what you find out is there was to
18 be a call. The call was to be at eleven.

19 MR. GOULD: Yes.

20 MR. DAVID: He tells you that?

21 MR. GOULD: Yes, that's my sense
22 of what my notes say.

23 MR. DAVID: And Mr. Dyet also
24 informs you that Gar Pardy --

25 MR. GOULD: Gar was to be there, I

1 probably should have said, "was to have been there
2 but probably wasn't."

3 MR. DAVID: And then further down
4 the line, in the notebook, it says: "MKM's EA --"
5 executive assistant?

6 MR. GOULD: Mm-hmm.

7 MR. DAVID: Barbara Burns, with a
8 phone number, "about call from CSIS/Hooper."
9 What's that about?

10 MR. GOULD: That's my saying I
11 should call Ms Burns. (a) Did the call happen?
12 (b) What was the substance of it? Is it going to
13 affect?

14 MR. DAVID: So again you're
15 following up.

16 MR. GOULD: Just a minor follow-up
17 to keep, you know...

18 MR. DAVID: Is this page a
19 right-hand side or left-hand side --

20 MR. GOULD: This is a right-hand
21 side, this is one of my telephone conversations
22 that I was ...

23 MR. DAVID: Let's move on now to
24 the next page, page 10 of 16, and there's a date
25 indicated at the top, it's June 6. Is this a

1 left-hand or a right-hand --

2 MR. GOULD: It's a right-hand, and
3 it indicates on June 6th, for whatever reason, I
4 had not contacted Ms Burns on the previous day,
5 the 5th.

6 MR. DAVID: Okay.

7 MR. GOULD: I was trying again on
8 the 6th.

9 MR. DAVID: For the record the 5th
10 is a Thursday, and the 6th is a Friday.

11 MR. GOULD: Thank you. And the
12 substance -- why was I calling? About the call
13 from CSIS -- from CSIS about Arar. Then there's
14 an answer there, and it says "Call happened." So
15 I was able to confirm in conversation with Ms
16 Burns the call happened. But that's all I
17 obviously have.

18 MR. DAVID: No content.

19 MR. GOULD: No content.

20 MR. DAVID: Okay. Then we go to
21 page 11. Is this a right-hand or a left-hand?

22 MR. GOULD: Right-hand.

23 MR. DAVID: And the indicated date
24 is June the 9th, which is the Monday.

25 MR. GOULD: Monday.

1 MR. DAVID: It says Barbara Burns,
2 again her phone number, "about calls from
3 ADDO/Hooper to MKM." Can you tell us what that is
4 about?

5 MR. GOULD: Again that's a tasking
6 to myself saying please call Ms Burns about the
7 same call.

8 MR. DAVID: Okay.

9 MR. GOULD: Probably -- it doesn't
10 say why, but it is probably what was said.

11 MR. DAVID: Content.

12 MR. GOULD: Content.

13 MR. DAVID: You're seeking
14 content.

15 MR. GOULD: Probably. I have no
16 indication here, but I can't imagine why if I knew
17 the call happened that I wasn't, you know, calling
18 to ask -- if the call happened twice it would
19 be down that way.

20 MR. DAVID: You're simply
21 following up.

22 MR. GOULD: Absolutely.

23 MR. DAVID: Page 12, Mr. Gould.
24 Is this a left-hand or a right-hand --

25 MR. GOULD: This is the left-hand

1 one.

2 MR. DAVID: So should we go to the
3 right-hand page first?

4 MR. GOULD: If you would, please.

5 MR. DAVID: So that would be
6 page 13.

7 MR. GOULD: Yes, indeed.

8 MR. DAVID: At the top it says
9 "Dave Dyet 992-1152, WCB, will call back."

10 MR. GOULD: Correct.

11 MR. DAVID: And then hyphen or
12 slash:

13 "He spoke to MKM & she signed
14 off on the memo."

15 And there's a star. What's this
16 about?

17 MR. GOULD: Well, I'm speaking to
18 Mr. Dyet.

19 MR. DAVID: You did speak. Okay.

20 MR. GOULD: I tried to phone him.
21 Left a message. WCB, means he will call me back.
22 He obviously did. He spoke to Ms McCallion, and
23 she confirmed that she had signed off the memo.
24 That means, in our jargon, that she has signed it,
25 I think Mr. Livermore explained, and it has gone

1 up to the deputy's office.

2 MR. DAVID: This was confirmed by
3 Mr. Dyet on Monday, June 9th.

4 MR. GOULD: Correct. The star
5 throws me. Obviously there was something more.

6 MR. DAVID: Another reference.

7 MR. GOULD: Yes, now, again,
8 right-hand, left-hand. I had carried on with my
9 day, he called me back, and I had already added a
10 few lines of stuff that has been redacted. So, in
11 order to make space for it, a star and across to
12 the left-hand side.

13 MR. DAVID: We go back to page 12.

14 MR. GOULD: Right. So now go back
15 to page 12, and this is the expansion on
16 what --about the call.

17 MR. DAVID: And this is coming
18 from Mr. Dyet?

19 MR. GOULD: From Mr. Dyet.

20 MR. DAVID: So it says: "About
21 call-confirmed story. We had heard."

22 MR. GOULD: Correct.

23 MR. DAVID: "We" being?

24 MR. GOULD: David and I.

25 MR. DAVID: David Dyet and

1 yourself?

2 MR. GOULD: Correct. And I had
3 actually heard it from David, so I mean it's not
4 perhaps --

5 MR. DAVID: It's a grammatically
6 correct "we."

7 MR. GOULD: It is indeed.

8 MR. DAVID: Then it says: "-may be
9 a bit more to it, but she didn't want to go into
10 it."

11 Who is saying that to you?

12 MR. GOULD: As I recall, this is
13 David saying this to me in light of a conversation
14 which he had with Ms Burns.

15 MR. DAVID: Okay. And not with Ms
16 McCallion?

17 MR. GOULD: Not with Ms McCallion.

18 MR. DAVID: The next line says:
19 "MKM signed the memo so she seems to be ignoring
20 the request from the ADDO"?

21 MR. GOULD: Correct.

22 MR. DAVID: And what does that --
23 translate that.

24 MR. GOULD: It tells me that the
25 memo has gone up. Whatever -- if it is correct

1 that Mr. Hooper asked Ms McCallion, or implies --
2 said to Ms McCallion you don't want him back
3 because of the resource problems or for whatever
4 reason, she was ignoring that and going forward
5 with what had been decided within the department
6 and interdepartmentally with the memo to the
7 deputy and then the Minister.

8 MR. DAVID: Okay. And that's the
9 end of your notes on this call.

10 MR. GOULD: That's -- yes, it is.

11 MR. DAVID: You were present
12 during Mr. Livermore's testimony?

13 MR. GOULD: Yes, I was.

14 MR. DAVID: I'll get directly to
15 the point. You go and see Mr. Livermore and speak
16 to Mr. Livermore about this call?

17 MR. GOULD: I don't -- I wouldn't
18 want to say I go -- that implies I got up, walked
19 around the door --

20 MR. DAVID: Put it this way, you
21 had a conversation --

22 MR. GOULD: I certainly had a
23 conversation with Mr. Livermore. Whether it was
24 the next moment, or half an hour or an hour later,
25 I don't recall.

1 MR. DAVID: What day would that
2 have been on?

3 MR. GOULD: I assume it would be
4 on that Monday the 9th, after I had had that tale
5 confirmed.

6 MR. DAVID: And your reason for
7 going to see Mr. Livermore about the call?

8 MR. GOULD: Again, I'm not
9 comfortable with the "going to see."

10 MR. DAVID: Okay. Discussing.

11 MR. GOULD: My discussing this
12 with Dan. It could literally have been a matter
13 of I walked out of my office, Mr. Livermore was
14 there, and on that topic, which I would guess we
15 probably talked about before, I just confirmed to
16 him that the memo was gone forward. That was the
17 whole point to it. It's gone up to the Minister's
18 office. Case closed.

19 MR. DAVID: Did you discuss it
20 with Mr. Heatherington?

21 MR. GOULD: Almost certainly, and
22 almost certainly in the same informal manner.

23 MR. DAVID: Did you discuss it
24 with Gar Pardy?

25 MR. GOULD: I don't recall, but

1 unlikely.

2 MR. DAVID: And did you pursue the
3 matter with Kathryn McCallion herself?

4 MR. GOULD: No, I did not.

5 MR. DAVID: Did you raise the
6 issue, or discuss the matter, with the liaison
7 officer of CSIS that works within your office --

8 MR. GOULD: I don't think so. I
9 think I was just doing this on my own.

10 MR. DAVID: I'd like to bring you
11 now to the Book of Documents we filed today,
12 Mr. Gould, and that is P-237, and if I could bring
13 you to tab 2.

14 MR. GOULD: Two?

15 MR. DAVID: Tab 2.

16 The call is on June the 5th.
17 Perhaps June the 6th. Your dealing with the call
18 directly is over the course of three days, the
19 Thursday, Friday, and the Monday, and then in the
20 weeks that follow, we will see that on July 30th,
21 a memo is drafted for the Deputy Minister, and
22 we'll come to that. But before that, on June
23 24th, you drafted this draft memo --

24 MR. GOULD: Yes.

25 MR. DAVID: And it was destined

1 for two people. It was destined for Jim Wright,
2 who was the Assistant Deputy Minister responsible
3 for your --

4 MR. GOULD: Correct.

5 MR. DAVID: -- office, for the
6 ISD office, so in terms of a reporting structure,
7 Mr. Wright had authority over your office. And it
8 was also destined for Kathryn McCallion, who was
9 the authority in terms of consular affairs.

10 MR. GOULD: Correct.

11 MR. DAVID: And it was to those
12 two people that you were addressing this draft.
13 And it says "Via ISD".

14 So this is via Dan Livermore?

15 MR. GOULD: Correct.

16 MR. DAVID: And also JPD, this is
17 Gar Pardy, the Director General of Consular
18 Affairs and the Director General of ISD, so
19 respecting again the chain of command.

20 MR. GOULD: Sure.

21 MR. DAVID: It's dated June 24th.
22 It says at the very top:

23 "It is very clear that there
24 has not yet been, on the
25 institutional level, a

1 meeting of minds between the
2 Department of Foreign Affairs
3 on the one hand and CSIS and
4 the RCMP on the other with
5 regard to the case of Maher
6 Arar. Recent exchanges have
7 been almost testy and there
8 is a fear that the working
9 relationship between DFAIT
10 and CSIS, in particular,
11 might be poisoned if
12 agreement is not reached on a
13 government-wide approach to
14 this case."

15 Can you tell us, what was going
16 through your mind at this time when drafting this
17 memo that allowed you to use this kind of language
18 and to speak of the fact that there was discord
19 between CSIS and DFAIT and the RCMP about Arar?

20 MR. GOULD: Mm-hmm. Again,
21 because -- I was drafting the memo because of my
22 policy function, and the fact I manage policy,
23 which means I get to draft a lot of memos. My
24 concern about managing that relationship with
25 CSIS.

1 Now, what had happened? Well, we
2 had had the -- and if I recall it went on for some
3 days, this negotiating or discussing of the
4 wording of the letter, Mr. Pardy wanted it to go
5 much farther than CSIS and the RCMP were prepared.
6 That's one point.

7 There was the phone call, which I
8 had understood Mr. Hooper to have made to
9 Ms McCallion. That was another point.

10 And there were other meetings
11 which had occurred, some of which I had been privy
12 to, some of which I had not been but about which I
13 knew, and about by I really cannot go into details
14 for reasons of national security. But it was a
15 summing up of.

16 MR. DAVID: Okay. And this first
17 paragraph in this draft memo, did it reflect
18 accurately your thinking at this time?

19 MR. GOULD: It was the desire to
20 head something off. "Might be poisoned." I'm
21 trying to do something in advance.

22 I was concerned -- as I read this,
23 I was concerned that if we didn't come to a
24 conclusion, if Foreign Affairs couldn't sit down
25 with CSIS, and I think the RCMP is implied,

1 although it's not named, that the relationship
2 could become difficult.

3 So I was trying to get a
4 conversation started, first in-house, and then, if
5 successful, a bilateral conversation with our
6 colleagues in the service so that we really did
7 have a one-voice, one-channel, one-line approach
8 on these matters. I was concerned that it would
9 spread, that if it didn't work well with this then
10 it might go into other areas. There's a fairly
11 rich relationship between the department and the
12 service.

13 MR. DAVID: And obviously
14 Mr. Pardy shared your concerns in that regard?

15 MR. GOULD: I don't know whether
16 Mr. Pardy shared the concerns or not, but I
17 thought Mr. Pardy should be part of this
18 discussion, first in-house and, second, with the
19 service, because -- this seems to be stimulated by
20 the Arar case, a consular case.

21 MR. DAVID: Right. Let's move
22 down to the last paragraph of your draft memo, and
23 you say:

24 "There is not sufficient
25 evidence against Arar for him

1 to be charged with anything
2 in Canada. CSIS has made it
3 clear to the Department that
4 they would prefer to have him
5 remain in Syria, rather than
6 returned to Canada."

7 Let me ask you. You're asserting
8 this in a draft memo?

9 MR. GOULD: Mm-hmm.

10 MR. DAVID: I understand that it
11 was never finalized, it never actually went up the
12 chain of command.

13 MR. GOULD: No.

14 MR. DAVID: It remained a draft in
15 your computer?

16 MR. GOULD: Yes.

17 MR. DAVID: Okay. When you
18 assert, "CSIS has made it clear to the department
19 that they would prefer to have him remain in Syria
20 rather than returned to Canada," what are you
21 basing that on?

22 MR. GOULD: Meetings, et cetera,
23 that I mentioned a moment ago that I really don't
24 want -- I can't go into the details for national
25 security, but there was sufficient grounds to make

1 me concerned.

2 The wording is dramatic because I
3 wanted to start a dialogue. Not all memos are
4 intended to be finalized. I wanted to bring my
5 concerns to people's attention.

6 MR. DAVID: And so did this
7 sentence, this -- I should say this allegation, go
8 beyond simply the Hooper-McCallion phone call?

9 MR. GOULD: There were -- well, if
10 nothing else, and you discussed it this morning,
11 the debate over the wording of a letter, which
12 went on for some date -- it was not a one
13 half-hour meeting. And there was certainly not a
14 meeting of minds on that. And although a decision
15 was reached, there may not have been a true
16 meeting of minds. They may not have totally
17 agreed.

18 MR. DAVID: You go on and you say:
19 "CSIS officials do not seem
20 to understand that, guilty or
21 innocent, Maher Arar has the
22 right to consular assistance
23 from the Department and that
24 in the circumstances in which
25 he presently finds himself,

1 the best outcome might be his
2 return to Canada. Even
3 though there is a risk that
4 Arar might later be found to
5 have been involved in
6 extremist activities of one
7 sort or another, his right to
8 consular assistance must be
9 honoured."

10 So there's -- you're raising the
11 issue of understanding; that is, you're saying
12 that maybe there's misunderstanding --

13 MR. GOULD: That's right. I was
14 concerned, from my position as the Deputy Director
15 (Policy), that I wanted to bring my slightly more
16 senior people into it, and possibly more senior,
17 depending on how far up this went, to ensure that
18 they -- that I obviously had a concern that CSIS
19 might not be understanding here. We've got to be
20 a little clearer.

21 We have a mandate to deliver
22 consular -- a consular program to Mr. Arar. He
23 has certain rights and privileges as a Canadian
24 citizen. We've got to do that. And make sure
25 they understand that. And if, as I say in here,

1 if later he might be found to have an extreme --
2 was involved, well --

3 MR. DAVID: So be it.

4 MR. GOULD: So be it. That's --
5 that's a criminal matter.

6 MR. DAVID: And thus your
7 recommendation -- we find this at paragraph 3:

8 "It is important that the
9 Minister and his staff be
10 made aware of the evidence
11 that can be marshalled
12 against Arar and a way must
13 be found for the Department
14 to respond to allegations
15 that there is no suggesting
16 that Arar has a connection to
17 the activities of Muslim
18 extremists."

19 MR. GOULD: That's back to the
20 wording question, as came out during the debate
21 over the letter. To me, it is.

22 MR. DAVID: And, finally, your
23 assertion:

24 "CSIS must accept that DFAIT
25 has a duty to assist Arar,

1 even though this may result
2 in him regaining his freedom
3 in Canada."

4 MR. GOULD: That's reiterating the
5 same point I made in paragraph -- the previous
6 paragraph, which I think is numbered wrong. Oh,
7 well. Yeah.

8 MR. DAVID: And so this reflected
9 basically your understanding of the environment at
10 this time?

11 MR. GOULD: Yes. That's well-put.
12 That it was the environment that I was trying to
13 address.

14 MR. DAVID: Okay. We go now to
15 tab 3, Mr. Gould, and there's a memo that has been
16 reviewed also with Mr. Livermore.

17 MR. GOULD: Yes.

18 MR. DAVID: From this memo, and
19 it's at paragraph 5 of page 2 of the memo, the
20 assertion comes that another senior CSIS officer
21 told MKM that DFAIT should curtail its efforts to
22 have Arar released and that it was CSIS's
23 preference that Arar not return.

24 Again, that was the operating
25 understanding of the phone call --

1 MR. GOULD: Correct.

2 MR. DAVID: -- almost two months
3 after it occurred?

4 MR. GOULD: At least in the mind
5 of the drafter and -- Mr. Heatherington, yes.

6 MR. DAVID: And at this time, July
7 30th, as far as you're concerned, this is an
8 accurate statement?

9 MR. GOULD: This was our
10 understanding of the situation.

11 MR. DAVID: On July 30th?

12 MR. GOULD: Yes. Or at least my
13 understanding of the situation, and I can't
14 imagine it being different.

15 MR. DAVID: Okay. And then we go
16 to tab 4, Mr. Gould, and, again, I'll put you in
17 context.

18 November the 6th is the date.
19 Bill Gusen is one of your colleagues, he's one of
20 your underlings in ISI?

21 MR. GOULD: Mm-hmm.

22 MR. DAVID: And the task at hand
23 was to draft a chronology.

24 MR. GOULD: Correct.

25 MR. DAVID: And it was to be a

1 detailed chronology, factual chronology, and it
2 was for the purposes of PCO. PCO had -- I don't
3 want to say "ordered," but certainly requested,
4 and there was to be follow-through on that
5 request.

6 MR. GOULD: Right.

7 MR. DAVID: And so in a fairly
8 intense environment, a chronology was prepared?

9 MR. GOULD: Yes.

10 MR. DAVID: Okay. And this first
11 e-mail that is going from Mr. Gusen to
12 Mr. Heatherington concerns the drafting of that
13 memo and you're being cc'd on it.

14 MR. GOULD: Correct.

15 MR. DAVID: And it says, "As
16 okayed by Don and Jim."

17 And "Don" is Don Saunders and
18 "Jim" is Jim Gould, yourself.

19 MR. GOULD: Correct.

20 MR. DAVID: So you have reviewed
21 the contents.

22 MR. GOULD: Yup.

23 MR. DAVID: And then it says, "To
24 be hand-delivered to Chesson."

25 MR. GOULD: Yes.

1 MR. DAVID: Now, let's go to the
2 next page, page 2, and at the very top we see,
3 "Chronology of Maher Arar case," and then it says,
4 "ISI input."

5 So this is ISI's contribution to a
6 chronology that was prepared by other --

7 MR. GOULD: Was being prepared at
8 the department.

9 MR. DAVID: Okay. So here is your
10 contribution.

11 MR. GOULD: Correct.

12 MR. DAVID: And if we go to page 2
13 or -- or page 3 of 3. We'll see that there's an
14 entry for July 30th, 2003, and I bring you to the
15 last sentence. It says:

16 "It also reports --"

17 I'm sorry. Let's read the whole
18 thing, just for clarity. It's in reference to the
19 July 30th memo, and it says:

20 "ISI Top Secret memo to USS
21 concerning Sol Gen's comments
22 about rogue elements in the
23 RCMP. The memo mentions the
24 cross-border information
25 sharing on individuals of

1 interest such as Arar. It
2 also reports on a call from a
3 very senior official at CSIS
4 to DFAIT/MKM (responsible for
5 consular affairs) suggesting
6 that DFAIT curtail its
7 efforts to secure Arar's
8 return as that would not be
9 CSIS' preference."

10 So clearly, again, a reference to
11 the phone call, a reference to what Mr. Dyet told
12 you, a reference to the July 30th memo. This you
13 had found was not included in the draft chronology
14 that was circulating. You suggested, "Let's put
15 this in." "This is ISI's input. Let's put it
16 in."

17 MR. GOULD: I don't know whether I
18 suggested putting it in. It was in.

19 MR. DAVID: Well, it's because the
20 e-mail, at the first page, says, "As okayed by Don
21 and Jim --"

22 MR. GOULD: Yes, but it's not -- I
23 didn't necessarily go through and say, "Stick this
24 item in." I read that draft input and said,
25 "Yeah, it looks good --"

1 MR. DAVID: Okay. So you felt it
2 appropriate to refer --

3 MR. GOULD: Yes.

4 MR. DAVID: -- to that reference?

5 MR. GOULD: Yes.

6 MR. DAVID: And in point of fact,
7 Mr. Gould, if I compare the ISI input suggestions
8 on those two pages with the final chronology that
9 was actually released to PCO, almost the totality
10 of the suggestions made by ISI were included in
11 the draft -- in the final memo, in the final
12 chronology.

13 MR. GOULD: Okay.

14 MR. DAVID: Except for this
15 reference to July 30th, in terms of the phone
16 call, and except for the entry for the 8th of
17 September, 2003. Other than that, in some form or
18 another, all of ISI's input has been included in
19 the final chronology.

20 We go to tab 5, please, and this
21 is the next day, November 7th, and it's from
22 Mr. Gusen once again and it's going to Scott, and
23 it says Gould -- and it's being cc'd to you, and
24 the message is as follows:

25 237, TAB 5 "I've picked up the

1 typos, et cetera, refer.
2 Jim's comments on having
3 missed the ADDO call to MKM
4 in early June. I leave it to
5 those here then to decide.
6 I've left it out for now."

7 And in terms of the identified
8 subject matter on the e-mail, it says, "Arar chron
9 with Jim Gould's recommended changes."

10 MR. GOULD: Yup.

11 MR. DAVID: Could you tell us what
12 that is about?

13 MR. GOULD: Well, it's some --
14 it's a day or so later, I think?

15 MR. DAVID: It's one day later.

16 MR. GOULD: One day later, it's
17 come back down. More comments and more -- other
18 things to add. The chronology went through
19 several combinations and permutations as more and
20 more information was added. Items were put in as
21 they went into more detail. Items were taken out
22 because they were deemed as no longer relevant or
23 superfluous, unnecessary; it added nothing to the
24 chronology.

25 MR. DAVID: Okay. And if you go

1 to page 9 of 12 within that tab --

2 MR. GOULD: Yup.

3 MR. DAVID: You'll see that on
4 July 30th, the reference to the phone call is not
5 there.

6 MR. GOULD: Yup.

7 MR. DAVID: So are we to
8 understand that you're saying, "Hey, let's put it
9 back in" or "This should be in"? Is that --

10 MR. GOULD: It sounds -- if I
11 recall correctly, I noted -- I noted that it was
12 not there --

13 MR. DAVID: And you make a
14 recommendation --

15 MR. GOULD: And the reference to
16 Bill as in -- you know, that's out. You know, did
17 you drop it or -- I don't know whether I asked who
18 dropped it but why -- you know, is it out? Why is
19 it out? I thought it should be in there, but
20 others thought it was -- because it had been
21 overtaken. The memo had gone. The letter
22 had been -- you know. So that was the context.

23 MR. DAVID: Okay.

24 Then we have, at tab 6 -- this is,
25 again, it's a draft version of the chronology,

1 which is dated the 11th -- I'm sorry, the 7th of
2 November. And if you go to page 7, you'll see the
3 entry on July 30th; there is no reference to the
4 phone call?

5 MR. GOULD: Yup.

6 MR. DAVID: And then at tab 7,
7 Mr. Gould, you have a version that seems to be
8 dated November 13th, and this, from previous
9 testimony, I can tell you, are the manuscript
10 notes of Jim Wright, because Jim Wright was
11 actually responsible for the production of the
12 chronology.

13 That is correct?

14 MR. GOULD: I don't recall.

15 MR. DAVID: No, but that

16 Mr. Wright was in charge of --

17 MR. GOULD: I don't recall.

18 MR. DAVID: You don't recall.

19 MR. GOULD: GMR was doing it --
20 excuse me. GMR was compiling it, putting it
21 together. Now, whether they were doing that on
22 behalf of Mr. Wright or Mr. McNee, their ADM, I'm
23 not sure.

24 MR. DAVID: That's fine. We have
25 testimony to that effect.

1 MR. GOULD: Good.

2 MR. DAVID: I simply note that at
3 tab 7, the version of the chronology at page 14
4 stops, and it stops on July 22nd, '03. So we
5 don't have the benefit of Mr. Wright's comments on
6 July 30th or after, thereafter.

7 And then we have the final version
8 of the chronology at tab 8. And if you go to
9 page 16, you'll see that the entry for July
10 30th -- I'm sorry. The entry for the phone call,
11 in terms of the events for July 30th, is not
12 referenced.

13 MR. GOULD: Okay.

14 MR. DAVID: Do you have any
15 knowledge, Mr. Gould, as to why it was -- who
16 decided to exclude it?

17 MR. GOULD: No idea. No, I do
18 not.

19 MR. DAVID: And do you know why it
20 was decided to be excluded? Who --

21 MR. GOULD: No, only in the sense
22 it was no longer relevant. The memo had gone.
23 Whatever the discussion was, whatever the phone
24 call was about, the memo was up, gone, finished.

25 MR. DAVID: Thank you. Those are

1 my questions, Mr. Gould.

2 THE COMMISSIONER: Okay. It's
3 12:30, and we'll take the lunch break.

4 Just before we do, two things: If
5 the lawyers, counsel could look at -- I may have
6 made a misstatement to you, Ms Edwardh. In tab 4
7 of P-237, you will recall that you asked, down at
8 the bottom of the second page, the 16th of
9 December, 2002, providing the translated
10 transcript, and we had a discussion about that. I
11 had expressed certain views. Ms McIsaac had as
12 well.

13 It's pointed out to me that at
14 tab 5, if you turn over to page 7 of 12 in tab 5,
15 the second entry from the bottom is that same
16 date. So we're at the 16th of December, 2002, and
17 it refers to:

18 237, tab 5, p.7 "In response to
19 a request for a debriefing on
20 the CSIS visit to Damascus,
21 CSIS provides a report
22 summarizing what appears to
23 be information provided to
24 SMI by Arar under
25 interrogation."

1 So that I'm not sure how one
2 reconciles the two entries, but I thought -- I
3 don't think it's necessarily as clear as I had
4 indicated to you, but -- I'm just not sure. I
5 just simply bring it to your attention.

6 MS EDWARDH: Well, thank you,
7 Mr. Commissioner, because it was a matter I was
8 hoping to discuss with Commission counsel because
9 I had failed to point out to you -- if you go to
10 tab 4, at the very top of the chronology, that
11 subsequently refers to December 16th, it starts
12 with an undated three-paragraph translation.

13 THE COMMISSIONER: Right.

14 MS EDWARDH: And it seems to me
15 unlikely it's the same document being referred to
16 at the bottom of the page.

17 THE COMMISSIONER: In any event, I
18 wanted to bring that to your attention, and I'll
19 let you make of it what you will.

20 MS EDWARDH: Thank you.

21 THE COMMISSIONER: The second
22 point is that there are the two transcripts being
23 prepared. I don't know how your time -- we were
24 going to just take an hour for lunch, but if you'd
25 like longer in order to read that -- let me ask

1 counsel how long we're likely to be. We have to
2 finish today.

3 MS EDWARDH: I understand.

4 THE COMMISSIONER: We have
5 Ms McCallion. How long do you think you'll be in
6 chief with Ms McCallion?

7 MR. DAVID: I'd say between 30 and
8 45 minutes?

9 THE COMMISSIONER: Well, then, I
10 think we're fine.

11 Is an hour long enough, or would
12 you like more --

13 MS EDWARDH: Could we have an hour
14 and 15 minutes? It will allow us to both grab
15 something to eat and review the materials.

16 THE COMMISSIONER: It's
17 twenty-five to one now. We will resume at ten to
18 two.

19 MS McISAAC: Sir, I have not yet
20 received confirmation that both transcripts are
21 ready, but ...

22 THE COMMISSIONER: If they're not,
23 then we'll follow Plan B.

24 MS McISAAC: Because we had to
25 obtain Mr. Dyet's as well because we didn't have

1 the full transcript --

2 THE COMMISSIONER: Right. I
3 appreciate --

4 MS McISAAC: And part of
5 Mr. Gould's.

6 THE COMMISSIONER: I appreciate,
7 Ms McIsaac, the assistance you're giving us. It's
8 one of those situations that come up.

9 If they're not ready, we'll go to
10 the other plan, and somehow we'll manage.

11 In any event, we'll resume at ten
12 to two.

13 MR. DAVID: Ten minutes to two?

14 THE COMMISSIONER: Yes.

15 MR. DAVID: All right. Thank you.

16 THE REGISTRAR: Please stand.

17 --- Upon recessing at 12:35 p.m. /

18 Suspension à 12 h 35

19 --- Upon resuming at 1:51 p.m. /

20 Reprise à 13 h 52

21 THE REGISTRAR: Please be seated.

22 Veuillez vous asseoir.

23 THE COMMISSIONER: Ms Edwardh?

24 MS EDWARDH: Thank you,

25 Mr. Commissioner. I wonder if I could just make

1 this observation.

2 I was handed about 30 seconds ago
3 a transcript from Ms McIsaac, and it is the
4 transcript in relation to Ms McCallion.

5 THE COMMISSIONER: Right.

6 MS EDWARDH: It runs from 14609 to
7 14687, which is about 80 pages, and while I am
8 sometimes a quick read, I'm not nearly that quick.

9 THE COMMISSIONER: Fair enough.

10 MS EDWARDH: I understand the
11 other transcript is in the course of preparation.

12 I'm in your hands, of course. I
13 am ready to commence my cross-examination, and
14 maybe would ask for an opportunity to look at
15 Mr. Gould's transcript when it is done, just to
16 see that I've covered everything that I need to
17 cover.

18 THE COMMISSIONER: Right. The
19 other one was Mr. Gould's, okay. Why don't we
20 finish the cross-examinations and any other
21 examinations. We will take a break for you to
22 look at the two transcripts, as long as you need,
23 and then we will call Ms McCallion.

24 MS EDWARDH: Thank you. I promise
25 to read quickly.

1 MS McISAAC: Sir, if I might just
2 make one observation, I spoke at the lunch hour to
3 both Ms Edwardh and Mr. David. I personally felt
4 rather uncomfortable being given the task of
5 deciding which portions of these transcripts were
6 in fact relevant. It will probably come as no
7 surprise that I've taken a narrow view of
8 relevance.

9 I did that actually for the very
10 specific reason in some cases because it avoided
11 issues of National Security Confidentiality where
12 I would have had to consult.

13 What I had suggested is that, in
14 the days following, your counsel take a look at my
15 choices, they identify additional materials that
16 they believe ought to be to give context to what's
17 there. We will take a look at that as well.

18 THE COMMISSIONER: And we will
19 address it if there have been any problem.

20 Is that satisfactory to you,
21 Mr. David?

22 MR. DAVID: That is correct,
23 Mr. Commissioner. Everybody is working in pretty
24 tight circumstances right now.

25 THE COMMISSIONER: Mostly,

1 Mr. David. I guess you are, but ...

2 --- Laughter / Rires

3 THE COMMISSIONER: No, just
4 kidding. Sure, okay. Let's go ahead on that
5 basis.

6 MS EDWARDH: Thank you,
7 Mr. Commissioner.

8 EXAMINATION

9 MS EDWARDH: I should call you
10 Dr. Gould. Is that correct?

11 MR. GOULD: No, I don't use it.

12 MS EDWARDH: Okay. I want to just
13 ask you a little bit about your earlier
14 involvement in this case, Mr. Arar's case.

15 I take it that you had some
16 consultative arrangements with A-OCANADA and
17 therefore had become aware of Mr. Arar as early as
18 July 29th, 2002?

19 MR. GOULD: Yes. We asked for a
20 briefing, just sort of -- after the events of
21 9/11, there were a variety of individuals started
22 to come to our attention. We asked for a briefing
23 as to who were people of concern, what was
24 happening, and I think that is how his name came
25 up as one of -- in that briefing, he was one of

1 several, if I recall correctly.

2 MS EDWARDH: And that briefing was
3 provided by...?

4 MR. GOULD: I'm not sure, I'm
5 sorry.

6 MS EDWARDH: A-OCANADA. Do you
7 know whether it was Cabana himself, Inspector
8 Cabana?

9 MR. GOULD: I do not recall. It
10 may well have been, but I'm not sure.

11 MS EDWARDH: And in respect of the
12 purpose of your involvement, although you may have
13 asked for a briefing -- and I take it the members
14 of A-OCANADA provided you with some of the details
15 of their investigation post-9/11?

16 MR. GOULD: Almost no details of
17 an investigation to my knowledge were ever passed
18 over.

19 MS EDWARDH: They provided you
20 with names of people who were targets?

21 MR. GOULD: People who were of
22 interest. They confirmed that people were of
23 interest, that sort of thing, but we didn't get
24 details of the investigation.

25 MS EDWARDH: What would be the

1 purpose of providing that information to the
2 Department of Foreign Affairs?

3 MR. GOULD: We are talking about
4 people who were abroad. So they were either
5 consular cases, or potential consular cases, or
6 might come to the attention of our missions
7 abroad, that sort of thing.

8 Certainly we weren't getting
9 information -- we didn't ask for and didn't
10 receive information about people in Canada.

11 MS EDWARDH: And so you would have
12 then been told that sometime in June 2002 -- no,
13 excuse me.

14 So you would have been told that
15 Mr. Arar was believed to be in Tunisia in July
16 2002 and had recently left Canada?

17 MR. GOULD: I don't recall the
18 details of how much I was told. It was very
19 little.

20 MS EDWARDH: All right.

21 MR. GOULD: I mean, the note that
22 is in my notes, there is one handwritten squib, I
23 think.

24 MS EDWARDH: I'm not sure I have
25 that squib.

1 MR. GOULD: Excuse me, could I --
2 I thought that is where it came from. Maybe I'm
3 wrong.

4 The first -- no, I guess it's not
5 there, unless it's...

6 MS EDWARDH: Could it be in tab 2?

7 MR. DAVID: Tab 2, perhaps page 1
8 of 6.

9 MS EDWARDH: I hope that
10 clarifies.

11 MR. GOULD: Yes, that's "RCMP". I
12 can't read the first word, "for their info. We
13 are having our people seek" something.

14 THE COMMISSIONER: "Consular"?

15 MR. GOULD: "Seek consular".
16 That's probably after he was...

17 MS EDWARDH: July 29th.

18 MR. GOULD: I'm not sure what that
19 is in aid of, I'm sorry, because that is before
20 Mr. Arar was sent off, I think.

21 MS EDWARDH: Certainly.
22 Considerably before.

23 MR. GOULD: It was that sort of
24 information. Almost nothing.

25 MS EDWARDH: There is certainly

1 nothing in that note that would confirm that
2 Mr. Arar's name was given to you on that day.

3 MR. GOULD: No. And I don't know
4 where that came from. I thought that that's where
5 that was from. Perhaps I'm mistaken.

6 MS EDWARDH: You could be mistaken
7 with respect to that, and it could have been the
8 names of other persons?

9 MR. GOULD: It could indeed have
10 been.

11 MS EDWARDH: Now, did you have an
12 ongoing relationship of consultation with
13 A-OCANADA?

14 MR. GOULD: No, not -- excuse me.

15 I attended, if I recall correctly,
16 two or three part-sessions -- I did not attend the
17 entire sessions -- of the task force meetings.
18 Colleagues attended, I think, one other, perhaps
19 two others, so it was not a long ongoing regular
20 consultation in that sense.

21 MS EDWARDH: And was there any
22 purpose from your perspective of your
23 participation in what was a police investigation?
24 What were you contributing to it?

25 MR. GOULD: We probably only

1 contributed that information that would have been
2 received from the embassy in Damascus: items,
3 diplomatic reports on his state or the latest
4 consultations with General Khalil, something like
5 that.

6 MS EDWARDH: Were you aware or
7 privy to Mr. Pardy's decision to pass on consular
8 visit notes?

9 MR. GOULD: No. I was not aware
10 of it, nor would I be privy to it.

11 MS EDWARDH: Were you aware or
12 privy to -- were you aware of the fact that CSIS
13 came into possession of certain consular notes?

14 MR. GOULD: No.

15 MS EDWARDH: Notes of visits with
16 Mr. Arar

17 MR. GOULD: I believe they were
18 copied or we shared with them. I would have to
19 see the documents to see if they were copied by
20 the mission, or whether we shared with them. But
21 we may have shared parts of those reports from the
22 post.

23 I can't recall an example of where
24 I did that or where that was done.

25 MS EDWARDH: We have heard

1 evidence that at least there are, leaving aside
2 the RCMP, there are two consular notes written --

3 MR. GOULD: From the CAMANT notes?
4 Is that what you mean by consular notes?

5 MS EDWARDH: Yes, they record the
6 contents of a consular visit with Mr. Arar, and
7 are written by Leo Martel --

8 MR. GOULD: Okay, no, I did not
9 have access to those myself and I didn't see them.

10 MS EDWARDH: And you would have
11 had no knowledge that they were placed in CSIS
12 hands?

13 MR. GOULD: I certainly. No, I
14 don't know -- no.

15 MS EDWARDH: And were you aware of
16 any system within the department whereby approval
17 could be given for release of those notes to other
18 interested entities like CSIS? And who, from your
19 perspective, would be the person to give that
20 approval if you were going to seek the release of
21 those notes to someone like the RCMP or CSIS?

22 MR. GOULD: If...

23 MS EDWARDH: Let me give you --

24 MR. GOULD: I would in the first
25 instance refer to JPD, Gar Pardy, and quite

1 possibly to the lawyers. I would take advice from
2 the Director General first, and then after that
3 consultation I may have gone to the departmental
4 lawyers.

5 But I don't recall it ever having
6 come up.

7 MS EDWARDH: All right. And so
8 while you were, if I can for want of a better
9 term, the manager of the liaison both with RCMP
10 and CSIS and DFAIT, I take it you were never
11 involved in any process whereby information of
12 that kind flowed either to the RCMP or to CSIS?

13 MR. GOULD: Coming out of the
14 CAMANT notes, no, not that I recall.

15 MS EDWARDH: I would like to go,
16 just for clarification, to your discussion with
17 Inspector Cabana.

18 MR. GOULD: Okay.

19 MS EDWARDH: I take it that your
20 knowledge of him, sir, arose because of your
21 contacts with A-OCANADA and that was a formal
22 relationship?

23 MR. GOULD: He had approached me
24 some time earlier. We had dealt with another
25 matter on another case, I presume successfully.

1 So when it came up that we discovered that there
2 was an A-OCANADA task force that was following
3 these individuals on whom we were certainly having
4 an interest because they were becoming or
5 potentially consular cases, I said, "Well,
6 Mr. Cabana is running it or on it. I will call
7 him." I knew him. I called him.

8 MS EDWARDH: So you call
9 Mr. Cabana, I take it as best you can recall, the
10 first time when you make your note about Mr. Arar
11 has been confirmed --

12 MR. GOULD: In this context. As I
13 say, there had been previous contexts.

14 MS EDWARDH: But in this
15 context --

16 MR. GOULD: Some months before.

17 MS EDWARDH: In this context, this
18 is the first occasion, and you make the overture
19 to Inspector Cabana to let him know that Arar has
20 now been identified as being -- confirmed as being
21 in Damascus?

22 MR. GOULD: It sounds strange that
23 I would have phoned; but just, by the way, we
24 haven't spoken on this issue before, but you might
25 like to know that he is there.

1 I would guess I must have spoken
2 to him before, but I have no memory of it and no
3 record of it, I don't believe, that I know of.

4 MS EDWARDH: You are talking a
5 little bit to yourself there. I take it you have
6 no memory or record of a prior conversation about
7 Mr. Arar's whereabouts?

8 MR. GOULD: That's right. Before
9 the one that is recorded there.

10 MS EDWARDH: So the only record we
11 have suggests that you made the telephone call?

12 MR. GOULD: Yes.

13 MS EDWARDH: Although you are
14 surprised that you would have made that call?

15 MR. GOULD: Yes, not having --
16 unless there had been previous conversations like,
17 "Do you know where he is? Oh, we don't know where
18 he is. Do you know where he is?" Sort of thing.

19 MS EDWARDH: Did you receive
20 instructions to communicate that information to
21 Inspector Cabana?

22 MR. GOULD: No idea. I don't
23 recall.

24 MS EDWARDH: In any event, the net
25 effect of it, the issue I wish to pursue, you have

1 described the three questions: Is he wanted in
2 Canada?

3 MR. GOULD: Mm-hmm.

4 MS EDWARDH: And just so I can
5 confirm it, I'm having trouble reading your
6 writing, sir, my apologies.

7 MR. GOULD: No, no. I have
8 trouble reading my writing, so don't apologize.

9 MS EDWARDH: That's comforting.
10 The answer "Is he wanted in Canada?" is "no".

11 MR. GOULD: Is he wanted in
12 Canada. Why -- if so, why? And will charges be
13 laid?

14 MS EDWARDH: The first question,
15 did you ask that of Inspector Cabana?

16 MR. GOULD: Yes, I did.

17 MS EDWARDH: And by using the term
18 "wanted", would I be correct that you were asking
19 were there allegations that would give rise to
20 charges against Mr. Arar? That's what "wanted"
21 means. Either there is a warrant or there could
22 be a warrant.

23 MR. GOULD: I think perhaps you
24 are seeing a non-legal person using words more --
25 less correctly than you or Mr. Cabana would have,

1 but that's -- "is he wanted?" Are you
2 investigating him? Are you looking for him? You
3 know, are you --

4 MS EDWARDH: So it's broader
5 than --

6 MR. GOULD: Broader than the legal
7 term, definition, you just gave it.

8 MS EDWARDH: And his answer --

9 MR. GOULD: I think I included the
10 legal in the third question, which is: "Will
11 charges be laid?"

12 MS EDWARDH: And what was his
13 answer again to the first one, is he being
14 investigated, or do you want him here, or
15 whatever?

16 MR. GOULD: As I read my notes, he
17 came up in an investigation, but it's a long way
18 from any charges. They are still trying to find
19 out who he is. They would like to talk to him.
20 Problem is association.

21 MS EDWARDH: So he conveyed to
22 you, at least from his perspective, that the
23 problem was not any knowledge of Mr. Arar's
24 activities themselves but rather his connection to
25 persons?

1 MR. GOULD: That is my reading of
2 my note, so I would think you are probably
3 correct.

4 MS EDWARDH: Inspector Cabana also
5 answered implicitly, "will charges be laid", by
6 saying really there are no charges in sight.
7 That's your understanding?

8 MR. GOULD: That is my
9 understanding -- that was my understanding.

10 MS EDWARDH: But he does make the
11 offer to provide evidence or information from
12 their investigation to the Syrians?
13 --- Pause

14 MR. GOULD: My notes, as I have
15 them before me, don't confirm that, but they imply
16 that.

17 MS EDWARDH: Yes. They
18 certainly -- and your recollection?

19 MR. GOULD: About the same.

20 MS EDWARDH: Okay. But then there
21 is other evidence, sir, that suggests that such an
22 openness to the sharing of information about
23 Mr. Arar was there for the RCMP.

24 So the question really is: Once
25 this is on your plate, what steps, if any, do you

1 take to inform the relevant persons that such a
2 sharing from the RCMP perspective is at least on
3 the table?

4 MR. GOULD: I would have informed
5 Messrs. Heatherington and Livermore, and almost
6 certainly Mr. Pardy, but I can't guarantee that 99
7 per cent. I was gathering information on this
8 occasion in order to provide information to our
9 Ambassador in Damascus who was going to meet a
10 senior representative of the --

11 MS EDWARDH: General Khalil?

12 MR. GOULD: It was General Khalil.
13 Probably.

14 I would guess -- I don't recall
15 that I phoned Ambassador Pillarella. I would
16 guess that it was probably Mr. Livermore who did
17 so, although I may have. I don't recall.

18 MS EDWARDH: You can't exclude
19 that as being --

20 MR. GOULD: I cannot exclude it.
21 But I would certainly think those two at least,
22 and probably Mr. Pardy. But I can't confirm it.

23 MS EDWARDH: All right. So
24 assuming that once you have in your hands this
25 information that the RCMP is prepared to share

1 this, isn't that, sir, exactly the kind of
2 information that the Ambassador would want to have
3 for his meeting with General Khalil that is
4 upcoming in the next day or so?

5 MR. GOULD: I would think that --
6 although I went seeking information about Mr. Arar
7 specifically, to give him context and background,
8 yes, he would like to know that.

9 MS EDWARDH: Certainly, because he
10 is going to meet the General. Mr. Arar is in
11 detention in Syria, and the RCMP are in theory
12 offering, at least, to provide information to the
13 Syrians that they may find of relevance to their
14 own investigation.

15 I mean, isn't that the sum and
16 total of it?

17 MR. GOULD: As you say, so it
18 would seem.

19 MS EDWARDH: And I take it that it
20 would have been either your job or someone to whom
21 you report to let the Ambassador know that that
22 was on the table?

23 MR. GOULD: Yes, in the context of
24 the other information on Mr. Arar himself, yes.

25 MS EDWARDH: Yes.

1 MR. GOULD: Okay.

2 MS EDWARDH: You are not
3 uncomfortable with that conclusion.

4 MR. GOULD: No, no.

5 MS EDWARDH: And do you know, sir,
6 should the Ambassador have passed on that general
7 offer to Syrian Military Intelligence or General
8 Khalil, thereafter would the information have
9 flowed through your good offices or would the
10 information have flowed directly then to the
11 Ambassador or through the LO Rome or some other
12 circuit?

13 MR. GOULD: I had no idea if the
14 offer was made. If the Ambassador even raised
15 that, he may have -- it may have been sufficiently
16 vague that he didn't feel comfortable raising the
17 prospect of sharing information.

18 As you say, I think you said there
19 is other information which implies that he did
20 know this or --

21 MS EDWARDH: I'm going to leave
22 that aside.

23 MR. GOULD: Okay. The information
24 almost certainly would have gone through their LO.

25 MS EDWARDH: Their LO being the

1 liaison officer in Rome?

2 MR. GOULD: I'm sorry, the liaison
3 officer in Rome.

4 MS EDWARDH: And that would be the
5 CSIS liaison --

6 MR. GOULD: No, the RCMP liaison.

7 MS EDWARDH: The RCMP liaison
8 officer in Rome.

9 MR. GOULD: Is it Rome?

10 MS EDWARDH: Yes, I think we now
11 know that. And so that would be the ordinary
12 channel.

13 So if the Ambassador had made the
14 suggestion, then indeed if it had been accepted --
15 and we will leave the Commissioner to determine
16 what did happen, but the route that it would go is
17 through LO Rome?

18 MR. GOULD: Probably.

19 MS EDWARDH: Not back through ISI
20 or ISD?

21 MR. GOULD: It could have gone
22 that way, but it is more likely to have gone
23 police force to police force, but...

24 MS EDWARDH: Now, to the best of
25 your knowledge, I take it you have no recollection

1 or there is no record that any RCMP information
2 flowed through the Department of Foreign Affairs
3 to Syrian Military Intelligence?

4 MR. GOULD: Correct.

5 MS EDWARDH: And is that also the
6 case of any information that may have somehow been
7 reposed in ISI or ISD? Nothing went to Syrian
8 Military Intelligence?

9 MR. GOULD: From us?

10 MS EDWARDH: Yes.

11 MR. GOULD: No.

12 MS EDWARDH: Were you aware, sir,
13 of information that flowed from CSIS through DFAIT
14 to Syrian Military Intelligence?

15 MR. GOULD: No --

16 MS McISAAC: May I take a moment
17 just to consult on whether that question may be
18 answered?

19 --- Pause

20 MS McISAAC: My instructions are
21 that we are refusing to confirm or deny whether or
22 not any information travelled from CSIS to the
23 Syrian authorities.

24 MS EDWARDH: That's not the
25 question, though. It has travelled from CSIS to

1 DFAIT to be transmitted to the Syrian authorities.

2 MS McISAAC: The objection would
3 apply to that question or an answer to that
4 question as well.

5 THE COMMISSIONER: Thank you.

6 MS EDWARDH: Mr. Gould, I take it
7 when Inspector Cabana made this offer, that the
8 RCMP were prepared to share the fruits of their
9 own investigation with Syrian military, that was a
10 fairly unusual offer from your perspective to be
11 told about?

12 MR. GOULD: It's unusual, yes. I
13 don't have the wording before me of his offer and
14 I don't know what the reference is, but it's
15 certainly unusual.

16 MS EDWARDH: Right. I am going to
17 suggest to you, sir, that you weren't aware of
18 other cases, leaving aside the names, where you at
19 least, or ISI and ISD, had been conduits for
20 police information to foreign intelligence
21 agencies?

22 MR. GOULD: Can I answer this or
23 does it fall under the -- excuse me.

24 Can I speak to my counsel or
25 Ms McIsaac?

1 THE COMMISSIONER: Ms McIsaac?

2 MS McISAAC: I'm sorry, sir, I
3 have no idea what the answer would be, so I'm
4 having some difficulty here.

5 If it deals with other
6 individuals, I have some difficulty, and out of an
7 abundance of caution I have to say that if we are
8 dealing with whether or not ISI or ISD facilitated
9 the transfer of policing information to other
10 police or security authorities in respect of other
11 individuals, I would first argue that it is not
12 relevant, and out of an abundance of caution I
13 would have to take the position that we claim
14 national security with respect to any answer
15 relating to that.

16 THE COMMISSIONER: Okay.

17 MS EDWARDH: If the offer, as I've
18 described it -- although I appreciate you are not
19 precisely clear, there certainly is other evidence
20 that such an offer was made for the sharing of
21 information in respect of Mr. Arar.

22 What I wanted to simply ask you is
23 this: To your knowledge, was there ever any
24 discussion with Inspector Cabana's superiors or
25 anyone between yourself or anyone else in DFAIT

1 about the propriety of such a sharing?

2 MR. GOULD: Not to my knowledge.

3 MS EDWARDH: Were you ever
4 consulted one way or the other about DFAIT's
5 perspective on the sharing of police investigative
6 information with entities like Syrian Military
7 Intelligence?

8 MR. GOULD: Not to my knowledge.

9 MS EDWARDH: So as someone who was
10 on the policy side, and someone who also watched
11 over the relationships between CSIS and the RCMP
12 and DFAIT, do I take it then you were never
13 specifically asked to give advice about whether or
14 not such sharing carried with it certain risks
15 attached for the individual who might be the
16 subject of investigation, if they were detained in
17 Syria?

18 MR. GOULD: I do not recall ever
19 being so asked.

20 MS EDWARDH: And hypothetically,
21 sir, if you had been asked the question about
22 whether a Canadian citizen who is being detained
23 by Syrian Military Intelligence, and who is under
24 investigation by Canadian police forces should be
25 a person whose information is shared with Syrian

1 Military Intelligence, would you have had any
2 advice to offer about the risks associated with
3 such information-sharing?

4 MR. GOULD: You want my comments
5 on the propriety of it, the legality of it, or the
6 risks associated with it?

7 MS EDWARDH: The risks associated
8 with it.

9 MR. GOULD: Had I been asked --
10 and I do not recall being asked -- I believe I
11 would have said that there would be some risk to
12 the individual, just because the enforcement of
13 laws in Syria is rather more rigorous than it is
14 in Canada, physically rigorous.

15 MS EDWARDH: Physically rigorous.
16 Let me just explore that a bit further.

17 This would be particularly the
18 case if in fact the person was being detained
19 without charge and there being no trial in sight,
20 simply being detained?

21 MR. GOULD: No difference.

22 MS EDWARDH: No different? So am
23 I correct, sir, that the risks that you would have
24 identified would have been both the risks
25 associated with a much more severe penalty, as

1 well as the risks of the use of force during
2 interrogation?

3 MR. GOULD: I would have been
4 concerned about the use of aggressive or rigorous
5 questioning tactics, you know, however you want to
6 call them. I worry about the terminology, but I
7 think you understand what I mean.

8 MS EDWARDH: I understand what you
9 mean. And that language --

10 MR. GOULD: Strictly hypothetical.
11 I was never asked --

12 MS EDWARDH: I know. I clearly
13 understand that, sir. And I want to assure you
14 there is no document that suggests you were asked.

15 MR. GOULD: Okay, good.

16 MS EDWARDH: But it just seems to
17 me that you are simply one of those persons who
18 could have opined about the risks and were about
19 the business of managing those two entities, CSIS
20 and RCMP, in their relationship with DFAIT.

21 And so when you use the term
22 "aggressive interrogation", just so there is no
23 illusion here, hypothetically such interrogation
24 could involve the use of torture?

25 MR. GOULD: I don't know at what

1 line torture starts but certainly physical force,
2 violence.

3 MS EDWARDH: In the course of
4 interrogation?

5 MR. GOULD: In the course of an
6 interrogation.

7 MS EDWARDH: And had then you been
8 asked hypothetically, you would have alerted
9 Inspector Cabana or CSIS that one of the concerns
10 that they would have to factor into any decision
11 is that that kind of interrogation was a
12 possibility, if you had been asked.

13 MR. GOULD: Had I been asked, I
14 would like to think I would, but that's -- yes.

15 MS EDWARDH: Yes. I mean, that's
16 what you said.

17 MR. GOULD: Yes.

18 MS EDWARDH: Let me go on then, if
19 I could, Mr. Gould. I just want to take you, if I
20 could, to the little volume of documents that is
21 associated with your testimony, Exhibit 237.

22 Do you have that there?

23 MR. GOULD: 237?

24 MS EDWARDH: Yes. And in
25 particular, I would like you to turn to tab 5,

1 page 7. I would like you, sir, to look at the
2 date, 16/12/02, which is at page 7.

3 MR. GOULD: Yes.

4 MS EDWARDH: And the entry reads:

5 "In response to a request for
6 a debriefing on the CSIS
7 visit to Damascus, CSIS
8 provides a report summarizing
9 what appears to be
10 information provided to
11 Syrian Military Intelligence
12 by Arar under interrogation."

13 Do you see that reference?

14 MR. GOULD: Mm-hmm.

15 MS EDWARDH: Is there anything
16 wrong with that statement? Is it factually
17 accurate or is it accurate?

18 MS McISAAC: Mr. Commissioner, we
19 have taken the position on a number of occasions
20 that details of what transpired during the CSIS
21 visit to Damascus is a matter of a claim for
22 National Security Confidentiality, and I would
23 object to the witness answering any questions in
24 this area in terms of the national security
25 implications of any answer he might be able to

1 give.

2 THE COMMISSIONER: Well, I
3 understand that, and if there is an objection,
4 there is an objection. But there is no claim over
5 this statement. Is there an objection to simply
6 asking -- I understood the question was just is
7 this statement correct?

8 MS EDWARDH: That's correct,
9 Mr. Commissioner.

10 MS McISAAC: It's one of those
11 difficult areas, sir, where we keep -- we can't
12 tell the whole story in public. We are not
13 telling the whole story in public, and these
14 little snippets, in my submission, end up being
15 rather misleading for most people.

16 THE COMMISSIONER: Well, I know
17 the whole story.

18 MS McISAAC: I know you do, sir.
19 But we are doing this for other reasons.

20 THE COMMISSIONER: I don't want to
21 quibble, but I have a hard time understanding how
22 answering that question would be misleading
23 because of anything that was in camera.

24 MS McISAAC: As long as the
25 witness is confined to a statement as to whether

1 that is accurate or not and we don't get into the
2 details going beyond that.

3 THE COMMISSIONER: When I saw it
4 and I raised it before the lunch hour, that is
5 what was in my mind.

6 MS EDWARDH: Well, that's why I'm
7 doing this, Mr. Commissioner, because I have taken
8 the witness to the next tab where the reference to
9 this date is a little different, and I want to
10 know which is correct.

11 I am troubled by my friend's
12 statement, you know, little bits get us into
13 trouble. Well, all Mr. Arar has is what you give
14 us in this forum, Mr. Commissioner, and I'm
15 content to pursue little bits, if that's all I
16 get.

17 THE COMMISSIONER: The answer is,
18 you can ask if that statement is correct.

19 And you can answer that question.

20 MS EDWARDH: Mr. Gould, I have
21 taken you to tab 5, and I am looking particularly
22 at page 7, under the date December 16th, 2002.

23 First of all, there is a reference
24 "TS". Can I ask what "TS" means?

25 MR. GOULD: Top secret.

1 MS EDWARDH: I see. All right.

2 Then it says:

3 "In response to a request for
4 a debriefing on the CSIS
5 visit to Damascus, CSIS
6 provides a report summarizing
7 what appears to be
8 information provided to
9 Syrian Military Intelligence
10 by Arar under interrogation."

11 Sir, to the best of your
12 knowledge, is that statement true or false?

13 MR. GOULD: To the best of my
14 knowledge, it is true. But it's to the best of my
15 knowledge. I cannot recall.

16 MS EDWARDH: You don't have all
17 the records in front of you, but is there anything
18 that you can identify as incorrect about that
19 assertion?

20 MR. GOULD: No.

21 MS EDWARDH: Thank you.

22 I must admit, Mr. Gould, and I'm
23 going to ask you to help us, we have heard that as
24 of June 5th -- we have heard evidence, and I'm not
25 suggesting it came from you, but as of June 5th

1 there had been a consensus and resolution reached
2 that led to a memorandum in support of a letter
3 that the Minister of Foreign Affairs was to write,
4 and that really finished off the kind of
5 difficulties or institutional friction that
6 existed between DFAIT and the Mounties and CSIS.

7 Even with that sign-off, sir, on
8 June 5th, and the consultation process that had
9 gone on, it's clear, is it not, that there were --
10 and this leads to your memorandum. But it's clear
11 that there were ongoing concerns -- and I'm going
12 to call it conflict, in the broadest sense --
13 between the RCMP and CSIS and DFAIT about the
14 course of action that should be followed in
15 Mr. Arar's case, and what CSIS and the RCMP could
16 or would not agree with?

17 MR. GOULD: In my mind, there was
18 the potential for more friction.

19 MS EDWARDH: We will come to your
20 mind in a little bit.

21 But it was quite clear, too, that
22 that was not you just operating in isolation of
23 your colleagues. It is my understanding, sir,
24 that Mr. Heatherington shared your concerns.

25 MR. GOULD: You would have to ask

1 Mr. Heatherington that, I'm sorry. I haven't read
2 his testimony.

3 MS EDWARDH: Well, let me take you
4 to tab 4 in these materials, and there is a brief
5 outline. It is tab 4, page 3 of 3.

6 Well after the June 5th memo is
7 cleared through the Deputy Minister's office,
8 there is a reference to a June 18th, 2003,
9 proposal from ISI -- which I believe comes from
10 Mr. Heatherington -- to Gar Pardy, struggling
11 again with the language of a possible draft. So
12 we are now two weeks after the deputy signed off.

13 What is being proposed by ISI is
14 language that is designed to suit the interests of
15 the RCMP.

16 Do you see that?

17 MR. GOULD: Mm-hmm.

18 MS EDWARDH: Now, first of all, I
19 am correct, am I not, to suggest that when ISI
20 proposed that language to Mr. Pardy, it was in aid
21 of a continuing attempt to bring the RCMP and CSIS
22 into some kind of formal letter?

23 MR. GOULD: I really don't recall.

24 MS EDWARDH: You don't recall.

25 MR. GOULD: I do not recall.

1 MS EDWARDH: Certainly the date of
2 this suggests that June 5th was not the end of the
3 matter?

4 MR. GOULD: That would be
5 suggested by the dates.

6 MS EDWARDH: And of course
7 Inspector Cabana testified that language which
8 indicated that Mr. Arar was the subject of a
9 national security investigation, et cetera, was
10 recognized -- I'm sorry, it wasn't Inspector
11 Cabana. It was Mr. Loepky who testified that he
12 appreciated that that language would be
13 counterproductive to effecting Mr. Arar's release.

14 Do you agree that the use of that
15 language in a letter to the Syrians would be
16 counterproductive to effecting Mr. Arar's release?

17 MR. GOULD: I don't know enough
18 about the case to be able to make a judgment call.
19 I really don't.

20 MS EDWARDH: You are certain about
21 that?

22 MR. GOULD: Yes.

23 MS EDWARDH: You were asked a
24 whole series of questions about how the telephone
25 call vanished from the chronologies, and let me

1 just understand your evidence, sir.

2 I take it you yourself did not
3 remove the telephone call.

4 MR. GOULD: No.

5 MS EDWARDH: You yourself would
6 have chosen to put the call in had you been
7 drafting the chronology?

8 MR. GOULD: Yes.

9 MS EDWARDH: And who was it that
10 removed the telephone call, to the best of your
11 knowledge?

12 MR. GOULD: I do not know. Do not
13 know.

14 MS EDWARDH: Do you know if that
15 was within the Department of Foreign Affairs or
16 was it after a -- I don't know. Or PCO? Any
17 knowledge about where it disappeared?

18 MR. GOULD: This was a
19 departmental chronology. I would therefore assume
20 it was someone in the department -- or it was a
21 decision taken in the department.

22 MS EDWARDH: All right. Now, I
23 take it the removal of that didn't cause you to
24 make any objection about the reliability of the
25 chronology?

1 MR. GOULD: No.

2 MS EDWARDH: You were still
3 prepared to sign off on it?

4 MR. GOULD: Yes.

5 MS EDWARDH: One of the things
6 that puzzles me is not only is the call not
7 mentioned when it disappears from the chronology,
8 but as I read the chronologies, the call
9 disappears, a lengthy discussion with CSIS and the
10 RCMP to try and forge an agreement disappears, the
11 memo on June 5th going up to the deputy
12 disappears, and that's all just taken out of the
13 chronology.

14 And if you would just like to take
15 a moment to take a look -- do you agree with that?

16 MR. GOULD: I will take your word
17 for it.

18 MS EDWARDH: Well, no, I don't
19 want you to take my word. I'm not testifying,
20 sir. I may be making suggestions and I want you
21 to satisfy yourself.

22 Certainly we can start by looking
23 at the very last chronology.

24 THE COMMISSIONER: That's tab 8?

25 MS EDWARDH: Which is tab 8. It

1 is the final chronology.

2 The way I read it, this whole
3 series of meetings from May 5th to June 5th, and
4 the letter that is so much the subject of concern
5 just doesn't exist in here, unless I have misread
6 something.

7 MR. GOULD: There is certainly a
8 reference on the 18th to an agreed text to be used
9 in a ministerial letter.

10 MS EDWARDH: You help me with
11 this.

12 MR. GOULD: Page 15 of 19, tab 8.

13 MS EDWARDH: Fifteen.

14 MR. GOULD: Fifteen of 19, under
15 18 June '03, under TS -- it's got an acronym. And
16 there is reference to a...

17 MS EDWARDH: Well, the problem
18 that's so kind of -- let me stop about this.

19 When CSIS and the RCMP provide an
20 agreed text, it's June 18th.

21 MR. GOULD: Mm-hmm.

22 MS EDWARDH: The attempt to get an
23 agreement is long gone because the Deputy Minister
24 or Assistant Deputy Minister has signed off. It
25 appears, from what we have heard, that everything

1 was honky dory with CSIS, and the RCMP say, no, go
2 write a letter that doesn't mention us.

3 MR. GOULD: Mm-hmm.

4 MS EDWARDH: There is no mention
5 here -- we will try it in small bits.

6 There is no mention in this
7 chronology of the meetings held to discuss an
8 agreed text that occurred in May, is there?

9 MR. GOULD: Correct.

10 MS EDWARDH: There is no mention
11 that on June 5th Mr. Pardy signed off and placed
12 on Ms McCallion's desk a document which
13 recommended to the Minister that he write his own
14 letter to the Minister of Foreign Affairs in
15 Syria? No mention of that?

16 MR. GOULD: Correct.

17 MS EDWARDH: No mention of the
18 alleged phone call between Mr. Hooper and
19 Ms McCallion where Mr. Hooper is alleged to have
20 made remarks about CSIS's concerns?

21 MR. GOULD: Correct.

22 MS EDWARDH: And when you read
23 this chronology, sir, one of the remarkable things
24 about it -- and we haven't really addressed it --
25 is if on June 5th Ms McCallion is recommending to

1 the Deputy, and the Deputy is recommending to the
2 Minister, we all of course know that the Minister
3 never signed it?

4 MR. GOULD: Correct.

5 MS EDWARDH: Correct?

6 MR. GOULD: Okay, yes.

7 MS EDWARDH: You are aware that
8 the Minister never signed this letter?

9 MR. GOULD: Yes, I am.

10 MS EDWARDH: Mr. Pardy told us
11 something about institutional politics, and I
12 would like you to comment about it.

13 The effect of what he said is, you
14 know, discussions are expected to take place
15 interdepartmentally, so if CSIS has a difficulty
16 with what we are doing, or the RCMP, we are
17 expected to be responsible and try to address our
18 concerns with our colleagues in another
19 department.

20 Do you agree with that?

21 MR. GOULD: I agree.

22 MS EDWARDH: And if we cannot
23 agree and we are not able to come to some
24 consensus, we go up the hierarchy. Is that
25 correct?

1 MR. GOULD: Yes.

2 MS EDWARDH: And ultimately the
3 resolution, if you have to go all the way up to
4 the hierarchy, is to be found in the Prime
5 Minister's Office?

6 MR. GOULD: Yes.

7 MS EDWARDH: So from an outsider
8 looking in, it seems awfully like somewhere after
9 Ms McCallion signed off, this whole issue
10 continued to percolate, and on June 18th there is
11 another proposal. But ultimately the PMO
12 addresses this issue by calling upon a special
13 envoy to deliver a letter from the Prime Minister,
14 and he is the one who ultimately bridges the
15 consensus or makes the consensus, does he not?

16 MR. GOULD: So it would appear
17 from the chronology.

18 MS EDWARDH: Yes.

19 MR. GOULD: Or that could -- yes.

20 MS EDWARDH: So it would appear
21 from the chronology.

22 So the concerns you fairly
23 identify -- and let me go back to your letter, if
24 I could, or your memo at tab 2.

25 I got a little puzzled by what

1 this document was. Commission counsel fairly
2 described it as a draft that is the kind of thing
3 that is obviously on your computer?

4 MR. GOULD: Correct.

5 MS EDWARDH: Then obviously you
6 also described it, not only as a draft, but as
7 something that was meant to provoke discussion and
8 therefore in some respects the language was a bit
9 dramatic.

10 Do you recall that testimony?

11 MR. GOULD: Yes, I do.

12 MS EDWARDH: So even though it is
13 a draft, we are to take it that this was a draft
14 that was shared for the purposes of discussion?

15 MR. GOULD: Yes.

16 MS EDWARDH: And can you tell us,
17 sir, who it would have been shared with for the
18 purposes of the discussion you wanted to have?

19 MR. GOULD: My assumption is that
20 this would have been shared with Mr. Heatherington
21 and Mr. Livermore.

22 MS EDWARDH: Anyone else?

23 MR. GOULD: I cannot think of
24 anyone else. In the first instance, I would have
25 just delivered to them a hard copy of the two for

1 comment, suggestion, "What do you think?" And
2 that's the way it would start.

3 MS EDWARDH: And is it the case
4 that you did deliver a hard copy of this to Mr. --

5 MR. GOULD: I don't recall, sorry.

6 MS EDWARDH: But logically --

7 MR. GOULD: Logically, that is
8 what I would have done.

9 MS EDWARDH: That is not
10 inconsistent with its character as a draft. It is
11 there for the first level of discussions --

12 MR. GOULD: There are typing
13 mistakes and that sort of thing, so it was a very
14 early push-out on the machine and hit print.

15 MS EDWARDH: Right. But my point
16 is, even as a draft, this is the kind of document
17 you expect that you at least shared within the
18 inner circle of ISI.

19 MR. GOULD: Yes.

20 MS EDWARDH: And that it was the
21 subject of discussion for your group.

22 MR. GOULD: Yes.

23 MS EDWARDH: You perhaps would
24 appear more than anyone to have been a person
25 bridging the relationships between DFAIT, the RCMP

1 and DFAIT, and CSIS in this management role, for
2 want of a better term, between CSIS and the Los --

3 MR. GOULD: Yes, I will accept
4 that.

5 MS EDWARDH: You used the term,
6 unsatisfactory though it may be, so I'm just
7 following up with it.

8 MR. GOULD: It is. I wanted to be
9 facilitating a relationship, managing a
10 relationship, assisting a relationship, but...

11 MS EDWARDH: But you are there to
12 help smooth over the --

13 MR. GOULD: Whatever.

14 MS EDWARDH: Whatever. Okay.

15 And there was no one else that had
16 that responsibility, to the best of your
17 knowledge, in ISI? That was your obligation.

18 MR. GOULD: Excuse me. I was
19 given that responsibility, but we all worked at it
20 when necessary, Mr. Heatherington, Mr. Livermore,
21 Saunders, the others, but it was on my --

22 MS EDWARDH: It was part of your
23 job description.

24 MR. GOULD: Yes.

25 MS EDWARDH: And they would of

1 course assist you if circumstances required it?

2 MR. GOULD: And direct me.

3 MS EDWARDH: And direct you.

4 MR. GOULD: Yes.

5 MS EDWARDH: Do you have any
6 recollection of the conversation that this
7 memorandum precipitated?

8 MR. GOULD: No, I don't. No, I do
9 not.

10 MS EDWARDH: Certainly your
11 concerns -- and I just want to tap into this for a
12 moment, if I could.

13 Your description that CSIS has
14 made it clear to the department that they would
15 prefer to have Mr. Arar remain in Syria rather
16 than returned to Canada -- do you see that?

17 MR. GOULD: Mm-hmm.

18 MS EDWARDH: Sir, as someone who
19 had been to meetings with CSIS, had struggled
20 through the issue of the language in the letter,
21 or had seen the letter issue develop, had heard
22 about the phone call, I take it you are not
23 relying on any single event but rather on the kind
24 of collection of conversations, discussions,
25 innuendos, all those things that go into

1 interpreting and understanding a position?

2 MR. GOULD: Correct.

3 MS EDWARDH: So it's not just what
4 someone may have said on one occasion but the
5 total dealings and the institutional culture and
6 mandate of the organization?

7 MR. GOULD: Yes.

8 MS EDWARDH: And I take it that
9 your overall conclusion from weeks and months of
10 dealings is that this was their position with
11 respect to Maher Arar, otherwise you would not
12 have set it down as such?

13 MR. GOULD: Yup.

14 MS EDWARDH: It also strikes me,
15 and I have seen this in other contexts, that the
16 comment that you make is very important to the
17 provision of consular services, that the consular
18 services persons providing assistance to Canadian
19 citizens overseas can't constitute themselves as
20 judge and jury.

21 So when you say guilty or
22 innocent, Canadian citizens have the right to
23 these kinds of services?

24 MR. GOULD: Yes.

25 MS EDWARDH: And I take it that

1 was one of the things that CSIS appeared to you --
2 CSIS and the RCMP, I think you said in chief --
3 appeared to you to be reluctant to accept?

4 MR. GOULD: Yes, if you accept
5 that the wording may be more dramatic than it --
6 but, yes.

7 MS EDWARDH: In general the sense
8 that providing, at enormous cost sometimes and a
9 great deal of energy, services to people who may
10 have been even found guilty in a serious criminal
11 case, may be something that they had difficulty --
12 or a serious criminal case with intelligence
13 components -- was something that CSIS appeared to
14 have difficulty with?

15 MR. GOULD: Yes, okay. Yes, fair
16 statement.

17 MS EDWARDH: Now, post-9/11, one
18 of the concerns it would appear that CSIS had
19 conveyed to you, and to I'm going to suggest
20 others, is that there wasn't enough evidence to
21 charge Mr. Arar with anything but they were
22 concerned that maybe out there there may be
23 something that could show that Canada's efforts
24 brought back someone who was an extremist and a
25 terrorist? They were afraid of that, although

1 they had no information that that was the case?

2 I'm drawing that from --

3 MR. GOULD: No, I see where you're
4 drawing it from and I'm trying to think of
5 occasions -- there were meetings about which --

6 MS EDWARDH: You can't maybe tell
7 me about meetings, but I think you can answer the
8 question that I've asked you, unless there's an
9 objection, but I don't hear one, so if you
10 wouldn't mind, sir, answer the question.

11 MR. GOULD: I'm trying to think of
12 how I should phrase it because I don't want to
13 give undue weight to something.

14 I certainly had that impression,
15 and that's drawing on a variety of experiences.

16 MS EDWARDH: Yes, and I think we
17 have before us information to indicate that CSIS
18 was mindful of the example with Mr. Khadr, and the
19 efforts made by the Prime Minister that resulted
20 or may have affected his release and then
21 subsequently information arose indicated he had
22 been obviously much more involved in activities
23 than people had initially understood.

24 So that what seems to be at the
25 heart of this as well.

1 MR. GOULD: Mm-hmm.

2 MS EDWARDH: Is that correct?

3 This fear --

4 MR. GOULD: It may indeed be, yes.
5 That example I am not using, but that may indeed
6 be it.

7 MS EDWARDH: It's one of the
8 examples that was floating in the environment, was
9 it not?

10 MR. GOULD: Yes.

11 MS EDWARDH: Were you aware of any
12 discussion that CSIS itself could take steps
13 through its own channels to assist by
14 communicating with Syrian Military Intelligence a
15 message of send Mr. Arar home? Was there any
16 discussion -- or were they so far away from that
17 there was no point in having the discussion?

18 MR. GOULD: I'm not sure I can
19 answer that because -- should I fall back, I can
20 neither confirm nor deny the relationship between
21 CSIS and Syria. I don't know the state of that.

22 MS EDWARDH: Well, Ms McIsaac.

23 MS McISAAC: Well I basically
24 understood the question to be, if I can
25 paraphrase, if Foreign Affairs ever asked CSIS to

1 make contact with Syria to ask for Mr. Arar's
2 release.

3 MS EDWARDH: Through the
4 intelligence channels.

5 MR. GOULD: Okay. Then, no. Not
6 to the best of my knowledge.

7 THE COMMISSIONER: The second part
8 of the question I think was -- was that because
9 you said there would be no sense --

10 MS EDWARDH: Yes, I think -- I
11 have to ask you to finish the question.

12 Would one of the reasons that such
13 a request would not be made is CSIS had made its
14 position clear that Mr. Arar -- it would be better
15 if Mr. Arar remain in Syria?

16 MR. GOULD: No, I don't think that
17 would have been a factor.

18 MS EDWARDH: So why not ask?

19 MR. GOULD: Don't know. Don't
20 know.

21 --- Pause

22 MR. GOULD: Excuse me. If I can
23 just?

24 --- Laughter / Rires

25 MR. GOULD: I'm sorry, I just

1 reconsidered -- not reconsidered, I don't know.
2 But it may have been, and I do not recall our
3 conversation, but it may have been the fact that
4 Ambassador Pillarella had a personal relationship
5 with General Khalil, and that that was deemed to
6 be as good a pipeline into that organization as
7 one could ever ask for. That there would have
8 been no merit in asking a CSIS liaison officer,
9 who would have gone in at a lower level. That
10 could have been it. That would be very logical in
11 the circumstances of the --

12 MS EDWARDH: And even if one were
13 to accede to the logic of that for a moment, I
14 take it your evidence today, sir, is you can never
15 remember sitting around a table and mooting the
16 issue of should CSIS do this or do we have a more
17 effective entree?

18 MR. GOULD: I don't recall that I
19 sat around and table and discussed that, correct.

20 MS EDWARDH: And I take it you
21 have no reason to believe it was mooted by others.

22 MR. GOULD: I have no reason to
23 believe it was not, so I have no comment on that.

24 MS EDWARDH: Mr. Gould, thank you
25 for answering my questions, sir.

1 MR. GOULD: Oh? That's all?

2 MS EDWARDH: That's it. Thank
3 you, Mr. Commissioner.

4 THE COMMISSIONER: Mr. Boxall, do
5 you have any questions?

6 MR. BOXALL: I do.

7 THE COMMISSIONER: You're next.

8 EXAMINATION

9 MR. BOXALL: Mr. Gould, I
10 represent Inspector Cabana, and just to pick up
11 with respect to the last comment. You were asked
12 if you ever sat around with -- in a totally
13 different context than where I'm going -- but
14 Ms Edwardh is asking you if you sat around and
15 discussed or mooted the possibility with respect
16 to the letter she was talking about from CSIS.

17 My question is going to be more
18 general in nature, and that is, the process of
19 putting something out for discussion, either in a
20 memo to attract discussion from people that you
21 work with, or sitting around and mooting
22 possibilities, I take it that's something you do
23 do in your everyday work?

24 MR. GOULD: I'm fortunately able
25 to say I did do.

1 MR. BOXALL: That you did do.

2 Okay.

3 MR. GOULD: Thank you.

4 We were a very collegial, and I
5 assume the division or bureau still is. Many
6 issues would be discussed standing in a doorway or
7 meeting in the open area as often, or probably
8 more often, than you would put a draft together,
9 as I did here, to force an issue. So when you say
10 "moot," I see us literally three people standing
11 with a coffee, it could be Mr. Heatherington,
12 Mr. Livermore, and myself standing there saying,
13 "What should we do about this?" As easily as it
14 could have been as, "What did you think of last
15 night's hockey game?"

16 MR. BOXALL: And as perhaps
17 lawyers could well understand who accept the
18 adversarial decision gets to the best decision and
19 the result, there is often a value in taking pros
20 and cons of different positions and determining
21 what the best route might be to go. It allows for
22 that discussion to consider all alternatives?

23 MR. GOULD: Yes.

24 MR. BOXALL: Right. Okay. Now
25 I'm not quite certain what material is public and

1 what isn't, so I'm going to try and be fairly
2 general here, but clearly you had an ongoing
3 consultative relationship with Inspector Cabana
4 in 2002?

5 MR. GOULD: I spoke with
6 Mr. Cabana a dozen times over a period of six or
7 eight months.

8 MR. BOXALL: And this wasn't about
9 hockey games?

10 MR. GOULD: This was -- almost
11 certainly not.

12 MR. BOXALL: Right. It and it
13 would be about Canadians abroad?

14 MR. GOULD: Correct.

15 MR. BOXALL: And it would be about
16 RCMP interest in Canadians abroad?

17 MR. GOULD: Or any information
18 they could share about Canadians abroad that were
19 coming to our attention.

20 MR. BOXALL: And that would be
21 part of his job and your job --

22 MR. GOULD: Mm-hmm.

23 MR. BOXALL: -- to discuss, to
24 consider information-sharing about Canadians
25 abroad?

1 MR. GOULD: To discuss
2 information-sharing, or to discuss the
3 information?

4 MR. BOXALL: To discuss the
5 possibility of information-sharing.

6 MR. GOULD: I don't recall ever
7 discussing with Mr. Cabana the policy and
8 principles of information-sharing.

9 MR. BOXALL: Okay. You don't
10 recall ever discussing with Inspector Cabana the
11 possibility about sharing information?

12 MR. GOULD: It was more along the
13 lines of, do you know anything about Individual
14 "A"? Yes, no. Can you tell me anything about
15 him? Yes or no. And whatever information. Not
16 the principle or policies.

17 MR. BOXALL: So he would just ask
18 you about specific persons?

19 MR. GOULD: And I might ask him
20 about specific persons.

21 MR. BOXALL: And what about
22 specific countries? He might ask that?

23 MR. GOULD: He might.

24 MR. BOXALL: And would you agree
25 with me that -- this may not be the best choice of

1 words but my characterization is you're not a very
2 good note taker?

3 MR. GOULD: I'm a terrible note
4 taker.

5 MR. BOXALL: All right, good. And
6 so the discussions that you would have with
7 Mr. Cabana, your notes are not really of much
8 assistance to you in trying to recollect what was
9 said.

10 MR. GOULD: Not now. At the time
11 hopefully they would have been. These are not
12 meant as permanent records.

13 MR. BOXALL: And that's the notes
14 that you do have, which are limited?

15 MR. GOULD: Yes.

16 MR. BOXALL: There would be a lot
17 of material that is not put in the notes?

18 MR. GOULD: Oh, almost certainly.

19 MR. BOXALL: And it's even more
20 difficult to be able to recall what was said when
21 there is no entry at all?

22 MR. GOULD: Yes.

23 MR. BOXALL: So your recollection
24 of what you discussed with Inspector Cabana over
25 these meetings is very limited?

1 MR. GOULD: Yes.

2 MR. BOXALL: Now, you agree that
3 it is you that called Inspector Cabana on
4 October 21st?

5 MR. GOULD: That's the one with
6 all the squiggles, yes. Because I have got his
7 pager number listed at the top, so, yes, I
8 initiated the call.

9 MR. BOXALL: You initiated the
10 call, and you had some questions that you wanted
11 to ask?

12 MR. GOULD: Correct.

13 MR. BOXALL: And you knew that he
14 was the appropriate person to call?

15 MR. GOULD: I knew he was a person
16 to call.

17 MR. BOXALL: You knew he was a
18 person to call.

19 MR. GOULD: Very often if he's not
20 the appropriate person, he could identify the
21 appropriate person.

22 MR. BOXALL: Fair enough. Just as
23 if he was speaking with you and you weren't the
24 appropriate person, you could direct him to the
25 appropriate person.

1 MR. GOULD: Correct.

2 MR. BOXALL: And this would be an
3 example of the ongoing consultative relationship
4 you had with this man?

5 MR. GOULD: Correct.

6 MR. BOXALL: And you asked him a
7 series of questions?

8 MR. GOULD: Correct.

9 MR. BOXALL: And that would be
10 part of your responsibility to attempt to learn
11 what information you could be provided to assist
12 your department.

13 Correct?

14 MR. GOULD: In this case
15 specifically the Ambassador in Damascus, yes.

16 MR. BOXALL: Right. And would you
17 agree with me that a police investigator would
18 have a responsibility himself to complete his own
19 investigation and to gather information for his
20 investigation?

21 MR. GOULD: Of course.

22 MR. BOXALL: Of course. And from
23 time to time that police investigator would have
24 to deal with foreign sources?

25 MR. GOULD: I suppose that would

1 depend on the case he was pursuing, yes.

2 MR. BOXALL: Right. But if it
3 involves an international component, it may be
4 necessary, in order to get information, to deal
5 with foreign sources.

6 It makes sense to you, right?

7 MR. GOULD: Yes.

8 MR. BOXALL: That would be the
9 types of things you may have contact with
10 Inspector Cabana or other police officers if it
11 came up.

12 Correct?

13 MR. GOULD: Yes.

14 MR. BOXALL: And, generally
15 speaking, is it a recognized principle that in
16 order to get information from foreign sources that
17 you had to give? It's a two-way street?

18 MR. GOULD: It is normally seen as
19 a two-way street.

20 MR. BOXALL: And that would be
21 made clear, in a hypothetical sense, that if you
22 were asked by a police officer, if you have to
23 give to get, you would tell them it's normally a
24 two-way street?

25 MR. GOULD: If a police officer

1 were to ask me what it takes to get, I would
2 probably say you may be asked questions back and
3 maybe you should be prepared to answer some.

4 MR. BOXALL: Because you have to
5 give to get. It's that simple, isn't it?

6 MR. GOULD: Hypothetically, yes.

7 MR. BOXALL: All right. And
8 beyond hypothetically, in the everyday working
9 world of DFAIT, you have to give to get?

10 MR. GOULD: You have to be
11 prepared that when you're dealing -- setting aside
12 these cases -- as a working diplomat abroad
13 dealing with a representative of a foreign
14 Ministry of your host country, you may go in one
15 day and ask six questions, and the next time
16 you're talking to him he asks you eight. You have
17 to be prepared to the best of your ability, within
18 the constraints, to answer them.

19 MR. BOXALL: Right. Because if
20 you want to get answers to yours, you have to
21 answer theirs.

22 MR. GOULD: Yes, right.

23 MR. BOXALL: Now, you've
24 indicated -- perhaps I'm just going to ask it
25 again. What exactly, if you're able to say

1 exactly, did Mr. Cabana say in this offer to
2 share? What did he say?

3 MR. GOULD: I'm sorry, the notes I
4 have available to me don't clearly tell me what he
5 said.

6 MR. BOXALL: What was said
7 immediately before that?

8 MR. GOULD: Again, they do not
9 clearly -- these are very sketchy notes.

10 MR. BOXALL: And what was your
11 response to him, if any?

12 MR. GOULD: No response that I
13 have noted, so therefore, I don't recall.

14 MR. BOXALL: Okay. All right.
15 And did you invite Inspector Cabana, did you ask
16 Inspector Cabana, do you have any message to
17 deliver to the Syrians? Did you invite that, if
18 he had any message or anything to tell him?

19 MR. GOULD: I don't recall doing
20 that.

21 MR. BOXALL: But you don't recall
22 what was said before it.

23 Correct?

24 MR. GOULD: Correct.

25 MR. BOXALL: And the purpose of

1 the call seems to be for you to ask certain
2 questions?

3 MR. GOULD: Correct.

4 MR. BOXALL: All right. So the
5 inference would be, when the topic switches from
6 the answers to your questions to what's
7 characterized as an offer, the inference may well
8 be that you asked him if he had anything to say to
9 them?

10 MR. GOULD: I don't know why I
11 would have. My Ambassador was going in to meet
12 the Head of Syrian Military Intelligence. I
13 wouldn't have thought that the RCMP in an
14 investigation would have something, but --

15 MR. BOXALL: You can't deny that
16 you may have? Right.

17 Your evidence is, sir, in this
18 forum, that you were never asked any -- for your
19 opinion or advice about sharing information with
20 the Syrians?

21 MR. GOULD: I don't recall.

22 MR. BOXALL: No recollection of
23 ever being asked that?

24 MR. GOULD: I think the question
25 was, did we sit about in the division or the

1 bureau and discuss this matter.

2 MR. BOXALL: Forget the bureau.

3 MS EDWARDH: If my friend wishes
4 to put the question I asked, I'd ask that he put
5 it fairly to the witness.

6 MR. BOXALL: All right. So that
7 you never -- you never discussed it within the
8 bureau.

9 Is that what you're saying?

10 MR. GOULD: I don't recall being
11 asked, or sitting about discussing the merits of
12 information-sharing by the RCMP I think, or
13 CSIS -- I'm not sure which, whichever you're
14 discussing.

15 MR. BOXALL: Let's deal with the
16 RCMP sharing information with the Syrians. You
17 have no recollection of discussing that with
18 anyone? That's your evidence?

19 MR. GOULD: The merits of sharing
20 information with --

21 MR. BOXALL: The possibility of
22 doing it.

23 MR. GOULD: No.

24 MR. BOXALL: The pros and cons?

25 MR. GOULD: No.

1 MR. BOXALL: You're saying,
2 though, that hypothetically, if you ever had been
3 asked, you would like to think that you would have
4 indicated there would be some risk to doing so, or
5 sharing information with respect to a person
6 detained in custody?

7 MR. GOULD: Yes.

8 MR. BOXALL: And yet with respect
9 to Mr. Cabana's offer, communicated to you, of
10 being open to the possibility of sharing with the
11 Syrians, you made no response?

12 MR. GOULD: I do not recall having
13 made any response.

14 MR. BOXALL: You certainly didn't
15 tell him of any risks at that time, did you, sir?

16 MR. GOULD: I don't recall having
17 done so.

18 MR. BOXALL: All right. Well,
19 what I'm suggesting to you, sir, is that you
20 didn't at that time.

21 MR. GOULD: Okay.

22 MR. BOXALL: All right? And who
23 did you pass that on to --

24 MS EDWARDH: I think I have to
25 object -- I want to make an objection.

1 We've heard from Cabana. As I
2 recall his evidence was he never asked, and I
3 don't think it's fair to say to this witness, "I'm
4 going to put it to you that you didn't share." I
5 mean, he's answered as best he can in his
6 recollection. We know what the officer said. But
7 I don't think that the last suggestion was fair to
8 the witness.

9 THE COMMISSIONER: Well, as I
10 understand his evidence, he said it several times,
11 he doesn't recall whether he did or not.

12 MR. BOXALL: That's fair enough.

13 MR. GOULD: Is there evidence to
14 suggest that I -- that Mr. Cabana did say, "How
15 about we go and share information?" Did he put a
16 distinct offer to me through us. Is there
17 evidence to that effect?

18 MR. BOXALL: What exactly did he
19 say then?

20 MR. GOULD: I don't know. I
21 phoned him up and asked -- I listed out three
22 questions I wanted answered. If you take a look
23 at my notes, I think I only got to the first one
24 because it seemed to cover the other two. I would
25 guess this conversation lasted a few moments at

1 best. That was the information I needed. There
2 was nothing else. Bang.

3 MR. BOXALL: This possibility,
4 this comment about sharing information with the
5 Syrians, did you pass it on to anyone?

6 MR. GOULD: I would assume that I
7 did. There's no reason to hold on to it and
8 there's no reason not to have told it, but I don't
9 recall -- and it would have been an informal
10 passing on to Heatherington or Livermore.

11 MR. BOXALL: So you don't know if
12 you did?

13 MR. GOULD: No.

14 MR. BOXALL: All right, sir, those
15 are the questions I have.

16 MR. GOULD: Super.

17 THE COMMISSIONER: Just in the
18 order, earlier I think I may have mixed the order.
19 I don't think it really matters. Is there a
20 preference between Mr. Shore and Ms McIsaac?

21 MS McISAAC: I'm content to let
22 him go last.

23 THE COMMISSIONER: Okay. If that
24 suits you, Mr. Shore.

25 MR. SHORE: Thank you.

1 THE COMMISSIONER: I think
2 Ms McIsaac was saying she'd go before you,
3 Mr. Shore. But, as I say, it doesn't matter to
4 me. Mr. David will be the last re-examiner.

5 EXAMINATION

6 MS McISAAC: Do you have your
7 notes in front of you, Mr. Gould, P-236?

8 MR. GOULD: Yes, I do.

9 MS McISAAC: I want to go to the
10 telephone conversation that you had with Mr. Dyet,
11 which is referenced at page 9 of 16 at tab 1 of
12 your notes.

13 MR. GOULD: Okay.

14 MS McISAAC: Now, to the best of
15 your recollection, at the time that you spoke with
16 Mr. Dyet and recorded this note, was it your
17 understanding that Mr. Hooper and Ms McCallion had
18 already spoken or were about to speak?

19 MR. GOULD: My notes -- the tense
20 of the second point, or point 2 of my notes,
21 implies to me it is post-conversation.

22 MS McISAAC: All right. Now, I
23 just want to clarify your notes, given the way you
24 make your notes.

25 MR. GOULD: Sorry about that.

1 MS McISAAC: I understood your
2 evidence, and correct me if I'm wrong, that you
3 had written down the question you wanted to ask
4 Mr. Dyet, which was.

5 "memo for JPD @ Arar ...
6 did it go to MKM"

7 You had written that question down
8 before you spoke with Mr. Dyet?

9 MR. GOULD: Mm-hmm, yup.

10 MS McISAAC: Now, number 2 though,
11 would you have -- as I understand it, you then
12 record your answer, when you're speaking with
13 Mr. Dyet was, "status: Probably up today."

14 MR. GOULD: Yes.

15 MS McISAAC: So you've written the
16 question, you speak to Mr. Dyet, you write the
17 answer.

18 MR. GOULD: Yes.

19 MS McISAAC: Number 2, however,
20 presumably was not written before you spoke with
21 Mr. Dyet?

22 MR. GOULD: No it was not. This
23 is as if it -- there's no question, it's just an
24 answer.

25 MS McISAAC: So, during that

1 conversation, you record what Mr. Dyet is telling
2 you, or what you understand him to be telling you?

3 MR. GOULD: Either during the
4 conversation or after the conversation. I do not
5 recall when it was done.

6 MS McISAAC: Then if we go down to
7 the second part of the notes, I know there was
8 some discussion about whether it was "done" or
9 "Dave," quite frankly it looks more to me like
10 "done." I don't know if you have a view. You put
11 number 2.

12 Now, when you have recorded the
13 second part of that? Concurrent with the number 2
14 above or at a later date?

15 MR. GOULD: I think at a later
16 time on the same day, and I have no idea how much
17 later that would be. It looks to me as if I made
18 the note, the first note (2), went back to my
19 office. There's two names there. People that I
20 probably tried to phone or discuss --

21 MS McISAAC: Yes.

22 MR. GOULD: And then went back to
23 and I think it's probably "Dave," because it's a
24 reference back up, and I said -- and I went back
25 just to clarify something, and that's basically

1 the time of the call, but I got the tenses wrong.
2 There was to be -- it's not a particularly clear
3 note, but that's probably done a couple hours
4 after the first one or within, you know --

5 MS McISAAC: But there was to be a
6 call. Is there still some confusion as to whether
7 the call had taken place or not?

8 MR. GOULD: No, because the next
9 one, "Gar was to be there, probably wasn't." It
10 implies -- as I say, it's not a clear --

11 MS McISAAC: More importantly,
12 though, at any point in time do you recall
13 speaking with Ms McCallion about the substance of
14 the telephone conversation she had with --

15 MR. GOULD: No. No, I did not.

16 MS McISAAC: Now, I'd like to move
17 on to another topic. During examination by
18 Ms Edwardh, we were reviewing, or you were
19 reviewing with her, the discussion you had with
20 Inspector Cabana on October the 21st, I believe,
21 when it was first confirmed that Mr. Arar was in
22 Syria.

23 MR. GOULD: Yes.

24 MS McISAAC: And why were you
25 seeking information to pass on to the Ambassador

1 about the status of Mr. Arar?

2 MR. GOULD: It was the status of
3 Mr. Arar in Canada, and it was for background
4 information for the Ambassador's background.
5 Information to give him some context. As the
6 notes say, we had just had it confirmed, that the
7 Syrians had -- you will recall there was the great
8 to-ing and fro-ing trying to find him. It has now
9 been confirmed that he's in Damascus, or he's in
10 Syria. The ambassador is going to meet the head
11 of Syrian Intelligence, or a senior officer, a
12 senior representative. Who is he? Is this guy a
13 mass murderer in Canada? Is he -- you know? Just
14 strictly context for the background of the
15 Ambassador.

16 MS McISAAC: And the information
17 that would then be passed on to the Ambassador by
18 way of background for the purposes of his
19 discussions, how would that normally be provided
20 to him? Would it be provided by a telephone call
21 or some kind of C-4 message?

22 MR. GOULD: Either way, and it
23 would depend on timing. If you have the luxury of
24 time and if there's sufficient to warrant it, you
25 type out a C-4 message. If the time differential

1 between post and headquarters and it's short, you
2 phone.

3 MS McISAAC: And would that type
4 of information normally be passed directly by ISI,
5 or would it be passed back through Mr. Pardy and
6 the Consular Affairs Bureau?

7 MR. GOULD: Oh, in this case, this
8 would have been passed probably by Mr. Livermore,
9 possibly by Mr. Heatherington, possibly by myself,
10 although I don't recall phoning --

11 MS McISAAC: You don't recall
12 phoning.

13 MR. GOULD: I don't recall phoning
14 Ambassador Pillarella.

15 MS McISAAC: Now, with respect to
16 the Book of Documents that constitutes your
17 documents for the purposes of today, exhibit
18 P-237 --

19 MR. GOULD: Yes?

20 MS McISAAC: -- and the draft
21 memo at tab 2, I understood you to say that you --
22 I just want to clarify this.

23 Do you have any clear recollection
24 of actually providing a copy of this memo to
25 Mr. Livermore and Mr. Heatherington or anyone

1 else?

2 MR. GOULD: No, I don't.

3 MS McISAAC: So your evidence
4 earlier was based on what you might have done?

5 MR. GOULD: Yes, it is what I
6 assume I did with it. It died. It didn't go any
7 further. That's one version. We never cleaned
8 the typos up. My guess is I -- my guess is I
9 handed it to either/or, or possibly both, of
10 Livermore and Heatherington, and for whatever
11 reason, it just never went anywhere, nor do I
12 recall a conversation discussing it, which should
13 be your next question.

14 MS McISAAC: Those are my
15 questions. Thank you.

16 THE COMMISSIONER: Mr. Shore?

17 MR. SHORE: Mr. Commissioner, just
18 to make it clear with regard to Mr. Gould's
19 transcript, do I understand that we're proceeding
20 with the cross-examination, but that once the
21 transcripts have been reproduced, we will have an
22 opportunity to review them and then recall
23 Mr. Gould if anything arises that requires --

24 THE COMMISSIONER: If necessary,
25 yes.

1 MR. SHORE: No, I understand that
2 you prefer it not happen but --

3 THE COMMISSIONER: I take it
4 you've seen Mr. Gould's transcript, though?

5 MR. SHORE: I had read it earlier.

6 THE COMMISSIONER: Yes. So that
7 if you need to cross-examine -- if you have a
8 question, you should do it now so that we don't
9 have to --

10 MR. SHORE: Well, I don't have --
11 I don't the transcript.

12 THE COMMISSIONER: Oh, you don't
13 have it with you. I see.

14 MR. SHORE: No, I --
15 --- Off microphone / Sans microphone

16 MS McISAAC: Well, the
17 ever-obliging Ms Mcisaac can provide.

18 THE COMMISSIONER: Well, there you
19 go.

20 MR. SHORE: I don't propose to
21 read it while I'm asking Mr. Gould questions --

22 THE COMMISSIONER: We expect you
23 to do that. We have high standards around here.

24 MR. SHORE: I understand that. I
25 realize I may not be up to scratch. I'm pedalling

1 as fast as I can.

2 THE COMMISSIONER: Okay. Well,
3 let's go ahead with the cross-examination --

4 MR. SHORE: I'm prepared to go
5 ahead, and then at the break review it and if I
6 have to I --

7 THE COMMISSIONER: All right.

8 MS McISAAC: I just want to be
9 sure that it's the entire transcript, that if
10 there is a question it relates to a part that I
11 have, in fact, produced.

12 THE COMMISSIONER: Yes. Thank
13 you.

14 EXAMINATION

15 MR. SHORE: Mr. Gould, I act for
16 Mr. Hooper, so my questions will be restricted to
17 events that involve him.

18 I just want to start, though, with
19 clarification with regard to your memo of
20 June 24th, 2003, which is in tab 2, that you have
21 described as being a dramatic memo in order to
22 stimulate conversation?

23 MR. GOULD: There's some wording
24 in there which, yes, I would characterize as
25 dramatic.

1 MR. SHORE: Or provocative?

2 MR. GOULD: Or provocative,
3 perhaps.

4 MR. SHORE: And you say at the
5 very beginning that there hasn't been a meeting of
6 minds on an institutional level between CSIS,
7 RCMP, and DFAIT.

8 Apart from what you've told us
9 about your knowledge of the alleged conversation
10 between Mr. Hooper and Ms McCallion, is there
11 anything that you rely on there that comes from
12 Mr. Hooper to indicate that there hasn't been a
13 meeting of the minds?

14 MR. GOULD: With specific
15 reference to Mr. Hooper, no.

16 MR. SHORE: Just Mr. Hooper.
17 Mr. Hooper is my client.

18 MR. GOULD: No.

19 MR. SHORE: That's my mandate.

20 MR. GOULD: Nothing.

21 MR. SHORE: And when you say in
22 the next sentence that "recent exchanges have been
23 almost testy," I take it nothing that you rely on
24 for that provocative comment is related to
25 Mr. Hooper?

1 MR. GOULD: No.

2 MR. SHORE: And if you go to --

3 MS EDWARDH: I'm sorry, I don't
4 think the witness has answered the question.

5 MR. GOULD: I said "no." I'm
6 sorry.

7 I apologize.

8 MR. SHORE: I thought he said no.

9 And if you go to the last
10 paragraph on that page, the second sentence:

11 "CSIS has made it clear to
12 the Department that they
13 would prefer to have him
14 remain in Syria, rather than
15 returned to Canada."

16 Apart from what you've told us
17 about your understanding of the Hooper-McCallion
18 phone call, anything in that comment that would
19 come, in your view, from Mr. Hooper?

20 MR. GOULD: No.

21 MR. SHORE: The next sentence:

22 "CSIS officials do not seem
23 to understand that, guilty or
24 innocent, Maher Arar has the
25 right to consular

1 assistance ..."

2 Anything that you have, any
3 information you have to say that coming from
4 Mr. Hooper?

5 MR. GOULD: Part of that, the
6 wording of that sentence, may have been drawn from
7 my understanding of the telephone conversation
8 about which we're discussing, but it would be an
9 element of it. It was not --

10 MR. SHORE: I'll get to the
11 telephone conversation --

12 MR. GOULD: I'm sure you will.

13 MR. SHORE: -- later. But apart
14 from that, nothing that -- any information you
15 have, or any culture within your department
16 derives from Mr. Hooper?

17 MR. GOULD: I'm not sure I
18 understand your question.

19 MR. SHORE: Well, you indicated to
20 my friend, Ms Edwardh, that your opinion is based
21 on a myriad of sources --

22 MR. GOULD: Several, yes.

23 MR. SHORE: -- with regard to
24 CSIS's position generally.

25 MR. GOULD: Mm-hmm.

1 MR. SHORE: And I take it this
2 opinion from these sources are solely from within
3 your department, basically. You never spoke to
4 anyone at CSIS.

5 MR. GOULD: No, I did speak to
6 people at CSIS, but at meetings about which I am
7 not prepared to speak.

8 MR. SHORE: You never spoke to
9 Mr. Hooper?

10 MR. GOULD: I do not recall he was
11 in the meetings to which I just referred.

12 MR. SHORE: And you never spoke to
13 him outside the meetings?

14 MR. GOULD: On this topic, no.

15 MR. SHORE: Whereby you got an
16 indication of where he stood with regard to these
17 matters?

18 MR. GOULD: No.

19 MR. SHORE: So you're not prepared
20 to refer to any document or other source of
21 information, apart from the phone call, which we
22 will deal with, where Mr. Hooper doesn't believe
23 that Mr. Arar has the right to consular
24 assistance?

25 MR. GOULD: No.

1 MR. SHORE: And on the next page,
2 paragraph 3, last sentence:

3 "CSIS must accept that DFAIT
4 has a duty to assist Arar,
5 even though this may result
6 in him regaining his freedom
7 in Canada."

8 Anything that you have that
9 suggests that Mr. Hooper is not pursuing his
10 mandate in good faith, apart from the phone call?

11 MR. GOULD: Apart from the phone
12 call, no.

13 MR. SHORE: And then you conclude
14 your memo with, "Do you agree?"

15 And you are asking Mr. Livermore,
16 Mr. Heatherington -- who else?

17 MR. GOULD: No, I'm actually --
18 had this been finalized, had this gone up the
19 chain, I'm asking Ms McCallion and Mr. Wright, do
20 they agree that the Minister should seek a
21 briefing? That would have instituted a whole
22 other memo up to the Minister.

23 MR. SHORE: I see. And over their
24 initials you have a line for their signature, if
25 they agreed.

1 MR. GOULD: Excuse me.

2 MR. SHORE: The last page. Right?

3 MR. GOULD: Badly drafted.

4 MR. SHORE: Pardon me?

5 MR. GOULD: Badly drafted.

6 MR. SHORE: Badly drafted in what

7 way?

8 MR. GOULD: It was to them. I

9 guess I was leaving room for them to put your

10 initials --

11 MR. SHORE: If they agreed, you

12 would expect them to put their initials?

13 MR. GOULD: Yes.

14 MR. SHORE: If they don't agree,

15 you would expect that they wouldn't put their

16 initials?

17 MR. GOULD: Or they could easily

18 write "I do not agree," or -- no, not unusual, not

19 uncommon.

20 MR. SHORE: Anyway, there was

21 certainly no indication that anyone agreed with

22 this?

23 MR. GOULD: No, other than myself.

24 MR. SHORE: You agree with that?

25 MR. GOULD: Right.

1 MR. SHORE: So this is your
2 ramblings, basically, conveying your frustration
3 about your interpretation of the events?

4 MR. GOULD: I wouldn't
5 characterize them as ramblings, but there's
6 obviously a level of frustration there. But I
7 think I'm more concerned about the state of the
8 Foreign Affairs relationship with CSIS and the
9 RCMP rather than just frustrations.

10 MR. SHORE: And are you sure that
11 you gave it to anyone to look at, or did it just
12 remain on your computer --

13 MR. GOULD: As I just said, I
14 don't recall physically giving it, but it is
15 normal that I would have done that. I wouldn't
16 have done it just for myself and left it on the
17 hard drive to sit there.

18 MR. SHORE: Do you recall who you
19 gave it to?

20 MR. GOULD: I do not recall, but
21 it would have been normal for me to give it to
22 Mr. Livermore and/or possibly both, Livermore and
23 Heatherington.

24 MR. SHORE: And I take it that
25 neither responded?

1 MR. GOULD: I don't recall.
2 Certainly there was no formal -- the memo went no
3 further. The response may have been: "Crumple it
4 up and throw it away, Jim," or "We don't agree,"
5 or "Let's let it sit for a while," or "Let's think
6 about it." I don't recall.

7 MR. SHORE: If they had said we
8 don't agree, would you have made a note of that
9 somewhere?

10 MR. GOULD: No.

11 MR. SHORE: It's over. This is
12 your personal views, and for whatever reason, you
13 couldn't get anyone else to sign on to it.

14 MR. GOULD: That's fine. That's
15 correct.

16 MR. SHORE: You couldn't get
17 anyone else to sign on to it, assuming --

18 MR. GOULD: Yes, no. The fact
19 that it did not go anywhere means exactly that.

20 MR. SHORE: Now, dealing with the
21 phone call -- do you have your notes in front of
22 you? Momentarily -- sorry to take you back to
23 them again.

24 MR. GOULD: Not at all. Where are
25 we starting?

1 MR. SHORE: Let's start at page 9
2 of 16.

3 MR. GOULD: Yeah.

4 MR. SHORE: So is there a date
5 that contextualizes that note?

6 MR. GOULD: Is there a date for
7 that note?

8 MR. SHORE: Yes.

9 MR. GOULD: It's not noted on the
10 paper but if I recall correctly it's June the 5th.
11 It's certainly -- in the hard copy text there is a
12 date for that page and it is June 5.

13 MR. SHORE: All right. So you're
14 satisfied --

15 MR. GOULD: Excuse me.

16 MR. SHORE: Sorry.

17 MR. GOULD: To confirm that, do
18 you have a copy of the one that I dated with each
19 date?

20 MS McISAAC: My recollection was
21 that we had to reconstruct the dates. That they
22 weren't actually on the page, and that you
23 reconstructed the date as being June the 5th --

24 MR. GOULD: That's right. That's
25 my recollection. But I don't -- on each page, if

1 you recall, when I did my in camera testimony, I
2 went back, took out my black books and wrote the
3 date -- I'm confident in my own mind it's June
4 5th, but ...

5 MR. SHORE: That's fair enough.
6 So on page 9 of 16, June 5, is that your first
7 notation for that day?

8 MR. GOULD: No.

9 MR. SHORE: There are other
10 notations for that day that come earlier than
11 that?

12 MR. GOULD: Yes.

13 MR. SHORE: And do you have any
14 times beside them?

15 MR. GOULD: No.

16 MR. SHORE: And you have no time
17 beside this one?

18 MR. GOULD: Correct.

19 MR. SHORE: Apart from these
20 notes, do you have any personal recollection of
21 these events?

22 MR. GOULD: I recall sitting down
23 with David in his office and him telling me this,
24 yes.

25 MR. SHORE: You don't know the

1 time?

2 MR. GOULD: No, I do not.

3 MR. SHORE: You don't know whether
4 it was morning or afternoon?

5 MR. GOULD: No, I do not. I would
6 guess it's after 11 p.m. because the second note
7 has an eleven o'clock -- or 1100 hours as the time
8 the call was to have been made --

9 MR. SHORE: But that doesn't
10 necessarily mean that the earlier part --

11 MR. GOULD: It does not
12 necessarily mean, no.

13 MR. SHORE: Well, you have
14 something intervening that has nothing to do with
15 this matter.

16 MR. GOULD: Correct.

17 MR. SHORE: You have two names
18 there, Peter Bailey and Delores --

19 MR. GOULD: Peter Bates and
20 Delores Nowak.

21 MR. SHORE: Dolores?

22 MR. GOULD: N-O-W-A-K. I'm not
23 sure of the pronunciation.

24 MR. SHORE: They're not relevant.
25 Have nothing to do with this matter?

1 MR. GOULD: Nothing.

2 MR. SHORE: So those notes were
3 separated by some period of time.

4 MR. GOULD: Yes, they were.

5 MR. SHORE: So the fact that under
6 "done," you think it may say "Dave," but if you
7 look at how you've written "Dave" beside "Dyet" on
8 the top line, it doesn't look the same as that.

9 MR. GOULD: I can only say that
10 I'm orthographically challenged.

11 MR. SHORE: Well, you may be. But
12 are you suggesting that that could be "Dave"?

13 MR. GOULD: I suggest it could be
14 "Dave." I think it is "Dave." Other people have
15 said it might be "done," and I can see how it
16 might be read as "done."

17 MR. SHORE: Because it certainly
18 doesn't look like the earlier "Dave."

19 MR. GOULD: No, it does not.

20 MR. SHORE: And you sometimes
21 write --

22 MR. GOULD: Sometimes I write in
23 different scripts.

24 MR. SHORE: In different ways on
25 the same day, within hours of each other?

1 MR. GOULD: Within hours.

2 MR. SHORE: What we can assume is
3 that the top note on the top part of the page, on
4 top of the names and the bottom note under "done"
5 or "Dave" were written at different times?

6 MR. GOULD: Oh, yes.

7 MR. SHORE: No question about
8 that?

9 MR. GOULD: No question.

10 MR. SHORE: And I take it when
11 you're writing these notes on June 3rd --

12 MR. GOULD: June 5th.

13 MR. SHORE: June 5th, thank you,
14 2003, you were writing them in a normal way using
15 normal language?

16 MR. GOULD: The normal language
17 with which I make notes, yes.

18 MR. SHORE: And the first
19 notation, "Memo from JPD," and "Status, did it go
20 to MKM," "Probably went up today;" is that what
21 you wrote?

22 MR. GOULD: Yes, it is.

23 MR. SHORE: That was your
24 understanding at that time?

25 MR. GOULD: Yes.

1 MR. SHORE: That it had already
2 gone up to her?

3 MR. GOULD: Yes. Oh, excuse me.

4 MR. SHORE: Yes?

5 MR. GOULD: "Probably went up
6 today" could mean it that it went past
7 Ms McCallion, if she had signed it off, and went
8 up to the Minister. It's not clear from that. I
9 think from the context it's clear later it didn't
10 hit the Minister's office until the 9th, so this
11 is unlikely.

12 MR. SHORE: So you're probably
13 referring --

14 MR. GOULD: Probably, with a fair
15 degree of certainty.

16 MR. SHORE: -- to Ms McCallion.
17 And then the bottom part of the page, under "Dave"
18 or "done." "There was to be a call at 1100 hours
19 today," normal languaging was to suggest -- would
20 suggest that there has not yet been a call, there
21 was to be one, but perhaps it didn't happen. Is
22 that not right?

23 MR. GOULD: You're absolutely
24 correct. Badly, badly drafted note.

25 MR. SHORE: Well, it may be. But

1 if you're using normal language in the normal way,
2 a well educated --

3 MR. GOULD: The original note to
4 above places it quite clearly in the past.

5 MR. SHORE: I understand that.

6 MR. GOULD: From --

7 MR. SHORE: I understand that.

8 But a well-educated person saying there was to be
9 a call at 1100 hours today doesn't say by that
10 that there already was a call.

11 MR. GOULD: To me, as I say, it's
12 badly drafted --

13 MR. SHORE: It's worse than badly
14 drafted, it's misleading.

15 MR. GOULD: Absolutely.

16 MR. SHORE: If there was a call at
17 1100 hours today --

18 MR. GOULD: Absolutely.

19 MR. SHORE: You would have said
20 that there was a call at 1100 hours today.

21 MR. GOULD: Had I thought that
22 this going to become as important as it has
23 become, I would have taken much more care with my
24 wording.

25 MR. SHORE: Well that's my point.

1 MR. GOULD: As it was, it was a
2 busy day.

3 MR. SHORE: My point is you're
4 reconstructing now what you wrote then, but
5 looking at the normal languaging then, the call
6 had not yet taken place.

7 MR. GOULD: Fine.

8 MR. SHORE: Do you agree that that
9 is a normal interpretation of that language?

10 MS EDWARDH: May I make an
11 objection? I don't represent the witness,
12 obviously, but I think my friend is not fair. The
13 line that he's reading to the officer -- not the
14 officer, the witness, has two prongs to it. One
15 implies the future; the other implies the past.

16 THE COMMISSIONER: The very next
17 sentence, Gar was to be there --

18 MS EDWARDH: It's not even the
19 next sentence, there Commissioner. There's a
20 dash. "There was to be a call." "Gar was to be
21 there, but probably wasn't," brings it into the
22 past. So I think in fairness to the witness the
23 whole phrase should be put to him.

24 MR. GOULD: You can put the phrase
25 to me, and I will agree you can interpret it that

1 way. I will interpret it the way I believe it was
2 meant, and I will say I am sorry for my bad
3 drafting but that's the way she came down.

4 MR. SHORE: Underneath that, you
5 have Barbara Burns with her phone number.

6 MR. GOULD: Correct.

7 MR. SHORE: Why is that written
8 there?

9 MR. GOULD: Because that is a
10 phone call that I made to Ms Burns about the call
11 from CSIS Hooper basically asking if she had any
12 information on it.

13 MR. SHORE: And when did you
14 make -- when did you make that call?

15 MR. GOULD: Later that same day.

16 MR. SHORE: And I take it you
17 didn't get through to her?

18 MR. GOULD: Correct. That's the
19 way I understand that note.

20 MR. SHORE: And you were calling
21 her with regard to whether that phone call took
22 place.

23 MR. GOULD: Mm-hmm.

24 MR. SHORE: Is that right?

25 MR. GOULD: Correct.

1 MR. SHORE: Right. And if you
2 turn over the page, 10 of 16, again, you have:
3 "Barbara Burns EA to Ms McCallion," with her
4 telephone number and it's about a call from CSIS.

5 MR. GOULD: Correct.

6 MR. SHORE: Is that right?

7 MR. GOULD: Correct.

8 MR. SHORE: That's on page 10 so
9 that's a left-hand side?

10 MR. GOULD: No, that's a
11 right-hand side.

12 MR. SHORE: That's a right-hand
13 side?

14 MR. GOULD: The date above it sets
15 it into context because that's the way I start
16 each working day, by putting the date.

17 MR. SHORE: So the odd numbers are
18 the right-hand side?

19 MR. GOULD: No. You cannot do
20 that in here. That's the reason I tried to
21 explain, because they didn't photograph every
22 page.

23 MR. SHORE: I see. Okay. So
24 June 6 then, is this your first entry on that
25 page?

1 MR. GOULD: Yes. That date.

2 MR. SHORE: On that date, I mean.

3 MR. GOULD: There may have been
4 some voice mails which would have been on the
5 left-hand side, but whoever photocopied my black
6 book decided if there were any voice mails that
7 they were not relevant.

8 MR. SHORE: And your note is, on
9 June 6, "Call happened."

10 MR. GOULD: Yeah, right.

11 MR. SHORE: So that's your
12 confirmation.

13 MR. GOULD: Right.

14 MR. SHORE: That's your
15 confirmation of the call.

16 Isn't that right?

17 MR. GOULD: Mm-hmm.

18 MR. SHORE: Well, isn't it
19 interesting that you get confirmation on June 6th
20 of the call when you thought that the call had
21 happened and you had spoken to Mr. Dyet about it
22 on June 5th? If you knew that the call -- in
23 other words -- do you follow me?

24 MR. GOULD: No.

25 MR. SHORE: If Mr. Dyet is telling

1 you about a phone call that has taken place, why
2 do you have to, the next day, get confirmation
3 that the call has taken --

4 MR. GOULD: I was also asking
5 about the substance. I didn't get that confirmed.
6 I got the call happened confirmed; I didn't get
7 any comment on the substance.

8 MR. SHORE: Did you ask for
9 comment on the substance?

10 MR. GOULD: Yes.

11 MR. SHORE: You asked Barbara
12 Burns that?

13 MR. GOULD: If I recall correctly,
14 yes.

15 MR. SHORE: Did you ask her person
16 to person or via voice?

17 MR. GOULD: No, this would have
18 been person to person.

19 MR. SHORE: Person to person. And
20 what did you ask her?

21 MR. GOULD: One, did Ms McCallion
22 receive a call from Mr. Hooper, happened? Two,
23 was it -- and probably rehearsed or reviewed the
24 details as I received them from Mr. Dyet.

25 MR. SHORE: And what was the

1 response?

2 MR. GOULD: As I recall, she
3 didn't know. She knew the call had occurred but
4 she had not yet spoken to Ms McCallion about the
5 substance of the call.

6 MR. SHORE: So do you not
7 understand that I would find it odd that you would
8 have to confirm a call on June the 6th that you
9 understood took place the day before? Did you
10 have any doubt about what Mr. Dyet told you?

11 MR. GOULD: No.

12 MR. SHORE: No?

13 MR. GOULD: No.

14 MR. SHORE: So then why would you
15 have to confirm the call if you believed what he
16 had said?

17 MR. GOULD: Perhaps I was more
18 interested in the confirmation of the substance of
19 the call, and the did-the-call-happen would be a
20 polite entry into that. I don't know. I don't
21 recall my thinking at the time.

22 MR. SHORE: You have no note here
23 about the contents of the conversation?

24 MR. GOULD: No, I don't.

25 MR. SHORE: Would it surprise you

1 to know that Ms Burns doesn't recall speaking to
2 you?

3 MR. GOULD: No.

4 MR. SHORE: About this call?

5 MR. GOULD: No.

6 MR. SHORE: If we go over to the
7 next page, 11 of 16, you have Barbara Burns again.

8 MR. GOULD: That's correct.

9 MR. SHORE: Same number, same re.

10 MR. GOULD: Right.

11 MR. SHORE: What is that referring
12 to? That's June 9th.

13 MR. GOULD: That's Monday, and
14 that's me trying to phone Ms Burns to see if she
15 has -- she has now confirmed on Friday that the
16 call happened, and now perhaps she can give me a
17 brief -- a debrief on the substance of the call.

18 MR. SHORE: And did you speak to
19 her on June 9th?

20 MR. GOULD: There's no indication
21 there that I did.

22 MR. SHORE: Did you leave a voice
23 mail?

24 MR. GOULD: Probably.

25 MR. SHORE: Did she call you back?

1 MR. GOULD: I have no -- no
2 indication that she did.

3 MR. SHORE: And then we go to, I
4 take it, 13 --

5 MR. GOULD: Yes.

6 MR. SHORE: Is the right-hand
7 side.

8 MR. GOULD: Correct.

9 MR. SHORE: And 12 before that --

10 MR. GOULD: Is the left-hand side,
11 that's right.

12 MR. SHORE: And here you're
13 speaking with Mr. Dyet?

14 MR. GOULD: Correct.

15 MR. SHORE: And you have written
16 here: "He spoke to Ms McCallion. She signed off
17 on the memo."

18 MR. GOULD: Yeah.

19 MR. SHORE: Is that coming from
20 Mr. Dyet?

21 MR. GOULD: Yes.

22 MR. SHORE: And it's not coming
23 from Barbara Burns?

24 MR. GOULD: No.

25 MR. SHORE: It's Mr. Dyet?

1 MR. GOULD: My notes would
2 indicate to me that it's Mr. Dyet.

3 MR. SHORE: And if you go back to
4 page 12, "About call," is that information coming
5 to you from Mr. Dyet?

6 MR. GOULD: Mr. Dyet.

7 MR. SHORE: And everything in that
8 paragraph is from Mr. Dyet?

9 MR. GOULD: Correct. Just a
10 second.

11 MR. SHORE: I'm sorry?

12 MR. GOULD: Yeah.

13 MR. SHORE: And you say "Confirmed
14 story we had heard."

15 MR. GOULD: Yes.

16 MR. SHORE: Are you referring to
17 the phone call as a story?

18 MR. GOULD: I'm referring to the
19 conversation Mr. Dyet and I had on the 5th, where
20 he told me that Mr. Hooper had called Ms McCallion
21 and then went on to say that CSIS doesn't want us
22 to get Arar back into the country because they
23 would have to devote too many resources to watch
24 him. So he -- so he told me -- that's my notes --
25 that in speaking ...

1 MR. SHORE: I'm suggesting to you
2 that "Story we have heard" has nothing to do with
3 the phone call. It has to do with the rumours
4 circling throughout DFAIT.

5 MR. GOULD: What rumours?

6 MR. SHORE: That CSIS did not want
7 Arar back into Canada.

8 MR. GOULD: I find that hard to
9 believe. I was talking to the same person about
10 the same topic about which we have been discussing
11 and I don't recall the rumours.

12 MR. SHORE: You don't recall any
13 rumours?

14 MR. GOULD: No.

15 MR. SHORE: Within DFAIT?

16 MR. GOULD: No.

17 MR. SHORE: I see. I find it odd,
18 sir, that you would use the word "story,"
19 "Confirmed story."

20 MR. GOULD: Sloppy drafting again.

21 MR. SHORE: Why would you not say
22 "Confirmed contents of call" or "Confirmed call"?

23 MR. GOULD: Possibly because story
24 is shorter than "contents of call." Sloppy
25 drafting is all I can put it down to.

1 MR. SHORE: How about just "call"?

2 MR. GOULD: No, it's the
3 information within the call, the story within the
4 call.

5 MR. SHORE: And are you getting
6 all this from Mr. Dyet -- maybe a bit more to it
7 because he didn't want to get into it?

8 MR. GOULD: Yes.

9 MR. SHORE: And are you assuming
10 here that Dyet had spoken to Ms McCallion about
11 this?

12 MR. GOULD: I am.

13 MR. SHORE: Did you check with him
14 to see whether --

15 MR. GOULD: I did not follow up on
16 it.

17 MR. SHORE: Did you ask him when
18 he's telling you this, "Did you get this from
19 Kathryn McCallion"? Did you ask him that?

20 MR. GOULD: I do not recall being
21 that specific about it. I wrote down he spoke to
22 MKM, so he must have said that he did. I wouldn't
23 have made it up -- or at least I don't think I
24 would have. She signed off a memo. And then we
25 just carry on. Those are my notes because...

1 MR. SHORE: All right. Where you
2 say: "MKM signed the memo so she seems to be
3 ignoring the request from ADDO," is that your
4 conclusion, Mr. Dyet's conclusion, or Kathryn
5 McCallion's conclusion?

6 MR. GOULD: I don't recall. It
7 certainly -- it wouldn't be Mr. McCallion's
8 conclusion, it might be Mr. Dyet's. I don't
9 recall whether Mr. Dyet said that to me or whether
10 I wrote that down. Sorry. Don't.

11 MR. SHORE: And thinking back, of
12 course, is not going to help you now?

13 MR. GOULD: Probably not.

14 MR. SHORE: Could that have been
15 your conclusion?

16 MR. GOULD: Yes, it could easily
17 have been.

18 MR. SHORE: And you're sure that
19 this information is not coming from anybody else
20 than Mr. Dyet through Kathryn McCallion?

21 MR. GOULD: The information is
22 coming from Mr. Dyet, it's not coming through Ms
23 McCallion.

24 MR. SHORE: Well, from
25 Ms McCallion.

1 MR. GOULD: I only report what
2 I --

3 MR. SHORE: You're satisfied
4 with --

5 MR. GOULD: I'm very comfortable
6 in my own mind.

7 MR. SHORE: All right. Subject,
8 Mr. Commissioner, to reading the transcript.

9 THE COMMISSIONER: Okay.

10 Mr. David, any re-examination?

11 MR. DAVID: I will be brief,
12 Mr. Commissioner.

13 EXAMINATION

14 MR. DAVID: The first is I'd like
15 to bring Mr. Gould to tab 2 of our new Book of
16 Documents, and it's your draft memo, June 24th.

17 MR. GOULD: June -- oh, I believe
18 it is, you're right.

19 MR. DAVID: 2003. I've read this
20 many times.

21 MR. GOULD: I'm sure you have,
22 sir.

23 MR. DAVID: Mr. Shore just brought
24 you through it and asked you at several points
25 whether the basis for your affirmations were Jack

1 Hooper.

2 MR. GOULD: Yes.

3 MR. DAVID: And in all cases I
4 believe you said no.

5 MR. GOULD: With the one exception
6 that things that I may have interpolated from the
7 telephone call.

8 MR. DAVID: Correct. So, I bring
9 you to the last paragraph of the first page, in
10 the second sentence, where you claim that CSIS has
11 made it clear to the Department that they would
12 prefer to have him remain in Syria rather than
13 returned to Canada. My question very simply, and
14 just for clarity of the record, is that a
15 reference to the Hooper-McCallion call?

16 MR. GOULD: I think it, as I think
17 I said to Mr. Shore, that it may be partially
18 drawn from that, but it's partially drawn from
19 other meetings as well, other incidents.

20 MR. DAVID: All right. And the
21 question begs, Mr. Gould, insofar as you did have
22 meetings with members of CSIS, and insofar as some
23 of the language conveyed in this draft memo is
24 based on meetings with members of CSIS personnel,
25 my question to you is: Is your thinking, some of

1 your thinking, based on direct conversations with
2 CSIS personnel?

3 MR. GOULD: Yes, some of it is.

4 MR. DAVID: And would those
5 members of CSIS be junior or senior to Mr. Hooper?

6 MR. GOULD: Oh, junior. In CSIS
7 it was -- there were two people who were not
8 junior to him, if I recall correctly.

9 MR. DAVID: Okay.

10 MR. GOULD: And I didn't associate
11 with them.

12 MR. DAVID: I'd like to now bring
13 you to the phone slips concerning the call itself,
14 and the phone slips have been filed in volume
15 P-85, volume 5, tab 15.

16 MR. GOULD: Sorry? Tab 15?

17 MR. DAVID: Tab 15. And if you
18 could go to the second page, and I'm going to ask
19 you to also refer to your notes, but the first
20 message on the very top, it's a phone slip that is
21 addressed to Kathryn McCallion. It is dated June
22 the 6th.

23 MR. GOULD: Yup.

24 MR. DAVID: And the message says
25 that it's from you.

1 MR. GOULD: Yup.

2 MR. DAVID: And the contents of
3 the message is "re your phone call with CSIS on
4 Arar."

5 MR. GOULD: Correct.

6 MR. DAVID: It would seem from
7 this phone slip that you called Kathryn McCallion
8 on June 6th --

9 MR. GOULD: Yes.

10 MR. DAVID: -- seeking her input
11 on the phone call.

12 MR. GOULD: Mm-hmm.

13 MR. DAVID: Do you recall doing
14 so?

15 MR. GOULD: No, I will contend
16 that I called Ms Burns. I don't recall whether I
17 asked to speak to Ms McCallion. I may have
18 just -- but for whatever reason she has passed it
19 on to Ms McCallion. I may have said -- I could
20 easily have said I would like to speak to
21 Ms McCallion about this topic and that's the
22 message being passed, but that's the day in which
23 my note says "Call happened," so I would --
24 Ms Burns confirms that the call happened. She may
25 have been -- I may have said I'd like to talk to

1 Ms McCallion about what was said and that's the
2 substance of it.

3 MR. DAVID: But you never spoke to
4 Ms McCallion?

5 MR. GOULD: No, I did not.

6 MR. DAVID: The final question,
7 Mr. Gould, concerns your notes once again, and on
8 page 9 we've dated these as June 5th. You take it
9 and your testimony is to the effect that the phone
10 call -- the understanding that you have is that
11 the phone call has already taken place --

12 MR. GOULD: Yes.

13 MR. DAVID: -- and that is the
14 way you understand the language that you've used.

15 MR. GOULD: That's correct.

16 MR. DAVID: If you go to your
17 notes on the next page for June 6th -- let me
18 first say that on June 5th the confirmation that
19 the call has occurred is coming from Dave Dyet.

20 MR. GOULD: Correct.

21 MR. DAVID: And on June 6th you
22 note call happened, and this confirmation is
23 coming from Barbara Burns.

24 MR. GOULD: Correct.

25 MR. DAVID: Is there any

1 inconsistency in your mind between those two
2 references and the fact that you're noting that
3 the call is confirmed happened --

4 MR. GOULD: Not, not in my mind.

5 MR. DAVID: Could you just
6 explain?

7 MR. GOULD: I was still interested
8 in the content of the call, the substance of the
9 conversation, and I phoned Ms Burns. She
10 confirmed that the call happened, was not --
11 perhaps had not yet received a briefing, or Ms
12 McCallion had not yet told her -- she hadn't asked
13 her or thought to tell her what the substance was.
14 I would guess by the fact that there's a phone
15 message there, that I probably said, "Well, can I
16 speak to Ms McCallion about it?" She wasn't
17 available. A phone message went in.

18 MR. DAVID: Thank you. Those are
19 my questions.

20 THE COMMISSIONER: Thank you,
21 Mr. David.

22 Just wait a second. I'll address
23 the timing issues.

24 It seems to me there's two issues.
25 The first is the time to read the two transcripts.

1 The second, with that in mind, is does Mr. Gould
2 need to stand by in case there are further
3 questions.

4 As a matter of process, one way of
5 dealing with it, which may be the most efficient,
6 would be to take a short break now -- Ms McCallion
7 is here -- and to have Mr. David do the
8 examination, his examination, then to take a break
9 for the cross-examinations to give people a chance
10 to read the transcripts, having heard the main
11 examination, may shorten the exercise. That's
12 just a suggestion, and I'm open to suggestions
13 from all counsel.

14 I'd like to finish all of this
15 today.

16 Does anybody disagree with that
17 approach?

18 Okay. Well, then we'll take a
19 ten-minute break right now. Mr. Gould,
20 unfortunately we're going to have to ask you to
21 stand by for some time, and get a newspaper and
22 entertain yourself and we'll resume in ten
23 minutes.

24 Thank you.

25 THE REGISTRAR: Please stand.

1 --- Upon recessing at 3:46 p.m. /

2 Suspension à 15 h 46

3 --- Upon resuming at 3:49 p.m.

4 Reprise à 15 h 49

5 THE REGISTRAR: Please, be seated.

6 Veuillez vous asseoir.

7 MR. DAVID: Mr. Commissioner,
8 Ms McCallion is before you, and has testified in
9 camera.

10 THE COMMISSIONER: Good afternoon,
11 Ms McCallion.

12 MS McCALLION: Good afternoon,
13 sir.

14 THE COMMISSIONER: You are still
15 under oath.

16 Go ahead, Mr. David.

17 PREVIOUSLY SWORN: KATHRYN McCALLION
18 EXAMINATION

19 MR. DAVID: Ms McCallion, I'd like
20 to, for the benefit of all present, review briefly
21 your CV, as this is your first appearance in
22 public.

23 Your CV has been filed as
24 exhibit P-85, volume 5, tab 14.

25 MS McCALLION: Okay, yes.

1 MR. DAVID: You have a bachelor's
2 in political science in 1972, and you have a
3 partial completion of a masters in political
4 science from Carleton University.

5 You have been employed by the
6 Department of Foreign Affairs since 1973 ?

7 MS McCALLION: Two.

8 MR. DAVID: Nineteen
9 seventy-two (1972).

10 And you have been an Assistant
11 Deputy Minister since 1994.

12 MS McCALLION: Yes, correct.

13 MR. DAVID: So for over ten years?

14 MS McCALLION: That's correct.

15 MR. DAVID: You are presently --
16 or I should say at the relevant time you were
17 Assistant Deputy Minister of Consular Affairs,
18 Corporate Services and Passport since 1999,
19 September of 1999?

20 MS McCALLION: Yes.

21 MR. DAVID: And previous to that,
22 Ms McCallion, you were also the Assistant Deputy
23 Minister, since the very beginning of 1998, again
24 for consular affairs?

25 MS McCALLION: Yes.

1 MR. DAVID: So in fact, in point
2 of fact, since 1998 you have been Assistant Deputy
3 Minister of Consular Affairs?

4 MS McCALLION: Yes.

5 MR. DAVID: And is this a position
6 that you hold to this day?

7 MS McCALLION: No.

8 MR. DAVID: When did you lose the
9 consular affairs portfolio?

10 MS McCALLION: January 16 of this
11 year.

12 MR. DAVID: Of 2005?

13 MS McCALLION: Of 2005. It was a
14 reorganization of the Department of Foreign
15 Affairs, after the split that the government had
16 announced of DFAIT being split into two
17 departments.

18 MR. DAVID: All right. Can you
19 describe briefly the role -- the responsibilities
20 attached to your position in terms of the relevant
21 time, in terms of 2002, 2003?

22 MS McCALLION: As it pertains to
23 consular or the whole package?

24 MR. DAVID: No, as it pertains to
25 consular affairs.

1 MS McCALLION: My role was the
2 day-to-day management of the consular bureau as
3 Gar Pardy, who was Director General, it was a
4 direct report. So it was concerning how they
5 spent their money, the staffing actions, all the
6 regular things that go on in a bureau of the
7 department, and at the senior level he reported to
8 me. So it was concerning primarily the day-to-day
9 management of consular affairs.

10 However, I was also briefed
11 regularly on key issues of concern and how they
12 were being managed. Normally, who collectively
13 were managing them; so if you had a crisis, like
14 this last year, the tsunami, then you would have
15 the consular bureau as part of a task force. That
16 task force would be chaired by an ADM, usually an
17 ADM geographic, but I was kept in the loop of
18 where we were, what was happening, in particular
19 if more resources were required or not, as an
20 example.

21 MR. DAVID: So is it that priority
22 files were brought to your attention even though
23 they were consular matters?

24 MS McCALLION: Yes.

25 MR. DAVID: And does Mr. Arar's

1 file fit into that category?

2 MS McCALLION: Yes.

3 MR. DAVID: And when did you
4 become first aware of the Arar file? Obviously
5 there were media reports, and I'm not referring to
6 that. We were well aware of at least since
7 October of 2002, but in terms of your position as
8 Assistant Deputy Minister?

9 MS McCALLION: There would be two
10 ways of informing me. One is sort of an update on
11 hot cases, and secondly it would have been the
12 intensity when he had been deported and we were
13 trying to get him back.

14 I distinctly remember being
15 briefed. He has gone from New York and we have to
16 find him.

17 MR. DAVID: So as of at least
18 October 2002 --

19 MS McCALLION: October of 2002.

20 MR. DAVID: -- you were being
21 briefed more than what the media was reporting in
22 your position as Assistant Deputy Minister?

23 MS McCALLION: Correct.

24 MR. DAVID: Is it fair to say that
25 since that time the Arar file was one of the files

1 that you were regularly briefed on by Mr. Pardy
2 and others?

3 MS McCALLION: Yes.

4 MR. DAVID: Ms McCallion, I don't
5 know if you have had the benefit of hearing
6 today's testimony from Mr. Livermore and
7 Mr. Gould. We have reviewed extensively the June
8 5th memo. I would like you to refer to it
9 briefly.

10 That is found at tab 5 of P-117,
11 volume 2. In fact, it's 75.5.

12 The front page, the first page is
13 the transmittal slip. Your name appears on it,
14 and in fact your signature also appears on this
15 document.

16 My first question to you -- and I
17 gather you are familiar with the contents of this
18 memo?

19 MS McCALLION: Yes.

20 MR. DAVID: My first question to
21 you: Is there anything unusual in terms of
22 internal processing for this memo to land up on
23 your desk for authorization?

24 MS McCALLION: No.

25 MR. DAVID: Is this in the normal

1 course of business that you would have received
2 such a memo from Mr. Pardy?

3 MS McCALLION: Yes. Yes, sir.

4 MR. DAVID: Were you aware of the
5 background of this memo -- and by "background", I
6 will define that.

7 We have -- and it's been filed in
8 fact at tab 3 -- seen a draft memo, a draft
9 version of this memo that Mr. Pardy wrote that is
10 dated May the 5th, 2003. We have heard also much
11 evidence about meetings that followed the draft
12 memo, the circulation of the draft memo to CSIS
13 and to the RCMP. Meetings occurred to come to a
14 consensus on a course of action.

15 Are you aware of that background
16 to the June 5th memo that came up to you?

17 MS McCALLION: I'm aware of the
18 background. I'm not aware of all of the
19 ramifications or all the details. So the nature
20 of the briefing would have been Mr. Pardy
21 reporting to me what was being attempted and how
22 they were doing it and how they were progressing,
23 but not a blow-by-blow, nor was I at any of the
24 meetings, nor was I asked to be at any of the
25 meetings.

1 MR. DAVID: But you did have a
2 general understanding --

3 MS McCALLION: A general
4 understanding that work was proceeding to, to the
5 best of our ability, bring Mr. Arar home and
6 processes and conversations, dialogues between
7 partners were carrying on.

8 MR. DAVID: And was it to your
9 understanding that the process of trying to arrive
10 to a recommended course of action for your
11 Minister involve discussions with the RCMP and
12 with CSIS?

13 MS McCALLION: Yes.

14 MR. DAVID: And was it to your
15 understanding that in fact at one point there was
16 the hope, put it that way, that a joint letter, a
17 joint letter signed by both your Minister and the
18 Solicitor General could be signed and sent over to
19 Syria in terms of an effort of getting Mr. Arar
20 back to Canada?

21 MS McCALLION: That one I'm not as
22 comfortable with agreeing with. I don't recall
23 being told specifically who would sign the letter.
24 I remember we now need to propose a letter. But I
25 can't agree that I knew that it would have two

1 signatures on it.

2 MR. DAVID: All right. Can you
3 tell us the date that this memo ended up in the
4 Minister's office, by looking at the transmittal
5 slip?

6 MS McCALLION: My assumption is it
7 was Monday the 9th.

8 MR. DAVID: And what do you base
9 that on?

10 MS McCALLION: The date stamp in
11 the corner.

12 MR. DAVID: In the right-hand
13 corner of the box --

14 MS McCALLION: 3/6/9, 11:30, I
15 think it is.

16 MR. DAVID: And there's a time
17 that is indicated.

18 So that is your understanding of
19 the date at which it would have arrived at the
20 Minister's office?

21 MS McCALLION: Registered.

22 MR. DAVID: Registered in the
23 Minister's office?

24 MS McCALLION: Right.

25 MR. DAVID: Do you know when this

1 memo left your office to end up in the office of
2 the Deputy Minister?

3 And just to help you or assist
4 you --

5 MS McCALLION: It was sometime
6 between Thursday and Friday at close of business.

7 MR. DAVID: Okay. Which brings me
8 to my next question: When did you receive this
9 memo?

10 MS McCALLION: I'm not precisely
11 clear as to when, but it was very -- around the
12 whole discussion of the phone calls, I received
13 the memo. I did not have the memo sitting in my
14 office gathering dust. So it's with the same
15 timeframe and the same rather vagueness. It was
16 within a day, day and a half.

17 I clearly had asked to see the
18 memo prior to dealing with it, either by a phone
19 call or -- I couldn't deal with it or sign it if I
20 didn't have it. So where is it? Please get it
21 here.

22 MR. DAVID: So you were expecting
23 this memo?

24 MS McCALLION: Yes.

25 MR. DAVID: And this expectation

1 was created by the fact that Mr. Pardy told you
2 that this memo was coming to you?

3 MS McCALLION: I believe so.

4 MR. DAVID: And you have already
5 mentioned just now that you wanted to read the
6 memo before speaking to Mr. Hooper?

7 MS McCALLION: Correct.

8 MR. DAVID: So am I to understand,
9 or are we to understand, I should say, that
10 Mr. Hooper had placed a call to you before you
11 received the memo?

12 MS McCALLION: I really don't
13 recall the exact chronology of this, but around
14 that time I had received a call from Mr. Hooper.
15 I clearly would not have taken the call without
16 knowing why he was calling, and I would normally
17 ask my DG, "Do you know what this is about?"

18 And if it had been about this,
19 which we assume it was, then could you show it
20 to -- if it's something to be discussed, could I
21 see it and read it before I call back?

22 So that's perfectly normal
23 behaviour.

24 The precision of how it happened
25 in this occasion I'm not as clear on as I would

1 like to be.

2 MR. DAVID: Let's see if I can
3 help you reconstruct that.

4 First of all, did you know who
5 Jack Hooper was?

6 MS McCALLION: Yes.

7 MR. DAVID: Had you ever spoken to
8 Mr. Hooper before?

9 MS McCALLION: I think, as I had
10 said to you previous -- well, let me repeat
11 myself. I may have, but not on a specific
12 consular case. There are other occasions in
13 Ottawa where ADMs get together and they are on
14 working groups, et cetera, et cetera.

15 MR. DAVID: So not specifically --

16 MS McCALLION: Not specifically on
17 this, work-related.

18 MR. DAVID: And you knew
19 Mr. Hooper to have a very senior position within
20 CSIS?

21 MS McCALLION: Yes.

22 MR. DAVID: Can I say that you
23 knew that he was basically the Number 3 man of the
24 organization?

25 MS McCALLION: I would have done

1 it the other way, which is -- I assumed he was
2 more or less my counterpart.

3 MR. DAVID: Fair enough. Your
4 position as an ADM puts you basically at Number 3
5 position --

6 MS McCALLION: Yes.

7 MR. DAVID: -- within your
8 organization?

9 MS McCALLION: Yes.

10 MR. DAVID: And you understood
11 Mr. Hooper to be your counterpart?

12 MS McCALLION: Yes, without
13 counting.

14 MR. DAVID: Let me now refer you
15 to Barbara Burns, your executive assistant's phone
16 slips for that day.

17 Could you go to tab 15 of P-85,
18 volume 5, please.

19 MS McCALLION: Yes.

20 MR. DAVID: There are two pages in
21 this tab and they are in chronological order, Ms
22 McCallion. The second box has been redacted.
23 However, the date that appears for that -- on the
24 first page, I'm sorry, if you go to the first
25 page?

1 MS McCALLION: Yes.

2 MR. DAVID: The second box is
3 redacted. It does not concern this inquiry.
4 However, the date that is indicated is June 3rd,
5 2003.

6 The next message, Jack Hooper, is
7 not dated. And the bottom message is dated, and
8 that is June 5th, 2003.

9 So by Ms Burns' reconstruction,
10 she has testified to the fact that this message of
11 Jack Hooper was registered by her no later than
12 June 5th.

13 MS McCALLION: Mm-hmm.

14 MR. DAVID: And the message reads:
15 "For KEM."

16 Is that her common way of
17 addressing you, KEM, on phone slips?

18 MS McCALLION: Yes. We have been
19 together for 13 years and they keep changing my
20 acronym but not my initials.

21 MR. DAVID: So far.

22 MS McCALLION: So far. They are
23 working on that one.

24 MR. DAVID: And the message is:
25 "Jack Hooper CSIS"

1 MS McCALLION: Yes.

2 MR. DAVID: And the message is:
3 "re: Arar"

4 So you knew that Mr. Hooper was
5 calling you about Arar?

6 MS McCALLION: Right.

7 MR. DAVID: Did that puzzle you?

8 MS McCALLION: No.

9 MR. DAVID: At first?

10 MS McCALLION: No.

11 MR. DAVID: Okay. You have
12 mentioned that your position was you are not
13 returning Mr. Hooper's call until you have read
14 the memo?

15 MS McCALLION: Correct.

16 MR. DAVID: So you have made the
17 link between the call and the memo?

18 MS McCALLION: Yes.

19 MR. DAVID: And why?

20 MS McCALLION: Because I knew we
21 were going up to the Minister around that time
22 with the strategy of what next steps we were
23 taking to get Mr. Arar released.

24 MR. DAVID: And you knew that that
25 strategy included a letter to be issued by your

1 Minister to the Foreign Minister of Syria.

2 If you want, I can refer you to
3 the document in question that it is attached to
4 the memo.

5 MS McCALLION: The memo now had
6 the letter. You are asking me did I know in
7 advance? Yes and no. I knew we were going to the
8 Minister with a briefing. I knew we had been
9 asked for one and we had been asked for our
10 strategy and various strategies had been outlined,
11 and I probably knew that it had got to the point
12 of sending a letter.

13 MR. DAVID: And there was a letter
14 that was attached to the memo?

15 MS McCALLION: Yes, there was.

16 MR. DAVID: And you read that
17 letter?

18 MS McCALLION: I did.

19 MR. DAVID: And you understood
20 that the letter was going from your Minister to
21 the Foreign Minister of Syria?

22 MS McCALLION: Yes.

23 MR. DAVID: And it included this
24 language that was arrived at by consensus as it
25 was indicated in the memo, that "there was no

1 Canadian government impediment to Mr. Arar's
2 return to Canada"?

3 MS McCALLION: Correct.

4 MR. DAVID: And this you
5 understood to be a language to be coached --
6 coached in the sense that it was the product of a
7 consensus between various Canadian government
8 agencies, including CSIS?

9 MS McCALLION: Correct.

10 MR. DAVID: Including the RCMP?

11 MS McCALLION: Correct.

12 MR. DAVID: And obviously DFAIT.

13 Okay.

14 Other than the phone slip that we
15 have just seen, what other heads-up, if any, did
16 you have that Mr. Hooper was going to call you, or
17 calling you about Mr. Arar?

18 MS McCALLION: The best I can
19 recollect was I was aware that the town was not in
20 agreement at the outset, 100 per cent agreement.
21 Well, I must have been told by someone because I
22 don't have any briefing notes to that effect, that
23 we are trying to get the town to agree and we are
24 working on it but we are not there yet.

25 MS EDWARDH: Mr. Commissioner, I

1 didn't understand the word. You are trying to get
2 the "town" to agree?

3 MS McCALLION: I'm sorry. Other
4 departments in Ottawa. Keep your eye on me; I do
5 things like that.

6 So I was aware that it wasn't,
7 what would we say, a done deal at the start; that
8 it was going to take some collaboration and some
9 discussions.

10 MR. DAVID: And that was including
11 on June 5th to be the situation?

12 MS McCALLION: No.

13 MR. DAVID: No?

14 MS McCALLION: By the time I got
15 the memo, I had been told this was an agreed memo.

16 MR. DAVID: And do you recall who
17 told you that?

18 MS McCALLION: Gar.

19 MR. DAVID: Gar Pardy told you
20 that this was now a final product and that you had
21 the green light and this could go ahead?

22 MS McCALLION: From his level.

23 MR. DAVID: From his level.

24 Director General level?

25 MS McCALLION: Director General

1 level.

2 MR. DAVID: Below you?

3 MS McCALLION: They had done their
4 work interdepartmentally. The interdepartmental
5 community could agree with this letter.

6 MR. DAVID: And that was for the
7 interdepartmental community of all the concerned
8 organizations?

9 MS McCALLION: I wasn't in the
10 room, so I'm not sure who was there. I had been
11 following it with CSIS, RCMP. I think other
12 people from the Solicitor General, I believe PCO;
13 but the community of concerned departments.

14 MR. DAVID: And did you understand
15 that on June 5th, when you received this memo,
16 that there were potential outstanding issues in
17 terms of agreement on the manner to proceed?

18 MS McCALLION: No, the contrary.

19 MR. DAVID: The contrary, okay.

20 MS McCALLION: That this was now
21 understood around town, the role that Foreign
22 Affairs was going to take, how they were going to
23 take it, and the content of the letter.

24 MR. DAVID: So did you read the
25 memo before returning Mr. Hooper's call?

1 MS McCALLION: I did.

2 MR. DAVID: And do you recall the
3 date that you did that on?

4 MS McCALLION: No.

5 MR. DAVID: No. Did you
6 understand that the processing of the memo, there
7 was some -- maybe "urgency" is a strong word, but
8 there was some --

9 MS McCALLION: Urgent.

10 MR. DAVID: You will qualify it as
11 being urgent?

12 MS McCALLION: Urgency.

13 MR. DAVID: Urgency?

14 MS McCALLION: There was some
15 level of urgency.

16 MR. DAVID: There was some level.
17 And that concern for some urgency in treating of
18 the matter, how did you understand that there was
19 some urgency to dealing with the memo and
20 processing the memo?

21 MS McCALLION: My understanding
22 was the Minister or the Minister's office was
23 asking where are we on the next steps? This was
24 in the public domain at the time, and there was
25 pressure for Ministers to answer questions about

1 what were they doing and how were they doing it.

2 MR. DAVID: And so you understood
3 that your Minister wanted to act in this manner --

4 MS McCALLION: A manner.

5 MR. DAVID: I'm sorry?

6 MS McCALLION: He wanted action.
7 This was our recommendation.

8 MR. DAVID: Okay, fine. So he was
9 waiting upon the memo, and he was waiting upon the
10 letter? Yes?

11 MS McCALLION: No.

12 MR. DAVID: No?

13 MS McCALLION: He was waiting for
14 us to suggest something to him. This is what we
15 were suggesting to him.

16 MR. DAVID: Okay, fine. Good
17 enough.

18 Did you have any issues in reading
19 the memo when you read the memo?

20 MS McCALLION: No. Issues? No.
21 I may have asked for clarification, but I don't
22 recall. But it was very clear.

23 MR. DAVID: And did you read the
24 letter?

25 MS McCALLION: Yes.

1 MR. DAVID: And did you agree with
2 the contents, the language of the letter? Did you
3 make any suggestions? Did you seek any
4 clarification as to the letter?

5 MS McCALLION: No.

6 MR. DAVID: Now, before calling
7 Mr. Hooper back, what did you do? Did you try to
8 speak to Gar Pardy?

9 Do you recall having a meeting
10 with Dave Dyet in your office?

11 MS McCALLION: No. But I
12 understand Mr. Dyet recalls having a meeting with
13 me, and therefore we had a meeting. I mean, if
14 Mr. Dyet recalled it, we did.

15 It is customary for me to say,
16 "I've read the memo. What do you want me to know
17 prior to a meeting I'm going to, a briefing I'm
18 going to," and in this case probably prior to the
19 phone call. Background. Like, how did we get to
20 where we are.

21 MR. DAVID: But clearly you
22 understood that there was a link between the memo,
23 the phone call and Mr. Arar?

24 MS McCALLION: Correct.

25 MR. DAVID: And this phone call

1 lasted approximately how long with Mr. Hooper?

2 MS McCALLION: To my best
3 recollection, it was longer than five minutes and
4 it wasn't half an hour, so I would say 15, 20
5 minutes.

6 MR. DAVID: Okay. And clearly you
7 had read the memo?

8 MS McCALLION: Yes.

9 MR. DAVID: And from Mr. Dyet's
10 testimony, you are satisfied that you had sat down
11 with Mr. Dyet previous to calling Mr. Hooper?

12 MS McCALLION: Yes.

13 MR. DAVID: Did you call
14 Mr. Hooper back, or did he call you back to speak
15 to actually --

16 MS McCALLION: I believe I called
17 him.

18 MR. DAVID: I would like you now
19 to describe in as much detail as possible the
20 contents of your conversation with Mr. Hooper.

21 MS McCALLION: This isn't as easy
22 as it sounds because it was a general conversation
23 as well as a specific conversation. It was
24 specific, we should be talking about Arar, but
25 rather than talk about the details of Arar, we

1 were talking about the global situation, relations
2 with the United States and other states
3 post-September 11, my role, or the role of Foreign
4 Affairs vis-à-vis our mandate and our obligation
5 on consular affairs, his role and mandate
6 vis-à-vis his obligation as a member of CSIS,
7 previous ways and means of cooperation.

8 Did I understand the full
9 ramifications of promising more than we could
10 deliver or not? Were we clear?

11 It was of that magnitude -- like,
12 it was of that kind. It was not a specific
13 request. It was not acrimonious. It was not
14 confrontational. It was a dialogue between two
15 ADMs representing two different mandates that were
16 being obliged to work together, and I think it was
17 a verification that I knew what consular was
18 doing, that I understood what the memo was about,
19 and that I was aware of the contents of the memo
20 and the letter. Like, I wasn't just signing
21 something.

22 So to the best of my ability, that
23 was the nature of the conversation.

24 MR. DAVID: So Mr. Hooper was
25 asking you to reflect upon how you do your work in

1 terms of processing this memo?

2 MS McCALLION: No, because that
3 makes it sound like he was questioning how I did
4 my work, and that's not what I said.

5 We were acknowledging that in some
6 instances departmental mandates were not always
7 100 per cent complementary, and that efforts would
8 be made to get them as close as possible,
9 understanding the mandates of each department, why
10 they might be in conflict.

11 For instance, with the RCMP, in
12 previous times with criminal cases the RCMP have
13 been known to be upset when they help put someone
14 in jail, and the first thing that happens is the
15 consular division tries to offer them consular
16 assistance, with or without any prejudice about
17 whether they are or aren't guilty.

18 So I think it was again with CSIS,
19 "This is our mandate, national security. We have
20 to be careful, we have to be thorough." And I'm
21 saying, "I do consular. This person is obliged to
22 get the assistance we are giving." And then we
23 talked about it.

24 MR. DAVID: Let me ask you,
25 Ms McCallion, was it your understanding that when

1 you spoke to Mr. Hooper, he was in possession of
2 the memo?

3 MS McCALLION: No, I don't
4 think -- I never -- we never asked whether he
5 agreed to the contents or had seen the memo. The
6 only reassurance was that the contents of the
7 letter as drafted had been sufficiently negotiated
8 that CSIS was not objecting to it.

9 MR. DAVID: So there was reference
10 to the letter?

11 MS McCALLION: No, not
12 specifically. It's, "Are you comfortable with the
13 steps? Do you understand I am sending my memo or
14 my letter up?" That was my job.

15 MR. DAVID: But I just want to
16 understand very clearly here.

17 Mr. Hooper, in his conversation
18 with you, did he understand that there was a
19 letter to be issued by your Minister to Syria?

20 MS McCALLION: Yes. I would say
21 he was.

22 MR. DAVID: And did you understand
23 that he was aware of the language of the letter,
24 the contents of the letter?

25 MS McCALLION: I don't know if he

1 was or not.

2 MR. DAVID: But he was aware of
3 the fact that DFAIT was contemplating this course
4 of action?

5 MS McCALLION: Yes, and that there
6 had been meetings.

7 MR. DAVID: Meetings between --

8 MS McCALLION: The agencies.

9 MR. DAVID: The agencies,
10 including the RCMP, CSIS and DFAIT?

11 MS McCALLION: Yes.

12 MR. DAVID: And he made reference
13 to that course of action?

14 MS McCALLION: I don't recall. I
15 don't recall specific step-by-step what the
16 conversation -- like, step-by-step.

17 MR. DAVID: Okay.

18 MS McCALLION: So my hypothesis is
19 we were discussing the fact that there had been
20 consultations, things were progressing, and we
21 would be going ahead with our plan of action.

22 MR. DAVID: So one of the things
23 that you have mentioned is that he explained to
24 you CSIS' mandate?

25 MS McCALLION: Yes.

1 MR. DAVID: What did he tell you
2 in that regard?

3 MS McCALLION: It was in general
4 terms; that they have to take great care of
5 national security and that's what their job was.

6 MR. DAVID: And did you not know
7 that already?

8 MS McCALLION: Sure, I did.

9 MR. DAVID: Did you learn anything
10 about CSIS' mandate --

11 MS McCALLION: No.

12 MR. DAVID: -- from Mr. Hooper
13 that day?

14 MS McCALLION: No, nor do I think
15 he learned anything about consular.

16 MR. DAVID: So in terms of an
17 education process between two ADMs, you learned
18 nothing about CSIS' mandate and their role in the
19 Canadian government, and you are saying that he
20 learned nothing about DFAIT's role in the Canadian
21 government and its mandate?

22 MS McCALLION: I think both of us
23 were reassuring each other that we were aware of
24 the issue in the context of our mandates.

25 MR. DAVID: Aware of what issue,

1 Ms McCallion?

2 MS McCALLION: The Arar case.

3 MR. DAVID: The Arar case. So he
4 was contextualizing for you what you should be
5 considering in terms of CSIS' mandate with regard
6 to what you had to decide in terms of processing
7 the memo.

8 MS McCALLION: No. I think it was
9 more an acknowledgment of the mandates on both our
10 parts.

11 MR. DAVID: So what did he want
12 you to acknowledge in terms of CSIS' mandate with
13 regard to what you had to do?

14 MS McCALLION: The role they had
15 been playing up till then in the interdepartmental
16 community. Discussions.

17 MR. DAVID: That doesn't quite
18 answer my question.

19 I mean, you clearly understood
20 what your role was and what DFAIT's mandate was.

21 MS McCALLION: Yes.

22 MR. DAVID: And clearly Mr. Hooper
23 had nothing to tell you about what you had to do
24 in terms of DFAIT's mandate.

25 MS McCALLION: No. I think what

1 I'm trying to say is the discussion was around the
2 fact that in some instances the mandates of the
3 two departments are not necessarily 100 per cent
4 concurrent, and how do we resolve the need --
5 again, you have heard it today -- to speak with
6 one voice. How does the government make sure that
7 all considerations that have to be taken into
8 account have been taken into account?

9 And it was simply, "Are you taking
10 into account?" "Yes." "Are you taking me into
11 account?" "Yes." "Are we still more or less in
12 the middle of the road?" "Yes." "Are we in
13 agreement that what we have done so far we can
14 live with?" "Yes." "Thank you." "Thank you."

15 So it's not a lecture. It's not
16 an instructive thing. It is a reassurance.

17 MR. DAVID: It's a reassurance of
18 what, Ms McCallion?

19 MS McCALLION: Well, I would
20 imagine he was reassuring himself that I was aware
21 of the content of the discussions that had
22 occurred at a junior level and that they weren't
23 actually as easy as they might have been, but they
24 have been resolved.

25 MR. DAVID: But your understanding

1 is that a consensus had been arrived at already.

2 MS McCALLION: Yes.

3 MR. DAVID: That is your
4 understanding?

5 MS McCALLION: Mm-hmm.

6 MR. DAVID: Was it not
7 Mr. Hooper's understanding?

8 MS McCALLION: I think so.

9 MR. DAVID: So what was the point
10 of his call?

11 MS McCALLION: You will have to
12 ask him.

13 MR. DAVID: And his conversation
14 to you.

15 MS McCALLION: Well, you will have
16 to ask him.

17 MR. DAVID: Did you perceive it as
18 being a pointless call to you?

19 MS McCALLION: No. Reassuring.

20 MR. DAVID: Reassuring for himself
21 or reassuring for you?

22 MS McCALLION: Both of us.

23 MR. DAVID: And how did the call
24 reassure you?

25 MS McCALLION: Because it ended

1 well. "Thank you for calling."

2 MR. DAVID: So you discussed the
3 mandate of CSIS in the context --

4 MS McCALLION: In the context of
5 the issue at hand. It was the role and function
6 each of us play, from a slightly different
7 perspective on a very complex issue, that was in
8 the public domain.

9 MR. DAVID: And what did you
10 explain to him about your mandate?

11 MS McCALLION: That the memo would
12 be going forward.

13 MR. DAVID: You told him that?

14 MS McCALLION: Yes.

15 MR. DAVID: You asserted that?

16 MS McCALLION: Yes.

17 MR. DAVID: And how did he react
18 to that?

19 MS McCALLION: He agreed. He
20 didn't disagree.

21 MR. DAVID: He did not disagree
22 with the fact that your Minister was writing to
23 the Foreign Minister?

24 MS McCALLION: Right.

25 MR. DAVID: Did he give you any

1 warnings?

2 MS McCALLION: No.

3 MR. DAVID: Did he raise any
4 flags --

5 MS McCALLION: This is part of the
6 reassurance because sometimes you can end a phone
7 call with, "Then I'm afraid I will have to have my
8 Minister talk to your Minister" or "My Deputy will
9 talk to your Deputy."

10 And I think both of us were
11 reassured that after our conversation he did not
12 refer it upwards in his system and I did not refer
13 it upwards in my system. I did not debrief
14 upwards on the phone call.

15 MR. DAVID: And what did you
16 discuss concerning Mr. Arar per se? What was
17 shared between the both of you about --

18 MS McCALLION: To my recollection,
19 nothing.

20 MR. DAVID: -- the case?

21 MS McCALLION: Nothing.

22 MR. DAVID: Now, in terms of
23 timing, clearly Mr. Hooper had well-identified the
24 time where this memo was in the machine, if I
25 could say, in terms of processing, and clearly he

1 had identified the person on whose desk the memo
2 was for the purposes of processing?

3 MS McCALLION: Mm-hmm.

4 MR. DAVID: Did that not strike
5 you as an odd coincidence?

6 MS McCALLION: No.

7 MR. DAVID: Did it not strike you
8 as being perhaps an indirect attempt to influence
9 your decision-making in terms of processing the
10 memo?

11 MS McCALLION: I would put it more
12 that I was willing to listen to him, but I didn't
13 assume what he was going to say. So I wasn't
14 surprised he phoned me. I wasn't surprised he
15 knew where the memo was. I assumed all the DGs
16 had been told it has been finalized and it is
17 starting up the system, and each department would
18 have so informed their immediate superiors. And
19 if you wanted to touch base, you would.

20 MR. DAVID: But the situation is
21 as follows: The memo is on your desk. It is
22 there for the purposes of your review.

23 MS McCALLION: Mm-hmm.

24 MR. DAVID: It is there for the
25 purposes of your contribution, and it is there for

1 the purposes of your authorization.

2 MS McCALLION: Mm-hmm.

3 MR. DAVID: And Mr. Hooper is
4 calling at that exact moment --

5 MS McCALLION: Mm-hmm.

6 MR. DAVID: -- where it's before
7 you --

8 MS McCALLION: Right.

9 MR. DAVID: -- for that purpose.

10 MS McCALLION: Mm-hmm.

11 MR. DAVID: And on one hand, you
12 understood from your people, Mr. Pardy and others,
13 that a consensus had been arrived at with, amongst
14 others, CSIS?

15 MS McCALLION: Right.

16 MR. DAVID: So in your mind, or in
17 the mind of a reasonable person, I'm asking you:
18 Could it not be understood that Mr. Hooper's call
19 was an attempt to influence your decision-making
20 in terms of the memo?

21 MS McCALLION: Not at all. He was
22 probably phoning to find out if I was going to
23 change the letter. But I don't know. You will
24 have to ask Mr. Hooper. But he did not ask me to
25 change anything.

1 MR. DAVID: Did he refer to the
2 language of the letter?

3 MS McCALLION: Not directly.

4 MR. DAVID: Well, indirectly, how
5 did he refer to it then?

6 MS McCALLION: That we have agreed
7 language around town that we can all live with.

8 MR. DAVID: And this call, to the
9 best of your ability to recall it, lasted from 15
10 to 20 minutes?

11 MS McCALLION: Approximately.

12 MR. DAVID: So if you had to
13 describe the purpose of the call, Ms McCallion, at
14 the end of the day, how would you describe the
15 purpose for that call?

16 MS McCALLION: He was reassuring
17 himself I was aware of the intricacies of the job
18 at hand.

19 MR. DAVID: That you were aware of
20 the intricacies? In other words, that you were
21 not only --

22 MS McCALLION: That I knew this
23 had been talked about around town. It wasn't
24 agreed around town at the beginning. It was
25 difficult. Sensitivities. Did I know there had

1 been a lot of work going into this? An awareness.
2 And I suggest I was.

3 MR. DAVID: So was it to try to
4 make it that the language that the letter
5 contained remained that language and didn't
6 change --

7 MS McCALLION: You will have to
8 ask Mr. Hooper. He did not ask me about it.

9 MR. DAVID: Did he tell you that
10 he was content with the present form of the
11 letter?

12 MS McCALLION: No. We did not
13 discuss happiness, contentment, anything at all of
14 that nature.

15 MR. DAVID: Did he tell you that
16 the language in its present form, as it was
17 attached to the memo, was satisfactory to CSIS?

18 MS McCALLION: Not to my
19 recollection.

20 MR. DAVID: Did he tell you that
21 any other language would not be satisfactory and
22 there would be no consensus if any other language
23 was considered?

24 MS McCALLION: I don't recall that
25 he did.

1 --- Pause

2 MR. DAVID: It was understood by
3 you, Ms McCallion, that the language was an
4 agreed-upon language in town, as you say?

5 MS McCALLION: Yes.

6 MR. DAVID: And it was also your
7 understanding that Mr. Hooper understood that it
8 was agreed-upon language --

9 MS McCALLION: Yes.

10 MR. DAVID: -- when he called you?

11 MS McCALLION: Yes.

12 MR. DAVID: That was his
13 understanding?

14 MS McCALLION: That was my
15 understanding of his understanding.

16 MR. DAVID: So, again, what is the
17 point of the call?

18 MS McCALLION: You will have to
19 ask him. He initiated the call. We had the call.
20 I left the call not briefing up -- not worried I
21 had signed or was signing the memo. And to be
22 brutal, as far as I was concerned, that was it.

23 MR. DAVID: And so you informed
24 Mr. Hooper --

25 MS McCALLION: We didn't -- we

1 didn't plan to meet again, talk again. We had our
2 conversation. It was very cordial and very
3 professional, and we hung up.

4 MR. DAVID: And did you gain any
5 additional understanding from anything Mr. Hooper
6 said to you?

7 MS McCALLION: Hard to say. Hard
8 to say what I knew. Hard to say what -- I had
9 also been responsible for Passport, so I was very
10 aware of the ramifications of September 11th
11 internationally. Maybe he didn't know that I knew
12 that. I don't know. You will have to ask.

13 MR. DAVID: Did Mr. Hooper
14 acknowledge in any way that he was better educated
15 about DFAIT's mandate following your call, your
16 conversation?

17 MS McCALLION: Not to me, he
18 didn't.

19 MR. DAVID: I would like to bring
20 you to Mr. Gould's notes, Ms McCallion. This is
21 P-236.

22 MS McCALLION: No, I don't have
23 that. Or if I do, it's gone.

24 All right, I have it.

25 MR. DAVID: Could you go to page 9

1 of 16 at tab 1.

2 These are Mr. Gould's notes. You
3 know who Mr. Gould is. He is an officer within
4 ISI. He is the Deputy Director of ISI.

5 He notes the following on June
6 5th. It's at the top and it's ii:

7 "Call from Jack Hooper ADDO
8 to MKM saying that CSIS
9 doesn't want us to get Arar
10 back in the country as they
11 would have to devote too many
12 resources to watching him."

13 Did Mr. Hooper refer to the lack
14 of CSIS resources in terms of watching Arar if he
15 was to come back to Canada?

16 MS McCALLION: Not to my
17 recollection, no.

18 MR. DAVID: Did Mr. Hooper mention
19 to you that CSIS didn't want Mr. Arar back in the
20 country?

21 MS McCALLION: No.

22 MR. DAVID: To your knowledge,
23 Ms McCallion, had a member of CSIS ever called you
24 before about a consular case?

25 MS McCALLION: Not to my

1 recollection.

2 MR. DAVID: I would like to bring
3 you now to tab -- you have the Volume in front of
4 you. It's P-85, volume 5, tab 15. It's the phone
5 slips from Ms Barbara Burns.

6 If you could go to the second
7 page, the top message, it says "KEM" and it's
8 dated June the 6th, from Jim Gould, ISI. And,
9 again, the message in terms of content is "Re your
10 phone call with CSIS on Arar".

11 Did you have any conversation, to
12 your recollection, with Jim Gould concerning this
13 call?

14 MS McCALLION: No, I didn't.

15 MR. DAVID: Did you discuss the
16 call with anybody?

17 MS McCALLION: No.

18 MR. DAVID: Did you discuss the
19 call with Mr. Pardy, with Mr. Heatherington, with
20 Mr. Gould?

21 MS McCALLION: To the best of my
22 recollection, I never discussed the content with
23 anyone and discussed the fact that it had occurred
24 and the memo had gone forward with someone in
25 consular.

1 MR. DAVID: With some what?

2 MS McCALLION: Someone in
3 consular. And my understanding now is Gar Pardy
4 had left, so it would have been Dave Dyet.

5 I had the conversation. I've
6 signed the memo. It has left my office.

7 MR. DAVID: And did you take any
8 actions of any kind following the phone call with
9 Mr. Hooper?

10 MS McCALLION: No.

11 MR. DAVID: Thank you. Those are
12 my questions.

13 THE COMMISSIONER: Should we take
14 a break?

15 How long do you think it might be,
16 Ms Edwardh?

17 MS EDWARDH: Could we have 20
18 minutes?

19 THE COMMISSIONER: Sure.

20 MS EDWARDH: I think I have found
21 the portions of the conversation that I need to
22 read, and then I will be able to proceed.

23 THE COMMISSIONER: All right.

24 And, Mr. Shore, you were going to
25 read the transcript. That will give you enough

1 time, I take it?

2 MR. SHORE: Yes, I've read what I
3 have to read. I will have some examination for
4 Mr. Gould.

5 THE COMMISSIONER: You will?

6 MR. SHORE: But brief. Yes. I'm
7 sorry to surprise you, but it won't be lengthy.

8 THE COMMISSIONER: All right.

9 We will break for 20 minutes.

10 --- Upon recessing at 4:39 p.m. /

11 Suspension à 16 h 39

12 --- Upon resuming at 5:00 p.m. /

13 Reprise à 17 h 00

14 THE COMMISSIONER: Mr. David.

15 MR. DAVID: Thank you.

16 Ms Edwardh, I have one more
17 question for Ms McCallion.

18 I just want to clarify a point,
19 Ms McCallion.

20 After the phone call with
21 Mr. Hooper, I understand you did speak to the
22 matter to Mr. Dyet; that you confirm that the call
23 had taken place?

24 MS McCALLION: To the best of my
25 recollection, I informed consular that the call

1 had taken place and the memo had been signed. I
2 don't recall who I spoke to.

3 They were the originators of the
4 memo. They should not expect it back.

5 MR. DAVID: Assuming that
6 Mr. Pardy was away, was the next in line be Dave
7 Dyet?

8 MS McCALLION: Yes.

9 MR. DAVID: Not being 100 per cent
10 sure as to who you spoke to from consular that day
11 about the memo, processing the memo and the phone
12 call, did you describe to the person your
13 discussions with Mr. Hooper?

14 MS McCALLION: No.

15 MR. DAVID: And provide content
16 about the discussion?

17 MS McCALLION: No.

18 MR. DAVID: Thank you.

19 EXAMINATION

20 MS EDWARDH: Good afternoon,
21 Ms McCallion. My name is Marlys Edwardh. I
22 represent Maher Arar.

23 Why didn't you discuss the content
24 of the conversation with anyone? Is there any
25 reason?

1 MS McCALLION: It didn't affect
2 the actions being taken.

3 MS EDWARDH: For that reason you
4 treated the matter as confidential?

5 MS McCALLION: No. More did it,
6 done it, finished. It didn't affect what was
7 taking place.

8 MS EDWARDH: Let me ask you a
9 couple of questions.

10 This telephone call you have
11 described as being relatively short, something
12 less than 30 minutes, probably closer to 15 or 20?

13 MS McCALLION: I described it that
14 way, yes; not short, but about that length.

15 MS EDWARDH: I take it, from the
16 absence of any notes that you have referred to,
17 you didn't make any notes at all of the
18 conversation with Mr. Hooper.

19 MS McCALLION: I made no notes.

20 MS EDWARDH: I'm sorry?

21 MS McCALLION: I made no notes.

22 MS EDWARDH: Nor did you dictate
23 any report in respect of that contact or provide
24 any information to anyone who was your superior in
25 the department.

1 MS McCALLION: Yes, correct.

2 MS EDWARDH: You have described
3 yourself as having been kept abreast of
4 developments, at least in general terms, as they
5 related to Maher Arar. In particular, it is my
6 understanding that you met with or were briefed by
7 Mr. Pardy on a fairly regular basis.

8 Is that a fair statement?

9 MS McCALLION: Yes.

10 MS EDWARDH: Would you also agree
11 with me that Mr. Pardy is a man who makes clear
12 generally his views of the matter? He is a blunt
13 man.

14 MS McCALLION: You could describe
15 him that way.

16 MS EDWARDH: In his memorandum --
17 before we get to his memorandum, I take it you
18 knew that he was aware and had struggled with
19 issues around differing views of Mr. Arar for some
20 time.

21 MS McCALLION: Differing views of
22 an approach to the case.

23 MS EDWARDH: Fair enough.
24 Differing views of an approach to the case.

25 Would it be fair to say that

1 Mr. Pardy undertook his consular obligations with
2 vigour and was fairly aggressive in his insistence
3 that consular services be provided to individuals,
4 regardless of their status?

5 MS McCALLION: Yes.

6 MS EDWARDH: He was a person --
7 and you adverted to some difficulty in the past
8 with RCMP struggling to put someone in jail only
9 to have people like Mr. Pardy enthusiastically
10 throw themselves into positions of assisting. And
11 I think it is obvious that that happened
12 particularly in cases, for example, dealing with
13 death penalties in the United States. He was
14 active in trying to assist people and indeed
15 solicited the participation of the department in
16 those areas.

17 MS McCALLION: Well, if you will
18 excuse me, you are editorializing. If you are
19 asking about Mr. Pardy and his work habits --

20 MS EDWARDH: Yes.

21 MS McCALLION: He was a committed
22 officer. He was very good. He was enthusiastic.
23 And he was persistent in trying to achieve his
24 goals.

25 MS EDWARDH: He was persistent in

1 defining the right of a Canadian to have access to
2 consular services.

3 MS McCALLION: Yes, because that
4 is our mandate.

5 MS EDWARDH: He had, had he not,
6 conveyed to you at least in general terms what the
7 differing views were as to the "approaches" that
8 should be taken to the case of Maher Arar?

9 MS McCALLION: No. He had
10 referred to the fact that there was not a
11 consistent approach around town.

12 MS EDWARDH: Did you not at that
13 time ask him what was the inconsistency and
14 whether or not it formed an impediment to the
15 actions that fell within your mandate?

16 MS McCALLION: One of the things
17 that concerned me is there were other players --
18 i.e., there were two other governments involved.
19 So it was not only Ottawa.

20 And yes, there were issues of
21 coordination of federal departments around this
22 case.

23 MS EDWARDH: So you have other
24 governments and other departments.

25 MS McCALLION: Correct.

1 MS EDWARDH: That are players in
2 the Maher Arar case.

3 MS McCALLION: Correct.

4 MS EDWARDH: Leaving aside for the
5 moment other governments, Mr. Pardy, did he not,
6 speak to you generally about the issues of
7 divergence as it related to the players within the
8 Government of Canada?

9 MS McCALLION: Yes.

10 MS EDWARDH: Could you recount for
11 us what his descriptions, not necessarily in this
12 memo but over the months or so leading up to this
13 memo, what were his descriptions of the divergence
14 with respect to the Canadian government players,
15 starting with DFAIT.

16 MS McCALLION: I would simply say
17 it was how much was known and who knew what. I
18 did not go to those meetings and therefore it was
19 national security.

20 But who came at it from their
21 mandate and why.

22 MS EDWARDH: I'm sorry, I am
23 having trouble understanding that.

24 MS McCALLION: CSIS is in charge
25 of national security.

1 MS EDWARDH: Correct. RCMP is
2 supposed to conduct criminal --

3 MS McCALLION: Criminal behaviour,
4 domestic criminal behaviour.

5 MS EDWARDH: Yes. They are at the
6 table.

7 MS McCALLION: They are at the
8 table.

9 MS EDWARDH: Right. And they have
10 a different approach, according to what you just
11 said.

12 MS McCALLION: Concerns, concerns.

13 MS EDWARDH: Well, you said --

14 MS McCALLION: And approach.

15 Concerns around how the government as a whole
16 would approach the case.

17 MS EDWARDH: Right. It is not
18 probably uncommon for one department to think that
19 its view of the matter ought to prevail over
20 others, but nonetheless they are forced into the
21 position of recognizing that you speak for
22 consular services and are in charge of how they
23 will be delivered to a particular Canadian.

24 MS McCALLION: Correct.

25 MS EDWARDH: What I am trying to

1 capture is I don't have a handle -- and I know it
2 is late in the date -- on what those divergences
3 were.

4 MS McCALLION: I didn't get a
5 detailed list. It was in the hands of, not only
6 Mr. Pardy, but other parts of the department.

7 MS EDWARDH: Certainly, though,
8 one of the things you knew was that that
9 divergence was an impediment for Mr. Pardy to
10 gather together an intergovernmental consensus.
11 He made that clear to you.

12 MS McCALLION: I wouldn't use the
13 word "impediment". I think he was talking about
14 the process he was going through.

15 MS EDWARDH: Let's look at his
16 memo.

17 I don't use the word "impediment"
18 loosely.

19 If you go to 75.5 -- we will get
20 that for you.

21 This is Exhibit P-117,
22 Mr. Commissioner.

23 THE COMMISSIONER: I have it.

24 MS McCALLION: It is No. 5 here?

25 MS EDWARDH: Yes, that is correct.

1 This memo, which is ultimately
2 proposing a letter written only by Minister Graham
3 to his counterpart, has two interesting comments
4 that Mr. Pardy makes, to make sure you understand
5 the context, I think.

6 In paragraph 11 at page 4 of the
7 memorandum, Ms McCallion, it says:

8 "CSIS officials visited Syria
9 earlier this year and
10 discussed Mr. Arar with their
11 counterparts. They did not
12 meet Mr. Arar. Subsequent to
13 these discussions, Syrian
14 officials informed us that
15 they were informed by CSIS
16 officials that Canada did not
17 want to have Mr. Arar
18 returned. The CSIS officials
19 denied that they had said
20 this to the Syrians."

21 So there is a tension in
22 communication.

23 MS McCALLION: When I read this,
24 it was clear. You asked me if Gar told me these
25 things in his regular briefings, and I said no, he

1 did not go into it in great detail.

2 By the time I reached this memo,
3 it was very clear in para 11.

4 MS EDWARDH: Right. Now let's go
5 to paragraph 13:

6 "In recent days, we have
7 discussed the case with both
8 CSIS and the RCMP. They have
9 maintained their positions
10 that Mr. Arar, while not
11 under investigation in
12 Canada, is a person of
13 interest to them because of
14 the evidence of his
15 connections with others who
16 are. In these circumstances,
17 they will not provide any
18 direct support in having Mr.
19 Arar returned to Canada."

20 Clearly, I am going to suggest
21 that Mr. Pardy is making as obvious as can be that
22 after discussions, interdepartmental discussions
23 with the RCMP and CSIS, CSIS is not willing to
24 provide any direct assistance.

25 Is that fair? You don't draw any

1 different meaning from those words?

2 MS McCALLION: My interpretation
3 of it now from then, my understanding was that
4 they were no longer in a discussion about whether
5 their minister would sign a document.

6 MS EDWARDH: I'm sorry?

7 MS McCALLION: There was a
8 proposal that the Solicitor General would co-sign
9 the letter.

10 MS EDWARDH: Yes.

11 MS McCALLION: Withdrawing their
12 agreement to co-sign that letter could be deemed
13 that they would not offer support.

14 MS EDWARDH: So you were aware
15 that Mr. Pardy had made his best efforts to try
16 and see if a co-signed letter could go forward.
17 When you read this specific reference, you
18 understood that that proposal had gone by the
19 board. It was now dead.

20 MS McCALLION: All of this
21 happened around the time I got the memo. I was
22 not told most of this -- I understood you were
23 asking Mr. Pardy's frequent or regular briefings
24 to me, in what detail did they go into.

25 MS EDWARDH: No. I am asking

1 you --

2 MS McCALLION: Hardly any. I was
3 aware of the case. I was kept abreast of the fact
4 that there was a case, the fact that it was
5 causing some concern.

6 MS EDWARDH: Ms McCallion, you
7 were the one who just testified that in reading
8 the language "they will not provide any direct
9 support in having Mr. Arar returned to Canada",
10 you were the one who said you understood that this
11 meant --

12 MS McCALLION: No. I did when I
13 read it.

14 MS EDWARDH: Yes, at the time you
15 read it.

16 MS McCALLION: At the time I read
17 it.

18 MS EDWARDH: That this referred to
19 the letter that you had understood might be
20 co-signed and that it was no longer going forward.

21 MS McCALLION: No longer co-signed
22 and now we had the one that was attached.

23 MS EDWARDH: Right.

24 MS McCALLION: With agreed
25 wordings.

1 MS EDWARDH: So you understood
2 that when you read it.

3 And of course, I suppose it was at
4 an earlier briefing that you had been informed
5 about the co-signing process --

6 MS McCALLION: No.

7 MS EDWARDH: -- because it is not
8 here. So it must have come from Mr. Pardy on an
9 earlier occasion.

10 MS McCALLION: Or at the time I
11 asked Mr. Dyet to talk to me.

12 MS EDWARDH: All right.

13 MS McCALLION: I don't recall
14 being involved in any great detail up until I was
15 asked to sign this memo.

16 MS EDWARDH: In any event, upon
17 receiving this and being confronted with this
18 choice --

19 MS McCALLION: What does this
20 mean?

21 MS EDWARDH: You understood.

22 MS McCALLION: Yes.

23 MS EDWARDH: So then Mr. Pardy
24 goes:

25 "As such, the best we can

1 do --"

2 And that is, of course, DFAIT, the
3 best DFAIT can do. I think that is obvious there.

4 MS McCALLION: Right.

5 MS EDWARDH: "... in these
6 circumstances is to again
7 raise the matter direct with
8 the Syrian Foreign Minister
9 and to that end we have
10 attached a letter for your
11 signature."

12 So it is quite clear that the
13 collaborative process has ended insofar as a joint
14 letter, and now there is a single letter going
15 from the Minister of Foreign Affairs to his
16 counterpart, and that is what has been left out of
17 this negotiation.

18 Is that fair?

19 MS McCALLION: It is an
20 interpretation.

21 MS EDWARDH: Did you interpret it
22 in any different way?

23 MS McCALLION: I don't recall
24 interpreting it either way.

25 MS EDWARDH: All right. But you

1 certainly do know that CSIS and the RCMP are not
2 involved in any joint effort by way of a letter
3 where the Solicitor General will sign. That is a
4 given.

5 MS McCALLION: Yes. If I would
6 have been asked -- this is when the
7 "plus-que-parfait" always comes in handy -- I
8 would not have recommended asking for more than
9 one signature of one Minister.

10 I support others who have said it
11 is very complicated; it is not normal; we
12 shouldn't go there. The Minister of Foreign
13 Affairs had the direct responsibility and could
14 use that responsibility that rested in him by
15 virtue of the Foreign Affairs Act to send the
16 letter.

17 MS EDWARDH: But I take it you
18 were not asked.

19 MS McCALLION: I was not
20 consulted. My advice would have been this is
21 fine.

22 MS EDWARDH: I hear what you said
23 you would have said had you been asked, and we
24 will come back to that. I take it that it is very
25 clear from your evidence to date that you were not

1 asked.

2 MS McCALLION: Not asked.

3 MS EDWARDH: Mr. Pardy has
4 undoubtedly alerted you that this memo and letter
5 are coming.

6 MS McCALLION: Correct.

7 MS EDWARDH: I am going to suggest
8 to you that it is obvious that he, at least, is
9 not satisfied with the language of the letter. He
10 would have liked it to be more fulsome.

11 MS McCALLION: Okay.

12 MS EDWARDH: Would you agree with
13 that?

14 MS McCALLION: Probably.

15 MS EDWARDH: Thank you.

16 It is my understanding that
17 Mr. Pardy, prior to his departure, had at least
18 given you a heads-up that maybe Mr. Hooper would
19 contact you.

20 MS McCALLION: Yes.

21 MS EDWARDH: So you knew that this
22 matter retained some delicacy from CSIS'
23 perspective.

24 MS McCALLION: Okay.

25 MS EDWARDH: They thought it was a

1 complex case, and even though they had written
2 themselves out of the letter, they had concerns
3 that they wanted you to be aware of.

4 MS McCALLION: Correct.

5 MS EDWARDH: When you looked at
6 that letter -- and you will find it at tab 439 of
7 volume 5 of the -- do you have it there?

8 No, not that volume. Let me get
9 you another volume.

10 MS McCALLION: No problem. Which
11 tab is it?

12 MS EDWARDH: It is tab 339.

13 THE COMMISSIONER: Tab 439, I
14 think.

15 MS EDWARDH: I'm sorry, 439,
16 Mr. Commissioner.

17 MS McCALLION: I have it.

18 MS EDWARDH: The letter that you
19 agree that you will sign on to for the Minister's
20 consideration makes a very limited statement, and
21 I quote from the second paragraph:

22 "I assure you there is no
23 Canadian government
24 impediment to Mr. Arar's
25 return to Canada."

1 It doesn't say anything about the
2 fact that he is not wanted or anything like that
3 in Canada.

4 That observation did not escape
5 you. It is a limited statement for the Minister
6 to make.

7 MS McCALLION: It is a correct
8 statement at the time.

9 MS EDWARDH: It could have said
10 Mr. Arar is facing no criminal charges in Canada.
11 Mr. Arar is a long-time resident; he has a wife
12 and family, blah, blah, blah. It could have said
13 all sorts of things.

14 This assertion on behalf of the
15 Government of Canada that there is no impediment
16 is a very limited statement of support that
17 represents the consensus reached.

18 MS McCALLION: It was a sentence
19 agreed to by consensus among the agencies, yes.

20 MS EDWARDH: That's right.

21 When you mean that it was a
22 sentence agreed to by consensus, it is fair to say
23 it was negotiated to the extent that no one
24 department took offence or was upset or disagreed
25 with the character of the letter going from the

1 Minister of Foreign Affairs.

2 MS McCALLION: If you look at it
3 from a different perspective, it is very rare for
4 the Minister to take a unilateral action when
5 other agencies are concerned. Therefore, we
6 consult with other agencies. We take on board
7 their views, and we do the best we can to
8 represent one voice, one view, when it goes to a
9 Cabinet Minister.

10 MS EDWARDH: I hear you saying --
11 and I am interpreting something of what you are
12 saying, Ms McCallion -- that the contents of the
13 letter, be what they may be, are designed to
14 accommodate the concerns of entities outside the
15 Department of Foreign Affairs.

16 MS McCALLION: They are designed
17 to reflect the collective view of the Cabinet,
18 Cabinet Ministers and their concerns.

19 MS EDWARDH: Certainly it is not
20 simply the Minister of Foreign Affairs --

21 MS McCALLION: He was writing on
22 behalf of the federal government.

23 MS EDWARDH: I see. So by
24 definition, then, must accommodate the concerns of
25 the Solicitor General, CSIS and the RCMP.

1 MS McCALLION: To the best of his
2 capacity.

3 MS EDWARDH: Yes. Knowing as you
4 did that Mr. Pardy felt the letter was a little on
5 the inadequate side, and knowing as you did that
6 he gave you a heads-up that Mr. Hooper may be
7 knocking on your door, don't you think it is fair
8 for us who were observers of this to see
9 Mr. Hooper's telephone call, as you have described
10 it, as a way of ensuring that this letter doesn't
11 change?

12 Let me give you an example.

13 Mr. Hooper conveyed to you in
14 general terms -- leave aside the precise words --
15 that this has been the product of hard work.
16 Correct?

17 I thought that is what you said;
18 that Mr. Hooper had conveyed --

19 MS McCALLION: I am waiting for
20 the next --

21 MS EDWARDH: No, no. The question
22 is --

23 MS McCALLION: This is the result
24 of collaboration --

25 THE COMMISSIONER: Ms McCallion,

1 please just listen to me.

2 You will help this process if you
3 listen to the question and answer the questions
4 directly. This is not a fencing contest between
5 you and Ms Edwardh. She is asking clear
6 questions, and it will help me if you try to
7 answer them clearly. Thank you.

8 MS EDWARDH: I gathered from what
9 you testified to, Mr. McCallion, that Mr. Hooper
10 in the conversation said that this letter that was
11 now before you had been the product of hard work
12 on an inter-agency basis.

13 MS McCALLION: Yes.

14 MS EDWARDH: And that it had been
15 difficult to define a consensus that was
16 acceptable to the agencies, to everyone.

17 MS McCALLION: That is my
18 understanding.

19 MS EDWARDH: That is the effect he
20 left you with. That is the understanding he left
21 you with from his words.

22 MS McCALLION: That is my
23 understanding.

24 MS EDWARDH: He also, I think,
25 conveyed to you then, in a discussion of the

1 mandate of CSIS the general concerns CSIS had
2 about such complex security cases.

3 MS McCALLION: Yes.

4 MS EDWARDH: I am going to suggest
5 to you that the effect of conveying the extent of
6 the complexity was to share with you why he felt
7 the agency couldn't go any further, why it
8 couldn't be more of a participant; that he felt
9 they had done their best.

10 MS McCALLION: He didn't put it
11 that way, nor did I hear him say that.

12 MS EDWARDH: What was your
13 understanding of why he was telling you that this
14 letter was in fact the product of hard work and
15 cooperation?

16 MS McCALLION: I can't tell you
17 that.

18 MS EDWARDH: If you go back then,
19 in addition to talking about this being the
20 product of hard work and cooperation, you did also
21 say in your testimony that you and he discussed
22 your respective mandates.

23 MS McCALLION: Correct.

24 MS EDWARDH: I take it from that,
25 Ms McCallion, that in no uncertain terms you said

1 listen, consular affairs belong to us. We have an
2 obligation to a Canadian citizen. And this
3 letter, with this language, is going to go
4 forward.

5 MS McCALLION: I believe I was a
6 little more subtle than that, but that was the
7 message I imparted.

8 MS EDWARDH: Yes. What he
9 conveyed to you was that it was only this kind of
10 letter that could go forward.

11 MS McCALLION: No. He conveyed to
12 me the mandate of CSIS above all is the security
13 of Canadians in general an larger terms and that
14 individual cases are taken in that context.

15 MS EDWARDH: And therefore...?
16 And therefore what?

17 MS McCALLION: I agreed.

18 MS EDWARDH: And therefore...?

19 MS McCALLION: There was no
20 "therefore".

21 MS EDWARDH: Do you have any
22 information that after your conversation with
23 Mr. Hooper, because you signed off on this letter
24 and the Deputy signed off on this letter, this
25 letter dies. This letter doesn't go. No one ever

1 sends this letter.

2 Do you have any knowledge of
3 whether anyone else at CSIS spoke to any of your
4 superiors to say, "Better not this letter", so
5 that the only entity in Canada who could resolve
6 the dispute between CSIS and the RCMP and DFAIT
7 was the Prime Minister's Office?

8 MS McCALLION: I have no
9 knowledge. That was your question? I don't know.

10 MS EDWARDH: You have no
11 knowledge?

12 MS McCALLION: I have no
13 knowledge.

14 MS EDWARDH: Do you know how the
15 letter that was the product of such efforts and
16 hard work, do you know how it just died on the
17 vine?

18 MS McCALLION: No, I don't know.

19 MS EDWARDH: When the letter just
20 simply died on the vine, given the urgency that
21 you have described -- I don't want to over
22 emphasize it -- given the hard work to make it a
23 product, did you every inquire as to why it died
24 on the vine or who killed it?

25 MS McCALLION: My understanding --

1 Commissioner, I have to object to
2 the premise of these questions. We have heard
3 evidence that the Minister sent it back with
4 changed wording. It didn't die on the vine. I
5 refer you to tab 75.6.

6 THE COMMISSIONER: I think that is
7 fair.

8 MS McISAAC: That's fair.

9 MS EDWARDH: If you turn to
10 tab 6 --

11 MS McCALLION: Which book, please?

12 MS EDWARDH: The one that has the
13 coloured tab.

14 MS McCALLION: The same one?

15 MS EDWARDH: Yes.

16 MS McCALLION: Okay.

17 MS EDWARDH: I'm sorry, it is the
18 large book. No, I'm sorry. You don't have it.

19 MS McCALLION: This one?

20 MS EDWARDH: It says Exhibit
21 P-117. I think you have it.

22 MS McCALLION: Yes, I have it.

23 MS EDWARDH: Do you get a copy of
24 this?

25 MS McCALLION: MKM C4 is my

1 office. It is not my personal -- it is not my
2 personal computer. It is my office.

3 MS EDWARDH: But having signed off
4 on the memorandum, I take it that this coming back
5 recommending changes would be of concern to you?
6 Or is it your evidence that --

7 MS McCALLION: To be fair, I don't
8 recall seeing this, but yes, my office is on the
9 distribution list.

10 MS EDWARDH: Do you recall
11 participating, then, in any further discussions to
12 try to resolve the issue that is created in this
13 memorandum from the Minister's office saying they
14 want more in the letter?

15 MS McCALLION: I did not
16 participate in any further discussions.

17 MS EDWARDH: Were you alive to the
18 fact that Mr. Pardy, who receives this memorandum,
19 participated in further discussions? Did he
20 brief you with respect to those?

21 MS McCALLION: No, he didn't.

22 MS EDWARDH: So then we take it
23 that you were not involved in any further respect
24 in trying to build a consensus or a bridge in
25 respect of the differing views of the government?

1 MS McCALLION: Correct.

2 MS EDWARDH: Would you not have
3 been the -- I'm just trying to understand the
4 hierarchy and its respective responsibilities and
5 duties.

6 Is there some reason why you
7 wouldn't be the person who is having discussions
8 with your counterpart as an ADM with CSIS about
9 this --

10 MS McCALLION: My understanding,
11 this was now over in Mr. Wright's shop.

12 MS EDWARDH: For the record's
13 sake, this is Mr. Wright, this is --

14 MS McCALLION: The ISD world.

15 MS EDWARDH: So then he would have
16 handled the negotiations. Is that your
17 understanding?

18 MS McCALLION: I don't know if he
19 did or not.

20 --- Pause

21 MS EDWARDH: Those are my
22 questions.

23 Thank you.

24 THE COMMISSIONER: Thank you.

25 Ms McIsaac?

1 MS McISAAC: Thank you, sir.

2 EXAMINATION

3 MS McISAAC: Just a couple of
4 questions, Ms McCallion.

5 Did Mr. Hooper ask you not to send
6 the memorandum up the chain of command to the
7 Deputy Minister and the Minister?

8 MS McCALLION: No, he did not.

9 MS McISAAC: Had there been
10 anything in the conversation you had with
11 Mr. Hooper to suggest that CSIS was going to take
12 the matter further, what would you have done?

13 MS McCALLION: I would have held
14 the memo, I would have asked for further
15 clarifications. Probably I would have asked
16 Mr. Hooper if we could have worked it out at our
17 level, I would have asked Gar or his deputy to
18 assist, and I would have let Gaetan know that we
19 had problems.

20 MS McISAAC: By saying "Gaetan",
21 you mean --

22 MS McCALLION: The Deputy
23 Minister.

24 MS McISAAC: -- the Deputy
25 Minister Gaetan Lavertu.

1 And you didn't do any of those
2 things?

3 MS McCALLION: I didn't do any of
4 those things.

5 MS McISAAC: Thank you very much.

6 THE COMMISSIONER: Mr. Shore?

7 EXAMINATION

8 MR. SHORE: Ms McCallion, you have
9 indicated that the discussion was both specific
10 and general with Mr. Hooper. There was some
11 specifics with regard to Arar, there was some
12 generalities with regard to the sensitivities of
13 the case, the high profit nature of the case, the
14 respective mandates in cases of this nature.

15 MS McCALLION: Correct.

16 MR. SHORE: Is that right?

17 You may not remember this because
18 you didn't make notes, but was part of
19 Mr. Hooper's concern that there were other cases
20 coming down the chute that were also sensitive,
21 difficult, high profile cases, dual national
22 Canadians in the post-9/11 era incarcerated
23 abroad?

24 MS McCALLION: I would agree that
25 we discussed that.

1 MR. SHORE: And although you had
2 never spoken to him before, this was an
3 opportunity to sort of launch a new era with
4 regard to dealing with these difficult cases,
5 because --

6 MS McCALLION: If I could change
7 the tense --

8 MR. SHORE: Sure.

9 MS McCALLION: -- I would say we
10 were in the new era and finding it difficult and
11 trying to find ways of making it work.

12 MR. SHORE: Right. As you
13 indicated, there were a lot of difficulties in
14 arriving at the negotiated language that was
15 finally arrived at in this matter and Mr. Hooper's
16 concern, if you recall, was to ensure that in the
17 future the various departments could work together
18 collaboratively to try and do it a little more
19 smoothly?

20 MS McCALLION: I don't recall if
21 he said that, but I could agree that that was part
22 of the tenor of the kind of discussion we were
23 having.

24 MR. SHORE: Right. That was the
25 general nature. Of course the hook to talk to you

1 was the talk about Arar, because that was the case
2 that was presently receiving the high profile
3 interest.

4 MR. SHORE: I think we were both
5 concerned. There was political concern about the
6 departments getting along, as well as senior level
7 concern.

8 MR. SHORE: Right. This was a
9 matter in the press --

10 MS McCALLION: In the public
11 record, absolutely.

12 MR. SHORE: -- it was high
13 profile. And there were other cases that DFAIT
14 and RCMP, CSIS, PCO were going to be involved in
15 and this was sort of an opening salvo, "Let's get
16 together on this stuff in a better way in the
17 future", and that is why perhaps the call went to
18 you as opposed to somebody else at --

19 MS McCALLION: Again, I took the
20 call. I don't know why he chose to call me.

21 MR. SHORE: He will testify as
22 to that. But you are at equal levels, as you
23 indicated, counterparts without counting, as you
24 said.

25 So I think you have already told

1 us, he didn't ask you to do or not to do anything.
2 He made no request of you to perform or not
3 perform --

4 MS McCALLION: No, he didn't

5 MR. SHORE: -- your function.

6 You indicated that you had no
7 discussions with anyone with regard to the content
8 of the phone call.

9 MS McCALLION: Correct.

10 MR. SHORE: You did have
11 discussion -- perhaps you are not sure with whom,
12 but I think you said Dave Dyet -- that the call
13 occurred, and you probably discussed it with
14 Barbara Burns that the call occurred.

15 MS McCALLION: She knew the call
16 occurred.

17 MR. SHORE: She knew the call
18 occurred.

19 MS McCALLION: She did not know
20 the content of the call.

21 MR. SHORE: Right. You didn't
22 discuss, why would you with your Executive
23 Assistant, the content of it.

24 Once you sign off you probably
25 gave her the memo and said --

1 MS McCALLION: Send it on.

2 MR. SHORE: -- let it go. You are
3 finished with it.

4 MR. SHORE: You would never have
5 said to anyone about the call that there may have
6 been a bit more to it, because you didn't discuss
7 the contents of the call with anyone.

8 And you never -- shaking your head
9 means no for the purpose of the record.

10 MS McCALLION: Oh, sorry. Not to
11 my recollection. It is not something I would do.

12 MR. SHORE: And you would never
13 have said to anyone that you are ignoring the
14 request from Mr. Hooper because he didn't make a
15 request.

16 MS McCALLION: He didn't make a
17 request to me.

18 MR. SHORE: Right. So you would
19 not have told anyone that he did and you were
20 ignoring it?

21 MS McCALLION: Again, sorry for
22 shaking my head, no, I didn't.

23 MR. SHORE: No, that's fine.

24 MR. SHORE: And of course he never
25 suggested to you, as has already been indicated,

1 that you not forward the letter? That was a fait
2 accompli. It had been negotiated, it was done.

3 MS McCALLION: Correct.

4 MR. SHORE: And he didn't try to
5 undo it.

6 MS McCALLION: No, he didn't.

7 MR. SHORE: There was never any
8 discussion about Mr. Hooper saying that CSIS did
9 not want Arar back because they didn't have the
10 resources to monitor him. That was not discussed
11 in that conversation?

12 MS McCALLION: In that context,
13 no.

14 MR. SHORE: Those are my
15 questions. Thanks, Mr. Commissioner.

16 Thank you, Ms McCallion.

17 THE COMMISSIONER: Mr. David?

18 MR. DAVID: Three questions.

19 EXAMINATION

20 MR. DAVID: Ms McCallion, I
21 understand that you have testified today to the
22 effect that Mr. Pardy knew beforehand that
23 Mr. Hooper was going to be calling you and that he
24 told you so.

25 MS McCALLION: No, I thought I

1 said he would give me a heads up that Mr. Hooper
2 might call me.

3 MR. DAVID: All right.

4 MS McCALLION: If I said he -- my
5 recollection is, I was given a heads up as to a
6 possibility.

7 MR. DAVID: As to a possibility of
8 a phone call from Mr. Hooper to you, and this
9 Mr. Pardy told you?

10 MS McCALLION: Yes.

11 MR. DAVID: Did you understand
12 where Mr. Pardy was getting this information about
13 the possibility of a phone call?

14 MS McCALLION: I assumed it came
15 from the interdepartmental meetings.

16 MR. DAVID: Did Mr. Pardy
17 inform you?

18 MS McCALLION: I don't recall
19 that he did, but -- I don't recall why he said
20 I -- like why he gave me the heads up, but he gave
21 me a heads up.

22 MR. DAVID: And was it your
23 understanding that Mr. Pardy had spoken to
24 Mr. Hooper?

25 MS McCALLION: No.

1 MR. DAVID: Was it your
2 understanding that Mr. -- that's fine.

3 The second question, or second
4 area if I can say, Ms McCallion, I heard you say
5 during the testimony where Ms Edwardh's was asking
6 you some questions, that Mr. Hooper mentioned to
7 you that CSIS' mandate was to protect Canadians
8 and that individual cases are to be taken in that
9 context.

10 MS McCALLION: Correct.

11 MR. DAVID: I'm going to ask you:
12 Could a reasonable person interpret that as
13 meaning to sacrifice one to save and protect many
14 is an acceptable principle?

15 MS McCALLION: No. I withdraw all
16 of my comments if that is how you are interpreting
17 them. No.

18 MR. DAVID: So he did not say this
19 to you to try to dissuade you from your efforts --

20 MS McCALLION: No, he did not.

21 MR. DAVID: -- in bringing
22 Mr. Arar back?

23 MS McCALLION: No, he did not.

24 MR. DAVID: The third area I wish
25 to ask you some questions is that you have

1 mentioned now with Mr. Shore that you discussed
2 the fate of other detained Canadians as well as
3 Mr. Arar during this conversation?

4 MS McCALLION: The possibility of
5 others. Not others in a highly specific list
6 sense, no.

7 MR. DAVID: Explain to me the -- I
8 don't quite grasp how this was referred to, then,
9 in your conversation.

10 MR. DAVID: I don't recall the
11 details of the conversation. It is a long time
12 ago. I didn't take notes.

13 The context would more likely be
14 there are other cases of similar nature on the
15 order paper now and potentially coming. The world
16 has changed. How we deal with a changed world
17 will involve cooperation between two levels of
18 agencies with two different mandates.

19 To my recollection, that is the
20 context.

21 MR. DAVID: Therefore, he
22 understood and he was trying to make you
23 understand that today's world's context meant that
24 DFAIT would be trying to repatriate other
25 Canadians involved in situations similar to Mr.

1 Arar's as well as Mr. Arar?

2 MS McCALLION: Well, the
3 complexity of dual citizenship, the complexity of
4 international law, yes. In that context.

5 MR. DAVID: In that context.

6 MS McCALLION: We were on an open
7 phone, we did not go into details of any of the
8 cases.

9 MR. DAVID: In that context, did
10 Mr. Hooper mention that this fact, that there are
11 potentially many other cases similar to
12 Mr. Arar's, could bring on a resource issue for
13 CSIS?

14 MS McCALLION: Not to my
15 recollection.

16 MR. DAVID: Thank you. Those are
17 my questions.

18 THE COMMISSIONER: Okay. Thank
19 you, Ms McCallion, that completes your evidence
20 and you may step down. The books can remain
21 there, that's fine.

22 --- Pause

23 THE COMMISSIONER: That leaves
24 only the recall of Mr. Gould, and Mr. Shore you
25 had a few questions?

1 MR. SHORE: Very short.

2 THE COMMISSIONER: Mr. Gould, you
3 have patiently waited in the back of the hearing
4 room. Please come forward. Thank you.

5 --- Pause

6 PREVIOUSLY SWORN: JAMES GOULD
7 EXAMINATION

8 MR. SHORE: Thanks for waiting
9 around, Mr. Gould. I just have a couple of
10 questions.

11 Earlier today when we talked
12 about the story we had heard, you indicated that
13 you were referring to the story that you and
14 Mr. Dyet had heard.

15 In your previous testimony at
16 page 12744 you indicated -- Mr. David was asking:
17 "About call - confirmed
18 story we had heard.'

19 The 'we' refers to?"

20 That is the question.

21 "MR. GOULD: To me. Sorry,
22 the 'we' is an imperial 'we'.
23 'I' here would have been more
24 accurate."

25 MR. GOULD: Okay.

1 MR. SHORE: So today you said that
2 the we was both of you. Your earlier testimony, I
3 forget the date -- do you have the date?

4 MR. GOULD: The date is fine. The
5 testimony --

6 MR. SHORE: You testified April --

7 MR. GOULD: I have no problem with
8 that.

9 MR. SHORE: I'm just trying to --

10 MR. GOULD: The "we" I was
11 including that I had heard from David Dyet. Again
12 I go back to my sloppy drafting. The "we" quite
13 properly was an imperial "we". "I" had heard from
14 Mr. Dyet.

15 MR. SHORE: I'm not talking about
16 the drafting, I'm talking about evidence. You
17 gave evidence today that the "we" talked about --
18 the "we" referred to David Dyet and myself.

19 MR. GOULD: It referred to a
20 conversation that I had with Mr. Dyet.

21 MR. SHORE: Right. That was the
22 "we". In your earlier testimony you said the "we"
23 is an imperial we and it means really "I". So I
24 am confused as to whether the "we" is just you or
25 the "we" is you and Mr. Dyet.

1 MR. GOULD: I would think the we
2 is the imperial "we". It is "I heard from Mr.
3 Dyet".

4 MR. SHORE: All right. So you are
5 going back to what you said earlier --

6 MR. GOULD: I think so, yes.

7 MR. SHORE: -- as opposed to what
8 you said earlier today.

9 Is that right?

10 MR. GOULD: I think so, yes. Yes.
11 I am going back, yes.

12 MS McISAAC: I think it only fair
13 if the witness would like to have a copy of what
14 he said.

15 THE COMMISSIONER: Yes.

16 MR. SHORE: Sure. I have no
17 problem with that. I was looking for it, but I
18 just have one.

19 MR. GOULD: I'm sure I have a copy
20 here.

21 THE COMMISSIONER: I don't have a
22 copy. Could somebody hand the witness a copy?

23 MR. DAVID: The other matter,
24 Mr. Commissioner, if I can just raise it, is for
25 the first time during these proceedings, whether

1 they be in camera or public, we are using
2 transcripts to --

3 THE COMMISSIONER: That came out
4 of today's process.

5 I am a little concerned. I'm not
6 sure, I may have misunderstood his evidence
7 earlier today. I must say I'm having a bit of a
8 difficulty understanding there is a distinction in
9 substance between the two, but carry on. The
10 transcript will speak for itself.

11 MR. SHORE: Do you have the
12 transcript?

13 MR. GOULD: I do have the page in
14 front of me, 12744.

15 MR. SHORE: Page 12744. Did I
16 read it accurately?

17 MR. GOULD: Yes, you did.

18 MR. SHORE: Both the questions and
19 the answers?

20 MR. GOULD: Yes.

21 MR. SHORE: Just the next page,
22 12745 -- or perhaps I will just continue on and
23 put it all in context, and correct me if I --

24 THE COMMISSIONER: Just follow
25 along.

1 MR. SHORE: Correct me if I -- no,
2 the next page.

3 MR. GOULD: Sorry.

4 MR. SHORE: You only had the
5 one page.

6 MR. GOULD: It was hidden
7 underneath.

8 Carry on.

9 MR. SHORE: Page 12745. I am
10 going to read into that from page 12744.

11 "MR. DAVID: All right. It
12 says:
13 '- may be a bit more to
14 it, but she didn't want
15 to go into it.'
16 So the 'she' there, this is
17 Barbara Burns?

18 MR. GOULD: Yes.

19 MR. DAVID: And:
20 '- may be a bit more to
21 it, but she didn't want
22 to go into it.'
23 You have no idea what that
24 refers to?

25 MR. GOULD: No, I have no

1 idea what that refers to.
2 MR. DAVID: But she is
3 indicating this to you --
4 MR. GOULD: Yes.
5 MR. DAVID: -- that there is
6 more to the call than what --
7 MR. GOULD: That there was a
8 reference to there having
9 been something to it, but she
10 didn't want to go into it.
11 MR. DAVID: Okay. Then it
12 says:
13 '- MKM signed the memo -
14 so she seems to be
15 ignoring the request from
16 the ADDO.'
17 MR. GOULD: Correct.
18 MR. DAVID: This is again
19 Ms Burns telling you this?
20 MR. GOULD: Yes."
21 Earlier today you understand you
22 gave --
23 MR. GOULD: Yes, I do. I do.
24 MR. SHORE: -- much different
25 testimony?

1 MR. GOULD: Yes, I do.

2 MR. SHORE: And they both can't
3 stand beside each other.

4 MR. GOULD: Yes.

5 MR. SHORE: One has to fall and
6 you have to choose if you can or --

7 MR. GOULD: I'm not sure I am
8 able to.

9 MR. SHORE: Or refuse to. You
10 don't have to, but --

11 MR. GOULD: Excuse me. May I
12 refer back to the copy of my handwritten notes
13 here.

14 MR. SHORE: Absolutely.

15 MR. GOULD: Which is my only
16 source, as you are aware.

17 MR. SHORE: Absolutely.

18 MS McISAAC: Mr. Commissioner, I
19 should also point out that we brought to the
20 attention of Commission counsel that the version
21 of the note that has been produced is not the
22 final version. There was a redaction at the top
23 of the page, I believe it is page 12, if I'm not
24 mistaken, which was originally made on the
25 understanding that it related to an earlier note

1 about a different matter and then it was
2 subsequently unredacted.

3 I believe that if you go to the
4 re-examination there is some clarification,
5 because at that point the second note was
6 available to give more precision as to who was
7 being discussed.

8 That is my recollection
9 anyway, sir.

10 THE COMMISSIONER: Thank you. That
11 is helpful.

12 That is the re-examination in
13 camera, so that the witness should be provided
14 with that as well, and the unredacted --
15 --- Pause

16 THE COMMISSIONER: Just before you
17 answer the question, Mr. Gould, apparently there
18 is evidence in the re-examination that touches on
19 this and there is an unredacted version of what is
20 at the top of page 12 of your note that may assist
21 you in answering the question.

22 Can somebody provide the witness
23 with both of those things?

24 --- Pause

25 THE COMMISSIONER: Can you give

1 the note, the unredacted note?

2 MS McISAAC: We don't have it.

3 THE COMMISSIONER: Do you know
4 what it says?

5 MS McISAAC: My memory is not bad,
6 but it is not that good, sir.

7 THE COMMISSIONER: Okay.

8 MR. DAVID: We certainly don't
9 have it here.

10 THE COMMISSIONER: Nobody would
11 have it here I guess because of the claim.

12 In any event, let's see if we can
13 complete this in some fashion.

14 --- Pause

15 MR. SHORE: Sir, have you read
16 the -- what is this?

17 THE COMMISSIONER: It is called
18 the re-examination.

19 MR. SHORE: The re-examination.

20 MR. SHORE: Re-examination,
21 thank you.

22 MR. GOULD: No.

23 MR. SHORE: Obviously the same
24 question came up because I obviously made the same
25 confusion the first time during the in camera.

1 If I can read --
2 MR. GOULD: Sure.
3 "MR. GOULD:" -- this is myself,
4 excuse me.
5 "MR. DAVID: On Monday, do
6 you recall testifying that
7 you said the `she' was
8 Barbara Burns?"
9 This replicates what you have
10 just stated.
11 My response:
12 "Yes. And I was confused
13 because of exactly what you
14 are clarifying now, my left
15 page and right page."
16 You will recall I started today
17 with a short exposition on that.
18 "I have also since Monday had
19 the opportunity to look at
20 the originals. When I look
21 at my originals, it is much
22 clearer that I am writing
23 with the same pen, et
24 cetera --"
25 I'm not sure what the "et cetera"

1 means.

2 "-- if you look at that, I
3 don't use the same pen all
4 the time. I am of the belief
5 now that that star indicates
6 and directs me across,
7 because it is supplementary."

8 That is going from right side
9 to left side.

10 "MR. DAVID; This is,
11 however, the same date,
12 Mr. Gould, that you tried to
13 call Barbara Burns.

14 MR. GOULD: Yes. I had tried
15 to call her sometime
16 before..."

17 "MR. DAVID: Is it possible
18 that your reference `may be a
19 bit more to it but she didn't
20 want to go into it', is it
21 possible, Mr. Gould, that
22 that reference is to Barbara
23 Burns?

24 MR. GOULD: As I read it now,
25 very, very unlikely. I would

1 have put a name in if there
2 was a change in reference.
3 MR. DAVID: Then you say
4 `MKM signed'. You don't say
5 she signed the memo. Do you
6 understand what I am saying?
7 MR. GOULD: Yes. Once in a
8 while you put the person in.
9 MR. DAVID: How you refer to
10 the same person changes in
11 the course of the text.
12 MR. GOULD: Yes, it does.
13 MR. DAVID: And that doesn't
14 help in making you understand
15 that perhaps when you say
16 `she ...' that that would
17 refer to Barbara Burns.
18 MR. GOULD: You perhaps might
19 refer to it as bad style."
20 It really obviously confuses the
21 first time around and I don't really think the
22 matter is clarified in the original
23 re-examination.
24 MR. DAVID: Could you, just for
25 the clarity of the record, as confused as it may

1 be now, tell us what pages you just read from,
2 Mr. Gould?

3 MR. GOULD: I'm sorry. I'm
4 reading from pages 12984 through to 12986.

5 MR. SHORE: Can I ask you a
6 supplementary question?

7 MR. GOULD: Of course you can.

8 MR. SHORE: Who is the "she"?

9 MR. GOULD: That is the question I
10 would love to be able to answer.

11 MR. SHORE: Well, there are only
12 two she's.

13 MR. GOULD: There are two she's in
14 play.

15 MR. SHORE: Two she's in play.
16 One is Barbara Burns --

17 MR. GOULD: And one of them is
18 McCallion.

19 MR. SHORE: -- and one is
20 Ms McCallion.

21 MR. GOULD: I find it --

22 MR. SHORE: Are you sure it was a
23 she that told you that?

24 MR. GOULD: Didn't tell me. I
25 think perhaps the solution would be to ask Mr.

1 Dyet.

2 MR. SHORE: Well, if you o back to
3 page 12745 at line 13 --

4 MR. GOULD: Yes.

5 MR. SHORE: -- the question is --

6 MR. GOULD: This is again
7 Ms Burns, yes.

8 MR. SHORE: This is again Ms Burns
9 telling you this and the answer is yes.

10 MR. GOULD: An imperial "you"
11 again. I think I received this from -- it is
12 certainly not telling me.

13 MR. SHORE: But that is clearly
14 how you answer the question.

15 MR. GOULD: Then I mis-spoke.

16 MR. SHORE: You mis-spoke.

17 In the re-examination that I don't
18 have in front of me there is no mention of
19 Mr. Dyet being the one who gave you the
20 information, although that was the evidence you
21 gave earlier today.

22 MR. GOULD: That certainly I
23 thought was very clear, that I did not speak to
24 Ms McCallion about this and that the information
25 on this was passed to me by Mr. Dyet.

1 MR. SHORE: All right. So it is
2 Mr. Dyet and you mis-spoke in your previous
3 testimony on page 12745 when you said it was
4 Ms Burns who told you.

5 Is that what you are saying?

6 MR. GOULD: Yes.

7 MR. SHORE: All right. Those are
8 all my questions. Thank you, sir.

9 Than you, Mr. Gould.

10 THE COMMISSIONER: Thank you.
11 Anything arising out of that?

12 Thank you very much, Mr. Gould.
13 Thank you for your patience and remaining
14 throughout the afternoon.

15 MR. GOULD: I apologize for the
16 confusion here, but these notes are just what
17 they are.

18 THE COMMISSIONER: That's fine. I
19 appreciate the time and effort you have devoted to
20 giving your evidence.

21 MR. GOULD: No, not at all.
22 Thank you.

23 THE COMMISSIONER: Thank you. We
24 will rise until tomorrow morning at 9 o'clock.

25 MS McISAAC: Sir, just one last

1 housekeeping matter.

2 Will we be entering the two
3 transcripts that have been referred to as exhibits
4 as well?

5 THE COMMISSIONER: Were they not
6 entered? I thought they had been this morning.

7 Oh, those.

8 MS McISAAC: No, these are the
9 ones that we produced at lunchtime.

10 MR. DAVID: Is this the right
11 time, in the sense that --

12 THE COMMISSIONER: Let's just talk
13 about that for a second.

14 I'm not sure the transcripts
15 should be entered as exhibits. They are evidence
16 that was given on an earlier occasion. To the
17 extent that they were referred to, as they just
18 were in a cross-examination, that part would
19 become part of the record, but I don't think the
20 transcripts in their entirety should go in.

21 MS McISAAC: I just wanted to be
22 sure that we had some method of identifying that
23 they were there and what they were.

24 THE COMMISSIONER: Right. I think
25 that's okay. If anybody has a different thought,

1 let me know tomorrow.

2 Thank you, Ms McIsaac, for
3 bringing to the attention of the hearing the
4 reference to the re-examination. I appreciate
5 that.

6 MR. DAVID: A final thing,
7 Mr. Commissioner, is that I have copies here of
8 the CSIS chronology that was prepared that may be
9 useful for counsel in terms of Mr. Hooper's
10 testimony.

11 THE COMMISSIONER: You can
12 distribute those after we adjourn.

13 MR. DAVID: I can distribute
14 those, if anybody is interested in having a copy.

15 THE COMMISSIONER: Okay. We will
16 rise until 9 o'clock tomorrow morning.

17 MR. DAVID: Thank you.

18 --- Whereupon the hearing adjourned at 5:52 p.m.,

19 to resume on Thursday, August 25, 2005

20 at 9:00 a.m. / L'audience est ajournée

21 à 17 h 52, pour reprendre le jeudi

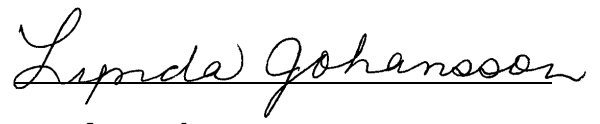
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19
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21
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24
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Lynda Johansson,

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

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A

- ability** 10435:17 10492:5
10508:22 10520:9
- able** 10312:20,20 10319:7
10348:15 10404:25
10410:18 10415:23
10427:24 10431:20
10435:25 10526:22 10572:8
10578:10
- abreast** 10530:3 10539:3
- abroad** 10297:22 10382:4,7
10429:13,16,18,25
10435:12 10556:23
- absence** 10254:20 10529:16
- absolute** 10278:15 10283:12
- absolutely** 10196:20 10245:7
10266:1,4 10268:7
10273:17 10276:24
10315:10 10321:16
10349:22 10464:23
10465:15,18 10558:11
10572:14,17
- abundance** 10399:7,12
- accede** 10426:13
- accept** 10281:24 10291:15
10317:19,20 10319:20
10363:24 10419:3 10422:3
10422:4 10428:17 10455:3
- acceptable** 10313:2 10548:16
10563:14
- accepted** 10236:15 10396:14
- accepting** 10278:19
- access** 10193:23 10199:10,16
10386:9 10532:1
- accommodate** 10546:14,24
- accommodated** 10200:13
- accompli** 10561:2
- account** 10195:5 10226:10
10246:10 10267:20 10514:8
10514:8,10,11
- accuracy** 10278:15 10280:18
10295:12 10296:9
- accurate** 10236:4,5 10242:16
10251:5 10275:10 10280:3
10294:4 10296:9 10365:8
10404:17,17 10406:1
10566:24
- accurately** 10215:10
10260:16 10263:2 10280:5
10282:16 10358:18
10569:16
- achieve** 10531:23
- acknowledge** 10513:12
10523:14
- acknowledged** 10214:23
10259:16
- acknowledging** 10509:5
- acknowledgment** 10513:9
- acrimonious** 10508:13
- acronym** 10413:15 10498:20
- act** 10450:15 10505:3
10542:15
- acting** 10245:6 10293:23
- action** 10246:13 10247:9,12
10285:23 10294:25 10311:6
10315:2 10408:14 10491:14
10492:10 10505:6 10511:4
10511:13,21 10546:4
- actions** 10234:21 10488:5
10526:8 10529:2 10532:15
- activated** 10299:23
- active** 10531:14
- actively** 10286:9
- activities** 10235:13,16
10255:5 10273:7 10362:6
10363:17 10391:24
10423:22
- activity** 10254:21 10274:22
10275:4
- add** 10205:16 10211:19
10217:9 10220:11 10223:10
10288:7 10370:18
- added** 10351:9 10370:20,23
- addition** 10549:19
- additional** 10295:19 10298:21
10315:6,7 10379:15
10523:5
- ADDO** 10242:15 10341:18
10352:20 10370:3 10477:3
10524:7 10571:16
- ADDO/Hooper** 10349:3
- address** 10217:12 10249:10
10285:17 10316:9 10320:25
10332:4 10364:13 10379:19
10415:17 10483:22
- addressed** 10233:25 10304:2
10321:5 10414:24 10480:21
- addresses** 10416:12
- addressing** 10247:3,7
10356:12 10498:17
- adjourn** 10582:12
- adjourned** 10582:18
- ADM** 10372:22 10488:16,17
10497:4 10554:8
- administrative** 10193:17
- admit** 10407:22
- admitted** 10204:19
- ADMs** 10496:13 10508:15
10512:17
- ADO** 10207:23 10242:17
- adopted** 10292:7
- advance** 10358:21 10500:7
- advantage** 10300:13
- advantageous** 10300:18
- adversarial** 10428:18
- adverted** 10531:7
- advice** 10234:3 10327:4
10387:1 10400:13 10401:2
10437:19 10542:20
- advise** 10200:15 10306:12
10312:23 10313:2 10328:22
10329:11 10345:11,14
- advised** 10203:17 10269:10
10329:10
- affairs** 10213:3,6,8 10229:19
10233:24 10234:13 10235:2
10235:18 10247:24 10248:9
10255:13 10269:24
10275:15 10277:23 10278:5
10284:22 10291:20 10293:6
10293:11 10295:11 10296:6
10297:8 10317:25 10325:14
10325:20,22 10328:17
10356:9,18 10357:2
10358:24 10368:5 10382:2
10397:2 10408:3 10411:15
10414:14 10424:25 10447:6
10457:8 10486:6,17,24
10487:3,9,15,25 10488:9
10503:22 10508:4,5
10541:15 10542:13,15
10546:1,15,20 10550:1
- affect** 10347:13 10529:1,6
- affirmations** 10478:25
- affirming** 10340:25
- Afghanistan** 10261:14
- afraid** 10303:1 10422:25
10517:7
- afternoon** 10201:13 10207:9
10461:4 10485:10,12
10528:20 10580:14
- agencies** 10212:18 10225:14
10234:24 10236:2 10251:25
10294:3 10327:13 10398:21
10501:8 10511:8,9
10545:19 10546:5,6
10548:16 10564:18
- agency** 10246:9 10549:7
- aggressive** 10292:8 10402:4
10402:22 10531:2
- aggressively** 10290:22
- ago** 10256:13 10276:8
10360:23 10378:2 10564:12
- agree** 10202:7 10235:20
10244:24 10292:13 10302:9
10302:11 10317:13
10318:24 10408:16
10410:14 10412:15
10415:20,21,23 10430:24
10432:2 10433:17 10455:14
10455:20 10456:14,18,24
10458:4,8 10466:8,25
10492:25 10501:23 10502:2
10503:5 10506:1 10530:10
10543:12 10544:19
10556:24 10557:21
- agreed** 10202:8 10214:22
10247:11,17 10315:2
10361:17 10413:8,20
10414:8 10455:25 10456:11
10456:21 10502:15 10510:5
10516:19 10520:6,24
10539:24 10545:19,22
10550:17
- agreed-upon** 10522:4,8
- agreeing** 10197:23 10492:22
- agreement** 10211:3 10247:8
10247:14 10274:24
10294:24 10295:3 10357:12
10412:10 10413:23
10501:20,20 10503:17
10514:13 10538:12
- agrees** 10230:15 10298:16
- ahead** 10211:20 10214:18
10221:12 10280:2 10303:24
10332:1 10380:4 10450:3,5
10485:16 10502:21
10511:21
- aid** 10383:19 10409:20
- ajournée** 10582:20
- alarmed** 10344:21
- alerted** 10403:8 10543:4
- alive** 10553:17
- allegation** 10361:7
- allegations** 10363:14
10390:19
- alleged** 10273:14 10414:18,19
10451:9
- allegedly** 10264:10,15
- alleges** 10261:13
- allow** 10259:11 10267:13
10376:14
- allowed** 10357:17
- allows** 10428:21
- Almalki** 10333:16 10335:6
- alternatives** 10428:22
- al-Qaida** 10238:19
- ambassador** 10233:10
10256:24 10257:21 10259:4
10259:17 10260:13,23
10261:2 10265:22 10266:18
10267:14,16,20 10269:8
10271:12,17 10273:25
10275:17 10281:11,12,16
10289:2 10305:4,12,14
10316:19 10317:8,24
10329:16 10393:9,15
10394:2,21 10395:6,11,14
10396:13 10426:4 10433:15
10437:11 10445:25
10446:10,15,17 10447:14
- Ambassador's** 10446:4
- ambiguities** 10302:16
- ambiguity** 10300:19 10302:13
10302:17 10316:1
- American** 10325:4

Americans 10268:15,16
amount 10205:2
ample 10257:21
and/or 10457:22
annotation 10231:2
annotations 10343:3
announced 10487:16
answer 10247:20 10253:24
10263:14 10303:13,23
10306:10 10348:14
10390:10 10391:8,13
10398:3,22 10399:3,14
10404:25 10406:17,19
10423:7,10 10424:19
10435:3,18,21 10443:12,17
10443:24 10504:25
10513:18 10548:3,7
10573:17 10578:10 10579:9
10579:14
answered 10392:5 10397:18
10440:5,22 10452:4
answering 10277:19 10404:23
10405:22 10426:25
10573:21
answers 10307:1 10335:3
10435:20 10437:6 10569:19
anxiously 10258:11
anybody 10205:15 10217:8,19
10217:20 10220:10
10249:16 10250:3 10299:3
10321:12 10323:19
10477:19 10484:16
10525:16 10581:25
10582:14
anymore 10302:17
anyone's 10194:25
anyway 10456:20 10573:9
août 10193:4 10582:21
apart 10451:8 10452:16
10453:13 10454:21
10455:10,11 10460:19
apologies 10221:11 10390:6
apologize 10333:2 10390:8
10452:7 10580:15
apparent 10263:22 10267:24
10277:1,14
apparently 10311:4 10573:17
appear 10416:16,20 10418:24
10422:18
appearance 10485:21
appeared 10285:11,17
10422:1,3,13
appears 10270:11 10374:22
10404:9 10407:7 10413:25
10490:13,14 10497:23
applications 10193:19
apply 10204:17 10398:3
appointments 10304:16
appreciate 10285:25 10291:1

10377:3,6 10399:18
10580:19 10582:4
appreciated 10410:12
approach 10247:3 10248:3
10254:14 10269:11
10357:13 10359:7 10484:17
10530:22,24 10532:11
10534:10,14,16
approached 10387:23
approaches 10532:7
appropriate 10194:8
10208:24 10214:25
10249:10 10343:25 10369:2
10432:14,20,21,24,25
approval 10213:12 10386:16
10386:20
approving 10345:8
approve 10213:10 10294:13
approved 10230:24 10231:4
10288:4
approximately 10208:2
10214:5 10327:24 10337:16
10507:1 10520:11
April 10208:18 10209:18
10210:4 10567:6
Arabia 10326:10
Arabic 10260:25
Arar 10193:23 10199:16
10215:20 10217:4 10221:24
10222:2 10223:2 10231:13
10231:17,23 10232:13,22
10232:23 10234:22 10235:4
10235:12,23 10237:5
10238:18,21 10241:2,4
10242:3,19 10244:9,11
10245:14 10246:24
10254:21 10259:17
10261:13 10265:1,18
10268:17 10272:1,4,7,11,24
10274:21 10276:23 10279:3
10280:17,23 10281:13
10285:5 10286:24 10288:3
10289:23 10290:3,18,21
10291:18,24 10293:8
10298:11 10299:24
10300:24 10301:25
10305:15,19 10315:23
10327:23 10329:10,13
10333:16 10334:9 10335:4
10335:12 10336:2 10341:12
10341:19 10348:13 10357:6
10357:19 10359:20,25
10361:21 10362:4,22
10363:12,16,25 10364:22
10364:23 10367:3 10368:1
10370:8 10374:24 10380:17
10382:15 10383:20
10385:16 10386:6 10388:10
10388:19 10390:20

10392:23 10394:6,10,24
10399:21 10404:12
10406:13 10407:10 10410:8
10420:15 10421:11
10422:21 10424:15
10425:14,15 10443:5
10445:21 10446:1,3
10452:24 10454:23 10455:4
10474:22 10475:7 10481:4
10489:4,25 10492:5,19
10499:3,5,23 10501:17
10506:23 10507:24,25
10513:2,3 10517:16
10524:9,14,19 10525:10
10528:22 10530:5,19
10532:8 10533:2 10536:10
10536:12,17 10537:10,19
10539:9 10545:10,11
10556:11 10558:1 10561:9
10563:22 10564:3 10565:1
Arar's 10194:10 10197:17
10236:18 10253:8 10256:19
10257:3 10262:12 10277:3
10277:15,23 10279:15
10319:15 10333:25 10368:7
10380:14 10384:2 10389:7
10391:23 10408:15
10410:13,16 10425:1
10488:25 10501:1 10544:24
10565:1,12
area 10246:15 10291:2
10297:21 10315:18
10320:19 10331:17
10404:24 10428:7 10563:4
10563:24
areas 10313:7 10320:11
10359:10 10405:11
10531:16
argue 10249:12 10257:15
10399:11
arguing 10264:18
argument 10230:15 10294:21
10319:20
arises 10448:23
arising 10198:14 10580:11
arose 10387:20 10423:21
arrangements 10380:16
arrival 10345:21
arrive 10220:4 10492:9
arrived 10212:15 10228:5
10493:19 10500:24 10515:1
10519:13 10557:15
arriving 10295:8 10557:14
arrows 10332:24 10333:2
article 10285:11
articulate 10193:25
Arts 10325:1,3
aside 10386:1 10395:22
10398:18 10435:11 10533:4

10547:14
asked 10195:18 10204:14
10212:13,22 10213:10
10289:22 10290:3,17
10303:8 10304:16 10330:15
10333:11,14,15 10335:16
10353:1 10371:17 10374:7
10380:19,22 10381:13
10400:13,19,21 10401:9,10
10402:11,14 10403:8,12,13
10410:23 10423:8 10424:25
10427:11 10433:6 10434:22
10435:2 10437:8,18,23
10438:4,11 10439:3
10440:2,21 10470:11
10478:24 10481:17
10483:12 10491:24
10494:17 10500:9,9
10505:21 10510:4 10536:24
10540:11,15 10542:6,18,23
10543:1,2 10555:14,15,17
asking 10193:23 10198:2,5,12
10243:12 10245:20
10289:24 10297:9 10303:19
10310:20 10335:14
10390:18 10405:6 10426:8
10427:14 10449:21
10455:15,19 10467:11
10470:4 10500:6 10504:23
10508:25 10519:17
10531:19 10538:23,25
10542:8 10548:5 10563:5
10566:16
asks 10435:16
aspect 10203:9 10319:2
aspects 10296:24
Assadourian 10271:11,21
10275:16
asseoir 10193:6 10322:22
10377:22 10485:6
assert 10360:18
asserted 10516:15
asserting 10360:7
assertion 10363:23 10364:20
10407:19 10545:14
assertions 10253:21,23
assess 10296:9
assessed 10215:2
assessment 10303:8,10
asset 10268:11
assist 10197:11,14 10279:14
10286:8 10329:15 10363:25
10420:1 10424:13 10433:11
10455:4 10494:3 10531:14
10555:18 10573:20
assistance 10279:16 10361:22
10362:8 10377:7 10421:18
10431:8 10453:1 10454:24
10509:16,22 10537:24

assistant 10207:23,25
10208:12 10213:2 10215:6
10219:11 10229:23 10230:6
10239:5 10247:21 10248:2
10249:2 10326:13 10347:5
10356:2 10413:24 10486:10
10486:17,22 10487:2
10489:8,22 10559:23
assistant's 10497:15
assisting 10419:10 10531:10
associate 10480:10
associated 10334:16 10401:2
10401:6,7,25 10403:21
association 10391:20
associations 10334:14
assume 10196:3,4 10202:9
10263:15 10276:7 10284:4
10284:8 10331:24 10354:3
10411:19 10428:5 10441:6
10448:6 10463:2 10495:19
10518:13
assumed 10294:24 10497:1
10518:15 10562:14
assuming 10303:8 10311:19
10330:19 10393:24
10458:17 10476:9 10528:5
assumption 10338:15
10417:19 10493:6
assure 10236:16 10237:5
10402:13 10544:22
astonished 10309:8
Atkey 10259:12
attached 10233:7 10400:15
10487:20 10500:3,14
10521:17 10539:22
10541:10
attempt 10254:14 10409:21
10413:22 10433:10 10518:8
10519:19
attempted 10274:24 10491:21
attempting 10278:23
attend 10384:16
attended 10384:15,18
attention 10205:21 10284:20
10285:7 10286:15 10361:5
10375:5,18 10380:22
10382:6 10429:19 10488:22
10572:20 10582:3
attentive 10319:17
attest 10244:22
attitude 10344:12
attract 10427:20
August 10193:2 10582:19
authored 10289:18
authoritatively 10317:22
authorities 10298:10
10315:22,23 10397:23
10398:1 10399:10
authority 10228:9 10297:22

10315:8 10356:7,9
authorization 10229:10
10490:23 10519:1
authorized 10346:7
available 10193:15 10195:10
10207:4 10262:18 10290:14
10323:23 10436:4 10483:17
10573:6
avoid 10195:22
avoided 10379:10
awaiting 10258:11
aware 10224:6,9,22 10225:5
10225:11,18 10231:11,13
10231:17,20 10233:21
10234:5,7 10255:13
10260:3,4 10267:19
10277:11 10284:22 10305:9
10309:1 10339:3 10363:10
10380:17 10385:6,9,11,12
10386:15 10397:12
10398:17 10415:7 10424:11
10489:4,6 10491:4,15,17,18
10501:19 10502:6 10508:19
10510:23 10511:2 10512:23
10512:25 10514:20
10520:17,19 10523:10
10530:18 10538:14 10539:3
10544:3 10572:16
awareness 10521:1
awfully 10416:8
A-OCANADA 10327:18
10328:14 10380:16 10381:6
10381:14 10384:13
10387:21 10388:2
a.m 10193:3 10322:17,19
10582:20

B

b 10347:12 10376:23
Bachelor 10325:1
bachelor's 10486:1
back 10215:20 10220:19
10234:22 10235:4,23
10242:20 10244:9,11
10245:14 10253:25 10255:8
10256:24 10259:5,17
10260:2 10263:7 10264:5
10265:2,18,21 10272:4,11
10277:12 10279:10
10280:17 10281:13,18
10286:24 10291:18
10295:25 10296:23
10308:23 10315:1,12
10319:23 10324:12
10327:12 10334:4 10341:19
10342:18,19,22 10345:11
10345:13 10346:16 10350:9
10350:21 10351:9,13,14
10353:2 10363:19 10370:17

10371:9 10396:19 10416:23
10422:24 10424:19 10435:2
10444:18,22,24,24 10447:5
10458:22 10460:2 10472:25
10474:3,22 10475:7
10477:11 10489:13
10492:20 10495:21 10506:7
10507:14,14 10524:10,15
10524:19 10528:4 10542:24
10549:18 10552:3 10553:4
10561:9 10563:22 10566:3
10567:12 10568:5,11
10572:12 10579:2
background 10295:17
10315:7 10394:7 10446:3,4
10446:14,18 10491:5,5,15
10491:18 10506:19
bad 10246:9 10467:2 10574:5
10577:19
badly 10456:3,5,6 10464:24
10464:24 10465:12,13
Bailey 10461:18
Bang 10441:2
Barbara 10208:10,17 10347:7
10349:1 10467:5 10468:3
10470:11 10472:7 10473:23
10482:23 10497:15 10525:5
10559:14 10570:17 10575:8
10576:13,22 10577:17
10578:16
base 10493:8 10518:19
based 10203:23 10293:14
10448:4 10453:20 10479:24
10480:1
basically 10249:5,7 10280:1,7
10295:13 10308:7 10320:2
10328:2 10330:10 10339:13
10364:9 10424:23 10444:25
10454:3 10457:2 10467:11
10496:23 10497:4
basing 10360:21
basis 10256:8 10275:16
10284:20,21 10319:25
10320:2 10341:14 10380:5
10478:25 10530:7 10548:12
Bates 10461:19
becoming 10388:4
beginning 10210:24 10235:3
10451:5 10486:23 10520:24
begs 10479:21
behalf 10297:24 10372:22
10545:14 10546:22
behaviour 10495:23 10534:3
10534:4
belief 10197:9 10287:6
10576:4
believe 10201:3 10210:16
10211:12 10225:8 10228:2
10238:20 10241:9 10259:2

10272:24 10292:25
10298:12 10299:7 10319:20
10379:16 10385:17 10389:3
10401:10 10409:9 10426:21
10426:23 10445:20
10454:22 10467:1 10475:9
10478:17 10479:4 10495:3
10503:12 10507:16 10550:5
10572:23 10573:3
believed 10258:9 10272:10
10382:15 10471:15
belong 10550:1
belonging 10317:24
benefit 10211:1,23 10219:5
10324:18 10338:5 10373:5
10485:20 10490:5
benefitted 10302:12
best 10228:9 10233:2 10296:9
10323:15 10362:1 10388:9
10396:24 10407:11,13,14
10411:10 10419:16 10425:6
10428:18,21 10430:25
10435:17 10440:5 10441:1
10442:14 10492:5 10501:18
10507:2 10508:22 10520:9
10525:21 10527:24
10538:15 10540:25 10541:3
10546:7 10547:1 10549:9
better 10304:3 10319:17
10387:8 10419:2 10425:14
10523:14 10551:4 10558:16
beyond 10361:8 10406:2
10435:8
bilateral 10359:5
Bill 10365:19 10371:16
bit 10253:25 10274:5
10279:18 10304:13
10314:12 10352:9 10380:13
10389:5 10401:16 10408:20
10417:8 10476:6 10560:6
10569:7 10570:13,20
10576:19
bits 10406:12,15 10414:5
black 10228:1 10330:22
10460:2 10469:5
blah 10545:12,12,12
blaming 10286:6
blank 10332:14
block 10229:15 10298:1
blow-by-blow 10491:23
blunt 10530:12
board 10226:20 10248:3,9
10538:19 10546:6
body 10237:15
book 10210:12,18 10330:22
10332:11 10355:11
10447:16 10469:6 10478:15
10552:11,18
books 10318:8 10332:10

10460:2 10565:20
bottom 10238:6 10257:18
10263:1 10374:8,15
10375:16 10463:4 10464:17
10498:7
bouncing 10279:20
bout 10257:4,24 10261:10
box 10227:12,16 10228:2,12
10314:14 10493:13
10497:22 10498:2
Boxall 10427:4,6,9 10428:1
10428:16,24 10429:8,12,15
10429:20,23 10430:4,9,17
10430:21,24 10431:5,13,16
10431:19,23 10432:2,9,13
10432:17,22 10433:2,6,9,16
10433:22 10434:2,8,14,20
10435:4,7,19,23 10436:6,10
10436:14,21,25 10437:4,15
10437:22 10438:2,6,15,21
10438:24 10439:1,8,14,18
10439:22 10440:12,18
10441:3,11,14
bracketed 10229:20
branch 10248:5
break 10320:23,25 10374:3
10378:21 10450:5 10484:6
10484:8,19 10526:14
10527:9
bridge 10553:24
bridges 10416:14
bridging 10418:25
brief 10194:17 10219:8
10252:25 10313:7 10409:4
10472:17 10478:11 10527:6
10553:20
briefed 10288:13 10488:10
10489:15,21 10490:1
10530:6
briefing 10266:21 10267:16
10267:19 10380:20,22,25
10381:2,13 10455:21
10483:11 10491:20 10500:8
10501:22 10506:17
10522:20 10540:4
briefings 10536:25 10538:23
briefly 10324:22 10485:20
10487:19 10490:9
bring 10240:11 10355:10,12
10361:4 10362:15 10367:14
10375:5,18 10409:21
10478:15 10479:8 10480:12
10492:5 10523:19 10525:2
10565:12
bringing 10257:23 10563:21
10582:3
brings 10466:21 10494:7
broader 10199:3 10391:4,6
broadest 10408:12

brought 10256:24 10259:5,16
10261:2 10284:19,20
10285:7 10298:21 10422:24
10478:23 10488:22
10572:19
brutal 10522:22
build 10254:14 10263:21
10276:4 10553:24
building 10253:4 10324:8
bullet 10331:17
bullets 10331:7,19
bureau 10227:9 10243:23,25
10293:16 10295:17,22
10428:5 10438:1,2,8
10447:6 10488:2,6,15
bureaucracy 10296:6
bureaucratic 10297:18
bureaus 10226:18
Burns 10195:20 10200:23
10208:10,11,18 10209:18
10211:2 10219:5,8,23
10220:9 10221:25 10222:3
10222:14 10223:11 10347:7
10347:11 10348:4,16
10349:1,6 10352:14
10467:5,10 10468:3
10470:12 10472:1,7,14
10473:23 10481:16,24
10482:23 10483:9 10497:15
10498:9 10525:5 10559:14
10570:17 10571:19 10575:8
10576:13,23 10577:17
10578:16 10579:7,8
10580:4
business 10284:9 10304:12,18
10304:22 10402:19 10491:1
10494:6
busy 10327:15 10466:2

C

Cabana 10256:6 10276:21
10328:7,19 10329:5,11,18
10330:15 10332:25
10333:15,22,24 10334:8
10381:7,8 10387:17
10388:6,9,19 10389:21
10390:15,25 10392:4
10398:7 10403:9 10410:7
10410:11 10427:10 10429:3
10429:6 10430:7,10
10431:7,24 10432:3
10434:10 10436:1,15,16
10440:1,14 10445:20
Cabana's 10331:1,22 10332:3
10399:24 10439:9
Cabinet 10546:9,17,18
Cairo 10325:4 10326:6,10
call 10193:19 10195:22
10196:15 10202:21 10203:3

10203:7,14,19 10204:2,4,6
10204:8 10205:1,5,10,24
10206:2,6,8,18,21 10207:22
10208:2,6 10213:20,23,24
10214:1 10215:17 10216:7
10216:24 10217:5 10218:2
10219:14,17,18 10220:3,6
10220:19,22,24 10222:10
10222:21 10223:2,13,14,15
10226:16 10233:9 10242:14
10243:19 10244:2 10245:25
10246:21 10249:9 10250:18
10250:18,24 10251:4
10252:3 10264:17 10269:13
10271:6 10287:5 10304:20
10307:4,7 10308:10
10313:10,17 10321:10,14
10321:17,19 10328:18
10334:3,5 10336:19
10337:22 10339:19,20,22
10339:24 10340:1,17
10341:1,18 10342:5,7,8,20
10342:23 10343:14
10346:18,18 10347:8,11,11
10348:12,14,16 10349:6,7
10349:17,18 10350:9,21
10351:16 10353:9,16
10354:7 10355:16,17
10358:7 10361:8 10364:25
10368:2,11 10369:16
10370:3 10371:4 10372:4
10373:10,24 10378:23
10380:9 10388:6,8
10389:11,14 10402:6
10408:12 10410:18,25
10411:3,6,10 10412:6,8
10414:18 10420:22 10432:8
10432:10,14,16,18 10437:1
10445:1,6,7 10446:20
10452:18 10454:21
10455:10,12 10458:21
10461:8 10464:18,20
10465:9,10,16,20 10466:5
10466:20 10467:10,10,14
10467:21 10468:4 10469:9
10469:15,20,20,22 10470:1
10470:3,6,22 10471:3,5,8
10471:15,19 10472:4,16,17
10472:25 10474:4,17
10475:3,22,22,24 10476:1,3
10476:4 10479:7,15
10480:13 10481:3,11,23,24
10482:10,11,19,22 10483:3
10483:8,10 10494:19
10495:10,14,15,21
10499:13,17 10501:16
10503:25 10506:19,23,25
10507:13,14 10515:10,18
10515:23 10517:7,14

10519:18 10520:8,13,15
10522:17,19,19,20
10523:15 10524:7 10525:10
10525:13,16,19 10526:8
10527:20,22,25 10528:12
10529:10 10547:9 10558:17
10558:20,20 10559:8,12,14
10559:15,17,20 10560:5,7
10562:2,8,13 10566:17
10571:6 10576:13,15
called 10196:11 10202:25
10203:1,24 10205:13,17,19
10205:20 10206:25
10213:19 10226:10 10255:4
10257:24 10308:17
10329:11,18 10334:4
10337:24 10338:1 10342:19
10346:16 10351:9 10388:7
10432:3 10474:20 10481:7
10481:16 10507:16
10522:10 10524:23
10574:17
calling 10213:18 10214:19
10222:1 10249:16 10343:17
10343:17 10348:12
10349:17 10416:12
10467:20 10495:16 10499:5
10501:17 10506:6 10507:11
10516:1 10519:4 10561:23
calls 10349:2 10494:12
call-confirmed 10351:21
CAMANT 10386:3 10387:14
camera 10195:9,15 10196:11
10196:16 10198:19
10199:23 10200:17
10205:13,18,20 10207:17
10209:19 10219:8 10323:3
10330:8,21 10405:23
10460:1 10485:9 10569:1
10573:13 10574:25
camp 10261:15
camp 10261:15
Canada 10231:22 10232:15
10232:22,24 10233:23
10234:22 10236:19
10238:11,16,23 10244:9,11
10247:4 10257:22 10261:3
10265:2 10270:12 10272:8
10272:12,25 10273:8
10277:16,22,24 10278:24
10280:17 10282:12
10286:24 10293:21
10297:22,25 10299:25
10300:21 10302:1 10305:20
10316:24 10318:1,3,17
10319:14 10333:19,20
10360:2,6,20 10362:2
10364:3 10382:10,16
10390:2,10,12 10401:14
10420:16 10446:3,13

10452:15 10455:7 10475:7
10479:13 10492:20 10501:2
10524:15 10533:8 10536:16
10537:12,19 10539:9
10544:25 10545:3,10,15
10551:5
Canada's 10422:23
Canadian 10212:18 10225:14
10236:17 10251:25
10260:23 10264:11,12,18
10264:21 10269:22,23
10279:4 10280:24 10281:10
10281:17 10293:7 10298:10
10299:11,13 10301:25
10303:3 10305:6,19
10319:18 10326:4 10362:23
10400:22,24 10421:18,22
10501:1,7 10512:19,20
10532:1 10533:14 10534:23
10544:23 10550:2
Canadians 10272:10
10277:21 10304:14
10429:13,16,18,24
10550:13 10556:22 10563:7
10564:2,25
capacity 10547:2
capture 10535:1
care 10330:13 10465:23
10512:4
careful 10258:24 10509:20
Carleton 10486:4
carried 10351:8 10400:14
carry 10322:5,12 10331:8
10476:25 10569:9 10570:8
carrying 10492:7
case 10196:4 10211:8,21
10226:7 10229:21 10232:10
10235:24 10246:20,23,25
10271:23 10273:9,20,21
10279:4,5,13 10298:7
10302:6 10317:11 10354:18
10357:5,14 10359:20,20
10367:3 10380:14,14
10387:25 10397:6 10401:18
10408:15 10410:18 10418:3
10422:11,12 10423:1
10433:14 10434:1 10447:7
10484:2 10496:12 10506:18
10513:2,3 10517:20
10524:24 10530:22,24
10532:8,22 10533:2
10534:16 10537:7 10539:3
10539:4 10544:1 10556:13
10556:13 10558:1
cases 10209:17 10243:24
10244:1 10379:10 10382:5
10382:5 10388:5 10398:18
10435:12 10479:3 10489:11
10509:12 10531:12 10549:2

10550:14 10556:14,19,21
10557:4 10558:13 10563:8
10564:14 10565:8,11
categorically 10287:18
category 10489:1
Catterall 10271:7,11,21
10275:15
cause 10296:16 10411:23
caused 10276:9 10283:7
causes 10276:3
causing 10539:5
caution 10399:7,12
Cavalluzzo 10193:7 10199:5
10199:6 10200:4 10202:1
10202:14 10205:12
10299:10 10300:5
cc'd 10366:13 10369:23
cemented 10319:22
cent 10393:7 10501:20
10509:7 10514:3 10528:9
century 10325:16
certain 10193:24 10194:7,19
10200:6 10315:12 10337:2
10337:25 10362:23
10374:11 10385:13
10400:14 10410:20
10428:25 10437:1
certainly 10202:10 10255:25
10277:6 10282:1 10283:6
10283:25 10287:13
10291:16 10292:7 10299:11
10300:15 10305:3,25
10315:1 10323:21 10333:8
10353:22 10354:21,22
10361:13 10366:3 10382:8
10383:21,25 10386:13
10388:3 10392:18 10393:6
10393:21 10394:9 10395:24
10398:15 10399:19 10403:1
10410:1 10412:22 10413:7
10420:10 10423:14
10429:11 10431:18
10439:14 10456:21 10458:2
10459:11 10462:17 10477:7
10535:7 10542:1 10546:19
10574:8 10579:12,22
certainty 10464:15
cetera 10256:6 10327:12
10360:22 10370:1 10410:9
10496:14,14 10575:24,25
chain 10356:19 10360:12
10455:19 10555:6
chair 10323:18
chaired 10488:16
challenge 10330:8,9,19
challenged 10462:10
chance 10207:5 10252:18
10301:19 10484:9
change 10251:14 10519:23,25

10521:6 10547:11 10557:6
10577:2
changed 10288:9 10552:4
10564:16,16
changes 10288:21 10370:9
10553:5 10577:10
changing 10237:22 10498:19
channel 10234:6 10305:11
10343:25 10396:12
channels 10273:11 10282:10
10424:13 10425:4
character 10418:10 10545:25
characterization 10431:1
characterize 10235:1
10283:18,19 10450:24
10457:5
characterized 10214:8
10437:7
charge 10213:3 10247:23
10248:7,16 10273:8
10372:16 10401:19
10422:21 10533:24
10534:22
charged 10360:1
charges 10333:20 10334:10
10390:12,20 10391:11,18
10392:5,6 10545:10
check 10310:9,16 10476:13
checked 10310:14
checking 10310:22
Chesson 10366:24
chief 10376:6 10422:2
choice 10430:25 10540:18
choices 10379:15
choose 10292:6 10572:6
chose 10558:20
chosen 10296:2 10311:6
10411:6
chron 10370:8
chronological 10497:21
chronologies 10252:1
10410:25 10412:8
chronology 10193:12 10251:9
10251:14,22 10252:4
10256:14 10262:6 10365:23
10366:1,1,8 10367:3,6
10368:13 10369:8,12,19
10370:18,24 10371:25
10372:12 10373:3,8
10375:10 10411:7,19,25
10412:7,13,23 10413:1
10414:7,23 10416:17,21
10495:13 10582:8
chute 10556:20
circle 10418:18
circling 10475:4
circuit 10395:12
circulated 10331:21
circulating 10368:14

circulation 10491:12
circumstance 10201:23
circumstances 10196:1
10201:3 10213:25 10219:21
10232:19 10233:3 10267:12
10296:18 10361:24
10379:24 10420:1 10426:11
10537:16 10541:6
citizen 10362:24 10400:22
10550:2
citizens 10421:19,22
citizenship 10565:3
claim 10320:15 10399:13
10404:21 10405:4 10479:10
10574:11
claims 10259:19
clarification 10197:16
10274:1 10315:12 10387:16
10450:19 10505:21 10506:4
10573:4
clarifications 10555:15
clarified 10299:20 10577:22
clarifies 10383:10
clarify 10299:8 10315:8
10332:8 10342:20 10442:23
10444:25 10447:22
10527:18
clarifying 10264:24 10575:14
clarity 10215:14 10367:18
10479:14 10577:25
class 10245:8
clean 10323:9,23
cleaned 10448:7
clear 10206:1 10233:17
10253:3 10268:5 10270:8
10272:17,20 10273:23
10274:10 10275:18,20
10285:2 10316:24,25
10331:16 10340:21 10343:1
10346:9,13 10356:23
10360:3,18 10375:3
10399:19 10408:9,10,21
10420:14 10425:14
10434:21 10445:2,10
10447:23 10448:18
10452:11 10464:8,9
10479:11 10494:11
10495:25 10505:22
10508:10 10530:11
10535:11 10536:24 10537:3
10541:12 10542:25 10548:5
10579:23
cleared 10273:15,18 10302:16
10316:1 10409:7
clearer 10362:20 10575:22
clearly 10199:13 10214:17
10218:6 10233:12 10235:5
10242:8 10246:24 10247:2
10247:6 10250:17 10258:6

10260:17 10272:22 10274:6
10275:8 10278:17 10280:15
10281:16 10286:16
10287:13 10291:19 10318:6
10368:10 10402:12 10429:2
10436:4,9 10465:4
10494:17 10495:15
10506:21 10507:6 10510:16
10513:19,22 10517:23,25
10537:20 10548:7 10579:13
client 10451:17
client's 10198:24
close 10326:17 10494:6
10509:8
closed 10354:18
closer 10529:12
coached 10501:5,6
coffee 10428:11
coin 10198:23
coincidence 10518:5
cold 10304:20
collaboration 10502:8
10547:24
collaborative 10541:13
collaboratively 10557:18
collaborator 10326:17
colleagues 10359:6 10365:19
10384:18 10408:23
10415:18
collection 10236:11 10420:24
collective 10546:17
collectively 10488:12
collegial 10428:4
coloured 10552:13
combinations 10370:19
come 10202:18 10213:17
10244:11 10260:2,18
10295:25 10336:3 10355:22
10358:23 10370:17 10377:8
10379:6 10380:22 10382:6
10387:6 10408:19 10415:23
10452:19 10460:10
10491:13 10524:15 10540:8
10542:24 10566:4
comes 10260:17 10286:3
10304:13,15 10364:20
10409:9 10451:11 10542:7
comfortable 10301:12
10302:19,22 10303:6
10354:9 10395:16 10478:5
10492:22 10510:12
comforting 10390:9
coming 10193:13 10247:8
10288:9 10315:1,21
10316:18 10317:3,4,5
10327:17 10342:1 10345:13
10345:19 10351:17
10387:13 10429:19 10453:3
10473:19,22 10474:4

10477:19,22,22 10482:19
10482:23 10495:2 10543:5
10553:4 10556:20 10564:15
command 10356:19 10360:12
10555:6
commence 10378:13
commencing 10193:2
comment 10202:2 10282:23
10287:16 10301:16
10415:12 10418:1 10421:16
10426:23 10427:11 10441:4
10451:24 10452:18 10470:7
10470:9
commented 10334:8
10339:18
comments 10243:18 10301:23
10367:21 10370:2,17
10373:5 10401:4 10536:3
10563:16
Commission 10202:3,11
10205:8,22 10206:21
10212:3 10218:24 10322:24
10323:3 10375:8 10417:1
10572:20
Commissioner 10193:8
10194:11,15,22 10195:13
10196:2,14 10197:3,6,20
10198:8,13,18,20 10199:5,7
10199:17 10200:24
10201:12,16,22 10202:13
10202:19,20,24 10203:4
10204:9,21 10205:7,14
10206:14 10207:13
10208:15,19,25 10209:3,7
10209:13,25 10210:8,17
10211:1,9,14 10212:19,24
10213:5,9,15,22 10216:5
10217:8,13 10218:9,16,20
10218:25 10219:9 10220:10
10220:17,21,25 10221:5,9
10221:12,14,20 10222:12
10222:17 10223:3,9,18
10233:18 10237:7,17,25
10241:17 10251:13,18,24
10252:6,14,22 10253:1
10256:14,22 10257:5,10,14
10258:4,13,18,21,22
10259:6,14 10260:1,11
10261:6,24 10262:3,9,24
10263:8 10268:24 10274:17
10277:9 10283:1 10289:1
10289:14,15 10291:7
10292:17,18 10293:1
10298:23 10299:3 10303:12
10303:18 10305:25 10306:9
10306:19 10313:6,8
10315:19 10320:7,17,20,24
10321:2,11,20,23 10322:4
10322:14,23 10323:14

10324:1 10330:24 10331:3
10331:4,8,11,15,20,25
10332:1 10335:2 10336:7,9
10338:9 10374:2 10375:7
10375:13,17,21 10376:4,9
10376:16,22 10377:2,6,14
10377:23,25 10378:5,9,18
10379:18,23,25 10380:3,7
10383:14 10396:15 10398:5
10399:1,16 10404:18
10405:2,9,16,20 10406:3,7
10406:14,17 10412:24
10425:7 10427:3,4,7
10440:9 10441:17,23
10442:1 10448:16,17,24
10449:3,6,12,18,22 10450:2
10450:7,12 10466:16,19
10478:8,9,12 10483:20
10485:7,10,14 10501:25
10526:13,19,23 10527:5,8
10527:14 10535:22,23
10544:13,16 10547:25
10552:1,6 10554:24
10556:6 10561:15,17
10565:18,23 10566:2
10568:15,21,24 10569:3,24
10572:18 10573:10,16,25
10574:3,7,10,17 10580:10
10580:18,23 10581:5,12,24
10582:7,11,15
Commission's 10208:21
committed 10531:21
common 10498:16
commonplace 10293:13
communicate 10282:11
10298:9 10346:1 10389:20
communicated 10235:4
10273:25 10439:9
communicating 10424:14
communication 10273:24
10297:12 10298:4,17
10306:3 10536:22
communications 10234:6
community 10274:25
10287:10 10296:1 10503:5
10503:7,13 10513:16
compare 10369:7
compilation 10210:6,9
10274:6
compiling 10372:20
complementary 10509:7
complete 10207:8 10211:18
10271:2 10306:15 10333:4
10433:18 10574:13
completely 10277:5 10296:8
completes 10565:19
completion 10486:3
complex 10516:7 10544:1
10549:2

complexity 10549:6 10565:3,3
complicated 10542:11
comply 10266:16
component 10197:19 10434:3
components 10199:22
10422:13
compromise 10225:18
10233:14 10236:10
computer 10360:15 10417:3
10457:12 10553:2
conceive 10206:23
concern 10199:6,17 10200:19
10201:4 10203:5 10242:12
10245:11 10288:1 10308:9
10308:14 10323:22
10336:19 10339:12
10357:24 10362:18
10380:23 10413:4 10488:11
10498:3 10504:17 10539:5
10553:5 10556:19 10557:16
10558:5,7
concerned 10215:15 10219:20
10222:4 10247:16 10250:18
10256:4 10260:16 10292:1
10299:12 10300:22
10321:24 10344:21
10358:22,23 10359:8
10361:1 10362:14 10365:7
10402:4 10422:22 10457:7
10503:7,13 10522:22
10532:17 10546:5 10558:5
10569:5
concerning 10209:20 10216:7
10219:14,17,18 10313:10
10313:15 10315:20
10333:16 10335:25 10336:7
10346:5 10367:21 10480:13
10488:4,8 10517:16
10525:12
concerns 10199:12 10209:10
10209:22 10244:7 10247:7
10290:11,21 10295:9
10359:14,16 10361:5
10366:12 10403:9 10408:11
10408:24 10414:20
10415:18 10416:22
10420:11 10422:18 10482:7
10534:12,12,15 10544:2
10546:14,18,24 10549:1
conclude 10218:11 10279:11
10304:1 10455:13
concludes 10275:16
conclusion 10275:25 10276:2
10358:24 10395:3 10421:9
10477:4,4,5,8,15
concurrence 10294:18,20
10315:3
concurrent 10444:13 10514:4
condition 10290:5,20

conditions 10290:11
conduct 10284:22 10304:12
10304:18 10534:2
conduits 10398:19
conference 10271:6
confidence 10283:12
confident 10460:3
confidential 10529:4
Confidentiality 10197:12
10259:20 10320:15
10379:11 10404:22
confine 10335:3
confined 10405:25
confinement 10290:11
confines 10217:18,19
confirm 10329:9 10345:3
10348:15 10384:1 10390:5
10392:15 10393:22
10397:21 10424:20
10459:17 10471:8,15
10527:22
confirmation 10376:20
10469:12,15,19 10470:2
10471:18 10482:18,22
confirmed 10216:14 10350:23
10351:2 10354:5,15
10381:22 10388:11,20
10445:21 10446:6,9
10470:5,6 10472:15
10474:13 10475:19,22,22
10483:3,10 10566:17
confirming 10262:22
confirms 10481:24
conflict 10408:12 10509:10
confrontational 10508:14
confronted 10540:17
confused 10332:19 10567:24
10575:12 10577:25
confuses 10577:20
confusion 10264:10,16
10268:25 10269:2,3,6,7,20
10269:21,24 10270:7,11
10271:2 10273:14,18
10299:21 10445:6 10574:25
10580:16
connected 10334:15
connection 10235:12 10237:6
10363:16 10391:24
connections 10232:18
10274:22 10275:11
10537:15
cons 10428:20 10438:24
consensus 10212:16,18
10226:17 10253:4,5
10263:21 10276:5 10345:19
10345:21,25 10408:1
10415:24 10416:15,15
10491:14 10500:24 10501:7
10515:1 10519:13 10521:22

10535:10 10545:17,19,22
10548:15 10553:24
consider 10288:24 10428:22
10429:24
considerable 10338:22
Considerably 10383:22
consideration 10544:20
considerations 10514:7
considered 10293:12
10521:23
considering 10513:5
consistent 10262:16 10532:11
constitute 10421:19
constitutes 10447:16
constraints 10435:18
consular 10213:3 10235:18
10243:23,24,25 10246:19
10246:23,25 10247:23
10248:17 10249:17
10253:15,16 10277:6,20
10278:4 10293:16 10295:16
10295:21 10356:9,17
10359:20 10361:22 10362:8
10362:22,22 10368:5
10382:5,5 10383:14,15
10385:7,13 10386:2,4,6
10388:5 10421:17,17
10447:6 10452:25 10454:23
10486:17,24 10487:3,9,23
10487:25 10488:2,9,15,23
10496:12 10508:5,17
10509:15,15,21 10512:15
10524:24 10525:25 10526:3
10527:25 10528:10 10531:1
10531:3 10532:2 10534:22
10550:1
consult 10226:8 10379:12
10397:17 10546:6
consultation 10226:12,15,16
10227:4 10294:1,2,8,12,17
10296:24 10312:17
10328:16 10384:12,20
10387:3 10408:8
consultational 10328:11
consultations 10294:15
10385:4 10511:20
consultative 10380:16
10429:3 10433:3
consulted 10224:13 10226:19
10247:13 10294:24 10400:4
10542:20
contact 10267:14 10303:14
10425:1 10434:9 10529:23
10543:19
contacted 10267:11 10289:21
10348:4
contacting 10341:15
contacts 10290:1 10304:9
10387:21

contained 10294:19,21
10296:13 10521:5
contemplate 10297:11
contemplated 10293:5
contemplating 10511:3
contemporaneous 10343:2
contend 10481:15
content 10212:15 10218:24
10222:7 10231:9 10244:13
10263:5 10348:18,19
10349:11,12,14 10406:15
10441:21 10483:8 10503:23
10514:21 10521:10 10525:9
10525:22 10528:15,23
10559:7,20,23
contentment 10521:13
contents 10223:13 10224:6,10
10224:19 10227:4,19,20
10231:4 10291:16 10295:14
10313:3 10337:20 10340:5
10340:7 10366:21 10386:6
10471:23 10475:22,24
10481:2 10490:17 10506:2
10507:20 10508:19 10510:5
10510:6,24 10546:12
10560:7
contest 10548:4
context 10224:5 10234:17
10239:3 10285:9 10290:16
10297:16 10302:20 10329:6
10329:18 10334:18 10337:3
10365:17 10371:22
10379:16 10388:12,15,17
10394:7,23 10427:13
10446:5,14 10464:9
10468:15 10512:24 10516:3
10516:4 10536:5 10550:14
10561:12 10563:9 10564:13
10564:20,23 10565:4,5,9
10569:23
contexts 10388:13 10421:15
contextualizes 10459:5
contextualizing 10513:4
continue 10569:22
continued 10287:11,22
10416:10
continues 10269:2
continuing 10409:21
contrary 10226:21 10306:23
10503:18,19
contribute 10315:16
contributed 10385:1
contributing 10384:24
contribution 10367:5,10
10518:25
control 10289:25
controversy 10339:4,5
conversation 10194:20
10195:5 10200:18 10203:16

10218:5,7 10242:23
10244:5 10256:5 10275:17
10307:25 10310:1 10311:1
10328:24 10329:3,4
10335:19 10336:11
10339:17 10340:5,8
10348:15 10352:13
10353:21,23 10359:4,5
10389:6 10420:6 10426:3
10440:25 10442:10 10444:1
10444:4,4 10445:14
10448:12 10450:22 10451:9
10453:7,11 10471:23
10474:19 10483:9 10507:20
10507:22,23 10508:23
10510:17,17 10511:16
10515:13 10517:11 10523:2
10523:16 10525:11 10526:5
10526:21 10528:24
10529:18 10548:10
10550:22 10555:10
10561:11 10564:3,9,11
10567:20
conversations 10277:13
10284:7 10347:21 10389:16
10420:24 10480:1 10492:6
convey 10305:15
conveyed 10278:2 10284:10
10391:21 10422:19
10479:23 10532:6 10547:13
10547:18 10548:25 10550:9
10550:11
conveying 10294:12 10457:2
10549:5
conveys 10294:18,20
convince 10319:7
cooperated 10280:14
cooperation 10508:7
10549:15,20 10564:17
coordination 10532:21
cop 10319:6
copied 10385:18,19
copies 10323:3,5,7,9,9,23,24
10324:8 10582:7
copy 10229:7 10298:21
10417:25 10418:4 10447:24
10459:11,18 10552:23
10568:13,19,22,22
10572:12 10582:14
cordial 10523:2
corner 10238:6 10493:11,13
corporate 10213:4 10486:18
correct 10220:20 10228:15
10231:18 10234:16
10244:21 10271:14
10295:19 10317:10
10325:23 10326:5,19
10328:9 10333:17 10336:24
10340:10 10341:10,16

10350:10 10351:4,22
10352:2,6,21,25 10356:4,10
10356:15 10365:1,24
10366:14,19 10367:11
10372:13 10379:22
10380:10 10390:18 10392:3
10397:4 10401:23 10405:7
10405:8 10406:10,18
10409:19 10414:9,16,21
10415:4,5,25 10417:4
10421:2 10424:2 10426:19
10429:14 10432:12 10433:1
10433:5,8,13 10434:12
10436:23,24 10437:3
10443:2 10458:15 10460:18
10461:16 10464:24 10467:6
10467:18,25 10468:5,7
10472:8 10473:8,14
10474:9 10479:8 10481:5
10482:15,20,24 10486:12
10486:14 10489:23 10495:7
10499:15 10501:3,9,11
10506:24 10530:1 10532:25
10533:3 10534:1,24
10535:25 10543:6 10544:4
10545:7 10547:16 10549:23
10554:1 10556:15 10559:9
10561:3 10563:10 10569:23
10570:1 10571:17
correctly 10200:3 10326:25
10329:23 10371:11 10381:1
10384:15 10390:25
10459:10 10470:13 10480:8
correspondence 10327:12
cost 10422:8
Council 10295:2
counsel 10193:23 10194:18
10195:11 10196:10 10199:8
10199:8,16 10200:9,15
10202:3,11 10205:8
10206:21 10211:3 10218:24
10322:25 10331:1,22,23
10332:3 10374:5 10375:8
10376:1 10379:14 10398:24
10417:1 10484:13 10572:20
10582:9
counsel's 10194:10
counterpart 10214:11
10255:21 10293:6 10317:17
10497:2,11 10536:3
10541:16 10554:8
counterparts 10231:13
10280:22 10536:11
10558:23
counterproductive 10276:22
10410:13,16
counting 10497:13 10558:23
countries 10304:5,8,17,18,24
10430:22

country 10215:20 10242:20
10279:20 10299:14
10341:20 10435:14
10474:22 10524:10,20
couple 10193:10 10302:8
10445:3 10529:9 10555:3
10566:9
course 10207:8 10218:5
10234:8 10235:3 10246:13
10247:8,11 10262:1
10266:8 10270:22 10271:16
10276:22 10279:20
10285:23 10287:4,25
10288:12,20 10289:19
10293:15 10294:25
10295:14 10311:5 10312:22
10315:2 10323:2 10325:17
10343:13 10355:18
10378:11,12 10403:3,5
10408:14 10410:6 10415:2
10420:1 10433:21,22
10477:12 10491:1,14
10492:10 10511:3,13
10540:3 10541:2 10557:25
10560:24 10577:11 10578:7
courses 10325:15
court 10204:16 10331:13
cover 10294:8 10378:17
10440:24
covered 10338:3 10378:16
co-sign 10538:8,12
co-signed 10538:16 10539:20
10539:21
co-signing 10540:5
created 10495:1 10553:12
criminal 10279:4 10281:1
10363:5 10422:10,12
10509:12 10534:2,3,4
10545:10
crisis 10488:13
critical 10324:5
cross-border 10367:24
cross-examination 10216:19
10378:13 10448:20 10450:3
10581:18
cross-examinations 10252:15
10322:6 10378:20 10484:9
cross-examine 10200:11
10449:7
Crumple 10458:3
CSIS 10193:12 10207:24
10212:16 10214:8,13
10215:19 10216:11 10217:3
10217:3,18,20 10221:22
10223:2 10225:14,19
10227:16 10231:11,22,25
10232:11,24 10234:7,19
10235:15,19 10240:23
10242:18 10244:8,9

10245:16,17 10246:3,21
10247:11 10250:3 10252:10
10253:7 10255:7,11,12,13
10255:16,19 10256:2,17,18
10258:1,3,10,16 10259:22
10260:4,7 10261:7,17,18,23
10262:2,8,11,18,22
10263:10,18,20 10264:16
10265:1,1,8,8,18 10266:7
10266:16 10267:11,19,24
10268:10,14,18 10269:24
10271:23 10272:2,21
10274:1 10275:5,19,23
10276:18 10277:1,5,14
10278:5 10279:12 10280:4
10280:19 10281:5,6,21
10282:3,10 10285:4
10286:7,15,23 10287:1
10288:2 10294:10 10295:2
10298:5,7,18 10301:7,17
10303:8 10304:4 10305:7
10312:11,23 10315:22
10317:17 10318:19
10319:17,20,25 10327:9
10338:22 10341:19
10343:15,22 10344:1
10345:18 10348:13,13
10355:7 10357:3,10,19,25
10358:5,25 10360:2,18
10361:19 10362:18
10363:24 10364:20 10368:3
10368:9 10374:20,21
10385:12 10386:11,18,21
10387:10,12 10396:5
10397:13,22,25 10400:11
10402:19 10403:9 10404:6
10404:7,20 10407:4,5
10408:6,13,15 10409:21
10412:9 10413:19 10414:1
10415:15 10419:1,2
10420:13,19 10422:1,2,13
10422:18 10423:17
10424:12,21,25 10425:13
10426:8,16 10427:16
10438:13 10451:6 10452:11
10452:22 10454:4,6
10455:3 10457:8 10467:11
10468:4 10474:21 10475:6
10479:10,22,24 10480:2,5,6
10481:3 10491:12 10492:12
10496:20 10498:25 10501:8
10503:11 10508:6 10509:18
10510:8 10511:10,24
10512:10,18 10513:5,12
10516:3 10519:14 10521:17
10524:8,14,19,23 10525:10
10533:24 10536:8,15,18
10537:8,23,23 10542:1
10543:22 10546:25 10549:1

10549:1 10550:12 10551:3
10551:6 10554:8 10555:11
10558:14 10561:8 10563:7
10565:13 10582:8
CSIS's 10241:3 10364:22
10414:20 10453:24
CSIS/Hooper 10347:8
cultural 10319:1
culture 10421:5 10453:15
cumbersome 10297:18
curiosity 10286:12,14
curious 10310:12
currently 10201:13
curtail 10241:1 10285:5
10364:21 10368:6
curtailed 10286:9
custody 10293:9 10439:6
customary 10506:15
CV 10324:19,22 10485:21,23
C-4 10446:21,25
C-42 10236:11
C.S.R 10583:25
C4 10552:25

D

Damascus 10265:19 10266:19
10267:4 10318:1 10374:20
10385:2 10388:21 10393:9
10404:7,21 10407:5
10433:15 10446:9
Dan 10223:17 10319:8
10354:12 10356:14
Daniel 10207:16
dash 10466:20
date 10221:21 10222:4,5,8,9
10222:11,22 10228:4
10239:8,10 10257:19
10258:12 10269:17 10299:7
10299:8 10314:14 10316:5
10328:1 10333:25 10335:1
10335:25 10347:24
10348:23 10361:12
10365:18 10374:16 10404:2
10406:9,22 10410:1
10444:14 10459:4,6,12,19
10459:23 10460:3 10468:14
10468:16 10469:1,2
10493:3,10,19 10497:23
10498:4 10504:3 10535:2
10542:25 10567:3,3,4
10576:11
dated 10208:18 10210:4
10212:1 10221:17 10224:25
10225:5 10242:9 10260:20
10312:2 10336:23 10356:21
10372:1,8 10459:18
10480:21 10482:8 10491:10
10498:7,7 10525:8
dates 10410:5 10459:21

Dave 10194:19 10198:22
10210:3 10213:17 10214:17
10216:23 10229:3 10337:6
10341:7 10342:11,17,21
10343:2 10350:9 10444:9
10444:23 10462:6,7,12,14
10462:14,18 10463:5
10464:17 10482:19
10506:10 10526:4 10528:6
10559:12
David 10207:11,12 10208:20
10208:23 10209:2,8,14
10210:1,5,11,15,22,24
10211:11,21 10212:21
10213:2,7,11,16,25 10219:2
10219:3 10220:15,20,23
10221:3,7,13,21 10222:14
10222:18 10223:6,10,16,23
10224:3,4,9,13,18,22
10225:11,17,21 10226:1,24
10227:2,8,11,14,18,24
10228:10,16,20,23,25
10229:3,6,9,25 10230:3,6,9
10230:19 10231:1,6,9,16,19
10231:25 10232:4,7
10233:20 10234:2,11,17
10236:9,13,24 10238:1,5
10239:3,19,24 10240:3,5,9
10240:21 10241:7,11,19
10242:11 10243:3,12
10244:6,17,21,24 10245:5
10245:11,20 10246:15,24
10247:2,6,18 10248:11,19
10249:1,5,8,15,20,24
10250:2,6,16,21 10251:2,7
10251:11,15,20 10252:7,13
10294:9 10313:6,7,10,20,24
10314:3,6,11,17,24 10315:5
10315:15,18 10316:4,7,11
10316:14,17 10317:1,10,13
10318:6,12,15,19,23
10319:1,4,11 10320:5
10322:2 10324:11,16,24
10325:8,11,13,19,24
10326:3,6,9,12,16,20
10327:17,22 10328:2,6,10
10328:21 10329:2,8,21,25
10330:2,17,23 10331:2,6,9
10331:14,18,24 10332:5
10333:8,13,18 10334:19,24
10335:7,13,24 10336:6,10
10337:2,8,15,19 10338:5,10
10338:12,17,24 10339:8,10
10339:12,15,21 10340:2,7
10340:11,25 10341:6,11,17
10341:23 10342:3,9,14,25
10343:5,8 10344:3,6,11,16
10344:24 10345:9,15,22
10346:4,15,20,23 10347:3,7

10347:14,18,23 10348:6,9
10348:18,20,23 10349:1,8
10349:11,13,20,23 10350:2
10350:5,8,11,19 10351:2,6
10351:13,17,20,23,24,25,25
10352:3,5,8,13,15,18,22
10353:8,11,14,20 10354:1,6
10354:10,19,23 10355:2,5
10355:10,15,25 10356:5,11
10356:16,21 10358:16
10359:13,21 10360:10,14
10360:17 10361:6,18
10363:3,6,22 10364:8,14,18
10365:2,6,11,15,22,25
10366:7,10,15,20,23
10367:1,9,12 10368:19
10369:1,4,6,14 10370:11,15
10370:25 10371:3,7,13,23
10372:6,15,18,24 10373:2
10373:14,19,25 10376:7
10377:13,15 10379:3,21,22
10380:1 10383:7 10442:4
10460:23 10478:10,11,14
10478:19,23 10479:3,8,20
10480:4,9,12,17,24 10481:2
10481:6,10,13 10482:3,6,13
10482:16,21,25 10483:5,18
10483:21 10484:7 10485:7
10485:16,19 10486:1,8,13
10486:15,21 10487:1,5,8,12
10487:18,24 10488:21,25
10489:3,17,20,24 10490:4
10490:20,25 10491:4
10492:1,8,14 10493:2,8,12
10493:16,22,25 10494:7,22
10494:25 10495:4,8
10496:2,7,15,18,22 10497:3
10497:7,10,14,20 10498:2
10498:14,21,24 10499:2,7,9
10499:11,16,19,24
10500:13,16,19,23 10501:4
10501:10,12 10502:10,13
10502:16,19,23 10503:2,6
10503:14,19,24 10504:2,5
10504:10,13,16 10505:2,5,8
10505:12,16,23 10506:1,6
10506:21,25 10507:6,9,13
10507:18 10508:24
10509:24 10510:9,15,22
10511:2,7,9,12,17,22
10512:1,6,9,12,16,25
10513:3,11,17,22 10514:17
10514:25 10515:3,6,9,13,17
10515:20,23 10516:2,9,13
10516:15,17,21,25 10517:3
10517:15,20,22 10518:4,7
10518:20,24 10519:3,6,9,11
10519:16 10520:1,4,8,12,19
10521:3,9,15,20 10522:2,6

10522:10,12,16,23 10523:4
10523:13,19,25 10524:18
10524:22 10525:2,15,18
10526:1,7,11 10527:14,15
10528:5,9,15,18 10561:17
10561:18,20 10562:3,7,11
10562:16,22 10563:1,11,18
10563:21,24 10564:7,10,21
10565:5,9,16 10566:16
10567:11,18 10568:23
10570:11,19 10571:2,5,11
10571:18 10574:8 10575:5
10576:10,17 10577:3,9,13
10577:24 10581:10 10582:6
10582:13,17
day 10207:8 10285:12
10308:21 10314:18 10324:4
10330:11 10334:20
10337:17 10340:17 10341:3
10341:5,15 10348:4
10351:9 10354:1 10369:21
10370:14,15,16 10384:2
10394:4 10435:15 10444:16
10460:7,10 10462:25
10466:2 10467:15 10468:16
10470:2 10471:9 10481:22
10487:6 10494:16,16
10497:16 10512:13
10520:14 10528:10
days 10232:9 10256:13
10341:7 10355:18 10358:3
10379:14 10537:6
day-to-day 10343:23 10488:2
10488:8
de 10257:4,24 10261:10
dead 10538:19
deal 10206:20 10243:23
10245:21 10251:16 10273:8
10282:3 10318:16 10322:5
10322:11 10331:7 10422:9
10433:24 10434:4 10438:15
10454:22 10494:19 10502:7
10564:16
dealing 10193:20 10203:2
10246:17 10300:10
10328:22 10331:17
10355:17 10399:8 10435:11
10435:13 10458:20 10484:5
10494:18 10504:19
10531:12 10557:4
dealings 10263:20 10276:25
10345:18 10421:5,10
deals 10201:8 10399:5
dealt 10207:22 10243:24
10280:24 10285:18,20
10323:13 10387:24
death 10531:13
debate 10196:19 10236:8
10361:11 10363:20

debrief 10472:17 10517:13
debriefing 10267:3 10374:19
10404:6 10407:4
December 10256:15 10257:20
10258:15 10262:6 10374:9
10374:16 10375:11
10406:22
decide 10370:5 10513:6
decided 10205:9 10272:12
10285:23 10315:6 10353:5
10373:16,20 10469:6
deciding 10379:5
decision 10195:19 10196:22
10214:19 10216:21
10311:17,21,22 10361:14
10385:7 10403:10 10411:21
10428:18,18
decision-making 10312:11
10518:9 10519:19
deemed 10205:23 10328:15
10370:22 10426:5 10538:12
define 10491:6 10548:15
defining 10532:1
definite 10329:9
definitely 10316:5
definition 10391:7 10546:24
definitively 10287:19
degree 10464:15
delay 10252:19
delays 10321:24
deliberations 10269:5
delicacy 10543:22
deliver 10233:11 10362:21
10416:13 10418:4 10436:17
10508:10
delivered 10417:25 10534:23
Delores 10461:18,20
demeanour 10309:4
denied 10232:1 10536:19
denies 10287:2
deny 10397:21 10424:20
10437:15
department 10213:6,7
10226:5,9 10229:13
10255:13 10264:20
10275:14 10283:23
10284:23 10285:5 10291:19
10293:11 10295:11 10296:6
10304:15 10306:2 10311:22
10325:20,21 10327:13
10353:5 10357:2 10359:11
10360:3,18 10361:23
10363:13 10367:8 10382:2
10386:16 10397:2 10411:15
10411:20,21 10415:19
10420:14 10433:12
10452:12 10453:15 10454:3
10479:11 10486:6 10487:14
10488:7 10509:9 10518:17

10529:25 10531:15
10534:18 10535:6 10545:24
10546:15
departmental 10387:3
10411:19 10509:6
departments 10294:3
10487:17 10502:4 10503:13
10514:3 10532:21,24
10557:17 10558:6
departure 10267:13 10543:17
depend 10306:25 10434:1
10446:23
dependent 10334:6
depending 10362:17
deported 10489:12
deputies 10288:9
deputy 10207:23 10208:1
10213:3,13 10228:17
10229:19,23 10230:7,9,13
10230:14,16 10231:3
10247:21 10248:2,22,23
10249:2 10250:23 10284:16
10284:19,21 10287:3,4
10288:5,9,11 10294:13
10326:15,16,23,25 10327:1
10327:6 10353:7 10355:21
10356:2 10362:14 10409:7
10409:12 10412:11
10413:23,24 10415:1,1
10486:11,17,22 10487:2
10489:8,22 10494:2
10517:8,9 10524:4
10550:24 10555:7,17,22,24
deputy's 10285:7 10351:1
derives 10453:16
describe 10275:3 10286:20
10309:3 10326:22 10487:19
10507:19 10520:13,14
10528:12 10530:14
described 10251:4 10271:3
10295:18 10336:12 10390:1
10399:18 10417:2,6
10450:21 10529:11,13
10530:2 10547:9 10551:21
describes 10260:21
describing 10260:16
description 10260:15
10419:23 10420:13
descriptions 10533:11,13
designed 10278:17 10409:14
10546:13,16
desire 10358:19
desk 10213:12,13 10215:1
10216:15 10225:23 10226:3
10327:24 10414:12
10490:23 10518:1,21
destined 10355:25 10356:1,8
detail 10346:17 10370:21
10507:19 10537:1 10538:24

10540:14
detailed 10252:1 10366:1
10535:5
details 10334:4 10358:13
10360:24 10381:14,16,24
10382:18 10404:20 10406:2
10470:24 10491:19
10507:25 10564:11 10565:7
detain 10272:13
detained 10400:16,22
10401:18,20 10439:6
10564:2
detention 10394:11
determine 10290:4,18
10338:1 10396:15
determining 10428:20
develop 10420:21
development 10227:19
developments 10530:4
devote 10215:21 10242:21
10341:20 10474:23
10524:11
devoted 10580:19
DFAIT 10208:1 10212:16
10215:7 10216:3 10217:19
10225:19 10227:5 10230:1
10234:19 10236:11 10241:1
10247:19 10249:9,17
10250:7 10251:8 10252:4
10256:15 10273:3,25
10279:14 10283:15 10289:3
10289:9 10312:9,16,24
10326:13 10334:25 10357:9
10357:19 10363:24
10364:21 10368:6 10387:10
10397:13 10398:1 10399:25
10400:12 10402:20 10408:6
10408:13 10418:25 10419:1
10435:9 10451:7 10455:3
10475:4,15 10487:16
10501:12 10511:3,10
10533:15 10541:2,3
10551:6 10558:13 10564:24
DFAIT's 10245:15 10400:4
10512:20 10513:20,24
10523:15
DFAIT/MKM 10368:4
DG 10495:17
DGs 10518:15
dialogue 10319:25 10361:3
10508:14
dialogues 10492:6
diametrically 10303:2
dictate 10529:22
did-the-call-happen 10471:19
die 10552:4
died 10448:6 10551:16,20,23
dies 10550:25
difference 10301:9 10401:21

different 10196:5 10200:3,5
10246:13 10247:7,20
10257:2,11 10264:6,7
10270:2 10277:5 10304:5,6
10365:14 10401:22 10406:9
10427:13 10428:20
10462:23,24 10463:5
10508:15 10516:6 10534:10
10538:1 10541:22 10546:3
10564:18 10571:24 10573:1
10581:25
differential 10446:25
differently 10318:13
differing 10530:19,21,24
10532:7 10553:25
difficult 10297:21 10359:2
10405:11 10431:20
10520:25 10548:15
10556:21 10557:4,10
difficulties 10408:5 10557:13
difficulty 10275:2 10277:18
10278:2 10296:17 10299:4
10302:3,4,5 10320:14
10323:18 10331:11 10332:3
10399:4,6 10415:15
10422:11,14 10531:7
10569:8
diluted 10233:14
dinner 10304:10
diplomat 10435:12
diplomatic 10385:3
direct 10207:3 10232:21
10233:4 10301:3 10420:2,3
10432:24 10480:1 10488:4
10537:18,24 10539:8
10541:7 10542:13
directed 10333:6
direction 10289:20 10324:3
directly 10229:11 10253:21
10255:20 10307:21 10308:4
10334:16 10353:14
10355:18 10395:10 10447:4
10520:3 10548:4
director 10207:24 10215:7
10226:2 10229:13,13
10230:4 10239:5 10326:14
10326:15,16,23,25 10327:1
10345:4,4 10356:17,18
10362:14 10387:2 10488:3
10502:24,25 10524:4
directs 10576:6
disadvantage 10221:10
disagree 10302:18 10484:16
10516:20,21
disagreed 10545:24
disagreement 10235:22
10239:2
disappeared 10411:17
disappears 10412:7,9,10,12

discharge 10263:23 10278:4
disclosure 10197:15 10216:6
discontent 10214:13
discord 10357:18
discourse 10206:5
discovered 10388:1
discretion 10206:20
discuss 10252:9 10290:10
10332:25 10354:19,23
10355:6 10375:8 10414:7
10429:23 10430:1,2,4
10438:1 10444:20 10517:16
10521:13 10525:15,18
10528:23 10559:22 10560:6
discussed 10218:1 10231:12
10232:10 10279:22
10296:25 10334:20
10337:10 10340:14,16
10361:10 10426:19
10427:15 10428:6 10431:24
10438:7 10495:20 10516:2
10525:22,23 10536:10
10537:7 10549:21 10556:25
10559:13 10561:10 10564:1
10573:7
discussing 10199:15 10354:10
10354:11 10358:3 10430:7
10430:10 10438:11,14,17
10448:12 10453:8 10475:10
10511:19
discussion 10202:10 10218:14
10339:5 10359:18 10373:23
10374:10 10387:16
10399:24 10412:9 10417:7
10417:14,18 10418:21
10424:12,16,17 10427:19
10427:20 10428:22 10444:8
10445:19 10494:12 10514:1
10528:16 10538:4 10548:25
10556:9 10557:22 10559:11
10561:8
discussions 10225:13
10231:20 10253:25 10335:5
10415:14 10418:11
10420:24 10431:6 10446:19
10492:11 10502:9 10513:16
10514:21 10528:13
10536:13 10537:22,22
10553:11,16,19 10554:7
10559:7
dispositive 10273:15
dispute 10551:6
dissuade 10563:19
distinct 10440:16
distinction 10569:8
distinctly 10489:14
distribute 10582:12,13
distributed 10228:14,17
10331:5

distribution 10228:12
10553:9
divergence 10533:7,13
10535:9
divergences 10535:2
division 10227:7 10248:4
10269:10 10327:9 10328:15
10328:16 10333:11,12
10338:19 10343:22,24
10428:5 10437:25 10509:15
divisions 10226:18
doctorate 10325:5
document 10208:14 10209:14
10210:5 10240:10,13
10254:17 10256:13,16
10257:2,6,15,24 10258:25
10259:5,9 10260:6,24
10261:3,9,12,17,20
10270:21 10289:12,18
10290:13 10291:9 10294:6
10305:23 10330:4 10338:6
10375:15 10402:14
10414:12 10417:1 10418:16
10454:20 10490:15 10500:3
10538:5
documents 10193:14 10208:6
10210:12,14,19,20 10254:6
10254:17 10283:2 10289:3
10306:11 10355:11
10385:19 10403:20
10447:16,17 10478:16
doing 10199:20 10201:25
10252:12 10278:3 10306:20
10323:15 10355:9 10372:19
10372:21 10405:19 10406:7
10415:16 10436:19
10438:22 10439:4 10481:13
10491:22 10505:1,1
10508:18
Dolores 10461:21
domain 10195:7,8 10287:14
10333:9 10504:24 10516:8
domestic 10534:4
dominant 10293:25
Don 10366:16,17,17 10368:20
Donald 10260:18
door 10353:19 10547:7
doorstep 10304:21
doorway 10428:6
dory 10414:1
double 10241:23
doubly 10296:14 10297:21
doubt 10245:9 10471:10
dozen 10429:6
Dr 10380:10
draft 10224:24 10236:22
10237:1,15,24 10238:2
10254:1,17,23 10274:11,19
10278:24 10280:6 10295:22

10295:24 10338:3 10342:3
10355:23 10356:12
10357:23 10358:17
10359:22 10360:8,14
10365:23 10368:13,24
10369:11 10371:25
10409:11 10417:2,6,13,13
10418:10,16 10428:8
10447:20 10478:16
10479:23 10491:8,8,11,12
drafted 10219:13 10222:4
10225:23 10235:21 10236:5
10254:2,24 10263:2
10278:21 10342:4 10355:21
10355:23 10456:3,5,6
10464:24 10465:12,14
10510:7
drafter 10365:5
drafting 10219:20,21
10224:15 10226:6,14
10343:16 10345:7,7
10357:16,21 10366:12
10411:7 10467:3 10475:20
10475:25 10567:12,16
drafts 10225:10 10229:10
dramatic 10361:2 10417:9
10422:5 10450:21,25
draw 10537:25
drawing 10423:2,4,15
drawn 10453:6 10479:18,18
drive 10457:17
drop 10371:17
dropped 10371:18
dual 10556:21 10565:3
due 10268:22 10272:8
10278:7
dust 10494:14
duties 10554:5
duty 10363:25 10455:4
Dyett 10194:19 10198:22
10200:23 10203:10,11,20
10204:3 10205:24 10209:18
10210:3 10211:2,8,22
10212:8,13,22 10213:17,19
10214:4,6,17 10215:5,6,9
10215:10,24 10216:10,14
10216:17,24 10217:15
10229:3,6 10241:14
10307:24 10337:6,17,20,25
10340:2,9,22 10341:7,15
10342:1 10344:3 10346:16
10346:23 10350:9,18
10351:3,18,19,25 10368:11
10442:10,16 10443:4,8,13
10443:16,21 10444:1
10462:7 10469:21,25
10470:24 10471:10
10473:13,20,25 10474:2,5,6
10474:8,19 10476:6,10

10477:9,20,22 10482:19
10506:10,12,14 10507:11
10526:4 10527:22 10528:7
10540:11 10559:12
10566:14 10567:11,14,18
10567:20,25 10568:3
10579:1,19,25 10580:2
Dyett's 10195:20 10205:25
10209:15,20 10214:22
10215:15 10216:6 10217:7
10217:10 10241:24
10340:12 10341:8 10342:7
10344:12 10376:25 10477:4
10477:8 10507:9
démarche 10236:3

E

EA 10347:4 10468:3
ear 10317:16 10319:17
earlier 10201:7 10202:4
10231:12 10236:22
10253:13 10299:25
10311:11 10314:2 10323:13
10332:9 10335:9 10380:13
10387:24 10441:18 10448:4
10449:5 10460:10 10461:10
10462:18 10536:9 10540:4
10540:9 10566:11 10567:2
10567:22 10568:5,8
10569:7 10571:21 10572:25
10579:21 10581:16
early 10239:5 10258:2
10370:4 10380:17 10418:14
case 10204:19 10209:11
easily 10296:17 10428:13
10456:17 10477:16
10481:20
East 10227:7 10248:4,8
10269:10 10325:18,18,25
10326:4
Easter 10254:5
Eastern 10325:2,14,16
easy 10323:4 10507:21
10514:23
eat 10376:15
Edelson 10262:17
Edelson's 10258:7
Edinburgh 10325:6
editorializing 10531:18
educated 10465:2 10523:14
education 10325:1 10512:17
Edwardh 10194:12,14,23
10197:6,21 10198:4,11,17
10198:21 10199:18 10207:5
10218:21,23 10220:12
10221:1,2,11 10252:18,20
10252:23,25 10253:18
10254:3,8,11,19,25 10255:6
10255:10,16,19,25 10256:3
10256:12,25 10257:8,14
10258:5,17,20 10260:10
10261:7,25 10262:5,10
10263:5,9,19 10264:12,15
10264:23 10265:6,11,15,23
10266:2,6,15 10267:15,18
10267:23 10268:4,8
10270:5,15,18 10271:1,16
10273:22 10274:13,16
10275:12,22 10276:1,11,15
10276:20,25 10277:8,12
10278:1,9 10279:1,9
10280:19 10281:19 10282:8
10282:14,22 10283:3,6,11
10283:20 10284:1,6,15,18
10285:1,15,25 10286:18,21
10287:1,24 10288:19
10289:9,16 10291:8,12,17
10291:22 10292:5,14
10305:22 10306:1 10321:5
10321:20 10322:8 10323:11
10324:6 10374:6 10375:6
10375:14,20 10376:3,13
10377:23,24 10378:6,10,24
10379:3 10380:6,9,12
10381:2,6,11,19,25
10382:11,20,24 10383:6,9
10383:17,21,25 10384:6,11
10384:21 10385:6,11,15,25
10386:5,10,15,23 10387:7
10387:15,19 10388:8,14,17
10389:4,10,13,19,24
10390:4,9,14,17 10391:4,8
10391:12,21 10392:4,10,17
10392:20 10393:11,18,23
10394:9,19,25 10395:2,5,21
10395:25 10396:4,7,10,19
10396:24 10397:5,10,12,24
10398:6,16 10399:17
10400:3,9,20 10401:7,15,22
10402:8,12,16 10403:3,7,15
10403:18,24 10404:4,15
10405:8 10406:6,20
10407:1,16,21 10408:19
10409:3,18,24 10410:1,6,20
10410:23 10411:5,9,14,22
10412:2,5,18,25 10413:10
10413:13,17,22 10414:4,10
10414:17,22 10415:5,7,10
10415:22 10416:2,7,18,20
10417:5,12,16,22 10418:3,6
10418:9,15,20,23 10419:5
10419:11,14,22,25 10420:3
10420:5,10,18 10421:3,8,14
10421:25 10422:7,17
10423:6,16 10424:2,7,11,22
10425:3,10,18 10426:12,20
10426:24 10427:2,14
10438:3 10439:24 10445:18

10452:3 10453:20 10466:10
10466:18 10501:25
10526:16,17,20 10527:16
10528:20,21 10529:3,8,15
10529:20,22 10530:2,10,16
10530:23 10531:6,20,25
10532:5,12,23 10533:1,4,10
10533:22 10534:1,5,9,13,17
10534:25 10535:7,15,25
10537:4 10538:6,10,14,25
10539:6,14,18,23 10540:1,7
10540:12,16,21,23 10541:5
10541:21,25 10542:17,22
10543:3,7,12,15,21,25
10544:5,12,15,18 10545:9
10545:20 10546:10,19,23
10547:3,21 10548:5,8,14,19
10548:24 10549:4,12,18,24
10550:8,15,18,21 10551:10
10551:14,19 10552:9,12,15
10552:17,20,23 10553:3,10
10553:17,22 10554:2,12,15
10554:21
Edwardh's 10306:10 10563:5
effect 10237:4 10238:15
10273:24 10274:21
10276:20 10279:5 10303:10
10340:4 10372:25 10389:25
10415:13 10440:17 10482:9
10501:22 10548:19 10549:5
10561:22
effecting 10279:14 10410:13
10410:16
effective 10426:17
effectively 10305:18
efficient 10484:5
effort 10492:19 10542:2
10580:19
efforts 10234:22 10241:2
10245:14 10285:5 10286:9
10301:25 10364:21 10368:7
10422:23 10423:19 10509:7
10538:15 10551:15
10563:19
eight 10429:7 10435:16
eighth 10214:21
either 10226:22 10239:15
10255:20 10307:10 10311:7
10342:15 10346:2 10382:4
10387:12 10390:21
10394:20 10427:19 10444:3
10446:22 10494:18
10541:24
either/or 10448:9
element 10286:3 10300:15
10453:9
elements 10285:14 10287:9
10295:20,23 10367:22
eleven 10341:1 10346:18

10461:7
eleventh 10215:12
elicit 10319:12
Elizabeth 10221:18
embark 10197:23
embassies 10326:4
embassy 10385:2
emphasize 10551:22
employed 10486:5
enable 10303:23
ended 10225:22 10269:6
10493:3 10515:25 10541:13
ends 10203:22
energy 10422:9
enforcement 10273:10
10401:12
engaged 10295:24
enhance 10197:19
enormous 10422:8
enormously 10295:15
ensure 10226:14 10293:22
10296:24 10362:17
10557:16
ensuring 10345:25 10547:10
entered 10209:1 10246:14
10264:8 10581:6,15
entering 10581:2
entertain 10484:22
enthusiastic 10531:22
enthusiastically 10531:9
entire 10281:17 10295:17
10302:6 10384:17 10450:9
entirely 10242:16 10245:9
10257:2 10275:10
entirety 10581:20
entities 10386:18 10400:6
10402:19 10546:14
entitled 10210:13,19 10227:2
entity 10551:5
entree 10426:17
entries 10242:25 10375:2
entry 10252:2 10258:20
10336:21 10367:14
10369:16 10372:3 10373:9
10373:10 10374:15 10404:4
10431:21 10468:24
10471:20
environment 10234:19
10364:9,12 10366:8
10424:8
envision 10198:14 10252:18
envoy 10416:13
equal 10558:22
equation 10253:11
era 10556:22 10557:3,10
escape 10545:4
essence 10219:19 10220:8
essentially 10207:21 10229:25
10289:5 10330:15 10336:23

est 10582:20
establish 10300:19 10320:3
established 10304:7 10305:1
establishing 10199:19
10319:25
et 10256:6 10327:12 10360:22
10370:1 10410:9 10496:14
10496:14 10575:23,25
Europe 10248:8
evaluating 10281:20
event 10196:21 10200:13,14
10282:8 10293:11,13
10314:25 10375:17
10377:11 10389:24
10420:23 10540:16
10574:12
events 10193:13 10266:21
10268:24 10373:11
10380:20 10450:17 10457:3
10460:21
eventual 10213:14
eventually 10225:6 10274:11
everybody 10211:16
10306:20 10379:23
everyday 10427:23 10435:8
everyone's 10264:24
ever-obliging 10449:17
evidence 10193:24 10195:15
10196:5,15,23 10197:1
10198:16 10199:2,10,13,22
10200:7,19,20 10201:17
10202:12 10203:24
10204:17,22 10205:17,24
10206:15,18,22,24 10207:4
10207:9,14,15 10232:17
10238:16 10253:9,10
10254:20 10257:21
10262:17,25 10280:25
10298:16 10320:10 10332:2
10359:25 10363:10 10386:1
10392:11,21 10399:19
10407:24 10411:1 10422:20
10426:14 10437:17
10438:18 10440:2,10,13,17
10443:2 10448:3 10491:11
10537:14 10542:25 10552:3
10553:6 10565:19 10567:16
10567:17 10569:6 10573:18
10579:20 10580:20
10581:15
evolved 10225:7
exact 10237:3 10239:22
10495:13 10519:4
exactly 10196:12 10205:12
10234:23 10239:13
10286:11 10318:10 10394:1
10435:25 10436:1 10440:18
10458:19 10575:13
exaggerated 10278:7

examination 10223:22
10252:24 10292:22 10299:6
10307:2 10313:9 10324:15
10380:8 10427:8 10442:5
10445:17 10450:14
10478:13 10484:8,8,11
10485:18 10527:3 10528:19
10555:2 10556:7 10561:19
10566:7
examinations 10378:21
examine 10301:20
example 10385:23 10423:18
10424:5 10433:3 10488:20
10531:12 10547:12
examples 10424:8
exception 10278:25 10479:5
excerpt 10198:22
excerpts 10195:9
exchanges 10357:6 10451:22
exclude 10373:16 10393:18
10393:20
excluded 10373:20
excuse 10223:8,14 10233:16
10267:18 10274:15
10308:25 10330:17 10338:2
10346:12 10372:20
10382:13 10383:1 10384:14
10398:23 10419:18
10425:22 10456:1 10459:15
10464:3 10531:18 10572:11
10575:4
executive 10208:12 10219:11
10347:5 10497:15 10559:22
exercise 10199:24 10295:24
10484:11
exerted 10303:1
exhibit 10195:1 10208:16
10209:1,5 10210:2,9,18
10212:3,3 10224:1 10254:4
10257:17 10260:14
10270:19 10403:21
10447:17 10485:24
10535:21 10552:20
exhibits 10581:3,15
exist 10413:5
existed 10408:6
existence 10276:17
exists 10238:21
expansion 10351:15
expect 10304:21 10332:22
10418:17 10449:22
10456:12,15 10528:4
expectation 10494:25
expected 10333:9 10415:14
10415:17
expecting 10494:22
experience 10293:10,15
10297:8,10 10300:9
10303:19,22,25

experiences 10423:15
expertise 10303:22
explain 10226:1 10330:20,21
10468:21 10483:6 10516:10
10564:7
explained 10314:8 10350:25
10511:23
explore 10401:16
explored 10195:7
exposition 10575:17
expressed 10226:22 10246:16
10308:9,14 10318:22
10374:11
expresses 10286:12
extensive 10296:23
extensively 10490:7
extent 10197:13 10198:1
10234:9 10236:1 10256:1,4
10260:6 10545:23 10549:5
10581:17
extract 10330:4
extreme 10206:4 10363:1
extremist 10362:6 10422:24
extremists 10363:18
eye 10502:4
eyes 10338:7
e-mail 10366:11 10368:20
10370:8

F

face 10318:5
facilitate 10277:2,15
10323:22
facilitated 10399:8
facilitating 10345:21 10419:9
facilitator 10277:25
facilities 10323:7 10324:7
facing 10545:10
fact 10205:17,20 10214:9
10216:15 10219:24
10226:25 10231:1 10245:17
10245:22 10246:3,17
10247:20 10248:2 10256:15
10267:16 10277:25
10284:13 10285:22 10286:8
10292:1 10308:10 10309:25
10310:7,14 10315:15
10319:13 10320:1 10343:12
10357:18,22 10369:6
10379:6 10385:12 10401:18
10426:3 10450:11 10458:18
10462:5 10483:2,14
10487:1,2 10490:11,14
10491:8 10492:15 10495:1
10498:10 10511:3,19
10514:2 10516:22 10525:23
10532:10 10539:3,4
10545:2 10549:14 10553:18
10565:10

factor 10403:10 10425:17
factual 10366:1
factually 10295:18 10404:16
failed 10266:16 10375:9
fair 10206:13 10265:3
10266:15 10275:19
10279:11 10282:19
10283:20 10285:8 10287:16
10292:4 10320:12 10321:8
10378:9 10422:15 10432:22
10440:3,7,12 10460:5
10464:14 10466:12
10489:24 10497:3 10530:8
10530:23,25 10537:25
10541:18 10545:22 10547:7
10552:7,8 10553:7
10568:12
fairly 10262:25 10286:20
10293:17 10296:5,19
10316:24 10359:10 10366:7
10398:10 10416:22 10417:1
10429:1 10438:5 10530:7
10531:2
fairness 10199:7,11,16
10263:16 10466:22
fait 10561:1
faith 10245:10 10280:11
10310:4 10455:10
fall 10235:18 10253:16
10398:23 10424:19 10572:5
fallen 10195:6
false 10407:12
familiar 10320:8,14 10327:18
10490:17
family 10545:12
far 10247:15 10300:20
10304:19 10339:25
10343:22 10362:17 10365:7
10424:16 10498:21,22
10514:13 10522:22
farther 10358:5
fashion 10277:19 10574:13
fast 10450:1
faster 10332:17
fate 10564:2
fear 10357:8 10424:3
feature 10294:1
federal 10532:21 10546:22
feel 10303:13,22 10395:16
fell 10253:21 10532:15
felt 10236:1 10251:2 10278:3
10283:14 10284:9 10285:6
10305:3 10369:1 10379:3
10547:4 10549:6,8
fencing 10548:4
Fifteen 10322:14 10413:13,14
fifteenth 10216:16
figure 10334:12
file 10208:6,14 10209:5

10210:6,12 10489:1,4,25
filed 10194:25 10211:5
10212:2 10219:12 10220:14
10220:16 10240:9 10241:16
10324:19 10328:4 10337:8
10355:11 10480:14
10485:23 10491:7
files 10488:22 10489:25
filing 10219:6
final 10202:1 10212:1
10217:1 10224:24 10231:7
10233:21 10239:11
10273:15 10296:25 10369:8
10369:11,11,19 10373:7
10413:1 10482:6 10502:20
10572:22 10582:6
finalized 10360:11 10361:4
10455:18 10518:16
finally 10207:19 10210:11
10232:7 10287:19 10363:22
10557:15
find 10236:10 10240:7
10248:22 10270:16
10332:18 10346:17 10363:7
10391:18 10394:13 10446:8
10471:7 10475:8,17
10489:16 10519:22 10544:6
10557:11 10578:21
finding 10245:16 10557:10
finds 10361:25
fine 10211:14 10228:11
10251:19 10276:2 10335:7
10343:13 10372:24
10376:10 10458:14 10466:7
10505:8,16 10542:21
10560:23 10563:2 10565:21
10567:4 10580:18
finish 10274:16 10376:2
10378:20 10425:11
10484:14
finished 10373:24 10408:4
10529:6 10560:3
finishing 10198:16
first 10196:11,16 10204:25
10205:21 10207:6 10208:8
10211:24 10212:7 10220:7
10221:8,13 10222:20
10223:4 10226:5,11,25
10235:15 10239:24 10242:1
10243:7 10245:8,11
10254:5 10258:14 10271:10
10287:17 10289:6,11
10291:4 10294:6,12
10295:22 10317:21
10324:25 10326:21 10330:3
10333:18,23 10337:14,15
10339:25 10343:3,10,11
10346:5,6 10350:3
10358:16 10359:4,18

10366:10 10368:20 10383:4
10383:12 10386:24 10387:2
10388:10,18 10390:14
10391:13 10399:11
10406:23 10409:18
10417:24 10418:11
10440:23 10444:18 10445:4
10445:21 10460:6 10463:18
10468:24 10478:14 10479:9
10480:19 10482:18
10483:25 10485:21 10489:4
10490:12,16,20 10496:4
10497:24,24 10499:9
10509:14 10568:25
10574:25 10577:21
firsthand 10216:24
first-class 10310:5
fit 10489:1
five 10336:18 10507:3
flag 10211:23 10217:7
flags 10517:4
flipping 10332:22
floating 10217:24 10424:8
flow 10226:3 10229:25
flowed 10387:12 10395:9,10
10397:2,13
flying 10329:24
follow 10260:19 10313:12
10334:17 10344:25
10346:16 10355:20
10376:23 10469:23
10476:15 10569:24
followed 10408:14 10491:11
following 10207:18 10215:17
10216:5 10299:4 10347:15
10349:21 10379:14 10388:2
10419:7 10503:11 10523:15
10524:5 10526:8
follows 10222:9 10230:1
10369:24 10518:21
follow-through 10366:4
follow-up 10336:1 10343:5
10347:16
foolish 10268:12,19
force 10292:9 10328:14
10384:17 10388:2 10396:23
10396:23 10402:1 10403:1
10428:9 10488:15,16
forced 10534:20
forces 10400:24
foreign 10213:6,8 10214:11
10229:19 10233:5,23,25
10234:13,14 10235:2,25
10238:14,17 10248:9
10255:13 10269:12,19,24
10270:8 10274:20 10275:14
10277:22 10291:19 10293:5
10293:11 10295:11 10296:6
10297:7,13,23 10298:5,6

10299:14 10316:8 10317:4
10317:24 10320:9 10325:20
10325:21 10328:17 10357:2
10358:24 10382:2 10397:2
10398:20 10408:3 10411:15
10414:14 10424:25
10433:24 10434:5,16
10435:13 10457:8 10486:6
10487:14 10500:1,21
10503:21 10508:3 10516:23
10541:8,15 10542:12,15
10546:1,15,20
forge 10412:10
forget 10438:2 10567:3
forgive 10253:24 10296:3
form 10211:4 10289:13
10333:5 10369:17 10521:10
10521:16
formal 10387:21 10409:22
10458:2
Formally 10247:25
formed 10532:14
forth 10230:16 10319:23
10327:13
fortunately 10427:24
forum 10406:14 10437:18
forward 10202:18 10214:12
10214:15 10216:12 10235:8
10236:3 10246:1 10247:14
10262:7 10271:1 10279:6
10279:25 10294:4,19
10296:13,18 10309:21
10315:4 10338:23 10353:4
10354:16 10516:12
10525:24 10538:16
10539:20 10550:4,10
10561:1 10566:4
forwarded 10213:13
found 10241:13 10274:11
10291:19 10300:18
10301:13 10310:12,12,13
10362:4 10363:1,13
10368:13 10416:4 10422:10
10490:10 10526:20
four 10221:15 10238:5
10285:22 10331:7,16
fourteenth 10216:13
fourth 10213:16
Franco 10266:23 10267:2,9
10282:7
frankly 10198:18 10319:19
10444:9
freedom 10364:2 10455:6
frequent 10538:23
friction 10408:5,18
Friday 10348:10 10355:19
10472:15 10494:6
friend 10193:25 10202:21
10217:22 10254:4 10259:11

10260:19 10262:20
10288:23 10305:22 10438:3
10453:20 10466:12
friend's 10259:25 10406:11
front 10257:6 10283:4
10289:1 10290:10 10314:11
10330:11,13 10338:7
10407:17 10442:7 10458:21
10490:12 10525:3 10569:14
10579:18
fro-ing 10338:22 10343:23
10446:8
fruits 10398:8
frustration 10457:2,6
frustrations 10457:9
full 10199:9 10326:24
10377:1 10508:8
fully 10206:25 10222:7,9
10244:24 10296:25
fulsome 10543:10
function 10288:17 10343:19
10343:21 10357:22 10516:5
10559:5
fundamental 10341:14
further 10197:14 10201:1
10234:21,21 10256:18
10258:10 10259:18
10262:19 10305:2 10322:9
10341:2 10347:3 10401:16
10448:7 10458:3 10484:2
10549:7 10553:11,16,19,23
10555:12,14
furthermore 10224:23
10273:1
future 10466:15 10557:17
10558:17
F-something 10228:2

G

Gaetan 10555:18,20,25
gain 10523:4
game 10428:15
games 10429:9
Gar 10226:7 10229:23
10235:21 10236:4 10242:2
10243:21 10248:18,19
10254:2 10274:12,23
10276:9 10277:22 10278:21
10278:23 10279:21 10302:5
10314:23 10340:19
10342:23 10346:24,25
10354:24 10356:17
10386:25 10409:10 10445:9
10466:17,20 10488:3
10502:18,19 10506:8
10526:3 10536:24 10555:17
gather 10290:1 10341:9
10433:19 10490:17
10535:10

gathered 10548:8
gathering 10393:7 10494:14
general 10193:12 10195:6
10226:2 10229:13 10233:23
10234:3 10235:10 10238:13
10281:15,15 10285:13
10297:5,11 10304:3
10305:5 10317:14,18
10329:17 10345:5 10356:17
10356:18 10385:4 10387:2
10393:11,12 10394:3,10
10395:6,7 10422:7 10426:5
10427:18 10429:2 10488:3
10492:2,3,18 10502:24,25
10503:12 10507:22 10512:3
10530:4 10532:6 10538:8
10542:3 10546:25 10547:14
10549:1 10550:13 10556:10
10557:25
generalities 10556:12
generally 10434:14 10453:24
10530:12 10533:6
General's 10230:4
generates 10260:17
Gen's 10367:21
geographic 10227:8 10247:22
10248:1,5 10488:17
getting 10206:16 10260:9
10264:19,20 10382:8
10476:5 10492:19 10558:6
10562:12
gist 10236:25 10237:3
10239:1,22,23 10240:19
10243:1
give 10255:8 10288:23
10299:8 10336:14 10379:16
10386:19,23 10390:19
10394:7 10400:13 10405:1
10406:13 10423:13
10434:17,23 10435:5,9
10446:5 10457:21 10472:16
10484:9 10516:25 10526:25
10547:12 10562:1 10573:6
10573:25
given 10211:1,17 10256:13
10263:21 10265:19 10306:2
10306:5 10325:15 10330:18
10379:4 10384:2 10386:17
10419:19 10442:23 10542:4
10543:18 10551:20,22
10562:5 10581:16
gives 10203:9
giving 10244:8 10325:17
10344:13 10377:7 10457:14
10509:22 10580:20
glass 10323:20
global 10508:1
GMR 10227:5 10248:4
10372:19,20

go 10211:20 10216:12
10221:12 10229:11
10230:10 10231:10 10238:1
10238:3,5 10240:14
10241:21,21 10242:5
10253:25 10258:19
10260:12 10263:6 10264:5
10272:15 10277:12 10279:5
10279:9 10280:2 10282:10
10292:23 10295:20
10303:23 10304:4,17
10308:23 10314:11 10332:1
10336:17 10339:10
10341:13 10342:18
10348:20 10350:2 10351:13
10351:14 10352:9 10353:15
10353:18 10358:4,13
10359:10 10360:24 10361:7
10361:18 10364:14
10365:15 10367:1,12
10368:23 10369:20
10370:25 10372:2 10373:8
10375:9 10377:9 10380:4
10387:15 10396:16
10403:18 10414:1 10415:24
10416:3,23 10420:25
10428:21 10435:14
10440:15 10441:22 10442:2
10442:9 10443:6 10444:6
10448:6 10449:19 10450:3
10450:4 10452:2,9
10458:19 10463:19 10472:6
10473:3 10474:3 10480:18
10482:16 10485:16 10488:6
10497:17,24 10502:21
10523:25 10525:6 10533:18
10535:19 10537:1,4
10538:16,24 10542:12
10549:7,18 10550:3,10,25
10560:2 10565:7 10567:12
10570:15,22 10571:10
10573:3 10576:20 10581:20
goals 10531:24
goes 10203:20 10229:18
10259:24 10262:2 10284:15
10291:18 10292:19
10294:19 10296:22 10305:1
10336:19 10540:24 10546:8
going 10193:18 10194:10
10196:24 10197:10
10199:14 10202:9,25
10203:1,17,25 10204:2,4,12
10204:13 10205:2 10213:23
10214:12,15,18 10236:2
10246:1,9 10247:4 10249:9
10251:15 10260:2 10268:8
10270:15 10279:25 10280:9
10287:8 10288:10 10296:18
10299:1 10306:13 10309:21

10312:5 10313:12 10315:3
10321:15 10334:5 10336:14
10336:16 10337:5 10339:4
10339:4,8 10343:18
10344:1 10347:12 10353:4
10354:7,9 10357:15
10366:11 10369:22
10375:24 10386:20 10393:9
10394:10 10395:21
10398:16 10406:2 10407:23
10408:11 10412:11
10422:19 10427:13,17
10429:1 10435:24 10437:11
10440:4 10446:10 10465:22
10477:12 10480:18
10484:20 10499:21 10500:7
10500:20 10501:16 10502:8
10503:22,22 10506:17,18
10511:21 10516:12
10518:13 10519:22 10521:1
10526:24 10535:14
10537:20 10539:20
10541:14 10543:7 10545:25
10549:4 10550:3 10555:11
10558:14 10561:23
10563:11 10568:5,11
10570:10 10576:8
good 10193:7 10194:11
10199:20 10207:12
10223:18,23 10235:9
10245:9 10281:3 10312:21
10318:8 10322:23 10368:25
10373:1 10395:9 10402:15
10426:6 10431:2,5
10455:10 10485:10,12
10505:16 10528:20
10531:22 10574:6
gossip 10283:14 10284:9
Gould 10202:22 10203:22
10204:1,3,7 10205:3,21,22
10207:19 10210:15,21
10215:6 10216:5,14
10218:3,14 10219:17
10222:24 10239:5 10240:19
10241:8,13,23 10242:23
10243:8 10244:8,20,25
10245:1,5,16 10249:22
10251:3,16,20 10252:2
10282:15,16 10283:7,12
10307:7 10309:22 10310:4
10310:9 10313:11 10321:25
10322:5 10323:1 10324:12
10324:14,16,23 10325:7,10
10325:12,15,23 10326:1,5,8
10326:10,15,19,21,24
10327:20,25 10328:5,9,13
10328:21 10329:1,7,20,22
10330:1,17 10332:6,8
10333:10,13,17 10334:2,23

10334:25 10335:8,15
10336:5,13,25 10337:5,10
10337:18,24 10338:11,14
10338:19 10339:2,14,16,23
10340:6,10,15 10341:4,10
10341:16,22 10342:2,6,12
10342:16 10343:4,7,11
10344:5,8,14,18 10345:2,10
10345:20,23 10346:9,19,21
10346:25 10347:6,10,16,20
10348:2,7,11,19,22,25
10349:5,9,12,15,22,23,25
10350:4,7,10,17,20 10351:4
10351:7,14,19,22,24
10352:2,7,12,17,21,24
10353:10,13,17,22 10354:3
10354:8,11,21,25 10355:4,8
10355:12,14,24 10356:4,10
10356:15,20 10357:20
10358:19 10359:15 10360:9
10360:13,16,22 10361:9
10362:13 10363:4,19
10364:4,11,15,17 10365:1,4
10365:9,12,16,21,24
10366:6,9,14,18,19,22,25
10367:7,11 10368:17,22
10369:3,5,7,13,23 10370:10
10370:13,16 10371:2,6,10
10371:15 10372:5,7,14,17
10372:19 10373:1,13,15,17
10373:21 10374:1 10380:10
10380:11,19 10381:4,9,16
10381:21 10382:3,17,21
10383:1,11,15,18,23
10384:3,9,14,25 10385:9,14
10385:17 10386:3,8,13,22
10386:24 10387:13,18,23
10388:12,16,22 10389:8,12
10389:15,22 10390:3,7,11
10390:16,23 10391:6,9,16
10392:1,8,14,19 10393:4,12
10393:20 10394:5,17,23
10395:1,4,13,23 10396:2,6
10396:9,18,21 10397:4,9,11
10397:15 10398:6,12,22
10400:2,8,18 10401:4,9,21
10402:3,10,15,25 10403:5
10403:13,17,19,23 10404:3
10404:14 10406:20,25
10407:13,20,22 10408:17
10408:25 10409:17,23,25
10410:4,17,22 10411:4,8,12
10411:18 10412:1,4,16
10413:7,12,14,21 10414:3,9
10414:16,21 10415:4,6,9,21
10416:1,6,16,19 10417:4,11
10417:15,19,23 10418:5,7
10418:12,19,22 10419:3,8
10419:13,18,24 10420:2,4,8

10420:17 10421:2,7,13,24
10422:4,15 10423:3,11
10424:1,4,10,18 10425:5,16
10425:19,22,25 10426:18
10426:22,24 10427:1,9,24
10428:3,23 10429:5,10,14
10429:17,22 10430:1,6,12
10430:19,23 10431:3,10,15
10431:18,22 10432:1,5,12
10432:15,19 10433:1,5,8,14
10433:21,25 10434:7,13,18
10434:25 10435:6,10,22
10436:3,8,12,19,24 10437:3
10437:10,21,24 10438:10
10438:19,23,25 10439:7,12
10439:16,21 10440:13,20
10441:6,13,16 10442:7,8,13
10442:19,25 10443:9,14,18
10443:22 10444:3,15,22
10445:8,15,23 10446:2,22
10447:7,13,19 10448:2,5,23
10449:21 10450:15,23
10451:2,14,18,20 10452:1,5
10452:20 10453:5,12,17,22
10453:25 10454:5,10,14,18
10454:25 10455:11,17
10456:1,3,5,8,13,17,23,25
10457:4,13,20 10458:1,10
10458:14,18,24 10459:3,6,9
10459:15,17,24 10460:8,12
10460:15,18,22 10461:2,5
10461:11,16,19,22 10462:1
10462:4,9,13,19,22 10463:1
10463:6,9,12,16,22,25
10464:3,5,14,23 10465:3,6
10465:11,15,18,21 10466:1
10466:7,24 10467:6,9,15,18
10467:23,25 10468:5,7,10
10468:14,19 10469:1,3,10
10469:13,17,24 10470:4,10
10470:13,17,21 10471:2,11
10471:13,17,24 10472:3,5,8
10472:10,13,20,24 10473:1
10473:5,8,10,14,18,21,24
10474:1,6,9,12,15,18
10475:5,8,14,16,20,23
10476:2,8,12,15,20 10477:6
10477:13,16,21 10478:1,5
10478:15,17,21 10479:2,5
10479:16,21 10480:3,6,10
10480:16,23 10481:1,5,9,12
10481:15 10482:5,7,12,15
10482:20,24 10483:4,7
10484:1,19 10490:7
10524:3 10525:8,12,20
10527:4 10565:24 10566:2
10566:6,9,21,25 10567:4,7
10567:10,19 10568:1,6,10
10568:19 10569:13,17,20

10570:3,6,18,25 10571:4,7
10571:17,20,23 10572:1,4,7
10572:11,15 10573:17
10574:22 10575:2,3
10576:12,14,21,24 10577:7
10577:12,18 10578:2,3,7,9
10578:13,17,21,24 10579:4
10579:6,10,15,22 10580:6,9
10580:12,15,21
Gould's 10203:8,22,23
10210:7,10 10215:9,13,16
10215:25 10217:2 10241:12
10241:18,19 10242:13
10283:21 10309:4 10321:9
10370:9 10377:5 10378:15
10378:19 10448:18 10449:4
10523:20 10524:2
government 10196:15
10202:8 10207:5 10212:18
10236:17 10238:11 10246:8
10247:3 10259:18,21
10281:10,17 10282:11
10292:19 10293:7,20,23
10297:13 10300:21 10303:3
10305:6,19 10318:1,3
10323:6 10343:21 10487:15
10501:1,7 10512:19,21
10514:6 10533:8,14
10534:15 10544:23
10545:15 10546:22
10553:25
governments 10300:10,11
10532:18,24 10533:5
government's 10298:10
government-wide 10294:15
10357:13
grab 10376:14
Graham 10214:10,15
10216:12 10269:18 10295:4
10297:7 10536:2
Graham's 10214:9 10227:21
10270:8
grammatically 10352:5
granted 10197:18
grasp 10564:8
great 10206:5,20 10422:9
10446:7 10512:4 10537:1
10540:14
greater 10317:16
greatest 10266:7
green 10502:21
ground 10305:18
grounds 10360:25
group 10418:21
groups 10496:14
guarantee 10291:14 10393:6
guess 10195:3 10197:20
10211:16 10246:1 10260:5
10306:9 10342:16 10354:14

10380:1 10383:4 10389:1
10393:14,16 10440:25
10448:8,8 10456:9 10461:6
10483:14 10574:11
guilty 10361:20 10421:21
10422:10 10452:23
10509:17
Gusen 10365:19 10366:11
10369:22
guy 10446:12

H

h 10193:4 10322:18,20
10377:18,20 10485:2,4
10527:11,13
habits 10531:19
half 10287:17 10353:24
10494:16 10507:4
halfway 10341:3
half-hour 10361:13
hand 10199:18 10203:8
10245:12 10270:22 10308:7
10357:3 10365:22 10516:5
10519:11 10520:18
10568:22
handed 10257:25 10268:19
10378:2 10448:9
handle 10244:9 10535:1
handled 10243:20 10248:24
10302:6 10554:16
hands 10346:8 10378:12
10386:12 10393:24 10535:5
hands-on 10251:21
handwritten 10382:22
10572:12
handy 10542:7
hand-delivered 10366:24
happen 10267:10,10 10292:11
10304:25 10347:11
10396:16 10449:2 10464:21
happened 10251:13 10267:1,1
10288:21 10309:22,22
10310:1,10 10323:17
10343:25 10348:14,16
10349:17,18 10358:1
10469:9,21 10470:6,22
10472:16 10481:23,24
10482:22 10483:3,10
10495:24 10531:11
10538:21
happening 10249:13 10311:8
10344:23 10380:24
10488:18
happens 10509:14
happiness 10521:13
happy 10251:17 10296:1
harbour 10287:6
harboured 10197:9
hard 10253:24 10405:21

10417:25 10418:4 10457:17
10459:11 10475:8 10523:7
10523:7,8 10547:15
10548:11 10549:14,20
10551:16,22
Harris 10289:21
head 10267:2,20 10293:15
10319:24,24 10358:20
10437:12 10446:10 10560:8
10560:22
headed 10198:3 10248:5
headquarters 10447:1
heads 10562:1,5,20,21
heads-up 10501:15 10543:18
10547:6
hear 10199:18 10201:19
10202:15 10204:4,22,24
10206:15,21 10207:14,15
10208:4 10218:6 10273:2
10281:24 10291:23
10331:13 10332:2 10423:9
10542:22 10546:10
10549:11
heard 10204:1,3,11,13,15
10206:10 10207:1 10214:7
10217:17,17,23 10218:13
10249:13,15,21 10253:4
10257:21 10269:7 10282:2
10307:13,24 10318:11
10320:10 10323:2 10328:24
10336:11 10351:21 10352:3
10385:25 10407:23,24
10413:25 10420:21 10440:1
10474:14 10475:2 10484:10
10491:10 10514:5 10552:2
10563:4 10566:12,14,18
10567:11,13 10568:2
hearing 10203:10 10207:17
10490:5 10566:3 10582:3
10582:18
hearsay 10204:17,18,18,19
heart 10423:25
Heatherington 10229:1
10250:8,10 10282:18
10284:3 10285:3 10286:4
10326:18 10327:4 10345:5
10346:2 10354:20 10365:5
10366:12 10393:5 10408:24
10409:1,10 10417:20
10419:20 10428:11
10441:10 10447:9,25
10448:10 10455:16
10457:23 10525:19
Heatherington's 10227:15
held 10256:5 10285:3 10414:7
10555:13
help 10278:17 10280:9,13
10407:23 10413:10
10419:12 10477:12 10494:3

10496:3 10509:13 10548:2
10548:6 10577:14
helpful 10196:6 10201:7
10256:9 10288:25 10573:11
helping 10279:23,24
Hey 10371:8
hidden 10570:6
hierarchy 10230:1 10243:22
10415:24 10416:4 10554:4
high 10309:12 10449:23
10556:13,21 10558:2,12
highly 10293:21 10564:5
High-ranking 10266:2
hindrance 10277:7
History 10325:3,5,16
hit 10418:14 10464:10
hockey 10428:15 10429:9
hold 10329:10 10441:7
10487:6
home 10424:15 10492:5
honky 10414:1
honoured 10362:9
hook 10557:25
Hooper 10193:21 10194:3,6
10200:16 10201:25
10203:15 10206:2 10207:23
10213:18,23 10214:2,19,23
10215:18 10216:20,25
10218:1 10219:14 10221:22
10222:1 10242:14 10243:19
10244:2 10246:18 10248:13
10249:2,8,16 10250:3
10252:3 10307:4 10308:17
10310:22 10337:23
10339:20 10340:3 10341:18
10343:14 10353:1 10358:8
10414:18,19 10442:17
10450:16 10451:10,12,15
10451:16,17,25 10452:19
10453:4,16 10454:9,22
10455:9 10467:11 10470:22
10474:20 10479:1 10480:5
10495:6,10,14 10496:5,8,19
10497:11 10498:6,11,25
10499:4 10501:16 10506:7
10507:1,11,14,20 10508:24
10510:1,17 10512:12
10513:22 10517:23 10519:3
10519:24 10521:8 10522:7
10522:24 10523:5,13
10524:7,13,18 10526:9
10527:21 10528:13
10529:18 10543:18 10547:6
10547:13,18 10548:9
10550:23 10555:5,11,16
10556:10 10560:14 10561:8
10561:23 10562:1,8,24
10563:6 10565:10
Hooper's 10199:8 10203:18

10220:6 10499:13 10503:25
10515:7 10519:18 10547:9
10556:19 10557:15 10582:9
Hooper-McCallion 10203:2
10361:8 10452:17 10479:15
hope 10319:10 10383:9
10492:16
hopefully 10324:9 10333:6
10431:11
hoping 10375:8
host 10435:14
hot 10489:11
hour 10252:19 10314:15
10322:7 10353:24,24
10375:24 10376:11,13
10379:2 10406:4 10507:4
hours 10340:17 10445:3
10461:7 10462:25 10463:1
10464:18 10465:9,17,20
house 10323:20
housekeeping 10581:1
huge 10197:1
human 10299:17
hung 10523:3
hyphen 10350:11
hypothesis 10511:18
hypothetical 10402:10
10434:21
hypothetically 10400:20
10402:23 10403:8 10435:6
10435:8 10439:2

I

idea 10196:17 10217:25
10218:7 10235:9 10339:11
10340:23 10373:17
10389:22 10395:13 10399:3
10444:16 10570:23 10571:1
identical 10290:14
identified 10214:24 10222:24
10370:7 10388:20 10401:24
10518:1
identify 10214:23 10379:15
10407:18 10416:23
10432:20
identifying 10581:22
ignoring 10352:19 10353:4
10477:3 10560:13,20
10571:15
ii 10241:23 10337:12,13
10341:17 10342:21,22
10524:6
ill 10198:24
illusion 10402:23
ill-conceived 10287:7
ill-founded 10287:7
imagine 10298:2 10349:16
10365:14 10514:20
immediate 10518:18

immediately 10257:25
10436:7
immigration 10289:25
impact 10311:4
imparted 10550:7
impediment 10236:18
10501:1 10532:14 10535:9
10535:13,17 10544:24
10545:15
imperial 10566:22 10567:13
10567:23 10568:2 10579:10
implications 10404:25
implicitly 10392:5
implied 10358:25
implies 10353:1,18 10395:19
10442:21 10445:10
10466:15,15
imply 10392:15
implying 10197:5
import 10205:18 10279:18
important 10200:21 10245:24
10269:1 10274:18 10279:3
10283:15,18 10302:25
10363:8 10421:16 10465:22
importantly 10206:9
10235:20 10445:11
impossible 10278:19
impression 10340:3 10423:14
improper 10292:10
inaccuracies 10296:14
inaccurate 10211:18
inadequate 10547:5
incarcerated 10556:22
incidents 10479:19
inclined 10201:23 10306:22
include 10312:10
included 10252:4,5 10258:19
10315:14 10368:13
10369:10,18 10391:9
10499:25 10500:23
includes 10275:19 10292:8
including 10259:22 10268:14
10275:22 10287:10
10331:22 10501:8,10
10502:10 10511:10
10567:11
incoming 10288:11
inconsistency 10483:1
10532:13
inconsistent 10418:10
incorrect 10407:18
incumbrance 10200:1
independently 10298:9
indicate 10203:15 10235:11
10313:12,14 10334:2
10339:23 10340:16
10423:17 10451:12 10474:2
indicated 10194:5 10214:17
10217:16,22,25 10218:4

10221:22 10222:5,11
10223:11 10224:19
10232:25 10253:13 10260:3
10308:8 10309:16 10311:11
10312:13 10339:21,24
10347:25 10348:23 10375:4
10410:8 10423:21 10435:24
10439:4 10453:19 10493:17
10498:4 10500:25 10556:9
10557:13 10558:23 10559:6
10560:25 10566:12,16
indicates 10194:6 10203:13
10218:2,6,10 10228:4,13
10229:21 10230:23 10231:3
10242:8 10314:18 10348:3
10576:5
indicating 10244:12 10571:3
indication 10349:16 10454:16
10456:21 10472:20 10473:2
indirect 10518:8
indirectly 10255:20 10520:4
individual 10206:7 10297:23
10400:15 10401:12
10430:13 10550:14 10563:8
individuals 10206:11
10226:18 10282:5 10334:22
10367:25 10380:21 10388:3
10399:6,11 10531:3
infer 10307:20
inference 10273:12 10437:5,7
inferences 10262:18
inferred 10308:3
influence 10518:8 10519:19
influenced 10216:21
info 10383:12
inform 10333:24 10393:1
10562:17
informal 10354:22 10441:9
information 10193:13
10203:6,8,21 10232:4
10238:20 10245:12,21
10255:21 10256:2,7,9
10258:6,10 10259:16,19,21
10260:5 10261:21 10268:14
10268:15,16,20 10272:23
10273:5 10276:18 10283:9
10284:10 10285:4 10286:7
10290:2 10294:11 10300:12
10308:3 10315:7,21
10316:18 10317:3,9
10329:19 10334:21
10335:12,22 10336:2
10343:9,11 10344:4,12,15
10344:25 10367:24
10370:20 10374:23 10382:1
10382:9,10 10383:24
10385:1 10387:11 10389:20
10392:11,22 10393:7,8,25
10394:2,6,12,24 10395:8,10

10395:17,19,23 10397:1,6
10397:13,22 10398:20
10399:9,21 10400:6,25
10404:10 10407:8 10423:1
10423:17,21 10429:17
10430:3,11,15 10433:11,19
10434:4,16 10437:19
10438:16,20 10439:5
10440:15 10441:1,4
10445:25 10446:4,5,16
10447:4 10453:3,14
10454:21 10467:12 10474:4
10476:3 10477:19,21
10529:24 10550:22
10562:12 10579:20,24
information-sharing 10401:3
10429:24 10430:2,5,8
10438:12
informed 10231:21,21
10315:22 10393:4 10518:18
10522:23 10527:25
10536:14,15 10540:4
informing 10318:4 10489:10
informs 10346:24
initial 10225:4,6 10254:1,13
10254:17 10274:11,19
10278:24 10280:6 10297:4
initially 10196:16 10271:22
10273:19,20 10278:21
10317:7 10423:23
initials 10230:19,21,22
10455:24 10456:10,12,16
10498:20
initiated 10214:1 10432:8,9
10522:19
initiative 10213:24
inner 10418:18
innocent 10361:21 10421:22
10452:24
innuendos 10420:25
input 10367:4 10368:15,24
10369:7,18 10481:10
inquire 10267:11 10328:17
10551:23
inquired 10308:2
inquiries 10289:23 10323:24
inquiry 10200:1 10206:17
10216:6 10498:3
inscriptions 10337:3,4
insisted 10267:3 10280:17
insistence 10279:12 10531:2
insistent 10278:13,14
insofar 10316:8 10479:21,22
10541:13
Inspector 10276:21 10381:7
10387:17 10388:19
10389:21 10390:15 10392:4
10398:7 10399:24 10403:9
10410:7,10 10427:10

10429:3 10430:10 10431:24
10432:3 10434:10 10436:15
10436:16 10445:20
instance 10326:6 10338:25
10386:25 10417:24
10509:11
instances 10199:21,22
10509:6 10514:2
instituted 10455:21
institution 10296:7
institutional 10356:25
10408:5 10415:11 10421:5
10451:6
institutions 10295:3
instructed 10305:14
instruction 10306:7
instructions 10306:1,5
10389:20 10397:20
instructive 10514:16
intelligence 10255:17,22
10256:8,21 10261:1
10262:14 10263:12,17,22
10263:25 10266:3 10268:1
10268:5 10281:7,11,13
10282:3 10286:7 10298:6
10301:8 10312:25 10316:21
10317:6,15 10318:9,16,17
10319:16 10327:6 10395:7
10397:3,8,14 10398:20
10400:7,23 10401:1
10404:11 10407:9 10422:12
10424:14 10425:4 10437:12
10446:11
intended 10361:4
intends 10202:21
intense 10366:8
intensity 10489:12
intent 10233:22
intention 10280:16
intentions 10264:11,13,16,18
10264:22 10269:22
inter 10300:3
interdepartmental 10226:15
10254:14 10274:25 10276:4
10280:15,16 10295:25
10503:4,7 10513:15
10537:22 10562:15
interdepartmentally
10311:23 10353:6 10415:15
10503:4
interest 10232:16 10263:11
10263:24 10271:25 10272:3
10277:2 10288:2,2
10289:18 10307:4 10308:14
10308:15 10321:17
10334:11 10368:1 10381:22
10381:23 10388:4 10429:16
10537:13 10558:3
interested 10263:17 10304:23

10312:10 10344:19,22
10386:18 10471:18 10483:7
10582:14
interesting 10243:17,18
10270:6 10283:19 10286:1
10286:22 10308:16 10309:9
10309:11 10310:12
10311:15 10469:19 10536:3
interests 10198:24 10409:14
intergovernmental 10535:10
internal 10490:22
internally 10250:7
international 10235:12
10434:3 10565:4
internationally 10523:11
interpolated 10479:6
interpreted 10300:11 10466:25
10467:1 10541:21 10563:12
interpretation 10300:7,8
10301:24 10457:3 10466:9
10538:2 10541:20
interpreting 10421:1
10541:24 10546:11
10563:16
interrogate 10233:1
interrogation 10256:20
10262:19 10292:2,9,10
10374:25 10402:2,22,23
10403:4,6,11 10404:12
10407:10
interrogations/interviews
10262:13
interrupt 10239:25
interrupting 10300:4
intervening 10461:14
interviews 10256:20
inter-agency 10548:12
intricacies 10520:17,20
introduce 10324:21
introduced 10193:15
introduction 10336:14
investigate 10272:7
investigated 10391:14
investigating 10391:2
investigation 10232:14
10334:9 10381:15,17,24
10384:23 10391:17
10392:12 10394:14 10398:9
10400:16,24 10410:9
10433:19,20 10437:14
10537:11
investigative 10400:5
investigator 10433:17,23
invite 10436:15,17
involve 10402:24 10450:17
10492:11 10564:17
involved 10204:5 10205:1
10224:14 10225:9 10227:4
10227:18 10235:16 10236:2

10248:25 10251:25 10266:3
10308:11 10327:19 10339:2
10343:16 10345:6,16
10362:5 10363:2 10387:11
10423:22 10532:18
10540:14 10542:2 10553:23
10558:14 10564:25
involvement 10208:5
10263:21 10268:10 10273:6
10275:4 10380:14 10381:12
involves 10434:3
in-camera 10193:24 10195:4
10195:21 10196:23,25
10197:8,24 10199:10,22
10200:7,19 10209:16
in-house 10359:4,18
Iraq 10326:11
irresponsible 10296:12,14
ISD 10227:11 10228:23
10345:16 10356:6,13,18
10396:20 10397:7 10398:19
10399:8 10554:14
ISI 10215:7 10222:25
10227:15 10229:1 10239:5
10256:16,18 10260:18
10261:4,7,19,20 10262:7,7
10262:11 10326:14,17,23
10334:25 10345:16
10365:20 10367:4,20
10369:7,10 10396:19
10397:7 10398:19 10399:8
10409:9,13,19 10418:18
10419:17 10447:4 10524:4
10524:4 10525:8
ISI's 10367:5 10368:15
10369:18
Islamic 10325:3,5
isolation 10408:22
issue 10196:9 10205:9
10207:21 10217:2 10234:7
10243:20 10244:10
10248:17 10255:1,2
10268:22 10270:2 10275:7
10288:13 10291:5 10293:21
10298:4 10303:21 10312:5
10315:8 10316:9 10319:8
10319:13 10321:1 10322:25
10331:7 10334:20 10335:10
10344:1 10355:6 10362:11
10388:24 10389:25 10416:9
10416:12 10420:20,21
10426:16 10428:9 10512:24
10512:25 10516:5,7
10553:12 10565:12
issued 10214:11 10319:17
10499:25 10510:19
issues 10253:16 10277:6
10312:24,25 10328:22
10379:11 10428:6 10483:23

10483:24 10488:11
10503:16 10505:18,20
10530:19 10532:20 10533:6
item 10368:24
items 10370:20,21 10385:2
I-U 10228:2
i.e 10532:18

J

Jack 10207:23 10214:19
10215:18 10216:20
10221:22 10222:1 10242:14
10243:18 10244:2 10246:17
10248:13 10249:2 10341:18
10478:25 10496:5 10498:6
10498:11,25 10524:7
jail 10299:14 10509:14
10531:8
JAMES 10566:6
January 10269:17,25 10271:3
10273:18 10287:5 10302:15
10316:1 10325:18 10487:10
jargon 10350:24
jeudi 10582:21
Jim 10207:19 10210:6,10,14
10210:21 10215:6 10222:24
10239:4 10240:19 10244:20
10308:21 10309:1 10310:3
10324:14 10356:1 10366:16
10366:18,18 10368:21
10370:9 10372:10,10
10458:4 10525:8,12
Jim's 10370:2
job 10394:20 10419:23
10429:21,21 10510:14
10512:5 10520:17
jog 10333:6
jogged 10333:7
jogger 10308:23 10309:1
Johansson 10583:24
John 10248:6,7
join 10321:21
joining 10197:8
joint 10492:16,17 10541:13
10542:2
jointly 10233:24
JPD 10242:2 10289:20
10341:12 10356:16
10386:25 10443:5 10463:19
JPE 10289:20
JPO 10229:3 10337:6 10341:7
judge 10421:20
judgment 10410:18
July 10240:7,14 10250:12,17
10250:22 10282:18 10285:2
10287:3,24 10327:24
10355:20 10365:6,11
10367:14,19 10368:12
10369:15 10371:4 10372:3

10373:4,6,9,11 10380:18
10382:15 10383:17
jump 10338:15
June 10203:19,19 10208:2
10212:1,17 10216:8,15
10220:1 10222:8,11,15,19
10222:23 10224:7,10,11
10225:7,18,22 10239:6,11
10242:9 10250:19 10269:3
10269:4,4 10285:24
10288:8 10292:24 10294:7
10301:21 10308:24
10311:19,19 10312:2
10313:14,14,25 10336:23
10347:25 10348:3,24
10351:3 10355:16,17,22
10356:21 10370:4 10382:12
10407:24,25 10408:8
10409:6,8 10410:2
10412:11 10413:3,15,20
10414:11,25 10416:10
10450:20 10459:10,12,23
10460:3,6 10463:11,12,13
10468:24 10469:9,19,22
10471:8 10472:12,19
10478:16,17 10480:21
10481:8 10482:8,17,18,21
10490:7 10491:16 10498:4
10498:8,12 10502:11
10503:15 10524:5 10525:8
junior 10480:5,6,8 10514:22
jury 10421:20
justifies 10280:25

K

Kathryn 10207:20,24
10208:12 10210:15,22
10212:14 10213:17,19
10214:16 10215:18 10216:2
10216:21 10219:11
10221:18 10222:22
10228:20 10229:22 10230:7
10230:23 10240:25
10243:19 10244:3 10246:17
10246:21 10247:23 10248:1
10248:14,25 10249:1
10307:5,17 10308:11,17
10310:9 10315:5 10321:6
10339:18 10344:1 10346:7
10346:11 10355:3 10356:8
10476:19 10477:4,20
10480:21 10481:7 10485:17
keep 10272:13 10288:15
10315:23 10332:11 10333:5
10347:17 10405:11
10498:19 10502:4
KEM 10221:18,18 10230:22
10498:15,17 10525:7
kept 10327:15 10488:17

10530:3 10539:3
key 10488:11
Khadr 10423:18
Khalil 10281:15,15 10304:3
10305:5 10329:17 10385:4
10393:11,12 10394:3
10395:8 10426:5
kidding 10380:4
killed 10551:24
kind 10276:11,14 10279:14
10280:21 10283:21 10285:9
10298:8 10305:1 10357:17
10387:12 10394:1 10403:11
10408:4 10409:22 10413:18
10417:2 10418:16 10420:23
10446:21 10508:12 10526:8
10550:9 10557:22
kinds 10421:23
knew 10212:13 10223:12
10261:16 10265:24
10283:23 10328:19 10339:4
10344:6 10349:16 10358:13
10388:7 10432:13,15,17
10469:22 10471:3 10492:25
10496:18,23 10499:4,20,24
10500:7,8,11 10508:17
10518:15 10520:22 10523:8
10523:11 10530:18
10533:17 10535:8 10543:21
10559:15,17 10561:22
knocking 10547:7
know 10194:18 10197:7
10198:15,18 10201:8,9
10205:4 10209:9 10211:19
10218:12 10222:7 10256:5
10259:4,24 10263:16
10265:20,21 10266:6,11,12
10266:14 10268:15
10270:23 10276:16 10277:9
10281:21,22 10283:16,25
10284:2,3,11 10299:4
10303:1 10308:20 10323:11
10335:23 10338:20,24
10339:9,25 10340:12
10342:13 10345:4,14
10347:17 10349:17
10359:15 10368:17
10371:16,16,17,18,22
10373:19 10375:23 10381:7
10384:3 10386:14 10388:19
10388:25 10389:3,17,17,18
10391:3 10394:8,21
10395:5,20 10396:11
10398:14 10402:5,12,25
10405:16,18 10406:10,12
10410:17 10411:12,13,14
10411:16 10415:2,14
10424:21 10425:19,20
10426:1 10430:13 10437:10

10440:6,20 10441:11
10444:7,10 10445:4
10446:13 10460:25 10461:3
10471:3,20 10472:1
10490:5 10493:25 10495:17
10496:4 10500:6 10506:16
10510:25 10512:6 10519:23
10520:25 10523:11,12
10524:3 10535:1 10542:1
10551:9,14,16,18 10554:18
10555:18 10558:20
10559:19 10574:3 10582:1
knowing 10344:8 10495:16
10547:3,5
knowledge 10209:23 10232:5
10298:7 10345:15 10373:15
10381:17 10386:11
10387:20 10391:23
10396:25 10399:23 10400:2
10400:8 10407:12,14,15
10411:11,17 10419:17
10425:6 10451:9 10524:22
10551:2,9,11,13
known 10250:13 10288:16
10509:13 10533:17

L

lack 10217:3 10288:2
10524:13
laid 10333:20 10390:13
10391:11 10392:5
land 10490:22
language 10236:9,10,15
10291:25 10292:5,7
10296:2 10357:17 10402:9
10409:11,14,20 10410:7,12
10410:15 10417:8 10420:20
10463:15,16 10465:1
10466:9 10479:23 10482:14
10500:24 10501:5 10506:2
10510:23 10520:2,7
10521:4,5,16,21,22 10522:3
10522:4,8 10539:8 10543:9
10550:3 10557:14
languaged 10312:6
languaging 10312:10
10464:19 10466:5
large 10288:10 10294:20
10552:18
largely 10194:21
larger 10550:13
lasted 10214:4 10440:25
10507:1 10520:9
late 10535:2
latest 10385:3
Laughter 10380:2 10425:24
launch 10557:3
Lavertu 10555:25
law 10204:16 10273:10

10280:25 10565:4
laws 10401:13
lawyers 10374:5 10387:1,4
10428:17
le 10193:3 10582:21
lead 10310:8
leading 10269:4 10296:4
10533:12
leads 10304:1 10334:17
10408:10
leap 10280:11
learn 10433:10 10512:9
learned 10266:16 10271:19
10271:22 10273:19,21
10284:7 10307:7 10512:15
10512:17,20
leave 10193:24 10212:13,13
10260:8 10277:8 10320:21
10333:1,11 10370:4
10395:21 10396:15
10472:22 10547:14
leaves 10565:23
leaving 10386:1 10398:18
10456:9 10533:4
lecture 10514:15
lecturer 10325:11
led 10222:14 10225:12
10272:23 10408:2
left 10206:20 10267:4
10315:13 10332:10,14
10333:12 10350:21 10370:6
10382:16 10457:16 10494:1
10522:20 10526:4,6
10541:16 10548:20,20
10575:14 10576:9
left-hand 10228:13 10332:14
10347:19 10348:1,21
10349:24,25 10351:8,12
10468:9 10469:5 10473:10
legal 10391:6,10
legality 10401:5
lend 10317:16
length 10253:3 10290:10
10529:14
lengthy 10336:14 10412:9
10527:7
lent 10315:3 10319:17
Leo 10386:7
letter 10214:9,10,15 10216:12
10233:7,11,24 10234:14
10235:10,11,21 10237:1,24
10246:5 10254:1,23
10264:2 10270:3 10274:12
10274:19,23 10275:3,9
10276:16,21 10278:15,16
10278:16,18,19,20,22
10279:22 10280:2,3,3,3,22
10293:6,13,20 10294:2
10295:5,8,10,14,18,20

10296:8,13,16,17,21
10297:6,17,20 10298:1,8
10299:19 10301:6 10303:9
10311:17,23 10312:4,16
10313:2,3 10338:3
10343:16 10345:3,11
10358:4 10361:11 10363:21
10371:21 10408:2 10409:22
10410:15 10413:4,9
10414:2,14 10415:8
10416:13,23 10420:20,21
10427:16 10492:16,17,23
10492:24 10499:25 10500:6
10500:12,13,17,20 10503:5
10503:23 10505:10,24
10506:2,4 10508:20
10510:7,10,14,19,23,24
10519:23 10520:2 10521:4
10521:11 10536:2 10538:9
10538:12,16 10539:19
10541:10,14,14 10542:2,16
10543:4,9 10544:2,6,18
10545:25 10546:13 10547:4
10547:10 10548:10
10549:14 10550:3,10,23,24
10550:25,25 10551:1,4,15
10551:19 10553:14 10561:1
let's 10196:3,4 10231:10
10240:21 10263:19 10299:7
10315:23 10320:20 10332:1
10341:6 10347:23 10359:21
10367:1,17 10368:14,15
10371:8 10380:4 10438:15
10450:3 10458:5,5 10459:1
10496:2 10535:15 10537:4
10558:15 10574:12
10581:12
level 10206:16 10249:6
10316:15 10356:25
10418:11 10426:9 10451:6
10457:6 10488:7 10502:22
10502:23,24 10503:1
10504:15,16 10514:22
10555:17 10558:6
levels 10316:23 10558:22
10564:17
liaison 10252:10 10256:17
10258:16 10261:19 10262:8
10327:9,10,10 10343:19,21
10343:23 10355:6 10387:9
10396:1,2,5,6,7 10426:8
life 10224:25
light 10291:3 10352:13
10502:21
liked 10543:10
limited 10431:14,25 10544:20
10545:5,16
line 10198:16 10226:16,20
10229:16 10230:15,20

10239:12 10243:22
10294:17,21 10299:10
10304:3 10315:11 10336:4
10347:4 10352:18 10403:1
10455:24 10462:8 10466:13
10528:6 10579:3
lines 10279:8 10299:19
10304:6 10351:10 10430:13
lingering 10299:13
link 10213:20 10281:14
10499:17 10506:22
linking 10254:21
list 10199:1 10226:18 10291:2
10535:5 10553:9 10564:5
listed 10432:7 10440:21
listen 10257:6 10518:12
10548:1,3 10550:1
listened 10262:25
literally 10354:12 10428:10
little 10270:10 10286:8
10316:25 10330:22
10362:20 10380:13
10382:19 10389:5 10403:20
10405:14 10406:9,12,15
10408:20 10416:25 10547:4
10550:6 10557:18 10569:5
live 10514:14 10520:7
lived 10325:24
Livermore 10202:22 10203:6
10204:1,7 10205:4
10207:16 10208:5 10210:15
10210:23,25 10223:6,16,17
10223:19,20,24,25 10224:2
10224:6,8,12,17,21,23
10225:8,12,16,20,25
10226:4 10227:1,6,10,13,17
10227:22,25 10228:8,15,19
10228:22,24 10229:2,4,8,12
10230:2,5,8,12,25 10231:5
10231:8,15,18,24 10232:3,6
10232:8 10233:20 10234:1
10234:5,15,18,25 10236:12
10236:20 10237:1,10,14,21
10238:3,4 10239:1,4,9,21
10239:25 10240:2,4,6,11,18
10241:6,9,12 10242:10
10243:1,6,10,14 10244:7,15
10244:19,22 10245:3,7,19
10245:22 10246:19 10247:1
10247:5,10,25 10248:15,21
10249:4,7,12,18,23 10250:1
10250:5,9,20 10251:1,6,8
10251:10,17 10252:11
10253:2,12,23 10254:7,10
10254:16,22 10255:2,7,15
10255:18 10263:14 10264:3
10264:14,17 10265:4,7,13
10265:17 10266:1,4,10,25
10267:17,21 10268:3,7,21

10270:13,25 10271:15
10273:17 10274:2,15,18
10275:20,24 10276:7,13,19
10276:24 10277:4,10,17
10278:6,11 10279:7,17
10281:2,20 10282:6,13,20
10283:4,5,10,17,24 10284:4
10284:12,17,24 10285:8,16
10286:11,19,25 10287:15
10288:6 10289:11,19
10290:8,25 10291:3,8,11,14
10291:21 10292:3,12
10293:4,14,25 10294:16
10295:6,13 10296:11
10297:2,14 10298:12
10302:2 10303:16,25
10305:16 10306:5,20
10307:3,8,14,19 10308:1,13
10308:19,22 10309:5,10,14
10309:17,23 10310:3,11,19
10310:24 10311:2,5,9,14,21
10312:1,7,12,14,19 10313:1
10313:5,11,18,21 10314:1,5
10314:10,16,21,25
10315:10,17 10316:3,6,10
10316:13,16,22 10317:2,7
10317:12,20 10318:7,10,14
10318:18,21,25 10319:3,9
10319:10,19 10320:13,18
10327:5 10336:13 10345:6
10346:2 10350:25 10353:15
10353:16,23 10354:7,13
10356:14 10364:16 10393:5
10393:16 10417:21
10419:20 10428:12
10441:10 10447:8,25
10448:10 10455:15
10457:22,22 10490:6
Livermore's 10207:18
10353:12
LO 10395:11,24,25 10396:17
locate 10290:3,18 10291:24
Loepky 10410:11
logic 10274:6 10426:13
logical 10426:10
logically 10418:6,7
logistical 10269:15
long 10202:7 10285:21
10300:9 10306:14,18,21,21
10327:14 10334:5,10
10376:1,5,11 10378:22
10384:19 10391:17
10405:24 10413:23 10507:1
10526:15 10564:11
longer 10370:22 10373:22
10375:25 10507:3 10538:4
10539:20,21
long-time 10545:11
look 10200:21 10227:25

10257:17 10268:12,19
10270:16 10294:5 10314:4
10322:6 10374:5 10378:14
10378:22 10379:14,17
10404:1 10412:15 10440:22
10457:11 10462:7,8,18
10535:15 10546:2 10575:19
10575:20 10576:2
looked 10205:9 10296:19
10544:5
looking 10197:24 10240:17
10267:8 10268:10 10270:18
10391:2 10406:21 10412:22
10416:8 10466:5 10493:4
10568:17
looks 10368:25 10444:9,17
loop 10488:17
loose 10327:11
loosely 10535:18
Los 10419:2
lose 10487:8
lost 10282:24
lot 10321:18 10357:23
10431:16 10521:1 10557:13
lots 10266:13
love 10281:5 10578:10
lower 10426:9
lunch 10252:19 10304:10
10322:7,8,11 10374:3
10375:24 10379:2 10406:4
lunchtime 10581:9
luxury 10446:23
Lynda 10583:24
Léo 10289:21
L'audience 10193:3 10582:20

M

machine 10332:16 10418:14
10517:24
Maghreb 10326:7
magnitude 10508:11
Maher 10327:23 10357:5
10361:21 10367:3 10421:11
10452:24 10528:22 10530:5
10532:8 10533:2
mail 10472:23
mails 10469:4,6
main 10484:10
maintained 10232:12
10286:17,23 10537:9
maintaining 10263:11
making 10194:3,7 10197:21
10197:25 10199:3 10216:11
10235:25 10245:1 10256:6
10412:20 10537:21
10557:11 10577:14
man 10283:21 10433:4
10496:23 10530:11,13
manage 10343:21 10357:22

10377:10
managed 10488:12
management 10243:25
10302:6 10419:1 10488:2,9
manager 10387:9
managing 10327:11 10357:24
10402:19 10419:9 10488:13
mandate 10235:18 10245:15
10253:17,22 10263:13,23
10277:4,20,20 10278:4
10279:12 10362:21 10421:6
10451:19 10455:10 10508:4
10508:5 10509:19 10511:24
10512:10,18,21 10513:5,12
10513:20,24 10516:3,10
10523:15 10532:4,15
10533:21 10549:1 10550:12
10563:7
mandated 10281:12 10329:15
mandates 10508:15 10509:6,9
10512:24 10513:9 10514:2
10549:22 10556:14
10564:18
manner 10297:6 10354:22
10503:17 10505:3,4
manuscript 10372:9
March 10271:3,13 10272:19
10273:23 10275:13
marked 10260:14
Marlene 10271:6 10275:15
Marlys 10528:21
marshalled 10363:11
Martel 10289:22 10290:2,17
10291:23 10386:7
mass 10446:13
masters 10325:3 10486:3
material 10237:2 10289:2
10428:25 10431:17
materials 10260:14,15
10376:15 10379:15 10409:4
matter 10194:20 10198:6
10199:11,15 10233:4
10249:17,25 10250:4
10252:9 10256:2 10258:2
10285:6 10296:25 10308:12
10308:15 10309:21
10313:15 10315:20
10328:14 10339:9 10345:16
10354:12 10355:3,6
10363:5 10370:8 10375:7
10387:25 10404:21 10410:3
10438:1 10442:3 10461:15
10461:25 10484:4 10504:18
10527:22 10529:4 10530:12
10534:19 10541:7 10543:22
10555:12 10557:15 10558:9
10568:23 10573:1 10577:22
10581:1
matters 10253:15 10259:23

10284:19,21 10302:14
10327:6,8 10335:4 10359:8
10441:19 10454:17
10488:23
matter-of-fact 10309:6
10344:14
mature 10319:21
maximum 10300:12
McCallion 10195:4,23
10201:12,24 10202:22
10203:14,16,16 10204:25
10205:24 10206:1 10207:20
10207:25 10208:13
10210:15,22 10212:6,10,11
10212:14,23,25 10213:17
10213:23 10214:4,17
10215:5,18 10216:2,25
10218:1 10219:11,15,18
10220:1,4,6 10221:19
10222:1,2,22 10223:14
10228:21 10229:22 10230:7
10230:23 10240:25
10243:19,21 10244:3
10246:17,22 10247:23
10248:1,14,25 10249:1,21
10252:3 10307:5,17
10308:11 10310:9,16
10315:6 10321:6 10323:1
10337:23 10339:18 10340:4
10343:18 10346:7,12
10350:22 10352:16,17
10353:1,2 10355:3 10356:8
10358:9 10376:5,6 10378:4
10378:23 10414:19,25
10416:9 10442:17 10445:13
10451:10 10455:19 10464:7
10464:16 10468:3 10470:21
10471:4 10473:16 10474:20
10476:10,19 10477:20,23
10477:25 10480:21 10481:7
10481:17,19,21 10482:1,4
10483:12,16 10484:6
10485:8,11,12,17,19,25
10486:7,12,14,20,22,25
10487:4,7,10,13,22 10488:1
10488:24 10489:2,9,19,23
10490:3,4,19,24 10491:3,17
10492:3,13,21 10493:6,10
10493:14,21,24 10494:5,10
10494:24 10495:3,7,12
10496:6,9,16,21,25 10497:6
10497:9,12,19,22 10498:1
10498:13,18,22 10499:1,6,8
10499:10,15,18,20 10500:5
10500:15,18,22 10501:3,9
10501:11,18 10502:3,12,14
10502:18,22,25 10503:3,9
10503:18,20 10504:1,4,9,12
10504:14,21 10505:4,6,11

10505:13,20,25 10506:5,11
10506:24 10507:2,8,12,16
10507:21 10509:2,25
10510:3,11,20,25 10511:5,8
10511:11,14,18,25 10512:3
10512:8,11,14,22 10513:1,2
10513:8,14,21,25 10514:18
10514:19 10515:2,5,8,11,15
10515:19,22,25 10516:4,11
10516:14,16,19,24 10517:2
10517:5,18,21 10518:3,6,11
10518:23 10519:2,5,8,10,15
10519:21 10520:3,6,11,13
10520:16,22 10521:7,12,18
10521:24 10522:3,5,9,11,14
10522:18,25 10523:7,17,20
10523:22 10524:16,21,23
10524:25 10525:14,17,21
10526:2,10 10527:17,19,24
10528:8,14,17,21 10529:1,5
10529:13,19,21 10530:1,9
10530:14,21 10531:5,17,21
10532:3,9,16,25 10533:3,9
10533:16,24 10534:3,7,12
10534:14,24 10535:4,12,24
10536:7,23 10538:2,7,11,20
10539:2,6,12,16,21,24
10540:6,10,13,19,22
10541:4,19,23 10542:5,19
10543:2,6,11,14,20,24
10544:4,10,17 10545:7,18
10546:2,12,16,21 10547:1
10547:19,23,25 10548:9,13
10548:17,22 10549:3,10,16
10549:23,25 10550:5,11,17
10550:19 10551:8,12,18,25
10552:11,14,16,19,22,25
10553:7,15,21 10554:1,10
10554:14,18 10555:4,8,13
10555:22 10556:3,8,15,24
10557:6,9,20 10558:10,19
10559:4,9,15,19 10560:1,10
10560:16,21 10561:3,6,12
10561:16,20,25 10562:4,10
10562:14,18,25 10563:4,10
10563:15,20,23 10564:4
10565:2,6,14,19 10578:18
10578:20 10579:24
McCallion's 10195:15
10199:8,10,12 10200:20
10201:5 10202:6 10207:4,9
10213:20 10216:21
10252:16 10414:12 10477:5
10477:7
McISAAC 10195:16 10196:8
10196:18 10197:21
10200:25 10201:2,15,18
10205:16 10218:16,18
10233:16 10237:8,13,20

10255:23 10256:1,11,23
10257:12 10258:24 10259:2
10259:8,15 10262:20
10289:7 10292:23 10293:3
10293:19 10294:5 10295:1
10295:7 10296:3,22
10297:3 10298:3,14,25
10299:5 10303:7,20
10305:13,21 10306:4
10323:8,21 10335:2
10374:11 10376:19,24
10377:4,7 10378:3 10379:1
10397:16,20 10398:2,25
10399:1,2 10404:18
10405:10,18,24 10424:22
10424:23 10441:20,21
10442:2,6,9,14,22 10443:1
10443:10,15,19,25 10444:6
10444:21 10445:5,11,16,24
10446:16 10447:3,11,15,20
10448:3,14 10449:16,17
10450:8 10459:20 10552:8
10554:25 10555:1,3,9,20,24
10556:5 10568:12 10572:18
10574:2,5 10580:25
10581:8,21 10582:2
McIsaac's 10258:23
McNee 10248:6,7 10372:22
mean 10271:20 10272:2
10300:9 10303:14 10334:15
10344:15,23 10346:11,12
10352:3 10382:21 10386:4
10394:15 10402:7,9
10403:15 10440:5 10461:10
10461:12 10464:6 10469:2
10506:13 10513:19
10540:20 10545:21
10555:21
meaning 10538:1 10563:13
means 10226:19 10350:21,24
10357:23 10390:21
10406:24 10458:19 10508:7
10560:9 10567:23 10576:1
meant 10272:5 10279:12
10327:2 10346:14 10417:7
10431:12 10467:2 10539:11
10564:23
media 10285:18 10286:6,14
10489:5,21
Medieval 10325:18
meet 10231:17 10393:9
10394:10 10437:11
10446:10 10523:1 10536:12
meeting 10214:3 10215:5
10266:23 10271:17
10273:14 10329:16
10338:25 10339:1 10357:1
10361:13,14,16 10394:3
10428:7 10451:5,13

10506:9,12,13,17
meetings 10225:13 10239:18
10258:2 10339:3 10358:10
10360:22 10384:17 10413:3
10414:7 10420:19 10423:5
10423:7 10431:25 10454:6
10454:11,13 10479:19,22
10479:24 10491:11,13,24
10491:25 10511:6,7
10533:18 10562:15
member 10238:18 10246:21
10271:7 10508:6 10524:23
members 10381:13 10479:22
10479:24 10480:5
memo 10203:18 10211:25
10212:1,5,10,15,17
10213:10,11,21 10214:18
10214:24 10215:1 10216:8
10216:14,22 10220:1,4,7
10224:7,10,15,19,25
10225:5,18,21,22 10226:2
10226:21,23 10227:4,20
10228:13 10229:7,10,14,15
10229:21 10230:17,24
10231:4 10237:15 10238:2
10240:7,15 10242:1,12
10246:1 10247:2,6,14,15
10248:4,10,14 10250:12,17
10250:22,25 10256:17
10258:15 10269:9 10273:19
10274:3 10276:9 10284:13
10284:14 10285:9,10,19,24
10286:3,10 10292:6
10308:24 10312:1 10313:16
10313:16,21,22,25
10314:20 10315:3,11,16
10337:21,22 10338:2,2,12
10339:13,14 10341:12
10343:12 10345:17 10346:6
10350:14,23 10352:19,25
10353:6 10354:16 10355:21
10355:23 10357:17,21
10358:17 10359:22 10360:8
10364:15,18,19 10366:13
10367:19,20,23 10368:12
10369:11 10371:21
10373:22,24 10409:6
10412:11 10416:24
10427:20 10443:5 10447:21
10447:24 10450:19,21
10455:14,22 10458:2
10463:19 10473:17
10476:24 10477:2 10478:16
10479:23 10490:8,18,22
10491:2,5,8,9,12,12,16
10493:3 10494:1,9,13,13,18
10494:23 10495:2,6,11
10499:14,17 10500:4,5,14
10500:25 10502:15,15

10503:15,25 10504:6,19,20
10505:9,19,19 10506:16,22
10507:7 10508:18,19
10509:1 10510:2,5,13
10513:7 10516:11 10517:24
10518:1,10,15,21 10519:20
10521:17 10522:21
10525:24 10526:6 10528:1
10528:4,11,11 10533:12,13
10535:16 10536:1 10537:2
10538:21 10540:15 10543:4
10555:14 10559:25
10571:13 10577:5
memorandum 10239:12
10271:13 10276:6 10282:17
10282:18,24 10286:2
10292:24 10294:7,19,22
10338:3 10408:2,10
10420:7 10530:16,17
10536:7 10553:4,13,18
10555:6
memorandums 10289:4
memory 10240:6 10264:25
10308:22,25 10333:6
10389:2,6 10574:5
memos 10357:23 10361:3
mention 10414:2,4,6,10,15,17
10524:18 10565:10
10579:18
mentioned 10360:23 10412:7
10495:5 10499:12 10511:23
10563:6 10564:1
mentions 10367:23
mercredi 10193:3
merit 10330:18 10426:8
merits 10438:11,19
message 10219:13 10220:19
10220:22 10221:24,25
10223:1 10244:7,14,16,18
10244:20,23 10256:18
10262:11 10264:20,21
10265:1,9,15,19 10267:9
10272:17,20 10274:10
10282:15,16 10305:14,17
10319:14 10350:21
10369:24 10424:15
10436:16,18 10446:21,25
10480:20,24 10481:3,22
10483:15,17 10498:6,7,10
10498:14,24 10499:2
10525:7,9 10550:7
messages 10264:19 10332:16
messaging 10268:25 10269:2
10269:3
Messrs 10393:5
met 10215:6 10255:16
10258:8 10268:4 10271:11
10275:15 10328:13
10337:17,20 10340:2

10530:6
method 10581:22
micromanage 10206:17
microphone 10322:3,3
10331:10,10,13 10449:15
10449:15
middle 10227:6 10248:4,8
10269:9,17 10325:1,13,16
10325:17,18,25 10326:4
10514:12
mid-January 10273:16
military 10255:17,22 10256:7
10256:20 10261:1 10262:14
10263:12,16,25 10266:3
10268:1,5 10281:7,10,13
10282:2 10301:7 10316:20
10317:5,15 10318:9,16
10319:16 10395:7 10397:3
10397:8,14 10398:9
10400:6,23 10401:1
10404:11 10407:9 10424:14
10437:12
mind 10217:5 10247:15
10309:25 10337:25
10357:16 10365:4 10406:5
10408:17,20 10423:10
10460:3 10478:6 10483:1,4
10484:1 10519:16,17
mindful 10423:18
minds 10269:22 10299:22
10357:1 10361:14,16
10451:6,13
mine 10239:14
minister 10208:1 10213:3,14
10214:12 10227:20
10228:18 10229:19,23
10230:7,10,14,17 10231:3,7
10233:5,14,23,25 10234:13
10234:13,14 10235:16,25
10238:14 10247:17 10248:2
10248:22 10249:2 10250:23
10269:10,12,19 10270:8,8
10274:20 10284:16 10287:4
10293:5,20,22 10294:4,13
10294:14 10295:4 10296:7
10296:15,20 10297:7,23,25
10316:8,9 10317:5 10320:9
10327:6 10353:7 10355:21
10356:2 10363:9 10408:3
10413:23,24 10414:13,14
10415:2,2,8 10416:13
10423:19 10455:20,22
10464:8 10486:11,17,23
10487:3 10489:8,22
10492:11,17 10494:2
10499:21 10500:1,1,8,20,21
10504:22 10505:3 10510:19
10516:22,23 10517:8,8
10536:2 10538:5 10541:8

10541:15 10542:9,12
10545:5 10546:1,4,9,20
10552:3 10555:7,7,23,25
ministerial 10294:2 10297:19
10413:9
Ministers 10247:21 10297:17
10504:25 10546:18
Minister's 10213:13 10216:15
10225:23 10226:3 10228:5
10229:11 10230:11,14,18
10234:9 10237:9,18,22
10246:4 10284:20 10314:19
10338:4 10354:17 10409:7
10416:5 10464:10 10493:4
10493:20,23 10504:22
10544:19 10551:7 10553:13
ministry 10298:5 10317:25
10435:14
minor 10235:19 10302:8
10347:16
minutes 10214:5 10320:23
10322:15 10376:8,14
10377:13 10484:23 10507:3
10507:5 10520:10 10526:18
10527:9 10529:12
miscommunication 10272:9
misinterpreted 10301:16
misleading 10405:15,22
10465:14
misread 10413:5
missed 10370:3
mission 10267:3,20 10385:20
missions 10382:6
misstatement 10374:6
mistaken 10384:5,6 10572:24
mistakes 10418:13
misunderstanding 10287:11
10287:12,18 10362:12
misunderstandings 10274:7
misunderstood 10569:6
mis-spoke 10579:15,16
10580:2
mixed 10264:19 10441:18
mixture 10264:7
MKM 10228:20 10230:21,22
10240:24,25 10242:5,18
10339:17 10341:13,18
10349:3 10350:13 10352:19
10364:21 10370:3 10443:6
10463:20 10476:22 10477:2
10524:8 10552:25 10571:13
10577:4
MKM's 10347:4
Mm-hmm 10314:10 10342:2
10347:6 10357:20 10360:9
10365:21 10390:3 10404:14
10409:17 10413:21 10414:3
10420:17 10424:1 10429:22
10443:9 10453:25 10467:23

10469:17 10481:12
10498:13 10515:5 10518:3
10518:23 10519:2,5,10
Modern 10325:16
moment 10353:24 10360:23
10397:16 10412:15
10420:12 10426:13 10519:4
10533:5
momentarily 10302:12
10458:22
moments 10440:25
Monday 10216:8 10348:24,25
10351:3 10354:4 10355:19
10472:13 10493:7 10575:5
10575:18
money 10488:5
monitor 10217:4 10561:10
month 10224:11 10235:7
10236:7 10261:25 10262:5
10269:9
months 10243:20 10245:13,13
10245:14 10250:21 10251:3
10365:2 10388:16 10421:9
10429:7 10533:12
moot 10428:10
mooted 10235:8 10426:21
10427:15
mooting 10426:15 10427:21
morning 10193:7,20 10194:11
10207:12 10223:18,23
10285:12 10320:22
10322:23 10337:11
10361:10 10461:4 10580:24
10581:6 10582:16
motion 10194:10,13,17
10201:8,19
motions 10193:19
Mounties 10286:6 10408:6
move 10271:1 10336:10
10347:23 10359:21
10445:16
moved 10346:13
moving 10342:9
MPs 10270:11 10273:25
Mujahedin 10261:15
murderer 10446:13
Muslim 10363:17
Myra 10270:22 10274:7
10275:14
myriad 10453:21

N

name 10247:12 10327:23
10380:24 10384:2 10490:13
10528:21 10577:1
named 10359:1
names 10381:20 10384:8
10398:18 10444:19
10461:17 10463:4

narrow 10291:3 10379:7
national 10197:11 10201:4
10259:19 10320:15
10358:14 10360:24
10379:11 10399:14
10404:22,24 10410:9
10509:19 10512:5 10533:19
10533:25 10556:21
nature 10292:1 10297:13
10427:18 10491:19
10508:23 10521:14
10556:13,14 10557:25
10564:14
nearly 10378:8
neatly 10316:24
necessarily 10197:22
10204:10 10234:20 10345:7
10368:23 10375:3 10461:10
10461:12 10514:3 10533:11
necessary 10205:23 10331:21
10419:20 10434:4 10448:24
need 10195:25 10205:3
10238:9 10252:16 10272:16
10273:1 10274:9 10275:18
10296:23 10304:11 10324:4
10378:16,22 10449:7
10484:2 10492:24 10514:4
10526:21
needed 10259:8 10333:7
10441:1
needs 10273:22 10274:1
negotiated 10510:7 10545:23
10557:14 10561:2
negotiating 10358:3
negotiation 10345:17
10541:17
negotiations 10554:16
neither 10424:20 10457:25
net 10389:24
never 10217:18,20 10249:13
10276:8 10277:6 10282:9
10302:25 10303:16 10312:4
10333:8 10360:11,11
10387:10 10400:12
10402:11 10415:3,8
10426:14 10437:18 10438:7
10438:7 10440:2 10448:7
10448:11 10454:3,8,12
10482:3 10510:4,4
10525:22 10557:2 10560:4
10560:8,12,24 10561:7
new 10206:16 10240:10
10288:9,11,15 10290:13
10478:15 10489:15 10557:3
10557:10
newly 10210:14,19 10283:2
newspaper 10285:11
10484:21
newsworthy 10283:15,18

night's 10428:15
Nineteen 10486:8
ninth 10215:4
noise 10311:12,12,13
non-involvement 10255:5
non-legal 10390:24
norm 10226:4 10229:12
10230:12
normal 10333:10 10457:15,21
10463:14,15,16 10464:19
10465:1,1 10466:5,9
10490:25 10495:22
10542:11
normally 10229:18 10288:11
10434:18,23 10446:19
10447:4 10488:12 10495:16
notation 10460:7 10463:19
notations 10460:10
note 10203:9 10205:21
10208:19 10223:11
10274:19 10288:8,15
10342:17 10343:1 10373:2
10382:21 10384:1 10388:10
10392:2 10431:2,3
10442:16 10444:18,18
10445:3 10458:8 10459:5,7
10461:6 10463:3,4
10464:24 10465:3 10467:19
10469:8 10471:22 10481:23
10482:22 10572:21,25
10573:5,20 10574:1,1
notebook 10203:22,23
10347:4
noted 10215:25 10221:25
10241:23 10371:11,11
10436:13 10459:9
notes 10210:7,10 10215:9,11
10215:13,16,25,25 10217:2
10240:1,3 10241:12,13,18
10241:20 10242:4,8,13
10288:10 10328:3 10329:4
10330:5,10 10332:7,11,20
10333:3,14 10334:2,6
10336:17,18 10337:4,13,21
10339:23 10340:16,22
10341:3,4 10342:19
10346:5,10,22 10353:9
10372:10 10382:22 10385:8
10385:13,15 10386:2,3,4,17
10386:21 10387:14
10391:16 10392:14 10431:7
10431:13,17 10436:3,9
10440:23 10442:7,12,19,20
10442:23,24 10444:7
10446:6 10458:21 10460:20
10462:2 10463:11,17
10474:1,24 10476:25
10480:19 10482:7,17
10501:22 10523:20 10524:2

10524:5 10529:16,17,19,21
10556:18 10564:12
10572:12 10580:16
notice 10306:14 10330:25
10335:18
notification 10329:12
10339:25
noting 10340:5 10483:2
notionally 10243:22
November 10251:9,14,24
10252:5 10257:1,23
10258:3,12,25 10260:20,22
10261:5,12 10263:4
10365:18 10369:21 10372:2
10372:8
Nowak 10461:20
NSC 10195:14 10199:12
10207:6 10209:10,22
10252:17 10321:13,15
nuances 10302:8
number 10208:6 10214:3
10221:23 10222:25 10224:3
10279:19 10282:4 10337:12
10337:12 10341:8,9
10347:8 10349:2 10404:19
10432:7 10443:10,19
10444:11,13 10467:5
10468:4 10472:9 10496:23
10497:4
numbered 10364:6
numbers 10332:17 10468:17
N-O-W-A-K 10461:22

O

o 10579:2
oath 10223:19 10324:13
10485:15
object 10235:24 10276:13
10404:23 10439:25 10552:1
objecting 10510:8
objection 10195:14 10319:14
10321:12 10398:2 10405:3
10405:4,5 10411:24
10423:9 10439:25 10466:11
objections 10306:23
objective 10245:18 10323:17
obligation 10419:17 10508:4
10508:6 10550:2
obligations 10266:17 10531:1
obliged 10508:16 10509:21
observation 10378:1 10379:2
10545:4
observations 10271:18
10282:23
observers 10547:8
obtain 10376:25
obvious 10198:22 10268:9
10287:9 10296:5 10531:11
10537:21 10541:3 10543:8

obviously 10197:1 10200:21
10215:11 10263:9 10332:25
10335:18 10340:18
10348:17 10350:22 10351:5
10359:13 10362:18 10417:3
10417:5 10423:22 10457:6
10466:12 10489:4 10501:12
10574:23,24 10577:20
occasion 10240:20 10270:14
10291:4 10309:20 10335:11
10388:18 10393:8 10421:4
10495:25 10540:9 10581:16
occasional 10288:15
occasions 10196:10 10404:19
10423:5 10496:12
occurred 10310:17 10358:11
10365:3 10414:8 10471:3
10482:19 10491:13
10514:22 10525:23
10559:13,14,16,18
occurring 10287:20
October 10291:13 10329:5,8
10333:25 10336:7 10432:4
10445:20 10489:7,18,19
odd 10244:1 10285:17
10286:5 10297:25 10468:17
10471:7 10475:17 10518:5
offence 10545:24
offer 10256:6 10392:11
10395:7,14 10398:7,10,13
10399:17,20 10401:2
10436:1 10437:7 10439:9
10440:16 10509:15
10538:13
offering 10394:12
office 10193:17 10213:18,20
10220:5 10227:8,21
10228:5 10229:11 10230:4
10230:11,18 10234:10
10237:9,18,22 10239:14,15
10239:17 10246:4 10252:10
10295:3 10297:24 10307:11
10307:11 10314:19 10351:1
10354:13,18 10355:7
10356:5,6,7 10409:7
10416:5 10444:19 10460:23
10464:10 10493:4,20,23
10494:1,1,14 10504:22
10506:10 10526:6 10551:7
10553:1,2,8,13
officer 10226:14 10240:23
10245:8 10252:10 10261:19
10286:23 10289:25 10310:5
10319:7 10327:10,10
10343:24 10355:7 10364:20
10396:1,3,8 10426:8
10434:22,25 10440:6
10446:11 10466:13,14
10524:3 10531:22

officers 10434:10
offices 10395:9
official 10226:6 10289:23
10329:12 10368:3
officials 10231:11,21,22
10232:1 10271:24 10278:24
10281:10 10283:15,23
10294:14 10296:13
10301:17 10304:9,10,17
10361:19 10452:22 10536:8
10536:14,16,18
oh 10245:3 10255:15
10298:20 10321:16
10329:20 10344:5 10364:6
10389:17 10427:1 10431:18
10447:7 10449:12 10463:6
10464:3 10478:17 10480:6
10560:10 10581:7
okay 10209:7 10213:15
10222:17 10237:25 10252:6
10252:13 10256:22 10263:8
10265:6 10306:20,22
10311:16 10313:20 10314:5
10320:17,20 10322:4,14
10326:12 10329:7 10334:19
10338:17 10342:25
10344:16 10348:6,20
10349:8 10350:19 10352:15
10353:8 10354:10 10358:16
10360:17 10364:14
10365:15 10366:10 10367:9
10369:1,13 10370:25
10371:23 10373:13 10374:2
10378:19 10380:4,12
10386:8 10387:18 10392:20
10395:1,23 10399:16
10402:15 10415:6 10419:14
10422:15 10425:5 10428:2
10428:24 10430:9 10436:14
10439:21 10441:23
10442:13 10450:2 10468:23
10478:9 10480:9 10484:18
10485:25 10494:7 10499:11
10501:13 10503:19 10505:8
10505:16 10507:6 10511:17
10543:11,24 10552:16
10565:18 10566:25
10571:11 10574:7 10581:25
10582:15
okayd 10366:16 10368:20
once 10253:6 10286:2
10322:7 10336:17 10369:22
10392:24 10393:24
10448:20 10482:7 10559:24
10577:7
ones 10581:9
one-channel 10359:7
one-line 10359:7
one-voice 10359:7

ongoing 10384:12,19
10408:11 10429:2 10433:3
online 10245:17
Ontario 10193:1,1
open 10332:11 10428:7
10439:10 10484:12 10565:6
opening 10558:15
openness 10392:22
operated 10247:19
operates 10247:19
operating 10221:10 10364:24
10408:22
operational 10309:18
Operations 10207:24
opined 10402:18
opinion 10437:19 10453:20
10454:2
opinions 10226:21
opportunity 10207:17
10243:11 10288:24
10324:17 10378:14
10448:22 10557:3 10575:19
opposed 10282:6,7 10286:15
10293:24 10303:2 10308:17
10317:25 10558:18 10568:7
order 10194:4,5,8 10201:9
10202:23 10205:10,18,20
10206:21 10266:20 10278:4
10279:5 10284:22 10293:22
10323:24 10351:11
10375:25 10393:8 10434:4
10434:16 10441:18,18
10450:21 10497:21
10564:15
ordered 10366:3
ordinary 10396:11
organization 10249:3 10317:6
10317:15 10318:17
10319:24 10421:6 10426:6
10496:24 10497:8
organizations 10503:8
original 10233:22 10465:3
10577:22
originally 10572:24
originals 10575:20,21
originates 10270:21
originators 10528:3
origins 10287:12
orthographically 10462:10
Ottawa 10193:1,1 10325:9
10496:13 10502:4 10532:19
ought 10284:10,11 10285:6
10379:16 10534:19
outcome 10362:1
outline 10409:5
outlined 10500:10
outlines 10272:22
outraged 10309:7
outset 10302:7 10501:20

outside 10307:10,11 10454:13
10546:14
outsider 10416:7
outstanding 10288:1
10503:16
overall 10421:9
overinterpreted 10301:15
overseas 10421:19
overtaken 10371:21
overture 10388:18
o'clock 10461:7 10580:24
10582:16

P

package 10487:23
page 10215:17 10221:13,16
10222:20 10226:25
10230:13 10231:10 10238:3
10238:4 10240:17 10241:21
10254:22 10255:3 10257:18
10257:18 10263:2 10294:6
10299:10 10314:12 10330:3
10330:6 10332:13,14,21,22
10332:22,23 10336:17,23
10341:7 10342:10 10343:9
10347:18,24,24 10348:21
10349:23 10350:3,6
10351:13,15 10364:19
10367:2,2,12,13 10368:20
10371:1 10372:2 10373:3,9
10374:8,14 10375:16
10383:7 10404:1,2
10406:22 10409:5 10413:12
10442:11 10452:10 10455:1
10456:2 10459:1,12,22,25
10460:6 10463:3 10464:17
10468:2,8,22,25 10472:7
10474:4 10479:9 10480:18
10482:8,17 10490:12,12
10497:24,25 10523:25
10525:7 10536:6 10566:16
10569:13,15,21 10570:2,5,9
10570:10 10572:23,23
10573:20 10575:15,15
10579:3 10580:3
paged 10334:4
pager 10432:7
pages 10219:12 10221:8
10299:6 10336:18,19
10369:8 10378:7 10497:20
10578:1,4
paid 10286:15
paper 10226:12 10459:10
10564:15
papier 10257:4,24 10261:11
para 10537:3
paragraph 10231:10 10232:7
10236:14 10240:16,17
10257:11 10271:9,10

10274:4 10286:4,13
10289:17,17 10358:17
10359:22 10363:7 10364:5
10364:6,19 10452:10
10455:2 10474:8 10479:9
10536:6 10537:5 10544:21
parallel 10305:7
paraphrase 10424:25
paraphrasing 10278:10
pardon 10293:3 10298:5
10456:4
Pardy 10212:6,12,20,21,22
10224:7,16,20 10225:24
10226:7 10229:10,23
10233:13,22 10235:7,21
10236:4,22 10237:16
10238:8 10242:2 10243:21
10247:20 10248:18,19
10254:2,18 10270:24
10274:12,23 10276:4,10
10277:22 10278:3,22,23
10280:2 10298:16 10299:6
10300:2,6 10302:6
10314:23 10340:19
10346:24 10354:24
10356:17 10358:4 10359:14
10359:16,17 10386:25
10393:6,22 10409:10,20
10414:11 10415:10 10447:5
10488:3 10490:1 10491:2,9
10491:20 10495:1 10502:19
10506:8 10519:12 10525:19
10526:3 10528:6 10530:7
10530:11 10531:1,9,19
10533:5 10535:6,9 10536:4
10537:21 10538:15 10540:8
10540:23 10543:3,17
10547:4 10553:18 10561:22
10562:9,12,16,23
Pardy's 10229:14 10279:22
10301:24 10302:21 10385:7
10538:23
Parliament 10271:7
parsing 10199:24
part 10218:11 10239:5
10246:8 10248:5 10250:11
10253:14 10256:14 10258:2
10259:10 10266:20 10269:3
10280:11,12 10285:19,19
10295:10 10297:17 10298:4
10298:18 10359:17 10377:4
10419:22 10425:7 10429:21
10433:10 10444:7,13
10450:10 10453:5 10461:10
10463:3 10464:17 10488:15
10517:5 10556:18 10557:21
10581:18,19
partial 10486:3
partially 10479:17,18

participant 10549:8
participate 10297:5,12
10553:16
participated 10206:7
10553:19
participating 10553:11
participation 10384:23
10531:15
particular 10193:22 10199:14
10200:10,17 10220:22
10226:20 10248:10,17
10285:19 10308:12 10313:1
10320:19 10357:10
10403:25 10488:18 10530:5
10534:23
particularly 10206:4
10220:18 10243:17
10246:12 10255:12
10401:17 10406:21 10445:2
10531:12
parties 10193:16 10206:20
10247:7 10248:8
partner 10225:13
partners 10492:7
parts 10385:21 10513:10
10535:6
party 10345:24
part-sessions 10384:16
Part-time 10325:10
pass 10385:7 10439:23
10441:5 10445:25
passed 10381:17 10395:6
10446:17 10447:4,5,8
10481:18,22 10579:25
passing 10286:6 10344:15
10441:10
Passport 10486:18 10523:9
passports 10213:4
Pastyr-Lupul 10270:22
10271:8 10274:7 10275:14
patience 10580:13
patiently 10566:3
Pause 10270:17 10288:18
10392:13 10397:19
10425:21 10522:1 10554:20
10565:22 10566:5 10573:15
10573:24 10574:14
PCO 10227:16 10251:9
10252:1 10294:10 10295:3
10312:11 10366:2,2
10369:9 10411:16 10503:12
10558:14
pedalling 10449:25
pen 10575:23 10576:3
penalties 10531:13
penalty 10401:25
people 10206:5 10228:17
10234:3 10250:7 10273:3
10294:23 10304:18 10322:6

10330:20 10346:1 10356:1
10356:12 10362:16
10380:23 10381:20,21,22
10382:4,10 10383:13
10405:15 10422:9 10423:23
10427:20 10428:10
10444:19 10454:6 10462:14
10480:7 10484:9 10503:12
10519:12 10531:9,14
people's 10361:5
perceive 10515:17
perceived 10216:11
perception 10243:13,14,15,16
percolate 10416:10
perfectly 10495:22
perform 10559:2,3
period 10269:14 10291:18
10429:6 10462:3
peripheral 10345:24
permanent 10431:12
permitted 10230:10 10238:22
10274:16
permutations 10370:19
persistent 10531:23,25
person 10204:5 10214:25
10215:1,2 10232:15
10248:6,16,17 10249:10,10
10275:13 10310:17
10334:11 10386:19
10390:24 10400:25
10401:18 10418:24
10432:14,15,18,20,21,24,25
10439:5 10465:8 10470:15
10470:16,18,18,19,19
10475:9 10509:21 10518:1
10519:17 10528:12 10531:6
10537:12 10554:7 10563:12
10577:8,10
personal 10210:7,10 10304:11
10328:3 10330:5 10426:4
10458:12 10460:20 10553:1
10553:2
personally 10243:20 10261:3
10379:3
personnel 10479:24 10480:2
persons 10277:13 10284:10
10384:8 10391:25 10393:1
10402:17 10421:18
10430:18,20
person's 10323:18
perspective 10197:17
10263:10 10286:1 10384:22
10386:19 10391:22 10393:2
10398:10 10400:5 10516:7
10543:23 10546:3
pertains 10487:22,24
Peter 10461:18,19
phase 10264:9
phases 10264:6,7

phone 10203:2,7,14,18
10204:2,4,6,8 10205:1,5
10206:2 10207:22 10208:5
10214:1 10216:7,24
10217:5 10219:12,12,14,17
10219:18 10220:2,13,18,18
10220:23 10221:6,8,23
10222:10,21,25 10223:2,13
10223:14 10244:2 10245:25
10252:2 10307:4,7
10313:16 10321:9,14,17,19
10328:23 10329:3 10336:19
10337:22 10341:8,8
10347:8 10349:2 10350:20
10358:7 10361:8 10364:25
10368:11 10369:15 10371:4
10372:4 10373:10,23
10414:18 10420:22
10444:20 10447:2 10452:18
10454:21 10455:10,11
10458:21 10467:5,10,21
10470:1 10472:14 10474:17
10475:3 10480:13,14,20
10481:3,7,11 10482:9,11
10483:14,17 10494:12,18
10497:15 10498:17
10501:14 10506:19,23,25
10517:6,14 10525:4,10
10526:8 10527:20 10528:11
10559:8 10562:8,13
10565:7
phoned 10316:8 10388:23
10393:15 10440:21 10483:9
10518:14
phoning 10248:13 10267:5
10447:10,12,13 10519:22
photocopied 10221:16
10469:5
photograph 10468:21
phrase 10290:15 10292:13
10334:11 10423:12
10466:23,24
phraseology 10235:11
10236:3 10237:4,23
physical 10292:9 10403:1
physically 10239:14 10401:14
10401:15 10457:14
Ph.D 10325:5
pick 10193:16 10427:10
picked 10283:13 10317:8
10369:25
piece 10226:11 10311:13
Pillarella 10259:5 10263:3
10265:22 10266:18,23
10267:2,14 10269:8
10281:11,12,16 10282:7
10305:12,14 10316:19
10317:8,24 10393:15
10426:4 10447:14

Pillarella's 10257:22
10260:13 10289:2 10305:4
10306:6
pipeline 10426:6
place 10202:9 10207:7
10245:25 10246:1 10252:17
10254:1,16 10269:13,16,16
10287:22 10294:1 10296:15
10335:5 10339:22,24
10341:1 10342:5,5,7
10415:14 10445:7 10466:6
10467:22 10470:1 10471:9
10482:11 10527:23 10528:1
10529:7
placed 10207:22 10208:20
10287:13 10386:11
10414:11 10495:10
places 10465:4
plan 10376:23 10377:10
10511:21 10523:1
plate 10392:25
play 10253:15 10516:6
10578:14,15
players 10532:17 10533:1,7
10533:14
playing 10513:15
please 10193:5 10202:19
10211:18 10217:13 10223:7
10224:1,3 10274:17
10321:2 10322:16,21
10324:11 10335:3 10349:6
10350:4 10369:20 10377:16
10377:21 10484:25 10485:5
10494:20 10497:18 10548:1
10552:11 10566:4
pleasure 10194:16
plus-que-parfait 10542:7
PMO 10416:11
point 10195:17 10197:21
10200:10,16 10212:7
10213:16 10214:6,16,21
10215:4,8,12 10216:4,9,13
10216:16,23 10217:1
10220:5 10225:9 10237:12
10242:13 10249:14
10258:23 10259:1,4
10262:10,11 10267:23
10270:6 10274:2,14
10275:12 10319:11
10338:21 10346:7 10353:15
10354:17 10358:6,9
10364:5 10369:6 10375:9
10375:22 10418:15
10424:17 10442:20,20
10445:12 10465:25 10466:3
10487:1 10492:15 10500:11
10515:9 10522:17 10527:18
10572:19 10573:5
pointed 10374:13

pointless 10515:18
points 10193:10 10211:12,22
10217:6 10331:17 10332:24
10478:24
poisoned 10357:11 10358:20
police 10319:7 10334:17
10384:23 10396:23,23
10398:20 10399:10 10400:5
10400:24 10433:17,23
10434:10,22,25
policies 10430:16
policing 10399:9
policy 10288:22 10326:25
10327:1,3 10345:11
10357:22,22 10362:15
10400:10 10430:7
polite 10471:20
political 10316:15,20 10486:2
10486:3 10558:5
politician 10317:18 10319:18
politics 10325:17 10415:11
poor 10314:12
popped 10239:15,16
portfolio 10487:9
portion 10215:14
portions 10198:5 10315:13
10379:5 10526:21
posed 10277:7,18
poses 10272:24
position 10212:25 10253:7
10255:12 10264:1 10274:1
10275:9 10280:4,5,7
10282:11 10283:22
10288:24 10293:8 10296:15
10298:11 10300:20
10301:24 10303:19
10362:14 10399:13
10404:19 10421:1,10
10425:14 10453:24 10487:5
10487:20 10489:7,22
10496:19 10497:4,5
10499:12 10534:21
positions 10225:19 10232:12
10428:20 10531:10 10537:9
positive 10277:2
possession 10212:10 10385:13
10510:1
possibilities 10427:22
possibility 10246:7 10335:1
10336:1 10403:12 10427:15
10430:5,11 10438:21
10439:10 10441:3 10562:6
10562:7,13 10564:4
possible 10201:21 10234:12
10290:5,19 10291:25
10409:11 10507:19 10509:8
10576:17,21
possibly 10216:2,3 10226:23
10250:11 10280:11

10285:12 10319:22
10335:20 10362:16 10387:1
10447:9,9 10448:9
10457:22 10475:23
post 10385:22 10447:1
post-conversation 10442:21
post-September 10508:3
post-9/11 10381:15 10422:17
10556:22
potential 10262:18 10382:5
10408:18 10503:16
potentially 10197:16 10388:5
10564:15 10565:11
pour 10582:21
practice 10312:21
precedent 10199:19
precipitated 10420:7
precise 10234:6 10547:14
precisely 10253:13 10260:16
10307:15 10399:19
10494:10
precision 10495:24 10573:6
prefer 10360:4,19 10420:15
10449:2 10452:13 10479:12
preferable 10319:15
preferably 10238:12
preference 10241:4 10318:22
10364:23 10368:9 10441:20
preferred 10282:3 10318:16
prejudice 10509:16
preliminary 10281:7
premise 10552:2
preparation 10224:15
10250:12 10251:21
10378:11
prepare 10252:1
prepared 10193:11 10211:10
10225:23 10226:2 10250:23
10251:8 10259:13 10269:9
10280:12 10358:5 10366:8
10367:6,7 10375:23
10393:25 10398:8 10412:3
10435:3,11,17 10450:4
10454:7,19 10582:8
present 10273:13 10336:12
10353:11 10485:20
10521:10,16
presently 10203:12 10325:8
10361:25 10486:15 10558:2
press 10235:24 10558:9
pressure 10303:1 10504:25
pressuring 10303:3
presumably 10227:22
10248:21,23 10443:20
presume 10387:25
pretty 10278:7 10281:7
10297:18 10305:17
10327:15 10379:23
prevail 10534:19

previous 10222:6 10224:25
10227:25 10233:21
10288:17 10304:2 10336:22
10348:4 10364:5 10372:8
10388:13 10389:16
10486:21 10496:10
10507:11 10508:7 10509:12
10566:15 10580:2
previously 10196:6 10223:17
10324:14 10485:17 10566:6
pre-Christmas 10269:14
primarily 10488:8
Prime 10416:4,13 10423:19
10551:7
primitive 10267:25
principle 10430:16 10434:15
10563:14
principles 10430:8
print 10418:14
prior 10193:9 10203:14
10276:8 10294:1 10389:6
10494:18 10506:17,18
10543:17
priorities 10293:23,24
priority 10488:21
privilege 10197:7
privileges 10362:23
privity 10295:2 10358:11
10385:7,10,12
probably 10242:6 10243:16
10250:13 10287:16
10292:20 10340:20 10341:5
10341:13 10342:17,24
10344:21 10346:10 10347:1
10347:2 10349:9,10,15
10354:15 10379:6 10383:16
10384:25 10392:2 10393:13
10393:16,22 10396:18
10428:7 10435:2 10443:13
10444:20,23 10445:3,9
10447:8 10463:20 10464:5
10464:12,14 10466:21
10470:23 10472:24
10477:13 10483:15
10500:11 10506:18
10519:22 10529:12
10534:18 10543:14
10555:15 10559:13,24
problem 10278:16 10312:4
10321:11,15 10323:8
10334:14 10379:19
10391:20,23 10413:17
10544:10 10567:7 10568:17
problems 10277:24 10353:3
10555:19
procedure 10200:12
proceed 10206:13 10207:2
10223:4 10234:20 10324:11
10330:25 10503:17

10526:22
proceeding 10239:12
10448:19 10492:4
proceedings 10194:21
10195:10,22 10198:7
10206:19 10208:7,22
10209:12 10210:13
10568:25
proceedings,Ms 10195:4
process 10197:8,19,23
10213:12 10260:12
10279:24,24 10280:15,16
10293:22 10295:8 10387:11
10408:8 10427:18 10484:4
10492:9 10512:17 10535:14
10540:5 10541:13 10548:2
10569:4
processed 10211:25 10212:6
processes 10492:6
processing 10213:21
10214:18 10216:7,22
10219:25 10231:6 10313:16
10337:21 10345:9,10,17
10490:22 10504:6,20
10509:1 10513:6 10517:25
10518:2,9 10528:11
produced 10324:2,3 10450:11
10572:21 10581:9
product 10212:17,17
10224:24 10501:6 10502:20
10547:15 10548:11
10549:14,20 10551:15,23
production 10372:11
professional 10523:3
professionally 10245:6
profile 10556:21 10558:2,13
profit 10556:13
program 10362:22
progressing 10491:22
10511:20
project 10214:10 10327:17,19
10328:8
promise 10378:24
promising 10508:9
prongs 10466:14
pronunciation 10461:23
proper 10206:13 10292:21
properly 10567:13
proposal 10409:9 10416:11
10538:8,18
propose 10246:3 10449:20
10492:24
proposed 10205:11 10207:2
10233:12 10246:2 10276:21
10295:5 10409:13,20
proposing 10332:6 10536:2
proposition 10268:13
10317:14,18 10318:23
propriety 10400:1 10401:5

pros 10428:19 10438:24
prosecution 10281:1
prospect 10395:17
protect 10563:7,13
provide 10195:19,19 10219:7
10221:1 10232:20 10256:7
10298:8 10327:3 10392:11
10393:8 10394:12 10413:19
10449:17 10528:15
10529:23 10537:17,24
10539:8 10573:22
provided 10194:18 10199:2
10201:10 10259:18
10270:19 10283:9 10374:23
10381:3,14,19 10404:10
10407:8 10433:11 10446:19
10446:20 10531:3 10573:13
provides 10374:21 10404:8
10407:6
providing 10256:9,18
10262:12 10374:9 10382:1
10421:18 10422:8 10447:24
provision 10421:17
provocative 10451:1,2,24
provoke 10417:7
public 10193:12,13,14
10195:7,8 10196:13
10197:14,19,25 10200:14
10200:22 10201:20 10202:5
10202:7 10205:25 10206:4
10206:9,15 10207:18
10219:4 10259:10,12
10287:13 10288:17
10293:21 10324:17,18
10330:9 10333:9 10405:12
10405:13 10428:25
10485:22 10504:24 10516:8
10558:10 10569:1
publicly 10195:22,24
10205:19
public's 10211:1,23
purpose 10263:6,7 10264:23
10381:12 10382:1 10384:22
10436:25 10519:9 10520:13
10520:15 10560:9
purposes 10263:12 10366:2
10417:14,18 10446:18
10447:17 10518:2,22,25
10519:1
pursue 10234:8 10355:2
10389:25 10406:15
pursued 10216:6 10336:4
pursuing 10313:15 10434:1
10455:9
purview 10327:8
push-out 10418:14
put 10214:14 10224:5,14
10230:16 10235:8,10
10236:3 10247:12 10253:12

10262:7 10268:13 10270:3
10281:5 10284:13 10285:9
10287:18 10294:4 10296:13
10297:15 10298:14 10301:5
10303:16 10309:13
10318:12 10329:6,13
10344:19,20 10353:20
10365:16 10368:14,15
10370:20 10371:8 10411:6
10428:8 10431:17 10438:4
10438:4 10440:4,15
10444:10 10456:9,12,15
10466:23,24 10475:25
10492:16 10509:13
10518:11 10531:8 10549:10
10569:23 10577:1,8
puts 10497:4
putting 10199:4 10226:17
10330:11 10368:18
10372:20 10427:19
10468:16
puzzle 10499:7
puzzled 10270:10 10416:25
puzzles 10412:6
P-117 10212:4 10224:1
10254:6,7 10292:24
10314:9 10338:8 10490:10
10535:21 10552:21
P-134 10260:14 10289:2
P-236 10241:15,17 10330:4
10442:7 10523:21
P-237 10210:16 10240:10,13
10250:17 10355:12 10374:7
10447:18
P-85 10220:16 10221:2,3
10324:20 10480:15
10485:24 10497:17 10525:4
P-99 10270:19
p.m 10377:17,19 10461:6
10485:1,3 10527:10,12
10582:18
p.7" In 10374:18

Q

qualified 10303:13
qualify 10504:10
quality 10314:13
question 10200:8 10221:24
10222:11 10223:1 10233:19
10253:24 10259:25 10260:2
10263:6,15 10277:13,18
10279:10,18 10281:5
10288:20 10291:9 10296:4
10299:9 10303:17,23
10304:2 10306:10 10311:11
10317:1 10329:14 10334:24
10335:24 10337:14
10338:13 10340:11,18
10343:13 10363:20

10390:14 10391:10
10392:24 10397:17,25
10398:3,4 10400:21
10405:6,22 10406:19
10423:8,10 10424:24
10425:8,11 10427:17
10437:24 10438:4 10443:3
10443:7,16,23 10448:13
10449:8 10450:10 10452:4
10453:18 10463:7,9
10479:13,21,25 10482:6
10490:16,20 10494:8
10500:3 10513:18 10527:17
10547:21 10548:3 10551:9
10563:3 10566:20 10573:17
10573:21 10574:24 10578:6
10578:9 10579:5,14
questioned 10196:7 10290:23
questioning 10263:7 10292:8
10402:5 10509:3
questions 10195:11 10197:16
10251:12 10291:5 10292:15
10320:6 10322:9 10330:16
10333:14,15,22 10336:7
10374:1 10390:1 10404:23
10410:24 10426:25 10427:5
10432:10 10433:7 10435:2
10435:15 10437:2,6
10440:22 10441:15
10448:15 10449:21
10450:16 10483:19 10484:3
10504:25 10526:12 10529:9
10548:3,6 10552:2
10554:22 10555:4 10561:15
10561:18 10563:6,25
10565:17,25 10566:10
10569:18 10580:8
quibble 10405:21
quick 10378:8,8
quickly 10201:21 10269:7
10290:4,19 10291:25
10378:25
quite 10198:17 10206:1
10215:11 10235:1,5,17
10248:11 10264:4 10265:4
10267:2 10274:13 10275:8
10281:15 10291:3 10301:11
10302:9 10305:17 10337:25
10386:25 10408:21
10428:25 10444:9 10465:4
10513:17 10541:12 10564:8
10567:12
quote 10544:21
quoted 10285:12

R

raise 10211:23 10233:4
10355:5 10517:3 10541:7
10568:24

raised 10196:9 10201:7
10214:21 10322:25
10323:12 10334:20 10336:1
10395:14 10406:4
raises 10201:4
raising 10249:25 10362:10
10395:16
ramblings 10457:2,5
ramifications 10491:19
10508:9 10523:10
random 10338:15
rank 10249:11
rapport 10304:11
rare 10546:3
rarely 10339:2
RCMP 10212:16 10225:14,19
10227:16 10232:11,24
10234:7,19 10235:14,19
10253:6 10255:7,11,21
10256:10,11 10258:9,9,11
10260:5 10261:22 10263:10
10263:18 10268:14,18
10269:24 10275:5 10276:18
10280:4 10282:7 10285:14
10286:15 10294:10 10295:2
10305:8 10312:11 10318:8
10318:20 10327:10
10345:18 10357:4,19
10358:5,25 10367:23
10383:11 10386:2,21
10387:9,12 10392:23
10393:2,25 10394:11
10396:6,7 10397:1 10398:8
10400:11 10402:20
10408:13,15 10409:15,21
10412:10 10413:19 10414:1
10415:16 10418:25 10422:2
10429:16 10437:13
10438:12,16 10451:7
10457:9 10491:13 10492:11
10501:10 10503:11
10509:11,12 10511:10
10531:8 10534:1 10537:8
10537:23 10542:1 10546:25
10551:6 10558:14
reached 10234:9 10253:5
10357:12 10361:15 10408:1
10537:2 10545:17
react 10243:5 10516:17
reacted 10343:9
reacting 10243:8
reaction 10216:10 10344:12
read 10201:5,10 10215:14
10218:21 10230:23 10231:3
10240:21 10288:4 10290:15
10299:1 10330:12 10331:18
10358:22 10367:17
10368:24 10375:25 10378:8
10378:25 10383:12

10391:16 10409:1 10412:8
10413:2 10414:22 10449:5
10449:21 10462:16
10478:19 10483:25
10484:10 10495:5,21
10499:13 10500:16
10503:24 10505:19,23
10506:16 10507:7 10526:22
10526:25 10527:2,3
10536:23 10538:17
10539:13,15,16 10540:2
10569:16 10570:10
10574:15 10575:1 10576:24
10578:1
reader 10286:2
reading 10231:7 10341:2
10390:5,8 10392:1
10466:13 10478:8 10505:18
10539:7 10578:4
reads 10404:4 10498:14
ready 10300:24 10376:21
10377:9 10378:13
realize 10204:16 10303:9
10304:14 10449:25
really 10228:8 10285:10
10302:4 10358:13 10359:6
10360:23 10392:6,24
10408:4 10409:23 10410:19
10414:24 10431:7 10441:19
10495:12 10567:23
10577:20,21
reason 10197:10 10199:20
10209:4 10245:8 10251:4
10253:16 10272:6 10281:3
10291:24 10296:23 10333:1
10339:7 10345:13 10348:3
10353:4 10354:6 10379:10
10426:21,22 10441:7,8
10448:11 10458:12
10468:20 10481:18
10528:25 10529:3 10554:6
reasonable 10519:17
10563:12
reasoning 10226:20
reasons 10269:15 10288:7
10297:18 10301:1 10304:2
10358:14 10405:19
10425:12
reassurance 10510:6
10514:16,17 10517:6
reassure 10212:14 10515:24
reassured 10517:11
reassuring 10512:23
10514:20 10515:19,20,21
10520:16
recall 10200:2,9 10201:17
10236:24 10237:3 10239:7
10239:9 10240:19 10249:18
10250:9,14 10252:11

10257:20 10258:8 10266:19
10267:21 10269:15,17
10279:1 10281:2 10290:9
10307:14 10310:19
10313:19 10324:4 10326:25
10329:9,22 10335:9,10,10
10336:5 10337:16,19
10342:19 10344:8 10352:12
10353:25 10354:25 10358:2
10371:11 10372:14,17,18
10374:7 10381:1,9
10382:17 10384:15
10385:23 10387:5,14
10388:9 10389:23 10393:14
10393:17 10400:18
10401:10 10407:15
10409:23,24,25 10417:10
10418:5 10426:2,18
10430:6,10 10431:20
10436:13,19,21 10437:21
10438:10 10439:12,16
10440:2,11 10441:9
10444:5 10445:12 10446:7
10447:10,11,13 10448:12
10448:22 10454:10
10457:14,18,20 10458:1,6
10459:10 10460:1,22
10470:13 10471:2,21
10472:1 10475:11,12
10476:20 10477:6,9
10480:8 10481:13,16
10492:22 10495:13
10502:16 10504:2 10505:22
10506:9 10511:14,15
10520:9 10521:24 10528:2
10540:13 10541:23 10553:8
10553:10 10557:16,20
10562:18,19 10564:10
10565:24 10575:6,16
recalled 10506:14
recalling 10267:7
recalls 10506:12
receipt 10314:22
receive 10382:10 10389:19
10470:22 10494:8
received 10203:6,7,10
10229:7 10255:21 10256:2
10256:4 10259:21 10260:5
10260:24 10262:18,23
10263:3 10264:25 10265:9
10376:20 10385:2 10470:24
10483:11 10491:1 10494:12
10495:11,14 10503:15
10579:11
receives 10256:17 10314:19
10553:18
receiving 10540:17 10558:2
recessing 10322:17 10377:17
10485:1 10527:10

recognized 10410:10
10434:15
recognizing 10534:21
recollect 10431:8 10501:19
recollection 10195:16
10219:25 10235:6,14
10236:6 10237:3,21
10239:15 10267:9 10268:24
10274:23 10275:6,7
10307:9 10313:23 10392:18
10396:25 10420:6 10431:23
10437:22 10438:17 10440:6
10442:15 10447:23
10459:20,25 10460:20
10507:3 10517:18 10521:19
10524:17 10525:1,12,22
10527:25 10560:11 10562:5
10564:19 10565:15 10573:8
recommend 10233:9 10296:7
recommendation 10295:4
10297:1 10363:7 10371:14
10505:7
recommendations 10230:16
10294:18
recommended 10294:25
10370:9 10414:13 10492:10
10542:8
recommending 10414:25
10415:1 10553:5
reconciles 10375:2
reconsidered 10426:1,1
reconstruct 10459:21 10496:3
reconstructed 10328:3
10459:23
reconstructing 10466:4
reconstruction 10498:9
record 10193:14 10212:25
10215:14 10226:12 10242:8
10255:24 10259:10 10262:6
10264:24 10299:17 10348:9
10386:5 10389:3,6,10
10397:1 10443:12 10444:1
10479:14 10558:11 10560:9
10577:25 10581:19
recorded 10389:9 10442:16
10444:12
records 10407:17 10431:12
record's 10554:12
recount 10533:10
recounting 10340:23 10342:8
redacted 10209:6,22
10210:14,20 10221:23
10222:7,9 10261:16
10283:2 10289:6,13
10351:10 10497:22 10498:3
redaction 10288:22 10572:22
redactions 10209:9,24
10330:10
reduce 10205:1

refer 10221:14 10225:2
10241:11,15 10254:4
10271:10 10305:23 10306:6
10324:19,22 10330:3,6,14
10333:14 10336:16 10338:2
10338:6 10369:2 10370:1
10386:25 10454:20
10480:19 10490:8 10497:14
10500:2 10517:12,12
10520:1,5 10524:13
10552:5 10572:12 10577:9
10577:17,19
reference 10209:12 10215:13
10242:7 10253:6 10258:6
10258:14 10262:1 10263:1
10276:17 10282:25 10330:3
10335:21 10342:22 10351:6
10367:18 10368:10,11,12
10369:4,15 10371:4,15
10372:3 10398:14 10404:13
10406:8,23 10409:8
10413:8,16 10444:24
10451:15 10479:15 10510:9
10511:12 10538:17 10571:8
10576:18,22 10577:2
10582:4
referenced 10373:12
10442:11
references 10257:19 10294:9
10483:2
referred 10208:9 10216:18
10217:2 10254:5 10260:6
10375:15 10454:11
10529:16 10532:10
10539:18 10564:8 10567:18
10567:19 10581:3,17
referring 10226:25 10237:10
10237:14 10238:24
10257:15 10291:9 10314:22
10464:13 10472:11
10474:16,18 10489:5
10566:13
refers 10258:14,15,25
10259:3 10263:3 10275:1
10374:17 10375:11
10566:19 10570:24 10571:1
reflect 10215:10 10358:17
10508:25 10546:17
reflected 10250:24 10255:3
10271:13 10276:5 10282:17
10286:4 10364:8
reflecting 10342:17
reflects 10226:17 10241:8
10243:3 10342:4
refresh 10264:24
refreshed 10240:7
refuse 10572:9
refused 10234:3 10259:11
refusing 10397:21

regaining 10364:2 10455:6
regard 10203:7 10204:7
10205:3 10214:20 10215:24
10216:22 10217:21 10240:1
10280:8 10311:8,17
10321:5,9,18 10336:15
10357:5 10359:14 10448:18
10450:19 10453:23
10454:16 10467:21 10512:2
10513:5,13 10556:11,12
10557:4 10559:7
regarded 10281:4,6 10317:23
regarding 10305:15 10335:5
regardless 10531:4
region 10247:22
registered 10493:21,22
10498:11
REGISTRAR 10193:5
10322:16,21 10377:16,21
10484:25 10485:5
regular 10384:19 10488:6
10530:7 10536:25 10538:23
regularly 10488:11 10490:1
rehearsed 10470:23
reiterated 10216:18
reiterating 10364:4
relate 10198:6 10220:24
related 10217:4 10259:23
10451:24 10530:5 10533:7
10572:25
relates 10193:12 10195:9
10220:22 10450:10
relating 10199:13 10257:2
10335:4 10399:15
relation 10378:4
relations 10263:11 10508:1
relationship 10267:25
10268:1 10281:6,8,9,21,23
10305:1,4,5 10317:23
10319:2,21 10320:1,2,3,8
10327:12 10328:7,11
10357:9,24 10359:1,11
10384:12 10387:22
10402:20 10419:9,10,10
10424:20 10426:4 10429:3
10433:3 10457:8
relationships 10263:24
10400:11 10418:25
relative 10286:14
relatively 10235:19 10297:15
10297:16 10529:11
relayed 10340:8
release 10195:25 10202:5,7
10278:17 10300:24 10321:5
10322:10 10386:17,20
10410:13,16 10423:20
10425:2
released 10200:6,22 10203:12
10203:13 10241:3 10285:6

10293:8 10321:10 10322:7
10364:22 10369:9 10499:23
releasing 10195:18 10196:24
10202:12
relevance 10379:8 10394:13
relevant 10207:25 10208:11
10222:10,21 10224:10
10240:16 10370:22
10373:22 10379:6 10393:1
10399:12 10461:24 10469:7
10486:16 10487:20
reliability 10411:24
reliable 10204:18
reluctance 10253:14
reluctant 10234:8 10235:15
10253:19,20 10422:3
rely 10451:11,23
relying 10420:23
remain 10199:23 10360:5,19
10420:15 10425:15
10452:14 10457:12
10479:12 10565:20
remained 10360:14 10521:5
remaining 10580:13
remains 10251:7
remarkable 10414:23
remarks 10414:20
remember 10220:2,2,3
10239:22 10334:3 10343:19
10426:15 10489:14
10492:24 10556:17
remind 10224:23 10270:13
removal 10257:22 10411:23
remove 10411:3
removed 10411:10
reorganization 10487:14
repatriate 10564:24
repeat 10496:10
rephrase 10233:19 10259:25
replicates 10575:9
report 10374:21 10394:21
10404:8 10407:6 10478:1
10488:4 10529:23
reported 10265:21 10310:1,4
10310:18 10488:7
reporter 10331:13
reporting 10266:17 10269:8
10283:13 10287:21,22,25
10356:6 10489:21 10491:21
reports 10229:24 10367:16
10368:2 10385:3,21
10489:5
reposed 10397:7
reprend 10193:3
reprendre 10582:21
represent 10427:10 10466:11
10528:22 10546:8
representations 10216:11
10235:25

representative 10393:10
10435:13 10446:12
represented 10318:1
representing 10508:15
represents 10194:2 10248:4
10545:17
Reprise 10322:20 10377:20
10485:4 10527:13
reproduced 10448:21
request 10195:8 10198:5,14
10198:25 10199:3 10220:12
10352:20 10366:5 10374:19
10404:5 10407:3 10425:13
10477:3 10508:13 10559:2
10560:14,15,17 10571:15
requested 10213:17 10251:25
10298:8 10329:15 10366:3
requesting 10194:1
required 10327:3,7 10420:1
10488:19
requires 10448:23
resembles 10242:24
reservations 10246:8
10309:25
resident 10545:11
resisted 10196:16
resolution 10197:11 10271:2
10408:1 10416:3
resolve 10514:4 10551:5
10553:12
resolved 10270:7 10315:20
10316:5,7,12,14 10323:12
10514:24
resource 10353:3 10565:12
resources 10215:22 10217:3,3
10217:4 10242:22 10244:10
10244:11 10341:21
10474:23 10488:19
10524:12,14 10561:10
respect 10194:3,19 10198:9
10198:15 10199:12
10200:23 10217:9 10253:7
10253:19 10259:20,22
10260:10 10264:16 10265:5
10266:7 10268:22 10278:8
10287:17 10293:7 10294:14
10295:9 10297:4 10298:3
10298:11,17 10306:2
10321:14 10381:11 10384:7
10399:10,14,21 10421:11
10427:11,15 10439:5,8
10447:15 10529:23
10533:14 10553:20,23,25
respectful 10262:15
respecting 10356:19
respective 10549:22 10554:4
10556:14
respects 10290:14 10417:8
respond 10363:14

responded 10333:22
10457:25
response 10374:18 10404:5
10407:3 10436:11,12
10439:11,13 10458:3
10471:1 10575:11
responsibilities 10326:22
10487:19 10554:4
responsibility 10226:6,13
10291:15 10295:16
10419:16,19 10433:10,18
10542:13,14
responsible 10285:14
10288:14 10312:15,17
10327:11 10356:2 10368:4
10372:11 10415:17 10523:9
responsive 10317:17
rest 10287:7,19
rested 10542:14
restricted 10450:16
result 10200:12 10288:21
10322:10 10364:1 10428:19
10455:5 10547:23
resulted 10203:8 10218:14
10423:19
resume 10376:17 10377:11
10484:22 10582:19
resuming 10322:19 10377:19
10485:3 10527:12
retained 10543:22
retired 10325:20
return 10218:2 10232:23
10236:19 10238:22 10241:5
10253:8 10257:22 10268:23
10277:3,16,24 10279:5,15
10280:10 10319:15 10362:2
10364:23 10368:8 10501:2
10544:25
returned 10203:18 10231:23
10232:22 10261:20
10280:24 10288:3 10299:25
10302:1 10305:20 10360:6
10360:20 10420:16
10452:15 10479:13
10536:18 10537:19 10539:9
returning 10213:24 10220:6
10277:7,21 10499:13
10503:25
reveals 10212:9
review 10201:20 10207:6
10213:14 10215:11
10252:16,19 10376:15
10448:22 10450:5 10485:20
10518:22
reviewed 10201:10 10209:10
10209:22 10215:9 10321:13
10364:16 10366:20
10470:23 10490:7
reviewing 10219:15 10445:18

10445:19
re-examination 10478:10
10573:4,12,18 10574:18,19
10574:20 10577:23
10579:17 10582:4
re-examiner 10442:4
rich 10359:11
right 10194:22 10198:13,20
10203:4 10205:14 10209:13
10214:24 10215:2,3
10218:25 10221:20
10227:17 10228:10,22,24
10229:2 10230:2,5,8
10231:24 10232:3 10237:7
10241:6 10242:10 10247:10
10249:4 10252:21 10259:14
10261:6,24 10262:3,9
10276:15 10280:21
10289:15 10291:17
10298:25 10299:5 10303:7
10304:22 10308:25 10310:7
10310:15,21 10311:9,25
10312:9 10313:4 10314:24
10318:18 10325:7 10332:10
10345:25 10351:14
10359:21 10361:22 10362:7
10362:13 10366:6 10375:13
10377:2,15 10378:5,18
10379:24 10382:20 10387:7
10389:8 10393:23 10398:16
10407:1 10411:22 10418:15
10421:22 10428:24
10429:12 10431:5 10433:16
10434:2,6 10435:7,19,22
10436:14 10437:4,16
10438:6 10439:18,22
10441:14 10442:22 10450:7
10452:25 10454:23 10456:2
10456:25 10459:13,24
10464:22 10467:24 10468:1
10468:6 10469:10,13,16
10472:10 10473:11 10477:1
10478:7,18 10479:20
10484:19 10487:18 10493:2
10493:24 10499:6 10516:24
10519:8,15 10523:24
10526:23 10527:8 10532:1
10534:9,17 10537:4
10539:23 10540:12 10541:4
10541:25 10545:20
10556:16 10557:12,24
10558:8 10559:21 10560:18
10562:3 10567:21 10568:4
10568:9 10570:11 10575:15
10576:8 10580:1,7
10581:10,24
rightly 10197:9 10235:17
10267:2
rights 10299:17 10362:23

right-hand 10238:6 10332:12
10332:13,21 10347:19,20
10348:1,2,21,22 10349:24
10350:3 10351:8 10468:11
10468:12,18 10473:6
10493:12
rigorous 10401:13,14,15
10402:4
Rires 10380:2 10425:24
rise 10203:9 10320:22
10390:19 10580:24
10582:16
risk 10362:3 10401:11
10439:4
risks 10400:14 10401:2,6,7,23
10401:24 10402:1,18
10439:15
road 10514:12
rogue 10285:14 10286:2
10367:22
role 10253:15 10277:21
10312:23 10326:22
10328:18 10345:24 10419:1
10487:19 10488:1 10503:21
10508:3,3,5 10512:18,20
10513:14,20 10516:5
Rome 10395:11 10396:1,3,8,9
10396:17
room 10333:1 10336:12
10456:9 10503:10 10566:4
route 10396:16 10428:21
routing 10229:21,22 10265:21
10308:2
ruin 10322:8
rules 10204:16
ruling 10201:19
rumour 10214:7,8,13
10217:16,21,24 10218:13
10283:14 10284:21
rumours 10475:3,5,11,13
running 10388:6
runs 10378:6
R.P.R 10583:25

S

sacrifice 10563:13
sake 10554:13
salient 10211:12
salvo 10558:15
sanctioned 10334:25
10335:11
Sans 10322:3 10331:10
10449:15
Sarkis 10271:11 10275:16
sat 10279:19 10280:19
10426:19 10427:12,14
10507:10
satisfactory 10306:12
10379:20 10521:17,21

satisfied 10459:14 10478:3
10507:10 10543:9
satisfy 10412:21
Saudi 10326:10
Saunders 10260:18 10366:17
10419:21
save 10563:13
saw 10247:12 10406:3
saying 10215:18 10238:8
10242:18 10243:9 10246:20
10268:11 10274:5 10278:6
10285:13 10302:19
10338:18 10341:18
10347:10 10349:6 10352:11
10352:13 10362:11 10371:8
10392:6 10428:12 10438:9
10439:1 10442:2 10465:8
10509:21 10512:19 10524:8
10546:10,12 10553:13
10555:20 10561:8 10577:6
10580:5
says 10199:18 10212:22
10215:25 10216:17
10221:18,22 10232:8
10240:22 10241:25
10273:19 10274:3 10286:10
10286:12 10314:14
10341:12 10342:10 10343:1
10346:10 10347:4 10348:14
10349:1 10350:8 10351:20
10352:8,18 10356:13,22
10366:15,23 10367:3,15,19
10368:20 10369:23 10370:8
10407:2 10480:24 10481:23
10525:7 10536:7 10552:20
10570:12 10571:12 10574:4
sceptical 10283:8
scheduled 10201:13
science 10486:2,4
Scott 10250:7,10 10282:18
10326:17 10369:22
scratch 10449:25
scripts 10462:23
se 10210:25 10219:25
10243:24 10244:1 10278:16
10316:18 10517:16
seated 10193:5 10322:21
10377:21 10485:5
second 10193:18 10194:2
10209:11,14 10212:8
10219:3,17 10222:20
10230:13 10236:14
10242:13 10246:15 10271:9
10274:4 10315:18 10333:19
10334:19 10359:18 10374:8
10374:15 10375:21 10425:7
10442:20 10444:7,13
10452:10 10461:6 10474:10
10479:10 10480:18

10483:22 10484:1 10497:22
10498:2 10525:6 10544:21
10563:3,3 10573:5
10581:13
secondhand 10308:6
secondly 10489:11
seconds 10378:2
second-last 10289:17
secret 10367:20 10406:25
section 10229:20 10341:5
secure 10278:17 10323:4
10368:7
security 10197:11 10200:10
10201:4 10259:19 10272:6
10272:25 10273:2 10278:24
10290:23 10312:24
10320:15 10358:14
10360:25 10379:11
10399:10,14 10404:22,24
10410:9 10509:19 10512:5
10533:19,25 10549:2
10550:12
see 10195:24 10201:24
10212:9 10220:7 10226:12
10227:3 10228:6,16
10229:14,17 10230:13,20
10230:21 10238:7 10257:19
10270:16 10277:20
10284:13 10291:9 10314:12
10323:25 10339:8,10
10353:15 10354:7,9
10355:20 10367:2,13
10371:3 10372:2 10373:9
10378:16 10385:19,19
10386:9 10404:13 10407:1
10409:16 10420:16 10423:3
10428:10 10449:13
10455:23 10462:15
10468:23 10472:14
10475:17 10476:14
10494:17 10495:21 10496:2
10538:16 10546:23 10547:8
10574:12
seeing 10234:20 10390:24
10553:8
seek 10383:13,15 10386:20
10455:20 10506:3
seeking 10277:23 10349:13
10394:6 10445:25 10481:10
seen 10211:15,16 10250:16
10276:9 10336:22 10420:21
10421:15 10434:18 10449:4
10491:8 10501:15 10510:5
send 10267:15 10268:17
10272:17 10274:9 10288:14
10311:23 10312:16
10315:11 10424:15
10542:15 10555:5 10560:1
sending 10500:12 10510:13

sends 10551:1
senior 10240:23 10246:21
10275:13 10283:22
10286:23 10362:16,16
10364:20 10368:3 10393:10
10446:11,12 10480:5
10488:7 10496:19 10558:6
sense 10243:8 10265:24
10301:4 10327:11 10345:20
10346:21 10373:21
10384:20 10408:12 10422:7
10425:9 10434:6,21
10501:6 10564:6 10581:11
sensible 10205:10
sensitive 10556:20
sensitivities 10520:25
10556:12
sent 10229:16 10230:17
10261:7,17 10267:9
10291:13 10383:20
10492:18 10552:3
sentence 10233:17 10236:21
10236:25 10237:9 10274:21
10361:7 10367:15 10451:22
10452:10,21 10453:6
10455:2 10466:17,19
10479:10 10545:18,22
separate 10298:4,8,17
10316:23
separated 10462:3
separation 10316:25
September 10369:17
10486:19 10523:10
series 10410:24 10413:3
10433:7
serious 10422:10,12
seriously 10245:6
service 10288:17 10359:6,12
10359:19
services 10213:4 10290:24
10421:17,18,23 10422:9
10486:18 10531:3 10532:2
10534:22
serving 10198:24
Sessional 10325:10,11
sessions 10279:19 10384:17
set 10199:23 10246:6 10287:7
10421:12
sets 10468:14
setting 10435:11
seventh 10214:16
seventy-two 10486:9
severe 10401:25
shaking 10560:8,22
shape 10333:5
share 10393:25 10398:8
10429:18 10436:2 10440:4
10440:15 10549:6
shared 10243:16 10261:22

10359:14,16 10385:18,20
10385:21 10400:25
10408:24 10417:14,17,20
10418:17 10517:17
sharing 10334:21 10335:11
10336:2 10367:25 10392:22
10393:2 10395:17 10399:20
10400:1,5,14 10430:11
10437:19 10438:16,19
10439:5,10 10441:4
she'd 10442:2
shock 10304:13
shop 10554:11
Shore 10194:2 10202:5,6,11
10202:16,17,20 10203:1,5
10204:12,23 10217:11,12
10217:15 10218:10 10223:8
10292:18,19 10306:13,17
10306:25 10307:3,10,16,22
10308:5,16,20 10309:3,7,12
10309:15,19,24 10310:7,15
10310:21,25 10311:3,7,10
10311:16,25 10312:3,9,13
10312:15,22 10313:4
10320:24 10321:4,16,22
10322:13 10441:20,24,25
10442:3 10448:16,17
10449:1,5,10,14,20,24
10450:4,15 10451:1,4,16,19
10451:21 10452:2,8,21
10453:10,13,19,23 10454:1
10454:8,12,15,19 10455:1
10455:13,23 10456:2,4,6,11
10456:14,20,24 10457:1,10
10457:18,24 10458:7,11,16
10458:20 10459:1,4,8,13,16
10460:5,9,13,16,19,25
10461:3,9,13,17,21,24
10462:2,5,11,17,20,24
10463:2,7,10,13,18,23
10464:1,4,12,16,25 10465:5
10465:7,13,16,19,25
10466:3,8 10467:4,7,13,16
10467:20,24 10468:1,6,8,12
10468:17,23 10469:2,8,11
10469:14,18,25 10470:8,11
10470:15,19,25 10471:6,12
10471:14,22,25 10472:4,6,9
10472:11,18,22,25 10473:3
10473:6,9,12,15,19,22,25
10474:3,7,11,13,16 10475:1
10475:6,12,15,17,21
10476:1,5,9,13,17 10477:1
10477:11,14,18,24 10478:3
10478:7,23 10479:17
10526:24 10527:2,6
10556:6,8,16 10557:1,8,12
10557:24 10558:4,8,12,21
10559:5,10,17,21 10560:2,4

10560:12,18,23,24 10561:4
10561:7,14 10564:1
10565:24 10566:1,8
10567:1,6,9,15,21 10568:4
10568:7,16 10569:11,15,18
10569:21 10570:1,4,9
10571:24 10572:2,5,9,14,17
10574:15,19,20,23 10578:5
10578:8,11,15,19,22
10579:2,5,8,13,16 10580:1
10580:7
Shore's 10201:8,19
short 10201:14 10257:23
10327:20,22 10447:1
10484:6 10529:11,14
10566:1 10575:17
shorten 10484:11
shorter 10475:24
show 10223:25 10240:11
10304:20 10422:23
10495:19
shows 10273:5
shred 10333:11
side 10198:23 10228:13
10264:10 10275:5 10332:12
10347:19,19,21 10351:12
10400:10 10468:9,11,13,18
10469:5 10473:7,10
10547:5 10576:8,9
sight 10392:6 10401:19
sign 10203:17 10214:10
10233:24 10234:13
10274:20 10280:21 10295:4
10296:8,16 10297:17
10412:3 10458:13,17
10492:23 10494:19 10538:5
10540:15 10542:3 10544:19
10559:24
signature 10229:15,15
10233:8 10235:10 10296:21
10298:1 10338:4 10455:24
10490:14 10541:11 10542:9
signatures 10297:19 10493:1
signed 10238:12 10246:5
10247:16 10314:23
10350:13,23,24 10352:19
10409:12 10413:24
10414:11 10415:3,8
10416:9 10464:7 10473:16
10476:24 10477:2 10492:17
10492:18 10522:21 10526:6
10528:1 10550:23,24
10553:3 10571:13 10577:4
10577:5
significance 10305:10
10309:16,18 10310:13
significant 10245:12,23
10246:12
signing 10264:1 10297:6

10508:20 10522:21
signs 10229:14 10230:17
10290:25
sign-off 10230:14 10408:7
similar 10231:2 10321:4
10564:14,25 10565:11
simple 10284:9 10297:17
10299:18 10339:8 10435:5
simply 10198:9 10209:11
10224:5 10228:13 10236:1
10236:5 10253:10 10266:18
10268:8 10275:12 10280:17
10293:24 10312:23 10319:4
10319:12 10349:20 10361:8
10373:2 10375:5 10399:22
10401:20 10402:17 10405:5
10479:13 10514:9 10533:16
10546:20 10551:20
single 10420:23 10541:14
sir 10195:16 10196:8,19
10201:2,15 10205:17
10217:16 10218:15,18
10223:12,21 10253:19
10259:3 10262:21 10265:16
10267:24 10270:6 10272:19
10273:13 10274:13
10275:13 10286:22
10291:22 10298:15 10299:1
10299:8 10313:5 10323:10
10342:13 10376:19 10379:1
10387:20 10390:6 10392:21
10394:1 10395:5 10397:12
10398:17 10399:2 10400:21
10401:23 10402:13 10404:1
10405:11,18 10407:11
10408:7,23 10411:1
10412:20 10414:23
10417:17 10420:18
10423:10 10426:14,25
10437:17 10439:15,19
10441:14 10475:18
10478:22 10485:13 10491:3
10555:1 10573:9 10574:6
10574:15 10580:8,25
sit 10323:17 10358:24
10437:25 10457:17 10458:5
sitting 10306:14 10426:15
10427:21 10438:11
10460:22 10494:13
situation 10199:14 10200:3,5
10200:5 10244:10 10264:4
10264:4 10285:18 10286:20
10290:6,20 10295:15,15
10296:19 10302:23 10303:6
10303:15 10323:4 10365:10
10365:13 10502:11 10508:1
10518:20
situations 10377:8 10564:25
six 10429:6 10435:15

sixteenth 10216:23
sixth 10214:6
sketchy 10342:18 10436:9
slash 10230:21 10350:12
slightly 10362:15 10516:6
slip 10219:17 10220:18,18
10221:15,17 10222:5,6,15
10222:20,22 10226:11,22
10227:3 10230:20 10247:13
10294:8,17 10480:20
10481:7 10490:13 10493:5
10501:14
slips 10219:12,13,20,21,22
10220:13,24 10221:6,8,15
10480:13,14 10497:16
10498:17 10525:5
sloppy 10475:20,24 10567:12
slowly 10345:3
small 10414:5
SMI 10320:9 10374:24
smooth 10419:12
smoothly 10557:19
snippets 10405:14
Sol 10367:21
solely 10454:2
solicited 10531:15
Solicitor 10233:22 10234:2
10235:9 10238:13 10285:13
10297:5,11 10492:18
10503:12 10538:8 10542:3
10546:25
solution 10233:15 10578:25
somebody 10201:7 10216:3
10249:9 10303:8 10323:12
10558:18 10568:22
10573:22
soon 10306:15
sorry 10217:20 10218:20
10222:18 10239:25 10252:7
10282:17,24 10289:7
10298:20 10300:3 10320:25
10324:24 10329:20
10331:14 10341:24
10367:17 10372:1 10373:10
10381:5 10383:19 10396:2
10399:2 10409:1 10410:10
10418:5 10425:25 10436:3
10442:25 10452:3,6
10458:22 10459:16 10467:2
10474:11 10477:10
10480:16 10497:24 10502:3
10505:5 10527:7 10529:20
10533:22 10538:6 10544:15
10552:17,18 10560:10,21
10566:21 10570:3 10578:3
sort 10314:13 10342:21
10362:7 10380:20 10381:23
10382:7 10383:23 10389:18
10418:13 10489:10 10557:3

10558:15
sorts 10196:25 10545:13
sound 10509:3
sounds 10371:10 10388:22
10507:22
soup 10296:20
source 10307:20 10316:20
10340:12,23 10454:20
10572:16
sources 10238:17 10433:24
10434:5,16 10453:21
10454:2
space 10351:11
speak 10243:11 10249:20
10250:2,6 10275:6 10278:1
10278:23 10280:22
10293:14 10296:21 10297:9
10297:22 10315:11
10317:21 10331:12,12
10337:6 10346:1 10350:19
10353:15 10357:18
10398:24 10442:18
10443:16 10454:5,7
10472:18 10481:17,20
10483:16 10506:8 10507:14
10514:5 10527:21 10533:6
10534:21 10569:10
10579:23
speaking 10215:1 10350:17
10432:23 10434:15
10443:12 10445:13 10472:1
10473:13 10474:25 10495:6
speaks 10297:24
special 10416:12
specific 10291:4 10379:10
10430:18,20,22 10451:14
10476:21 10496:11
10507:23,24 10508:12
10511:15 10538:17 10556:9
10564:5
specifically 10394:7 10400:13
10433:15 10492:23
10496:15,16 10510:12
specifics 10556:11
speculate 10204:10 10262:21
10303:20
speculated 10204:7
speculating 10218:4 10303:10
speculation 10218:4 10274:8
speculative 10280:11
speed 10288:15
speeding 10319:6
spending 10245:13
spent 10261:13 10488:5
split 10487:15,16
spoke 10203:13 10206:1
10250:10,14 10265:25
10269:18 10313:11 10318:2
10350:13,22 10379:2

10429:5 10442:15 10443:8
10443:20 10454:3,8,12
10473:16 10476:21 10482:3
10510:1 10528:2,10
10551:3
spoken 10202:4 10217:18,20
10307:17,21 10340:4
10388:24 10389:1 10442:18
10469:21 10471:4 10476:10
10496:7 10557:2 10562:23
spokesman 10281:17
spread 10359:9
squeezed 10302:25
squib 10382:22,25
squiggles 10432:6
stab 10295:22
staff 10226:8 10363:9
staffing 10488:5
stage 10235:6,7 10313:22
stamp 10228:3,4 10314:6,14
10314:18 10493:10
stand 10206:8 10322:16
10338:20 10377:16 10484:2
10484:21,25 10572:3
standards 10449:23
standing 10319:22 10428:6,10
10428:12
stands 10339:11
star 10350:15 10351:4,11
10576:5
start 10194:9 10196:24
10252:15 10254:9 10361:3
10412:22 10418:2 10450:18
10459:1 10468:15 10502:7
started 10359:4 10380:21
10575:16
starting 10206:6 10458:25
10518:17 10533:15
starts 10286:13 10375:11
10403:1
state 10215:16 10280:4
10286:16 10385:3 10424:21
10457:7
stated 10575:10
statement 10238:10 10241:24
10255:4,9 10256:19
10257:3 10262:2 10268:17
10268:18 10274:10
10275:18,19,20,22
10281:20 10282:4 10291:5
10302:20 10319:18 10365:8
10404:16 10405:5,7,25
10406:12,18 10407:12
10422:16 10530:8 10544:20
10545:5,8,16
statements 10253:20
10254:20 10262:13 10270:9
states 10508:2,2 10531:13
station 10309:21

status 10242:5 10333:25
10338:1 10341:12 10443:13
10446:1,2 10463:19
10531:4
stellar 10299:16
step 10277:15 10279:14
10565:20
steps 10277:2 10392:25
10424:12 10499:22
10504:23 10510:13
step-by-step 10511:15,16
Stick 10368:23
stimulate 10450:22
stimulated 10359:19
stood 10302:14 10454:16
stop 10265:23 10270:5
10413:18
stopped 10319:5
stops 10373:4,4
story 10286:3 10351:21
10405:12,13,17 10474:14
10474:17 10475:2,18,19,23
10476:3 10566:12,13,18
straightforward 10296:19
strange 10388:22
strategies 10500:10
strategy 10246:2,5 10499:22
10499:25 10500:10
street 10319:5 10434:17,19,24
strengthen 10237:19
strictly 10402:10 10446:14
strike 10518:4,7
strikes 10206:3 10252:15
10421:14
strong 10344:20,22 10504:7
strongest 10281:9,14 10305:5
struck 10198:21 10244:1,5
10260:3 10328:15
structure 10356:6
struggled 10420:19 10530:18
struggling 10409:10 10531:8
Studies 10325:2
stuff 10351:10 10558:16
style 10577:19
subject 10194:20 10198:6
10258:2 10269:11 10285:10
10370:8 10400:16 10410:8
10413:4 10418:21 10478:7
submission 10205:2,6
10206:12 10262:15
10405:14
subsequent 10231:20
10536:12
subsequently 10237:20
10284:6,14 10375:11
10423:21 10573:2
substance 10235:22 10250:23
10308:9 10342:8 10344:2
10347:12 10348:12

10445:13 10470:5,7,9
10471:5,18 10472:17
10482:2 10483:8,13
10569:9
subtle 10550:6
successful 10277:22,23
10359:5
successfully 10387:25
sufficient 10359:24 10360:25
10446:24
sufficiently 10395:15 10510:7
suggest 10196:4 10197:22
10204:18 10209:2 10268:9
10287:8 10321:25 10398:17
10409:19 10422:19
10440:14 10462:13
10464:19,20 10505:14
10521:2 10537:20 10543:7
10549:4 10555:11
suggested 10196:15 10236:22
10252:2 10282:10 10328:18
10368:14,18 10379:13
10410:5 10560:25
suggesting 10196:24
10204:22,24 10269:1
10279:2 10295:23 10363:15
10368:5 10407:25 10439:19
10462:12 10475:1 10505:15
suggestion 10197:4 10202:15
10235:8,8 10237:8,18
10256:25 10280:20 10297:5
10310:22 10396:14 10418:1
10440:7 10484:12
suggestions 10194:3,7
10206:17 10287:5 10369:7
10369:10 10412:20
10484:12 10506:3
suggests 10389:11 10392:21
10402:14 10410:2 10455:9
suit 10409:14
suits 10441:24
sum 10394:15
summarised 10337:11
summarize 10211:6 10219:4
10298:24
summarizing 10256:17
10258:15 10374:22 10404:8
10407:6
summary 10211:10,11,17
10218:24 10219:7 10220:9
10241:7 10259:10,12
10262:7
summing 10358:15
Sunday 10260:21
Super 10441:16
superfluous 10370:23
Superintendent 10328:7
10330:25 10331:22 10332:3
superior 10529:24

superiors 10233:13 10287:25
10399:24 10518:18 10551:4
supplementary 10288:8
10576:7 10578:6
supplemented 10332:20
support 10232:21 10306:11
10408:2 10537:18 10538:13
10539:9 10542:10 10545:16
supported 10224:18
supports 10305:23
suppose 10433:25 10540:3
supposed 10267:10 10534:2
sure 10203:21 10217:13,23
10225:9 10226:8 10234:9
10237:11 10244:15,25
10255:23 10276:9 10283:22
10294:3 10295:17 10296:1
10301:10 10302:13,20
10305:24 10316:23 10321:2
10321:22 10322:13 10323:9
10323:22 10327:16
10330:23 10342:14 10344:9
10356:20 10362:24
10372:23 10375:1,4
10380:4 10381:4,10
10382:24 10383:18
10424:18 10438:13 10450:9
10453:12,17 10457:10
10461:23 10477:18
10478:21 10503:10 10512:8
10514:6 10526:19 10528:10
10536:4 10557:8 10559:11
10568:16,19 10569:6
10572:7 10575:2,25
10578:22 10581:14,22
surprise 10246:16 10304:15
10343:15 10344:2 10379:7
10471:25 10527:7
surprised 10246:18 10344:17
10344:18,22 10389:14
10518:14,14
surprising 10248:13
Suspension 10322:18
10377:18 10485:2 10527:11
suspicious 10283:8
switches 10437:5
SWORN 10223:17 10324:14
10485:17 10566:6
Syria 10214:11,12 10231:12
10244:13 10247:22
10255:14 10256:18 10258:3
10258:10,16 10260:23
10262:8 10268:2,17
10270:12 10272:14
10290:12 10293:7 10299:15
10315:21,24 10316:18,23
10316:25 10317:4,22
10329:13,16,17,24 10360:5
10360:19 10394:11

10400:17 10401:13
10414:15 10420:15
10424:21 10425:1,15
10445:22 10446:10
10452:14 10479:12
10492:19 10500:1,21
10510:19 10536:8
Syrian 10231:20 10233:5,10
10233:25 10234:14
10255:17,22 10256:7,20
10259:21 10260:25
10263:11,16,25 10264:10
10265:25 10268:1,5
10269:11,19 10270:8
10271:12 10273:24
10275:17 10281:6,10,12
10282:2 10290:23 10298:5
10298:6,9 10301:7,24
10315:21,22,23 10316:8,20
10317:4,5,15 10318:8,15
10319:16,24 10320:8
10395:7 10397:3,7,14,23
10398:1,9 10400:6,23,25
10404:11 10407:9 10424:14
10437:12 10446:11
10536:13 10541:8
Syrians 10232:2 10235:5
10262:23 10264:25 10266:2
10269:22 10270:4 10271:24
10272:1,9,18,21 10273:1
10275:3 10279:2 10286:17
10286:23 10287:6,10
10297:6 10299:22 10300:17
10301:11 10302:12,19,22
10302:24 10303:14,17
10305:15 10312:5 10317:23
10329:9 10334:21 10335:12
10336:2 10392:12 10394:13
10410:15 10436:17
10437:20 10438:16
10439:11 10441:5 10446:7
10536:20
system 10386:16 10517:12,13
10518:17
systems 10304:6

T

tab 10212:4 10220:16 10221:2
10221:3 10224:1 10225:3
10226:25 10236:10 10238:2
10240:12,14 10241:21
10250:17 10254:11
10257:18 10260:14 10283:1
10289:3,8,10,13 10292:25
10294:6,7 10314:4,11
10324:20,23,24 10330:7
10338:8 10355:13,15
10364:15 10365:16
10369:20,25 10371:1,24

10372:6 10373:3,8 10374:6
10374:14,14 10375:10
10383:6,7 10403:25
10406:8,21 10409:4,5
10412:24,25 10413:12
10416:24 10442:11
10447:21 10450:20
10478:15 10480:15,16,17
10485:24 10490:10 10491:8
10497:17,21 10524:1
10525:3,4 10544:6,11,12,13
10552:5,10,13
table 10280:20 10282:9
10393:3 10394:22 10426:15
10426:19 10534:6,8
tactics 10402:5
take 10202:9 10205:8 10207:7
10220:18 10240:1 10244:16
10247:4 10248:23 10252:17
10260:11 10269:16 10271:5
10271:20 10273:13
10277:15 10279:13 10282:8
10283:11 10284:1,8,18
10287:22 10291:22 10295:1
10320:22 10341:6 10342:5
10346:4 10374:3 10375:24
10378:21 10379:14,17
10380:15 10381:13 10387:1
10387:10,19 10388:9
10389:5 10393:1 10394:19
10396:25 10397:16 10398:6
10399:13 10400:12
10403:19 10409:3 10411:2
10411:23 10412:14,15,16
10412:19 10415:14
10417:13 10420:22 10421:8
10421:25 10424:12
10426:14,20 10427:22
10440:22 10449:3 10451:23
10454:1 10457:24 10458:22
10463:10 10467:16 10473:4
10482:8 10484:6,8,18
10502:8 10503:22,23
10512:4 10526:7,13
10527:1 10529:15 10530:17
10542:17,24 10546:4,6
10549:24 10553:4,22
10555:11 10564:12
taken 10226:9,20 10236:23
10246:10 10248:3 10269:13
10304:9 10311:18,24
10335:5 10339:22,24
10341:1 10342:7 10370:21
10379:7 10404:19 10406:7
10406:21 10411:21
10412:12 10445:7 10465:23
10466:6 10470:1,3
10482:11 10495:15 10514:7
10514:8 10527:23 10528:1

10529:2 10532:8 10550:14
10563:8
taker 10431:2,4
takes 10294:1 10295:22
10435:1
tale 10354:4
talk 10204:1,3 10223:15
10248:16,17 10263:19
10334:13 10391:19
10481:25 10507:25 10517:8
10517:9 10523:1 10540:11
10557:25 10558:1 10581:12
talked 10206:10 10354:15
10509:23 10520:23
10566:11 10567:17
talking 10200:20 10263:17
10269:23 10270:1 10274:8
10279:15 10382:3 10389:4
10427:16 10435:16 10475:9
10507:24 10508:1 10535:13
10549:19 10567:15,16
tap 10420:11
targets 10381:20
task 10328:14 10365:22
10379:4 10384:17 10388:2
10488:15,16
tasked 10291:24
tasking 10349:5
teach 10325:9,13
team 10267:4,4
techniques 10292:10
telcon 10271:5
telephone 10206:6,8 10271:6
10287:5 10332:15,17
10336:11 10339:19,19
10343:14 10347:21
10389:11 10410:24 10411:3
10411:10 10442:10
10445:14 10446:20 10453:7
10453:11 10468:4 10479:7
10529:10 10547:9
tell 10204:10,13 10206:8
10239:19 10245:24
10280:23 10307:13,16
10340:13 10342:10 10349:3
10357:15 10370:11 10372:9
10405:12 10417:16 10423:6
10430:14 10434:23 10436:4
10436:18 10439:15
10483:13 10493:3 10512:1
10513:23 10521:9,15,20
10549:16 10578:1,24
telling 10313:13 10314:7
10405:13 10444:1,2
10460:23 10469:25
10476:18 10549:13
10571:19 10579:9,12
tells 10346:20 10352:24
ten 10214:5 10376:17

10377:11,13 10484:22
10486:13
tended 10332:11
tenor 10236:7 10286:3
10557:22
tense 10273:20 10287:23
10442:19 10557:7
tenses 10445:1
tension 10536:21
tenth 10215:8
tenure 10326:13
ten-minute 10484:19
term 10387:9 10390:17
10391:7 10402:21 10419:2
10419:5
terminology 10402:6
terms 10193:25 10198:16
10212:14 10213:11
10214:25 10216:10 10217:7
10222:7 10227:3 10229:9
10231:9 10234:21 10247:8
10251:21 10295:7 10301:13
10301:21 10314:13
10317:14 10319:2 10324:25
10332:7 10333:24 10336:1
10345:18 10356:6,9
10369:15 10370:7 10373:11
10404:24 10487:20,21
10489:7 10490:21 10492:19
10503:17 10509:1 10512:4
10512:16 10513:5,6,12,24
10517:22,25 10518:9
10519:20 10524:14 10525:9
10530:4 10532:6 10547:14
10549:25 10550:13 10582:9
terrible 10431:3
terrorist 10235:13 10254:21
10255:5 10273:6 10274:22
10275:4 10422:25
tested 10206:25
testified 10198:19 10205:22
10209:18 10253:2 10289:6
10336:13 10337:6 10410:7
10410:11 10485:8 10498:10
10539:7 10548:9 10561:21
10567:6
testifies 10321:7
testify 10196:12 10200:16,18
10201:13 10206:11
10207:19,20 10219:24
10289:12 10558:21
testifying 10195:24 10196:11
10199:9 10211:2 10412:19
10575:6
testimony 10193:9,21
10194:19 10195:9,20,21
10198:6 10201:5 10205:25
10207:18 10208:4,10,17
10209:6,15,16 10210:3,14

10210:21,25 10211:3,7,13
10212:9 10214:22 10215:15
10217:7,10 10218:11
10219:3,5,7,8,16,19
10220:9 10222:3 10223:11
10223:12 10227:25 10258:8
10290:9 10291:4 10301:3
10301:22 10302:4,21
10314:8 10315:19,25
10318:7 10324:18 10328:23
10332:9 10335:9 10336:22
10337:9,11 10353:12
10372:9,25 10403:21
10409:2 10417:10 10460:1
10482:9 10490:6 10507:10
10549:21 10563:5 10566:15
10567:2,5,22 10571:25
10580:3 10582:10
testy 10357:7 10451:23
text 10413:8,20 10414:8
10459:11 10577:11
thank 10194:14 10200:24
10202:13,17 10210:1
10218:9,15,19 10219:1
10223:20 10240:5 10251:11
10252:13,22 10292:16
10297:3 10305:21 10320:5
10324:10 10326:20 10336:6
10336:9 10338:11 10348:11
10373:25 10375:6,20
10377:15,24 10378:24
10380:6 10398:5 10407:21
10426:24 10427:2 10428:3
10441:25 10448:15
10450:12 10463:13
10483:18,20 10484:24
10514:14,14 10516:1
10526:11 10527:15
10528:18 10543:15 10548:7
10554:23,24 10555:1
10556:5 10561:16 10565:16
10565:18 10566:4 10573:10
10574:21 10580:8,10,12,13
10580:22,23 10582:2,17
Thanks 10313:5 10561:15
10566:8
theirs 10435:21
theory 10394:11
thing 10234:12 10244:4
10252:8 10266:11,12
10275:1 10283:21 10287:2
10312:16 10324:25
10342:21 10367:18
10381:23 10382:7 10389:18
10417:2 10418:13 10509:14
10514:16 10582:6
things 10196:12 10234:20
10236:21 10266:13
10288:16 10320:14

10323:16 10327:2,16
10332:20,23 10333:5
10370:18 10374:4 10412:5
10414:23 10420:25 10422:1
10434:9 10479:6 10488:6
10502:5 10511:20,22
10532:16 10535:8 10536:25
10545:13 10556:2,4
10573:23
think 10195:20 10197:3
10199:20 10206:15,24
10208:23 10209:4 10215:13
10216:17 10220:25
10222:15 10227:23
10235:17 10236:1 10237:13
10243:15 10244:6 10245:1
10248:7 10249:24 10254:8
10254:11 10256:23
10258:13,22 10262:24
10263:1 10264:3,7 10267:7
10268:21 10269:15,16
10276:20 10277:17
10279:17 10280:10 10282:3
10284:24 10285:11
10287:15 10288:8,12
10292:3,12,20 10293:1
10296:4 10297:14 10298:23
10300:23 10301:12 10302:7
10302:21,24 10303:5
10308:1 10309:5,19
10310:11 10311:10,16
10312:1 10313:4 10317:7,9
10317:10,23 10318:4
10321:8,14 10323:19
10324:7 10327:25 10330:1
10330:21 10334:11
10335:15,16,17,17,21
10340:15 10342:16 10343:4
10343:7,20 10345:23
10350:25 10355:8,9
10358:25 10364:6 10370:14
10375:3 10376:5,10
10380:24 10382:23
10383:20 10384:18
10390:23 10391:9 10392:2
10393:21 10394:5 10395:18
10396:10 10402:7 10403:14
10417:23 10418:1 10422:2
10423:4,7,11,16 10425:8,10
10425:16 10428:14
10437:24 10438:12 10439:3
10439:24 10440:3,7,23
10441:18,19 10442:1
10444:15,23 10452:4
10457:7 10458:5 10462:6
10462:14 10464:9 10466:12
10466:22 10476:23
10479:16,16 10493:15
10496:9 10503:11 10508:16

10509:18 10510:4 10512:14
10512:22 10513:8,25
10515:8 10517:10 10526:15
10526:20 10531:11
10534:18 10535:13 10536:5
10541:3 10544:14 10547:7
10548:24 10552:6,21
10558:4,25 10559:12
10568:1,6,10,12 10577:21
10578:25 10579:11
10581:19,24
thinking 10276:12,14
10358:18 10471:21
10477:11 10479:25 10480:1
thinks 10211:17
third 10203:7 10212:12
10221:14,17 10308:6
10333:20 10335:24
10391:10 10563:24
thirdly 10337:22
thirteenth 10216:9
thorough 10509:20
thought 10195:17 10202:8
10206:5 10248:12 10278:9
10298:20 10328:16 10345:2
10345:12 10359:17
10371:19,20 10375:2
10383:2 10384:4 10437:13
10452:8 10465:21 10469:20
10483:13 10543:25
10547:17 10561:25
10579:23 10581:6,25
threat 10272:25
three 10207:15 10234:23
10256:13 10257:11
10285:22 10299:19
10330:16 10333:14
10355:18 10384:16 10390:1
10428:10 10440:21
10561:18
three-line 10301:6
three-paragraph 10257:4,24
10261:10 10375:12
thrilled 10214:9,14
throw 10458:4 10531:10
throws 10351:5
Thursday 10291:13 10348:10
10355:19 10494:6 10582:19
ticket 10319:8
tight 10379:24
till 10513:15
time 10194:24,25 10200:10
10201:10 10205:2 10207:25
10208:12 10211:24 10212:5
10212:11 10215:3 10221:22
10224:11,16 10227:16
10234:21 10235:24
10239:11 10245:23,25
10246:10 10247:19 10248:6

10248:10 10251:8 10255:11
10257:25 10261:14
10266:24 10307:23
10308:21 10311:18
10314:19,22,22 10326:18
10327:14,20,22 10342:20
10357:16 10358:18
10364:10 10365:6 10375:23
10387:24 10388:10
10405:21 10431:10
10433:23,23 10435:15
10439:15,20 10442:15
10444:16 10445:1,12
10446:24,25 10460:16
10461:1,7 10462:3
10463:24 10471:21
10483:25 10484:2
10486:16 10487:21
10489:25 10493:16
10495:14 10499:21
10502:14 10504:24
10517:24 10527:1 10530:20
10532:13 10537:2 10538:21
10539:14,16 10540:10
10545:8 10564:11 10568:25
10574:25 10576:4 10577:21
10580:19 10581:11
timeframe 10494:15
times 10429:6 10440:10
10460:14 10463:5 10478:20
10509:12
timing 10202:2 10208:1
10214:25 10263:3 10340:18
10446:23 10483:23
10517:23
title 10326:24
today 10194:4 10195:24
10199:15 10202:25 10203:2
10206:15 10207:1,14
10211:5 10240:10 10241:16
10242:6 10292:7 10328:23
10331:1 10341:13 10342:23
10346:11,11 10355:11
10376:2 10426:14 10443:13
10447:17 10463:20 10464:6
10464:19 10465:9,17,20
10484:15 10514:5 10561:21
10566:11 10567:1,17
10568:8 10569:7 10571:21
10575:16 10579:21
today's 10194:21 10195:10
10198:7 10208:7 10209:12
10210:13 10219:16
10240:13 10490:6 10564:23
10569:4
told 10239:21 10240:1,19,24
10241:8 10243:2 10244:25
10245:9 10255:8 10258:9
10265:8,9,11,13,16,17

10271:24 10281:15
10286:24 10307:12 10309:4
10344:10 10364:21
10368:11 10382:12,14,18
10398:11 10415:10 10441:8
10451:8 10452:16 10471:10
10474:20,24 10483:12
10492:23 10495:1 10501:21
10502:15,17,19 10516:13
10518:16 10536:24
10538:22 10558:25
10560:19 10561:24 10562:9
10578:23 10580:4
tomorrow 10193:21 10199:9
10580:24 10582:1,16
top 10200:9 10229:17 10238:7
10241:22 10255:3 10341:7
10343:9 10347:25 10350:8
10356:22 10367:2,20
10375:10 10406:25 10432:7
10462:8 10463:3,3,4
10480:20 10524:6 10525:7
10572:22 10573:20
topic 10354:14 10437:5
10445:17 10454:14
10475:10 10481:21
Toronto 10325:2
torture 10292:10 10402:24
10403:1
total 10274:8 10394:16
10421:5
totality 10369:9
totally 10262:16 10361:16
10427:12
touch 10518:19
touches 10573:18
town 10501:19,23 10502:2
10503:21 10520:7,23,24
10522:4 10532:11
to-ing 10338:22 10446:8
train 10309:20 10340:1
transcript 10195:25 10201:14
10202:6 10203:12 10207:3
10208:9,16,20 10209:15
10210:2 10218:22 10219:6
10219:6 10252:16 10256:19
10257:3 10258:23 10262:12
10299:7 10306:7 10321:6,9
10321:18 10322:7,10
10374:10 10377:1 10378:3
10378:4,11,15 10448:19
10449:4,11 10450:9
10478:8 10526:25 10569:10
10569:12
transcripts 10196:25
10197:25 10200:6,22
10208:22 10209:21 10211:4
10211:16 10262:19
10298:19 10323:1,23

10375:22 10376:20
10378:22 10379:5 10448:21
10483:25 10484:10 10569:2
10581:3,14,20
transfer 10399:9
transitory 10333:3
translate 10256:16 10352:23
translated 10256:19 10258:23
10259:7,9 10261:11
10262:12 10374:9
translation 10257:13 10258:1
10261:8,18 10375:12
transmittal 10226:11,22
10227:3 10230:20 10247:13
10294:8,17 10490:13
10493:4
transmitted 10335:20
10398:1
transpired 10266:22
10404:20
travelled 10255:14 10270:12
10397:22,25
travels 10258:3
treading 10320:11
treated 10529:4
treating 10196:23 10504:17
trial 10401:19
tried 10286:19 10350:20
10444:20 10468:20
10576:12,14
tries 10509:15
trouble 10390:5,8 10406:13
10533:23
troubled 10406:11
true 10196:8,20 10361:15
10407:12,14
truth 10218:13
try 10276:4 10297:19
10346:16 10412:10 10414:5
10415:17 10429:1 10506:7
10521:3 10538:15 10548:6
10553:12 10557:18 10561:4
10563:19
trying 10206:16 10263:20
10285:16 10319:12
10334:12 10348:7 10358:21
10359:3 10364:12 10391:18
10423:4,11 10431:8
10446:8 10472:14 10489:13
10492:9 10501:23 10502:1
10514:1 10531:14,23
10534:25 10553:24 10554:3
10557:11 10564:22,24
10567:9
TS 10406:24,24 10413:15
tsunami 10488:14
Tunisia 10382:15
turn 10257:18 10374:14
10403:25 10468:2 10552:9

turned 10200:13
turns 10237:11
twelfth 10216:4
twenty-five 10376:17
twice 10349:18
two 10193:19 10219:12
10220:23 10221:8 10228:1
10242:25 10244:6 10247:20
10247:22 10250:21 10251:3
10256:13 10257:19 10264:6
10264:7 10273:25 10297:16
10297:19 10313:7 10316:23
10327:13 10328:22
10334:22 10355:14 10356:1
10356:12 10365:2 10369:8
10374:4 10375:2,22
10376:18 10377:12,13
10378:22 10384:16,19
10386:2 10393:21 10402:19
10409:12 10417:25
10440:24 10444:19
10461:17 10466:14
10470:22 10480:7 10483:1
10483:24,25 10486:7
10487:16 10489:9 10492:25
10497:20 10508:14,15
10512:17 10514:3 10532:18
10536:3 10564:17,18
10569:9 10578:12,13,15
10581:2
two-way 10434:17,19,24
type 10198:14 10253:25
10303:15 10446:25 10447:3
types 10312:24 10434:9
Typical 10332:10
typically 10206:19
typing 10418:12
typos 10370:1 10448:8

U

ultimately 10416:2,11,14
10536:1
unacceptable 10278:22
unambiguous 10238:10
10255:4
unanimity 10234:23 10235:2
unaware 10200:17 10220:13
uncertain 10549:25
unclear 10274:5
uncomfortable 10379:4
10395:3
uncommon 10456:19
10534:18
undated 10261:9 10375:12
undergoing 10292:2
underlings 10365:20
undermine 10264:1 10268:11
underneath 10228:1 10467:4
10570:7

understand 10193:20,22
10194:25 10201:19 10202:4
10202:21 10203:19
10227:24 10244:18
10247:18 10254:15 10262:4
10267:1 10282:15 10307:6
10307:22,23 10319:12
10327:23 10328:25 10332:5
10333:21 10336:25 10342:6
10344:24 10360:10
10361:20 10362:25 10371:8
10376:3 10378:10 10402:7
10402:8,13 10405:3
10411:1 10428:17 10440:10
10443:11 10444:2 10448:19
10449:1,24 10452:23
10453:18 10465:5,7
10467:19 10471:7 10482:14
10495:8,9 10502:1
10503:14 10504:6,18
10506:12 10508:8 10510:13
10510:16,18,22 10527:21
10536:4 10554:3 10561:21
10562:11 10564:23
10571:21 10577:6,14
understanding 10195:2
10228:4 10248:12 10251:23
10257:9 10267:6 10312:3,8
10313:24 10314:1,17
10317:2 10362:11,19
10364:9,25 10365:10,13
10392:7,9,9 10405:21
10408:23 10421:1 10442:17
10452:17 10453:7 10463:24
10482:10 10492:2,4,9,15
10493:18 10504:21 10509:9
10509:25 10514:25 10515:4
10515:7 10522:7,13,15,15
10523:5 10526:3 10530:6
10533:23 10538:3 10543:16
10548:18,20,23 10549:13
10551:25 10554:10,17
10562:23 10563:2 10569:8
10572:25
understood 10234:18
10250:24 10346:6 10358:8
10405:6 10423:23 10424:24
10443:1 10447:21 10471:9
10497:10 10500:19 10501:5
10503:21 10505:2 10506:22
10508:18 10513:19
10519:12,18 10522:2,7
10538:18,22 10539:10,19
10540:1,21 10564:22
undertaking 10197:2
undertook 10531:1
undo 10561:5
undoubtedly 10543:4
undue 10423:13

unequivocal 10305:17
unfair 10194:6 10196:3
10201:24 10279:18
unfairness 10197:18
10206:24
unfortunately 10259:9
10323:15 10484:20
unheard 10293:18 10298:2
unhelpful 10206:3
unilateral 10546:4
United 10508:2 10531:13
University 10325:2,4,6,9
10486:4
unnecessary 10370:23
unredacted 10573:2,14,19
10574:1
unreliable 10204:20
unsatisfactory 10419:6
unsure 10216:1
unusual 10244:5 10246:22
10248:24 10293:12,17
10297:15,16 10298:2
10398:10,12,15 10456:18
10490:21
unwise 10296:5,12
upcoming 10394:4
update 10489:10
upset 10216:10 10309:8
10509:13 10545:24
upwards 10517:12,13,14
urgency 10504:7,12,13,15,17
10504:19 10551:20
urgent 10504:9,11
use 10290:1 10291:25 10292:9
10333:2 10343:20 10357:17
10380:11 10402:1,4,21,24
10410:14 10475:18
10535:12,17 10542:14
10576:3
useful 10194:24 10208:7
10209:5 10210:13 10302:11
10304:1 10582:9
usefully 10295:23
USS 10228:18 10229:18
10231:2 10258:15 10367:20
usual 10273:10 10297:10
usually 10226:10,12 10229:20
10295:25 10332:15
10488:16
U.S 10268:19

V

vague 10395:16
vagueness 10494:15
value 10318:5 10428:19
vanished 10266:19 10410:25
variety 10269:14 10301:1
10327:2 10380:21 10423:15
various 10225:10 10326:4

10500:10 10501:7 10557:17
vary 10295:15
verification 10508:17
version 10209:6,21,23
10212:1 10225:4,6,7,12,22
10233:21 10238:2 10289:5
10371:25 10372:7 10373:3
10373:7 10448:7 10491:9
10572:20,22 10573:19
Veillez 10193:6 10322:22
10377:22 10485:6
view 10197:25 10201:6
10205:18 10245:22
10281:25 10285:2 10300:14
10305:4 10379:7 10444:10
10452:19 10534:19 10546:8
10546:17
views 10226:9 10300:16
10374:11 10458:12
10530:12,19,21,24 10532:7
10546:7 10553:25
vigour 10531:2
vine 10551:17,20,24 10552:4
violation 10319:6
violence 10403:2
virtually 10199:21
virtue 10542:15
visit 10239:7,13 10256:17
10258:16 10262:8 10266:9
10266:18 10320:3 10374:20
10385:8 10386:6 10404:7
10404:21 10407:5
visited 10231:12 10239:4
10260:4 10305:8 10536:8
visiting 10304:17
visits 10319:23 10385:15
visualize 10296:17
vis-à-vis 10270:7 10301:25
10508:4,6
viva 10211:2
voce 10211:3
voice 10318:3 10332:15
10469:4,6 10470:16
10472:22 10514:6 10546:8
volume 10220:16 10221:3
10224:1 10236:11 10289:3
10289:9,13 10292:24
10324:20 10338:8 10403:20
10480:14,15 10485:24
10490:11 10497:18 10525:3
10525:4 10544:7,8,9
volunteers 10344:4
vous 10193:6 10322:22
10377:22 10485:6

W

wait 10483:22
waited 10566:3
waiting 10220:4 10505:9,9,13

10547:19 10566:8
walked 10353:18 10354:13
walking 10339:9
want 10193:16 10196:18
10215:19 10231:22
10232:25 10235:23
10242:19 10244:8 10254:3
10258:24 10264:1 10265:1
10265:18 10268:11,13
10272:11 10275:8 10280:1
10281:13,18 10282:22
10284:2 10286:24 10303:20
10314:3 10330:12,12
10333:13 10341:19 10343:1
10344:19,20 10352:9
10353:2,18 10360:24
10366:3 10380:12 10387:8
10391:14 10394:2 10401:4
10402:5,13 10403:19
10405:20 10406:9 10412:19
10412:20 10419:2 10420:11
10423:12 10435:20
10439:25 10442:9,23
10447:22 10450:8,18
10474:21 10475:6 10476:7
10500:2 10506:16 10510:15
10513:11 10524:9,19
10527:18 10536:17
10551:21 10553:14 10561:9
10570:14,21 10571:10
10576:20
wanted 10220:7 10235:3
10248:16 10253:8,10
10254:19 10255:4 10277:14
10283:22,25 10284:2
10305:19 10312:16 10315:6
10315:7 10329:18 10333:19
10338:20 10358:4 10361:3
10361:4 10362:15 10375:18
10390:1,10,11,18,20
10391:1 10399:22 10417:18
10419:8 10432:10 10440:22
10443:3 10495:5 10505:3,6
10518:19 10544:3 10545:2
10581:21
wants 10262:21
warnings 10517:1
warrant 10390:21,22
10446:24
wasn't 10234:23 10235:23
10267:8 10284:8 10296:20
10308:13 10309:7,8,8
10310:14 10315:1 10320:3
10334:15 10340:20
10342:24 10347:2 10349:17
10410:10 10422:20 10429:8
10445:9 10466:21 10483:16
10502:6 10503:9 10507:4
10508:20 10518:13,14

10520:23
waste 10194:24
watch 10474:23
watched 10400:10
watching 10215:22 10242:22
10341:22,23 10524:12,14
way 10200:13 10205:12
10206:13,18 10214:14
10219:6 10224:14 10235:1
10247:16 10253:13
10256:16 10273:15
10274:11 10277:18 10280:5
10281:19 10283:7 10285:21
10292:13,21 10299:2,23
10302:5 10303:3 10304:25
10309:22 10310:1,17
10313:13 10324:9 10329:10
10329:13 10333:2,5
10334:10 10342:3,4
10349:19 10353:20
10363:12 10388:23
10391:17 10396:22 10400:4
10413:2 10416:3 10418:2
10442:23 10446:18,22
10456:7 10463:14 10465:1
10467:1,1,3,19 10468:15
10482:14 10484:4 10492:16
10497:1 10498:16 10523:14
10529:14 10530:15
10541:22,24 10542:2
10547:10 10549:11
10558:16
Wayne 10254:5
ways 10302:25 10303:2
10304:6 10462:24 10489:10
10508:7 10557:11
WCB 10350:9,21
website 10208:21
Wednesday 10193:2
10271:12
week 10202:4 10301:18,18
weeks 10276:8 10285:22
10287:19 10355:20
10409:12 10421:9
weight 10423:13
welcome 10324:12
well-communicate 10319:13
well-educated 10465:8
well-identified 10517:23
well-put 10364:11
went 10212:9 10227:20
10230:3 10288:5 10301:2
10311:1 10313:25 10314:2
10316:19 10343:22
10346:10,11 10358:2
10360:11 10361:12
10362:17 10370:18,21
10394:6 10397:7 10444:18
10444:22,24 10448:11

10458:2 10460:2 10463:20
10464:5,6,7 10474:21
10483:17 10558:17
weren't 10273:13 10382:8
10398:17 10432:23
10459:22 10514:22
we'll 10320:22 10322:4,5
10355:22 10367:13 10374:3
10376:23 10377:9,10,11
10484:18,22
we're 10280:9 10302:13
10304:16 10311:19
10374:16 10376:1,10
10448:19 10453:8 10484:20
we've 10306:14 10320:9
10342:12 10362:19,24
10440:1 10482:8
whatsoever 10218:7 10309:16
10311:4
whereabouts 10389:7
whichever 10298:6 10438:13
wholeheartedly 10321:21
widely 10226:8
wife 10545:11
willing 10317:19 10518:12
10537:23
will-say 10195:6 10267:8
10331:3,16,21
wish 10217:6,9 10225:2
10226:16 10389:25
10563:24
wished 10220:7 10332:24
wishes 10438:3
withdraw 10563:15
Withdrawing 10538:11
witness 10198:9 10216:24
10223:5 10270:19 10279:3
10288:20 10289:6 10298:15
10306:15,23 10322:1
10335:3 10404:23 10405:25
10406:8 10438:5 10440:3,8
10452:4 10466:11,14,22
10568:13,22 10573:13,22
witnesses 10194:4,5 10196:10
10196:20 10198:15
10200:11 10201:9 10204:6
10207:15 10219:16 10324:4
wonder 10377:25
wondered 10303:13
wondering 10323:6 10329:23
word 10318:5 10343:20,21
10344:20,22 10383:12
10412:16,19 10475:18
10502:1 10504:7 10535:13
10535:17
wording 10237:15 10295:8,10
10338:23 10339:6 10358:4
10361:2,11 10363:20
10398:13 10422:5 10450:23

10453:6 10465:24 10552:4
wordings 10539:25
words 10226:17 10239:23
10253:8 10294:23 10302:13
10335:13 10390:24 10431:1
10469:23 10520:20 10538:1
10547:14 10548:21
work 10304:6 10345:11
10359:9 10427:21,23
10492:4 10503:4 10508:16
10508:25 10509:4 10521:1
10531:19 10547:15
10548:11 10549:14,20
10551:16,22 10557:11,17
worked 10246:3 10325:21
10326:3 10419:19 10555:16
working 10245:17 10270:23
10341:21 10357:8 10379:23
10435:8,12 10468:16
10496:14 10498:23
10501:24
works 10355:7
work-related 10496:17
world 10263:22 10435:9
10554:14 10564:15,16
world's 10564:23
worried 10320:10 10522:20
worry 10246:11 10402:6
worse 10465:13
wouldn't 10199:25 10234:25
10253:12 10276:22
10288:13 10302:8 10353:17
10423:10 10437:13
10456:15 10457:4,15
10476:22 10477:7 10535:12
10554:7
Wright 10308:18,21 10309:1
10327:5 10356:1,7
10372:10,10,16,22
10455:19 10554:13
Wright's 10373:5 10554:11
write 10270:3 10279:2
10293:6 10303:9 10332:16
10408:3 10414:2,13
10443:16 10456:18
10462:21,22
writing 10272:18,20 10273:3
10287:3 10390:6,8
10463:11,14 10516:22
10546:21 10575:22
written 10253:11 10260:24
10267:15,17,19 10291:12
10293:13,20 10332:21
10386:2,7 10443:3,7,15,20
10462:7 10463:5 10467:7
10473:15 10536:2 10544:1
wrong 10364:6 10383:3
10404:16 10443:2 10445:1
wrongly 10197:10

wrote 10219:13,16 10222:16
10291:15 10460:2 10463:21
10466:4 10476:21 10477:10
10491:9

Y

Yeah 10314:16 10318:14
10364:7 10368:25 10459:3
10469:10 10473:18
10474:12

year 10208:2 10212:2
10231:12 10487:11
10488:14 10536:9

years 10319:21,23 10325:25
10486:13 10498:19

yes-or-no 10277:19

York 10489:15

yup 10366:22 10370:10
10371:2,6 10372:5
10421:13 10443:9 10480:23
10481:1

A

à 10193:4 10322:18,20
10377:18,20 10485:2,4
10527:11,13 10582:20,21

0

00 10527:13
03 10314:15 10373:4
10413:15
04 10193:4
0900 10582:21

1

1 10241:21 10262:10 10289:3
10289:9,13 10330:7
10383:7 10442:11 10524:1
1:51 10377:19
10 10347:24 10468:2,8
10th 10291:13
100 10501:20 10509:7
10514:3 10528:9
11 10231:10 10322:18,20
10348:21 10461:6 10472:7
10508:3 10536:6 10537:3
11th 10372:1 10523:10
11:23 10322:17
11:30 10493:14
11:40 10322:19
1100 10340:17,19 10342:23
10461:7 10464:18 10465:9
10465:17,20
113 10324:20,24
12 10349:23 10351:13,15
10371:1 10374:14 10377:18
10473:9 10474:4 10572:23
10573:20
12th 10339:1

12:30 10374:3
12:35 10377:17
12744 10566:16 10569:14,15
10570:10
12745 10569:22 10570:9
10579:3 10580:3
12984 10578:4
12986 10578:4
13 10232:8 10336:20 10350:6
10377:20 10473:4 10498:19
10537:5 10579:3

13th 10372:8
134 10289:7
14 10373:3 10485:24
14609 10378:6
14687 10378:7
15 10220:16 10221:4
10320:23 10325:25
10376:14 10413:12
10480:15,16,17 10485:2,4
10497:17 10507:4 10520:9
10525:4 10529:12

15th 10269:18,25
16 10215:17 10241:22
10299:10 10330:6 10332:12
10336:18,23 10347:24
10373:9 10442:11 10459:2
10460:6 10468:2 10472:7
10487:10 10524:1 10527:11
16th 10256:15 10257:20
10258:15 10262:6 10269:18
10273:18 10302:15 10316:1
10374:8,16 10375:11
10406:22

16/12/02 10404:2
17 10211:22 10527:13
17th 10302:16
1752 10582:20
18 10208:18 10210:4
10413:15
18th 10209:19 10409:8
10413:8,20 10416:10
19 10413:12,14
1972 10486:2,9
1973 10486:6
1975 10325:22
1994 10486:11
1998 10486:23 10487:2
1999 10486:18,19

2

2 10224:1 10240:17 10257:18
10257:19 10262:11
10292:25 10330:6 10332:12
10338:8 10355:13,15
10364:19 10367:2,12
10383:6,7 10416:24
10442:20 10443:10,19
10444:11,13,18 10447:21

10450:20 10478:15
10490:11
2nd 10301:21
20 10507:4 10520:10
10526:17 10527:9 10529:12
20th 10325:16
2002 10256:15 10257:20
10260:20,22 10291:13
10327:24 10329:5,9
10334:1 10374:9,16
10380:18 10382:12,16
10406:22 10429:4 10487:21
10489:7,18,19

2003 10208:3 10212:2
10222:8,11,23 10224:11
10225:1 10242:9 10250:19
10251:9,24 10252:5
10271:4 10275:13 10287:3
10316:2 10367:14 10369:17
10409:8 10450:20 10463:14
10478:19 10487:21
10491:10 10498:5,8
2005 10193:2,4 10208:18
10209:19 10210:4 10487:12
10487:13 10582:19

21st 10271:13 10329:5,8
10333:25 10336:8 10432:4
10445:20
22nd 10373:4
23 10322:18
234 10208:15,16
235 10209:25 10210:1,2
236 10210:8,9
237 10210:17,18 10257:17
10369:25 10403:21,23
237,tab 10374:18
24 10193:2,4
24th 10271:3 10272:19
10273:23 10355:23
10356:21 10450:20
10478:16

25 10582:19,21
29th 10327:24 10380:18
10383:17

3

3 10225:3 10238:2,4 10240:12
10240:14 10249:3 10250:17
10254:11 10283:1 10292:25
10324:20 10363:7 10364:15
10367:13,13 10409:5,5
10455:2 10491:8 10496:23
10497:4
3rd 10222:8,13 10257:1,23
10258:12,25 10260:20,22
10463:11 10498:4
3/6/9 10493:14
3:46 10485:1
3:49 10485:3

30 10240:8 10250:12 10376:7
10378:2 10529:12
30th 10240:14 10250:17
10282:18 10285:2 10355:20
10365:7,11 10367:14,19
10368:12 10369:15 10371:4
10372:3 10373:6,10,11
339 10544:12
35 10377:18
39 10527:11

4

4 10231:10 10238:3 10254:22
10255:3 10257:18 10365:16
10374:6 10375:10 10409:4
10409:5 10536:6
4:39 10527:10
40 10322:20
432 10236:12
439 10236:10,13 10544:6,13
10544:15
45 10376:8
46 10485:2
49 10485:4
4969 10299:6,10

5

5 10214:3 10220:16 10221:3
10226:25 10236:11 10238:3
10238:5 10240:17 10254:23
10255:3 10286:4,13
10294:6 10311:19 10314:4
10314:11 10338:8,10
10364:19 10369:20
10374:14,14,18 10403:25
10406:21 10459:12 10460:6
10480:15 10485:24
10490:10 10497:18 10525:4
10535:24 10544:7
5th 10203:19 10208:2 10212:1
10212:17 10220:1 10222:11
10222:15,19 10224:7,10
10225:1,5,7,12,18,22
10237:15 10238:2 10239:10
10242:9 10250:19 10254:13
10276:5 10285:24 10292:24
10294:7 10308:24 10311:19
10312:2 10336:23 10348:5
10348:9 10355:16 10407:24
10407:25 10408:8 10409:6
10410:2 10412:11 10413:3
10413:3 10414:11,25
10459:10,23 10460:4
10463:12,13 10469:22
10474:19 10482:8,18
10490:8 10491:10,16
10498:8,12 10502:11
10503:15 10524:6
5" I've 10369:25

5:00 10527:12
5:52 10582:18
52 10377:20

6

6 10260:15 10314:15
10347:25 10371:24 10383:8
10468:24 10469:9 10552:10
6th 10203:19 10222:23
10239:10 10261:5 10263:4
10313:14 10348:3,8,10
10355:17 10365:18
10469:19 10471:8 10480:22
10481:8 10482:17,21
10525:8
61 10289:3,10,13

7

7 10372:2,6 10373:3 10374:14
10404:1,2 10406:22
7th 10261:12 10369:21
10372:1
75 10254:8
75.3 10254:12
75.5 10212:4 10224:1,4
10293:2,3 10294:7 10338:9
10338:10 10490:11
10535:19
75.6 10552:5

8

8 10373:8 10412:24,25
10413:12
8th 10338:25 10369:16
80 10378:7

9

9 10193:4 10215:17 10241:22
10289:3 10314:15 10336:18
10336:19,23 10371:1
10442:11 10459:1 10460:6
10482:8 10523:25 10580:24
10582:16
9th 10216:8,15 10313:15,25
10348:24 10351:3 10354:4
10464:10 10472:12,19
10493:7
9/11 10380:21
9:00 10582:20
9:04 10193:3
99 10393:6
992-1152 10350:9