

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



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

Audience publique

Public Hearing

Commissaire

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

Commissioner

Tenue à:

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

le jeudi 10 novembre 2005

Held at:

Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario

Thursday, November 10, 2005

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1 Ottawa, Ontario / Ottawa (Ontario)
2 --- Upon commencing on Thursday, November 10, 2005
3 at 9:00 a.m. / L'audience reprend le jeudi 10
4 novembre 2005 à 9 h 00
5 THE REGISTRAR: Please be seated.
6 THE COMMISSIONER: Good morning.
7 MS EDWARDH: Thank you,
8 Mr. Commissioner.
9 PREVIOUSLY SWORN: FLYNT LAWRENCE LEVERETT
10 EXAMINATION (Cont.)
11 MS EDWARDH: Good morning,
12 Dr. Leverett.
13 MR. LEVERETT: Good morning.
14 MS EDWARDH: I'm glad you weren't
15 up a 5 o'clock this morning --
16 MR. LEVERETT: So am I, thank you.
17 MS EDWARDH: -- but I will only be
18 an hour.
19 MR. LEVERETT: Okay.
20 MS EDWARDH: Just to pick up on
21 some loose ends, I take it, sir, that when you
22 answered the question that it would have been
23 other people in the National Security Council
24 Office -- or other officials dealing with
25 extraordinary rendition and it wasn't within your

1 bailiwick at all, can you tell us what group
2 within the National Security Council would have
3 had an obligation, or discharged duties in that
4 regard?

5 MR. LEVERETT: I am assuming in
6 the National Security Council there is a
7 directorship for intelligence affairs, and if there
8 were an office at the National Security Council
9 that would be involved in an issue of intelligence
10 policy like renditions, I would assume it was that
11 one.

12 MS EDWARDH: Sir, do you know who
13 was the person who was a director of such an
14 entity?

15 MR. LEVERETT: In what period?

16 MS EDWARDH: In October 2002.

17 MR. LEVERETT: I can't recall who
18 the senior director would have been in that office
19 at that time, but I think that would be a matter
20 of public record.

21 MS EDWARDH: Can you recall any
22 of the individuals who would have worked within
23 that office?

24 MR. LEVERETT: At that time, no.

25 MS EDWARDH: Or at any time up

1 until October 4, 2003?

2 MR. DECARY: I object in purpose
3 to these questions, Mr. Commissioner. I don't see
4 the relevance.

5 The witness already answered that
6 he doesn't know. Now we are looking for names of
7 people who worked there?

8 What is the pertinence?

9 THE COMMISSIONER: Ms Edwardh?

10 MS EDWARDH: I think it is
11 relevant to the witness' credibility having to
12 find he had absolutely no knowledge to find out
13 whether or not the very entity he was a part of in
14 this period was known to carry out -- or there
15 were people who would have carried this out.

16 You yourself, Mr. Commissioner,
17 can decide whether or not the March 2002 article
18 in the Washington Post plopped on the doorstep, I
19 assume of the White House, wouldn't have produced
20 any concern in the CIA or in the National Security
21 Counsel. That will be for you to decide.

22 THE COMMISSIONER: Go ahead.

23 MS EDWARDH: One last question,
24 sir.

25 That was it.

1 MR. LEVERETT: Aside from the
2 Intelligence Directorate there was, as I believe I
3 mentioned yesterday, there was a separate
4 directorate in the NSC with responsibility for
5 overseeing the War on Terror. In addition to a
6 senior director responsible for running that
7 office, there was also a Deputy National Security
8 Advisor with responsibility for counterterrorism.

9 During much of the period that I
10 was at the White House that Deputy National
11 Security Advisor for counterterrorism was a
12 retired Air Force General named John Gordon.
13 Prior to General Gordon taking that position, the
14 gentlemen occupying that post was a retired Army
15 Special Forces General named Wayne Downing. Those
16 are all matters of public record.

17 Then the various people who
18 occupied the Senior Director position in the
19 office overseeing counterterrorism affairs, that
20 would also be a matter of public record.

21 MS EDWARDH: Do you recall offhand
22 who that was?

23 MR. LEVERETT: There were several
24 people who occupied that job during the time I was
25 at the White House. The person who had it at the

1 time that I left was a gentleman named Rand Beers
2 who subsequently, like me, left the Bush
3 administration and became John Kerry's Chief
4 Foreign Policy Advisor for his presidential
5 campaign.

6 Before Rand had that job, the
7 Senior Director for the Counterterrorism Office
8 was a State Department Officer on rotation, a
9 gentleman I believe named John Craig.

10 MS EDWARDH: Just for the record,
11 sir, during the entire period where you were
12 either working for the National Security Council
13 or in the State Department, you were still an
14 employee of the CIA?

15 MR. LEVERETT: Yes, that's right.

16 MS EDWARDH: This may be a
17 self-evident proposition, but given your
18 observations on the War on Terror and your
19 experience, can you agree with this: That it was
20 certainly a fundamental part of U.S. policy on the
21 War on Terror that if someone had been found on
22 U.S. soil and there was evidence that they were a
23 member of al-Qaeda, they would have been tried and
24 prosecuted and, if possible, convicted in a
25 domestic U.S. court?

1 MR. LEVERETT: That is what I
2 would assume, yes.

3 MS EDWARDH: I take it from your
4 evidence of the inclination of the Syrians -- and
5 by that I mean Syrian Military Intelligence -- to
6 want to open channels of intelligence information,
7 and I assume from that there was a high level of
8 incentive for them to do so, both within the
9 intelligence services and the government in
10 general?

11 MR. LEVERETT: I believe so, yes.

12 MS EDWARDH: The priority of
13 course for the CIA, or even others in the U.S.
14 administration, would be to press for more than
15 just information, but actionable intelligence?

16 MR. LEVERETT: I believe the
17 Syrians would want to have appeared as useful as
18 possible.

19 MS EDWARDH: Just for the record,
20 sir, "actionable intelligence" is defined as
21 information which can cause direct action to be
22 taken to either apprehend a person or stop an
23 event from taking place?

24 MR. LEVERETT: Yes, that's right.

25 MS EDWARDH: Of course in the

1 search by the Syrians for "actionable
2 intelligence" to please the U.S., you will agree
3 with me that that provided a pretty strong
4 incentive for the Syrians to use whatever means
5 they could access to information?

6 MR. LEVERETT: Whatever means they
7 thought would have been effective.

8 MS EDWARDH: Yes. From your
9 knowledge of the culture within the Central
10 Intelligence Agency and other agencies you worked
11 with, you could agree, sir, that those agencies
12 and personnel would be relatively indifferent to
13 whether or not actionable intelligence was
14 received through torture?

15 MR. LEVERETT: I don't know if
16 that is true or not.

17 MS EDWARDH: You have no
18 knowledge?

19 MR. LEVERETT: As I said
20 yesterday, the exchange channels through which
21 that kind of operational or raw intelligence
22 information would have been received is something
23 I don't have direct experience with. So I don't
24 feel I am in a position to comment on the mind-set
25 of those who were engaged in it.

1 MS EDWARDH: Certainly from the
2 public discussion that has occurred since your
3 departure from government, it is apparent that
4 there are very serious questions at play about the
5 methods used to extract information from
6 detainees.

7 MR. LEVERETT: Yes.

8 MS EDWARDH: Some of those methods
9 extend to the use of torture to get information?

10 MR. LEVERETT: It would seem that
11 might be the case, yes.

12 MS EDWARDH: Certainly we know
13 that from the Syrian perspective, given the human
14 rights record, they don't see any barrier, ethical
15 or otherwise, to the use of torture should they
16 wish to use that as a tool?

17 MR. LEVERETT: There is a long
18 well documented record of torture in Syrian
19 prisons by Syrian security personnel.

20 MS EDWARDH: I want to ask you
21 about an expression of perhaps concern or fear, as
22 you phrased it. This is a totally different area.

23 When you said in your opinion a
24 misstep or an excessive demand from Canada could
25 have risked, on behalf of Mr. Arar, both a denial

1 of access and ultimately his release.

2 MR. LEVERETT: Yes.

3 MS EDWARDH: But you will also
4 agree with me, sir, that being, as you have
5 described it on a number of occasions, a situation
6 that was unique --

7 MR. LEVERETT: Yes.

8 MS EDWARDH: -- that you cannot in
9 fact predict any ordinary course of action that
10 the Syrians would have taken had Canada pressed
11 any matter a little harder or made a few other
12 requests? It is simply unknown?

13 MR. LEVERETT: My answer to the
14 question wasn't based on a historical track record
15 of cases like Mr. Arar's you are right. I
16 testified yesterday I think Mr. Arar's case was
17 sui generis.

18 My answer to the question about
19 what the impact would have been if certain steps
20 had been taken by Canadian officials was based on
21 my assessment of what Syrian motives were in
22 allowing Canadian officials access to Mr. Arar in
23 the first place and on that basis how they would
24 likely have viewed other sorts of representations
25 by Canadian officials.

1 MS EDWARDH: But it is
2 significant, the observation you just made, Dr.
3 Leverett, that nothing that you said was based on
4 any historical record of performance in this
5 highly unique circumstance?

6 MR. LEVERETT: That's right,
7 because I think this case was unique.

8 MS EDWARDH: It was unique in the
9 sense that it was what?

10 MR. LEVERETT: It was unique in
11 the sense that Mr. Arar had been deported to Syria
12 by the United States relatively early in the
13 post-9/11 environment at the high point of Syrian
14 efforts to cultivate a better relationship with
15 the United States through their intelligence
16 channel with the United States. That is the set
17 of circumstances that I can't think of another
18 case in which those circumstances would be
19 reproduced.

20 MS EDWARDH: So it would be
21 entirely fair for the Commissioner to conclude
22 that in those extraordinary circumstances you have
23 described, the deportation was very closely tied
24 to U.S. efforts to obtain more information about
25 Mr. Arar and from him?

1 MR. LEVERETT: I don't know what
2 the motive was on the U.S. side for deporting
3 Mr. Arar.

4 I feel I can speak to what were
5 Syrian motives in accepting Mr. Arar and in the
6 way that they handled him.

7 MS EDWARDH: Certainly the Syrians
8 would have reasonably understood it as an
9 invitation to obtain information and send it back?

10 MR. LEVERETT: As I said
11 yesterday, I think the Syrians would have seen it
12 as an golden opportunity.

13 MS EDWARDH: I just want to
14 explore with you, you were quite certain that in
15 the early fall of 2001 --

16 MR. LEVERETT: Yes.

17 MS EDWARDH: -- CIA agents
18 travelled to Syria to open this channel.

19 Is that your evidence, sir?

20 MR. LEVERETT: That is my
21 understanding of the way the channel was
22 handled -- this has been described by U.S.
23 officials to various journalists -- was that
24 beginning late in 2001 CIA officials began
25 travelling to Damascus for meetings with Syrians

1 counterparts.

2 MS EDWARDH: Is it your
3 understanding from what representatives of the
4 administration have said, that CIA personnel, I
5 assume operational personnel --

6 MR. LEVERETT: I think they would
7 have been, yes.

8 MS EDWARDH: -- travelled on more
9 than one occasion throughout the period leading up
10 to, let's say January 2003?

11 MR. LEVERETT: Yes. I would not
12 know precisely how many trips there were, but I am
13 confident it is more than one.

14 MS EDWARDH: Can you give us any
15 indication, sir, about who would have made the
16 decision to send those individuals to Syria?
17 Where would they fit within the structure of the
18 CIA and who would be the principal decision-maker?

19 MR. LEVERETT: I would assume that
20 the decision to start this sort of relationship
21 with the Syrians would be taken at the highest
22 levels of the CIA. Probably it was in fact taken
23 as a policy decision by the administration.

24 MS EDWARDH: You will have to
25 forgive us. That language I'm sure has a great

1 deal of meaning in other contexts.

2 So at the highest levels of the
3 CIA, I go to the Director of the CIA.

4 MR. LEVERETT: Director of Central
5 Intelligence. I don't think this would have
6 happened if the Director of Central Intelligence
7 hadn't signed off on it, but I don't know that.

8 MS EDWARDH: Right. And you don't
9 know that, I suppose, because that might be a
10 matter that was confidential within the
11 administration at the time?

12 MR. LEVERETT: Almost certainly,
13 yes.

14 MS EDWARDH: But in the ordinary
15 course that would be your expectation for such a
16 significant move?

17 MR. LEVERETT: It would be, yes.

18 MS EDWARDH: So then we go up to
19 the fact that it wouldn't be the Director of the
20 CIA waking up one morning on his own saying, "Gee,
21 this is a good idea to do today." It would be as
22 a matter of policy taken under the auspices of the
23 National Security Council?

24 MR. LEVERETT: I think that is
25 probably correct.

1 MS EDWARDH: That kind of policy
2 would rest in whose hands? Would it be the entire
3 Council or would it be a subset of the Council
4 advising the President?

5 MR. LEVERETT: It could be done on
6 either basis. It could be done -- there could
7 have been a Principals Committee Meeting of the
8 National Security Council in which all of the
9 statutory members of the Council would come
10 together, this issue would be debated and
11 discussed and a decision would be taken. It could
12 have been handled on a more informal or ad hoc
13 basis by some subset. I don't know how it was
14 handled.

15 MS EDWARDH: Would an Executive
16 Order have been created? Would this be the kind
17 of decision that would produce an Executive Order
18 signed by the President?

19 MR. LEVERETT: I don't know. That
20 is a legal question, what requires an Executive
21 Order and what doesn't, and I wouldn't have any
22 expertise on that.

23 MS EDWARDH: You say, sir, that
24 despite years of involvement with the U.S.
25 administration, particularly the CIA, you feel

1 comfortable commenting on the reasons Syria would
2 receive Mr. Arar, but you have no knowledge of the
3 reasons the U.S. would have to have chosen Syria
4 as a destination once he was removed.

5 I am going to suggest to you, sir,
6 that it must be obvious that -- leave a side the
7 removal of Mr. Arar from the United States --
8 there was a choice where he could go.

9 MR. LEVERETT: Yes.

10 MS EDWARDH: He could have gone
11 to Canada because he carried a Canadian passport.
12 Correct?

13 MR. LEVERETT: Yes.

14 MS EDWARDH: He could have gone
15 back on the airplane that he arrived on to
16 Switzerland and he could have been, technically,
17 sent to Syria. So somebody made that choice.

18 What would be your understanding,
19 given the way the administration works, who would
20 have made that choice?

21 MR. LEVERETT: I honestly don't
22 know. It seems so extraordinary to me that in a
23 case like this, where Mr. Arar had Canadian
24 citizenship, Canadian authorities had indicated,
25 based on the record that I have reviewed, that

1 there was absolutely no barrier to Mr. Arar
2 returning to Canada -- under those circumstances
3 why the U.S. government would have chosen to
4 deport Mr. Arar to Syria rather than to Canada, I
5 find this extraordinary.

6 Indeed, is it so extraordinary it
7 is really hard for me to figure out who made the
8 decision.

9 MS EDWARDH: Hard for you to
10 figure out what person would have made that
11 decision?

12 MR. LEVERETT: Yes.

13 MS EDWARDH: What agency do you
14 assume would have made that decision?

15 MR. LEVERETT: At the time the
16 Immigration and Naturalization Service, which
17 handles these kinds of cases in our system, was
18 part of the Department of Justice. I don't know
19 if this decision was taken within the Department
20 of Justice's command chain or if it went beyond
21 the Department of Justice.

22 MS EDWARDH: So that ultimately
23 within the Department of Justice we end up with
24 the Attorney General, Mr. Ashcroft.

25 MR. LEVERETT: He is the head of

1 the department and it was Mr. Ashcroft at the
2 time.

3 MS EDWARDH: Yes. If in fact it
4 went outside of the department -- and I am going
5 to suggest to you it had to go outside the
6 department, because I want you to assume that Mr.
7 Arar travelled to Syria in a Gulf Jetstream
8 aircraft that was part and parcel of the groupings
9 of aircraft operated by the CIA -- if you assume
10 that fact to be true, clearly the CIA would be
11 involved as well, at an operational level
12 certainly

13 MR. LEVERETT: I don't know what
14 is true about the aircraft that carried Mr. Arar.

15 MS EDWARDH: Well, if you assume
16 that to be the case --

17 MR. LEVERETT: Okay.

18 MS EDWARDH: -- assume as a fact
19 it is true, then can you agree with me that it is
20 clear the CIA would have had to be at least
21 involved in terms of the transport?

22 MR. LEVERETT: If you can trace
23 that aircraft to the CIA, yes, that stands to
24 reason.

25 MS EDWARDH: If they had been

1 involved in the transport and facilitated the
2 arrangements, it is extremely unlikely that they
3 were not part of the decision to remove him there?

4 MR. LEVERETT: I think if that
5 were the case, then yes, they would have been
6 privy, at least, to the decision to remove him.

7 MS EDWARDH: If we assume that the
8 Syrians want to provide actionable intelligence,
9 we also would have to assume that the Americans or
10 some part of the American administration wants
11 actionable intelligence. Correct?

12 MR. LEVERETT: Yes.

13 MS EDWARDH: I am going to then
14 put to you the proposition that the channel of
15 communication and flow of information would
16 necessarily go two ways.

17 For example, if the U.S. had
18 partial information or some information about
19 Mr. Arar and wanted or hoped the Syrians would
20 complete an investigation, that in those
21 circumstances it is logical to assume the dossier
22 would have gone with Mr. Arar to Syrian Military
23 Intelligence.

24 MR. LEVERETT: I don't know what
25 the U.S. government provided the Syrians by way of

1 information on Arar

2 MS EDWARDH: Of course you don't
3 know because you don't know anything about this
4 case.

5 MR. LEVERETT: Yes.

6 MS EDWARDH: That's not my
7 question.

8 You have talked about the opening
9 and flow of information and how important it was
10 to the Syrians. We know it was important to the
11 U.S. to get actionable intelligence.

12 MR. LEVERETT: Yes.

13 MS EDWARDH: So my question is
14 very simple. Assuming that to be the case,
15 accepting your golden opportunity analysis at the
16 very beginning, is it not logical to assume that
17 any information the U.S. had would have been
18 reposed in the hands that they expected to
19 continue the investigation?

20 MR. LEVERETT: No, I don't think
21 it's logical to assume that because one of the
22 cardinal principles, cardinal concerns of the
23 intelligence business is protecting sources and
24 methods. And to the extent that the U.S.
25 government had other information on Mr. Arar, they

1 would have on a case-specific basis weighed the
2 importance of preserving the sources of that
3 information versus the prospective value of
4 sharing that information with others like the
5 Syrians who were going to be involved in the Arar
6 case from that point on.

7 I would not make an assumption one
8 way or the other about what the U.S. government
9 did in the Arar case.

10 MS EDWARDH: What is very
11 important about what you have said is that the
12 individuals who would be deciding whether to
13 transmit information to Syrian Military
14 Intelligence, whether to send some of the dossier,
15 none of the dossier or all of the dossier, would
16 be making a case-specific evaluation.

17 MR. LEVERETT: I believe that's
18 right.

19 MS EDWARDH: And they may have
20 decided to send some, none or all the information
21 they had, depending on the balance that they saw
22 at the time?

23 MR. LEVERETT: That's right.

24 MS EDWARDH: Are we correct in
25 drawing the inference from your statements earlier

1 that the channel of communications ran to Syrian
2 Military Intelligence through to General Khalil?
3 He is the person?

4 MR. LEVERETT: That's my
5 understanding, yes.

6 MS EDWARDH: And indeed, if I can
7 just ask you about the other types of cooperation,
8 it wasn't just giving information. General Khalil
9 told Washington that he would cooperate in other
10 respects.

11 That is discussed in Mr. Hersh's
12 article that I showed you yesterday.

13 MR. LEVERETT: Yes.

14 MS EDWARDH: Called "The Syrian
15 Bet".

16 MR. LEVERETT: Yes.

17 MS EDWARDH: If you just turn to
18 that article for a moment --

19 MR. LEVERETT: I'm sorry, my copy
20 of the article I had yesterday is not available at
21 the moment.

22 MS EDWARDH: It's Exhibit 261.

23 I wonder, Mr. Registrar, if you
24 could help the witness with this.

25 I would like to turn to page 4 of

1 the article.

2 MR. LEVERETT: All right.

3 MS EDWARDH: And if you look to
4 the third full paragraph, Mr. Hersh writes:

5 "Last fall, however, General
6 Hassan Khalil, the head of
7 Syria's military
8 intelligence, told Washington
9 that Syria was willing to
10 discuss imposing some
11 restrictions on the military
12 and political activities of
13 Hezbollah. The General
14 requested that the C.I.A. be
15 the means of back-channel
16 communication. A senior
17 Syrian foreign-ministry
18 official I met argued that a
19 back channel was crucial
20 because while Assad might be
21 able to take quick action
22 against Hamas and Palestinian
23 Islamic Jihad, a public
24 stance against Hezbollah
25 would be impossible."

1 Did you see that article?

2 MR. LEVERETT: Yes, I did.

3 MS EDWARDH: I know you were very
4 concerned in your own work with respect to some of
5 the forces at play in Lebanon and how they
6 affected the peace process. Were you aware that
7 General Khalil had not only offered to open the
8 channel of intelligence for information purposes
9 but had offered this other kind of control over
10 the activities of Hezbollah?

11 MR. LEVERETT: I didn't know that
12 General Khalil had made this offer, but I knew
13 that President Assad himself, in the fall of 2002,
14 made that offer because I was present at a meeting
15 with him in Damascus at which he made an offer
16 similar to the one that is outlined here and
17 attributed to General Khalil.

18 MS EDWARDH: Am I correct, sir,
19 that when you were present and President Assad
20 made this offer, one of the principal means of
21 communication about these issues was to be through
22 Syrian Military Intelligence and the CIA?

23 MR. LEVERETT: That was certainly
24 the preference on the Syrian side, to use the CIA
25 channel to handle contention bilateral issues such

1 as the question of Syria's support for Hezbollah.

2 I think the key point to make in
3 this context, though, is that in the end the
4 administration did nothing to follow up on that
5 offer.

6 MS EDWARDH: But I am interested
7 in what General Khalil or President Assad had been
8 prepared to say to garner cooperation and support
9 from U.S. authorities.

10 MR. LEVERETT: It seemed clear to
11 me that President Assad put a great deal of
12 importance on this channel. He had in many ways a
13 very positive regard for the CIA relative to other
14 parts of the administration. He also seemed to
15 have confidence that SMI was a reliable and
16 straightforward channel for him to deal with the
17 United States on these difficult issues.

18 MS EDWARDH: I am going to leave
19 that area then.

20 I want to take you to another area
21 where you have been quoted at some length.

22 Let's start again with Exhibit
23 261.

24 Yesterday in answer to a series of
25 questions posed by Mr. Boxall, and I think posed

1 by Mr. Décary, you discussed the fact that the
2 administration officials had said that reliable
3 actionable intelligence had been produced from
4 Syrian Military Intelligence during this time
5 period.

6 MR. LEVERETT: Yes.

7 MS EDWARDH: I am going to start,
8 sir, by asking generally -- I don't want to leave
9 any impression -- from your knowledge, both direct
10 and indirect from the statements of other
11 officials in the administration, would you agree
12 with me that there are two examples that have been
13 put into the public domain of such actionable
14 intelligence?

15 MR. LEVERETT: There are two that
16 I am aware of in the public domain, yes.

17 MS EDWARDH: And that you are not
18 personally aware of any other concrete examples
19 where information proved to be actionable and was
20 taken at face value by the United States and acted
21 upon and prevented some criminal conspiracy or
22 act?

23 MR. LEVERETT: That's right. I am
24 not aware of other cases other than two that I
25 know of in the public domain.

1 MS EDWARDH: And one of those
2 cases, if you turn to page 3, the first full
3 paragraph in Mr. Hersh's article --

4 MR. LEVERETT: Yes.

5 MS EDWARDH: First of all, there
6 is a discussion about the infiltration -- I'm
7 sorry, not infiltration, but that:

8 "... the Syrians had learned
9 that al-Qaeda had penetrated
10 the security services of
11 Bahrain."

12 Do you see that?

13 MR. LEVERETT: Yes.

14 MS EDWARDH: "...and had arranged
15 for a glider loaded with
16 explosives to be flown into a
17 building at the U.S. Navy's
18 5th Fleet headquarters."

19 Do you see that?

20 MR. LEVERETT: Yes.

21 MS EDWARDH: That is the first
22 example of what is in the public domain as being
23 of active relevant intelligence that was able to
24 be acted on and the action stopped.

25 MR. LEVERETT: It is the first one

1 of which I am aware, yes.

2 MS EDWARDH: Were you aware, sir,
3 of whether any of the individuals alleged to be
4 involved in that were actually arrested and tried
5 and convicted in either the United States or in
6 Bahrain or any other jurisdiction?

7 MR. LEVERETT: No, I don't know
8 that.

9 MS EDWARDH: I am not really
10 interested in the first one, I am actually
11 interested in the second one.

12 MR. LEVERETT: Okay.

13 MS EDWARDH: "The Syrians also
14 helped the United States
15 avert a suspected plot
16 against an American target in
17 Ottawa."

18 MR. LEVERETT: Yes.

19 MS EDWARDH: And that target gets
20 discussed in other newspaper articles.

21 MR. LEVERETT: Yes.

22 MS EDWARDH: You agree with me
23 that what went into the public domain was that the
24 Syrians had helped avert a suspected plot against
25 the U.S. Embassy in Ottawa.

1 MR. LEVERETT: Yes, that story has
2 been -- I have seen it reported in a number of
3 places, yes.

4 THE WITNESS: And I will take you
5 to some of the other places where it is reported.

6 Sir, do you have any direct
7 knowledge of actions taken by U.S. authorities
8 that in fact thwarted such an attempt?

9 MR. LEVERETT: No, I don't; direct
10 knowledge, no.

11 MS EDWARDH: Do you have any
12 indirect knowledge of the actions taken that
13 thwarted such an attempt?

14 MR. LEVERETT: Only what I have
15 read in the press.

16 MS EDWARDH: And what you have
17 read is that they thwarted.

18 MR. LEVERETT: Yes.

19 MS EDWARDH: With no other detail.

20 MR. LEVERETT: No.

21 MS EDWARDH: Let's go on to
22 another discussion of this, sir.

23 I have to Mr. Registrar something
24 from Democracy Now, a daily radio and TV program,
25 sir, that you participated in.

1 MR. LEVERETT: Yes.

2 MS EDWARDH: Could you provide
3 that to the witness, Mr. Registrar.

4 It is April 2nd, 2004. The cover
5 looks like this.

6 Thank you, sir. And also to the
7 Commissioner.

8 Mr. Commissioner, I would ask that
9 this be filed as the next exhibit.

10 THE COMMISSIONER: 265.

11 MS EDWARDH: Thank you, sir.

12 EXHIBIT NO. P-265:

13 Transcript of interview of
14 Flynt Leverett on Democracy
15 Now, dated April 2, 2004

16 MS EDWARDH: Do you recall being
17 interviewed on this radio program?

18 MR. LEVERETT: Yes.

19 MS EDWARDH: The interviewer was a
20 woman by the name of Amy Goodman?

21 MR. LEVERETT: That's right.

22 MS EDWARDH: And if I could invite
23 you to turn to page 8 of this interview, again you
24 are being interviewed -- you are really talking to
25 the Seymour Hersh article and she says, at page 8:

1 "Seymour Hersh has a very
2 interesting piece in the New
3 Yorker magazine last summer
4 where he quoted you, Flynt
5 Leverett. He talked about
6 how Syria also provided the
7 United States with
8 intelligence about future
9 al-Qaeda plans. In one
10 instance the Syrians learned
11 that al-Qaeda had penetrated
12 the security services of
13 Bahrain and had arranged for
14 a glider loaded with
15 explosives to be flown into a
16 building at the U.S. Navy's
17 5th Fleet headquarters there.
18 Then Sey writes that, 'Flynt
19 Leverett, a former CIA
20 analyst who served until this
21 year on the National Security
22 Council, now a Fellow at the
23 Saban Center at the Brookings
24 Institution, told us that
25 Syria let us --"

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1 And I think the word should be --
2 MR. LEVERETT: Thwart.
3 MS EDWARDH: "... thwart an
4 operation if carried out
5 would have killed a lot of
6 Americans.' The Syrians
7 helped the United States
8 avert a suspected plot
9 against an American target in
10 Ottawa." (As read)
11 MR. LEVERETT: Yes.
12 MS EDWARDH: So to the extent that
13 she is quoting Mr. Hersh and Mr. Hersh appears to
14 be quoting you, you in fact have no direct
15 knowledge of whether any such plots were thwarted.
16 MR. LEVERETT: If you look at the
17 original article by Mr. Hersh, the paragraph we
18 just reviewed a couple of minutes ago, the quote
19 that I gave to Mr. Hersh did not relate
20 specifically to any operation.
21 It said, you know, I knew from
22 other officials that the information the Syrians
23 had given us let us thwart operations.
24 I did not tell Mr. Hersh that one
25 of those operations was in Bahrain or that one of

1 them was in Ottawa.

2 MS EDWARDH: In fact, if they
3 thought you were saying that, they would be
4 mistaken because you couldn't have confirmed that.

5 MR. LEVERETT: That's right.

6 MS EDWARDH: Let me go on to one
7 last article.

8 Could you please provide the
9 witness with an article published on Friday, July
10 25th, 2003 by Mr. Robert Fife.

11 THE COMMISSIONER: 266.

12 MS EDWARDH: Thank you very much,
13 Mr. Commissioner.

14 EXHIBIT NO. P-266: Article
15 by Robert Fife, dated July
16 25, 2003

17 MS EDWARDH: Robert Fife is a
18 senior journalist in Canada, sir.

19 I know you have had a chance to
20 look at this article.

21 MR. LEVERETT: Yes, and I recall
22 my conversation with Mr. Fife.

23 MS EDWARDH: So that the others in
24 the room can place this in context, in his story
25 he writes:

1 "A network of al-Qaeda agents
2 was rounded up before it
3 could carry out a plot to
4 attack the American Embassy
5 in Ottawa, U.S. intelligence
6 sources say."

7 Sir, was that your understanding,
8 that individuals alleged to be involved in the
9 so-called plot had been rounded up? Is that what
10 you understood to be the thwarting of this
11 possible action?

12 MR. LEVERETT: Yes; that the
13 individuals involved were rounded up and that
14 meant that the plot could no longer be carried
15 out.

16 MS EDWARDH: And therefore they
17 were detained somewhere.

18 MR. LEVERETT: I would assume so,
19 but I don't know where.

20 MS EDWARDH: Then it goes on to
21 say:

22 "The Central Intelligence
23 Agency was alerted to the
24 al-Qaeda conspiracy by
25 Syria's intelligence service,

1 which has been co-operating
2 with Washington since the
3 Sept. 11 terrorist attacks,
4 sources say."

5 And then it turns to you.

6 MR. LEVERETT: Yes.

7 MS EDWARDH: "Flynt Leverett, a
8 former CIA analyst who until
9 recently served at the U.S.
10 National Security Council,
11 confirmed Thursday that a
12 suspected plot against an
13 American target in Ottawa was
14 averted, but would not
15 provide further details."

16 And that, sir, certainly seems to
17 indicate to the reader, in any event, that you
18 were in a position to confirm that there was a
19 plot and, further, that it was averted.

20 I take it, sir, for the record you
21 were not in such a position?

22 MR. LEVERETT: No. I think that
23 the way the article was written, the lead is
24 actually in some way misleading.

25 If you look at the words

1 attributed to me as quotations in this article, I
2 think the quotations are accurate. At no point in
3 this article do I say that I confirm any
4 particular plot.

5 I simply said in general terms
6 what Mr. Hersh had written in the article was
7 accurate, but I couldn't give more details.

8 MS EDWARDH: And of course the
9 reason you couldn't give more details, whenever we
10 see someone who is CIA analyst saying I can't give
11 details, you will forgive me if we tend to
12 translate that as an assertion of operational
13 confidentiality.

14 MR. LEVERETT: I understand that.
15 If you look at the date, it was relatively early
16 in my post-government life and I was still
17 learning how to talk to the press in a nuanced and
18 clear way.

19 MS EDWARDH: Certainly your
20 refusal, if that's what it was, to give further
21 details reflected none other than the absence of
22 knowledge?

23 MR. LEVERETT: That's right.

24 MS EDWARDH: So then when we go
25 down to the quotes, about halfway down, to give it

1 some context -- and that is something I want to
2 also put to you.

3 "RCMP Insp. Andre Guertin
4 said the force has no
5 knowledge of any terrorist
6 plot to assault the embassy.
7 Sources would not give a time
8 frame for the attack nor say
9 whether it involved a bomb,
10 but credited Syrian
11 intelligence for alerting the
12 CIA which passed on the
13 information to Canadian
14 authorities."

15 And of course that would be Syrian
16 Military Intelligence because that is the channel.

17 MR. LEVERETT: I imagine so, yes.

18 MS EDWARDH: And this revelation
19 then gets attributed, first of all, to Mr. Hersh
20 and then you are quoted as saying what Hersh had
21 in the article "I can confirm is accurate, but I
22 can't really go further than that".

23 Indeed, sir, other than to know
24 that Seymour Hersh has good sources, you are not
25 in a position to confirm it was accurate.

1 MR. LEVERETT: That's right. And
2 also I mean to confirm the basic fact that the
3 Syrians were providing intelligence.

4 MS EDWARDH: Yes, but whether it
5 was accurate intelligence and whether it involved
6 a plot on the embassy in Ottawa, you didn't know?

7 MR. LEVERETT: I didn't know about
8 specific plots, no.

9 MS EDWARDH: And then you are
10 quoted, if you just go down a little further:

11 "'The reports we got exceeded
12 (CIA) expectations, both in
13 quantity and quality, and
14 several of them turned out to
15 be actionable.'"

16 We know that there are really
17 these two.

18 "'We actually could do things
19 to stop operations from going
20 down on the basis of what the
21 Syrians told us,' Leverett
22 said. 'We could break up
23 networks. Bad guys got
24 arrested. It was useful
25 stuff.'"

1 In fact, sir, you have no direct
2 knowledge that in respect of Ottawa, any bad guys
3 got arrested, charged or prosecuted anywhere in
4 the world?

5 MR. LEVERETT: No, I don't.

6 MS EDWARDH: I want to take you to
7 another article, much more recent.

8 Could you please provide the
9 witness with an article entitled "Seymour Hersh on
10 Arar", dated October 21, 2005, in the Ottawa
11 Citizen.

12 MR. LEVERETT: I have that
13 article.

14 MS EDWARDH: The Registrar will
15 hand it to the Commissioner so he can follow where
16 we are going, Dr. Leverett.

17 THE COMMISSIONER: 267.

18 MS EDWARDH: Thank you very much,
19 Mr. Commissioner.

20 EXHIBIT NO. P-267: Ottawa
21 Citizen article entitled
22 "Seymour Hersh on Arar",
23 dated October 21, 2005

24 MS EDWARDH: Just a brief
25 reference here.

1 This whole story of the U.S.
2 Embassy in Ottawa seems to have, at least in the
3 public record, originated with Mr. Hersh?

4 MR. LEVERETT: I don't know of a
5 previous report on it.

6 MS EDWARDH: No. I couldn't find
7 one either, nor did I find any other American
8 official that you really couldn't trace back to
9 this original discussion, given your answers
10 today.

11 Leaving that aside, this is
12 Mr. Hersh in 2005.

13 MR. LEVERETT: Yes.

14 MS EDWARDH: And the question is
15 in the second paragraph referring to Mr. Hersh:

16 "That 2002 story he wrote
17 about an alleged plot to blow
18 up the U.S. Embassy in
19 Ottawa.

20 A. I don't believe it any
21 more, he says, adding it was
22 based on Syrian gathered
23 intelligence. At that time
24 Syria was very credible with
25 us and we were credible with

1 them." (As read)

2 I take it, assuming this is the
3 case, you would have no doubt that Mr. Hersh no
4 longer puts any credence in that intelligence that
5 came?

6 MR. LEVERETT: That's what he
7 says.

8 MS EDWARDH: Do you have any
9 reason to disagree with him?

10 MR. LEVERETT: No.

11 MS EDWARDH: The reason I asked
12 that question, if I can just go back, is we have
13 some fairly strong indications of the origin of
14 this story. Let me put a couple of facts to you
15 and then I am going to take you to a couple of
16 document, sir.

17 In November 2001, a gentleman by
18 the named Ahmed El Maati, who is a Canadian
19 citizen and Kuwaiti born, was arrested and
20 detained in Syria by the Syrian Military
21 Intelligence. And it won't surprise you that
22 he -- well, by the Syrian Military Intelligence.

23 He had prior to that, in August of
24 2001, been stopped crossing the Canadian-U.S.
25 border entering the U.S., where he was found in

1 possession of a map which was located in his
2 delivery truck. That map was at first thought to
3 be of several sensitive government sites.

4 We have an exhibit. Could you
5 please hand the witness Volume 7.

6 THE COMMISSIONER: This is of
7 P-42?

8 MS EDWARDH: No, it is not,
9 Mr. Commissioner. It is public exhibit -- not 42.
10 It is the El Maati chronology, and I have it as
11 public Exhibit 255.

12 I would also want 257 for the
13 witness, as well.

14 If you turn to pages 9 and 10,
15 Mr. El Maati describes his detention and
16 interrogation at the hands of Syrian Military
17 Intelligence in the following terms.

18 I am going to start three
19 paragraphs down, beginning with "Ahmed broke
20 down".

21 Do you see that?

22 MR. LEVERETT: Yes.

23 MS EDWARDH: "... and agreed to
24 say what they wanted him to
25 say. He was asked about any

1 Syrians he knew, including
2 Arar. Ahmed explained that
3 he did not know him well and
4 met him briefly in a garage
5 when he had worked in
6 Montreal in 1998. He was
7 also asked about Almalki and
8 he told them he knew him, but
9 not well, and had once asked
10 Almalki for advice on
11 obtaining a Syrian visa. The
12 Syrian interrogators wanted
13 Ahmed to say he had seen both
14 of them in Afghanistan,
15 although he had only seen
16 Almalki there in passing and
17 had not spoken with him. In
18 the end Ahmed said what he
19 thought they wanted him to
20 say, that he had seen them
21 both in Afghanistan. He was
22 shown pictures of other
23 people, but he did not
24 recognize any of them. They
25 told him his brother Amir --"

1 Do you know that name, Amir El
2 Maati? Are you familiar with it?
3 MR. LEVERETT: I don't think so.
4 MS EDWARDH: Let me go on.
5 "They he told him his brother
6 Amir sent him instructions
7 from Afghanistan to take
8 flying lessons so he could
9 recruit Ahmed into al-Qaeda.
10 They told him that Amir
11 wanted Ahmed to prepare for a
12 suicide attack using an
13 airplane. Ahmed said this
14 did not make any sense
15 because he had quit the
16 lessons. The Syrians
17 eventually agreed that this
18 did not make sense and said
19 Amir wanted Ahmed to launch a
20 suicide attack using a truck
21 full of explosives. When
22 Ahmed agreed to falsely
23 confess to this, they told
24 him they wanted him to
25 confess that Amir sent him a

1 map of Ottawa and said the
2 target would be the U.S.
3 Embassy in Ottawa. Ahmed did
4 not want to be turned over to
5 the U.S. so he falsely
6 confessed that he was
7 supposed to pick his own
8 target and decided on the
9 Parliament Buildings.
10 Neither the Parliament
11 Buildings nor the U.S.
12 Embassy are on the map, which
13 only shows an area west of
14 the downtown core. His
15 interrogators seemed pleased
16 with his false confession.
17 They asked him who would help
18 him he said that he don't
19 know and that Amir would take
20 care of this. They seemed to
21 accept this."

22 Then down, if I could, skip two
23 paragraphs:

24 "They wanted Ahmed to write
25 out their version of the

1 story in front of him but he
2 was having trouble thinking
3 and was moving too slowly.
4 They were angry that Ahmed
5 with a so slow and continued
6 to torture him and he
7 suggested that they write it
8 and he would sign it. The
9 interrogators wrote the story
10 for him over several days and
11 when it was finished made him
12 put his thumb print on and
13 sign it. Ahmed was not
14 permitted to read the final
15 document." (As read)

16 I am going to suggest to you, sir,
17 that given the date. that is exactly the kind of
18 evidence that could well have been sent through
19 Syrian Military Intelligence pronouncing upon the
20 existence of a plot to blow up the U.S. Embassy in
21 Canada.

22 MR. LEVERETT: It could have been.

23 MS EDWARDH: I am just going to
24 finish this one last area. We know today that the
25 Syrians had the map -- at least that is what this

1 interrogation says -- and that map would have
2 fallen into U.S. hands when Mr. El Maati crossed
3 the border.

4 So if the Syrians had the map and
5 it fell into U.S. hands when he crossed the
6 border, can you not agree with me that the obvious
7 inference is that the Syrians provided information
8 for the interrogation?

9 MR. LEVERETT: That's possible.

10 MS EDWARDH: I'm sorry, the
11 Americans provided information for the
12 interrogation. That is how the map would get
13 there.

14 MR. LEVERETT: That's possible.

15 MS EDWARDH: And at the end of the
16 day, just to finish this story, if I could,
17 Mr. Commissioner, there is one other article that
18 I want to briefly refer to.

19 It is written by Jeff Sallot and
20 Colin Freeze, published on September 6, 2005.

21 THE COMMISSIONER: Do we need
22 Exhibit 267?

23 MS EDWARDH: We do; thank you.

24 For your reference, Exhibit 257,
25 at the very end of that tab, Mr. Leverett, is this

1 map.

2 MR. LEVERETT: All right.

3 MS EDWARDH: I just want to turn
4 it up to take a peek.

5 THE COMMISSIONER: Should we mark
6 Mr. Salad's article as the next exhibit?

7 MS EDWARDH: I would ask that that
8 be done, Mr. Commissioner.

9 THE COMMISSIONER: 268.

10 EXHIBIT NO. P-258: Article
11 written by Jeff Sallot and
12 Colin Freeze, published
13 September 6, 2005

14 MS EDWARDH: Mr. Sallot and Colin
15 Freeze are well-known journalists in this country,
16 and in pursuit of this story of the map they
17 determined -- and let me take you down to the
18 fourth paragraph. We will start there.

19 "'All my problems started
20 with that map,' says Mr. El
21 Maati, who was interrogated
22 about the document while held
23 in filthy prisons in Syria
24 and Egypt, where he says he
25 was tortured to extract

1 information for Canadian
2 authorities.
3 There is nothing secret about
4 the map. The existence of
5 the nuclear facilities and
6 the virus labs at Tunney's
7 Pasture was never a secret.
8 Moreover, they were gone from
9 Tunney's Pasture long before
10 the map aroused the
11 suspicions of U.S. customs
12 agents when they stopped Mr.
13 El Maati's truck at the
14 border at Buffalo in August
15 of 2001.
16 Yet in the past four years,
17 the 'terrorist map' has taken
18 on almost mythic qualities.
19 It has figured in various
20 leaked accounts describing
21 thwarted al-Qaeda plots to
22 blow up targets in Ottawa,
23 including the Parliament
24 Buildings and the U.S.
25 embassy."

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1 Indeed that map, we know today, is
2 a government map issued by the government of a
3 government complex.

4 MR. LEVERETT: Right.

5 MS EDWARDH: So my comment is --
6 and I will ask you just to reflect on it and give
7 your observations: If this is the first of two
8 incidents where Syrian Military Intelligence
9 eagerly provided actionable intelligence, it's a
10 pretty sorry state of affairs, is it not?

11 MR. LEVERETT: If this is all
12 there is, yes, it would not make much of a case.

13 MS EDWARDH: And indeed it is
14 obtained in circumstances, if you read the
15 description of Mr. El Maati's torture, where one
16 might reasonably conclude one would say anything
17 to bring relief from the distress he faced?

18 MR. LEVERETT: That certainly
19 would be plausible.

20 MS EDWARDH: Just a couple of last
21 areas, Dr. Leverett, if I could.

22 In answer to a question posed by
23 Mr. Décary, you said that you reviewed the record
24 that you were provided and that you were unable to
25 suggest that the Ambassador and Leo Martel took

1 any step they should not have taken.

2 MR. LEVERETT: Yes.

3 MS EDWARDH: Or didn't take any
4 step they ought to have taken.

5 Do you recall that testimony?

6 MR. LEVERETT: Yes.

7 MS EDWARDH: First of all, I want
8 to understand what the standard is you used.

9 Was it in order to obtain his
10 release? Was it in order to ensure the best of
11 consular services? Was it in order to ensure the
12 maintenance of his health or wellbeing? Or were
13 you simply saying in order to effect his release?

14 MR. LEVERETT: I would say my
15 statement about the effectiveness of their
16 actions, my assumption was that there were two
17 objectives. One was ultimately to secure his
18 release, and the second would be, for whatever
19 period he was incarcerated, to minimize to the
20 extent possible his ordeal.

21 MS EDWARDH: Right. So then let
22 me take those two issues briefly. You will
23 concede, I take it, that you have had only one
24 experience in dealing with a detained American
25 citizen, and that was with the government of

1 Egypt.

2 MR. LEVERETT: Yes.

3 MS EDWARDH: And it is only in
4 that case were you actively involved in actions or
5 advising on steps that might be used to secure
6 that person's release?

7 MR. LEVERETT: Yes.

8 MS EDWARDH: And their wellbeing.

9 MR. LEVERETT: Yes.

10 MS EDWARDH: You will agree with
11 me, sir, that there are many people in the U.S.
12 working in consular services who have vastly more
13 experience than you do?

14 MR. LEVERETT: There are certainly
15 people in the U.S. government who have vastly more
16 experience than I do with the day-to-day business
17 of doing consular visits, doing consular access.

18 My experience on the case you
19 referred to was at the policy level involving the
20 actual engagement of the President of the United
21 States in this matter.

22 MS EDWARDH: Were you successful?

23 MR. LEVERETT: Yes, we were.

24 MS EDWARDH: How long did it take?

25 MR. LEVERETT: I can't recall

1 precisely, but it would have been well over a
2 year.

3 MS EDWARDH: And are you in a
4 position to publicly identify the person who you
5 gave advice about and urged steps to be taken in
6 respect of?

7 MR. LEVERETT: Yes. The person
8 was Saad Eddin Ibrahim. He is an
9 Egyptian-American, academic, civil rights, human
10 rights activist, very, very well-known
11 internationally.

12 MS EDWARDH: And you will of
13 course agree with me that there was nothing
14 about -- he is a professor. Right?

15 MR. LEVERETT: Yes.

16 MS EDWARDH: There was nothing
17 about Professor Ibrahim's record that would have
18 ever given rise to a single suggestion that he
19 might be someone implicated in activities that
20 would affect the security of the Egyptian state?

21 MR. LEVERETT: That was not the
22 position that the Egyptian government took
23 relative to him.

24 MS EDWARDH: I appreciate that.
25 But there is a world of difference between

1 suspecting someone as a member of the Muslim
2 Brotherhood or al-Qaeda and suspecting they are an
3 academic who speaks out and promotes free speech.

4 MR. LEVERETT: Yes, although those
5 weren't the charges on which Professor Ibrahim was
6 brought up and convicted.

7 MS EDWARDH: Was he actually taken
8 to trial?

9 MR. LEVERETT: Yes.

10 MS EDWARDH: And did you assist
11 his counsel and others in providing information to
12 defend him in the tribunal that he stood trial?

13 MR. LEVERETT: No, but there was
14 an -- he was tried in Egypt, and the U.S. Embassy
15 in Cairo was providing consular access, consular
16 assistance to him and his family during this
17 period.

18 MS EDWARDH: And his lawyer.

19 MR. LEVERETT: I don't know for
20 sure about relations between U.S. diplomats and
21 his lawyer.

22 MS EDWARDH: I am going to suggest
23 to you it would be standard fare to provide
24 whatever assistance his lawyer might need if that
25 information that the lawyer had was available to

1 the U.S.

2 MR. LEVERETT: Probably.

3 MS EDWARDH: In any event, you
4 will agree with me that Egypt is a different place
5 than Syria?

6 MR. LEVERETT: Yes.

7 MS EDWARDH: And U.S. interests
8 and power in Egypt are very different than they
9 are in Syria?

10 MR. LEVERETT: Yes.

11 MS EDWARDH: And that while you
12 had this involvement in this particular case, you
13 would not hold yourself out as an expert in
14 consular relations with respect to security
15 detainees.

16 MR. LEVERETT: No.

17 MS EDWARDH: In this case, sir,
18 you were candid yesterday and indicated you
19 certainly had not read the entire record involving
20 the consular services. You have been given one
21 volume of documents?

22 MR. LEVERETT: That's correct. I
23 have read what was provided to me.

24 MS EDWARDH: Do you have that
25 volume with you today, sir?

1 MR. LEVERETT: Yes, I do.

2 MS EDWARDH: Have you made
3 personal notes in that volume, sir?

4 MR. LEVERETT: Not this copy, no.

5 MS EDWARDH: Mr. Commissioner, for
6 your record and to ensure that you have clear
7 evidence of the limited nature of the witness'
8 documentary review, I would ask that at least the
9 pages that he has -- that the index to the
10 document be filed as an exhibit.

11 THE COMMISSIONER: I think we
12 marked it yesterday, did we not?

13 MS EDWARDH: I don't believe we
14 marked it.

15 THE COMMISSIONER: We didn't mark
16 it as an exhibit because it was handed up.

17 MS EDWARDH: Yes, but I think it
18 should be marked as an exhibit.

19 THE COMMISSIONER: I agree with
20 you.

21 That will be 269.

22 THE REGISTRAR: That will be the
23 entire document, the appendix with the
24 documentation?

25 MS EDWARDH: All the documents are

1 in --

2 THE COMMISSIONER: Are in the
3 record.

4 If you provide us with the book,
5 sure.

6 MS EDWARDH: We can use the one
7 the witness has as long as it doesn't have
8 personal working notes in it. I am content that
9 we mark it as the next exhibit.

10 THE COMMISSIONER: So the book
11 will be marked as Exhibit 269.

12 There are no notes in it?

13 MR. LEVERETT: No.

14 THE COMMISSIONER: Thank you.

15 EXHIBIT NO. P-269: Appendix
16 A - Index of Documents for
17 Expert's Review

18 MS EDWARDH: So I take it, sir,
19 that your determination of what was appropriate or
20 not appropriate rests on the footing you have
21 described. And let me put two propositions to
22 you.

23 None of us know precisely the date
24 that the Syrians had really finished their
25 investigation.

1 MR. LEVERETT: That's true.

2 MS EDWARDH: We know from
3 Mr. Arar, from his public statements -- and there
4 is no dispute -- that the intensive interrogation
5 of him took place while he was held incognito
6 before the Canadians ever saw him?

7 MR. LEVERETT: That is Mr. Arar's
8 testimony, yes.

9 MS EDWARDH: It is his public
10 statements. He has not yet had the opportunity to
11 testify.

12 MR. LEVERETT: Sorry, public
13 statements.

14 MS EDWARDH: It may well be that,
15 as a matter of practical fact, the Syrians had
16 finished with him at end of those two weeks. We
17 don't know that.

18 MR. LEVERETT: We don't know that,
19 that's correct.

20 MS EDWARDH: There is no
21 suggestion that General Khalil, if he had found a
22 reason to say it, may have misrepresented a range
23 of things to the Canadians.

24 It may have been convenient for
25 him to say we are now investigating the Muslim

1 Brotherhood when in fact they have no real
2 investigation going on.

3 MR. LEVERETT: I was going by what
4 was in the documentary record I reviewed, and it
5 struck me from that review that along about
6 December of 2002 the nature of stated Syrian
7 concerns about Mr. Arar had shifted.

8 MS EDWARDH: I don't disagree,
9 sir. That's what he said.

10 MR. LEVERETT: Yes.

11 MS EDWARDH: My only and singular
12 point is whether it is true or not is a matter of
13 speculation.

14 MR. LEVERETT: Yes.

15 MS EDWARDH: That one would take
16 anything that General Khalil said with a big grain
17 of salt, depending on whether you could identify
18 the purpose for which he was giving that
19 information?

20 MR. LEVERETT: I would take it as
21 a given that in a diplomatic exchange you are
22 always taking what the other side says with that
23 sort of grain of salt.

24 MS EDWARDH: I'm not asking about
25 all diplomatic exchanges, I'm talking about this

1 man who ran Syrian Military Intelligence, his
2 purposes as you have understood them.

3 I am only going to suggest to you,
4 sir, that one would have to take anything he said
5 with a big grain of salt.

6 MR. LEVERETT: Yes.

7 MS EDWARDH: He has presided over
8 an agency that has brutalized persons --

9 MR. LEVERETT: Yes.

10 MS EDWARDH: -- and indeed is
11 today identified as one of a handful belonging to
12 the conspiracy that went out and did execute the
13 former Prime Minister of Lebanon?

14 MR. LEVERETT: That is a clear
15 implication of Mr. Mehlis' first report, yes.

16 MS EDWARDH: Now we know that
17 General Khalil seem to have been part of that
18 criminal conspiracy?

19 MR. LEVERETT: There is --

20 MS EDWARDH: Some evidence.

21 MR. LEVERETT: At least in the
22 interim report there is one witness who testifies
23 to that.

24 MS EDWARDH: So this is not the
25 kind of man in any respect that one would assume

1 would have honourable dealings with you?

2 MR. LEVERETT: I think General
3 Khalil's record is well understood and speaks for
4 itself.

5 MS EDWARDH: Yes, as do I.
6 One of the troubling things that
7 you made observations about -- I want to just
8 finish one other comment.

9 Since we don't know when the
10 Syrians were really finished their
11 investigation --

12 MR. LEVERETT: Yes.

13 MS EDWARDH: -- I take it, sir,
14 there is nothing you can say -- you have agreed
15 with me that at some point in time they had a
16 conclusion that they were safe from Mr. Arar?

17 MR. LEVERETT: Yes.

18 MS EDWARDH: We don't know when
19 that point is?

20 MR. LEVERETT: Yes.

21 MS EDWARDH: So you can't assist
22 the Commissioner at all in saying that had a
23 letter from the Prime Minister been delivered
24 earlier, that might have resulted in his release
25 earlier?

1 You can't say that?

2 MR. LEVERETT: Well, all I can say
3 is based on the documentary record that I
4 reviewed. If I am recalling correctly, the Prime
5 Minister sent his letter to President Assad in --
6 was it July?

7 MS EDWARDH: End of July.
8 July 22nd.

9 MR. LEVERETT: -- and Mr. Arar was
10 released several months later --

11 MS EDWARDH: October 4th.

12 MR. LEVERETT: -- in October.

13 So it seems to me that on that
14 basis, given that the response to the Prime
15 Minister's letter was not, I think by any
16 reasonable standard, immediate or prompt, I think
17 that what really was driving the time line here
18 was the Syrians reaching the conclusion that they
19 in fact had no reason to worry about Mr. Arar.
20 Then, at that point, the Prime Minister's letter
21 being on the table provided them with a relatively
22 easy way out.

23 MS EDWARDH: All I really want to
24 establish, sir, is while you are familiar with the
25 forces that move Syrian-U.S. relations, and some

1 extent the Syrian government, whether the five
2 weeks or six weeks between the receipt of the
3 letter and the actual release --

4 MR. LEVERETT: I think it was
5 longer than that.

6 MS EDWARDH: I'm sorry, July 22nd
7 to October 4th.

8 MR. LEVERETT: Okay.

9 MS EDWARDH: So let's say six
10 weeks.

11 Is that nine weeks?

12 MR. LEVERETT: Nine weeks.

13 MS EDWARDH: I'm sorry, yes, I
14 have left out a month. My apologies.

15 But whether this was filled with
16 any consideration by the Syrians is purely
17 speculative. You can't know that it wasn't a
18 matter of inconvenience, their distraction, they
19 hadn't gotten around to it yet?

20 MR. LEVERETT: There could be
21 other factors in play.

22 MS EDWARDH: Right. That is my
23 point.

24 A couple of last areas.

25 You said that it was quite

1 appropriate, and I want to understand you, for
2 Ambassador Pillarella or Leo Martel to assume that
3 no torture had occurred.

4 MR. LEVERETT: What I said was
5 that I did not think when they first met Mr. Arar
6 that going into that meeting that they could
7 reasonably assume that Mr. Arar had been tortured.

8 MS EDWARDH: So that going into
9 the meeting they could not assume it?

10 MR. LEVERETT: They could not
11 assume it.

12 MS EDWARDH: So it wouldn't be an
13 operational assumption, given the circumstances?

14 MR. LEVERETT: I would think you
15 might well have it in mind as a distinct
16 possibility, but I would not assume that it had
17 happened, given the circumstances of Mr. Arar's
18 deportation to Syria/

19 MS EDWARDH: It seems to me you
20 can go into the meeting with one of two states of
21 mind. The first is, given what one knows about
22 the human rights record, given the fact that there
23 is a reasonable possibility that he has been held
24 incognito, given the fact he has been labelled as
25 al-Qaeda, and given the fact that the U.S. has

1 sent him there for investigation, that one could
2 assume he is at the highest risk of having been
3 tortured?

4 MR. LEVERETT: Yes.

5 MS EDWARDH: Would you agree
6 with that?

7 MR. LEVERETT: That would be one
8 assumption one could make, yes.

9 MS EDWARDH: Would that not be
10 a reasonable assumption given the environment at
11 the time?

12 MR. LEVERETT: I think weighing
13 against that assumption would be another set of
14 facts, namely that Mr. Arar's deportation to Syria
15 by the United States was highly unusual, a highly
16 unusual initiative. The decision to accept
17 Mr. Arar by the Syrians was almost certainly taken
18 at a very high level -- I believe I testified
19 yesterday I think the decision was taken at least
20 at the level of General Khalil, if not higher --
21 and that on that basis you could reasonably assume
22 that it was General Khalil who was setting the
23 parameters for Mr. Arar's treatment.

24 MS EDWARDH: You might assume that
25 General Khalil, being who he was, would: One, use

1 torture; and two, try to make it as invisible as
2 possible.

3 MR. LEVERETT: You could assume
4 that General Khalil might also, depending on what
5 kinds of conversations he had had with American
6 authorities, depending on, you know, what the
7 state of play was in the U.S.-Syrian
8 intelligence-sharing relationship, that General
9 Khalil might well have given orders in that
10 situation that Mr. Arar not be tortured.

11 I am not speaking to the reality
12 of what actually happened to Mr. Arar, I am say
13 that for those diplomats going into that initial
14 meeting I don't think it was reasonable for them
15 to assume that Mr. Arar had been tortured.

16 MS EDWARDH: Do you think they had
17 any idea that the U.S. was opening intelligence
18 channels through the CIA, that this was a -- do
19 you think the Canadian diplomat, the consular
20 service representative had a clue that that was
21 going on?

22 MR. LEVERETT: I don't know what
23 they knew or didn't know. I do know that by the
24 fall of 2002 the fact of a U.S.-Syrian
25 intelligence-sharing relationship had become a

1 matter of public record through press reports.

2 MS EDWARDH: So if I sound
3 incredulous it is only because, Dr. Leverett, it
4 does seem to me that the CIA is the last agency
5 one would look to to put boundaries around
6 coercive interrogation.

7 MR. LEVERETT: I know from press
8 reports that there are U.S. officials who have
9 said that for suspects who are rendered that the
10 U.S. government seeks assurances about the
11 conditions of their treatment.

12 I don't know if that is accurate
13 or not.

14 MS EDWARDH: So let's deal with
15 it.

16 The U.S. press reports say the
17 purpose of rendering is aggressive interrogation
18 for actionable intelligence. They also say that.

19 MR. LEVERETT: Okay.

20 MS EDWARDH: You have seen those
21 press reports.

22 MR. LEVERETT: Yes.

23 MS EDWARDH: We just read some of
24 them together.

25 MR. LEVERETT: Yes.

1 MS EDWARDH: Indeed, if you read
2 one of your colleagues, Michael Schurr's
3 articles --

4 DR. LEVERETT: Yes.

5 MS EDWARDH: -- he makes it
6 adamantly and absolutely clear that that is what
7 it was about.

8 MR. LEVERETT: Okay. Yes, he
9 does.

10 MS EDWARDH: Although it had the
11 highest approval in the --

12 MR. LEVERETT: That is one of the
13 thrusts of his writing, yes.

14 MS EDWARDH: Okay.

15 So if we get to the question,
16 then, of the U.S. CIA approach to extraordinary
17 rendition, is it your evidence, sir, that you
18 accept, as an observer of your government, and
19 someone who was inside it for years, that those
20 renditions occurred without an expectation of any
21 interrogation that used aggressive techniques and
22 torture?

23 Is that what you are saying?

24 MR. LEVERETT: I don't know what
25 the expectations were. I don't know if the same

1 expectations were in place for all cases. If
2 there were cases where assurances might have
3 sought regarding the treatment of people who were
4 rendered, other cases where those assurances
5 weren't sought.

6 MS EDWARDH: Right, okay. We have
7 your evidence in that respect.

8 Let me ask you a couple of
9 questions about assurances.

10 Do you know what assurances are?

11 MR. LEVERETT: In a conceptual
12 sense, yes. The idea is that when the U.S.
13 rendered someone they might seek assurances from
14 the government that was receiving the person about
15 the conditions under which that person would be
16 detained, the kind of treatment that person would
17 receive while he was in custody.

18 MS EDWARDH: The assurance
19 theoretically is one that the person will not come
20 into harm's way?

21 MR. LEVERETT: Yes.

22 MS EDWARDH: Of course I am going
23 to suggest to you, sir, that assurances are
24 diplomatic in character. Correct?

25 MR. LEVERETT: They would be

1 verbal in character. I don't know if those would
2 be done through diplomatic channels or through
3 some other channel.

4 MS EDWARDH: You have no idea
5 whether or not the CIA phones up the Syrian
6 Military Intelligence and says, "We are shipping
7 him out to you but, by the way, be nice", or
8 whether it goes to the Department of State to the
9 foreign nation in question?

10 MR. LEVERETT: I have no idea how
11 those communications would be conducted.

12 MS EDWARDH: You have no idea
13 whether there is any mechanism to monitor the
14 treatment of a persons?

15 MR. LEVERETT: I do not know that.

16 MS EDWARDH: So I take it, sir,
17 you are not in a position to say anything about
18 whether assurances are given, how they are
19 monitored and who is responsible for them in the
20 U.S. government?

21 MR. LEVERETT: That's right, I do
22 not know.

23 MS EDWARDH: One last area, if I
24 could, Mr. Commissioner. I know I'm over my hour.

25 THE COMMISSIONER: That's okay.

1 MS EDWARDH: I want to talk about
2 the "bout de papier", which is what Mr. Arar
3 sought from the Syrian Military Intelligence in
4 order to effect its return to Canada.

5 I take it, sir, what your evidence
6 is, it was quite appropriate for the Ambassador to
7 seek out information from Mr. Arar's interrogation
8 to the return it to the Canadian authorities?

9 MR. LEVERETT: I think it was
10 appropriate for Ambassador Pillarella to do
11 everything he could to understand Syrian
12 perceptions of this case, to understand what
13 Syrian thresholds of concern were about Mr. Arar.

14 Without understanding that kind of
15 thought process or valuation on the Syrian side,
16 how are Canadian authorities to be in a position
17 to devise some kind of effective strategy or
18 approach for securing Mr. Arar's release?

19 MS EDWARDH: I take it, then, the
20 bottom line is, it is your understanding that it
21 is appropriate for Mr. Pillarella to have done
22 this in order to fully engage the Government of
23 Canada in an informed effort to seek his return
24 and to best advance Mr. Arar's interest within the
25 framework of consular services?

1 MR. LEVERETT: I would consider
2 that a very reasonable and prudent basis for
3 Ambassador Pillarella to have taken this
4 information.

5 MS EDWARDH: But that is the basis
6 you understand he took it? That is why you are
7 giving it your imprimatur. Correct?

8 MR. LEVERETT: Yes.

9 MS EDWARDH: I take it if the
10 information contained in the "bout de papier" was
11 information that the Government of Canada could
12 cast some different light on, could provide a
13 context that was less alarming or concerning, or
14 provide other evidence, you would have expected
15 that there be some dialogue then using the "bout
16 de papier" to advance the government's interest in
17 securing Mr. Arar's release?

18 MR. LEVERETT: You would have to
19 make a judgment. Given what you could put
20 together and assess about Syrian perceptions of
21 the Arar case you would need to make a judgment:
22 Given how the Syrians are viewing this, what is
23 likely to be the most effective approach to
24 getting them to release him?

25 MS EDWARDH: Of course. You would

1 weigh and balance it.

2 MR. LEVERETT: Yes.

3 MS EDWARDH: Yes. I appreciate
4 that.

5 But that is the object of the
6 exercise?

7 MR. LEVERETT: I would think
8 so, yes.

9 MS EDWARDH: If Mr. Arar was going
10 to stand trial and the Government of Canada knew
11 that perhaps there was information in Canada that
12 could rebut an allegation, then you would
13 understand it appropriate that the diplomatic
14 service, through Consular Affairs, would ensure
15 that he had a lawyer, his lawyer had the necessary
16 information, so that if a trial did take place
17 that counsel was armed with that information?

18 MR. LEVERETT: I would think that
19 Canadian diplomats would want to do whatever they
20 legally and appropriately could to assist Mr. Arar
21 in getting out.

22 MS EDWARDH: If I could have your
23 indulgence, Mr. Commissioner.

24 --- Pause

25 MS EDWARDH: Dr. Leverett, thank

1 you for your patience.

2 Those are my questions,
3 Mr. Commissioner

4 THE COMMISSIONER: Thank you,
5 Ms Edwardh.

6 MR. LEVERETT: Thank you.

7 THE COMMISSIONER: Mr. Cavalluzzo.

8 EXAMINATION

9 MR. CAVALLUZZO: Dr. Leverett, I
10 am Commission counsel and I have a number of
11 questions for you, but relating to, in particular,
12 your comments relating to Mr. Arar and his
13 situation in Syria and your speculations as to
14 what occurred.

15 I just want to give some context
16 to my questions. I want to, in effect, very
17 briefly summarize your analysis in respect of the
18 post-9/11 events and what led to some of your
19 opinions relating to the Syrian Military
20 Intelligence and Mr. Arar.

21 MR. LEVERETT: All right.

22 MR. CAVALLUZZO: I'm not going to
23 go to what happened before 9/11, but you told us
24 after 9/11 that within weeks the new President
25 offered to share information with the United

1 States and you told us that the information was
2 going to relate to al-Qaeda and related groups and
3 that the relationship would be, or the channel of
4 information would be the SMI, the Syrian Military
5 Intelligence on the Syrian end and the Central
6 Intelligence Agency on the American end.

7 You told us, you went on -- just
8 if you could say yes?

9 MR. LEVERETT: Yes, that is all
10 correct.

11 MR. CAVALLUZZO: As you talked
12 about yesterday and this morning, this led to what
13 some American said was excellent intelligence
14 which thwarted certain attacks, which we talked
15 about this morning.

16 MR. LEVERETT: The administration
17 officials have spoken publicly to that effect.

18 MR. CAVALLUZZO: Right.'

19 You told us that from the Syrian
20 perspective they were using this sharing of
21 intelligence in order to leverage further
22 cooperation with the U.S.?

23 MR. LEVERETT: Yes.

24 MR. CAVALLUZZO: Okay.

25 Now, you told us that at the end

1 of the day that -- and we will come to the War in
2 Iraq -- but really the sharing of information
3 didn't really crystallize into a formal
4 cooperation, or more cooperation between the
5 Syrians and the Americans because within the U.S.
6 government itself there was dissent relating to
7 any close relationship with Syria.

8 MR. LEVERETT: That is correct.

9 MR. CAVALLUZZO: In fact in your
10 book you tell us that the dissenters are what are
11 referred to the neoconservatives or the neocons
12 like Wolfowitz, Cheney and Rumsfeld.

13 MR. LEVERETT: Yes.

14 MR. CAVALLUZZO: So that from the
15 aspect of more cooperation with Syria there was
16 certainly a backstop there within the U.S.
17 government which was discouraging this kind of
18 close relationship?

19 MR. LEVERETT: Yes, the
20 administration was internally divided on the
21 question.

22 MR. CAVALLUZZO: It is probably
23 fair to say that the Syrians were aware of the
24 views of the neocons, so that they would realize
25 that this further cooperation was going to be

1 difficult to achieve?

2 MR. LEVERETT: There was, I would
3 say, a learning curve about that on the Syrian
4 side as this intelligence-sharing channel
5 unfolded. This was, in fact, one of the reasons
6 why in the fall of 2002, when I first met with
7 President Assad, he said that he wanted to try to
8 funnel discussion of contention bilateral issues
9 between the U.S. and Syria into this
10 intelligence-sharing channel.

11 I remember his phrase in contrast
12 to other parts of the administration, the CIA in
13 his words, treated this relationship with logic
14 and respect.

15 MR. CAVALLUZZO: Okay.

16 MR. LEVERETT: So he liked the
17 idea of going through this channel in part to
18 minimize the influence of other parts of the
19 administration that were not supportive of this
20 effort.

21 MR. CAVALLUZZO: Apart from the
22 dissent of the neocons within the administration
23 there was another factor which was going to
24 complicate further cooperation. Of course that
25 was the War in Iraq which you talked about.

1 MR. LEVERETT: Yes.

2 MR. CAVALLUZZO: Indeed, in your
3 book and in articles that you have written you
4 have told us that the American administration
5 really started to prepare for the War in Iraq in
6 or about February of 2002.

7 MR. LEVERETT: My sense is, I
8 arrived at the White House in February of 2002 and
9 within short order became clear to me that the
10 basic strategic decision to go to war in Iraq had
11 already been taken.

12 MR. CAVALLUZZO: Right. You told
13 us in March of 2002 resources were being diverted
14 from Afghanistan, in other words following Osama,
15 and were being diverted to the War in Iraq.

16 MR. LEVERETT: Yes, that is
17 correct.

18 MR. CAVALLUZZO: Indeed, you were
19 asked yesterday about the White House group on
20 Iraq which has been publicized recently.

21 MR. LEVERETT: That is about White
22 House Committee.

23 MR. CAVALLUZZO: White House
24 Committee, right. But I think your response to
25 that was there wasn't just one committee, there

1 were several groups that were talking about or
2 preparing for the War in Iraq, at least by the
3 summer of 2002?

4 MR. LEVERETT: Yes, that's right.

5 MR. CAVALLUZZO: As time went on
6 it became crystal clear that despite what was
7 being said politically the American administration
8 was going to invade Iraq. In fact, if we look at
9 the State of the Union Address by the President in
10 January of 2003, or we look at Secretary Powell's
11 statement to the UN on February 5, 2003, it was
12 pretty clear that the Americans were going to be
13 invading Iraq?

14 MR. LEVERETT: I think it was
15 becoming certainly increasingly clear at that
16 point, yes.

17 MR. CAVALLUZZO: Certainly from
18 the Syrian perspective, they would be quite aware
19 of what was happening in terms of the American
20 intention of invading Iraq?

21 MR. LEVERETT: Yes. But from a
22 Syrian perspective I think the question would not
23 be simply: Is the United States going to invade
24 Iraq or not. The question would also be: What
25 role, if any, would the United States want Syria

1 to play in supporting that operation.

2 In the fall of 2002 at the UN,
3 when Syria was on the Security Council, they voted
4 for UN Security Council Resolution 1441.

5 MR. CAVALLUZZO: That's right.

6 MR. LEVERETT: That tells me at
7 that point they were not taking a position where
8 at all costs they were going to do what they could
9 to try to thwart the United States.

10 I think they were still, to some
11 degree, waiting to see what posture, if any, we
12 might take with regard to engaging them in this.

13 MR. CAVALLUZZO: Certainly they
14 refused to join -- in fact they weren't even
15 invited to join the coalition --

16 MR. LEVERETT: They were not.

17 MR. CAVALLUZZO: -- because
18 basically the neocons were, in effect, controlling
19 U.S. policy as far as the invasion of Iraq is
20 concerned?

21 MR. LEVERETT: Yes, that's right.

22 MR. CAVALLUZZO: Obviously it was
23 clear to everyone else and I assume it was clear
24 to the Syrians as well.

25 MR. LEVERETT: I said that the

1 administration was divided.

2 There were people on the other
3 side of this argument who would argue that there
4 was some value to engaging the Syrians in this
5 effort, that having the Syrians involved in the
6 first Gulf War had been politically very
7 beneficial for the United States and that there
8 might be some rationale for trying a similar
9 approach this time.

10 MR. CAVALLUZZO: Certainly it was
11 clear by March of 2003 when the Americans went
12 into Iraq that that was it?

13 MR. LEVERETT: Oh, yes.

14 MR. CAVALLUZZO: Okay. Very
15 clear. In fact, if we go on -- because I want to
16 talk about Canadian leverage at that point in
17 time.

18 If we go on, in late March we have
19 people like Wolfowitz and Rumsfeld saying: You
20 know what, we should invade -- we should take
21 military action against Syria.

22 MR. LEVERETT: Yes.

23 MR. CAVALLUZZO: Isn't that
24 correct?

25 MR. LEVERETT: Shortly after the

1 major combat operations concluded Rumsfeld and
2 Wolfowitz did make public statements to that
3 effect.

4 MR. CAVALLUZZO: So it would seem
5 to me that certainly by March and April of 2003
6 not only was the U.S. card dead in the sense of
7 further cooperation, but if you had people like
8 Wolfowitz and Rumsfeld saying we should invade
9 Syria, that Syria would want as many friends as
10 possible in order to fend off U.S. intentions.

11 Isn't that correct?

12 MR. LEVERETT: I think, yes, the
13 Syrians would do what they could to fend off
14 American pressure.

15 It is also worth noting that
16 Rumsfeld was contradicted in public a week after
17 he made his statement by Secretary Powell and the
18 President himself said shortly thereafter that we
19 didn't have plans --

20 MR. CAVALLUZZO: But I think it is
21 clear to say that the Syrians would understand
22 that whatever Wolfowitz said or whatever Rumsfeld
23 said would carry some weight within that
24 government.

25 MR. LEVERETT: Oh, yes.

1 MR. CAVALLUZZO: Right.

2 MR. LEVERETT: They would
3 certainly think that.

4 MR. CAVALLUZZO: You have agreed
5 that certainly as of March and April of 2003 the
6 Syrians would want as many friends as possible
7 outside of the United States that were not part of
8 the coalition.

9 Isn't that fair?

10 MR. LEVERETT: I think that is
11 right, yes.

12 MR. CAVALLUZZO: If we can apply
13 that analysis -- and, once again, when you are
14 applying any kind of analysis on what may have
15 happened in the Middle East it is sheer
16 speculation at best, but based on one's experience
17 and one's knowledge of the area. I just want to
18 apply that in terms of what happened to Mr. Arar
19 and what you told us yesterday.

20 You told us that when Mr. Arar was
21 deported to Syria on or about October 8th or 9th
22 of 2002 -- October 9th I think was the day you
23 were meeting the President, President Assad. So
24 you may have been --

25 MR. LEVERETT: I don't remember

1 precisely the day.

2 MR. CAVALLUZZO: It was the same
3 day, but in any event you have told us you don't
4 know anything about Mr. Arar.

5 In any event, you said that as far
6 as that situation was concerned -- we are in the
7 fall of 2002 --

8 MR. LEVERETT: Yes.

9 MR. CAVALLUZZO: -- you said that
10 at that point in time the Syrians would want to
11 placate the Americans in order to once again get
12 more cooperation and the kind of leverage we
13 talked about.

14 MR. LEVERETT: That is my
15 assessment of Syrian motives at that time, yes.

16 MR. CAVALLUZZO: If you compared
17 that to Canadian leverage at that point in time,
18 the U.S. leverage would trump the Canadian
19 leverage, because at that point in time the
20 Syrians really wanted to develop a better
21 relationship with the United States?

22 MR. LEVERETT: That would be my
23 judgment, yes.

24 MR. CAVALLUZZO: Then you said
25 that as time went on, in other words as we started

1 to move towards the War in Iraq and as the
2 American card or the American leverage is clearly
3 decreasing because the Syrians know what is about
4 to happen to them, that by that time there were
5 allegations that Mr. Arar was a member of the
6 Muslim Brotherhood.

7 MR. LEVERETT: Yes.

8 MR. CAVALLUZZO: You told that as
9 far as the Syrians were concerned an allegation of
10 being a member of the Muslim Brotherhood would be
11 far more serious than being a member of al-Qaeda.

12 MR. LEVERETT: It would be viewed
13 as more directly threatening to their interests,
14 yes.

15 MR. CAVALLUZZO: Right. You told
16 us yesterday that once the allegation of being a
17 member of the Muslim Brotherhood was concerned,
18 the Syrians would want to totally or completely
19 investigate that matter and be totally satisfied
20 that he wasn't tied in with a Muslim Brother
21 before they would ever release him.

22 MR. LEVERETT: I believe that is
23 the case, yes.

24 MR. CAVALLUZZO: I have a number
25 of questions that I want to ask you based on that

1 context, first of all, dealing with this
2 allegation of a Muslim Brotherhood.

3 We are aware, on the basis of the
4 evidence that we have, that at least by April 22,
5 of 2003 -- right, this is after Wolfowitz and
6 Rumsfeld are saying we should invade Syria, okay?

7 April 22, 2003 the Syrians are
8 saying: He is not a member of the Muslim
9 Brotherhood, he is a member of al-Qaeda.

10 MR. LEVERETT: Yes.

11 MR. CAVALLUZZO: Right?

12 MR. LEVERETT: Yes.

13 MR. CAVALLUZZO: So that the
14 Muslim Brotherhood allegation is now off the
15 table.

16 Now I'm putting it to you that at
17 that point in time, based on your analysis, that
18 Canadian leverage in April of 2003 was far greater
19 than American leverage.

20 MR. LEVERETT: I wouldn't argue
21 that it was -- I think Canadian leverage may have
22 been greater than it was in the fall of 2002. I
23 wouldn't argue it would be greater than American
24 leverage even at that point.

25 MR. CAVALLUZZO: Knowing that

1 Rumsfeld and Wolfowitz are saying "Let's invade
2 Syria", you don't think that at that point in time
3 they may want to placate Canadians in order to
4 gain Canadian friendship in light of the fact that
5 one would think that they are being further
6 isolated and marginalized even than before 9/11?

7 MR. LEVERETT: I don't believe
8 that the Syrians would have thought that if the
9 United States took a decision to invade Syria that
10 Canadian intervention would forestall that from
11 happening.

12 I mean, in the end Canada did not
13 join the United States in invading Iraq, but that
14 operation took place anyway.

15 MR. CAVALLUZZO: You told us
16 before in terms of your analysis that before he is
17 alleged to be a member of the Muslim Brotherhood,
18 being with al-Qaeda, it is important to them but
19 it is not crucial, and the only reason Canadians
20 aren't having an effect there is because of the
21 American trump, because they are trying to gain
22 more cooperation.

23 MR. LEVERETT: Yes.

24 MR. CAVALLUZZO: I just don't
25 understand why in April, when it is just a mere

1 allegation of being al-Qaeda, why Canadian
2 leverage, which you agree has certainly increased
3 from November to April of 2003, why they would
4 have the same inclination to keep him there?

5 MR. LEVERETT: I would say a
6 couple of things on that point.

7 First of all, I think I am aware
8 from the documentary record that I reviewed what
9 you are referring to, that in the spring the
10 possibility that Mr. Arar is connected to al-Qaeda
11 comes back into Syrian representations to
12 Canadians about his --

13 MR. CAVALLUZZO: And stays there
14 until his release.

15 MR. LEVERETT: And stays on the
16 table. I don't think that means -- I would not
17 deduce from that that they had eliminated the
18 possibility that he was a member of the Muslim
19 Brotherhood.

20 MR. CAVALLUZZO: There is not an
21 allegation, there is not a piece of writing in any
22 of the documents that you have that suggests that
23 the Muslim Brotherhood came back on the table
24 after March or April of 2003.

25 MR. LEVERETT: They may not have

1 referred to it again in their discussions with
2 Syrian authorities, but I would not conclude from
3 that that the Syrians had necessarily satisfied
4 themselves that Mr. Arar was not a part of the
5 Muslim Brotherhood.

6 The other point I would make --

7 MR. CAVALLUZZO: You would agree
8 with me, that is just sheer speculation on your
9 part?

10 MR. LEVERETT: Yes.

11 MR. CAVALLUZZO: Okay. Go on.

12 MR. LEVERETT: The other point I
13 would make in this regard is that in April, really
14 throughout the spring and into the summer of 2003,
15 I think the Syrians, at the highest levels of
16 their system, were preoccupied with: What was the
17 United States going to do next? What was going to
18 be American policy towards Syria?

19 In that context, were there things
20 that Syria could do to make life more difficult
21 for the United States in Iraq so that the United
22 States wouldn't have the room to manoeuvre to turn
23 their sights on Syria.

24 I think Syrian decision-making at
25 high levels was focused on that and in that

1 climate whatever the state of the Syrian
2 investigation of Mr. Arar was, his case, frankly,
3 just would not have had much of a priority for
4 Syrian officials at that point deciding what to do
5 with --

6 MR. CAVALLUZZO: We will come to
7 that change.

8 You told us that the unusual
9 consular access which was granted for Mr. Arar --
10 I think you said it was because they didn't want
11 to gratuitously offend Canada while at the same
12 time they were trying to gain more cooperation
13 from the United States.

14 MR. LEVERETT: When I tried to
15 think what would have been a rationale for the
16 Syrians to grant Canadian officials this kind of
17 access, that seemed to me the most likely
18 explanation, yes.

19 MR. CAVALLUZZO: Were you aware at
20 this point in time that the Syrians had tortured
21 other Canadians?

22 MR. LEVERETT: No. I mean I have
23 subsequently --

24 MR. CAVALLUZZO: You weren't aware
25 of that?

1 MR. LEVERETT: No. I have
2 subsequently become aware that there are other
3 cases involving Syrian-Canadian dual nationals or
4 people who are resident in Canada --

5 MR. CAVALLUZZO: So this idea that
6 they didn't want to gratuitously perturb Canada
7 once again doesn't suggest any kind of reasonable
8 basis in the sense that if they are torturing
9 other Canadians at the same time they don't seem
10 to -- I don't think they are very concerned about
11 gratuitously offending Canada.

12 MR. LEVERETT: But again, Mr. Arar
13 is a special case in that he was deported to Syria
14 by the United States and the United States seemed
15 to have some special security interest in him.

16 MR. CAVALLUZZO: We will come to
17 that. But it is important that you weren't aware
18 that others were tortured.

19 MR. LEVERETT: At that point, no.

20 MR. CAVALLUZZO: Okay.

21 The people who were instructing
22 you in terms of your testimony today, did they not
23 tell you that other Canadians were tortured at
24 this time?

25 MR. LEVERETT: I'm trying to

1 recall.

2 I was told that there were other
3 cases like Mr. El Maati.

4 MR. CAVALLUZZO: Yes.

5 MR. LEVERETT: I don't believe it
6 was in this initial packet of documents that I
7 read, but I also had occasion to read the report
8 of Professor Toope.

9 MR. CAVALLUZZO: So you have seen
10 the Toope Report?

11 MR. LEVERETT: Yes. And I became
12 aware then that at least in his view some of these
13 other individuals had been tortured.

14 MR. CAVALLUZZO: Right. Okay, now
15 let's move on.

16 You told us in terms of the
17 consular access, if I could just stay with that,
18 you told us that after Mr. Martel's first visit,
19 which would have been around October 22, 2002,
20 that he wasn't tortured after that, in your view,
21 because the access was maintained over a period of
22 a year and as a result of that constant or regular
23 access that protection was there.

24 MR. LEVERETT: Yes. Given
25 Mr. Arar's own public statements about his

1 treatment, by Mr. Arar's own account he was
2 subjected to physical violence in the course of
3 interrogation during that period of time before
4 Canadian officials gained access to him.

5 MR. CAVALLUZZO: Right.

6 MR. LEVERETT: Once the access was
7 obtained, he was not subjected to that particular
8 sort of torture.

9 MR. CAVALLUZZO: Okay. Although
10 obviously consular access is very important,
11 another reasonable explanation for that is that
12 the Syrians already had what they wanted by the
13 time of the first visit?

14 MR. LEVERETT: You could offer
15 that as an alternative explanation. I would
16 simply say that given what we know about Syrian
17 human rights practices that there does seem to be
18 a clear link between being held incommunicado and
19 the risk of being subjected to torture. For
20 people in the Syrian system who are getting
21 regular family visits, visits from others, their
22 risk of being tortured seems much less.

23 MR. CAVALLUZZO: I want to focus
24 in on that, on what you just said about there is a
25 relationship between being held incommunicado and

1 torture.

2 MR. LEVERETT: Yes.

3 MR. CAVALLUZZO: That is clear on
4 the record, the human rights record from the
5 Department of State, Amnesty International, Human
6 Rights Watch, whatever?

7 MR. LEVERETT: Yes.

8 MR. CAVALLUZZO: You told us that
9 as far as Canadian officials are concerned in
10 respect of Mr. Pillarella and Mr. Martel, that
11 going into the meeting, the initial meeting with
12 Mr. Arar, that they shouldn't be going in with the
13 assumption that he had been tortured or mistreated
14 by the Syrians.

15 Isn't that correct?

16 MR. LEVERETT: I wouldn't assume
17 it. I wouldn't take it as a given.

18 I would consider it as a distinct
19 possibility, but I would not assume it.

20 MR. CAVALLUZZO: So using your
21 analysis, you are going in knowing what the human
22 rights record is, knowing the relationship between
23 incommunicado detention and torture, knowing
24 present conditions, and so on and so forth. So
25 you go and you see him. Right?

1 The very first thing the guy says
2 to you during the first meeting: I have been in
3 Syria since October 9th. Right?

4 MR. LEVERETT: Yes.

5 MR. CAVALLUZZO: The Syrians say:
6 No, he hasn't. He just got here yesterday.
7 Right?

8 MR. LEVERETT: Yes.

9 MR. CAVALLUZZO: Do you think that
10 at that point in time at least Canadian officials
11 might have said: This Canadian has been held
12 incommunicado for 12 days. Maybe he was tortured.

13 Do you think that may have come
14 across their minds?

15 MR. LEVERETT: Like I said, I
16 would go into that meeting with a sense that there
17 is a distinct possibility that he had been
18 tortured. That exchange that you just recounted
19 would have increased my concern that that was a
20 possibility. But, in the end, the only way
21 available to those officials at the time to verify
22 whether Mr. Arar had been tortured was through
23 visual observation.

24 MR. CAVALLUZZO: We will come back
25 to that.

1 But surely, surely, Dr. Leverett,
2 unless you can help me, the Syrians would have
3 only one reason for lying about when Mr. Arar got
4 there. I am putting it to you, the reason would
5 be they would try to hide what they had done to
6 him, that they had tortured him.

7 MR. LEVERETT: Not necessarily.

8 MR. CAVALLUZZO: Is there any
9 other explanation as to why they would lie?

10 MR. LEVERETT: There would be
11 other explanations for why they might lie in that
12 situation. As I said, assuming that Mr. Arar had
13 been held in incommunicado for two weeks, you
14 know, the Syrians might have wanted to avoid
15 having to given any sort of explanation for why
16 Canadian authorities being given consular access
17 now hadn't been given consular access during that
18 period.

19 Why had Canadian authorities been
20 given previously erroneous information about
21 Mr. Arar's status in Syria?

22 You offer a plausible explanation
23 for why the Syrians were lying, but I think there
24 would be others.

25 The critical point for me is that

1 once Canadian officials had that access,
2 maintaining it was, in my judgment, essential to
3 reducing the chances that Mr. Arar would be
4 subjected to that sort of torture again.

5 MR. CAVALLUZZO: I agree with
6 that. I agree with that.

7 But I'm putting it to you by the
8 end of that meeting what they know. They know the
9 human rights record --

10 MR. LEVERETT: Yes.

11 MR. CAVALLUZZO: -- of Syria.
12 They know that torture is a regular part of
13 interrogation methods. They know that the
14 Americans have deported him to Syria, presumably
15 to get information that the Americans wouldn't get
16 on their own through their own interrogation
17 methods. Right?

18 MR. LEVERETT: Yes.

19 MR. CAVALLUZZO: They know that
20 they are dealing with the Syrian Military
21 Intelligence. They also know that the Syrians
22 have held him incommunicado for 12 days.

23 I'm putting it to you, putting all
24 of those things together the only reasonable
25 assumption -- the only reasonable assumption that

1 one could have leaving that meeting, was that
2 Mr. Arar was mistreated and Mr. Arar was tortured?

3 MR. LEVERETT: Coming out of
4 that meeting in the absence of visible signs of
5 torture I wouldn't agree that that was the only
6 reasonable assumption they could have coming out
7 of that meeting.

8 MR. CAVALLUZZO: Okay. You told
9 us you weren't an expert in torture.

10 MR. LEVERETT: That's right.

11 MR. CAVALLUZZO: I assume you were
12 not shown studies done by our own Department of
13 Foreign Affairs after the Arar event saying that
14 torture is very difficult to detect today if
15 sophisticated means are used?

16 MR. LEVERETT: No, I was not --

17 MR. CAVALLUZZO: You weren't aware
18 of that?

19 You weren't aware that the
20 Department of Foreign Affairs had decided after
21 the Arar case that their officials need more
22 training as far as detecting torture is concerned?

23 MR. LEVERETT: No.

24 MR. CAVALLUZZO: You weren't
25 advised of that?

1 MR. LEVERETT: No.

2 MR. CAVALLUZZO: Would you agree
3 with me that any Canadian official who was going
4 to protect a Canadian in Syria should have been
5 aware that the location that Mr. Arar was held at,
6 that is that he was in the Palestine Branch?

7 MR. LEVERETT: I'm sorry, I don't
8 quite understand the question.

9 MR. CAVALLUZZO: The question is:
10 A Canadian official whose goal is to protect
11 Mr. Arar should have known that the location at
12 which Mr. Arar was held was the Palestine Branch?

13 MR. LEVERETT: Yes.

14 MR. CAVALLUZZO: You agree with
15 that?

16 Would it surprise you to say that
17 Mr. Pillarella didn't know that?

18 MR. LEVERETT: I'm sorry, the
19 location would have been a facility. The
20 Palestine Branch is a particular part of SMI.

21 MR. CAVALLUZZO: Right.

22 MR. LEVERETT: To my knowledge, I
23 don't know if that branch is restricted to a
24 particular location as opposed to having
25 activities in a number of facilities.

1 MR. CAVALLUZZO: But you are aware
2 that the Palestine Branch has a reputation --

3 MR. LEVERETT: Yes.

4 MR. CAVALLUZZO: -- of engaging in
5 torture.

6 In fact, if you look the at
7 exhibits we have here, the Amnesty International
8 Report specifically says Palestine Branch is a
9 location.

10 MR. LEVERETT: Yes. I am aware
11 that the Palestine Branch of SMI has been singled
12 out in various human rights reports for their use
13 of torture.

14 MR. CAVALLUZZO: Therefore, it
15 would have been useful for a Canadian official to
16 know that Mr. Arar was being held in the Palestine
17 Branch.

18 MR. LEVERETT: If that information
19 were available to him I think it would be a useful
20 piece of information, yes.

21 MR. CAVALLUZZO: Okay. Now, in
22 terms of your knowledge of Syrian politics you can
23 perhaps help us.

24 Correct me if I'm wrong, but from
25 reading your book "Inheriting Syria" it would

1 appear to me that Foreign Minister Shara'a was a
2 more powerful actor within the Syrian government
3 than General Khalil.

4 Is that fair?

5 MR. LEVERETT: It would depend on
6 the issue. For a range of issues I would agree,
7 yes, Foreign Minister Shara'a would be more
8 powerful than General Khalil, but for issues
9 pertaining to Syrian internal security I would say
10 Khalil would be more important.

11 MR. CAVALLUZZO: You expressed an
12 opinion on this mixed signals, that is you told us
13 that from the reading you had done that you read
14 that CSIS allegedly let the Syrians know that they
15 didn't want Mr. Arar back.

16 MR. LEVERETT: I had been told
17 that CSIS denied having made those statements.

18 MR. CAVALLUZZO: CSIS denies that.

19 The rationale upon which you base
20 that opinion -- if I can use blunt language here
21 that -- would be that a CSIS official would be
22 trumped by our Minister of Foreign Affairs who
23 spoke to Shara'a in January of 2003 saying "You
24 should be aware that the Canadian position is 'We
25 want him back'."

1 MR. LEVERETT: That's right, that
2 whatever representations were made by CSIS in
3 November of 2002, they were made at a working
4 level and I believe that representations from
5 Ambassador Pillarella, your Foreign Minister and
6 your Prime Minister, in various ways would trump
7 the representations of working-level CSIS
8 officials.

9 MR. CAVALLUZZO: You don't know
10 General Khalil, but I am going to ask you this
11 question in any event.

12 Do you have any knowledge whatever
13 as to what General Khalil thinks of politicians?

14 MR. LEVERETT: No.

15 --- Pause

16 MR. CAVALLUZZO: Just a couple of
17 further questions.

18 The book that you have -- and we
19 should be clear on this -- refers to a chronology.
20 It doesn't indicate which chronology it is and I
21 would like it see that chronology, just to ensure
22 that I have asked you all of the questions.

23 --- Pause

24 MR. LEVERETT: Yes, this is the
25 chronology.

1 MR. CAVALLUZZO: So this is, just
2 for the record, a chronology which is dated
3 November 13, 2003. It is sent to Mr. John McNee.
4 The chronology itself is dated November 13, 2003.

5 We do have it. It is
6 Exhibit P-42, tab 709.

7 --- Pause

8 MR. CAVALLUZZO: Just bear with
9 me, Commissioner. I think I am almost finished
10 here.

11 --- Pause

12 MR. CAVALLUZZO: Just a couple of
13 final questions.

14 In terms of what you have referred
15 to as a high-profile campaign in terms of getting
16 one released from a Syrian Detention Centre or a
17 prison, the evidence that we have heard is that
18 what in effect moved the Syrians was that there
19 was a press conference in early August 2003 at
20 which time there were basically allegations of
21 torture coming from the Syrian Human Rights
22 Committee.

23 You have that letter that was
24 sent --

25 MR. LEVERETT: Yes.

1 MR. CAVALLUZZO: -- to Mr. Arar's
2 wife on July 28th.

3 The evidence that we have is that
4 what happened after that very quickly is that
5 Mr. Arar got his next consular visit on August
6 14th, which was the first visit he had had since
7 April 22nd, right.

8 So we were concerned about not
9 getting access. That happened very quickly.
10 Pillarella got a meeting immediately with Khalil.

11 Mr. Arar, seven days thereafter,
12 was moved to a far less harsh prison. He was
13 moved out of Palestine Branch. Shortly
14 thereafter, on October 4th he was moved to Canada.
15 He was released from Syria.

16 At least from an objective
17 observer's point of view it would appear that that
18 is what moved the Syrians, that the Syrians were
19 responding to public criticism of their regime.

20 I'm putting it to you that
21 certainly the evidence that we have would appear
22 to suggest just that, that they were responding to
23 public criticism.

24 So I have trouble understanding
25 your analysis, unless you are say the Canadian

1 government shouldn't criticize but it is all right
2 for others to.

3 MR. LEVERETT: The point I would
4 make in response to your question is I think
5 consistent with something I said on
6 cross-examination to Ms Edwardh yesterday, that
7 when I talk about a high-profile public campaign
8 to embarrass the Syrians, I am not referring at
9 all to what private citizens, non-governmental
10 organizations might do on behalf of Mr. Arar, but
11 in terms of how Canadian government officials
12 would best contribute to Mr. Arar's release.

13 I think that the high-level but
14 essentially non-public representations to Syrian
15 authorities and a consistent message that Canada
16 wants Arar back would be the most effective route.
17 I don't think it would have been productive for
18 Canadian officials to engage in high-profile
19 public criticism of the Syrians in this context.

20 MR. CAVALLUZZO: Just so that I am
21 clear, in terms of your opinion as to the kind of
22 campaign that would bring a Canadian out of
23 detention earlier, were you aware that there were
24 two other Canadians who were very quiet in respect
25 of their detention, i.e., Mr. Almalki and

1 Mr. al-Bouchi. They were detained, one for three
2 and a half years and the other for 22 months. It
3 looked like Mr. Arar came out much quicker than
4 they did.

5 MR. LEVERETT: Yes. I'm not
6 questioning the appropriateness of private
7 citizens or non-governmental organizations
8 concerned with these issues becoming publicly
9 engaged with a case like Mr. Arar.

10 MR. CAVALLUZZO: Right.

11 MR. LEVERETT: I was speaking to
12 what I thought were the most effective things that
13 Canadian officials could do to support the cause
14 of Mr. Arar's release.

15 MR. CAVALLUZZO: In respect of
16 what Canadian officials did, were you aware as to
17 the approaches that Minister Graham made to Syrian
18 officials in September 2003?

19 MR. LEVERETT: No, I don't believe
20 that was part of the record I reviewed.

21 MR. CAVALLUZZO: Just a couple of
22 final questions relating to some of your answers
23 this morning.

24 You were asked, in light of the
25 fact that this new sharing of information

1 relationship was developing between the Americans
2 and the Syrians, whether it was likely that the
3 Americans would have given information to the
4 Syrians. I think you suggested that is not
5 necessarily the case.

6 MR. LEVERETT: Yes, that's right.
7 Whatever was going on in terms of
8 U.S. communications with the Syrians, I think it
9 would have been decided on a case-specific basis
10 weighing a lot of different factors.

11 MR. CAVALLUZZO: But in the case
12 of Mr. Arar, for example, were you aware that the
13 Americans gave the Syrians Mr. Arar's computer?

14 MR. LEVERETT: No, I was not aware
15 of that.

16 MR. CAVALLUZZO: You weren't aware
17 of that?

18 But doesn't it seem reasonable to
19 suggest that if the Americans wanted the Syrians
20 to interrogate Mr. Arar using, as you used the
21 expression, effective means, isn't it very likely
22 that in order to assist the Syrians in using the
23 effective means that they would give them
24 information which would provide clues as to what
25 they were trying to establish?

1 MR. LEVERETT: It is entirely
2 possible. Again, I was simply saying I think that
3 the way American officials would have proceeded
4 would have been to weigh concerns about protecting
5 sources and methods against whatever value you
6 would ascribe to giving the Syrians certain kinds
7 of information.

8 MR. CAVALLUZZO: The only two
9 examples we have here, we have Mr. Arar, and we
10 know on the evidence that the Americans gave the
11 Syrians this computer, and with Mr. El Maati we
12 know the Americans gave the Syrians the map that
13 you just referring to.

14 MR. LEVERETT: Okay.

15 MR. CAVALLUZZO: So don't you
16 think it is reasonable that the Americans are
17 supplying information to the Syrians?

18 MR. LEVERETT: If you tell me that
19 the evidence shows that American officials
20 provided Mr. Arar's computer and this map, I will
21 accept that. Whatever else the United States
22 might have provided to the Syrians about Mr. Arar,
23 I simply don't know.

24 MR. CAVALLUZZO: Okay.

25 Finally, you told us that the back

1 channel, as far as the Americans were concerned
2 with the SMI, was the CIA, was the American
3 contact. As far as Canada is concerned, do you
4 know what the back channel was to the Syrians in
5 terms of sharing of information?

6 MR. LEVERETT: You mean between
7 your government and the Syrian government?

8 MR. CAVALLUZZO: Yes.

9 MR. LEVERETT: No, I don't. I am
10 aware of the CSIS visit to Damascus in November of
11 2002. Whatever other security contacts may have
12 been going on between your government and the
13 Syrians, I don't know what they are.

14 MR. CAVALLUZZO: Okay. Just give
15 me a second.

16 --- Pause

17 MR. CAVALLUZZO: Have you ever
18 spoken to or had contact with Mr. Pillarella?

19 MR. LEVERETT: No, I have not.

20 MR. CAVALLUZZO: You told us twice
21 that you spoke to Deputy Minister Mouallem about
22 Canada.

23 MR. LEVERETT: Yes.

24 MR. CAVALLUZZO: Did you speak to
25 the Deputy Minister about Mr. Arar?

1 MR. LEVERETT: No.

2 MR. CAVALLUZZO: What did you
3 speak to him about?

4 MR. CAVALLUZZO: The conversations
5 that I have had with the Deputy Foreign Minister
6 have been very wide ranging concerning Syrian
7 foreign relations with a host of countries.

8 MR. CAVALLUZZO: But you don't
9 recall specifically what you talked to him about
10 Canada. Was it about security intelligence?

11 MR. LEVERETT: No, it was not. It
12 was more about in the context of a rapidly
13 deteriorating U.S.-Syrian relationship, you know,
14 how Syria would try and -- or the importance that
15 Syria would attach to developing better relations
16 with other western countries.

17 MR. CAVALLUZZO: Okay. Thank you,
18 Dr. Leverett. I have no further questions.

19 THE COMMISSIONER: Mr. Fothergill,
20 do you have any questions?

21 MR. FOTHERGILL: No questions,
22 thank you.

23 THE COMMISSIONER: Nobody else has
24 other questions?

25 Do you have any re-examination,

1 Mr. Décary?

2 MR. DECARY: Yes.

3 THE COMMISSIONER: Do you want to
4 take the break first or are you content to go
5 ahead and let Dr. Leverett --

6 MR. DECARY: If you have three or
7 four --

8 THE COMMISSIONER: I'm fine.
9 You are fine to continue and then
10 we can finish off.

11 MR. LEVERETT: Yes, sir. Thank
12 you.

13 EXAMINATION

14 MR. DECARY: Dr. Leverett, I would
15 ask you to take document P-269, which is a
16 booklet, and tab 34, page 17.

17 MR. LEVERETT: Yes.

18 MR. DECARY: May I ask you to take
19 a moment and read the section under date 25/9/03,
20 the first two paragraphs, but the second paragraph
21 in particular?

22 MS EDWARDH: I apologize,
23 Mr. Commissioner. Excuse me for interrupting.

24 Can you direct me to the exhibit
25 or a more --

1 THE COMMISSIONER: I think it is
2 Exhibit P-42, tab 709.

3 MS EDWARDH: Thank you very much,
4 Mr. Commissioner. I'm very impressed.

5 MR. DECARY: I will wait a moment
6 while you --

7 MS EDWARDH: Thank you.

8 MR. DECARY: In particular with
9 respect to the second paragraph --

10 THE COMMISSIONER: Which date, I'm
11 sorry, Mr. Décarry?

12 MR. DECARY: 25/9/03, page 17.

13 THE COMMISSIONER: Thank you.

14 MR. DECARY: I will pause for a
15 moment.

16 It is a reference to Minister
17 Graham's meeting with Foreign Minister Shara'a,
18 but I note on the margins of the U.S. General
19 Assembly in New York.

20 In relation to comments made with
21 respect to a public campaign, what comments do you
22 have with respect to what you read here at page 17
23 under the date 25/9/03?

24 MR. LEVERETT: Yes.

25 Also I would need to correct an

1 answer I gave to Mr. Cavalluzzo. Because I
2 reviewed this chronology I am in fact aware of
3 efforts by Foreign Minister Graham, his
4 communications with Foreign Minister Shara'a about
5 this case in September. I simply did not recall
6 this particular reference when Mr. Cavalluzzo
7 asked me the question. I am sorry for that faulty
8 recollection.

9 What this reports is that your
10 Foreign Minister met with Shara'a on the margins
11 of UNGA in New York, talked with him about the
12 Arar case, underlined Canadian interest in seeing
13 Arar returned to Canada.

14 That kind of representation is
15 perfectly consistent with what I described as an
16 essentially non-public representation by Canadian
17 officials to their Syrian counterparts about
18 Canada's interest in seeing Arar returned.

19 MR. DECARY: Is there anything
20 in any of the evidence presented to you by any
21 counsel that causes you to change any of the
22 opinions which you expressed yesterday in your
23 examination in chief?

24 MR. LEVERETT: No.

25 MR. DECARY: No further questions.

1 THE COMMISSIONER: Okay. Well
2 that's it.

3 Let me thank you, Dr. Leverett,
4 for coming and giving evidence here. I am very
5 appreciative. I appreciate particularly the
6 careful and very forthright way you answered the
7 questions. That was helpful.

8 MR. LEVERETT: Thank you very
9 much.

10 THE COMMISSIONER: Thank you very
11 much.

12 MR. LEVERETT: Thank you,
13 Commissioner.

14 THE COMMISSIONER: Have a good
15 trip home.

16 MR. LEVERETT: Thanks.

17 THE COMMISSIONER: We will take a
18 break for 15 minutes.

19 --- Upon recessing at 11:00 /

20 Suspension a 11 h 00

21 --- Upon resuming at 11:20 a.m. /

22 Reprise à 11 h 20

23 THE REGISTRAR: Please be seated.

24 THE COMMISSIONER: We will wait
25 until the cameras are finished.

1 Would you like to be sworn or
2 affirmed?

3 MR. HOGGER: I will be sworn,
4 Mr. Commissioner.

5 SWORN: HENRY GEORGE HOGGER

6 THE COMMISSIONER: Your full name,
7 please.

8 MR. HOGGER: Henry George Hogger.

9 THE COMMISSIONER: Thank you,
10 Mr. Hogger. You may be seated.

11 Before we begin, I would like to
12 address the issue of timing and declare an
13 objective. It doesn't have to be what we do.

14 I have to be in Toronto sometime
15 this evening, so ideally if we could finish here
16 at 4:30, although I don't know if that is
17 possible.

18 Do you know how long you are going
19 to be?

20 MR. DECARY: Certainly not more
21 than one hour and a half. One hour to one hour
22 and a half.

23 THE COMMISSIONER: Who else is
24 there? Is it Mr. Fothergill at this point?

25 MR. FOTHERGILL: I very likely

1 won't have any questions after Mr. Décary and then
2 we will have to see.

3 THE COMMISSIONER: Mr. Boxall?

4 MR. BOXALL: I am hoping to be the
5 same as Mr. Fothergill.

6 THE COMMISSIONER: All right.

7 Mr. Waldman?

8 MR. WALDMAN: I would expect an
9 hour to an hour and a half.

10 THE COMMISSIONER: Mr. Cavalluzzo?

11 MR. CAVALLUZZO: I would expect
12 around 17, 18 minutes.

13 THE COMMISSIONER: That is three
14 and a half hours. So let me just think.

15 We should be able to do that. We
16 will probably take an hour for lunch and that
17 should be achievable.

18 Mr. Décary.

19 MR. DECARY: Thank you,
20 Mr. Commissioner.

21 EXAMINATION

22 MR. DECARY: Mr. Hogger, I would
23 like to begin by filing a copy of your Curriculum
24 Vitae. Copies were circulated.

25 THE COMMISSIONER: 270.

1 MR. DECARY: Thank you.

2 EXHIBIT NO. P-270:

3 Curriculum Vitae of Henry
4 George Hogger

5 MR. DECARY: Mr. Hogger, I would
6 direct you to page 3 and ask first about your
7 educational and professional qualifications.

8 You have obtained an MA in modern
9 languages with Oriental studies. Is that correct?

10 MR. HOGGER: Yes.

11 MR. DECARY: At Cambridge. And we
12 note also passes at various levels in diplomatic
13 service language exams, recently accepted, and
14 everyone can read what exactly is there.

15 Can you explain what is referred
16 to here?

17 MR. HOGGER: Yes. This is put, I
18 am afraid, rather in the language of the British
19 diplomatic service. What it essentially means is
20 that I am reasonably current and au fait in
21 principally Arabic, French and Spanish; rather
22 less so, but still occasionally usable, in German
23 and Italian.

24 THE COMMISSIONER: I like the
25 rusty but retrievable.

1 MR. HOGGER: I'm not sure if that
2 is a public document, Mr. Commissioner.

3 THE COMMISSIONER: Can
4 Mr. Cavalluzzo cross-examine you in Italian or is
5 that going to be a problem?

6 MR. HOGGER: I would rather not.

7 MR. DECARY: If we turn to the
8 first page and review your career, first I note in
9 1971-72, just because it deals with languages, can
10 you state what the reference to Middle East Centre
11 for Arabic Studies Lebanon refers to.

12 MR. HOGGER: That was a school run
13 by the British Foreign Office for teaching Arabic
14 to principally their own diplomats, but also to
15 people from people from outside, such as oil
16 companies and banks.

17 MR. DECARY: And how long did you
18 spend there?

19 MR. HOGGER: Nine months.

20 MR. DECARY: If we go back, you
21 started your career, you note 29 August 1969 you
22 joined FCO.

23 For the record, what is FCO?

24 MR. HOGGER: That is the Foreign
25 and Commonwealth Office, which is our acronym for

1 the British Foreign Service.

2 MR. DECARY: And 1969, the first
3 two years, I take it, the East African Department,
4 FCO London, would that be headquarters?

5 MR. HOGGER: Yes.

6 MR. DECARY: In a nutshell, what
7 were your functions there?

8 MR. HOGGER: I was what we called
9 desk officer for Ethiopia and Somalia, which
10 really means being on the receiving end of reports
11 from our embassies in those countries, analyzing
12 and looking at policy recommendations that might
13 flow from those reports.

14 MR. DECARY: If we move up to
15 February to July 1972, you are Third Secretary
16 Political Section, Aden, People's Democratic
17 Republic of Yemen. What were your functions?

18 I understand Third Secretary, but
19 in essence what were your functions?

20 MR. HOGGER: Essentially the
21 normal functions of a junior officer in the
22 political section of an embassy, which is
23 primarily collecting and collating, reporting on
24 political developments in that country.

25 MR. DECARY: And 1975 to 1980,

1 five years, or close to, Second Secretary and then
2 First Secretary, Political Section, Kuwait. Could
3 you develop and explain what your functions were?

4 MR. HOGGER: Yes. I should point
5 out that I'm afraid there is a slight misprint
6 here. It was actually 1975 to 1978. It was a
7 three-year posting.

8 It was very much the same sort of
9 work as I did in Aden and indeed in Caracas. It
10 was reporting on the local political situation and
11 conveying those reports to the Foreign Office for
12 analysis by their experts.

13 MR. DECARY: I note then this is
14 followed by a posting again in London at
15 headquarters, I take it?

16 MR. HOGGER: Yes.

17 MR. DECARY: Could you describe
18 those functions you occupied from 1978 to 1982,
19 Southern European and European Community
20 Departments.

21 MR. HOGGER: This is an
22 illustration of the variety which one gets in a
23 diplomatic career, which I think most diplomats in
24 any country will be familiar with. Sometimes it
25 is chance rather than logic that plays a greater

1 part.

2 In the Southern European
3 Department I spent two years on the desk dealing
4 with the problem of Cypress which then, as indeed
5 unfortunately now, is quite a considerable
6 unresolved political issue.

7 And then for the subsequent two
8 years I was in the department dealing with the
9 internal affairs of the European community and
10 Britain's involvement in those affairs.

11 So it was quite a varied four
12 years.

13 MR. DECARY: From 1882 to 1985,
14 Head of Chancellery and Consul, Abu Dhabi.

15 Could you elaborate on what your
16 functions were?

17 MR. HOGGER: The Head of
18 Chancellery is essentially the head of the
19 Political Section, so again I was back to the
20 political reporting function but also with some
21 management responsibilities, overall supervision
22 of some of the work of the embassy.

23 Consul is perhaps self-explanatory
24 and it was really a supervisory role for consular
25 work in that country.

1 MR. DECARY: Nevertheless, were
2 you involved in Abu Dhabi in certain matters, not
3 only in the supervisory capacity but also
4 otherwise?

5 MR. HOGGER: Yes, for two
6 principal reasons. One was that as I had a
7 supervisory role, I felt it right, having not been
8 involved before in consular work directly, to take
9 an interest and therefore, for example,
10 accompanied our consular officials occasionally
11 for visits to the jail.

12 I sometimes sat in court
13 proceedings where British citizens were involved,
14 partly also because there were sometimes a
15 requirement for language knowledge and most of our
16 consular staff didn't have that. So I was helping
17 as well as learning.

18 MR. DECARY: Then from 1986 to
19 1989 I note there is a rotation. You are back to
20 London?

21 MR. HOGGER: Yes.

22 MR. DECARY: And this time
23 Assistant Head Maritime Aviation Environment
24 Department. Briefly, what --

25 MR. HOGGER: Largely technical

1 issues to do with those particular subjects, in
2 each of which there is, if I could put it this
3 way, a diplomatic angle, because they all involve
4 our relations with other countries.

5 MR. DECARY: And then back to 1989
6 to 1992, Deputy Head of Mission and Consul General
7 in Jordan.

8 MR. HOGGER: The Deputy Head of
9 Mission role was really what Head of Chancellery
10 used to be; that is to say, once again, overall
11 supervision of the work of the embassy with
12 emphasis on supervising the political reporting
13 and political relations.

14 The Consul General function was
15 largely a supervisory one, but again I became
16 involved for the similar reasons in some of the
17 more detailed consular work from time to time.

18 MR. DECARY: Could you give
19 examples?

20 MR. HOGGER: I can certainly
21 recall visiting one of the jails in Amman with one
22 of our consular officials where there was at least
23 one British national incarcerated, primarily again
24 in order to have a feel for myself of what the
25 conditions there were like.

1 MR. DECARY: Then from 1992 to
2 1996 British High Commissioner to Namibia. Could
3 you describe -- I think we are familiar with the
4 British High Commission or Consul, but could you
5 state what this was.

6 MR. HOGGER: Essentially, that was
7 my first role as Head of Mission. Of course, as
8 you know, the British high commissioner is the
9 same as British ambassador in a commonwealth
10 country. I was therefore responsible for the
11 whole range of Britain's relations with Namibia,
12 which was at that time a very newly independent
13 country.

14 MR. DECARY: Did you also have
15 responsibility, supervisory responsibility for the
16 consular function?

17 MR. HOGGER: Theoretically, yes,
18 because the Head of Mission automatically has that
19 role. In practice, the consular work in Namibia
20 was relatively limited.

21 MR. DECARY: And from 1996 to
22 2000, Head of Latin American Caribbean Department,
23 back to London, rotation back to London.

24 Can you describe your function?

25 MR. HOGGER: I think I implied

1 earlier that diplomatic life can be full of
2 surprises. This was a job which I believe I was
3 given in recognition of my appointment in
4 Venezuela some 20 or so years earlier and was
5 again the department in the Foreign Office that
6 looked after our relations with all the Latin
7 American countries and the independent Caribbean
8 ones.

9 MR. DECARY: Before we move on, we
10 note that you have been rotated abroad and then
11 back to headquarters.

12 Is that common? Is that typical?

13 MR. HOGGER: Yes. There is no set
14 pattern, though broadly speaking we were told to
15 expect roughly two-thirds of one's time to be
16 spent overseas and a third in London, but the
17 frequency with which each happens is variable.

18 MR. DECARY: And what is a normal
19 period of stay abroad when you are stationed in a
20 function as you have abroad? What would be the
21 normal?

22 MR. HOGGER: It is normally
23 between three and four years, depending to some
24 extent on how comfortable the country is. I
25 haven't had an opportunity of being posted in

1 Canada, but if I did, I would be here for four
2 years.

3 MR. DECARY: From 2000 to 2003,
4 you were British Ambassador to Syria.

5 Precisely when were you appointed?

6 MR. HOGGER: I took up my post
7 there on the 12th of June, 2000.

8 MR. DECARY: Did anything in
9 particular happen on that date in Syria?

10 MR. HOGGER: There was nothing
11 planned to happen on that day when I chose it as
12 my arrival date, but in practice what happened was
13 that the former President of Syria died on the
14 10th of June, with the result that I arrived on
15 the day or the eve of the day of the State
16 ceremony, if you like. It is not really a
17 funeral, but the ceremony honouring his departure,
18 to which foreign dignitaries were invited, and had
19 what I can only call a rather busy first day in
20 post.

21 MR. DECARY: And when did you
22 leave Damascus?

23 MR. HOGGER: I left in August. I
24 am afraid I now can't remember the exact date, but
25 about the middle of August, 2003.

1 MR. DECARY: As you know, Mr. Arar
2 was detained from October 2002 to October 2003.
3 So you were the British ambassador in Syria for
4 most of that period.

5 MR. HOGGER: Yes.

6 MR. DECARY: Do you know
7 Ambassador Pillarella?

8 MR. HOGGER: Yes, I do.

9 MR. DECARY: Did you know about
10 the Arar case while you were in Damascus?

11 MR. HOGGER: What I recall is that
12 Ambassador Pillarella let me know in general terms
13 that he was dealing with a consular case that was
14 causing difficulties. But I don't recall having
15 any more of the detail of the case at that time.

16 MR. DECARY: Just to complete your
17 CV, you were seconded to the Coalition Provisional
18 Authority in Iraq as Governor and Coordinator for
19 Basra in 2003-2004.

20 Can you describe your functions at
21 that time?

22 MR. HOGGER: Well, again, in
23 summary, this was a role which was the initiative
24 of the then Coalition Administrator, Ambassador
25 Bremer, who felt that -- this was a few months

1 after the war itself -- who felt that the
2 Coalition Authority should be doing more to come
3 closer to the local administrations in each
4 province, and he therefore appointed coordinators
5 for each of the 18 provinces in Iraq.

6 I was the choice for Basra, so I
7 was effectively seconded to the Coalition
8 Provisional Authority from the Foreign office, as
9 the record shows.

10 As regards my duties there, in
11 essence it was to try and push forward the
12 reconstruction process at the local level, and
13 that had both a political and infrastructural
14 dimension. We were involved in projects on the
15 physical reconstruction but we were also involved
16 in efforts to try and build effective local
17 institutions where there had not been any under
18 the previous regime.

19 MR. DECARY: On page 2, the first
20 paragraph at the end, we note that you were made a
21 Companion of the Order of St. Michael and St.
22 George for your work.

23 Could you explain what this award
24 or recognition consists of?

25 MR. HOGGER: This is one of the

1 Orders of Chivalry which is awarded normally for
2 work in one way or another involving either work
3 overseas or work with an international dimension.

4 The awards under this order are
5 normally given to diplomats. But not only
6 diplomats, business people who have done a lot of
7 work on export work, for example, are sometimes
8 awarded them. That is the general outline.

9 MR. DECARY: You retired from the
10 Foreign Service in December, 2004. Is that
11 correct?

12 MR. HOGGER: Yes.

13 MR. DECARY: How many years have
14 you spent in the Middle East as a diplomat?

15 I would refer to your career as
16 that of a diplomat, and correct me if I'm wrong.

17 MR. HOGGER: Well, I'm not sure if
18 I've really ever had the chance carefully to count
19 exactly how many years it is, but it is certainly
20 more than 15.

21 MR. DECARY: Since your retirement
22 I note from page 1, "2005-Current", that you are a
23 senior consultant, Middle East Consultants,
24 London.

25 Can you describe what Middle East

1 Consultants are and then your functions within
2 that group or organization.

3 MR. HOGGER: I would be happy to
4 do that. I wonder if I might be allowed to make a
5 brief remark in connection with my retirement.

6 The record shows correctly that I
7 retired officially in December 2004. It may be
8 worth pointing out that my last official
9 appointment as a British government official
10 finished effectively in June 2004 when I returned
11 from Basra.

12 As regards Middle East
13 Consultants, they are one of a number of
14 organizations in Britain who essentially retain a
15 number of what they call in this case senior
16 consultants on a stand-by basis, if I can put it
17 that way, who are available to undertake specific
18 projects that the organization may be commissioned
19 to do by other governments, by commercial
20 organizations, and so on.

21 MR. DECARY: Mr. Commissioner, I
22 would ask that Mr. Hogger be qualified to give an
23 opinion as to the role and functions of an
24 ambassador and as to the means or measures at the
25 disposal of both an ambassador and a consul to

1 deal with consular problems.

2 THE COMMISSIONER: Any comments,
3 questions or submissions from anyone about that?

4 MR. WALDMAN: Mr. Commissioner,
5 our concern is the evidence before the Commission
6 suggests that each country has its own methods and
7 own practices. I certainly have no doubt that the
8 witness is an expert on U.K. practices. I am
9 concerned how relevant that is to Canadian
10 practices.

11 I would want it to be clear that
12 he is only qualified as an expert on U.K.
13 practices, unless he has any knowledge of Canadian
14 practises, which I don't believe there is any
15 indication in his CV that he does.

16 MR. HOGGER: You are correct.

17 THE COMMISSIONER: I think what we
18 will do, as much as we did with the previous
19 witness, I will allow the evidence to be led and
20 he can express opinions with respect to the role
21 of an ambassador in consular matters.

22 I think to the extent that there
23 are distinctions between the English and the
24 Canadian practices, or there may be, that would be
25 something that can be pursued in questions. I am

1 sure that Mr. Hogger will indicate appropriately
2 what there may be different.

3 I am content with the background;
4 that you lead the evidence and he can express
5 opinions.

6 MR. DECARY: Thank you.

7 This morning we will start with
8 the horse before the cart, and I will ask what
9 documents exactly were provided to you in
10 preparation of your testimony before the
11 Commission?

12 MR. HOGGER: I was provided with a
13 packet of documents which include a selection, I
14 believe, of the reports from the embassy and other
15 such supporting documents; a chronology which
16 details the various events during the course of
17 this case; and some other papers which relate to
18 both those documents.

19 I have also subsequently been
20 given the report by Professor Toope, and I have
21 read that. I have also had the transcript of the
22 testimony by Ambassador Pillarella, and I haven't
23 in writing but I have seen on line some of the
24 testimony at least of Consul Martel.

25 MR. DECARY: Would that be public

1 testimony of Mr. Martel?

2 MR. HOGGER: Yes.

3 MR. DECARY: I have prepared and
4 yesterday remitted -- or earlier this morning; I'm
5 not sure when this was done, Mr. Commissioner -- a
6 list of the documents which were remitted to
7 Mr. Hogger and also reference to the way they have
8 been produced before, the numbers under which they
9 were produced before the Commission as exhibits.

10 THE COMMISSIONER: Thank you,
11 Mr. Décary.

12 Why don't we mark this as the next
13 exhibit, 271, the list of documents.

14 EXHIBIT NO. P-271: List of
15 documents given to Mr.
16 Hogger, produced by Mr.
17 Décary

18 MR. DECARY: The first area,
19 Mr. Hogger, that I would like to cover has to do
20 with torture.

21 I know that the Commission is well
22 a ware of the conditions in Syria, but
23 nevertheless, briefly: Can you tell the
24 Commissioner about Syria's human rights record as
25 you know them?

1 MR. HOGGER: In general, I am
2 aware of course that there is a considerable
3 number of published material in one way or another
4 telling a fairly negative story about the human
5 rights situation in Syria. Those documents, I
6 think, have been referred to several times in
7 previous testimony, but of course include reports
8 by the United States State Department, by Amnesty
9 International and other non-governmental
10 organizations, by at least one, if not more,
11 United Nations committees.

12 In regard to the matter of
13 torture, it seems clear from what at least some of
14 those reports say that there are very strong
15 indications that torture is practised in Syria.

16 As regards my personal experience
17 of that of course, that is a more difficult issue.
18 But there is no doubt that on the public record
19 there is a negative story to be told about the
20 human rights situation there.

21 MR. DECARY: What was your
22 experience with Syria on human rights issues?

23 MR. HOGGER: What I've just said
24 created to some extent a dilemma for the British
25 government because, like most western governments

1 these days, we have a very firm human rights
2 element to our foreign policy, and because of the
3 need to deal with Syria in a more or less normal
4 diplomatic way, given that country's importance in
5 the Middle East and for a variety of reasons, we
6 had to find a way of reconciling that with showing
7 the proper concern about some of the aspects of
8 human rights.

9 One way that we tried to deal with
10 that was to engage the Syrian government in a
11 dialogue on human rights issues. I have to say
12 that we found that perfectly possible. We found
13 that the idea of having periodic discussions
14 between members of the embassy and Syrian
15 officials sometimes visiting British officials or
16 British ministers to talk about some aspects of
17 the human rights situation was perfectly possible
18 despite the rather negative aspects that I have
19 already mentioned.

20 We did talk to them about, for
21 example, the need to try to come towards
22 ratification of a number of international
23 instruments in the human rights field, including
24 in fact the United Nations Convention Against
25 Torture, which was quite a live subject of

1 discussion between our officials and Syrian
2 officials at that time.

3 MR. DECARY: Who were your
4 vis-à-vis in these discussions?

5 MR. HOGGER: Mostly officials in
6 the foreign ministry. I also used to talk to one
7 of the Deputy Ministers, probably in fact two
8 Deputy Ministers, at varying times about this.

9 The Syrian Foreign Ministry
10 actually has a Human Rights Department with a
11 director. In fact, I think there were two
12 successive directors during my time there.

13 We established a relationship with
14 him and spent quite a lot of time talking about
15 these questions with him.

16 MR. DECARY: What do you know
17 about the Syrian Military Intelligence?

18 MR. HOGGER: I was aware,
19 certainly, during my time there that it was one of
20 a number of intelligence and security
21 organizations belonging to the Syrian regime.
22 There were numerous such organizations and, to a
23 certain extent, part of their brief was to keep
24 something of an eye on each other's activities.

25 The military intelligence I

1 understood to be one of the leading, let's say,
2 organizations of that kind in terms of its
3 influence and power. I was certainly aware that
4 among many ordinary Syrians it had a fairly
5 frightening reputation.

6 MR. DECARY: What about the
7 Palestine or Palestinian Branch, and there may be
8 another term to which you may want to refer to
9 this group or organization or structure. Have you
10 ever heard of it before?

11 MR. HOGGER: Yes. Some of my
12 previous comments really apply.

13 I understood that it was indeed
14 part of or related to Syrian Military
15 Intelligence. Like I think most people, I had a
16 fairly imperfect understanding of exactly how all
17 the pieces of this jigsaw fitted together.

18 But again, it was clear that the
19 Palestine Branch was -- whether exactly it was an
20 organization or a location was rather difficult to
21 tell, but that it was very much an organization
22 involved in dealing with people regarded as
23 political or security detainees, and again that
24 its name was one which struck a very negative
25 chord in the minds of many ordinary Syrians.

1 MR. DECARY: Did torture occur in
2 Syria during the time that you were ambassador?

3 MR. HOGGER: It's not really
4 possible to answer that question put in that way.
5 I can't say from firsthand knowledge that torture
6 occurred.

7 Of course, as I have indicated
8 earlier, with the body of public documentation
9 suggesting that it did, I can only say that it
10 seems likely, but I can't say I have firsthand
11 knowledge or experience in the sense of, for
12 example, people telling me directly that they had
13 been tortured.

14 MR. DECARY: I would like to turn
15 to consular access in Syria.

16 You have described briefly your
17 experience as a supervisor in consular matters and
18 also occasional intervention because of your
19 knowledge of the Arabic language or again because
20 of personal interest.

21 Do you have anything to add to
22 this with respect to your background? I note that
23 you spent nevertheless quite a few years as
24 someone responsible for consular affairs.

25 Can you tell me, therefore, the

1 flow of information you get as a consul or again
2 as an ambassador?

3 MR. HOGGER: Well, as I indicated
4 earlier, my role in consular work in the two posts
5 where I had formal consular title, and indeed in
6 others where I had that supervisory role, was very
7 much supervisory.

8 I wouldn't for a moment claim that
9 I know everything to be known about all the
10 details of consular work, because it is a very
11 formal and to some extent bureaucratic world, but
12 a very important one, since it involved primarily
13 the protection of one's own nationals overseas.

14 Having said that, in addition to
15 the responsibilities I had, it has become
16 increasingly the case in recent years that all
17 officials, particularly heads of mission, have
18 been exhorted from headquarters to take an active
19 personal interest in consular work because -- and
20 I don't believe there is any distinction here
21 between Britain or Canada or many other
22 countries -- these issues are so much of public
23 concern.

24 MR. DECARY: Do you know if people
25 in the foreign service who are called upon to act

1 as consuls, are they trained first on human rights
2 issues?

3 MR. HOGGER: Yes. In general
4 terms, my understanding is that -- and this is I
5 believe a relatively recent innovation -- people
6 who have what I would call fulltime consular
7 assignments, not therefore of my type as a
8 supervisory one, but certainly who are going to be
9 doing the main burden of consular work overseas,
10 are given briefing by I believe they are
11 consultants brought from outside the foreign
12 office, on a range of human rights issues really
13 that affect issues likely to arise in the case of
14 a British national being detained or having other
15 types of problems in a foreign country.

16 MR. WALDMAN: Mr. Commissioner, I
17 have a bit of concern.

18 I really wonder about the
19 relevance of training of British foreign officers.
20 We have a great body of evidence that is already
21 before the Commission on the training or lack
22 thereof of Canadian consular officials.

23 I don't think this evidence is
24 particularly help to you. I think there might be
25 some areas that might be but --

1 THE COMMISSIONER: It might even
2 be interesting as a comparative. We have had
3 evidence, and he is not proposing to describe
4 Canadian training. So I think it could be helpful
5 as a comparison.

6 MR. DECARY: That was really the
7 purpose of my questions, Mr. Commissioner, as you
8 will see.

9 In particular, a point: Do you
10 know and have you, at my request, verified, are
11 you in a position to state before the Commission
12 whether or not there is any training given in the
13 U.K. to consular personnel with respect to
14 identifying torture?

15 MR. HOGGER: No, there is not. My
16 understanding again, having looked into this, is
17 that the reason for that is that the view in
18 official circles in London is that there is really
19 no practical or realistic way of training people
20 who are lay persons, in medical terms at least,
21 reliably to be able to identify whether somebody
22 has been tortured or not.

23 I haven't been into all the
24 reasons for that, but I think one is one that I
25 believe has come up in earlier testimony, which is

1 that torture sometimes can actually be inflicted
2 without really showing many physical signs.

3 For that and a number of other
4 reasons, my understanding is that our Foreign
5 Office does not give specific training in that
6 area.

7 MR. DECARY: While you were an
8 ambassador in Syria in the period 2000 to 2003,
9 were there cases involving British nationals who
10 were detained by Syrian officials, not the
11 military aspect, not the SMI, but just arrested
12 involving -- cases involving what I would call
13 mono-U.K., people who have single nationalities?

14 MR. HOGGER: Yes, there were.
15 Again my recollection is not of any great detail
16 because partly it is now quite a while ago and
17 partly, as I've said earlier, I wasn't directly
18 involved in all the cases.

19 In what I would call a routine
20 consular case, let's say a British national who
21 gets picked up by the police for a variety of
22 possible suspected offences, even down to a
23 traffic offence, I wouldn't normally be personally
24 involved because our consul or one of his
25 assistants would deal with that case.

1 The impression overall that I have
2 is that there were actually very few such cases,
3 and the reason for that is really twofold.

4 First of all, the British resident
5 community in Syria was relatively small, and the
6 number of visiting tourists for a regrettable
7 number of reasons was also rather limited.

8 And most of the people, the
9 British people who did live in or visit Syria
10 were, if I can put it this way, relatively
11 well-behaved because they had respectable official
12 reasons for being there.

13 MR. DECARY: Do you recall any
14 problems now in those cases?

15 MR. HOGGER: In general, no,
16 though I think it is perhaps worth observing that
17 the whole concept of consular protection for your
18 own nationals is a somewhat new one for Syria. It
19 is not one that I think they really recognize or
20 act on in the way they organize their own
21 diplomatic representation abroad.

22 I think there were sometimes
23 issues, therefore, where a particular local
24 official you might be dealing with in requesting
25 access to a detained British national might not be

1 fully aware of what the country's obligations were
2 in that respect under the Vienna convention.

3 Sometimes we would have difficulty
4 because we were only told rather belatedly about
5 arrest of a British national, particularly in a
6 remoter part of country. Sometimes, indeed, we
7 were not told at all. We would find out for
8 ourselves.

9 So there were what I would call
10 bureaucratic issues that sometimes caused
11 problems, but I don't have a recollection of
12 major, substantive issues, if I can put it that
13 way, in normal consular work.

14 MR. DECARY: Were you involved,
15 have knowledge of any case of dual nationals or a
16 dual national?

17 MR. HOGGER: I have a -- I'm
18 afraid not very clear now -- recollection from the
19 early part of my time in Syria of a case involving
20 a dual national who, from a document I have
21 recently seen, I have been reminded of his name,
22 and of the fact that he was actually, if I
23 understand it correctly, a dual British-Iraqi
24 national or a British citizen of Iraqi origin -- I
25 am not even certain that he had the two formal

1 nationalities -- who disappeared in Syria, and for
2 a long period we were unable even to get the
3 Syrian authorities to acknowledge that he was in
4 their custody.

5 That was a difficult case.
6 Eventually we did get such an acknowledgment and
7 eventually, as again the document I have recently
8 seen reminds me, he was in fact released.

9 It wasn't, for a number of
10 reasons, a high profile case in terms, for
11 example, of domestic interest in Britain.

12 MR. DECARY: In that case, what
13 was the allegation made against this person?

14 MR. HOGGER: Of course, for the
15 period during which the Syrian authorities denied
16 having him in their custody, there was no
17 allegation. When more detail emerged and when
18 they did acknowledge that fact, there were
19 allegations concerning involvement in terrorist
20 activities.

21 But I don't recall we were ever
22 given any detail on that.

23 MR. DECARY: The period during
24 which this person was detained without you being
25 able to obtain access, how long did that last, to

1 the best of your memory?

2 MR. HOGGER: To the best of my
3 memory -- and I have to emphasize that -- I know
4 that his overall period of detention was around a
5 year. I think it was several months before, as I
6 said earlier, we were even told, it was even
7 acknowledged that he was in the hands of the
8 official authorities.

9 MR. DECARY: During that period,
10 do you know if the embassy officials inquired as
11 to whether or not that person was held in
12 detention?

13 MR. HOGGER: I'm sorry, are you
14 talking about the period before they acknowledged
15 that they held him or after?

16 MR. DECARY: Yes, the period
17 before that.

18 MR. HOGGER: Yes, because we had
19 had a number of inquiries from family members and
20 friends who knew that he had disappeared; assumed,
21 possibly knew -- again, I can't remember for
22 sure -- that it was in Syria that he had last been
23 heard of and were sure therefore that he was in
24 Syria.

25 MR. DECARY: What steps did you

1 take to obtain access first to this person?

2 MR. HOGGER: Again I have to
3 stress that this is my recollection of an event
4 now something like four years, if not more, ago.

5 We went through what I would call
6 the normal steps of oral and written, in the form
7 of note verbal representations to the Syrian
8 authorities asking for us to be allowed access to
9 him.

10 MR. DECARY: Do you know if any
11 allegations of torture were made in this case?
12 And if so, when?

13 MR. HOGGER: I do know that
14 allegations were made from the document that I've
15 seen recently, which I referred to. I don't
16 recall at the time that I was in Syria hearing
17 that those allegations had been made.

18 MR. DECARY: And the document to
19 which you referred to, can you state to the
20 Commission what that document is?

21 MR. HOGGER: I hope so,
22 Commissioner.

23 It is, I believe, a report from
24 Amnesty International. If you will forgive me for
25 a moment, I will see if I can find it.

1 --- Pause

2 MR. HOGGER: It is a document, as
3 I thought, put out by Amnesty International. I'm
4 not, I'm afraid, sure what it is officially
5 called. It's headed "Urgent Action".

6 MR. WALDMAN: We have copies. It
7 is a document we disclosed. I don't know if you
8 want to introduce it now?

9 THE COMMISSIONER: Sure, if the
10 witness is referring to it, why don't we circulate
11 it.

12 It is not in our material
13 otherwise?

14 MR. WALDMAN: No.

15 THE COMMISSIONER: Thank you.

16 MR. HOGGER: Commissioner, I
17 apologize if I have committed any breach in
18 referring to this document now.

19 THE COMMISSIONER: Not at all.

20 MR. HOGGER: I felt it important
21 to clarify that that is how I knew about this.

22 THE COMMISSIONER: I think that is
23 helpful. I appreciate that, Mr. Hogger.

24 This will be 272.

25 EXHIBIT NO. P-272: Amnesty

1 International document headed
2 "Urgent Action"

3 MR. DECARY: I may be repeating,
4 and I wish to apologize if that is the case.

5 Based on your testimony, would it
6 be correct to state that you learned of the
7 allegation that this person had been tortured only
8 recently following reception of document P-272?

9 MR. HOGGER: As I said, I don't
10 recall at the time being aware of these
11 allegations, which of course were made after his
12 release from Syria. I would expect, given the
13 gravity of an allegation like that, that I would
14 have known -- that I would remember if I had known
15 of it at the time.

16 MR. DECARY: I would like to turn
17 to access to dual nationals.

18 Would you please describe to the
19 Commission and the Commissioner your understanding
20 of the Syrian view of dual nationality?

21 MR. HOGGER: My understanding is
22 that the Syrian authorities effectively don't
23 recognize the concept of dual nationality in the
24 sense that they consider a Syrian citizen to be
25 solely the responsibility of the Syrian state in

1 legal or other terms, jurisdictional terms,
2 irrespective of any other nationality that he may
3 also hold.

4 MR. DECARY: Who has jurisdiction
5 in Syria over dual nationals?

6 MR. HOGGER: The Syrian view is
7 that Syria does. As regards the position in
8 international law, I'm afraid I'm not an expert in
9 that area and I can't really say.

10 The Syrian view, as I have already
11 said, is that they are entirely subject to Syrian
12 jurisdiction.

13 MR. DECARY: What branch of Syrian
14 authorities or of government in particular would
15 claim jurisdiction, or in your view would have
16 jurisdiction over dual nationals?

17 MR. HOGGER: I am not really quite
18 sure I understand your question, but in terms
19 of --

20 MR. DECARY: Would it be the
21 foreign ministry, would it be --

22 MR. HOGGER: Principally it would
23 be the internal authorities, at least while this
24 person was on Syrian soil, because I think it
25 follows logically from the Syrian position on dual

1 nationality that they would consider such person
2 to be a purely Syrian citizen and not recognize
3 any interest or involvement by a foreign state.

4 Therefore the foreign ministry,
5 for example, would not normally be brought into
6 it.

7 MR. DECARY: As an ambassador did
8 you participate in meetings, and in particular
9 monthly meetings possibly, with other ambassadors
10 while you were stationed in Syria?

11 MR. HOGGER: Yes. We had a formal
12 arrangement for normally at least monthly meetings
13 of the European Union ambassadors. That is
14 actually a statutory requirement laid down from
15 Brussels, so that has to be done worldwide. We
16 used to do that regularly.

17 I had of course, as is normal,
18 regular meetings with many of my other diplomatic
19 colleagues. They were on a less formal and
20 structured basis.

21 The diplomatic community is
22 relatively large, I would say in my experience, in
23 Syria, but it is still quite close-knit and we saw
24 quite a good deal of each other.

25 MR. DECARY: Just so make sure

1 that it is on record, would these ambassadors,
2 based on your testimony, be those from the
3 European community, those who participated in the
4 monthly meetings, or was it more or less?

5 MR. HOGGER: Much more widely than
6 that. The irregular meetings were with both the
7 ambassadors of other western countries and indeed
8 many others from other Arab countries, other
9 developing countries and other commonwealth
10 countries.

11 MR. DECARY: Based on your
12 recollection of discussions with other
13 ambassadors, do you know if there were several
14 cases similar to the Arar case that occurred
15 during the three years in which you were stationed
16 in Syria?

17 MR. HOGGER: I don't know for
18 sure, and part of reason for that is that I don't
19 recall any significant discussion at the meetings
20 that we are talking about about cases that other
21 ambassadors and other embassies were involved in,
22 other than the Canadian case which I referred to
23 earlier.

24 I deduce from that, because these
25 are obviously difficult issues, that had there

1 been a lot more such cases, that we would have
2 spent more time discussing them in our meeting
3 because there was an obvious common interest in
4 how to handle such cases.

5 MR. DECARY: I would like now to
6 draw your attention to matters that more directly
7 bear on the investigation.

8 I would like to Exhibit P-134, tab
9 3.

10 Do you have a copy before you?

11 MR. HOGGER: Yes.

12 MR. DECARY: Do you recognize this
13 document?

14 MR. HOGGER: Yes, I do. I have
15 it in my papers. I am very grateful to the
16 Commission for saving me having to fumble through
17 to find it.

18 MR. DECARY: You have read this
19 document before?

20 MR. HOGGER: Yes.

21 MR. DECARY: What do you derive
22 from this report?

23 MR. HOGGER: Well, in my opinion
24 it's an extremely important report, first of all
25 for the fact that the meeting that it records took

1 place at all. This was, as I understand it, the
2 first consular visit to Mr. Arar, the first time
3 that access was granted to him. And given the
4 concerns that have been talked about earlier over
5 his treatment, it was obviously very important for
6 consular officials to have the opportunity to see
7 Mr. Arar.

8 Indeed, I would say from my own
9 experience that the principle of consular access
10 is important not only because it's a legal
11 obligation on both the sending and the receiving
12 states, as we put it, to allow such access, but
13 also because of the very important psychological
14 and humanitarian effect that it has for somebody
15 in trouble of one sort or another in a foreign
16 country to see an official representative of his
17 country coming to look into his condition and
18 offer him support.

19 I think, as I said, that the first
20 key point of interest really is that the visit
21 took place at all.

22 I think it is also important that
23 the consul had had the opportunity to see Mr. Arar
24 at relatively close quarters. I note that they
25 shook hands and that there was an opportunity for

1 the consul to see with his own eyes, if I can put
2 it that way, evidence of Mr. Arar's physical
3 condition.

4 I think it is also important that
5 indications were given during the meeting that
6 further access would be granted at regular
7 periods, not only again for the reasons of -- if I
8 could put it this way -- psychological reassurance
9 that this was something that was going to
10 continue, but also because if there had been
11 concern about the way that Mr. Arar was being
12 treated, I don't know if you could put it as
13 strongly as guarantee but the undertaking to
14 provide further access would hopefully at least
15 reduce the chances that any ill treatment might
16 take place.

17 So all those, I think, were the
18 principal positive aspects of the visit.

19 Against that, of course, it is
20 evident that all was not entirely well. There is
21 a reference to Mr. Arar being -- I can't find the
22 exact place -- but looked resigned and submissive
23 that there was clearly at least some restriction
24 on what he felt able to say in front of the Syrian
25 guards or officials who were present.

1 Given what must have been the very
2 traumatic circumstances that he had been through,
3 you could say that was not entirely surprising but
4 is nonetheless obviously a rather more negative
5 aspect of the meeting than the ones that I have
6 just highlighted.

7 Overall, I would certainly
8 characterize it again, against the background of
9 my own experience, as being a positive event, the
10 fact that the meeting took place at all.

11 I think I have said earlier, I am
12 not aware of any other case of a detainee being
13 held by the security authorities where the embassy
14 concerned was allowed direct access. I think that
15 is quite an achievement following the
16 representations from the ambassador to the Syrian
17 authorities about that. I certainly think that
18 overall, therefore, that meeting was very much a
19 plus in a number of ways.

20 If I may be allowed to make a
21 final observation on it, it is that I note also
22 that the ambassador in his commentary at the end
23 of this report observes that positive though this
24 meeting may have been, it doesn't by any means
25 represent a solution or a resolution of the issue

1 and that it will be necessary to exercise a degree
2 of patience in working to secure such a
3 resolution.

4 MR. DECARY: You commented on how
5 Mr. Martel proceeded to ascertain the condition in
6 which Mr. Arar was in particular, if there were
7 signs of torture.

8 Would you have proceeded any
9 differently?

10 MR. HOGGER: Given that that's a
11 hypothetical question, I would have to say that it
12 would depend on the circumstances of the case I
13 was involved in.

14 If we are working on the basis of
15 let's say a similar case, no, I can't think of
16 anything else that I would have done.

17 Perhaps I should ask just for
18 clarification though: Are you referring
19 specifically to the action that Mr. Martel took in
20 ascertaining or more generally what the embassy
21 did?

22 MR. DECARY: In the case that is
23 before you, in this report. Reading this report,
24 is there anything that you can think of that you
25 would have done differently; either something that

1 you would have done or not done?

2 MR. HOGGER: No, it seems to me
3 that the effort that Mr. Martel made within what I
4 would describe as controlled and restricted
5 circumstances to establish, as best as he could,
6 the physical conditions of Mr. Arar were the right
7 steps to take.

8 MR. DECARY: You were present this
9 morning during the testimony of Dr. Leverett and
10 you heard the exchange in particular between
11 Dr. Leverett and Mr. Cavalluzzo, chief Commission
12 counsel.

13 Taking into consideration Syria's
14 human rights record and assuming -- and I say
15 assuming -- that Mr. Arar had been held
16 incommunicado for two weeks, could you, as an
17 ambassador today, conclude that there had been
18 torture? Conclude that there had been torture?

19 MR. HOGGER: Well, it seems to me
20 the answer to that is really a combination of what
21 I call diplomatic experience, I mean the kind of
22 experience that I have had and actually logic.

23 It seems to me the answer to that
24 must be no, you couldn't conclude it.

25 It seems to me that however strong

1 the evidence that torture sometimes took place in
2 cases like this, and however strong therefore a
3 suspicion one might have that this might have
4 happened, that is not the same thing as concluding
5 in advance, if you like, that the torture had
6 taken place.

7 Indeed, although I believe the
8 question, the discussion earlier today referred to
9 the situation as the consul went into the room,
10 and therefore before he had seen Mr. Arar, it
11 seems to me that having not been able to conclude
12 that it had taken place, that torture had taken
13 place, and then coming in to see Mr. Arar in
14 apparently a physical condition that didn't show
15 the signs of torture, would to some extent support
16 the fact that it was unwise to jump to that
17 conclusion.

18 MR. DECARY: How would you have
19 gone about getting the evidence or proof or signs
20 or signals that there was torture?

21 MR. HOGGER: I think it's
22 extremely difficult for reasons, some of which
23 have already been discussed. In my layman's view
24 anyway, I think I am inclined to support the view
25 of at least our Foreign Office that it is

1 extremely difficult, if not impossible, to provide
2 what I call realistic training to officials to be
3 sure to be able to detect signs of torture.

4 It is the case again, as I believe
5 the evidence has already been put forward, that
6 there are types of torture that simply don't much
7 of a physical trace.

8 All I think I would feel able to
9 do therefore in these circumstances, principally I
10 would rely on firsthand visual observation of the
11 person concerned, which is what, from this report,
12 and those of subsequent consular contacts with
13 Mr. Arar, is what took place.

14 It's not perfect, it's not
15 foolproof, but I don't have a better suggestion.

16 MR. DECARY: If I ask, do you know
17 are there other means, other inquiries? For
18 instance, would you press the Syrian officials for
19 a private visit? Or would you seek ways to
20 further the inquiry?

21 Is there anything else that you
22 can envision? And if so, why or why not?

23 MR. HOGGER: I think it is
24 important to bear in mind in a situation like
25 this -- and I am really referring to this

1 particular case, not because it is something in my
2 own experience, but because it seems to me to be
3 the sort of case one might also be involved in.

4 It is important to bear in mind
5 that in a case like this it is actually the Syrian
6 authorities, like it or not, who hold most of the
7 cards. They have the person physically in their
8 possession. They are in a position effectively to
9 dictate the terms on which access is allowed. The
10 conditions in which the person is kept may or may
11 not be the subject of representations by the
12 embassy, depending on what evidence there is at
13 the time of those conditions.

14 But the important point is that
15 the embassy making the representations, the
16 embassy supporting the person from the point of
17 view of his consular rights, is, to a great
18 extent, "demandeur" in this matter -- I think that
19 is the right French expression -- in the sense
20 that there isn't -- one can regret that, but that
21 is the reality of life.

22 In that situation it seems to me I
23 would certainly want to be very certain that my
24 priority was retaining the right of access to this
25 person and I would be very reluctant to consider

1 another step that even risked putting that right
2 in jeopardy.

3 What I mean by that is that yes,
4 of course in logic there would be something to be
5 said for seeking to have a private meeting so that
6 Mr. Arar could speak unrestricted and openly about
7 the treatment he was receiving. In the real world
8 I have to say I think the likelihood of the Syrian
9 authorities agreeing to that would be very remote,
10 but more serious would be the likelihood that they
11 would see that as an unreasonable demand and
12 possibly take steps to reduce or restrict the
13 amount of access that the embassy had in the
14 future.

15 MR. DECARY: What steps or
16 measures can a government take in order to ensure
17 fair treatment of its nationals?

18 MR. HOGGER: Well, maybe it is
19 worth outlining something about the basic
20 principle of consular work. I think it may
21 sometimes be thought that the purpose of consular
22 protection is actually in every circumstance to
23 secure the release of one's citizen or citizens
24 who are detained in a foreign country. That is
25 not what the Vienna Convention actually provides

1 for. There are people in this room of course who
2 would know that very well, but I think perhaps
3 there is a public perception that is what your
4 consul is for, is to get people out of jail.

5 It is not as simple as that. The
6 purpose of consular work in -- I wouldn't say is
7 defined because I'm not sure what the exact
8 wording in this respect is of the Vienna
9 Convention, but the spirit of it is that it is to
10 ensure that if somebody is detained in a foreign
11 country that his or her embassy or consulate have
12 the ability to act in support of that person, not
13 necessarily to secure their release because the
14 receiving state has a right to submit somebody to
15 its jurisdiction if it feels an offence has been
16 committed within that jurisdiction. So in those
17 circumstances the emphasis is to ensure that the
18 person is receiving a fair deal, if I can put it
19 that way, at the hands of the judicial
20 authorities.

21 So I really mention that because
22 if you are asking about what steps can be taken it
23 is important to bear in mind what the purpose of
24 consular representations are.

25 Having said that, I would say that

1 tools, as it were, that one can use range from the
2 formal diplomatic representation in that country,
3 as was certainly used on this occasion, the
4 Ambassador, the Consul, the people on the spot, if
5 I can put it that way, and indeed officials at
6 Headquarters who may be more senior. The
7 political relationship between the two countries,
8 in most cases, because Foreign Ministers meet in
9 one forum or another quite regularly, Foreign
10 Ministers will know each other personally.
11 Clearly to use that channel of communication over
12 a difficult case such as this was clearly another
13 tool at the disposal of the Canadian government.

14 In some cases indeed, although I'm
15 not sure if it was the case here, there are links
16 between two countries which are outside the
17 official government domain. There may be business
18 connections, there may be family connections. We
19 know from this case in a way that there are
20 Canadians of Syrian origin living in Canada and
21 providing, in that sense, a link between the two
22 countries. There may be cultural or academic
23 links.

24 I could go on, but essentially my
25 view is that in a case such as this, you use what

1 assets you have in terms of relationships and
2 links, but possibly and arguably, in the first
3 instance anyway, the most important is your link
4 through your embassy on the spot because your
5 Ambassador will have relationships with some of
6 the players, as indeed this case demonstrates.

7 MR. DECARY: To be specific, in
8 the material that was provided to you do you
9 recall what steps were taken by the Consul, by the
10 Ambassador -- because you haven't been specific I
11 won't suggest the answer -- but by other Canadian
12 officials as we go up in the hierarchy?

13 MR. HOGGER: Yes. I don't suppose
14 you want me to, and I'm not sure I could go into
15 the full detail of the different representations
16 and discussions that took place, but certainly the
17 Ambassador himself clearly made a number of
18 contacts with both foreign ministry officials,
19 mainly the Deputy, in fact two Deputy Ministers,
20 with General Khalil himself, which I think is
21 important.

22 There were also contacts as time
23 went on at what I call an escalating level. There
24 were telephone calls from the Foreign Minister at
25 the time, there was a visit by Members of

1 Parliament and, as I think has already been
2 mentioned, there was ultimately a personal message
3 from the Prime Minister to President Bashar.

4 I would just observe that that
5 kind of, if you like, escalation of the political
6 level of representations strikes me as an entirely
7 right way to proceed in terms of trying to secure
8 a resolution of the case, gradually raising the
9 level at which the representations and contacts
10 take place. It is the kind of thing we would do
11 too.

12 MR. DECARY: Would you have acted
13 differently? Is there something that strikes you
14 in the record that you have seen that would lead
15 to a recommendation or a comment with respect to
16 something else that should have been done or
17 something that should not have been done or done
18 differently?

19 MR. HOGGER: No. As I have
20 already said, these steps, both at the local level
21 in Damascus through the embassy and subsequently
22 in contracts more directly between Canada and
23 Damascus, strike me as the right ones to take.

24 I think, bearing in mind what I
25 also said earlier about the sensitivity of

1 anything that looks too much like overt pressure
2 to which the Syrian authorities would likely to
3 respond negatively, it seems to me that the steady
4 progression of the level of representation was
5 right and, in a sense, though the period was a
6 regrettably long one, that is to some extent
7 shamed by the fact that in the end the result was
8 the desired one.

9 MR. DECARY: One last question on
10 this subject. Personal relations.

11 What is the importance of personal
12 relations in the Syrian context?

13 MR. HOGGER: Well, I suppose in a
14 sense you could say that personal relations are
15 important in any context, but I think it is
16 reasonable to suggest that the importance attached
17 to personal contacts and personal relationships,
18 perhaps not only in Syria but in the Arab world,
19 in the Middle East in general, is in a way of a
20 different order than it is to us, at least in the
21 sense of the way that society works, the way that
22 business is done.

23 What I suppose I mean by that is
24 that to a great extent business is done, official
25 government business or commercial business,

1 through a network of personal knowledge, personal
2 acquaintances, sometimes on a family basis because
3 somebody you are doing business with you will be
4 related to. In that sense it is linked with what
5 I call the issue of trust. People on the whole
6 prefer to do business with somebody they know
7 because they feel that that increases the degree
8 of trust in the transaction.

9 It is notable that certainly once
10 you know somebody in Syria, let's say a
11 shopkeeper, you can go and buy something from him
12 and he won't mind if you don't bring the money
13 until the following week or even the following
14 month. This is because once there is a personal
15 contact that trust is established and he is
16 confident in the knowledge that you won't
17 disappear, especially if you are posted there as a
18 Diplomat I suppose, but I think it is a wider
19 experience than that.

20 So it is something which acquires
21 great importance and I think that does link in in
22 a way to the issue we were discussing just now
23 about the assets that you use in trying to resolve
24 a case of this kind, because I have no doubt that
25 the sort of personal relationships that, from the

1 record I have seen -- well, the Ambassador in
2 particular was able to establish with his
3 interlocutors in the foreign ministry and more
4 particularly with General Khalil in the
5 intelligence service -- were very important tools
6 that were used in an effective way.

7 MR. DECARY: This leads me to the
8 role of an Ambassador.

9 How would you describe the role of
10 an Ambassador?

11 MR. HOGGER: You could have a
12 short and a long description of the role of an
13 Ambassador, but I think in essence it can be
14 expressed quite simply, which is what we are
15 taught to do. It is that you are really the face
16 and the voice, if I can put it that way, the
17 mouthpiece -- the Ambassador is the mouthpiece of
18 not only actually in principle the government but
19 actually the state that he represents, because
20 most Ambassadors in most countries are appointed
21 by the Head of State. I, as indeed I think
22 possibly the Ambassador of Canada, had my
23 appointment from Her Majesty the Queen.

24 So he is the mouthpiece of his
25 State, more in practice his government because it

1 will be the government that sends instructions on
2 a day-to-day basis in dealings with the state to
3 which he is accredited.

4 What that means -- and perhaps
5 worth mentioning because it is an issue I think
6 has come up in earlier testimony -- is that he has
7 the responsibility in a way for ensuring that
8 Canada in this case, Britain in my case, speaks
9 with one clear voice in its messages to the
10 government concerned.

11 MR. DECARY: Does this mean that
12 the Ambassador speaks, talking of this case, for
13 the consular side as well as the police or
14 intelligence services?

15 MR. HOGGER: Yes. I might just
16 elaborate that although the Ambassador would
17 normally take instructions on a day-to-day basis
18 from the foreign ministry, that is not an
19 exclusive process and I think it follows from his
20 role as the voice of the government he represents
21 that he can be charged with sending messages from
22 any agency of government.

23 MR. DECARY: Does that include
24 assisting the police and intelligence services
25 when they require assistance from foreign police

1 and intelligence services?

2 MR. HOGGER: Yes.

3 MR. DECARY: How would you
4 reconcile these functions, the consular function
5 and the police or intelligence function, when
6 dealing with a foreign government, when dealing
7 with Syria in your case?

8 MR. HOGGER: Well, normally it
9 should be perfectly possible to reconcile the two.
10 There is no in-built reason why there should be a
11 conflict.

12 It may be just worth adding the
13 observation to what I said about passing messages
14 on behalf of different government agencies that it
15 is obviously important for the Ambassador to do
16 two things.

17 First of all, to satisfy himself
18 that any instructions he is given comes with the
19 proper authority. I think one can say that will
20 vary according to his knowledge and experience he
21 is dealing with. In some cases he may be so used
22 to dealing with them that an instruction from
23 somebody more or less at the working level may be
24 sufficient. It may be that he wants to know that
25 the minister responsible for that department for

1 example had authorized the instruction that he is
2 given. It will vary according to the
3 circumstances.

4 But clearly he will need to do
5 that. And clearly, equally clearly I think, if he
6 receives two or more messages from different
7 agencies asking him to do something he will need
8 to satisfy himself that that is reconcilable.

9 I don't want to put this too
10 bluntly, but if you don't acknowledge the
11 discretionary role of the Ambassador in some of
12 those issues then you might as well not have an
13 Ambassador but an e-mail address.

14 MR. DECARY: Is there not a risk
15 of mixed messages?

16 MR. HOGGER: That, as I say, is
17 really what the Ambassador is there for, is to try
18 to ensure that that doesn't happen. The means by
19 which he can do that will obviously vary according
20 to the circumstances, but it is open to an
21 Ambassador to query an instruction that he is sent
22 on a number of reasons. If after that he is told,
23 "Yes, we have taken your query into account but
24 you must do it anyway", then that is his duty.

25 MR. DECARY: In the documents

1 which were remitted to you -- there was a document
2 yesterday we referred to -- I believe
3 Exhibit P-138, I hope my note is correct -- which
4 is in your booklet under -- I will get that for
5 you in a moment. Sorry. Thank you.

6 --- Pause

7 MR. DECARY: Mr. Hogger, have you
8 seen this document before?

9 MR. HOGGER: I believe so, yes.

10 MR. DECARY: Would you take a
11 moment just to read it?

12 MR. HOGGER: If I might just
13 refresh my memory I would be grateful.

14 Thank you, Commissioner.

15 MR. DECARY: In particular,
16 Mr. Hogger, I would ask you to take a look at the
17 same document, paragraph 3. Take a moment to look
18 at paragraph 3.

19 If I mention the words "bout de
20 papier", the words here are "bout de papier".

21 MR. HOGGER: Yes.

22 MR. DECARY: In this case
23 Ambassador Pillarella accepted the Syrian
24 authorities' offer of a statement they had taken
25 from Mr. Arar.

1 Was that appropriate?

2 MR. HOGGER: In my view, I can't
3 think of any real reason, valid reason why the
4 Ambassador shouldn't accept that document. It
5 seems to me -- and again I stress that I am
6 talking from my own experience -- but that in such
7 a situation that document would be a valuable
8 document for at least two purposes.

9 First of all, and I think most
10 importantly from, the consular point of view. If
11 you were dealing with a case where one of your
12 nationals is being detained in a foreign country
13 it seems to me very important that you should have
14 all the information you need or as much
15 information as possible about what he is being
16 charged with and how the detaining authorities
17 actually see the case. I think it was a
18 reasonable inference from this discussion that
19 that piece of paper would contain information on
20 that subject.

21 I think, secondly, the fact that
22 this was a case where, at least from the Syrian
23 side it had been understood that there were
24 allegations of involvement in terrorist activity
25 would no doubt mean that that information would be

1 of use and interest to other agencies of the
2 government, other than the people dealing, if you
3 like, with the consular case.

4 So I think for at least those two
5 reasons it would have been entirely right to
6 accept that document.

7 Again, if one can talk about
8 diplomatic practice, which is not always a very
9 exact science but I think it is, broadly speaking,
10 an accepted proposition that by accepting a
11 document from a foreign government you don't
12 necessarily indicate any gesture of accepting the
13 contents or recognizing the contents as valid.

14 I have certainly known cases where
15 I have received a note or a message from, for
16 example, the Syrian government with which it
17 turned out my government, the content of which
18 strongly disagreed, but they wouldn't have said
19 you shouldn't have accepted the piece of paper
20 because they wanted to know what the Syrian
21 government's view was.

22 So I think against the background
23 of the fact that the Ambassador would not have
24 been implying any sort of official endorsement of
25 the contents of the document, that to accept it

1 was entirely right and proper.

2 --- Pause

3 MR. DECARY: No further questions.

4 THE COMMISSIONER: Okay.

5 Do you have anything at this
6 stage, Mr. Fothergill?

7 MR. FOTHERGILL: No, thank you.

8 THE COMMISSIONER: Mr. Boxall?

9 Would you like to then start after
10 lunch.

11 We will resume at two o'clock.

12 MR. ATKEY: Commissioner, could we
13 have some clarification on the list of documents
14 that Mr. Hogger has been given?

15 To the extent that there are
16 documents that were adduced in camera is it clear
17 that the government is waiving its right to NSC?

18 THE COMMISSIONER: I think they
19 are the redacted versions of the in camera.

20 MR. ATKEY: They are redacted
21 versions. So everything that is on this page is
22 in the public domain?

23 THE COMMISSIONER: Yes. That is
24 my understanding. That was the case with the
25 earlier witness.

1 MR. ATKEY: right. If that is
2 understood, that's fine. Thank you.

3 MR. CAVALLUZZO: They had better
4 be or Mr. Decary is going to jail for 14 years.

5 --- Laughter / Rires

6 THE COMMISSIONER: We will rise
7 until 2 o'clock.

8 --- Upon recessing at 12:45 p.m. /

9 Suspension a 12 h 45

10 --- Upon resuming at 2:00 p.m. /

11 Reprise a 14 h 00

12 THE COMMISSIONER: Please be
13 seated.

14 EXAMINATION

15 MR. WALDMAN: Mr. Hogger, before I
16 start asking you questions, as Ms Edwardh did I
17 should introduce myself. My name is Lorne Waldman
18 and together with Ms Parnes and Ms Edwardh and
19 Ms Davies who is not here, we have been
20 representing Mr. Arar since the public inquiry
21 started.

22 MR. HOGGER: Thank you.

23 MR. WALDMAN: Before we start with
24 the questions, I just wanted to understand how it
25 is that you made your way from London to Toronto

1 today.

2 When were you first approached by
3 somebody and who was it that first approached you
4 about the testimony?

5 MR. HOGGER: To my recollection
6 the first contact was from Mr. Roger Flaim from
7 the Justice Department. This was, I would say,
8 probably mid to late August.

9 MR. WALDMAN: What was the nature
10 of the conversation at that time?

11 MR. HOGGER: Essentially, again to
12 my recollection, it was to inquire about my
13 availability to give evidence in a Commission of
14 Inquiry. A very relatively small amount of detail
15 in that first contact.

16 MR. WALDMAN: You didn't get any
17 more detail than that?

18 MR. HOGGER: There were further
19 conversations during which more --

20 MR. DECARY: I would object at
21 this point --

22 MR. HOGGER: Excuse me.

23 MR. DECARY: -- as to further
24 conversations. The first one, the initial one,
25 but the rest in this case --

1 THE COMMISSIONER: I think I
2 directed yesterday that you could explore, if you
3 wished, the contact but don't go into the
4 conversations between the lawyer and the witness.

5 MR. WALDMAN: I'm just interested
6 in who retained you, when it was agreed that you
7 would come. I don't need all the details of the
8 conversations.

9 MR. FOTHERGILL: Commissioner, if
10 it assists I can just advise you that the process
11 was very similar to the process surrounding the
12 retainer of Dr. Leverett. I don't think there was
13 anything materially different in the manner in
14 which Mr. Hogger was retained as opposed to
15 Dr. Leverett.

16 MR. WALDMAN: So you are being
17 paid by the Government of Canada, Department of
18 Justice for testifying.

19 Is that correct.

20 MR. HOGGER: Yes.

21 MR. WALDMAN: I would like to deal
22 with one of the consular notes and the whole
23 question of consular notes.

24 Before I do that, just a few
25 general questions about your own personal

1 experience.

2 I gather from the testimony that
3 you really don't have a lot of experience in the
4 consular area.

5 Were you ever a Consular Officer
6 yourself?

7 MR. HOGGER: No. As I think I was
8 explaining this morning, my background is
9 primarily in what I would broadly call the
10 political side of diplomat work. I have, as I
11 also explained, held a number of appointments in
12 which I supervised consular work, but I have not
13 been a consular officer in a full-time sense.

14 If there was any impression that
15 is what I have spent all my life doing this
16 morning, then it is not a correct impression.

17 MR. WALDMAN: Right. So it would
18 be fair to say you don't hold yourself out to be
19 an expert on consular matters?

20 MR. HOGGER: I think I would say
21 that I probably had as much if not perhaps a
22 little more experience of consular work than quite
23 a lot of people who followed a similar career to
24 my own in our foreign service, but I wouldn't want
25 to go much further than that.

1 MR. WALDMAN: Right. But there
2 are people in your foreign service who spend their
3 whole life as consular officers and have a great
4 deal more expertise than you on that side of --

5 MR. HOGGER: Yes, certainly. It
6 is very difficult to generalize because career
7 patterns are not always the same, but broadly
8 speaking I can't, myself at least, think of very
9 many people who have spent most of their career
10 doing consular work who have ended up in what I
11 call a Head of Mission or Ambassadorial-type job.
12 There is not exactly a separate cadre but it comes
13 a little close to that.

14 MR. WALDMAN: We heard this
15 testimony from Mr. Pardy who was Head of our
16 Consular and he had been running the department
17 for many years and there is a specific career path
18 in the Canadian foreign service in consular
19 affairs, although there is some cross-pollination.
20 So it is a similar kind of thing in England as
21 well.

22 Is that fair to say?

23 MR. HOGGER: It sounds very
24 similar to that description, yes.

25 MR. WALDMAN: You were more in the

1 political side than the consular side?

2 MR. HOGGER: Yes.

3 MR. WALDMAN: Right. Thank you.

4 As Ambassador, would you expect
5 that the consulars who were working under you
6 would keep you apprised of these very delicate and
7 complicated cases that might come your way?

8 That would be one of their
9 functions. Right?

10 MR. HOGGER: Yes.

11 MR. WALDMAN: You have already
12 told us that maintaining consular access is
13 extremely important. Correct?

14 MR. HOGGER: Yes.

15 MR. WALDMAN: And that one of the
16 reasons why it would be important would be do that
17 the consular official could observe the detainee.

18 Is that correct?

19 MR. HOGGER: Yes.

20 MR. WALDMAN: And in a country
21 like Syria where we know that human rights abuses
22 would occur, it would be particularly important
23 that you, as the Ambassador, would be apprised at
24 any point of any evidence of mistreatment.

25 Is that fair to say?

1 MR. HOGGER: Yes.

2 MR. WALDMAN: This would be
3 important not just for you, but because of course
4 it would be important for you to inform the
5 foreign office in London.

6 Is that correct?

7 MR. HOGGER: Yes. I think I would
8 simply add that a lot of this, if you like, could
9 be categorized broadly as my duty to ensure that
10 access it maintained to a British national in
11 detention. But given that we are all human beings
12 as well as officials, I would call it my moral
13 responsibility too.

14 MR. WALDMAN: Right. You would
15 agree that you have a duty to make sure that you
16 are apprised if any British subject in the
17 jurisdiction you are in -- in the case of Syria,
18 in Syria -- were subject to torture.

19 You would want to know about that.
20 That would be indeed your duty and your
21 obligation?

22 MR. HOGGER: Certainly.

23 MR. WALDMAN: And it would be your
24 obligation then to inform your superiors so they
25 could take the necessary legal steps to protect

1 that person.

2 MR. HOGGER: Yes.

3 MR. WALDMAN: So that if a consul
4 had information that had been given to him by a
5 detainee that he had been subject to torture, it
6 would be very serious if the consul didn't inform
7 anyone.

8 Is that a fair thing to say?

9 MR. HOGGER: I wonder if you could
10 just clarify the question, I'm sorry?

11 MR. WALDMAN: If a consul met with
12 one of your British detainees and the detainee
13 said "I have been tortured" and the consul kept it
14 to himself and didn't tell you, that would --

15 MR. HOGGER: This is our consul?

16 MR. WALDMAN: Your consul, yes.

17 MR. HOGGER: Yes.

18 MR. WALDMAN: That would be a
19 serious matter. Right?

20 MR. HOGGER: Yes.

21 MR. WALDMAN: Ambassador
22 Pillarella told us that in the case of Mr. Arar,
23 because it was a very high profile case, that all
24 of the consular notes that he received -- that
25 were sent on Mr. Arar were reviewed by him before

1 they were sent to Ottawa.

2 Would that have been your practice
3 in high profile cases --

4 MR. HOGGER: You are referring to
5 the reports --

6 MR. WALDMAN: The reports, yes.

7 MR. HOGGER: -- that the consul
8 made about his visits to Mr. Arar?

9 MR. WALDMAN: Yes.

10 MR. HOGGER: I think in a case of
11 this kind, of this sort of profile, yes, I would
12 expect to see the reports before they went.

13 MR. WALDMAN: You would expect
14 that the reports that were sent, that would be an
15 accurate reflection of what had transpired during
16 the meeting.

17 Is that fair to say?

18 MR. HOGGER: Certainly. Yes.

19 MR. WALDMAN: You would be very
20 concerned if they were not.

21 Is that fair to say?

22 MR. HOGGER: Indeed.

23 MR. WALDMAN: It would be
24 important for you to be able to rely on your
25 consul to provide you with all of the information

1 he had retained.

2 Is that fair to say?

3 MR. HOGGER: Yes.

4 MR. WALDMAN: Perhaps I could ask
5 you to go to Exhibit P-42, Volume 6, tab 508.

6 MR. HOGGER: Thank you very much.

7 --- Pause

8 MR. WALDMAN: Have you seen this
9 document? I believe it is one of the documents
10 that was listed.

11 MR. HOGGER: Yes, I have.

12 MR. WALDMAN: So you have seen it.
13 So you know that this is the notes
14 that were taken by Mr. Martel apparently very
15 shortly after he met with Mr. Arar in August of
16 2003?

17 MR. HOGGER: I am aware that these
18 are his notes. I'm not sure if I remember that
19 that was the specific meeting to which they
20 related, but I will take that on your --

21 MR. WALDMAN: I think you can take
22 that as a given because there was evidence to that
23 effect from Mr. Martel and others.

24 MR. HOGGER: So if we go down it
25 says "Present conditions" and he says:

1 "I have not been paralysed -
2 not beaten - not tortured
3 very beginning very little."

4 Then it says:

5 "3' x 6' x 7'
6 sleeping on ground. Mentally
7 destroyed."

8 Have you seen that?

9 MR. HOGGER: Yes, I have.

10 MR. WALDMAN: So there are a few
11 things that are apparent from this document. The
12 first is that he says he hasn't been paralysed.

13 I don't exactly know what was
14 meant by that, but it is there.

15 MR. HOGGER: Nor do I.

16 MR. WALDMAN: That is a rather
17 strange thing for someone to say.

18 MR. HOGGER: I'm not sure if it
19 relates to a translation from Arabic, but I'm not
20 enough of an expert to be sure of that.

21 MR. WALDMAN: I think it was said
22 in English if I'm not mistaken. That was the
23 evidence.

24 In any event, the next thing it
25 says is:

1 "not beaten - not tortured
2 very beginning very little"

3 Then it says:

4 "3' x 6' x 7'"

5 We have been told those were the
6 dimensions of the jail cell that Mr. Arar was
7 living in for 10 months, and he had been living in
8 for 10 months because he was still there at the
9 time of visit in August of 2003.

10 It says also:

11 "Sleeping on ground.

12 Mentally destroyed."

13 So these are rather significant
14 pieces of information, would you not agree, that
15 he was --

16 MR. HOGGER: Certainly it would
17 seem so.

18 MR. WALDMAN: -- in a 3 X 6 X 7
19 cell for 10 months and 10 days at this time, that
20 he had been sleeping on the ground and he had been
21 mentally destroyed.

22 Indeed I will tell you that
23 Professor Toope -- I think you have read his
24 report?

25 MR. HOGGER: Yes.

1 MR. WALDMAN: Perhaps I just could
2 read to you from page 17 of his report where he --

3 MR. FOTHERGILL: Commissioner,
4 just before we go down this road I wonder if it
5 would be appropriate just to express the concern
6 that the Toope report, as we know, is untested
7 evidence and consistent with your ruling in which
8 you appointed Professor Toope it cannot be used as
9 the basis to criticize Canadian officials.

10 Obviously I don't know what Mr.
11 Waldman is intending to do, but I would just like
12 some assurance that it is not his intention to lay
13 a foundation for a criticism of Canadian officials
14 in reliance on Professor Toope's report.

15 MR. WALDMAN: Well, Professor
16 Toope reached a conclusion which is consistent
17 with a conclusion reached by Professor Burns.
18 Professor Burns said that being kept in a 3 X 6 X
19 7 cell for 10 months and 10 days was torture. I
20 was just going to read that section of Professor
21 Toope's report.

22 THE COMMISSIONER: I think
23 technically Mr. Fothergill is correct, but if
24 there is other evidence of it you could refer to
25 the other evidence and use it.

1 But go ahead I think along the
2 lines. I understand the restraint with respect to
3 findings.

4 MR. WALDMAN: Okay. Well, I'm not
5 going rely on -- I'm going to ask you if you
6 agree.

7 Professor Toope made the following
8 comment and I'm just going to ask you if you agree
9 with it:

10 "Mr. Arar also experienced a
11 second form of torture
12 created by the appalling
13 conditions of his detention.
14 In his testimony you recall
15 that Dr. Peter Burns ..."

16 (As read)

17 He was an expert that we called
18 who was an international expert on torture and he
19 was a member of the Committee Against Torture for
20 a number of years, so he is a leading expert on
21 torture under international law:

22 "... suggested that the
23 conditions of the cell in
24 which Mr. Arar was held might
25 constitute torture as

1 understood by the committee."

2 (As read)

3 Quoting from Burns' testimony:

4 "Assuming that it was
5 established and assuming the
6 medical evidence supported
7 it, I regard it as torture,
8 again subject to the
9 purposive aspect of the
10 definition." (As read)

11 MR. DECARY: I would object.

12 There are so many assumptions
13 there and they are not proven. In the way of
14 admissibility to cross-examine someone when it is
15 so qualified, we know -- I mean, I respect what
16 has been done to date, I want to mitigate my
17 comments, but nevertheless there are serious
18 assumptions here, as a medical officer made a
19 determination. I mean, those are the assumptions
20 and this is not before the Commission.

21 THE COMMISSIONER: I think he is
22 seeking an opinion from this witness, who has been
23 qualified to give opinion evidence.

24 I think it is a fair question.

25 MR. DECARY: Then may I add one

1 comment, with your permission.

2 THE COMMISSIONER: Sure.

3 MR. DECARY: Why don't we read the
4 3 X 6 X 7 in a context and give him the context in
5 which this was used by Mr. Martel, not what
6 opinions were given later based on that, had he
7 known -- had Ambassador Hogger at the time known,
8 been informed of this piece of information in the
9 context, what his reaction would have been. That
10 is fair.

11 But otherwise, to have him confirm
12 something that is based on assumptions made by
13 other specialists, that is completely unfair. He
14 is not a specialist on torture.

15 MR. WALDMAN: I'm just asking your
16 opinion, sir. Would you agree with the conclusion
17 reached by Professor Toope and the conclusion also
18 reached by Professor Burns, an international legal
19 expert, that holding someone in a cell which is
20 3 X 6 X 7 for 10 months and 10 days would be
21 torture?

22 MR. DECARY: I object. He is not
23 here to comment on that. If that is the proof,
24 you will decide, but this person has been
25 called --

1 THE COMMISSIONER: I have your
2 objection I think.

3 MR. DECARY: Very well.

4 THE COMMISSIONER: Do you feel
5 qualified to answer that question?

6 MR. HOGGER: I don't feel
7 qualified to answer that question, Commissioner,
8 primarily for the reason that although I have seen
9 the Toope Report I don't have it in front of me.
10 I haven't seen Professor Burns' testimony.

11 I think I perhaps ought to add
12 that it is not clear to me simply from this note,
13 which is all I have to go on, that that is
14 specifically what these dimensions written down
15 here refer to.

16 I have to say, Commissioner, that
17 in the absence of some of that information I don't
18 feel qualified to comment on that.

19 MR. WALDMAN: I was asking --

20 THE COMMISSIONER: Mr. Waldman, if
21 I can help, you could put to Mr. Hogger what
22 Mr. Martel said he was told. The note is just a
23 record of what he was told, but what he was told
24 is evidence. So you are able to do that.

25 MR. WALDMAN: He was told that it

1 was 3' X 6' X 7', that he was held in that place
2 for 10 months and 10 days. That is what he was
3 told.

4 My question to you, sir, quite
5 simply is: Based upon your knowledge of human
6 rights, do you view holding someone in a
7 3 X 6 X 7 -- perhaps it would helpful if we
8 visualize what 3 X 6 X 7 is. It is two coffins
9 put together, if you want to put it in visual
10 terms.

11 Holding someone in a 3 X 6 X 7
12 cell for 10 months and 10 days, would you think
13 that might be torture, sir?

14 MR. HOGGER: I think I need to say
15 again, counsel, that I'm not an expert on torture.
16 I'm not sure quite, to be honest, what
17 qualifications an expert on torture needs, but I'm
18 fairly confident I don't have them.

19 I believe as a personal opinion we
20 are very much talking definitions here, and I have
21 seen in the evidence that has been given varying
22 references to torture, to ill treatment, to
23 physical abuse. I would certainly be perfectly
24 willing to acknowledge that holding somebody in a
25 cell of this size constitutes bad treatment. I'm

1 afraid I simply don't -- and you may think this is
2 a semantic distinction -- but I'm afraid I don't
3 feel professionally qualified categorically to say
4 whether I would see this as torture or not.

5 MR. WALDMAN: I find that rather
6 interesting, given that you were talking before
7 and you felt comfortable when it was convenient to
8 you to use the word "torture" and you say "Well,
9 we don't know if people were tortured and it
10 wasn't unreasonable for Mr. Martel or Mr.
11 Pillarella to assume that someone might be
12 tortured."

13 So are you telling me now that you
14 don't know what torture means and that you are
15 resiling from your testimony this morning, sir?

16 MR. HOGGER: I think with great
17 respect I would say there is a difference between
18 this and what we were talking about this morning
19 which was torture as a general description of a
20 series of behaviours.

21 What you are asking me to do now
22 is to categorize a particular type of behaviour as
23 being torture or not torture and what I am saying
24 is that while I am ready to acknowledge that would
25 constitute ill treatment, I don't feel qualified

1 to pronounce on whether in the definition of the
2 word that would constitute torture.

3 MR. WALDMAN: How could you be
4 qualified to pronounce before the break this
5 morning that it would be reasonable or
6 unreasonable for someone to reach a conclusion
7 about torture if you are now telling us that you
8 don't know what torture means?

9 MR. HOGGER: I don't think that
10 I'm saying I don't know what torture means. I
11 think I am drawing a distinction between what we
12 were talking about this morning which was torture
13 as a general description of a range of behaviours
14 and a particular type of behaviour which you are
15 asking me to categorize now.

16 MR. WALDMAN: What is your
17 definition of torture that you used this morning?

18 MR. HOGGER: I don't have a
19 definition of torture. I don't have one I could
20 give you that anyone would regard -- as I have
21 said before, I am not an expert on this subject
22 and I would not want to try to define it for you,
23 least of all in a legal forum.

24 MR. WALDMAN: So everything you
25 have told us about torture this morning we should

1 disregard because we don't know what you mean
2 about torture.

3 Is that fair to say?

4 MR. HOGGER: That doesn't strike
5 me as being fair to say because I have in my mind
6 reasonably clearly what I --

7 MR. WALDMAN: Then don't you
8 tell us --

9 MR. HOGGER: -- think are the kind
10 of things that --

11 MR. WALDMAN: Tell us what you
12 have in your mind then.

13 MR. HOGGER: There have been
14 descriptions in some of the evidence that has been
15 given of behaviours which I would certainly regard
16 as torture, of physical beatings, physical
17 treatment. I don't want to go into all the
18 definitions, but I think there are certainly
19 categories of behaviour which most people --
20 because I'm not setting myself up, as I said, as
21 an expert on this -- would regard as coming under
22 the heading of torture.

23 MR. WALDMAN: So when you were
24 giving evidence this morning you were only
25 referring to physical torture as being the type of

1 torture that might have occurred or might not have
2 occurred in the Palestine Branch?

3 MR. HOGGER: Not necessarily.

4 MR. WALDMAN: So it is more than
5 physical torture then?

6 MR. HOGGER: I think I need to say
7 again that I am aware that people have given
8 evidence to this Commission who are very much more
9 expert than I am on the definition of torture. I
10 would have to respect those definitions and the
11 views of those experts, but I don't feel qualified
12 to go through, if you like, a list of behaviours
13 and say this is torture and this isn't.

14 I believe there is a generally
15 accepted set of behaviours that most people regard
16 as constituting torture, but if you want me to
17 draw the distinctions more finely, I can't.

18 MR. WALDMAN: Amongst the
19 generally accepted -- but you don't feel
20 comfortable saying, though, that holding someone
21 in a 3 X 6 X 7 cell for 10 months and 10 days
22 might be generally accepted by any reasonable
23 person as being torture?

24 MR. HOGGER: Well, you are telling
25 me that that is the view of a recognized expert on

1 torture. I haven't seen the evidence that he has
2 given.

3 MR. WALDMAN: I'm just asking,
4 given the evidence that you have acknowledged that
5 you are not an expert but you have in your mind a
6 definition, that was the definition that you
7 applied this morning, I'm asking you based upon
8 that definition this morning, that you acknowledge
9 is not an expert opinion, would you consider
10 holding someone in a 3 X 6 X 7 cell for 10 months
11 and 10 days is torture? That is all I'm asking
12 you to say.

13 Given that we don't know what your
14 definition is I just want to know if it includes
15 that or not.

16 MR. HOGGER: I entirely understand
17 why you are asking this question, but I would
18 really ask you to understand why I feel not
19 confident about giving you an authoritative answer
20 on that question.

21 It is not the kind of behaviour
22 that I would, if you like, in an everyday way say
23 I am clear that this constitutes torture. I think
24 it is clear that it is a borderline type of
25 behaviour.

1 I'm not saying for a moment I
2 could condone it. It clearly, as I have said,
3 constitutes ill treatment of what I would regard
4 as an unacceptable nature. I don't want and I
5 don't think I'm qualified to be drawn on whether I
6 can formally define that as being the same thing
7 as torture and I'm sorry if I am seeming less
8 helpful than you would like.

9 MR. WALDMAN: No, it wasn't
10 unanticipated.

11 Perhaps I could ask you to go to
12 P-134, tab 24.

13 --- Pause

14 MR. WALDMAN: It is the third page
15 in on that. It is the consular note of August
16 14th.

17 MR. HOGGER: Yes.

18 MR. WALDMAN: I believe you have
19 seen this?

20 MR. HOGGER: Yes, I have.

21 MR. WALDMAN: This is a note that
22 was drafted by Mr. Martel and approved by
23 Ambassador Pillarella after -- and it was based on
24 the notes that you saw before.

25 MR. HOGGER: Yes.

1 MR. WALDMAN: This was shortly
2 after the meeting that they had with Mr. Arar on
3 August 14th.

4 So if I could ask you to just
5 quickly glance through the note and then I'm going
6 to ask you a few questions.

7 --- Pause

8 MR. WALDMAN: Okay. Have you had
9 a chance to go through it?

10 MR. HOGGER: Yes, thank you.

11 MR. WALDMAN: Could you please
12 show me where in this note it mentions the prison
13 conditions that were outlined in the handwritten
14 notes that were there before?

15 MR. HOGGER: It is not mentioned.

16 MR. WALDMAN: So you agree with me
17 that there is no mention of the fact that Mr. Arar
18 was -- although Mr. Martel acknowledges, there is
19 no mention of the fact that Mr. Arar was held in a
20 3 X 6 X 7 cell.

21 Is that correct?

22 MR. HOGGER: Not that I can see.

23 MR. WALDMAN: Would you also agree
24 with me that there is no mention of the fact that
25 Mr. Arar was sleeping on the ground?

1 MR. HOGGER: I can't see that
2 either.

3 MR. WALDMAN: Would you not agree
4 with me that it would have been extremely
5 important, if you had been the Ambassador
6 reviewing this note, to have been provided with
7 this information that Mr. Arar had been held in a
8 3 X 6 X 7 cell for 10 months and 10 days and he
9 was sleeping on the floor?

10 MR. HOGGER: I think what I would
11 say first of all, is that I believe that it is
12 reasonably normal for a report of this kind not
13 necessarily to contain all the details.

14 I note for example that it does
15 talk about what Mr. Arar said according to this
16 note in terms of the effect of the long detention
17 on him, the fact that he had not been, as we
18 agreed was a difficult word to explain or define,
19 but paralysed and that he had not been beaten or
20 tortured.

21 So, in other words, there is
22 clearly some of the detail of what was said at the
23 meeting that is being reported.

24 I'm afraid I can't offer an
25 explanation as to why those other parts appear not

1 to be in there.

2 MR. WALDMAN: Perhaps we could
3 take you to what Ambassador Pillarella said on
4 this point. It is June 15th, page 7073 of the
5 transcript.

6 MR. HOGGER: Page 7003?

7 MR. WALDMAN: It starts on 7072.

8 MR. HOGGER: I think I have it
9 here actually. Yes, thank you.

10 Yes...?

11 --- Pause

12 MR. WALDMAN: So Ambassador
13 Pillarella indicates that he wasn't advised of
14 these facts by Mr. Martel. That is on 7074.

15 "I don't believe that he
16 mentioned the 3 by 6 by 7."

17 MR. HOGGER: Yes.

18 MR. WALDMAN: He goes on to say:

19 "MR. WALDMAN: You were never
20 told by Mr. Martel that he
21 was in a -- that Mr. Arar had
22 been held for 10 months and
23 10 days --

24 AMBASSADOR PILLARELLA: Not
25 that I recall.

1 MR. WALDMAN: -- in a 3 by 6
2 by 7 cell?

3 AMBASSADOR PILLARELLA: Not
4 that I recall, no."

5 Then:

6 "MR. WALDMAN: But I thought
7 you told us that you were
8 very concerned about --"

9 This is back to very concerned
10 about the fact that he had been in these
11 detentions.

12 "AMBASSADOR PILLARELLA: Yes.
13 But if Mr. Martel doesn't
14 tell me, how am I supposed to
15 know what question to ask
16 him? I kept asking the
17 question in what condition he
18 saw Mr. Arar and he kept
19 giving me a certain answer,
20 but now you are showing this
21 to me and, as I said, it is
22 the first time that I see it,
23 so --

24 So it seems that Ambassador
25 Pillarella was expressing his concern about not

1 being advised by Mr. Martel of the fact that he
2 was in a 3 X 6 X 7 cell.

3 Would you agree that it is
4 something that Mr. Martel ought to have advised
5 the Ambassador?

6 I mean, you just testified that it
7 would be very important for you to know the
8 conditions of your British subjects, sir, and you
9 just told us that holding someone --

10 MR. HOGGER: Yes.

11 MR. WALDMAN: -- for 10 months and
12 10 days in a 3 X 6 X 7 cell, you didn't know if it
13 was torture but you said it was "ill treatment".

14 MR. HOGGER: Yes.

15 MR. WALDMAN: So wouldn't you want
16 to be advised that one of your British subjects
17 had been detained for 10 months and 10 days in two
18 coffins put together?

19 MR. HOGGER: I think that is
20 certainly information I would want and expect to
21 have.

22 MR. WALDMAN: Right.

23 MR. HOGGER: May I make a further
24 observation, with permission, that I note that
25 there is a subsequent comment from Ms McIsaac

1 which points out -- as I must say which was my
2 reaction when I saw this note -- that actually
3 that notation in itself is not very clear what it
4 means.

5 I think you told Mr. Martel has
6 clarified it in his testimony.

7 MR. WALDMAN: Yes, that's right.

8 MR. HOGGER: I don't have a
9 recollection of exactly what he said about it
10 when, as I assume, he was asked to explain this.

11 MR. WALDMAN: Let me just ask you
12 this: Would you agree with me, then, that the
13 failure of Mr. Martel to advise the Ambassador
14 that Mr. Arar was being held in two coffins put
15 together was a very serious omission on his part,
16 and that he was being forced to sleep on the
17 ground?

18 MR. HOGGER: I think I would have
19 difficulty with the amount of knowledge I have of
20 these circumstances in saying it quite as
21 categorically as that.

22 I would certainly say that if I
23 was in this situation I would be surprised if that
24 was something that had been specifically relayed
25 to my consul, that I had not heard about it, if

1 that is what the situation was.

2 MR. WALDMAN: You would be
3 surprised.

4 What if what happened as a result
5 of this was that it was communicated back to the
6 Minister of Foreign Affairs that Mr. Arar hadn't
7 been tortured -- and now assuming for a second
8 that we have the opinion from Professor Toope that
9 this constitute torture, I'm asking you to make
10 that assumption because it is now on the public
11 record -- and the Minister made a public statement
12 in which he said we now have information that
13 Mr. Arar wasn't tortured, because your consul
14 failed to provide the information that was
15 necessary.

16 How would you react to that, sir?
17 Wouldn't that cause you a lot of embarrassment as
18 the Ambassador?

19 MR. HOGGER: In a sense again you
20 are asking me to comment on a hypothetical
21 situation because it isn't the position I am in.

22 MR. WALDMAN: That is what you
23 have been doing for the last three hours, is it
24 not, sir. So why are you reluctant to do it now?

25 MR. HOGGER: I accept that. I

1 accept that and I'm not say that I won't, but I
2 think that is one of the difficulties.

3 You are also bringing me back I
4 think to a definition of torture, because --
5 perhaps I should pause for a moment.

6 MR. WALDMAN: Perhaps I could just
7 help you a little bit. Mr. Martel, at page 11140
8 of the transcript, says:

9 "When he was meeting -- he
10 was talking to the General in
11 Arabic and he turned and said
12 to him, 'But you know my cell
13 is very small. It only
14 measures 3 X 6 X 7.' He
15 certainly said that 'and I
16 sleep on the floor'."

17 So Mr. Martel certainly
18 acknowledged that he was given that information.

19 MR. HOGGER: Yes.

20 MR. WALDMAN: You agree with me it
21 is not in the consular note?

22 MR. HOGGER: I certainly agree
23 with that, because I --

24 MR. WALDMAN: You agree with me it
25 should have been in the consular note?

1 MR. HOGGER: What I said was that
2 if I was in this situation I would be surprised if
3 I hadn't been given that information myself.

4 MR. WALDMAN: And given that --
5 let's remember the context, sir. The Syrian Human
6 Rights have alleged that Mr. Arar was tortured.
7 We have a note from Mr. Pillarella saying he wants
8 to get a consular access to "rebut" the torture.
9 So it is a big political issue in Canada whether
10 Mr. Arar was tortured or not.

11 This consular note is received and
12 it is immediately transmitted to Canada. The
13 Minister goes on the air and says: We have
14 conclusive evidence Mr. Arar has said he wasn't
15 tortured.

16 I put it to you that the Minister
17 made the statement without having all of the
18 facts. He has already said that in his evidence.
19 I put it to you that the facts should have been
20 there.

21 MR. HOGGER: What I understand is
22 that --I don't know if I have seen the actual
23 words that the Foreign Minister used, but the
24 purport of it was that the information was that
25 Mr. Arar hadn't been tortured. The report that

1 was sent here actually recorded Mr. Arar as saying
2 that.

3 So if there is uncertainty about
4 whether or not the size of accommodation in itself
5 constitutes torture, it looks as if it was shared
6 not only by us, but by Mr. Arar himself.

7 MR. WALDMAN: No. Mr. Arar
8 doesn't say he wasn't tortured, sir. It says
9 here -- Mr. Arar of course disputes this fact and
10 because he hasn't been able to testify we have
11 this difficulty as to what in fact was the content
12 of his conversation with Mr. Martel. So we are
13 stuck with that reality at the present time.

14 But what he says, at least what
15 was Mr. Martel's report of what he said, was he
16 wasn't beaten, or at the beginning very little, if
17 you read the notes.

18 MR. FOTHERGILL: Commissioner, I
19 believe the notes do refer to "not tortured".

20 --- Pause

21 THE CHAIRPERSON: Yes, I think so.

22 MR. WALDMAN: We have the opinion
23 of two experts that this treatment is torture. So
24 regardless of what Mr. Arar said -- or allegedly
25 said because actually Mr. Arar doesn't take the

1 position that that was an accurate reflection of
2 what he said -- we have the evidence of two
3 experts that it does constitute torture, sir.

4 In any event, do you not agree
5 with me that it was extremely important that the
6 Minister, given the context that he was facing
7 where there was this great public outcry and he
8 needed to know all of the facts, the Minister
9 needed to know all of the facts and that included
10 the appalling conditions Mr. Arar was under.

11 MR. HOGGER: I'm not sure if I can
12 add very much on this I'm afraid. I think that,
13 as I have already said, I am struck by the fact
14 that both the manuscript notes and the telegraphic
15 report of the meeting do record Mr. Arar as saying
16 that he was not tortured.

17 We are now in a discussion about
18 whether what he also apparently said about his
19 accommodation actually shows that in fact he was
20 tortured. That was the message that would have
21 gone to the Minister and presumably formed the
22 basis for what he said in public.

23 MR. WALDMAN: Right. I understand
24 why the Minister said what he said, but the fact
25 of the matter is that the Minister's information,

1 based upon what we now know, was inaccurate, and
2 it was inaccurate because Mr. Martel did not
3 provide in his note all of -- did not provide
4 first to the Ambassador, because presumably
5 Ambassador Pillarella said, "Well, if I would have
6 known this it would have been very important for
7 me to know". And you acknowledged that
8 Ambassador -- that you would have expected to have
9 been told if one of your subjects was being held
10 in a cell the size of two coffins. Correct?

11 So Mr. Martel didn't tell
12 Ambassador Pillarella so I could make a judgment
13 as to whether -- now let me ask you another
14 question that flows from this.

15 If you were the Ambassador and you
16 received information that one of your subjects,
17 your citizens, had spent 10 days and 10 months in
18 a 3 X 6 X 7 cell, would you want your foreign
19 ministry to know that? Would you put it in a
20 note?

21 MR. HOGGER: I think the answer to
22 that question is yes, I would.

23 MR. WALDMAN: Thank you, sir. The
24 fact that it is not in this note is a matter of
25 concern. Correct?

1 MR. HOGGER: That is certainly
2 what Ambassador Pillarella said too.

3 MR. WALDMAN: Thank you.

4 So would you not agree with me
5 that at least insofar as the preparation of this
6 note, it was incompetently done by Mr. Martel if
7 it omits a very important and fundamental piece of
8 information?

9 MR. DECARY: I object, unless --

10 THE COMMISSIONER: I think I
11 have the point, Mr. Waldman, that you are
12 attempting to elicit.

13 MR. WALDMAN: Thank you.

14 I would like to go on to another
15 area, sir.

16 I wanted to talk about torture.
17 Obviously we are going to have some difficulty
18 because you have just told us that you don't know
19 what torture means.

20 Is that fair?

21 MR. HOGGER: I'm not sure if I
22 would say that was entirely fair. I have said
23 that I don't have a sufficient feeling of
24 expertise to be able to define in detail what
25 specific behaviours constitute torture and what

1 don't.

2 MR. WALDMAN: Bearing that
3 limitation in mind I will ask you a few questions.

4 You testified in chief that you
5 can't conclude that a person detained by the
6 Syrians is tortured.

7 Is that fair?

8 MR. HOGGER: What I said was that
9 in a case -- I was being asked about this specific
10 case and whether, if I recall correctly, at the
11 time I first went in, or my consul first went in
12 to see Mr. Arar, it would have been reasonable for
13 me to have already concluded that torture had
14 taken place and I said no.

15 MR. WALDMAN: If we go through,
16 would you agree with me, though, that there are a
17 series of factors that we might want to consider
18 and that would go through your mind when you went
19 in to see Mr. Arar about the likelihood that he
20 might have been tortured.

21 For example, if he had been held
22 for national security or terrorism grounds it is
23 more likely that he has been tortured than if he
24 is just held for a parking ticket or a driving
25 offence?

1 MR. HOGGER: I think your logic is
2 right. The Syrian situation is a bit unusual, but
3 it is a reasonable proposition that you are
4 putting.

5 MR. WALDMAN: And that it is more
6 likely that he is at risk of torture, according to
7 the documentary evidence and your own personal
8 knowledge, if he is held by the Syrian Military
9 Intelligence.

10 Is that a fair thing to say?

11 MR. HOGGER: I think that is
12 probably fair, yes.

13 MR. WALDMAN: And given what you
14 have told us about your knowledge generally about
15 the Palestine Branch, you would also agree with me
16 that if someone is held at the Palestine Branch it
17 also increases the risk of torture over other
18 detention centres?

19 MR. HOGGER: Broadly speaking. I
20 am hesitant because of my lack of knowledge of the
21 different other detention centres that there were,
22 but broadly speaking I think that is not an
23 unreasonable proposition.

24 MR. WALDMAN: The fact that a
25 person is a dual national, might that increase the

1 risk of torture?

2 MR. HOGGER: I don't think it
3 would increase it. In what I would call a normal
4 situation, it should reduce it because there might
5 be some sensitivity to the feelings of the
6 government of the other nationality. But given
7 what I have said about the Syrian position on dual
8 nationality, I don't think it is a major factor in
9 the probability of it one way or the other.

10 MR. WALDMAN: One way or the
11 other.

12 But you would also agree with me
13 that the fact that a person is held incommunicado
14 also would increase the risk of torture?

15 Is that fair?

16 MR. HOGGER: It seems from the
17 documentary evidence that that is a trend, yes.

18 MR. WALDMAN: So if one of the
19 factors were present you would have a concern when
20 you went in to see someone that there might be a
21 risk of torture.

22 Is that fair to say?

23 MR. HOGGER: It would certainly be
24 on one's mind, yes.

25 MR. WALDMAN: But wouldn't you

1 agree with me that if all of the factors that we
2 just outlined were present, he was detained on
3 terrorism grounds, he was detained by the military
4 intelligence, he was detained in Palestinian
5 Branch, and he was held incommunicado for two
6 weeks, wouldn't you agree with me that given those
7 four factors being present the likelihood of
8 torture would be far greater?

9 MR. HOGGER: Yes. In a relative
10 sense, certainly.

11 MR. WALDMAN: If you add to that
12 the fact that when you arrive there your citizen
13 tells you he has been detained for 12 days and the
14 Syrians have told you they have extracted a
15 confession out of him, wouldn't that also increase
16 your concern about the risk of torture?

17 MR. HOGGER: Yes.

18 MR. WALDMAN: Would it not be fair
19 to say, sir, that when you went in to see Mr.
20 Arar, in those circumstances, knowing those facts,
21 that you would start off with a very serious
22 concern that there was a risk that he had been
23 tortured?

24 MR. HOGGER: Yes. I think what
25 word you used as between "serious" or "very

1 serious" I think is a matter of language.
2 Certainly there would be a serious concern

3 MR. WALDMAN: Mr. Pardy, our
4 expert in Consular Affairs, said that he had the
5 working assumption that Mr. Arar was tortured.

6 That would be fair?

7 MR. HOGGER: I haven't seen that
8 testimony so I can't really comment on it, but --

9 MR. WALDMAN: Would you accept it
10 as being a reasonable proposition?

11 MR. HOGGER: I think I would
12 prefer to stand by what I said earlier, which is
13 that I don't believe that having even a strong
14 suspicion that torture may have happened is the
15 same thing as concluding that it has definitely
16 taken place, because you don't have the evidence
17 to that effect.

18 There may not be a very big gap,
19 but it is still a suspicion, even if it is a
20 strong one, rather than a conclusion.

21 If I may say so, I think that
22 distinction is important because if there were
23 conclusive evidence that torture had taken place
24 clearly one would want to make representations to
25 the Syrian authorities.

1 MR. WALDMAN: Are you saying to
2 me, because I think your evidence was that it
3 would be virtually impossible to ever get
4 conclusive evidence that someone had been
5 tortured, and so you are saying to me that you
6 wouldn't make representations unless you had
7 conclusive evidence?

8 MR. HOGGER: Perhaps I should put
9 it another way. I understand we may be tripping
10 up on language here.

11 What I'm saying is that concluding
12 that torture has taken place, to me at least,
13 suggests that further action would have to be
14 taken in approaching the Syrians and saying
15 "Torture has been taken place and I want to make a
16 protest".

17 MR. WALDMAN: When would you
18 conclude that torture had taken place, when you
19 see scars on the person's body?

20 Is that the only time, sir?

21 MR. HOGGER: No. We have already
22 discussed --

23 MR. WALDMAN: So aside from
24 that --

25 MR. HOGGER: -- the difficulty of

1 establishing it.

2 MR. WALDMAN: I understand. So
3 I'm asking you, given the difficulty of
4 establishing it -- this is causing me a lot of
5 concern, sir, I have to tell you. As a human
6 rights lawyer I think about all my clients who are
7 languishing in jails and wondering whether their
8 governments are only going to make representations
9 about there being torture when they have positive
10 and conclusive proof.

11 So I want you to know what you as
12 a diplomat tell me, at what point do you think
13 there is sufficient proof to make a representation
14 that someone is being tortured or you are
15 concerned about that?

16 MR. HOGGER: Well, I am concerned
17 about that, and I think I understand the point
18 that you are raising but I want to say two things
19 on that.

20 One is the point I'm trying to
21 make about concluding that torture has taken place
22 is that precisely because I think we have
23 established that it is difficult to get conclusive
24 evidence that torture has taken place, if you
25 nonetheless so conclude and make representations

1 to the authorities saying this person has been
2 tortured, and there isn't conclusive evidence, I
3 think there is a risk in some situations it could
4 damage the interests of the detainee more than if
5 you make your representations without it being
6 clearly established whether torture has taken
7 place or not.

8 MR. WALDMAN: I understand what
9 you are saying, but I am trying to understand at
10 what point you would intervene because it is
11 causing me a lot of concern.

12 MR. HOGGER: If I may say so, this
13 is the second point I wanted to make.

14 In a sense I believe that the kind
15 of action that one would normally expect an
16 embassy or diplomat to take in support of a
17 detainee in a case of this kind is not very
18 different, whether there is conclusive evidence of
19 torture or not.

20 What I mean by that is that it
21 seems to me that the first thing that happened
22 when news of Mr. Arar's detention came to the
23 embassy was that they sought access to him. That
24 you would do first of all as a means of
25 establishing what, if any, degree of ill treatment

1 or torture had been meted out to him, but also it
2 is something you would do, however strongly your
3 suspicions are, if I can put it that way.

4 The further representations that
5 were made -- and I hope we don't necessarily have
6 to go through them all chronologically -- but the
7 representations we talked about earlier on in the
8 form of approaches locally by the ambassador to
9 Syrian officials, messages from Canadian ministers
10 to the Foreign Minister and so on.

11 All those are things which you
12 would do to support a national of yours, really
13 whether or not you felt that the evidence of
14 torture in itself was conclusive or not
15 conclusive. Your duty of supporting your national
16 in what is clearly an extremely difficult
17 situation is the same.

18 MR. WALDMAN: I think the evidence
19 of you are Foreign Minister -- I'm sure people
20 will correct me if I'm wrong -- is that if he had
21 known earlier on that Mr. Arar was subject to
22 torture, he would have reacted much more
23 aggressively in terms of his representations.

24 So it still doesn't really
25 alleviate my concern at what point you are going

1 to communicate back. I think I have made my
2 point.

3 Let me just move on a little,
4 because connected to that is your evidence this
5 morning. You say you need conclusive proof, sir,
6 but then you acknowledge to us that the foreign
7 office doesn't engage in training because no
8 training is going to help because observations
9 aren't going to allow you to conclude one way or
10 the other whether someone is tortured because of
11 the sophisticated methods of torture.

12 You then said you wouldn't want to
13 ask for a private meeting because that might upset
14 the apple cart and you would might be denied
15 access.

16 The impression I'm getting is that
17 we are sort of in this box. You go in to see
18 Mr. Arar. You have all these strong indicators of
19 torture. You can't decide one way or the other
20 whether he is tortured although there are some
21 indications -- and you looked at them; he looked
22 submissive and he wasn't being allowed to talk
23 freely -- that might have pointed towards torture.
24 You acknowledge that there are no observation that
25 are going allow for torture. You say we can't ask

1 for a private meeting to ascertain torture.

2 So when is some British subject
3 going to be the subject of a protest that he is
4 being tortured? You have made it impossible, I
5 would suggest, by all of the parameters that you
6 have set out.

7 MR. HOGGER: I am afraid I don't
8 really agree with that. All the time that we are
9 discussing this, I am trying to think myself, if
10 you like, into a real world situation where this
11 is happening.

12 MR. WALDMAN: Mr. Arar's situation
13 was a real world situation.

14 MR. HOGGER: If I might just
15 continue on that.

16 THE COMMISSIONER: Mr. Waldman,
17 from time to time you do interrupt the witness so
18 it is extremely important to let him finish the
19 answer and then you can ask your next question.

20 Thank you.

21 MR. CAVALLUZZO: One further thing
22 is that if there is going to be an objection, it
23 should coming from one lawyer, the witness'
24 lawyer, not other lawyers.

25 THE COMMISSIONER: I think in this

1 case it was coming from Mr. Décary.

2 --- Off microphone

3 THE COMMISSIONER: In any event,
4 that will help keep it orderly as well.

5 Carry on, please, Mr. Waldman.

6 MR. WALDMAN: I think the witness
7 wanted to answer a question and I interrupted.

8 MR. HOGGER: Even if this might
9 not be coming across to be helpful, as I said, I
10 am trying to think myself into the real world
11 situation where this is happening, and I do stick
12 to what I said just now, which is that I believe
13 that in this kind of situation I would be broadly,
14 as ambassador, acting in the same way,
15 irrespective of whether I felt there was
16 conclusive evidence or how strong the evidence
17 was, if you like, that torture had been taken
18 place, because I would be acting in support of my
19 national who is detained by the Syrian
20 authorities, and I would be taking all the steps
21 that I am required to take to find a resolution to
22 that situation.

23 If I might just add to that, I
24 appreciate that this may look as if it is going
25 around in circles semantically, but actually in

1 terms of the difference it makes to what the
2 ambassador and embassy do to support, I don't
3 frankly believe that it makes a great deal of
4 difference.

5 MR. WALDMAN: But our Foreign
6 Minister told us that it would have made a lot of
7 difference to him to know earlier on that Mr. Arar
8 had been tortured.

9 MR. HOGGER: I am afraid I have
10 not seen his testimony.

11 MR. WALDMAN: I am just telling
12 you.

13 MR. HOGGER: I wonder, with
14 respect, if he meant that he would actually have
15 asked his embassy to do something different if he
16 had the information that he says he didn't have at
17 the time. I don't know because I haven't seen the
18 testimony.

19 MR. WALDMAN: I would like to move
20 on.

21 You have testified a bit about the
22 human rights record in Syria. Is that fair to
23 say?

24 You would agree with me that it
25 would be important for an ambassador to know

1 specifically the human rights record of a country
2 that he was in.

3 MR. HOGGER: Certainly.

4 MR. WALDMAN: So before embarking
5 on a posting, it would be important for the
6 ambassador to review the human rights reports and
7 all the documents on that.

8 MR. HOGGER: Yes.

9 MR. WALDMAN: I suppose before you
10 went to Syria you studied quite carefully and you
11 were well aware of what you have already described
12 as a poor human rights before you got there.

13 Is that fair?

14 MR. HOGGER: Yes. And if I may
15 add, even so far as having a meeting with
16 representatives of Amnesty International.

17 MR. WALDMAN: Right. I would
18 imagine that you would expect your consular
19 officials to be well versed on the human rights
20 record as well so that they could take that into
21 account when they were providing consular
22 assistance.

23 MR. HOGGER: In general, yes.

24 MR. WALDMAN: And the sources you
25 would rely on would be the U.K. Home Office

1 report, I guess, the Department of State reports,
2 Amnesty International, Human Rights Watch,
3 credible reports like that.

4 MR. HOGGER: Yes.

5 MR. WALDMAN: And you agreed with
6 the evidence I think of Professor Leverett that he
7 thinks those are credible sources.

8 MR. HOGGER: I have no reason to
9 disagree with that.

10 MR. WALDMAN: So you would agree
11 with me that on the public record that there is a
12 lot of clear and credible evidence that Syria
13 committed very serious human rights abuses against
14 detainees?

15 MR. HOGGER: Yes.

16 MR. WALDMAN: You also indicated
17 that you were aware of this one dual national, an
18 Iraqi-British citizen who was arrested while you
19 were in Syria.

20 MR. HOGGER: Yes.

21 MR. WALDMAN: And you would agree
22 with me that if a person were arrested in Syria,
23 it would be important for that person's case to be
24 brought to your attention.

25 Would that be fair to say?

1 MR. HOGGER: I think I made clear
2 there was a bit of context to this. If it was
3 what I call a routine arrest or detention,
4 possibly not; but certainly if it was a case of
5 this kind, yes.

6 MR. WALDMAN: That would be the
7 kind of thing that you would expect to be brought
8 to your attention.

9 MR. HOGGER: Yes.

10 MR. WALDMAN: You did tell us
11 about the one gentleman who was arrested in Syria,
12 Mr. Abdel Razaq Ali.

13 MR. HOGGER: Yes, I think we knew
14 him as Hilal Ali, but I think he has both names.

15 MR. WALDMAN: When you prepared
16 your will-say statement you had indicated that you
17 weren't aware of any, but I gather when we sent
18 you the documents that is when your memory was
19 refreshed on this case.

20 Is that fair to say?

21 MR. HOGGER: My memory --

22 MR. CAVALLUZZO: Objection. The
23 rules indicate that the will-say should not be
24 referred to in the examination of witnesses.

25 MR. WALDMAN: Okay, sorry.

1 I think you testified, in any
2 event, that it was when we sent you these
3 documents that your memory was refreshed with
4 respect to this person?

5 MR. HOGGER: Yes. What I think I
6 said, and I hope I said because it is the case, is
7 that I had a recollection of a case of this kind
8 but not a very clear recollection, and the
9 documents I saw reminded me of what his name was,
10 for example, and roughly what the time period was.

11 MR. WALDMAN: I asked you that
12 because we -- perhaps we could introduce that
13 second document from the Special Rapporteur on
14 torture.

15 THE COMMISSIONER: What number are
16 we at? 273.

17 EXHIBIT NO. P-273: Excerpt
18 from Report of the Special
19 Rapporteur on Torture, dated
20 14 March 2002

21 MR. WALDMAN: It is on page 311.
22 This is a report from the Special Rapporteur on
23 torture, Sir Nigel Rodley. It was submitted to
24 the Human Rights Commission on the 14th of March,
25 2002.

1 I will just read to you paragraph
2 1563.
3 "On 22 May 2001, the Special
4 Rapporteur sent an urgent
5 appeal on behalf of Hilal
6 Abdel Razaq Ali, a British
7 citizen and native of Iraq,
8 who had reportedly been
9 arrested in the northern city
10 of Hama on 25 July 2000.
11 Some of his relatives were
12 purportedly also detained.
13 It is believed that all have
14 been arrested in order to
15 force one of their relatives,
16 who is allegedly wanted for
17 having committed a 'breach of
18 national security', to give
19 himself up. Hilal Abdel
20 Razaq Ali is said to have
21 been beaten twice daily from
22 his arrest until October
23 2000, when he was allegedly
24 transferred to the
25 Far'Falastin ... military

1 intelligence detention centre
2 in Damascus. Although the
3 United Kingdom Embassy in
4 Syria and the Foreign Office
5 have reportedly made a number
6 of inquiries, the Syrian
7 authorities have allegedly
8 denied they are holding him.
9 him."

10 So were you the ambassador to
11 Syria on the 25th of July 2000?

12 MR. HOGGER: Yes.

13 MR. WALDMAN: And in October of
14 2000?

15 MR. HOGGER: Yes.

16 MR. WALDMAN: And in May 2001?

17 MR. HOGGER: Yes.

18 MR. WALDMAN: And you are telling
19 me that this report from the Special Rapporteur of
20 the United Nations Commission of Human Rights
21 wasn't brought to your attention?

22 MR. HOGGER: I don't have any
23 recollection of it.

24 MR. WALDMAN: Would you not
25 expect, as Ambassador, that such a serious report

1 from the Human Rights Commission about a British
2 subject detained in Syria would have been brought
3 to your attention?

4 MR. HOGGER: The answer to that is
5 certainly yes. I have to qualify that by saying
6 that, as I started by saying, I have no
7 recollection of this.

8 As I said this morning, I do not
9 recall hearing about allegations that torture had
10 taken place by this person at the time, but it is
11 clear from the dates of these documents that they
12 were made at the time that I was still in post.

13 So it is either my recollection
14 that is at fault or it simply is that
15 inexplicably, because I can't explain to you this
16 document and the other one I have seen were not
17 available to me at the time.

18 MR. WALDMAN: It would be your
19 normal expectation that a document like this
20 containing a serious allegation of torture being
21 committed against a British subject in a country
22 where you were ambassador would be brought to your
23 attention.

24 MR. HOGGER: It is. The only
25 possibly rather speculative observation I can make

1 on it is that this is a report covering -- I can't
2 now count the number of countries but it runs to
3 nearly 2,000 pages.

4 Even the most assiduous mission at
5 the United Nations -- and our British mission to
6 the United Nations I know is very assiduous -- may
7 not necessarily have picked up a specific
8 reference to Syria on pages 1,560 onwards.

9 I can only offer that as
10 speculation as to why I didn't see the report at
11 the time or don't recall seeing it.

12 MR. WALDMAN: Perhaps I could
13 assist you in that, because they are done by
14 country.

15 If you look at the page before,
16 they have urgent appeals and they are divided into
17 countries.

18 MR. HOGGER: I'm sorry, I have
19 seen the document now. What I am saying is that
20 if I am trying to explain why I don't seem to have
21 been aware of it at the time, it may be that it
22 was such a voluminous report that it didn't get
23 circulated as widely as --

24 MR. WALDMAN: You don't have a
25 desk in your Foreign Office that reviews United

1 Nations reports?

2 MR. HOGGER: We have a mission at
3 the United Nations which reviews United Nations
4 reports.

5 MR. WALDMAN: One would expect the
6 mission would notice a report that mentioned a
7 British subject in it? That's their job.

8 MR. HOGGER: That's an entirely
9 reasonable thing to say. As somebody who has been
10 working in a bureaucracy for 35 years, I can't be
11 quite as categoric as perhaps you might want to
12 be. But it would definitely be picked up.

13 MR. WALDMAN: If we look at this
14 report, it's clear to me that it is a national
15 security case. They say suspected terrorism,
16 breach of national security.

17 MR. HOGGER: Are we looking still
18 at the UN report?

19 MR. WALDMAN: It doesn't matter.
20 Both say the same thing, but the U.N. report says
21 breach of national security.

22 MR. HOGGER: Right.

23 MR. WALDMAN: And it is clear that
24 he was tortured? Or there is the allegation he
25 was tortured, according to this report, in any

1 event.

2 MR. HOGGER: Yes.

3 MR. WALDMAN: This is the only
4 case that you are aware of that occurred during
5 the time you were there?

6 MR. HOGGER: It is the only case
7 involving a British national that I can remember,
8 which isn't quite the same thing. But I am
9 reasonably confident because these are things that
10 stick in the memory.

11 MR. WALDMAN: So you would agree
12 with me that there are striking similarities
13 between this and Mr. Arar's. It is a national
14 security case. He was taken to Palestine and
15 there were allegations of torture?

16 MR. HOGGER: I wouldn't
17 completely agree in the sense that there are
18 certainly some similar features, but there are
19 also some quite significant differences, which I
20 can tell you about if you wish me to.

21 MR. WALDMAN: The Amnesty report
22 says he told Amnesty International after he had
23 been released that he had been ill treated while
24 he was held at Palestine. It sounds strikingly
25 similar to what Mr. Arar told Professor Toope.

1 It also describes the dimensions
2 of the cell being very similar in size to those
3 described by Mr. Arar.

4 MR. HOGGER: Yes.

5 MR. WALDMAN: I am almost done.
6 You told us that the role of the ambassador is to
7 represent all the country.

8 Is that correct?

9 MR. HOGGER: Sorry?

10 MR. WALDMAN: All the different
11 aspects of your country, all the different
12 departments and --

13 MR. HOGGER: Yes.

14 MR. WALDMAN: You are the
15 representative of the entire country.

16 MR. HOGGER: Yes.

17 MR. WALDMAN: And you also told us
18 in cases where there was a conflict, it would be
19 your job to reconcile the conflict.

20 Is that fair?

21 MR. HOGGER: I don't know if that
22 is quite how I put it. It is pretty near being
23 the same as what I said, which is that yes, I
24 would regard it as my responsibility to resolve
25 any conflict of interest that came in two

1 different sets of instructions.

2 MR. WALDMAN: And would you agree
3 with me that if you had a foreign national that
4 was detained in Syria, your primary responsibility
5 and your first responsibility as ambassador would
6 be to protect the Canadian citizen before anything
7 else -- that British subject in your case.

8 MR. HOGGER: Yes.

9 MR. WALDMAN: That would come
10 above everything else?

11 MR. HOGGER: In any situation that
12 I can reasonably think of, yes.

13 MR. WALDMAN: And you would also
14 agree with me that there might be other agencies
15 in your government or in any government that might
16 have different agendas, but from your point of
17 view as ambassador, your obligation first and
18 foremost is to protect the Canadian citizen or the
19 British citizen.

20 MR. HOGGER: It is a very
21 important obligation. I'm not sure what
22 particular situation you have in mind in saying
23 that it prevails over others.

24 MR. WALDMAN: Can you give me an
25 example of where some other national interests

1 prevails over --

2 MR. HOGGER: As I said earlier, I
3 can't think of any.

4 MR. WALDMAN: And you would agree
5 with me that an ambassador should not take any
6 steps that might put a citizen in jeopardy.

7 Would that be fair to say?

8 MR. HOGGER: That seems a
9 reasonable proposition to me, yes.

10 MR. WALDMAN: And would you not
11 agree with me that if an ambassador asked a regime
12 that was notorious for torturing detainees for
13 more information regarding that person, it might
14 well put the person at risk of further torture in
15 order to extract information?

16 MR. HOGGER: Well, the way you put
17 it, it sounds like a logical proposition. For me,
18 it's a hypothetical situation because I am not
19 sure what is been involved here.

20 MR. WALDMAN: So hypothetically,
21 if you were dealing with a person detained in
22 Military Intelligence in Syria, in an institution
23 that was notorious for torture, would you be
24 concerned as ambassador of going to someone there
25 and asking for more information about that person

1 because it might put that person at risk of
2 further interrogation and torture?

3 MR. HOGGER: I'm sorry to ask
4 again for clarification. Are we now talking about
5 going to the Syrians and asking for information or
6 accepting information from them?

7 MR. WALDMAN: Asking for
8 information.

9 MR. HOGGER: We did talk about
10 that earlier.

11 MR. WALDMAN: I am talking about
12 actively going and soliciting information from the
13 Syrians about a detainee in the Palestine Branch.

14 Would you as ambassador feel
15 comfortable about doing that?

16 MR. HOGGER: I would need to know
17 a good deal more about what the questions were
18 before I could really sensibly answer that.

19 I am sorry if I keep referring to
20 a hypothetical situation, because I accept what
21 you say that we have been talking to some extent
22 about hypothetically.

23 MR. WALDMAN: Would it be
24 appropriate to go and ask the authorities to give
25 you any information they had about his activities

1 in terrorism and say we would like you to provide
2 us with more information. You have given us some,
3 but we would like more information. Give us
4 whatever you can get about his involvement in
5 terrorism.

6 MR. HOGGER: Well, I can think of
7 a possible scenario in which I suppose seeking
8 answers to that kind of question might help the
9 detainee, in that if it elicits information with
10 which my authorities could help by saying well
11 there is actually an explanation for that.

12 But I don't know whether such a
13 case arose in this case.

14 MR. WALDMAN: Would you not agree
15 with me it may well be that in those
16 circumstances, by eliciting information you could
17 be putting the person at risk of further torture?

18 MR. HOGGER: I don't think I would
19 agree with that in an unqualified way. I
20 understand the point you are trying to make.

21 MR. WALDMAN: In a qualified way?

22 MR. HOGGER: It could do.

23 MR. WALDMAN: It could well. You
24 would agree that it might well?

25 MR. HOGGER: It might well.

1 MR. WALDMAN: Thank you.

2 Excuse me for one second.

3 --- Pause

4 MR. WALDMAN: Thank you.

5 THE COMMISSIONER: Thank you,

6 Mr. Waldman.

7 EXAMINATION

8 MR. CAVALLUZZO: Mr. Hogger,
9 initially I want to ask you some questions flowing
10 from Mr. Waldman's questions.

11 In particular in respect of the
12 first consular visit, he gave you several facts
13 such as the human rights record of Syria, the
14 record of the Palestinian Branch in terms of
15 torture.

16 You seem to be a ware of the
17 record of the Palestinian Branch. In fact, you
18 testified that most Syrians were -- I think you
19 said horrified or terrified of the Palestine
20 Branch.

21 MR. HOGGER: I'm afraid I can't
22 remember exactly what word I used.

23 MR. CAVALLUZZO: Words to that
24 effect.

25 MR. HOGGER: What I wanted to

1 indicate was that I know that it had a poor if not
2 frightening reputation --

3 MR. CAVALLUZZO: And it was a
4 common reputation throughout Syria, was it not?

5 MR. HOGGER: Yes, widespread.

6 MR. CAVALLUZZO: Would it surprise
7 you that the ambassador to Canada was not aware of
8 that?

9 MR. FOTHERGILL: Commissioner,
10 before the witness answers, obviously
11 Mr. Cavalluzzo is aware of the in camera record as
12 well, and I would like some assurance that he has
13 addressed his mind to whether the proposition he
14 has just made is consistent with all the evidence
15 as he understand it.

16 MR. CAVALLUZZO: Yes, it is
17 consistent with all of the evidence as he recalls
18 it.

19 Assume that the ambassador of
20 Canada wasn't aware of that. Would that surprise
21 you?

22 MR. HOGGER: There is very little
23 on the public record, let me put it this way,
24 about the Palestine Branch.

25 What I am talking about in terms

1 of its reputation is very much hearsay. I can't
2 easily explain, if it is the case, why --

3 MR. CAVALLUZZO: You just told us
4 that it is common throughout Syria that --

5 MR. HOGGER: I said it is widely
6 perceived by Syrians, because it is Syrians who
7 are the most likely to be its victims.

8 MR. CAVALLUZZO: If it was widely
9 perceived by Syrians, do you think that Canadian
10 or British consular officials should also be aware
11 of that reputation?

12 MR. HOGGER: British consular
13 officials by and large were.

14 MR. CAVALLUZZO: Then let us move
15 on.

16 There were other facts that
17 Mr. Waldman didn't tell you about prior to the
18 consular visit.

19 For example, were you aware that
20 prior to the first consular visit the head office
21 in Ottawa said that they were concerned about --
22 how shall I put it -- aggressive questioning?

23 MR. HOGGER: Yes, I think I have
24 seen a document to that effect.

25 MR. CAVALLUZZO: That is another

1 fact.

2 Another fact that you should be
3 aware of is that when they met General Khalil, lo
4 and behold, he said that Mr. Arar appeared at the
5 border the day before and he already confessed to
6 being involved in terrorist activities.

7 You are aware of that?

8 MR. HOGGER: I have seen that too.

9 MR. CAVALLUZZO: And lo and
10 behold, the Canadian turns around at the end of
11 the meeting and he says, you know what, I have
12 been here for two weeks. I have been here for two
13 weeks.

14 You are aware of that?

15 MR. HOGGER: Yes.

16 MR. CAVALLUZZO: In light of all
17 of that, I think your conclusion still is that
18 there is no conclusive proof of torture?

19 MR. HOGGER: Yes.

20 MR. CAVALLUZZO: It would seem it
21 me that the only conclusive proof that you would
22 satisfied with would be twofold: one, that you
23 would have been there observing the detainee being
24 tortured; or secondly, the detainee coming into
25 this room with blood all over his face and

1 physical signs of torture.

2 Is that what you are telling us?

3 MR. HOGGER: With respect, I don't
4 think it is.

5 MR. CAVALLUZZO: Give us an
6 example.

7 MR. HOGGER: Let me try and
8 clarify this.

9 What I was trying I think earlier
10 to draw a distinction between is a suspicion,
11 possibly a strong suspicion in certain
12 circumstances or because of the circumstances,
13 that torture may have taken place.

14 MR. CAVALLUZZO: Right.

15 MR. HOGGER: And I certainly would
16 not dispute the view that discovering, which I
17 think happened at the time of the visit itself,
18 that there was actually this discrepancy about how
19 long Mr. Arar had been in Syria could well have
20 increased concern that there may have been
21 torture, because there had been a longer time in
22 which for it to happen.

23 What I really I think was trying
24 to say was that, however strong that suspicion, it
25 is a different matter from drawing a conclusion

1 that it must have taken place.

2 Although as a non-expert on
3 torture, I entirely accept that even if you see
4 with your own eyes a person who does not show any
5 physical signs of abuse or torture, that's not a
6 hundred percent -- it's by no means conclusive
7 proof that he hasn't been tortured, nor is it
8 proof that he has.

9 With respect, I think a natural
10 human conclusion, having gone into the room with a
11 concern that torture may have happened and seeing
12 a person who to outward appearances, in the
13 physical sense, did not look, if I can put it
14 crudely, damaged would have helped provide a
15 degree of reassurance.

16 MR. CAVALLUZZO: Would you agree
17 with me, using your language now, using diplomatic
18 language, that in this case there was a strong
19 suspicion of torture after Mr. Martel left that
20 meeting?

21 MR. HOGGER: After he left the
22 meeting?

23 MR. CAVALLUZZO: After he had all
24 that information, was told by Mr. Arar how long he
25 had been there, do you think that there was at

1 least a strong suspicion, even if not conclusive
2 proof, a strong suspicion of torture?

3 MR. HOGGER: I'm sorry, but are
4 you asking whether I would have had a strong
5 suspicion or whether that would have created a
6 strong suspicion in the minds of Canadian
7 officials concerned?

8 MR. CAVALLUZZO: I'm asking you
9 whether that would have created a strong suspicion
10 in your mind. I can't ask you what was in
11 Mr. Martel's mind. I am asking about you.

12 MR. HOGGER: No, I don't think so
13 because, as I think I have already said, despite
14 whatever suspicions I might have had going into
15 the meeting, overall the apparent condition as
16 reported in the reports of Mr. Arar was
17 reassuring.

18 That is not the same as saying
19 there was any cast iron indication that he had not
20 been tortured.

21 From what I can judge from reading
22 the report --

23 MR. CAVALLUZZO: This isn't --

24 MR. HOGGER: I'm sorry, if I may
25 just finish.

1 MR. CAVALLUZZO: Yes, I'm sorry.

2 MR. HOGGER: I would say, if
3 anything, that my concern about torture would have
4 been somewhat alleviated.

5 MR. CAVALLUZZO: This is in light
6 of the knowledge that today, with sophisticated
7 methods of interrogation and torture, that it is
8 sometimes difficult to detect torture.

9 Are you a ware of that?

10 MR. HOGGER: Well, having
11 started --

12 MR. CAVALLUZZO: First of all,
13 answer the question.

14 Are you a ware of that?

15 MR. HOGGER: I am a ware of that
16 now.

17 MR. CAVALLUZZO: Okay, now expand.

18 You are a ware of that now?

19 MR. HOGGER: I am saying that
20 because not being an expert on torture, I had not
21 a very lively knowledge of that. But it has been
22 discussed in this forum, and I have learned a good
23 deal.

24 MR. CAVALLUZZO: Another thing I
25 want to clarify -- and I an going to move on to

1 training.

2 You seem to suggest that if the
3 consular official is satisfied of a reasonable
4 suspicion of torture or conclusive evidence of
5 torture, their response to that would be the same.

6 Is that correct? Did I understand
7 you correctly?

8 MR. HOGGER: What I believe I said
9 was that I didn't think it made a great deal of
10 difference to the actual steps that the embassy,
11 the consul, the ambassador, and so on, would take
12 in support of the detainee.

13 With respect -- and I am probably
14 wrong about this, but I thought I had detected
15 slightly from the previous questioning the
16 suggestion that unless there was absolutely
17 conclusive proof of torture, an embassy would do
18 nothing to help its detainee.

19 And that in the real world
20 situation is not the case.

21 MR. CAVALLUZZO: Let me give you
22 the real world, at least as far as Canadian
23 diplomacy is concerned.

24 We have evidence that when the
25 Canadian government suspected that Mr. Arar was

1 being tortured, as a result of allegations made by
2 the Syrian Human Rights Committee, our diplomatic
3 people met with the Syrian diplomatic people and
4 stated that there are serious allegations that
5 Mr. Arar has been tortured. We would like you to
6 do something about it.

7 So I am suggesting to you that
8 there is action that could have been taken other
9 than what was taken in this case, if torture had
10 reasonably been suspected after the first consular
11 meeting.

12 MR. HOGGER: I don't think I would
13 necessarily disagree with that proposition, but
14 what I'm saying -- sorry, if I may.

15 MR. CAVALLUZZO: Yes, please.

16 MR. HOGGER: If I may just
17 continue, what I am saying is that I would be
18 quite anxious, as somebody who can perhaps picture
19 himself in this situation in a fairly vivid way,
20 for there not to be a perception that if there
21 isn't evidence specifically of torture, you more
22 or less relax as far as helping and supporting one
23 of your nationals who is in detention. That is
24 not the way it happens, and I don't believe from
25 what I have read that it is the way it happened in

1 this case.

2 MR. CAVALLUZZO: I am putting it
3 to you, former Ambassador, that there is a
4 difference between "I would like access to the
5 Canadian", and "you have tortured the Canadian, we
6 want you to deal with that right now".

7 I submit to you that that is
8 different. Don't you agree?

9 MR. HOGGER: It is different
10 language, but I am not sure, counsellor, what you
11 are suggesting. If you use that language with the
12 Syrians without proof that they would be able to
13 recognize or accept, they would simply come back
14 and say "why are you saying we have tortured him?
15 We haven't."

16 MR. CAVALLUZZO: What the facts
17 are in this case is that in late August, an
18 approach was made to the Syrians with these
19 allegations of torture and about a month and a
20 half later Mr. Arar was released. Those are the
21 facts.

22 Does that surprise you?

23 MR. HOGGER: No, it doesn't
24 surprise me. And you will no doubt forgive me if
25 my recollection is wrong in any of these respects,

1 but I think I remember that what had also happened
2 roughly at the same time as the sequence of events
3 you have described, or in addition to those
4 events, was that the Prime Minister of Canada had
5 sent a personal message to the President of Syria.

6 MR. CAVALLUZZO: A month before,
7 that's correct.

8 MR. HOGGER: By Syria's own
9 account it was that message, albeit eventually --
10 there was a delay -- which they primarily took
11 into account in deciding in the end to release
12 Mr. Arar.

13 MR. CAVALLUZZO: That is true.
14 The month before the Prime Minister sent a letter,
15 and the evidence is there.

16 One thing that concerns me -- and
17 I just want to make sure you don't leave this
18 impression -- and that is you seem to suggest that
19 at least in the U.K. there is no training that a
20 foreign affairs official can take to be better
21 equipped to deal with torture in countries such as
22 Syria, Jordan, and so on.

23 Do I understand you correctly?

24 MR. HOGGER: I am not putting that
25 forward as my own view. I am saying that this is

1 my understanding, having had the opportunity to
2 look into this: that a decision has been taken by
3 the Foreign Office in London -- of which I remind
4 you I am no longer a member -- to not to try to
5 give specific training on how to recognize the
6 symptoms of torture to consular officers on the
7 grounds that they haven't been able to come up
8 with what they would regard as a reliable way of
9 providing such training.

10 MR. CAVALLUZZO: Are you aware
11 that the Canadian Foreign Affairs Department now
12 is giving such training?

13 MR. HOGGER: I have heard this
14 recently, yes.

15 MR. CAVALLUZZO: Are you aware
16 that subsequent to the Arar case the Foreign
17 Affairs Department decided that its officials
18 didn't have sufficient training in terms of
19 detecting torture?

20 MR. HOGGER: I have also heard
21 that.

22 MR. CAVALLUZZO: Did you see the
23 documents, the studies to that effect?

24 MR. HOGGER: I have not seen the
25 studies.

1 MR. CAVALLUZZO: I want to move to
2 General Khalil. Did you know him?

3 MR. HOGGER: No.

4 MR. CAVALLUZZO: You never meet
5 him?

6 MR. HOGGER: No.

7 MR. CAVALLUZZO: Do you know why
8 Mr. Pillarella had a relationship with General
9 Khalil? How did that happen?

10 MR. HOGGER: My understanding,
11 from what I have seen, is that this arose as a
12 result of the Arar case.

13 MR. CAVALLUZZO: Do you know of
14 any other ambassadors in Damascus that had a
15 relationship with General Khalil?

16 MR. HOGGER: I am not aware of
17 any.

18 MR. CAVALLUZZO: Did you ever deal
19 with the Syrian Military Intelligence?

20 MR. HOGGER: No.

21 MR. CAVALLUZZO: Do you know of
22 any other ambassador that dealt with the Syrian
23 Military Intelligence?

24 MR. HOGGER: Not to my knowledge.

25 MR. CAVALLUZZO: I would like to

1 move on now.

2 You gave some evidence relating to
3 representing two different agencies at the same
4 time as the ambassador, being the spokesperson for
5 the country or the state you said, even beyond the
6 government.

7 And you have said -- I'm trying to
8 capture what you said.

9 You said if one agency gives you
10 some information, some document or whatever for
11 the Syrian Military Intelligence, or whatever
12 agency it is of the Syrian government, that you
13 must ensure that the agency is giving you that
14 document or information with appropriate
15 authority.

16 MR. HOGGER: Yes.

17 MR. CAVALLUZZO: So that is a
18 given: that you just don't give the Syrians
19 whatever you are getting from this Canadian agency
20 but you must ensure that that agency has
21 appropriate authority to give you that
22 information.

23 MR. HOGGER: I would put it in a
24 slightly different way, though perhaps the effect
25 is the same, and say that there might, as I

1 believe I said earlier, be a situation in which
2 you were so used to working with that particular
3 agency that you would act on their instructions
4 without a specific effort to establish that they
5 came with the right authority because you trusted
6 them.

7 MR. CAVALLUZZO: In any event, the
8 bottom line is that it is your responsibility as
9 ambassador to ensure that the appropriate
10 authority underlies that request or information or
11 whatever is to be given.

12 MR. HOGGER: That is my belief,
13 yes.

14 MR. CAVALLUZZO: I would like to
15 deal with the next step, and that is a conflict.
16 That is where you, as the ambassador, are being
17 asked by one particular agency to do something
18 which is clearly in conflict with your consular
19 duties in terms of protecting that British
20 subject.

21 What do you do at that point in
22 time to resolve the conflict?

23 MR. HOGGER: Well, my first step
24 would be to go back to either or both of these
25 agencies and point out that there was a conflict

1 and ask them to look again at the instructions
2 that they wanted me to carry out with a view to
3 arriving at a single unified message or action,
4 whatever it was going to be, that they wanted me
5 to do.

6 MR. CAVALLUZZO: And if you still
7 couldn't resolve the conflict, what would you do?

8 MR. HOGGER: I would hope that the
9 conflict could be resolved. Again it would depend
10 on the level at which the instruction had come in
11 each case, because I might in some cases have a
12 right of appeal where I could go back to a higher
13 level and say look, please can you resolve this,
14 because you are putting me in an impossible
15 position, but more importantly you are risking
16 damaging the reputation of our country if we can't
17 speak with a common voice.

18 MR. CAVALLUZZO: Right. In fact,
19 we heard evidence that in Canada what is done is
20 that the ambassador should go back to head office
21 in Ottawa where it might be resolved at that
22 level.

23 MR. HOGGER: I certainly wouldn't
24 rule that out, because if you have two different
25 departments that can't agree, we regard the

1 foreign ministry as the parent department and
2 that's probably who you would go to.

3 MR. CAVALLUZZO: I would like to
4 move on to the single voice. Canada or Britain or
5 the U.K. speaks with a single voice.

6 You have seen documentation there
7 where the Syrians indicated that CSIS, our
8 security intelligence agency, had indicated or
9 stated to them that they did not want Mr. Arar
10 returned to Canada. Right?

11 You have read that?

12 MR. HOGGER: Yes.

13 MR. CAVALLUZZO: You are also
14 aware that CSIS denied that?

15 MR. HOGGER: I believe I have seen
16 that reported.

17 MR. CAVALLUZZO: Let me just put
18 it to you that the facts in this case are that the
19 Syrian Military Intelligence -- who you didn't
20 deal with so I have to give you this fact. The
21 Syrian Military Intelligence preferred to deal
22 with its counterpart, the security intelligence
23 agency of Canada, that is CSIS.

24 MR. HOGGER: I don't really have a
25 view to express on that, but it doesn't entirely

1 surprise me.

2 MR. CAVALLUZZO: You don't know
3 that, but I am give you that that is the fact
4 before us.

5 Now, even though CSIS has denied
6 it, even though the Minister of Foreign Affairs
7 has phoned the Syrian Minister of Foreign Affairs,
8 as you have seen from the documentation before
9 you, in January of 2003 to say we speak with one
10 voice, and that perception persists with the
11 Syrians after that, do you not think it would have
12 been prudent of the ambassador to Syria to have a
13 meeting with Mr. Khalil with a representative of
14 CSIS to say here there are and they want Mr. Arar
15 back to Canada?

16 Do you agree that would have been
17 prudent?

18 MR. HOGGER: I would have
19 difficulty in saying categorically that that is
20 exactly the action that should have been taken.

21 The impression I have is that when
22 it became clear from what, as you say the Foreign
23 Minister is reported as saying, that there was
24 confusion in Syrian reporting, I think I would say
25 purportedly that there was confusion in Syrian

1 minds about what Canada's real wish was. That
2 action of various kinds was taken, I believe
3 including a conversation or an exchange of
4 messages, I can't remember, between the Canadian
5 and Syrian Foreign Ministers --

6 MR. CAVALLUZZO: On January the
7 19th of 2003.

8 MR. HOGGER: I take your word for
9 it.

10 MR. CAVALLUZZO: Okay.

11 MR. HOGGER: To try to clarify and
12 put across clearly the message that Canada did
13 indeed want Mr. Arar released and wanted him back
14 in Canada.

15 We are talking about the method by
16 which you establish that. You have made one
17 suggestion. I believe action was taken to that
18 effect anyway.

19 MR. CAVALLUZZO: But I'm putting
20 it to you, sir, that the evidence is that that
21 perception that CSIS didn't want him back
22 persisted after the Foreign Minister made the
23 phone call, and I'm putting it to you that in the
24 those circumstances, knowing who you are dealing
25 with, General Khalil, knowing that General Khalil

1 likes to deal with security intelligence agencies,
2 I am putting to you that the prudent thing to do
3 on that occasion was to have a meeting with
4 Khalil -- and Mr. Pillarella had a number of
5 meetings with Mr. Khalil -- bring somebody from
6 CSIS with you and say CSIS wants Mr. Arar back and
7 here they are to confirm it.

8 MR. HOGGER: As I said earlier,
9 that is a suggestion that on the face of it seems
10 to me to have some merit. But it's one way of
11 getting the message across.

12 As I have also said, I believe
13 action was taken to do precisely that.

14 MR. CAVALLUZZO: All right.

15 This "bout de papier" that you
16 were asked about, this is the confession that was
17 brought back to Canada by Mr. Pillarella, you said
18 that it had two purposes. One was that it would
19 indicate the status of the Syrian investigation
20 relating to Mr. Arar in terms of what the charges
21 might be, and so on, so it would be useful from that
22 perspective, from I guess the consular
23 perspective. You also said it would be useful for
24 the police and security intelligence agencies.
25 That's the second one.

1 MR. HOGGER: I think that is the
2 gist of what I said. I perhaps ought to clarify
3 because I think you asked me -- or you suggested
4 that I said that the document would be useful in
5 this respect.

6 What I said was to accept the
7 document would be the right thing to do because it
8 should have useful purposes in both those areas.

9 MR. CAVALLUZZO: Right. And this
10 is where I come back to what we talked about at
11 the beginning, and that is that if you are giving
12 a statement to Canadian police and security
13 intelligence people, then it would seem to me it
14 would be incumbent upon you to at least share
15 with these police and security intelligence people
16 your view of the reliability of the statement.

17 In other words, if you reasonably
18 believe that that statement is a product of
19 torture -- or let's not use the word torture --
20 ill treatment, psychological mistreatment,
21 physical beatings, whatever. But if you have a
22 reasonable suspicion that that piece of paper or
23 confession, as they call it, is a product of that
24 kind of mistreatment, then you would agree with me
25 that you should share that with the police and

1 security intelligence authorities who are going to
2 be receiving it.

3 MR. HOGGER: I think I would agree
4 with it, but I would also want to say that I'm not
5 entirely sure from what I have seen whether that
6 didn't happen.

7 MR. CAVALLUZZO: No, don't -- you
8 know, you can only --

9 MR. HOGGER: I'm talking on the
10 basis of what I have seen.

11 MR. CAVALLUZZO: Okay. Let me put
12 it this way: If you were in the shoes of the
13 Canadian ambassador, you had met Khalil, you read
14 the first consular report, you discussed it with
15 the consular official and you have all those eight
16 factors we looked at, and then Khalil says why
17 don't you take this back to your police force and
18 your security intelligence people in London, you
19 bring it back to them. In those circumstances,
20 would you have told Scotland Yard and M5, M6,
21 whatever it is, that here is a piece of paper I
22 received from General Khalil but you should be
23 aware that I reasonably assume that it may be the
24 product of torture?

25 MR. HOGGER: I guess I might have

1 said something like that, but there is perhaps a
2 point that I ought to make, which again I hope
3 reflects my correct understanding of the
4 situation, which was that the document was given
5 to the ambassador in Arabic. I believe, if I
6 recall from the documents, that he then took it
7 back to Canada.

8 I am not sure whether it was
9 translated before it reached Canada, but you may
10 be able to enlighten me on that.

11 MR. CAVALLUZZO: He gave it to
12 CSIS to have it translated, but he was certainly
13 aware of what General Khalil had told him.
14 General Khalil had told him that this Canadian had
15 within 24 hours confessed to being a terrorist.

16 MR. HOGGER: Yes, I am aware of
17 that.

18 MR. CAVALLUZZO: If you take that
19 and the other seven factors into account and you
20 come back with that piece of paper, I am assuming
21 that you would have at least raised the reasonable
22 possibility that that statement could have been a
23 product of ill treatment or torture.

24 MR. HOGGER: I find myself in
25 quite a difficult position here because I really

1 am not sure whether I would have done that or
2 whether I would have expected the experts to be
3 able to work that out for themselves. And I mean
4 that, because I wasn't in that situation.
5 Thinking myself into it, a lot would depend on the
6 context.

7 MR. CAVALLUZZO: We are not
8 talking now about legal technicality. In your
9 testimony before you said basically it is my duty
10 to do this. Not only is it my legal duty, but it
11 is my moral responsibility.

12 Don't you think that in those
13 circumstances, with all of those factors we are
14 talking about, knowing you are dealing with the
15 SMI, knowing you are dealing with General Khalil
16 who had lied to you, bald-faced lie, you don't
17 think you would have said to your security people
18 and police officers I have a reasonable suspicion
19 that this is a product of torture?

20 MR. HOGGER: I think it is
21 certainly possible that I would have felt the need
22 to make some what I would call editorial comment
23 on this document.

24 MR. CAVALLUZZO: We will leave at
25 that.

1 MR. HOGGER: That is about as far
2 as I can go.

3 MR. CAVALLUZZO: You will go as
4 far as an editorial comment.

5 Mr. Hogger, I think that almost
6 completes the examination except for one question
7 which I would like to put on the record.

8 I wonder if counsel might refer to
9 the last exhibit, Exhibit 273.

10 This really isn't a question, but
11 this is just a point of clarification,
12 Mr. Commissioner.

13 In particular, if you refer to
14 paragraph 1561, we are dealing with a German dual
15 national who was allegedly tortured in Syria. Of
16 course, in paragraph 1563 we are dealing with a
17 U.K. person, and in paragraph 1564 we are dealing
18 with another German dual national who alleges that
19 he was tortured in Syria.

20 This evidence, as you know, may be
21 relevant in respect of other evidence we have
22 heard.

23 THE COMMISSIONER: All right.

24 MR. CAVALLUZZO: Thank you,
25 Mr. Hogger, I have no further questions.

1 THE COMMISSIONER: Re-examination,
2 Mr. Décary?

3 MR. DECARY: Yes.

4 EXAMINATION

5 MR. DECARY: In your opinion,
6 Mr. Hogger, did Ambassador Pillarella's
7 relationship with General Khalil help or hurt
8 Mr. Arar?

9 MR. HOGGER: It seems to me that
10 it helped. And I say that because -- and again I
11 have to stress that this is what I read from the
12 documents that I've seen and the testimony that
13 I've heard that establishing, as I understand it
14 anyway, a relationship with General Khalil on this
15 issue was the act that led effectively directly,
16 because it was the same or possibly the next day,
17 to the first access to Mr. Arar and during his
18 detention by the Canadian consul.

19 To me, that is a fairly helpful
20 development.

21 MS EDWARDH: With respect,
22 Mr. Commissioner, the record does show that the
23 ambassador testified that he had met General
24 Khalil on one occasion prior to this meeting.

25 THE COMMISSIONER: In July.

1 MS EDWARDH: That's correct.

2 MR. HOGGER: My apologies if I
3 have overlooked that. I did, I think, refer to
4 establishing a relationship in respect to this
5 particular case, but I apologize if I have not
6 noticed that reference.

7 MR. DECARY: If I refer you to
8 Exhibit P-134, tab 24, which is document C2060507,
9 which is the August 14th, 2003 C4 Damascus to
10 which you were referred to. And in particular --
11 actually, it is the second document in this; I
12 apologize.

13 It is the second C4 document. You
14 were referred to this document, and in particular
15 paragraphs -- well, the document I would refer you
16 to, paragraph three.

17 I would ask that you read it all.

18 --- Pause

19 MR. DECARY: The last sentence
20 states that Mr. Arar indicated that as far as he
21 knew, he was not receiving a worse treatment than
22 that given to other prisoners. And I'm not in any
23 way inferring that 3 by 6 by 7 is anything other
24 than what you described it to be.

25 The fact that Mr. Martel notes not

1 the 3 by 6 by 7, nor that the person slept on the
2 floor, but that as far as Mr. Arar knew, he was
3 not receiving a worse treatment than that given to
4 other prisoners -- and I noted from a document
5 referred to previously from Mr. Waldman that there
6 was also mention of someone being detained in a
7 3 by 6 by 7 cell.

8 Does that bring to mind any
9 comments first? Do you have any additional
10 comments before -- does the fact that this is the
11 same treatment as others trigger any additional
12 comments?

13 MR. HOGGER: Well, I suppose, as
14 you say, it doesn't imply that the kind of
15 treatment we are talking about is in any way
16 acceptable. But it does of course point out that
17 there wasn't some -- especially in a
18 discriminatory sense -- especially bad treatment
19 being issued to Mr. Arar.

20 That is the way I would read it.

21 MR. DECARY: And what can you do
22 in cases when a national is treated in the way
23 Mr. Arar was treated, if I use the terms that were
24 used, "not worse" than the other detainees, I
25 understand, that were in this detention centre?

1 MR. HOGGER: I mean we have
2 already had some discussion of what steps you
3 would take as an embassy, because he is one of
4 your nationals, to help him and to help resolve
5 his case.

6 At the same time you would have, I
7 guess, to recognize that as a result of Syrian
8 view of dual nationality, which has also already
9 been discussed, that you have limited grounds for
10 complaint specifically about that aspect; that is
11 to say, complaining about the conditions in itself
12 would possibly risk the rejoinder that this is how
13 all our prisoners are treated.

14 I mean, that certainly wouldn't be
15 the end of it because I think it follows from what
16 I said earlier about the purpose of consular work,
17 that you would still have a responsibility to try
18 to ensure that conditions were acceptable and you
19 would certainly have a responsibility, perhaps
20 more importantly, to secure a hastening of the
21 process that you hope would lead to his release
22 and therefore an end to having to suffer those
23 conditions.

24 MR. DECARY: Moving to comments
25 made by Mr. Cavalluzzo, questions put to you, with

1 respect to how you address the Syrians. Assuming
2 that you are of the view, assuming that you are of
3 the view that this treatment, if not torture, is
4 unacceptable, comes close to torture, and we won't
5 get into semantics here --

6 MR. HOGGER: Good.

7 MR. DECARY: You have a detainee,
8 who, as we see, is treated like other detainees.
9 Could you go -- and the expression I use is to
10 convey the message, but could you go and point
11 fingers at the Syrians?

12 And if so, are there any risks to
13 the detainee, if you take what I would call a
14 strong-handed approach?

15 MR. HOGGER: I think the answer to
16 the second question is, in my view anyway, yes,
17 certainly there are risks. I believe I've alluded
18 in earlier testimony to the importance of not
19 risking the principle of access by doing anything
20 the Syrians would regard as unreasonable pressure.

21 And in their eyes -- I'm not
22 saying I agree with it, but in their eyes I think
23 an ambassador or consul coming to say we want our
24 detainee treated better than the other Syrian
25 prisoners that you are holding there might be seen

1 as falling into that category.

2 I think, if I might be allowed an
3 extra remark on the question of pressure, it seems
4 to me to be very important to allow a degree of
5 discretion or authority to your man on the spot in
6 advising on precisely how much pressure to use
7 because of the delicacy of this issue and the
8 risks involved; that the man on the spot is
9 probably the one most likely to be able to make
10 the right judgments on this issue.

11 MR. DECARY: Moving to the "bout
12 de papier" and recognizing that this confession,
13 the fruit that is derived from the process used is
14 spoiled. Can that "bout de papier", the content
15 of it, notwithstanding its nature, nevertheless
16 serve Canadian authorities to determine precisely
17 what is on Syrians' minds and possibly help to
18 resolve the issues which underlie the case?

19 MR. HOGGER: I think if it is not
20 exactly in those words, that is pretty much what I
21 was attempting to say.

22 MR. DECARY: No further questions.

23 THE COMMISSIONER: That completes
24 your evidence.

25 Thank you very much, Mr. Hogger,

1 for coming. I know you have come a long to be
2 here, and I appreciate the way you have given your
3 evidence. It has been very straightforward and
4 helpful. I appreciate your time and effort.

5 Although it may not be a matter of
6 great significance to you, it is to most of the
7 rest of us that in this room that, touch wood, you
8 are the last witness in this inquiry.

9 MR. HOGGER: I'm sure that is of
10 very great significance.

11 MR. WALDMAN: I have heard that
12 one before.

13 THE COMMISSIONER: That is right.

14 You can step down. There is a
15 couple of housekeeping things I have to deal with
16 the assembled crowd before we break.

17 So thank you again.

18 There is the issue -- and
19 Mr. Cavalluzzo, perhaps you can help -- with
20 respect to submissions that might flow from the
21 evidence that we heard since closing submissions.

22 So I guess that would -- I'm just
23 thinking off the top off my head -- include when
24 Mr. Pardy was called back and the last two days.

25 MR. CAVALLUZZO: That is correct.

1 And we will be receiving submissions, I believe,
2 from Mr. Décary and I think we should put a
3 reasonable time limit on that.

4 THE COMMISSIONER: And then an
5 opportunity to respond.

6 MR. CAVALLUZZO: And an
7 opportunity to respond to that as well.

8 THE COMMISSIONER: Mr. Décary,
9 what would be suitable?

10 MR. DECARY: Two weeks.

11 THE COMMISSIONER: Today is the
12 10th, so that would make it the 24th.

13 And anybody else intending to make
14 submissions? Mr. Fothergill?

15 MR. FOTHERGILL: Yes,
16 Commissioner, we have also a couple of extra days
17 of in camera testimony that I will have to address
18 with you separately, although I think, without
19 disclosing too much, the issues are not entirely
20 unrelated at time.

21 So we will want to address not
22 only the additional in camera testimony but some
23 of the public testimony as well.

24 THE COMMISSIONER: When could you
25 make your submissions?

1 MR. FOTHERGILL: We can certainly
2 live with the same deadline as Mr. Décary.

3 THE COMMISSIONER: Two weeks. So
4 that would be the 24th, Mr. Décary and
5 Mr. Fothergill.

6 Mr. Boxall, do you intend to make
7 any further submissions?

8 MR. BOXALL: I wanted to speak to
9 Mr. Cavalluzzo after today, because it may have
10 relevance on whether I have something to submit or
11 not.

12 THE COMMISSIONER: I understand.
13 If you are going to, could you do it then within
14 the two weeks?

15 MR. BOXALL: We will work within
16 two weeks.

17 Could we have this? Could it be
18 two weeks tomorrow?

19 THE COMMISSIONER: Certainly.

20 MR. BOXALL: So November 25th at
21 4:30, or whatever the time is.

22 THE COMMISSIONER: Absolutely.
23 That is reasonable.

24 Then, Mr. Waldman, we have you on
25 behalf of Mr. Arar?

1 MR. WALDMAN: The only issue of
2 course would be no problem with Mr. Décary's --
3 there is no redactions, I assume it's public
4 submissions. Right?

5 THE COMMISSIONER: Yes.

6 MR. WALDMAN: But the government
7 might --

8 THE COMMISSIONER: Presumably the
9 government will do as they have done before with
10 respect to the public evidence. You make the
11 submission public.

12 MR. WALDMAN: So we want a week
13 after that to reply.

14 THE COMMISSIONER: Does that make
15 sense? Is everybody happy with that?

16 So that would be...?

17 MR. WALDMAN: A week from when we
18 get the submissions because there are --

19 THE COMMISSIONER: Let's do it the
20 week after the 25th. We will make everybody the
21 25th and then there is another week.

22 So December 2nd.

23 MR. CAVALLUZZO: Right, December
24 2nd and Mr. Décary may want a chance to reply.

25 THE COMMISSIONER: Hopefully,

1 there won't be need for reply, but if anybody
2 needs reply, keep them short and do them quickly.

3 MR. DECARY: Mr. Commissioner, I
4 want to make sure of the process because I
5 understood all this would be public.

6 THE COMMISSIONER: This will be
7 public.

8 If you have separate submissions
9 relating to in camera evidence, do that in an in
10 camera submission.

11 Insofar as your submissions relate
12 to a public evidence, do them in a public forum.

13 If you don't mind actually, if you
14 do any in camera submission in a separate
15 document, then we don't get into a redaction. It
16 is much easier. We didn't think of that entirely
17 beforehand, but it is much easier.

18 Does that settle that?

19 The last thing. I won't go
20 through all the thank you's again because they
21 still. Mr. Cavalluzzo accuses me of becoming a
22 little too sloppy with the thank you's, but they
23 were all very sincere. So I won't repeat them
24 again.

25 I did overlook the one thank you

1 last time and I'm glad I have an opportunity to do
2 it again.

3 On behalf of everybody in this
4 room, let me thank our Registrar, who was
5 absolutely outstanding. I have been involved in a
6 lot of court and administrative hearings over the
7 years, and I've simply never seen a Registrar who
8 has been any better than how we have been served.
9 Not only has he kept track of all the documents
10 but he has also had a wonderful, gentle touch in
11 shepherding people in here so that we have been
12 able to start on time and resume.

13 I think it was absolutely first
14 rate.

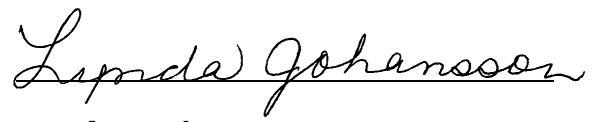
15 There may be some further things,
16 but I don't think anything further in public,
17 barring the unforeseen.

18 Thank you again, and we stand
19 adjourned.

20 --- Whereupon the hearing adjourned at 3:40 p.m.,
21 to resume on Tuesday, November 15, 2005 /
22 L'audience est ajournée à 15 h 40, pour
23 reprendre le mardi 15 novembre 2005

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Lynda Johansson,

C.S.R., R.P.R.

StenoTran