

**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 9 juin 2005

**Held at:**

Algonquin Room  
Old City Hall  
111 Sussex Drive  
Ottawa, Ontario

Thursday, June 9, 2005

## APPEARANCES / COMPARUTIONS

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

## APPEARANCES / COMPARUTIONS

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

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Thursday, June 9, 2005

3 at 9:40 a.m. / L'audience débute le jeudi

4 9 juin 2005 à 9 h 40

5 THE REGISTRAR: Please be seated.

6 Veuillez vous asseoir.

7 THE COMMISSIONER: Good morning.

8 MR. GOVER: Good morning,

9 Commissioner.

10 You will recall that Monday  
11 morning, when I introduced the plan for this week,  
12 I indicated that this morning we would be hearing  
13 evidence as part of the context for the inquiry  
14 from three individuals, and they are present now.

15 Before you swear them, I will  
16 indicate who they are and the purpose for their  
17 evidence.

18 They are, first, at my immediate  
19 left, Professor Reem Bahdi, who teaches law at the  
20 University of Windsor Faculty of Law.

21 In the middle, Dr. Sheema Khan,  
22 and she is Chair of the Board of Directors of  
23 CAIR-CAN, and in addition writes frequently, and I  
24 will be reviewing the publications that Dr. Khan  
25 has contributed to the understanding of the

1 community's experience.

2 Also, on my right, and closest to  
3 you, Commissioner, is Professor Rachad Antonius,  
4 and he is a professor in the Department of  
5 Sociology at the University of Quebec in Montreal.  
6 He, in addition to being a sociologist who brings  
7 to bear his perspective as such, and his academic  
8 study of the community in this respect, also  
9 comments in the popular media, and I will be  
10 referring to some of his work in that respect.

11 Commissioner, today's evidence, as  
12 I have said, is contextual evidence and functions  
13 as a bridge between the factual inquiry aspect of  
14 your mandate and the policy review.

15 And perhaps with that short  
16 introduction, I would ask that the witnesses be  
17 sworn.

18 I will then, Commissioner, be  
19 asking you to qualify them as expert witnesses in  
20 relation to the impact of the events of September  
21 11, 2001, and the aftermath of those events, as  
22 perceived by Canada's Muslim and Arab communities.

23 THE COMMISSIONER: All right.

24 Professor Bahdi, would you like to  
25 declare on the Qur'an?

1 PROF. BAHDI: No, thank you.

2 THE COMMISSIONER: Would you like  
3 to be sworn on the Bible?

4 MR. BAHDI: Yes, please.

5 THE COMMISSIONER: Would you stand  
6 and take the Bible in your right hand.

7 SWORN: REEM BAHDI

8 THE COMMISSIONER: Dr. Khan, what  
9 would your preference be?

10 DR. KHAN: On the Qur'an, please.

11 THE COMMISSIONER: Would you stand  
12 and take the Qur'an and repeat after me.

13 SWORN: SHEEMA KHAN

14 THE COMMISSIONER: And Professor  
15 Antonius, what is your preference?

16 MR. ANTONIUS: I will swear on the  
17 Bible.

18 THE COMMISSIONER: Would you stand  
19 and take the Bible in your right hand.

20 SWORN: RACHAD ANTONIUS

21 THE COMMISSIONER: Thank you. You  
22 may be seated.

23 EXAMINATION

24 MR. GOVER: I turn initially to  
25 you, Dr. Khan, in connection with your



1           qualifications and also to introduce you in  
2           greater detail to those present today.

3                         First of all, by way of  
4           educational background, you acquired a Bachelor of  
5           Science degree in chemistry in 1983 from McGill  
6           University.

7                         Is that correct?

8                         MS KHAN: That is correct.

9                         MR. GOVER: I am referring now to  
10          what I ought to have marked as the next exhibit,  
11          Commissioner, the reference materials compiled in  
12          relation to the evidence of Dr. Sheema Khan,  
13          Professor Rachad Antonius and Professor Reem  
14          Bahdi. This is a two-volume set.

15                        Might that be marked as the next  
16          exhibit?

17                        THE COMMISSIONER: It will be  
18          P-129.

19                        EXHIBIT NO. P-129: Two  
20          binders of documents entitled  
21          "Reference Materials Compiled  
22          in Relation to the Evidence  
23          of Dr. Sheema Khan, Professor  
24          Rachad Antonius and Professor  
25          Reem Bahdi"

1 MR. GOVER: Dr. Khan, by reference  
2 to your curriculum vitae which appears at tab 1 of  
3 Exhibit P-129, after receiving your Bachelor of  
4 Science degree in chemistry from McGill  
5 University, you then achieved a Master's degree in  
6 physics and a Ph.D. in chemical physics, both from  
7 Harvard University.

8 Is that correct?

9 MS KHAN: That is correct.

10 MR. GOVER: You acquired your  
11 Ph.D. in 1989. Is that right?

12 MS KHAN: That is correct.

13 MR. GOVER: By way of profession,  
14 I understand that you are a registered trade agent  
15 with both the U.S. Patent and Trademark Office and  
16 the Canadian Intellectual Property Office.

17 Is that correct?

18 MS KHAN: That is correct.

19 MR. GOVER: You work as a patent  
20 professional, specific as a patent agent and  
21 technical consultant at Smart & Biggar  
22 Fetherstonaugh here in Ottawa.

23 Is that right?

24 MS KHAN: That is correct.

25 MR. GOVER: And I understand that

1 in addition to your work as a patent agent, you  
2 actually hold two U.S. patents.

3 Is that right?

4 MS KHAN: That is correct.

5 MR. GOVER: And you have patents  
6 pending in Europe and in Canada at the present  
7 time.

8 MS KHAN: Correct.

9 MR. GOVER: Turning to your  
10 community activity, you have been the Chair of the  
11 board of CAIR-CAN since 2000.

12 Is that right?

13 MS KHAN: Yes, that is right.

14 MR. GOVER: Can you briefly tell  
15 us what CAIR-CAN is.

16 MS KHAN: CAIR-CAN is an acronym  
17 for the Canadian Council on American Islamic  
18 Relations. It is a grassroots advocacy  
19 organization for the Muslim community.

20 We have a threefold set of  
21 activities: one is education of the Muslim  
22 community regarding Canadian institutions of  
23 media, and more so now in politics; another is to  
24 educate the wider Canadian community through media  
25 articles; and the third is interfaith dialogue.

1 MR. GOVER: Now, in addition,  
2 since 2004 you have been a member of the board of  
3 the Canadian Civil Liberties Association.

4 Is that right?

5 MS KHAN: That is correct.

6 MR. GOVER: And previously you  
7 were a board member of CAIR. Is that right?

8 MS KHAN: That is correct.

9 MR. GOVER: That was in 2001 and  
10 2002?

11 MS KHAN: Correct.

12 MR. GOVER: We appreciate that you  
13 are the board chair of CAIR-CAN. Can you tell us  
14 what CAIR is and what your work as a board member  
15 of CAIR was.

16 MS KHAN: CAIR is the Council of  
17 American Islamic Relations based in Washington,  
18 D.C. It began in 1995, about ten years ago. They  
19 served as a prototype of the kind of work we do  
20 now in terms of a grassroots advocacy organization  
21 on behalf of Muslims in the United States.

22 While I was there as a board  
23 member for two years, it was mainly policy work  
24 that I was involved in.

25 MR. GOVER: Turning to page 3 of

1 your curriculum vitae, I see that you have listed  
2 there a number of articles or publications that  
3 you have written.

4 Is that correct?

5 MS KHAN: Correct.

6 MR. GOVER: Now, I understand that  
7 in addition to your employment as a patent  
8 professional, you are also a monthly columnist for  
9 The Globe and Mail.

10 Is that right?

11 MS KHAN: That is correct, yes.

12 MR. GOVER: What we see at pages 3  
13 and 4 is reference to a large number of articles,  
14 firstly in The Globe and Mail.

15 Is that right?

16 MS KHAN: That is correct, yes.

17 MR. GOVER: But also you have  
18 published articles in the Montreal Gazette.

19 Is that right?

20 MS KHAN: Yes.

21 MR. GOVER: The Literary Review of  
22 Canada.

23 MS KHAN: Yes.

24 MR. GOVER: A journal known as  
25 Canadian Diversity?

1 MS KHAN: Correct.

2 MR. GOVER: In The Toronto Star?

3 MS KHAN: Yes.

4 MR. GOVER: And in the Ottawa  
5 Citizen?

6 MS KHAN: Correct.

7 MR. GOVER: Your community work  
8 has included testimony before Parliamentary and  
9 Senate committees. Is that right?

10 MS KHAN: That is correct, yes.

11 MR. GOVER: You have referred to  
12 them at page 4 of your curriculum vitae, tab 1 of  
13 Exhibit P-129.

14 Is that right?

15 MS KHAN: That is correct.

16 MR. GOVER: Thank you. Further,  
17 you have appeared in the broadcast media. You  
18 appeared, as indicated at pages 4 and 5, on CBC  
19 Radio, Vision TV, CPAC, CBC Newsworld and TV  
20 Ontario.

21 Is that correct?

22 MS KHAN: That is correct, yes.

23 MR. GOVER: And I note further  
24 that you have participated in panels and lectures  
25 on topics such as Islamic Cultural Practices,

1           Diversity, Shari'ah Law and the Implication of  
2           Arbitration for Muslim Women. And you have  
3           participated in a panel on human rights, and that  
4           latter panel was at a conference hosted by the  
5           Canadian Bar Association?

6                           MS KHAN: That is correct, yes.

7                           MR. GOVER: In addition, you have  
8           spoken at a conference entitled "Canada and Islam  
9           in Asia in the 21st Century", sponsored by the  
10          Department of Foreign Affairs and International  
11          Trade, the Canadian International Development  
12          Agency and McGill University's Institute of  
13          Islamic Studies.

14                           Is that correct?

15                           MS KHAN: That is correct, yes.

16                           MR. GOVER: Turning, if I may, to  
17          Professor Antonius, sir, I indicated at the outset  
18          that you are a professor in the Department of  
19          Sociology at the University of Quebec in Montreal.

20                           Is that correct?

21                           MR. ANTONIUS: Correct.

22                           MR. GOVER: And I understand that  
23          previously you have taught at the University of  
24          Ottawa?

25                           MR. ANTONIUS: Correct.

1 MR. GOVER: At the American  
2 University in Cairo?

3 MR. ANTONIUS: Correct.

4 MR. GOVER: At the University of  
5 Sherbrooke?

6 MR. ANTONIUS: Partly, yes, a  
7 program within the University of Sherbrooke.

8 MR. GOVER: Yes. And your focus  
9 is in sociology and anthropology.

10 Is that right, sir?

11 MR. ANTONIUS: Yes.

12 MR. GOVER: And you have  
13 previously taught the Arab Society course to  
14 Canadian and Arabic audiences.

15 Is that right?

16 MR. ANTONIUS: Exactly.

17 MR. GOVER: I understand that you  
18 are the co-author of a widely used textbook on  
19 quantitative research methodology?

20 MR. ANTONIUS: Exactly.

21 MR. GOVER: You are a consultant  
22 with agencies such as UNICEF. Is that right?

23 MR. ANTONIUS: Yes.

24 MR. GOVER: The Canadian  
25 International Development Agency?



1 MR. ANTONIUS: Correct.

2 MR. GOVER: And others. Is that  
3 right, sir?

4 MR. ANTONIUS: Yes.

5 MR. GOVER: You have written  
6 reports, acting in the function of advisor on  
7 Middle East affairs, is that right, for a Canadian  
8 paragovernmental institution, Rights and  
9 Democracy.

10 Is that right, sir?

11 MR. ANTONIUS: Yes.

12 MR. GOVER: In that function, to  
13 whom did you report?

14 MR. ANTONIUS: Essentially to the  
15 board and president of Rights and Democracy.

16 MR. GOVER: And ultimately Rights  
17 and Democracy then reported to whom?

18 MR. ANTONIUS: Reports to the  
19 government in general, Parliament more precisely.

20 MR. GOVER: Now, I understand that  
21 your publications, in the sense of your academic  
22 publications, include your paper "Un racism  
23 'respectable'", which appears at tab 23 of the  
24 reference materials, Exhibit P-129.

25 Is that correct?

1 MR. ANTONIUS: That is correct.

2 MR. GOVER: And an English  
3 abstract of your paper appears at tab 22.

4 MR. ANTONIUS: Yes.

5 MR. GOVER: Now, your recent  
6 publications in the policy realm include special  
7 training to social workers and personnel on the  
8 effects of September 11th, 2001.

9 Is that right?

10 MR. ANTONIUS: That is correct.

11 MR. GOVER: Can you tell us  
12 something about that, please?

13 MR. ANTONIUS: That was the  
14 training done to the CLSC, the Centre local des  
15 services sociaux in Côte-des-Neiges area where  
16 they had about 50 social workers dealing with a  
17 wide variety of people from a wide variety of  
18 backgrounds, and they wanted to understand more  
19 how September 11 affected the Arab and Muslim  
20 communities and the population base that they were  
21 serving. So it was a discussion on this topic.

22 MR. GOVER: In addition, among  
23 your many endeavours in the fact field of policy  
24 communications was work with the Department of  
25 Foreign Affairs in its Think Tank on Human Rights

1 and Democracy Promotion in a Context of Terrorism.

2 Is that correct?

3 MR. ANTONIUS: Yes, I had the  
4 honour of being associated with that activity and  
5 participating in it on the premises of the  
6 Canadian Parliament.

7 MR. GOVER: And that was here,  
8 obviously, in Ottawa?

9 MR. ANTONIUS: Right.

10 MR. GOVER: On May 30th, 2002. Is  
11 that right?

12 MR. ANTONIUS: Correct.

13 MR. GOVER: Now, like Dr. Khan,  
14 you have written with the broader public in mind,  
15 and in particular you write on a semi-regular  
16 basis in terms of op-ed pieces and commentary  
17 pieces for major Canadian newspapers.

18 Is that correct?

19 MR. ANTONIUS: Exactly. I have  
20 written for The Globe and Mail, and for The  
21 Gazette and for La Presse and Le Devoir.

22 MR. GOVER: In addition, you have  
23 appeared in the broadcast media?

24 MR. ANTONIUS: Yes, essentially  
25 CBC and Radio-Canada, and CNN and TVA.

1 MR. GOVER: And you were a member  
2 of the Press Council of Quebec from 1989 to 2001.

3 Is that right?

4 MR. ANTONIUS: Correct.

5 MR. GOVER: If I might turn to  
6 you, Professor Bahdi, you are an assistant  
7 professor at the University of Windsor's Faculty  
8 of Law.

9 Is that right?

10 MS BAHDI: That is right.

11 MR. GOVER: I understand that your  
12 focus there is on access to justice and tort law.

13 Is that right?

14 MS BAHDI: That is right. Access  
15 to justice is a mandatory first-year course, and  
16 tort is a second-year course.

17 MR. GOVER: You have Bachelors and  
18 Masters degrees in history from the University of  
19 Western Ontario.

20 Is that correct?

21 MS BAHDI: A Master's in history  
22 and a Bachelor's in history and philosophy, that  
23 is right.

24 MR. GOVER: Thank you. In 1996  
25 you acquired your Bachelor of Laws degree from the

1 University of Toronto?

2 MS BAHDI: That is right.

3 MR. GOVER: You acquired your  
4 Master of Laws degree from the University of  
5 Toronto in 2001?

6 MS BAHDI: That is right.

7 MR. GOVER: Your thesis topic was  
8 Globalization of Judgement: International Human  
9 Rights Law in Commonwealth Courts.

10 Is that right?

11 MS BAHDI: That is correct.

12 MR. GOVER: Continuing on with  
13 your curriculum vitae at tab 3 of Exhibit P-129,  
14 you have been a visiting research scholar at the  
15 University of Michigan Faculty of Law?

16 MS BAHDI: That is right.

17 MR. GOVER: And your academic  
18 publications include an article referred to at  
19 page 4 of your curriculum vitae, "No Exit: Racial  
20 Profiling and Canada's War Against Terrorism".

21 Is that correct?

22 MS BAHDI: That is correct.

23 MR. GOVER: Now, that appeared in  
24 the Osgoode Hall Law Journal?

25 MS BAHDI: Yes, it did, in the

1 fall of 2003.

2 MR. GOVER: And it appears,  
3 Commissioner, at tab 27, of Exhibit P-129.

4 In addition, you have journal  
5 publications in progress or under consideration.  
6 Is that right?

7 MS BAHDI: That is right.

8 MR. GOVER: And your work in that  
9 respect includes work on, according to page 5 of  
10 your curriculum vitae, Section 15 and Security  
11 Certificates.

12 Is that right?

13 MS BAHDI: That is correct.

14 MR. GOVER: And that is Section 15  
15 of the Charter?

16 MS BAHDI: Of the Charter, that is  
17 correct.

18 MR. GOVER: And further,  
19 Anti-Terrorism as Tort: International Law and  
20 Canada's Duty to Protect Citizens Against the Acts  
21 of Foreign Governments?

22 MS BAHDI: That is right, those  
23 are both works in progress.

24 MR. GOVER: And you have a book in  
25 progress, "Using International Human Rights Law

1 and Mechanisms to Secure the Rights of  
2 Non-Citizens in Canada".

3 Is that right?

4 MS BAHDI: Yes, also a work in  
5 progress; that is right.

6 MR. GOVER: Your lectures and  
7 seminars include lectures and seminars in the  
8 fields of anti-terrorism as tort and racial  
9 profiling in Canada's anti-terrorism legislation.

10 Is that correct?

11 MS BAHDI: I have given some  
12 lectures and seminars on that topic, yes.

13 MR. GOVER: And you have acted as  
14 a consultant, as outlined at pages 8 and 9 of your  
15 curriculum vitae?

16 MS BAHDI: In various capacities,  
17 yes, that is right.

18 MR. GOVER: And at the last page  
19 of your curriculum vitae, page 11, you indicate  
20 funding that you have received for research and  
21 for consulting.

22 I would ask you, if you would, to  
23 elaborate on the first entry there, which is  
24 funding by the Canadian International Development  
25 Agency, Judicial Independence and Human Dignity

1 Initiative, announced by the Prime Minister on May  
2 27th of this year.

3 MS BAHDI: Right. The Prime  
4 Minister of Canada made an announcement on the  
5 occasion of the visit of President Mahmoud Abbas  
6 of the Palestinian Authorities that the University  
7 of Windsor was getting \$4.5 million to initiate a  
8 judicial education project.

9 It is a project that I had started  
10 about a year and a half ago, and the central  
11 objective is to give human rights training,  
12 education, for Palestinian judges working in  
13 conjunction with members of the Canadian  
14 judiciary, including in particular Madam Justice  
15 Claire L'Heureux-Dube, retired Justice of the  
16 Supreme Court of Canada, Madam Justice Catherine  
17 Fraser, of course Chief Justice of Alberta, and  
18 Justice Douglas Campbell of the Federal Court.

19 The Prime Minister, as I said,  
20 made that announcement. We are in the process of  
21 working out the paperwork with CIDA at the moment.

22 MR. GOVER: Mr. Commissioner, I  
23 have indicated the field in which Commission  
24 counsel put these three individuals forward as  
25 experts.



1 I don't know if my friends have  
2 any questions or submissions at this point.

3 THE COMMISSIONER: Mr. Waldman,  
4 any questions or submissions?

5 MR. WALDMAN: I accept their  
6 qualifications completely.

7 THE COMMISSIONER: And  
8 Mr. Fothergill?

9 MR. FOTHERGILL: I have no  
10 questions, but I think I should make perhaps a  
11 brief submission.

12 I appreciate Mr. Gover's  
13 explanation that this evidence is to be called not  
14 only in relation to the factual inquiry but also  
15 in respect of your policy review. I think for  
16 obvious reasons the Attorney General is not  
17 necessarily conceding the relevance of this  
18 evidence to the factual inquiry, but of course  
19 that is ultimately something for you to decide.

20 On the basis that it is being led  
21 also in relation to Part 2, we are content with  
22 the evidence to be heard.

23 I think, however, a special  
24 caution is in order because I anticipate that we  
25 will be hearing quite a bit of hearsay and

1 anecdotal evidence, and I think for obvious  
2 reasons I will not be in a position to respond to  
3 that evidence on the merits.

4 I don't think you would want this  
5 inquiry to be used for a detailed examination of  
6 various actors that may have informed perceptions  
7 within the Arab and Muslim communities. Certainly  
8 I think it is useful for you to hear evidence of  
9 those perceptions, but I just would have to say  
10 that I am not in a position generally to challenge  
11 the veracity of the events that contributed to  
12 those perceptions.

13 THE COMMISSIONER: Well, I am  
14 satisfied with the qualifications of each of the  
15 three members of the panel to give opinion  
16 evidence with respect to the impact of September  
17 11th and its aftermath as perceived by the  
18 Canadian Arab and Muslim community.

19 I might also indicate in response  
20 to Mr. Fothergill's comment that I understand, Mr.  
21 Gover, that it is being introduced as contextual  
22 evidence, and that as contextual evidence the  
23 suggestion is that for the factual inquiry it  
24 would be of assistance and would also be of  
25 assistance to me in the policy review part of my

1 mandate.

2 MR. GOVER: That is the case,  
3 Mr. Commissioner, yes.

4 THE COMMISSIONER: Mr. Fothergill,  
5 in response to your submission, obviously it is  
6 the case that at the end of the day, with all  
7 evidence, I will determine in the factual inquiry  
8 what evidence is relevant and useful. So I think  
9 that goes without saying.

10 I am pleased to proceed then on  
11 that basis.

12 Thank you, Mr. Gover.

13 MR. GOVER: Thank you.

14 Mr. Commissioner, the panel will  
15 be addressing a total of seven general questions  
16 in the course of its evidence. Mr. Cavalluzzo and  
17 I will be sharing the duty of examining the panel  
18 in-chief.

19 The issues about which the panel  
20 will be testifying are these:

21 First, do the phenomena of  
22 Islamiphobia and anti-Arab sentiment exist in the  
23 post-9/11 era?

24 Second, what is the experience of  
25 Canada's Arab and Muslim communities in dealing

1 with Canadian security intelligence and law  
2 enforcement officials after 9/11?

3 Third, are racial and religious  
4 profiling and security stereotyping used by  
5 government decision-makers, including the RCMP,  
6 other police agencies, and CSIS? If they are  
7 used, what is their impact on Canada's Muslim and  
8 Arab communities?

9 Fourth, in the post-9/11 era, do  
10 Canadian law enforcement and security officials  
11 exhibit appropriate cultural and religious  
12 sensitivity?

13 Fifth, is intelligence gathering  
14 in minority communities by Canadian intelligence  
15 agencies and the analysis of that information  
16 flawed?

17 Sixth, do information sharing  
18 practices, adhered to by Canadian law enforcement  
19 and security officials, discriminate against Arabs  
20 and Muslims?

21 And seventh, has the experience of  
22 these two communities in dealing with Canadian  
23 security intelligence and law enforcement agencies  
24 changed since the immediate aftermath of 9/11?

25 Before turning to the first of

1           those issues, I would like the panel to address  
2           the question of whether there are overarching  
3           problems in trying to answer those seven  
4           questions, and in particular I would ask for your  
5           comments about problems of proof.

6                           I turn to you first, Dr. Khan.

7                           In your view, are there problems  
8           of proof in answering those seven questions that I  
9           have put, and in particular in giving the evidence  
10          today as to the impact of 9/11 in a general sense  
11          and its aftermath as perceived by Canada's Muslim  
12          and Arab communities?

13                          MS KHAN: Well, in terms of  
14          problems of proof, I think it was alluded to  
15          earlier, and the fact that a lot of the  
16          sentiment -- not just sentiment but instances are  
17          anecdotal. Therefore, one can't say with a high  
18          degree of accuracy what is exactly going on, but  
19          we can only get a window of what the Arab and  
20          Muslim community perceives.

21                          On the other hand, we do have  
22          accurate statistics about hate crimes, vandalism,  
23          and acts of those nature as recorded by the  
24          police. Even the police say that they believe  
25          that those instances have been under-reported. So

1           there is also a question of under-reporting.

2                           I will leave it at that for now.

3                           MR. GOVER: I would like to ask  
4           for some elaboration on this concept of  
5           under-reporting.

6                           In particular, Dr. Khan, I would  
7           take you to tab 7 of Exhibit P-129.

8                           You have referred to  
9           under-reporting in the context of acts of  
10          vandalism following 9/11.

11                          At tab 7, we have a paper by Riad  
12          Saloojee, Executive Director of CAIR-CAN, which  
13          was delivered at a conference in Oslo, Norway, in  
14          September 2002, and it is entitled "Life for  
15          Canadian Muslims The Morning After: A 9/11  
16          Wake-up Call".

17                          I note at page 8, after describing  
18          the acts of vandalism and other hate activity that  
19          transpired in the immediate aftermath of 9/11,  
20          Mr. Saloojee says:

21                                       "Although police in Montreal,  
22                                       Calgary and Ottawa reported  
23                                       40, 24, and 44 hate-related  
24                                       incidents respectively, Ms  
25                                       Foss..."

1 Referring to a Globe and Mail  
2 reporter who had written on the subject.

3 "... confirmed the  
4 problematic issue of  
5 under-reporting, and noted  
6 that 'all police services  
7 emphasize that they only know  
8 about a small proportion of  
9 the hate-related incidents  
10 that occur.'"

11 MS KHAN: Yes, we believe that is  
12 quite accurate, simply because within the Muslim  
13 community it was a time of extreme fear, and there  
14 was reticence in reporting incidences of hate or  
15 the like. A lot of people perhaps didn't know the  
16 appropriate mechanism or the appropriate  
17 institutions to go to, and so we believe that that  
18 is quite an accurate portrayal of what was going  
19 on.

20 MR. GOVER: As a community leader,  
21 do you believe that under-reporting applies  
22 elsewhere, beyond the context in which  
23 Mr. Saloojee was reporting it?

24 MS KHAN: It would also apply --  
25 for example, I think we will be discussing the

1 survey which we released yesterday, the issue of  
2 perhaps interactions with police and security  
3 agencies or with racism at work.

4 How to file a complaint, for  
5 example, against perceived injustices. A lot of  
6 the community is not aware of how to proceed along  
7 those lines or is simply too fearful.

8 With regard specifically to the  
9 police and security agencies, many, many members  
10 of the Muslim community do come from countries  
11 where the police is to be feared, and the thought  
12 of even complaining is just unheard of.

13 So there is a lot of issues that  
14 the community must come to terms with when dealing  
15 with racism and vandalism and hate.

16 MR. GOVER: Professor Bahdi, your  
17 comments on problem of proof?

18 MS BAHDI: Yes, I think I would  
19 like to make two points in that regard.

20 The first is that often the  
21 complaints that come from the community are in  
22 relation to discretionary decisions that are made,  
23 and there are different types of discretion that  
24 we can talk about.

25 One type that I would like to



1 focus on is what is called on-the-ground  
2 discretion; that is, the decisions that get made  
3 on a daily basis that an administrative  
4 decision-maker has to make.

5 For example, if you are at an  
6 airport, the decision-maker has to determine if  
7 you are the kind of person that they want to pull  
8 over for a secondary inspection or extended  
9 questioning, and these are the kinds of decisions  
10 where that aren't necessarily accountability  
11 mechanisms, where one would know where to go in  
12 order to complain.

13 As Dr. Khan has said, her  
14 community organization has heard a lot about  
15 individuals not knowing where to complain.

16 My research has revealed that  
17 there is, as Dr. Khan said, fear of complaining.  
18 Partly that fear comes out of a concern that if  
19 neighbours or employers learn, for example, that  
20 one is the subject of scrutiny by security  
21 services, that there will be repercussions; that  
22 the individual will be isolated by the community  
23 or that they may lose a job contract. So often  
24 individuals don't want to complain because they  
25 don't want the ramifications of complaining.

1                   Sometimes mechanisms that may be  
2                   available, such as, for example, the possibility  
3                   of a human rights complaint, the individual may  
4                   find those mechanisms inaccessible because of cost  
5                   concerns, for example.

6                   Often there is a concern that  
7                   their complaint simply won't be understood; that  
8                   it will be trivialized as something that is  
9                   irrelevant, and that they feel that even if they  
10                  come out and make a complaint that the remedy that  
11                  they are hoping to obtain just won't be produced,  
12                  and that they will spend a lot of time and effort  
13                  and give up a lot of their life in the end for  
14                  nothing.

15                  MR. GOVER: Professor Antonius, do  
16                  you have a perspective on this general issue of  
17                  problems of proof?

18                  MR. ANTONIUS: Yes. I would just  
19                  add, first, I agree completely with what has been  
20                  said now and support it.

21                  I would like to add a personal  
22                  experience on that.

23                  I was, as you have mentioned, on  
24                  the Press Council of Quebec, and I was sitting on  
25                  the complaints committee for two years. Although

1 I would notice a lot of things in the media that  
2 were grounds for complaint, there was not a single  
3 complaint from the community during that period,  
4 and I asked the people I know, you know, "Why  
5 don't you complain?" They said, "Well, there is  
6 no point in it. We know our that complaint won't  
7 go very far anyway."

8 Basically there is a mistrust of  
9 the mechanisms, on the one hand.

10 But also in matters of security --  
11 not press and not image -- I would like to  
12 emphasize that the consequences for complaining  
13 can be very real. The mere fact of complaining  
14 means that the harassment, or whatever the  
15 situation about which people complain, becomes  
16 official, becomes on record, and it does affect  
17 the way neighbours and employers see the person.

18 In addition to that, many Arabs  
19 and Muslims are relatively recent immigrants.  
20 They don't know fully the system. They would  
21 rather not get into processes and mechanisms that  
22 they do not understand fully, and they do not see  
23 the consequences. So they would rather remain  
24 silent rather than complaining.

25 So this is one element.

1                   The second element is that, in an  
2 individual situation, because it is a matter of  
3 discretion, decision-making at the local level, as  
4 Professor Bahdi said, you cannot always prove that  
5 one individual event is related to a stereotyped  
6 image at the individual level. However, if you  
7 look statistically at all events, and when you see  
8 that there are more and more complaints and more  
9 and more events, then this becomes some kind of  
10 proof that there is a link.

11                   MR. GOVER: Professor Bahdi, again  
12 in terms of an overarching concept, are you  
13 familiar with the term "security discourse"?

14                   MS BAHDI: Yes. I think it refers  
15 to the general notion that once national security  
16 is raised as a concern in any particular context,  
17 then national security overwhelms any other  
18 concerns. These other issues or values would be  
19 subjugated or ignored.

20                   For example, national security  
21 would be considered more important and a trump to  
22 considerations like equality or efficiency in the  
23 administration of justice.

24                   I can go on and say some more. I  
25 can invite my colleagues to say some more and I

1 can say something about where I think this comes  
2 from as a conceptual matter.

3 MR. GOVER: Let's turn to  
4 Dr. Khan.

5 Dr. Khan, your view of this  
6 concept of security discourse, as described by  
7 Professor Bahdi?

8 MS KHAN: I speak as a lay person.  
9 I am not an expert on this particular issue.

10 Unfortunately, it seems that we  
11 almost have a binary of either security or human  
12 rights, and I believe that the discourse must go  
13 to trying to find -- it may be imperfect, but  
14 nonetheless some kind of balance where we can  
15 achieve security, yet maintain human rights.

16 From the perception of the Arab  
17 and Muslim community, human rights has been  
18 trumped in the name of security.

19 As we go through the testimony  
20 today, we will give specific examples to that  
21 effect.

22 MR. GOVER: Professor Antonius, do  
23 you have any comment?

24 MR. ANTONIUS: The notion of  
25 security is related to the notion of danger, and

1           whenever you invoke security, it is tied  
2           immediately to a danger and then this danger is  
3           tied to a particular group of the population. So  
4           the security discourse has had the effect of  
5           making critical approaches to it more difficult,  
6           because if you challenge the security discourse,  
7           then you are seen to be putting everybody in  
8           danger and it becomes more difficult to challenge  
9           it.

10                           MR. GOVER: And some final words  
11           on security discourse from you then, Professor  
12           Bahdi.

13                           MS BAHDI: Well, I think basically  
14           I am reiterating what Dr. Khan has said, that  
15           where this comes from is from our notion, or  
16           understanding, that security is had by trading off  
17           human rights, and so there is a dichotomy that is  
18           created between security and human rights.

19                           The problem is that this leads  
20           essentially to the problem of unaccountability  
21           within the legal system, for example, and losing  
22           perspective in the day-to-day administration of  
23           the law.

24                           I can give you an example. Again,  
25           this is based on interviews that I have done.

1                   I was speaking with a lawyer who  
2                   is very involved with the Muslim community, and he  
3                   told me that for many, many years, he and a number  
4                   of his friends have played paintball. But  
5                   recently, playing paintball has been understood as  
6                   an indication of possible links to terrorism. So  
7                   they stopped playing paintball but decided, again  
8                   fairly recently, that in fact they wanted to go  
9                   back to their activities. This was something that  
10                  they enjoyed, and they weren't terrorists, so why  
11                  should they be worrying about playing paintball?  
12                  Nonetheless, they felt that it was important to  
13                  inform CSIS that they were going to have a game of  
14                  paintball; that these were 50 people who were  
15                  going to get together, 50 Muslims, to play  
16                  paintball.

17                  And CSIS sent out a memo to its  
18                  officers advising that this game of paintball was  
19                  going to be taking place and that it was okay. It  
20                  was an acceptable thing to happen.

21                  I just use this as an example, a  
22                  very small example, perhaps, of how the idea that  
23                  security can overcome this notion of equality. I  
24                  mean, individuals couldn't get together to play  
25                  paintball because they were Muslim without

1 permission -- feeling they had to get permission  
2 from our national security services.

3 Again, the idea of using resources  
4 in order to say that it was okay for 50  
5 individuals to get together to play paintball  
6 doesn't, I think, enhance our national security;  
7 it undermines the concept of national security.

8 So what I am suggesting is a need  
9 to examine this idea that national security  
10 involves a trade-off of human rights; that  
11 perhaps, in fact, national security is enhanced by  
12 understanding that equality and efficiency are  
13 part of obtaining national security.

14 MR. GOVER: Let's turn to the  
15 first of our questions then.

16 The first question is: Do the  
17 phenomena of Islamophobia and anti-Arab sentiment  
18 exist in the post-9/11 era?

19 Just to preface our discussion of  
20 that issue, if I could take you to tab 4 of  
21 Exhibit P-129, we see here the joint statement  
22 made by several organizations representing  
23 Canadian Muslims condemning the terrorist attacks  
24 of September 11th, 2001, and expressing alarm at  
25 the growing number of anti-muslim incidents.



1                                   This was dated Friday, September  
2                                   14, 2001, and in it the groups that are  
3                                   represented there say:

4                                   "We the undersigned Canadian  
5                                   Muslim organizations condemn  
6                                   the un-Islamic and criminal  
7                                   acts of terrorism against  
8                                   innocent civilians in  
9                                   Washington, D.C. and New  
10                                  York. Canadian Muslims offer  
11                                  their heartfelt condolences  
12                                  to all those who lost loved  
13                                  ones and join with all people  
14                                  of conscience in calling for  
15                                  the swift apprehension and  
16                                  punishment of the  
17                                  perpetrators.

18                                  We also express alarm and  
19                                  concern with the growing  
20                                  number of anti-Muslim  
21                                  incidents documented in the  
22                                  last few days. Across  
23                                  Canada, Muslims have been the  
24                                  subject of threats, taunts,  
25                                  harassment, and, in a number

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1                   of instances, their places of  
2                   worship have been physically  
3                   damaged."

4                   And the statement goes on:

5                   "Canadian Muslims should not  
6                   suffer for being Muslim...  
7                   We call on public officials  
8                   and media professionals to  
9                   exercise restraint..."

10                  In the use of their language  
11                  concerning the blame of the terrorist attacks.

12                  Now, could I turn to you first,  
13                  Professor Antonius, and ask for your response from  
14                  the standpoint of a sociologist, someone who  
15                  speaks to the popular media as well, someone in  
16                  tune with the community. Can you tell us: Do the  
17                  phenomena of Islamophobia and anti-Arab sentiment  
18                  exist in the post 9/11 era?

19                  MR. ANTONIUS: Yes, I should say  
20                  that I have published a couple of papers on that  
21                  issue, and that I have now a grant from CSHRC,  
22                  from the Canadian Human and Social Centres to go  
23                  further in this study.

24                  What I have found in the  
25                  preliminary studies that I have done is the

1 following:

2 First, that there is an overtly  
3 racist discourse that is expressed sometimes in  
4 the public media, sometimes by some politicians,  
5 that qualifies as racist in a really overt way.  
6 That is the first thing I have noticed.

7 The second thing I have noticed is  
8 that this discourse is not seen as racist when the  
9 victims are Muslims or Arabs. I will elaborate on  
10 that second point in a second.

11 But the third thing is that since  
12 September 11 -- this was not started on September  
13 11. It was present before, but September 11 has  
14 polarized that discourse. So it has become more  
15 aggressive, on one hand, but at the same time  
16 there has been a counter-discourse, originating in  
17 various places in society, opposing this racist  
18 discourse. So there has been a polarization.

19 Now, concerning this aspect that  
20 this discourse is not seen as racist, I have taken  
21 one editorial from The Gazette, which had appeared  
22 also in a number of other papers, and that is in  
23 the papers produced here, I think, in tab 23.

24 That editorial had appeared in  
25 about a dozen daily papers in Canada, and it was

1 very offensive toward Muslims.

2 I had shown that statement to some  
3 of the colleagues where I was teaching in an  
4 English institution where there were Muslim, and  
5 they felt it was not nice, it was rude, but it was  
6 not racist. Then I interchanged the word Muslims  
7 and put Jew instead, and immediately people saw  
8 that that was an overtly racist and offensive  
9 statement. It was the same statement; it is just  
10 the target that had been changed.

11 MR. GOVER: If I could interrupt  
12 you just for a moment, perhaps it would assist us  
13 all if we were to refer to tab 22 of Exhibit  
14 P-129. Here we have the abstract for your  
15 article.

16 MR. ANTONIUS: Yes.

17 MR. GOVER: And am I correct that  
18 you begin the discussion about that editorial  
19 toward the bottom of the first page, under the  
20 heading "Illustrations"?

21 MR. ANTONIUS: Yes. The statement  
22 is:

23 "'Why can't some Muslims  
24 agree that killing innocent  
25 non-Muslims is unacceptable?"

1                   Part of the problem lies with  
2                   Muslim civilization itself.'"     "  
3                   And then it goes on, saying:  
4                   "'But even by the barbaric  
5                   standards of the Arab Middle  
6                   East, Yasser Arafat and the  
7                   Palestinian terrorist  
8                   organizations that operate  
9                   freely under his wit have hit  
10                  new lows.'"     "

11                  The editorial continues with the  
12                  same kind of statements.

13                  As I said, I have interchanged the  
14                  words Muslims and Jews, and then it was seen as  
15                  very offensive, the very same statement.

16                  When I sent the statement to the  
17                  Quebec Commission of Human Rights to see whether  
18                  there was grounds for complaint, they felt: Well,  
19                  the statement as it was printed, with the word  
20                  Muslim, was not offensive enough to lead to  
21                  anything.

22                  Of course, what gives meaning to  
23                  this is the global discourse about Arabs and  
24                  Muslims that is expressed through editorials,  
25                  through caricatures, through cartoons, and in that

1 paper there is a very common cartoon showing kids  
2 and fathers being proud of becoming suicide  
3 bombers, and that becomes --

4 You see, what is important is that  
5 because this discourse comes from centres of  
6 power, from editorials, from well-known  
7 politicians sometimes, it acquires a certain  
8 respectability -- hence the title of that paper --  
9 and then it becomes the framework through which  
10 people interpret their interaction with Arabs and  
11 Muslims.

12 That is where it interacts with  
13 this area of discretionary decisions that, let's  
14 say security agents have to make at some point.  
15 It becomes the framework through which they see  
16 Arabs and Muslims.

17 You know, a century ago, when  
18 racism was not challenged, it would be common to  
19 say that blacks are lazy, and that was a racist  
20 statement. Today it is common to say that Muslims  
21 and Arabs are moved essentially by hate and their  
22 political actions are essentially explained by  
23 hatred. That has become the framework of  
24 interpreting people's behaviour, and of course  
25 that has enormous consequences for new immigrants

1           who come who don't know the system, who come from  
2           difficult situations.

3                         MR. GOVER: Dr. Khan, I understand  
4           that CAIR-CAN conducted a survey in the first year  
5           after 9/11, and that the results of that survey  
6           are contained in the CAIR-CAN press release which  
7           appears at tab 6 of Exhibit P-129.

8                         Is that correct?

9                         MS KHAN: That is correct, yes.

10                        MR. GOVER: Can you describe to us  
11           what the survey found about post 9/11 bias, and  
12           especially as it relates to the media?

13                        MS KHAN: Well, in this particular  
14           survey, it was actually a questionnaire, and we  
15           tabulated the various responses that were given to  
16           us voluntarily.

17                        In terms of the media, Muslims  
18           found predominantly that CanWest outlets, as well  
19           as the National Post, were perhaps the worst  
20           offenders.

21                        In fact, in Mr. Saloojee's paper  
22           at tab 7, he goes through various editorials and  
23           statements, predominantly in the National Post,  
24           which were quite racist.

25                        Muslims were -- we were seen as

1 perhaps the fifth column in many media editorials.  
2 We were questioned with regards to our loyalty to  
3 Canada; you know, that stiffer test of patriotism,  
4 which is what journalist Haroon Siddiqui referred  
5 to. And many, many other things.

6 In terms of human rights, in one  
7 CanWest or National Post article, they said, you  
8 know, it is easier to burn the hay stack -- set  
9 the whole hay stack on fire -- than looking for  
10 that proverbial needle in a hay stack.

11 So several commentators  
12 essentially affirmed the process of racial  
13 profiling, and I think we will get to that a bit  
14 later.

15 So in the media, in certain  
16 segments of the media, we were seen as, like I  
17 said, a fifth column, a community under suspicion,  
18 a community where it was justified to suspend  
19 human rights, to cast an entire community under  
20 suspicion, to racially profile, and this was also  
21 going on while we were experiencing quite a bit of  
22 hate and vandalism.

23 The National Post -- and I will  
24 quote the journalist, someone whose writing I  
25 respect, Christie Blatchford, doubted the



1 incidents that we went through. In fact, the  
2 National Post questioned many of the incidences  
3 that we reported, that we were somehow blowing it  
4 out of proportion.

5 So even the negative experiences  
6 that we went through were somehow undermined or  
7 belittled, which added to a sense of alienation  
8 and marginalization.

9 MR. GOVER: I don't want to  
10 diminish the importance of the survey as it  
11 outlined the impact of 9/11 on the respondents to  
12 the survey, which of course went beyond the media  
13 analysis conducted in the survey. Can you briefly  
14 tell us about that?

15 I know that Mr. Cavalluzzo will be  
16 taking you through the report that CAIR-CAN  
17 released yesterday.

18 But for this first survey, can you  
19 give us a synopsis of what it was that CAIR-CAN  
20 found in the first year after 9/11?

21 MS KHAN: We had polled about 296  
22 Muslims from across Canada and about 82 per cent  
23 said that they knew of a fellow Muslim who  
24 experienced discrimination; 33 per cent of the  
25 respondents said that their lives changed for the

1       worst, while 39 per cent had said that they  
2       experienced no change whatsoever, and 22 per cent  
3       said that their lives had actually changed for the  
4       better.

5                       Those who indicated that their  
6       lives had changed for the worst felt the  
7       following: They felt they were disliked by fellow  
8       Canadians, they were subjected to rude and hostile  
9       behaviour, and many faced emotional distress, and  
10      they were concerned about the safety of themselves  
11      and their families.

12                      I can speak for myself. The days  
13      after 9/11, I stayed at home as much as I could  
14      and I made sure my children also stayed home,  
15      simply because I didn't know how people would  
16      react, and I am not alone.

17                      The most frequent forms of bias  
18      experienced by Muslims were verbal abuse,  
19      religious or ethnic profiling, and workplace  
20      discrimination.

21                      Fifty-six per cent of the  
22      respondents believed that the media had actually  
23      grown more biased against Islam and Muslims,  
24      whereas 13 per cent believed the opposite.

25                      Interesting enough, 24 per cent of

1 those who responded rated Prime Minister Jean  
2 Chrétien's interaction with the Muslim community  
3 as poor, and 45 per cent said that he was actually  
4 below average.

5 So Muslims found that political  
6 leadership at the national level they felt was  
7 lacking, whereas I think at the local level it was  
8 actually quite -- there was much more support.

9 I believe that is the synopsis.

10 MR. GOVER: I would like to take  
11 up on a comment that Professor Antonius raised,  
12 and that had to do with comments by Canadian  
13 politicians.

14 Dr. Khan, did the CAIR-CAN survey  
15 consider reports of comments by Canadian  
16 politicians?

17 MS KHAN: Well, this survey was  
18 done -- the first survey was released September  
19 5th, 2002, and I think up to that point there were  
20 no negative or reported negative comments by  
21 politicians per se. It was afterwards that these  
22 comments did seem to appear.

23 If you like, I can go to specific  
24 examples.

25 MR. GOVER: Well, before you do,

1 two points. I will take you to a portion of the  
2 transcript before this Commission; and second, we  
3 will make the point that what you do refer to will  
4 not be comments made by parliamentarians in the  
5 House of Commons, as I understand.

6 MS KHAN: Correct.

7 MR. GOVER: Now, if I could refer  
8 you to pages 4155 to 4156 of the transcript of the  
9 proceedings before the Commissioner, and here we  
10 are concerned with testimony of Monday, May 30th,  
11 2005, of the Honourable Bill Graham.

12 I will read to you the questions  
13 and answers, and I will ask for your comment, and  
14 ask you whether this accords with your  
15 recollection at the time of comments by Canadian  
16 politicians.

17 Starting at page 4155, line 21:

18 "MR. CAVALLUZZO: And do you  
19 also recall around this point  
20 in time that certain  
21 opposition, and I won't name  
22 them, but certain opposition  
23 politicians were saying to  
24 you that this guy, Arar, is a  
25 bad guy and Canadians had

1 missed the boat on him, and  
2 it took the Americans to get  
3 Mr. Arar, so to speak?  
4 Do you recall discussions  
5 along those lines from the  
6 opposition politicians at  
7 that time?  
8 HON. BILL GRAHAM: Well, I  
9 can certainly recall them  
10 because I was in the House of  
11 Commons and the subject  
12 matter -- I was accused by  
13 the Leader of the Opposition  
14 as going to bat for a known  
15 terrorist, a terrorist. And  
16 I was absolutely attacked by  
17 other members of the  
18 opposition for the same thing  
19 at the same time.  
20 MR. CAVALLUZZO: So that you  
21 were obviously in a situation  
22 where you didn't necessarily  
23 have all of the information.  
24 You have opposition  
25 politicians that are alleging

1                   that Mr. Arar is not such a  
2                   good guy, and on the other  
3                   hand you have other people  
4                   that are saying you are not  
5                   doing enough to get Mr. Arar  
6                   back.

7                   HON. BILL GRAHAM: Right."

8                   And that includes at line 20 at  
9                   page 4156.

10                   Again with this caution that  
11                   Parliamentary privilege precludes us from  
12                   commenting in this inquiry on comments made by  
13                   Parliamentarians in the House of Commons, are you  
14                   aware of comments made by Parliamentarians outside  
15                   the House of Commons that relate to the evidence  
16                   that Mr. Graham gave on Monday, May 30th?

17                   MS KHAN: Yes, I am.

18                   MR. GOVER: And in particular,  
19                   whose comments are you going to refer to?

20                   MS KHAN: I will refer to Diane  
21                   Ablonczy, as well as the opposition leader of The  
22                   Alliance at the time, Mr. Stephen Harper.

23                   MR. GOVER: And what were their  
24                   comments outside the House of Commons in that  
25                   context?

1 MS KHAN: In a CTV broadcast  
2 interview on November 18th, Roger Smith, who was  
3 the reporter, stated that Maher Arar was first  
4 portrayed as a victim of U.S. injustice. Now he  
5 is fingered as an alleged terrorist who slipped  
6 through Canadian hands. And Diane Ablonczy  
7 commented outside the House: "The fact is, he  
8 wasn't properly checked."

9 Perhaps in a more telling  
10 interview -- actually later on in the same  
11 interview, she asks:

12 "How is it the U.S. could  
13 uncover this man's background  
14 so quickly when this  
15 government system screening  
16 failed to find his al-Qaeda  
17 links?"

18 So she, outside of the House,  
19 alleged, or I would say accused him of having  
20 links to al-Qaeda.

21 MR. GOVER: Those were the  
22 comments made by Ms Ablonczy.

23 MS KHAN: Yes.

24 MR. GOVER: In the same newscast  
25 did you encounter comments by Mr. Harper?

1 MS KHAN: Mr. Harper then said:  
2 "We may have a coverup, but  
3 what we've likely got is pure  
4 bungling with regard to the  
5 government."

6 So his opinion essentially affirms  
7 that of Miss Ablonczy.

8 MR. GOVER: And seems to confirm  
9 the evidence of Mr. Graham as given on May 30th.  
10 Is that correct?

11 MS KHAN: I believe it does.

12 MR. GOVER: The CAIR-CAN report  
13 issued yesterday is something that, as I have  
14 mentioned, Mr. Cavalluzzo will take you through.  
15 That is found at tab 21.

16 I won't ask you to turn it up now,  
17 but it is entitled "Presumption of Guilt: A  
18 National Survey on Security Visitations of  
19 Canadian Muslims".

20 It contains responses of  
21 individuals to a survey conducted by CAIR-CAN.

22 Is that correct, Dr. Khan?

23 MS KHAN: That is correct.

24 MR. GOVER: Now I understand that  
25 respondents were asked to report on their



1 interaction with Canadian law enforcement and  
2 security intelligence officials.

3 Is that right?

4 MS KHAN: That is correct.

5 MR. GOVER: Now your  
6 methodology -- I say "your" and I mean that in a  
7 broad sense. I know that you didn't conduct the  
8 survey personally.

9 But CAIR-CAN's methodology in  
10 conducting the survey, I understand, included  
11 guaranteeing anonymity to respondents.

12 Is that right?

13 MS KHAN: That is correct.

14 MR. GOVER: Can you explain to us  
15 the rationale for that?

16 MS KHAN: Well it would, we hoped,  
17 bring out more people to report incidents that  
18 they have gone through because we know that if  
19 people's identity were known, given the climate of  
20 fear within the community, we believe that a lot  
21 of people would not have come forward.

22 What we were looking for was a  
23 window, and we needed cooperation of members of  
24 the community, and one way to elicit that was to  
25 ensure some form of anonymity to them.

1 MR. GOVER: Some might criticize  
2 that methodology in that it may impact on  
3 reliability if you guarantee anonymity. What  
4 would your response be to that?

5 MS KHAN: Well, that is a valid  
6 point to raise. Nonetheless, I don't think it  
7 would undermine the picture that we were getting.

8 What we did do is when reports did  
9 come to us, we followed up by actually speaking to  
10 the individuals -- these surveys were filled out  
11 either by hand or electronically, and so with the  
12 contact information that was provided a lot of  
13 times we did call back and check the information  
14 that was provided. So we did the best we could.

15 In fact, as part of our release  
16 yesterday, we realized the survey in itself is  
17 just a window and, if anything, it should point to  
18 the fact that there is a need to perhaps get a  
19 more official, thorough investigation of what is  
20 going on, and this is why we have called on the  
21 Minister, on Minister McLellan, to do so.

22 MR. GOVER: Thank you. Let me  
23 turn now to Professor Bahdi and ask for her  
24 comments on this topic of whether the phenomena of  
25 Islamophobia and anti-Arab sentiment exist in the

1 post 9/11 era?

2 MS BAHDI: Thank you.

3 My research has confirmed, as  
4 Dr. Khan notes, that Islamophobia and anti-Arab  
5 sentiment does exist in the post 9/11 era.

6 Maybe I could just say a few words  
7 about the framework that I bring to my analysis?

8 MR. GOVER: Please.

9 MS BAHDI: Which is an access to  
10 justice framework, and the reason that I do that  
11 is because I think it offers a holistic way of  
12 assessing a legal system and how well it works,  
13 how well the system conforms to our values.

14 First, one of the questions that I  
15 ask is: Is there procedural access to justice for  
16 a given group or an individual? And here what we  
17 are basically talking about is the manner in which  
18 claims are identified, framed, launched, resolved,  
19 debated within the legal system.

20 And here the point is just very  
21 simply it is not enough for the law to produce a  
22 good result; it actually has to do so in a  
23 credible way. In other words, justice must not  
24 only be done but also be seen to be done.

25 And what my research has revealed

1 is that there is fear and mistrust within the Arab  
2 and Muslim communities of legal procedures that  
3 are in place as part of our understanding of the  
4 war against terrorism, and that the legislation  
5 that we have is problematic in several respects,  
6 but let me just give one example.

7           There is nothing in our  
8 anti-terrorism legislation that prohibits racial  
9 profiling, for example. Even though when the  
10 legislation was being contemplated there were  
11 recommendations made that there be an explicit  
12 prohibition on racial profiling, that was not  
13 introduced within the legislation.

14           So there are questions within the  
15 Arab and Muslim community as to why, when  
16 individuals are pulled over for secondary  
17 inspection, for example, at airports, whether they  
18 are being questioned because of racial profiling.  
19 And this fear and uncertainty about the process  
20 undermines the whole concept of access to justice.

21           The second question is the  
22 substantive idea of access to justice. Here it is  
23 just the basic notion that the outcome has to be  
24 just, and we have to ask not only what do the laws  
25 look like on the books but how do they actually

1 interact with people? How do they affect people's  
2 lives?

3 And it is for that reason that we  
4 have to go to community organizations that have  
5 the trust of the communities and individuals who  
6 are most impacted by the legislation and ask them  
7 what their knowledge is and what their experiences  
8 are.

9 We have talked already about some  
10 of the impact that the legislation has had either  
11 directly or as a spin-off effect on the Arab and  
12 Muslim communities, so I won't mention them.

13 Then the third element that I look  
14 at when I think about access to justice for Arabs  
15 and Muslims in Canada is what we call social  
16 symbolism, or the question of: To what extent  
17 does the legal system empower individuals and  
18 communities within Canada; give them a sense that  
19 they belong to the Canadian multicultural fabric?

20 My research has revealed, and I  
21 think one of the conclusions of our work in  
22 general, the three of us, is that there is a  
23 climate of fear and uncertainty within the Arab  
24 and Muslim communities and a sense that Arabs and  
25 Muslims, whether they are citizens or not, are

1 constructed as non-citizens, as individuals who  
2 don't have the same rights as other members of  
3 Canadian society.

4 MR. GOVER: Thank you.

5 Mr. Cavalluzzo will now address  
6 the next three issues.

7 EXAMINATION

8 MR. CAVALLUZZO: Commissioner, I  
9 would like to move on to the second issue which we  
10 will be discussing today, and that is: What is  
11 the experience of Canada's Arab and Muslim  
12 communities in dealing with Canadian security and  
13 intelligence and law enforcement officials after  
14 9/11?

15 Initially I would like to call  
16 upon Dr. Khan because I understand yesterday that  
17 a study was released, the survey that was referred  
18 to by Mr. Gover, and if we refer to tab 21 of  
19 Exhibit P-129, we can start there.

20 This survey is entitled  
21 "Presumption of Guilt: A National Survey on  
22 Security Visitations of Canadian Muslims".

23 Dr. Khan, I understand that this  
24 is a survey under the supervision of your  
25 organization. Is that correct?

1 MS KHAN: That is correct.

2 MR. CAVALLUZZO: And I understand  
3 as well that this survey was released publicly  
4 yesterday. Is that correct?

5 MS KHAN: That is correct.

6 MR. CAVALLUZZO: Initially I would  
7 like to refer to the methodology in respect of the  
8 national survey, and if we could pick that up at  
9 page 7 of the report perhaps you can briefly  
10 describe to us the methodology that was invoked in  
11 respect of this survey.

12 MS KHAN: Yes. The survey was  
13 launched a little over a year ago, on March 26th,  
14 2004, across Canada. It was distributed in a  
15 total of two ways -- sorry, three ways, I should  
16 say: one was electronically through our  
17 distribution list; another was an online form; and  
18 a third was a hard copy or paper copy distributed  
19 by hand at mosques, Islamic centres and Muslim  
20 community events across the country. Roughly a  
21 little less than half were hard copy paper surveys  
22 and the remaining were electronic.

23 That is the methodology that is  
24 listed there.

25 MR. CAVALLUZZO: And I understand

1           that there were 467 respondents.

2                       MS KHAN: That is correct.

3                       MR. CAVALLUZZO: Perhaps you could  
4           give us a demographic survey of the respondents  
5           before we go into the analysis of the survey?

6                       MS KHAN: Sure. In terms of  
7           gender, not all of the respondents stated their  
8           gender; 455 did. But 56 per cent were male and  
9           44 per cent were female.

10                      In terms of the age, we had 6 per  
11           cent under the age of 18; 33 per cent between 18  
12           and 25 years of age; 29 per cent between 26 and  
13           35; 21 per cent between 36 and 55 years of age;  
14           and 11 per cent were 56 years of age or older.

15                      MR. CAVALLUZZO: In terms of  
16           ethnicity?

17                      MS KHAN: Ethnicity, 42 per cent  
18           identified themselves as South Asia, which would  
19           include Pakistan, India, Bangladesh; 36 per cent  
20           identified themselves as Arab; and 9 per cent as  
21           African; 4 per cent as what we call Euro-Canadian;  
22           3 per cent Spanish, or Latin American or  
23           Caribbean; and 1 per cent as Persian.

24                      MR. CAVALLUZZO: And the  
25           citizenship status?



1 MS KHAN: The citizenship status,  
2 overwhelmingly 85 per cent indicated that they  
3 were Canadian citizens; 11 per cent said that they  
4 were permanent residents of Canada; 2 per cent  
5 said that they were on temporary visa.

6 MR. CAVALLUZZO: Finally,  
7 occupation?

8 MS KHAN: Yes. Thirty-eight per  
9 cent indicated that they were students; 31 per  
10 cent were professionals; 13 per cent indicated  
11 they were part of the labour force; 4 per cent  
12 were self-employed or entrepreneurs; 4 per cent  
13 were homemakers; 1 per cent indicated they were  
14 retired; and the remaining did not respond to the  
15 question or were either unemployed or in other  
16 category.

17 MR. CAVALLUZZO: Do you find it  
18 significant that 38 per cent were students?

19 MS KHAN: Yes, that is something  
20 that stands out.

21 MR. CAVALLUZZO: Why don't you  
22 share that with us, as to why you think that is a  
23 significant figure?

24 MS KHAN: That is significant in  
25 the sense that -- well, there were other -- it is

1 part of a bigger picture. But it seems as though,  
2 and what our analysis showed was that those who  
3 were contacted were within a certain age range and  
4 that age range would correspond to being a student  
5 or out of school relatively recently.

6 MR. CAVALLUZZO: Let us move on to  
7 the analysis of the survey itself. Obviously we  
8 will all read it. But I wonder if you could just  
9 highlight what you think are the important aspects  
10 of the findings?

11 MS KHAN: Well, for that I will  
12 refer to the Executive Summary, because I believe  
13 it does contain --

14 MR. CAVALLUZZO: That can be found  
15 at page 3?

16 MS KHAN: At page 3 of the report.  
17 Eight per cent of the respondents  
18 reported that they were contacted by or questioned  
19 by security officials. We believe that this is  
20 under-reported or a low number because 43 per cent  
21 of the respondents who were not contacted by  
22 security officials indicated they knew at least  
23 one person who was.

24 So it seems to show that we didn't  
25 get everybody who has actually been contacted.

1           Maybe they didn't want to reveal this factor, or  
2           who knows.

3                           And 62 per cent of the respondents  
4           who were contacted said they never reported it to  
5           any organization. It was only when our call went  
6           out that they actually bothered to come forward.

7                           So this leads us to believe that  
8           the 8 per cent number is actually a low figure.

9                           MR. CAVALLUZZO: A low figure.  
10          Okay.

11                          MS KHAN: What we found was that  
12          those visited by security officials were  
13          disproportionately young Arab males, in the sense  
14          that 54 per cent of those who were contacted by  
15          security officials were Arab; yet that was higher  
16          than the 35 per cent of the total sample  
17          population as being Arab.

18                          And 89 per cent of those contacted  
19          were male and 63 per cent were between the ages of  
20          18 to 35. So it seemed to show us that young Arab  
21          males between the ages of 18 to 35 are being  
22          questioned by security officials.

23                          MR. CAVALLUZZO: Okay.

24                          MS KHAN: We asked people how they  
25          felt upon being questioned. We had a variety of

1 responses, but what we noticed was that 46 per  
2 cent of the respondents reported feeling fearful,  
3 anxious or nervous, and 24 per cent felt that they  
4 were being harassed or discriminated against.

5 Interesting enough -- I am sorry,  
6 I finished that section there.

7 MR. CAVALLUZZO: Okay. Go on.

8 MS KHAN: Eighty-nine percent of  
9 those who were contacted by security officials did  
10 not refuse to go and meet the security officials,  
11 but only 16 per cent of those contacted actually  
12 brought a third party to the meeting, even though  
13 more than half of those contacted knew that they  
14 had a right to a lawyer.

15 What alarmed us was that 23 per  
16 cent of the visitations actually occurred at work,  
17 which many of those who were questioned found  
18 problematic.

19 MR. CAVALLUZZO: Professor  
20 Antonius earlier talked about the fear that an  
21 individual might have if their employer --

22 MS KHAN: Exactly.

23 MR. CAVALLUZZO: -- observed the  
24 visitation at their workplace of a security or  
25 police official. I assume that that is very

1           problematic for the community.

2                           MS KHAN:  Much as I think for any  
3           human being to have CSIS or the RCMP come to their  
4           place at work.

5                           And I allude to the case --  
6           perhaps we will get into it later -- of Mohammed  
7           Alia, the nuclear engineer, who was contacted  
8           by -- I forget if it was CSIS or the RCMP.  He  
9           went for his interview off-site.  By the time he  
10          came back, all his security badge, everything, his  
11          security clearance had been removed.  He was not  
12          allowed back into work.  So during the course of  
13          his interview his employer had essentially  
14          terminated his employment.  That is the worst-case  
15          scenario.

16                           But these are real-life fears that  
17          people have about being interviewed at work.

18                           MR. CAVALLUZZO:  In terms of the  
19          survey, no doubt the report has found very  
20          troubling tactics that have been used by security  
21          and police agencies.  Could please share with us  
22          those concerns?

23                           MS KHAN:  A few of the tactics  
24          which raised quite a few troubling questions was,  
25          first and foremost, discouraging legal

1 representation, in the sense that telling people  
2 "you don't need a lawyer" or "it is too  
3 expensive", essentially discouraging a person from  
4 having that right.

5 At times there was aggressive and  
6 threatening behaviour. There was one, I think,  
7 narrative that we have where a person said that it  
8 was time for prayer -- Muslims, we pray five times  
9 during the day, and some intervals are very, very  
10 short. In one instance, the individual told the  
11 agent, "I need to finish my prayer," and the  
12 individual actually prohibited that; made him miss  
13 his prayer.

14 Another time we have in the  
15 narrative they sort of blocked the entrance to the  
16 door.

17 Another troubling instance was the  
18 threat of arrest pursuant to the anti-terrorism  
19 act, telling people, "We can make you talk because  
20 we have legislation in place," namely Bill C-36,  
21 which does allow that; but using that as a threat.

22 Visits at work, intrusive and  
23 irrelevant questioning. What we feel is  
24 irrelevant, namely, "How often do you pray? How  
25 much do you adhere to your religious values?"

1           That, from a personal perspective, seems to be  
2           very intrusive.

3                           Improper identification. We have  
4           cases where agents did not leave their correct  
5           contact, which makes it troubling in case you  
6           would ever like to file a complaint with the  
7           Civilian Review Board. You have nothing to really  
8           go on.

9                           Interrogation of a minor. We have  
10          one case where a 16-year-old was interviewed and  
11          was told not to tell his parents the interview  
12          took place. That is problematic.

13                          At times also asking people to  
14          become informants. And when there is hesitation  
15          or refusal to do so, telling that individual  
16          person information about their children's names,  
17          personal financial information, sort of as a  
18          threat to induce that individual to become an  
19          informant.

20                          MR. CAVALLUZZO: I understand that  
21          the report itself has a number of case summaries  
22          or anecdotes relating to the kinds of issues and  
23          points that you have raised?

24                          MS KHAN: That is correct. We  
25          were able to collect a number of narratives, or

1           what we call case summaries.  Again all  
2           identification of the individuals has been left  
3           out.  These, if you like, give a human face to the  
4           types of incidents that we were describing.

5                         MR. CAVALLUZZO:  You mentioned  
6           earlier that you recognized that there are limits  
7           to the methodology of this kind of survey.

8                         MS KHAN:  Yes.

9                         MR. CAVALLUZZO:  And you suggest  
10          or recommended to the government that an official  
11          study is certainly called for at this time in  
12          time.  I assume that has been put to the  
13          government?

14                        MS KHAN:  I believe that we did  
15          make a call yesterday, yes, for the government to  
16          do that.

17                        MR. CAVALLUZZO:  I am wondering,  
18          Professor Antonius, whether you want to make any  
19          comments in respect of this particular issue?

20                        MR. ANTONIUS:  Not on that  
21          particular issue.

22                        MR. CAVALLUZZO:  And Professor  
23          Bahdi?

24                        MS BAHDI:  Perhaps this would be  
25          an appropriate point for me to just speak briefly



1           about an experience that I had fairly recently at  
2           Pearson Airport?

3                           Let me just explain before I  
4           describe this experience that I am giving it as an  
5           illustration of how discretion can be exercised,  
6           and offer, again, my own experience of an analysis  
7           of what I think took place.

8                           I was returning from the West Bank  
9           and Gaza Strip about a month ago on the judicial  
10          education project I had mentioned at the  
11          beginning, and I approached customs. I had filled  
12          out my customs card, but I neglected to fill in  
13          whether I had purchased anything. I had just  
14          simply forgot to fill out that part of the card.  
15          So the customs officer who greeted me asked me if  
16          I had purchased anything and I said, "Oh, yes, I  
17          had forgotten that I had purchased some chocolates  
18          for my 7-year-old son." So he noted in his own  
19          writing, "0, 0," on the appropriate parts of the  
20          card.

21                          I had forgotten at that point that  
22          I had also purchased a \$10 poster, which I was  
23          carrying in my hand and I was not concealing in  
24          any way.

25                          You know, he wished me a good day

1 and I proceeded to the next point where I showed  
2 again I believe another customs agent my card, and  
3 she said "thank you very much" and directed me  
4 towards the exit where there was yet an individual  
5 who was another customs agent.

6 I handed him my card, and he said  
7 to me, "Where are you coming from?" And I  
8 explained that I was just returning from the West  
9 Bank and the Gaza Strip. And he said to me  
10 something like, "Well, where did you steal that  
11 poster?" And I was a little taken aback, and I  
12 thought, "He must be joking," so I laughed, and I  
13 said, "Oh, I didn't steal this poster." And he  
14 said, "Well, then you must be a liar because you  
15 have indicated on your customs card that you  
16 purchased nothing." And again I was a little bit  
17 taken aback and he said to me, "If you have lied  
18 about this, or if you have stolen this poster,  
19 then what else are you lying about? What else  
20 have you stolen?"

21 And at that point I thought, "This  
22 man is not joking." And I said to him, "May I  
23 please have your name?" And he said, "No, what  
24 you can have is a secondary customs inspection,"  
25 and he directed me towards secondary customs.

1                   The reason why I raise this  
2           particular example is that I think it offers some  
3           small insight into the possibility of a  
4           decision-maker who is exercising their discretion  
5           of interpreting facts either as being innocent  
6           without consequence, or interpreting them as  
7           having some larger significance, and in particular  
8           in this case significance as to my character and  
9           my behaviour.

10                   In this case, obviously the  
11           customs officer chose to interpret what could  
12           easily have been interpreted as an innocent  
13           fact -- I was carrying the poster in my hand; I  
14           wasn't hiding it. And there was no consequence to  
15           my having purchased the poster. I had been away  
16           long enough that there was no duty to pay,  
17           nothing. This was strictly an interpretation of  
18           my character.

19                   And I believe that this decision  
20           had been made, this interpretation had been made  
21           in light of the fact that the decision-maker knew  
22           where I was coming from and looked at me and  
23           judged by my appearance that I was probably Arab  
24           or Muslim in background.

25                   I can't prove that, and you

1 usually can't prove what is going on in the  
2 decision-maker's mind in that kind of  
3 discretionary decision-making. It is an  
4 assessment that you have to make based on all of  
5 the facts and the circumstances of a particular  
6 incident.

7 But I offer that, again, as an  
8 example of how discretionary decision-making can  
9 take place, and the choice between innocent and  
10 non-innocent interpretation and what goes into  
11 choosing the non-innocent interpretation; in this  
12 case, I believe race or religion.

13 MR. CAVALLUZZO: Thank you.

14 Commissioner, I am going to move  
15 now to the third issue. It may be an appropriate  
16 time to have the morning break.

17 THE COMMISSIONER: All right. We  
18 will rise for 15 minutes.

19 THE REGISTRAR: Please stand.

20 --- Upon recessing at 11:07 a.m. /

21 Suspension à 11 h 07

22 --- Upon resuming at 11:25 a.m. /

23 Reprise à 11 h 25

24 THE REGISTRAR: Please be seated.

25 Veuillez vous asseoir.

1                   MR. CAVALLUZZO: Commissioner, we  
2                   are now about to embark on the third issue, and  
3                   the third issue, as framed by Mr. Gover earlier,  
4                   is the following: Are racial and religious  
5                   profiling and security stereotyping used by  
6                   government decision-makers, including the RCMP,  
7                   other police agencies, and CSIS? If they are  
8                   used, what is their impact on Canada's Muslim and  
9                   Arab communities?

10                   At the outset, let me give us a  
11                   framework from which to commence the discussion  
12                   for a definition.

13                   I am referring now, Commissioner,  
14                   to Exhibit P-129, tab 27. It is one of the  
15                   articles that was referred to earlier by Professor  
16                   Bahdi entitled "No Exit: Racial Profiling and  
17                   Canada's War Against Terrorism", and if we could  
18                   just use as a framework the following definition,  
19                   which can be found at page 295, which states that:

20                   "As a general matter,  
21                   profiling involves a  
22                   subsection of the population  
23                   from the larger whole on the  
24                   basis of specific criteria  
25                   that purportedly correlates

1 to risk and subjecting the  
2 subgroup to special scrutiny  
3 for the purposes of  
4 preventing violence, crime,  
5 or some other undesirable  
6 activity. Racial profiling  
7 thus entails the use of race  
8 as a proxy for risk either in  
9 whole or in part."

10 Finally it states:

11 "In the context of the War  
12 against Terrorism, the racial  
13 profiling debate centers on  
14 whether or not race should  
15 substitute for real knowledge  
16 about the individual's  
17 connection to, or propensity  
18 for, terrorist activity."

19 I wonder, just starting this  
20 particular issue, Professor Bahdi, if you could  
21 give some indication of what you referred to  
22 earlier as statute-based decision-making and how  
23 that can lead to racial profiling or religious  
24 profiling.

25 MS BAHDI: As I noted earlier,

1       there are various types of discretion, and the  
2       kind of discretion I would like to talk about now,  
3       and link it up to -- I will give certain examples  
4       to link it up to the anti-terrorism legislation --  
5       is what I again call on-the-ground discretion.

6                   First of all, three points that I  
7       would like to make to highlight about the  
8       anti-terrorism legislation.

9                   The first is that terrorist  
10       activity in the Criminal Code is defined in  
11       relation to and linked up with a violent act,  
12       let's say, that is committed in whole or in part  
13       for political, religious, or ideological purpose.

14                   What that does is it at least  
15       implicitly instructs, or at the very least gives  
16       permission to security services to ask questions  
17       that Dr. Khan has already told us individuals get  
18       asked: things like, "How often do you pray?"  
19       This has been confirmed in my own research as  
20       well. "How often do you pray? Are you a  
21       fundamentalist? Is any member of your family a  
22       fundamentalist?"

23                   And in some instances when the  
24       decision-maker who is being asked "well, what does  
25       it mean to be a fundamentalist?", there is no

1           answer.  They often don't know what they mean by  
2           that.

3                           The other point I wanted to  
4           make -- just to wrap that up.  So the exercise of  
5           discretion there is the choice to ask certain  
6           questions, and to draw conclusions based on these  
7           questions that are asked, and again the choice to  
8           determine whether an innocent interpretation  
9           should be given to the information that is being  
10          offered, or a non-innocent interpretation, when  
11          often both are available.

12                          I could provide other examples,  
13          but perhaps we will wait and see as we move on in  
14          our discussion.

15                          The second point is that the  
16          anti-terrorism legislation, the Criminal Code,  
17          allows for -- or defines participating in a  
18          terrorist activity in terms of association.  The  
19          implication of that is that investigations can be  
20          cast quite broadly.  So one can be investigated  
21          for the possibility of participating in terrorist  
22          activity on the basis that you know somebody who  
23          is also under investigation, and whether you know  
24          the nature of the allegations against that  
25          particular individual may or may not be relevant.



1                   The third point is, as I have  
2                   already mentioned, that the anti-terrorism  
3                   legislation is silent on the question of racial  
4                   profiling; that this, again, sends an implicit, an  
5                   important signal about -- it doesn't give  
6                   permission to use racial profiling but doesn't say  
7                   don't use racial profiling.

8                   We have already talked about how  
9                   there are inadequate safeguards, or lack of  
10                  accountability measures, in place for a variety of  
11                  different reasons when discretionary decisions are  
12                  made under the anti-terrorism legislation, and I  
13                  have given some examples linked to particular  
14                  provisions of the Criminal Code.

15                 But other examples of  
16                 on-the-ground discretionary decision-making  
17                 include, of course, the discretion of airline and  
18                 airport staff to inspect and question passengers,  
19                 the discretion of security and intelligence  
20                 officials to investigate individuals, to both  
21                 decide when to start an investigation and when to  
22                 end an investigation, and the discretion to  
23                 determine if an individual should be investigated  
24                 and have their assets frozen.

25                 External scrutiny of such

1 decisions are rare, in part because of the nature  
2 of the decision, and we have already talked about  
3 also the reluctance of individuals within the  
4 community to complain and why there is that  
5 reluctance. So I won't repeat that particular  
6 point.

7 MR. CAVALLUZZO: Before we go on,  
8 there is just a point that I would make. In  
9 reference to the point you raised that there is a  
10 lack of reference to racial profiling or  
11 stereotyping in Bill C-36, there are other authors  
12 that we have in the Book of Documents,  
13 Commissioner. At tab 36 there is a paper entitled  
14 "Racial and Ethnic Profiling: Statutory  
15 Discretion, Constitutional Remedies, and  
16 Democratic Accountability".

17 That is at tab 36. The authors  
18 are Professor Choudhry and Professor Roach at the  
19 University of Toronto.

20 In respect of that gap or lack, if  
21 you refer to page 3 of the article, the authors  
22 state:

23 "Given the prominence of  
24 profiling in public debate,  
25 it is stunning that Canada's

1                   two legislative responses to  
2                   September 11 -- Bill C-36 ...  
3                   and Bill C-17, the proposed  
4                   Public Safety Act -- are  
5                   absolutely silent on this  
6                   issue."

7                   I would like to call upon you,  
8                   Professor Antonius, as to whether you have any  
9                   comments respecting how personal decision-making  
10                  by State agencies can be tainted by stereotyping?

11                  MR. ANTONIUS: Actually, I would  
12                  link the answer to this question to what you have  
13                  just raised.

14                  Why are these Acts silent? It is  
15                  because, in a way, they refer to certain  
16                  representations where things are seen to be so  
17                  obvious that you don't need to even question them.

18                  When we talk about Arabs and  
19                  Muslims, there is such a strong image that their  
20                  behaviour is determined more by their belonging to  
21                  a group rather than their individual characters.  
22                  This is an essential feature of representation of  
23                  the others in racist discourse.

24                  So it is essentially an  
25                  understanding that it is their belonging to that

1 group that determines and explains why and how  
2 they behave.

3 The result is that decision-making  
4 is made on the basis of this characteristic of  
5 what is Arab culture or what is Muslim culture?

6 The reason why I often speak here  
7 of either Arab or Muslim is that -- it is not a  
8 lack of knowledge that make people mix these two.  
9 Once you start explaining people's behaviour by  
10 hatred, hatred is essentially an irrational way of  
11 addressing issues.

12 If one person is hateful or  
13 irrational, you say it is that particular person.  
14 When you think it is a whole group of people that  
15 behaves irrationally, you have to explain that  
16 either by culture or religion. And depending on  
17 whether you put your emphasis on culture or  
18 religion, than the stereotype becomes that of  
19 Muslims or that of Arabs, and it comes to people  
20 who look like coming from the Middle East, or  
21 belonging to the Muslim faith, and showing it in  
22 some way or another, either by their name or by  
23 their dress code.

24 So the result of this, there are  
25 two consequences: that State agents who have to

1           make a discretionary decision at some point refer  
2           to this sort of popular wisdom about what the  
3           Arabs are, what the Muslims are, to make their  
4           decision.

5                           The impact of that on the people  
6           who belong to one of these two backgrounds,  
7           Muslims or Arabs or both, is that they feel  
8           constantly under suspicion. This has a tremendous  
9           impact on the way people belong to the society,  
10          and it has a tremendous impact on the social  
11          solidarity within a society.

12                          So I think these are the important  
13          consequences of this, and of course it gives rise  
14          to decisions like what we have seen in Mr. Arar's  
15          case.

16                          MR. CAVALLUZZO: Dr. Khan, you  
17          were going to share with us some incidents, for  
18          example, that would demonstrate the impact of  
19          racial profiling.

20                          MS KHAN: Yes. There are quite a  
21          few high-profile incidents that occurred here in  
22          Canada. Before I go to them specifically, I would  
23          just like to point out that these incidents, along  
24          with what had happened to Maher Arar, amongst  
25          others, unfortunately have undermined any level of

1 trust that the community has with the security  
2 apparatus, has deteriorated the level of trust.

3 We have talked about things that  
4 have happened, but I don't think we have mentioned  
5 yet the consequences, and I would hope that this  
6 would be kept in mind.

7 We begin, first, with shortly  
8 after 9/11, the case of Mohammed Alia, who was an  
9 Egyptian-born engineer with the Atomic Energy of  
10 Canada. He was at the nuclear facility at Chalk  
11 River. He was asked to come for an interview, to  
12 answer many questions, and after returning to  
13 work, or to his office, he had been essentially  
14 terminated. He filed suit against Atomic Energy  
15 of Canada and I believe they settled out of court.  
16 That was one case.

17 Another case is that of Liban  
18 Hussein, which Professor Bahdi will discuss  
19 afterwards, but this was an individual Somali  
20 Canadian who was put on this international list.  
21 All of his assets were frozen, and he was  
22 essentially found to have no links whatsoever, but  
23 his life was ruined.

24 Then in the fall of 2003, there  
25 was this case of 19 Pakistanis -- actually 18 and

1 one from India, 19 people from the Indian  
2 subcontinent who were rounded up, and the  
3 preliminary comment from the government was  
4 that -- in fact I quote, and this is from tab 12.

5 MR. CAVALLUZZO: Tabs 12 and 14.  
6 It is called Operation Thread.

7 MS KHAN: Operation Thread. At  
8 tab 12, page 4, the official said, I guess the  
9 easiest way of putting it there is the suggestion  
10 they perhaps might be a sleeper cell for al-Qaeda.

11 And then, of course, the case of  
12 fell apart in the same tab 12. The reasons for  
13 initially arresting these individuals was, in one  
14 case, there was a student who was a commercial  
15 pilot. His flight path for training purposes flew  
16 over the Pickering nuclear power plant. It turns  
17 out that every student's flight path goes over the  
18 Pickering nuclear power plant. Whether that  
19 should be changed or not, that is up to the  
20 aviation officials, but he was singled out.

21 It says -- the document that was  
22 submitted by the public security and  
23 anti-terrorism unit said that he often brought  
24 with him an unknown male as a passenger and his  
25 instructors describe him as an unmotivated

1 student. It took him almost three years to  
2 complete what would normally be done in one year.

3 Then another person was a friend  
4 of his. Two of those who were arrested wanted to  
5 take a walk on the beach near the power plant.

6 Another individual had an offer of  
7 employment from the Global Relief Foundation,  
8 which was later branded as a group fundraising for  
9 terrorist groups. I don't know if that had merit  
10 or not.

11 Another individual was someone who  
12 lived with that person who was offered employment.

13 The document also cited that all  
14 of these men came from or had connection to one of  
15 the four provinces in Pakistan, the Punjab  
16 province, which they note has Sunni Extremism. So  
17 the fact that they came from a certain part of the  
18 world which -- you know, and on and on and on, and  
19 one individual had access to nuclear gauges.

20 Also, the two apartments where the  
21 subjects lived had unexplained fires, and one  
22 resident who was arrested had airplane schematics  
23 and a picture of guns on his wall; and that when a  
24 group of them moved out, they took just their  
25 computer and hard drive and left everything else.



1                   So you see all of these things  
2           that are listed, and for many of us we would laugh  
3           if it wasn't so serious; that all these  
4           associations have been linked and have been done  
5           so and analyzed to purport criminal behaviour, or  
6           terrorist-linked behaviour.

7                   MR. CAVALLUZZO: What happened to  
8           the 19 individuals --

9                   MS KHAN: They were deported for  
10          immigration violations, which should happen if you  
11          violate our immigration laws. But the government  
12          never officially cleared their names, never  
13          offered an apology, never offered any redress.

14                  And I think that is another issue  
15          that many of us find so frustrating; that we  
16          recognize mistakes will be made, but there seems  
17          to be very little avenue of redress for personal  
18          loss in terms of employment or --

19                  MR. CAVALLUZZO: Or, indeed, an  
20          apology from your government?

21                  MS KHAN: Yes. I think that would  
22          mean the most.

23                  MR. CAVALLUZZO: Now there is  
24          also -- we can go on and on, but there is another  
25          example, a recent example, of a young lawyer in

1           Portland, Oregon, subsequent to the March 11th  
2           situation in Madrid.

3                           MS KHAN: This is the case of  
4           Brandon Mayfield, and for that I refer you to tab  
5           16, reports from the Associated Press and the New  
6           York Times.

7                           Shortly after the Madrid bombing,  
8           I believe it was the FBI maintained a set of  
9           prints which they supposedly matched to Brandon  
10          Mayfield, who was a 37-year-old convert to Islam  
11          in Portland, Oregon. It was later found out that  
12          the fingerprint match was not there, that even the  
13          Spanish authorities doubted the match of the  
14          fingerprints.

15                          But once they had what they  
16          thought was a good match, they started to, as they  
17          say, connect the dots. What they found was  
18          that -- this is on page 2 of tab 16:

19                          "... the FBI pointed to  
20                          Mayfield's attendance at a  
21                          local mosque, his advertising  
22                          legal services in a  
23                          publication owned by a man  
24                          suspected to have links of  
25                          terrorism, and a telephone

1 call his wife placed to a  
2 branch of an Islamic charity  
3 with suspected terrorist  
4 ties.

5 They also noted that Mayfield  
6 represented a man in a child  
7 custody case who later  
8 pleaded guilty to conspiring  
9 to help al-Qaida..."

10 And they noted that while they  
11 found that there were no airline tickets booked by  
12 Mayfield under his name, the suspicion was that he  
13 probably booked them under a false name.

14 So what started as a partial match  
15 in terms of fingerprints went into this nefarious  
16 web of tenuous connections which were used to  
17 detain a man, imprison him for two weeks without  
18 access to legal representation, and it was only  
19 once the case unravelled that the injustice was  
20 brought out.

21 And I must say in this case the  
22 FBI did issue an apology.

23 MR. CAVALLUZZO: I think it is  
24 rather an obvious question with an obvious answer,  
25 but I will ask it in any event, and that is:

1 Presumably this kind of situation, for example,  
2 Operation Thread, when the members of the  
3 community see that kind of implementation of  
4 police or security services, exacerbates the  
5 amount of distrust between the community and  
6 security and police forces?

7 MS KHAN: That is absolutely  
8 correct. I would characterize it as exacerbated.

9 MR. CAVALLUZZO: I would like to  
10 move on to what had been referred to earlier by  
11 Professor Antonius in terms of the editorial  
12 support for these kinds of issues, and indeed a  
13 government official making certain statements.

14 I am referring now, Commissioner,  
15 to tab number 7, and this is the paper referred to  
16 earlier by Riad Saloojee, entitled "Life for  
17 Canadian Muslims The Morning After: A 9/11 Wake-up  
18 Call".

19 In particular, I would make  
20 reference to -- I thought I had highlighted it,  
21 but I will find it very quickly.

22 If you would refer to page 33 of  
23 the text, I am referring now under the title  
24 "Racial Profiling" and will read the very first  
25 paragraph.

1                                   It states:  
2                                    "While the Canadian  
3                                   government repeated denounced  
4                                   the possibility of racial and  
5                                   ethnic profiling as an  
6                                   investigatory technique,  
7                                   others lauded it as  
8                                   necessary. The National  
9                                   Post, for example, declared  
10                                  that it would be 'criminally  
11                                  negligent if Air Canada did  
12                                  not engage in racial  
13                                  profiling'; a columnist in a  
14                                  national paper, The Globe and  
15                                  Mail, described it as both  
16                                  'necessary' and 'desirable',  
17                                  and Ontario Security Advisor  
18                                  General Lewis McKenzie touted  
19                                  it as 'an acceptable law  
20                                  enforcement strategy to fight  
21                                  terror.'"

22                                  Professor Antonius, do you have  
23                                  any comments regarding that particular paragraph?

24                                  MR. ANTONIUS: Well, the fact that  
25                                  statements of this kind come from people who are

1           in power -- and when I say in power, not  
2           necessarily political power, but moral power, you  
3           know, public figures, editorialists -- gives a  
4           sense that it is okay to abuse the reputation,  
5           dignity of Muslims and Arabs. And that message is  
6           received as a very strong message, and not only by  
7           Muslims, even when it targets Muslims  
8           specifically, but by Arabs in general, by people  
9           who have been totally acculturated and identified  
10          totally with the West, and have even broken their  
11          sort of cultural ties and rejected traditional  
12          Arab or Muslim culture. They feel these kind of  
13          comments as very personally insulting.

14                        What this does is that it creates  
15          a feeling that we will never be accepted; that  
16          society as a whole is racist -- which is not true.  
17          But because these statements come from centres of  
18          power and go unchallenged, that is the impact.

19                        The last thing that -- you know,  
20          one of the important impacts is that the direct  
21          impact is that people mistrust the system, and as  
22          a result of this mistrust they do not report, or  
23          they tend to underreport, events that they feel  
24          are offensive to them, and that explains the gross  
25          under-reporting of such events.

1                   MR. CAVALLUZZO: The final aspect  
2 of this issue I would like to refer to is, if we  
3 can call it, the present policy debate which  
4 appears to be happening within the federal  
5 government on this particular issue.

6                   Dr. Khan, I would refer to tab 32,  
7 which seems to indicate that our Justice  
8 Department -- this is tab 32, a report in The  
9 Globe and Mail by Mr. Ibbitson, the national  
10 columnist, and this seems to indicate that there  
11 is:

12                   "A secret Justice Department  
13 report that calls racial  
14 profiling by police and  
15 security services 'a  
16 high-profile and pressing  
17 issue' has reportedly excited  
18 protests from police and  
19 border-security officials,  
20 who want it rewritten or  
21 scrapped."

22                   What we seem to see is a report  
23 from the Department of Justice suggesting that  
24 this is a problem; that the report from the  
25 Department of Justice says that Canada lags far

1 behind the United States and the U.K. in respect  
2 of this particular issue in terms of legislation.  
3 However, there seems to be some resistance from  
4 the police force as well as the border agency  
5 concerning this particular issue.

6 I am wondering whether you are  
7 aware of the state of Canadian policy in respect  
8 of this particular issue, or whether it is still  
9 in a state of flux?

10 MS KHAN: I would say that I am  
11 not in the know per se. I only follow what is in  
12 the media.

13 MR. CAVALLUZZO: Right.

14 MS KHAN: All I can say is that if  
15 Minister McLellan, I think up until maybe even a  
16 month ago, has denied that racial profiling even  
17 exists within the RCMP and CSIS, and her statement  
18 has always been, it doesn't exist -- you know,  
19 essentially if anyone does it, they will be fired.  
20 So it sort of implies that no one would do it  
21 because they would be threatened to be fired.

22 So we see a denial on the part of  
23 Minister McLellan. From what I have been told,  
24 though, I believe she is not as -- she is more  
25 open to the idea that it might exist based on



1           personal communications.

2                           I have also noted, based on the  
3           cross-cultural roundtables that her department has  
4           set up, that she is getting that message from the  
5           15 community leaders that were selected; that they  
6           are telling her it does exist. So hopefully  
7           things will change.

8                           MR. CAVALLUZZO: We are edging  
9           towards enlightenment.

10                          MS KHAN: I hope so.

11                          MR. CAVALLUZZO: I would like to  
12           move on to the final issue with which I will deal,  
13           Mr. Commissioner. It is issue number 4, and it is  
14           framed as follows: In the post-9/11 era, do  
15           Canadian law enforcement and security officials  
16           exhibit appropriate cultural and religious  
17           sensitivity?

18                          Perhaps I would call upon  
19           Professor Bahdi to open up the discussion.

20                          What I would like to refer to here  
21           is whether a lack of cultural or religious  
22           sensitivity may give one who views certain  
23           activities a suspicious eye when that activity is  
24           purely innocent activity related to the group in  
25           which one finds himself or herself?

1                   In particular, for example, having  
2                   a telephone number in my Palm Pilot of someone who  
3                   may be under suspicion.

4                   MS BAHDI: I think we have to  
5                   start with an understanding of what cultural  
6                   sensitivity is, and it involves more than  
7                   simply -- this is an important piece of it -- but  
8                   of understanding the Qur'an if one wants to  
9                   understand Muslim values, for example. It  
10                  involves what we would call social context  
11                  knowledge, and that is the knowledge of why  
12                  individuals behave the way that they behave.

13                  One example might be understanding  
14                  why there might be cultural reasons or social  
15                  reasons why an individual might have the phone  
16                  number of somebody who, for all intents and  
17                  purposes, might be a stranger in their phone book.  
18                  It might just be that this is a person who has  
19                  sought them out because they share community or  
20                  cultural connections; that an individual has come  
21                  to Canada as a newcomer and looks to other  
22                  individuals who are more established within the  
23                  community to help them out with day-to-day things  
24                  like finding an apartment, possibly finding  
25                  employment, just sharing a cup of tea because they

1           happen to be lonely and don't know anybody.

2                           I will let my colleagues say more  
3           about this, but I just want to stress that this  
4           isn't just an Arab or a Muslim experience; it is  
5           something that is very important to newcomer  
6           communities in Canada in general.

7                           I myself belonged to an  
8           organization called Culture Link, which was funded  
9           by the federal government. It is part of a host  
10          program system in Canada which encourages  
11          Canadians, established Canadians, to do just that:  
12          to reach out a hand of friendship to newcomers to  
13          Canada to help them establish themselves. It is  
14          an important and integral part of settlement in  
15          Canada, in fact.

16                          MR. CAVALLUZZO: Professor  
17          Antonius, do you have anything?

18                          MR. ANTONIUS: Just expanding on  
19          this, first, I would reiterate the idea that this  
20          is something that is proper to immigrant  
21          communities, recent immigrants, that is a sense of  
22          solidarity and helping. And you don't ask  
23          somebody to give you his CV before you give a hand  
24          to the person.

25                          I have, myself, occasionally to go

1 and sign a lease for somebody I barely knew who  
2 was connected to somebody else in the community  
3 because the person had just arrived and did not  
4 have enough credentials to get the lease signed.  
5 So I had to guarantee it. These kinds of things  
6 happen a lot in immigrant communities.

7 Now, if that is going to be the  
8 basis for accusing people and just connecting  
9 dots, it is going to be very problematic.

10 I think this is happening and this  
11 is part of the culture of sensitivity that must be  
12 exhibited.

13 MR. CAVALLUZZO: What about doing  
14 business with members of that community? Is there  
15 anything unusual about that?

16 MR. ANTONIUS: Again, often, you  
17 know, because people are in an environment that  
18 they do not know well, there is sometimes a  
19 tendency to do business with people who come from  
20 the same area of the world that you come from.

21 MR. CAVALLUZZO: Right.

22 MR. ANTONIUS: And being less  
23 rigorous about, you know, who that person is and  
24 so on, there is an assumption that you will go  
25 along. And because of that, there are sometimes

1 business links that are not meaningful in the  
2 sense that they do not tell you that there is a  
3 strong or deep or long relationship between the  
4 two individuals who collaborate on something like  
5 that. And that is due to the very conditions of  
6 being a recent immigrant where you have to take  
7 more risks.

8 Why do you take these kinds of  
9 risks? Because it is harder for a recent  
10 immigrant to get a steady and tenured job, for  
11 instance. So people engage in more precarious  
12 jobs and in more risky businesses and that is part  
13 of it.

14 MR. CAVALLUZZO: I would call on  
15 Dr. Bahdi here.

16 In terms of culture and  
17 sensitivity or religious sensitivity training, is  
18 it enough to have an annual seminar to learn about  
19 the values of the Muslim community? Can you give  
20 us an idea of what meaningful sensitivity training  
21 really entails?

22 MS BAHDI: It is important to have  
23 seminars with members of the community. I don't  
24 want to discount that. But your question is: Is  
25 it enough? And the answer to that is no.

1                   That is an approach that, in the  
2 work that I am doing, and have been doing over the  
3 last few years, that we call throw it at the wall  
4 and hope it sticks.

5                   Before you can be trained in  
6 anti-discrimination work, you have to, first of  
7 all, start off examining yourself and examining  
8 your own assumptions, and that exercise itself has  
9 to start with a partnership with community groups,  
10 with those groups that have the information and  
11 are suggesting to you, as an institution, that  
12 there is a problem.

13                   A willingness to listen to those  
14 groups in a very meaningful way in designing, for  
15 example, your anti-discrimination training, in  
16 being willing to move outside of the classroom and  
17 to speak to individuals, to understand how their  
18 lives are affected on a day-to-day basis and being  
19 open to receiving information from the groups is  
20 key as a first step.

21                   The other thing is to be willing  
22 to go to those groups to allow them to evaluate  
23 the work that you are doing as well. So not only  
24 having them participate meaningfully in the design  
25 and implementation but also in the evaluation of

1 anti-discrimination training is very important.

2 MR. CAVALLUZZO: Okay. At tab 34  
3 we have an example of what has been referred to as  
4 a failure to exhibit appropriate cultural and  
5 religious sensitivity, and it concerns a visit by  
6 35 police chiefs to Israel. Obviously we don't  
7 want to get within the debate that is taking place  
8 there, could you comment, Professor Bahdi, on how  
9 the Muslim and Arab community viewed this visit by  
10 35 Canadian police chiefs to Israel?

11 MS BAHDI: Right. Again, I just  
12 want to stress that this is not a comment on the  
13 Israeli-Palestinian conflict. That is a very  
14 complicated issue that we could spend a lot of  
15 time discussing.

16 The point I want to speak to is  
17 the question of whether security officials exhibit  
18 appropriate cultural sensitivity, and the example  
19 that I will use to suggest that there isn't  
20 appropriate cultural sensitivity is a recent trip  
21 by a number of police chiefs to Israel. The trip  
22 was organized by the Canadian Jewish Congress,  
23 Ontario Region, the United Jewish Appeal  
24 Federation of Greater Toronto, the Ontario  
25 government and the Ontario Association of Chiefs

1 of Police.

2 It was considered a problematic  
3 trip. The understanding of Arab and Muslim  
4 communities who found out about this, largely  
5 after the fact, was that members of the police  
6 forces were going to Israel in order to learn  
7 about policing in a terrorist context, which in  
8 effect means policing Arab and Muslim populations.

9 There were a couple of things that  
10 Arab and Muslim organizations were concerned  
11 about.

12 One, that police within Israel  
13 have not always themselves exhibited cultural  
14 sensitivity to Arab and Muslim groups. There are  
15 a number of examples of this. For example, there  
16 was an incident -- and there are numerous  
17 incidents; this is one example -- of a young  
18 13-year-old boy who was strapped to a hood of a  
19 jeep, a police jeep, and used as a human shield,  
20 and his case was taken up in pictures taken of  
21 this incident by a group called Rabbis for Human  
22 Rights.

23 So the Arab and Muslim communities  
24 in Canada were concerned that there wasn't  
25 sufficient acknowledgment of the problems that



1 Israeli police have in policing Arab and Muslim  
2 communities, and that if Canadian police were  
3 going over and being trained, or speaking to  
4 Israeli police about how to police Arab and Muslim  
5 populations, this was going to translate some of  
6 the problems back to Canada. It was going to  
7 reinforce some stereotypes at the very best, and  
8 at the very worst it was going to lead to  
9 over-reactions in policing in relation to the Arab  
10 and Muslim communities.

11 I should note here that there have  
12 been significant over-reactions in Israel by the  
13 police in relation to Arab and Muslim communities,  
14 and this is documented in a report called "The Orr  
15 Commission Report" that relates to the use of and  
16 killing of 12 Palestinian protesters and one  
17 Jewish-Israeli protester right around the time of  
18 the second intifada.

19 None of this was acknowledged or  
20 discussed by the Canadian police when they came  
21 back to Canada. What was articulated publicly in  
22 the press by Canadian police was that Israeli  
23 police were heroes and that they were doing a  
24 wonderful job in fighting terrorism and that we  
25 had a lot to learn from their example.

1                   A number of community groups wrote  
2                   letters to the individual chiefs directly and  
3                   expressed their concerns and articulated why they  
4                   had concerns about this particular trip, and a  
5                   number of police services wrote back. Some of  
6                   them said, you know, "You are right. We do need  
7                   to have more dialogue with our Arab and Muslim  
8                   communities, and we welcome your offer of sitting  
9                   down to meet and discuss." Other individuals,  
10                  however, simply replied by saying, "I am an  
11                  objective person, and if you are questioning that,  
12                  then you are simply responding in an extremist  
13                  fashion."

14                  MR. CAVALLUZZO: The final  
15                  comments or discussion here will be to whether any  
16                  of you are aware of the outreach program of the  
17                  Ottawa Police Service which I understand is viewed  
18                  to be an effective outreach program.

19                  I wonder if I could call on  
20                  Dr. Khan to respond to that?

21                  MS KHAN: Well, I have to preface  
22                  this by saying that from my understanding -- I  
23                  haven't lived in Ottawa that long, but what I have  
24                  heard from community leaders is that there is a  
25                  pretty good relationship between the Ottawa Police

1 and the local Muslim and Arab population.

2 That, I believe, however, has been  
3 strained somewhat when -- and to give them due  
4 credit, the Police Chief, Vince Bevan,  
5 acknowledged to the Muslim and Arab community here  
6 in Ottawa that the Ottawa Police Force had been  
7 part of the investigation into Maher Arar. He  
8 brought that information out voluntarily to the  
9 community rather than to wait for it to be brought  
10 out by the Commission or other avenues of inquiry.

11 His approach was to be proactive,  
12 to inform the community that it had taken place,  
13 and to invite community leaders to work together  
14 in that context.

15 It is not a perfect arrangement,  
16 but I think, given the circumstances, the fact  
17 that he did take a proactive step, I think is to  
18 his credit.

19 But the very basic fact that your  
20 own police force is part of what has happened to  
21 Maher Arar is another dubious mark on the way the  
22 Muslim community views security and policing.

23 MR. CAVALLUZZO: Thank you.

24 Mr. Gover now will discuss with  
25 you issues 5, 6, and 7.

1 EXAMINATION

2 MR. GOVER: Issue number 5 is  
3 this: Is intelligence-gathering in minority  
4 communities by Canadian intelligence agencies, for  
5 example, through recruitment and use of members of  
6 the Arab and Muslim communities as informers, and  
7 the analysis of that information flawed?

8 Here we are back in the realm of  
9 anecdotal evidence, I appreciate. Perhaps I could  
10 ask, initially, Professor Bahdi for some comment  
11 about the underlying premise here: and that is  
12 that you are in a position, as a member of the  
13 panel, to comment at all by reference to anecdotal  
14 evidence, about this question of intelligence  
15 gathering of analysis.

16 MS BAHDI: Right. Well, we have  
17 to rely on anecdotal evidence to a large extent  
18 because so much of what takes place is done  
19 secretly. We don't know fully what happens.  
20 Indeed, that is what we are trying to learn.

21 But we do know, my research has  
22 revealed -- and I am sure Dr. Khan and Dr.  
23 Antonius will have something to say on this --  
24 that there are certain techniques and systems that  
25 are in place that are problematic, and we know

1           this because these stories are repeated over and  
2           over and over again to us and to individuals who I  
3           have interviewed as part of my research.

4                       Let me just give one example of  
5           some of the techniques that can be problematic.

6                       Anonymous tips. Yesterday I  
7           decided to do a Google search as part of my  
8           research, so I typed in something like "Canada  
9           terrorism hotline", and I came up with a number on  
10          a website that in fact was part of the RCMP  
11          hotline.

12                      Now, acknowledging that this is on  
13          a website, it wasn't the official RCMP website,  
14          this hotline was described and individuals are  
15          encouraged to call this hotline if they see  
16          something suspicious, something that the RCMP  
17          would be interested in, such as the purchase of  
18          unexplicable volumes of household items.

19                      So I thought, okay, I don't know  
20          quite that means. I am going to call the hotline.  
21          So I phoned the hotline. It is anonymous, so I  
22          didn't give my name, but I did indicate that I was  
23          doing some research and I asked for an  
24          explanation. And the individual said, "I don't  
25          know exactly what that means." So I said, "Can

1           you please tell me when I should call this  
2           hotline?  When should I have concern about  
3           terrorist activity?"  And I was told, "Whenever  
4           you see something that you yourself think is  
5           unusual.  It is like a feeling."  And I said, "You  
6           mean when I have a gut reaction?"  And I was told,  
7           "Yes, that is absolutely right, if you have a gut  
8           reaction."

9                           And I was told I didn't have to  
10          give my name and that an investigation would take  
11          place, likely -- there would be some assessment as  
12          to whether it was useful to undertake an  
13          investigation, but an investigation, I was told,  
14          would likely take place.

15                          Now, this is problematic because  
16          what we have heard, again anecdotally, is that a  
17          number of individuals within the community are  
18          investigated as a result of anonymous tips.  
19          Whether they come to this hotline, or whether they  
20          come through from other sources, we don't know.

21                          The tips are followed up on by  
22          security officials who go to a workplace, or to a  
23          place of study, and often declare themselves there  
24          to meet or interview a particular person; as  
25          Dr. Khan has indicated, often discourage the

1 individual from having a lawyer present at the  
2 meeting; and ask questions that are often quite  
3 inappropriate. And we have already alluded to  
4 some of those questions, like, "Do you pray five  
5 times a day?"

6 So the questions that are asked  
7 are inappropriate as a result of these tips.

8 So the fact that an investigation  
9 itself gets started is problematic. Then the  
10 questions that are asked are inappropriate, and it  
11 is hard to know the kind of significance that is  
12 attached to the answers that are given.

13 Often, well sometimes, what turns  
14 out to be the case is that it is just somebody  
15 with a vendetta, a former spouse, for example.  
16 But the harm has already been done. CSIS or the  
17 RCMP have already visited a workplace.

18 Sometimes there is a number of  
19 follow-up visits that take place, again as a  
20 result of receiving anonymous tips. In some  
21 instances it is an employer who says, you know,  
22 "This student was looking at a website." It  
23 happens to be an engineering website. They happen  
24 to be an engineering student. But that in and of  
25 itself is the basis of launching an investigation.

1                   I think I will stop there and hand  
2                   it over to my colleagues.

3                   MR. GOVER: Perhaps I will turn to  
4                   Dr. Khan then.

5                   Our focus in relation to this  
6                   question has to do with intelligence gathering and  
7                   analysis, and I would like your perspective then,  
8                   Dr. Khan.

9                   MS KHAN: Well, I am not very  
10                  well-versed in this area. I can just give you an  
11                  overview.

12                 I know, for example, in the United  
13                 States, there were some high-profile cases of  
14                 tips, malicious tips, that turned out to be  
15                 fraudulent, and in those cases people were  
16                 actually prosecuted. I don't know if any such  
17                 legislation exists here to prevent people using  
18                 vendettas or other personal agendas to get someone  
19                 else in trouble.

20                 I don't know if that kind of  
21                 measure is there, but that something that we need  
22                 to have as a balance to counteract what might be  
23                 some kind of free-for-all fishing expedition.  
24                 That is one.

25                 I am not a security expert, so I



1 don't know how the agencies analyze the  
2 information they get. But just seeing some of the  
3 high-profile cases that I alluded to earlier,  
4 where tenuous connections had been made, and then  
5 the Maher Arar case -- and this is why we are  
6 here -- of tenuous connections made and have led  
7 to people's lives being ruined suggests that  
8 perhaps some corrective measure is in order.

9 MR. GOVER: So we come back to the  
10 point of perception of the community in that  
11 respect, do we?

12 MS KHAN: Yes, the community  
13 perceives that, for example, what happened to  
14 Maher Arar is something that can happen to them.  
15 They don't have just his example. I don't know if  
16 we will get into it, but there are examples of  
17 three other Syrian -- well, Canadians who were  
18 held in Syria and interrogated: Almalki,  
19 Nureddin, and the fourth name escapes me.

20 So it is a series of incidents.  
21 It is a series of incidents where people have  
22 actually had physical harm done to them, or had  
23 their lives ruined, which has left a very negative  
24 impact.

25 MR. GOVER: Professor Antonius, do

1           you have a perspective on this question of  
2           intelligence gathering within the Arab and Muslim  
3           communities?

4                           MR. ANTONIUS:   Just one aspect of  
5           it.   The question of the vulnerability of  
6           newcomers who are waiting for a permanent status  
7           or who may be refugee claimants, and they feel  
8           that their status is not assured, they feel very  
9           vulnerable.

10                           So if they are approached by CSIS  
11           or by police, one of two things may happen:  If  
12           they refuse to answer, they may put their own  
13           status in jeopardy just for refusing to answer  
14           questions; or if they answer, they may simply, in  
15           order to get themselves off the hook, answer in  
16           ways that are maybe accusing others without  
17           evidence in order to just get rid of the issue.  
18           And the trouble is that this can have tremendous  
19           consequences on themselves or on others because of  
20           their vulnerable status.

21                           Of course, this leads to, as was  
22           said before, tenuous links rather than evidence.

23                           So to what extent could this be  
24           used to really do serious security activity, it is  
25           not clear at all, and the more vulnerable people

1 are, the less serious the tips one can get are as  
2 well.

3 MR. GOVER: Your point is that  
4 members of the community are put in a bind when  
5 asked to provide information or give a statement.

6 Is that right?

7 MR. ANTONIUS: If their status is  
8 vulnerable. If they have arrived to the country  
9 recently, maybe they are not yet citizens or not  
10 yet permanent residents, yes, they are put in a  
11 bind because they fear the authorities, and they  
12 fear that if they don't give the answers that CSIS  
13 or the officer is looking for, they may pay a  
14 price. And this status of vulnerability affects  
15 the quality of the answers and affects their  
16 rights as well.

17 MR. GOVER: Do outreach programs  
18 have a role in ameliorating that situation?

19 MR. ANTONIUS: As I said before,  
20 if these are regular outreach programs, not simply  
21 occasional, once-a-year programs, that could be of  
22 course very useful. And the outreach programs  
23 could go both ways: teaching people their rights  
24 on the one hand, and teaching officers and State  
25 representatives about these communities, about the

1 cultural aspects of it, et cetera. Both kinds of  
2 outreach are needed here.

3 MR. GOVER: Thank you.

4 Professor Bahdi, your evidence in  
5 relation to this question has related so far to  
6 intelligence gathering. Do you have any comments  
7 about analysis of that intelligence?

8 MS BAHDI: Maybe what I can say on  
9 this point is that in other contexts we have  
10 recognized that stereotypes and filtering  
11 information through preconceived notions has  
12 resulted in (1) poor policing, and (2) a violation  
13 of basic human rights.

14 So maybe I could do is just give  
15 two examples, quickly --

16 MR. GOVER: Please.

17 MS BAHDI: -- that we have seen in  
18 other contexts.

19 The Jane Doe case. In 1986, a  
20 woman living in Toronto was raped at knifepoint,  
21 and she was the fifth victim of the so-called  
22 balcony rapist, and she brought a claim against  
23 the Toronto Police saying that they had conducted  
24 a negligent investigation, and in part because  
25 they had failed to warn women of the risk.

1                   It is a long case and I won't go  
2                   into the details of it. I think the important  
3                   point for our purposes is that there was  
4                   acknowledgment by the courts that the  
5                   investigation had been biased by assumptions and  
6                   notions that the investigating officers had about  
7                   women who experienced sexual assault, sexual  
8                   violence.

9                   For example, the officers were  
10                  slanted towards disbelieving the victim, and that  
11                  this not only had profound implications for the  
12                  individual, it had profound implications for the  
13                  investigation itself. That is one example.

14                 Another example is the wrongful  
15                 conviction of Guy Paul Morin, and we have the  
16                 Kaufman Report. In 1992, as I am sure you all  
17                 know, Guy Paul Morin was convicted of the first  
18                 degree murder of a 9-year-old child, and then ten  
19                 years later it was found out that he was  
20                 wrongfully convicted, and there was a commission  
21                 into his wrongful conviction.

22                 One of the things that was  
23                 determined was that the investigators, prosecutors  
24                 and others involved had tunnel vision. They had a  
25                 preconceived idea of what had happened and were

1           therefore prone to excluding any evidence that  
2           didn't fit their theory.

3                         MR. GOVER:  What do you  
4           extrapolate from those cases then to this context  
5           of intelligence analysis as it relates to Canada's  
6           Muslim and Arab communities?

7                         MS BAHDI:  The importance of  
8           understanding the possibility that, as an  
9           investigator, one might be operating under  
10          stereotypes; the importance of being open to  
11          analyzing oneself as a decision-maker; and the  
12          importance, again, of working with community  
13          groups to determine if there is in fact a problem  
14          in this regard and how it manifests itself.

15                        MR. GOVER:  I would like to turn  
16          now to the sixth question, and it is this:  Do  
17          information sharing practices and protocols  
18          adhered to by Canadian law enforcement and  
19          security officials, including practices and  
20          protocols relating to sharing of information  
21          between States, discriminate against Arabs and  
22          Muslims?

23                                 And this is of course in the  
24          context of the post-9/11 era.

25                                 I turn to you first, Professor

1           Antonius.

2                           MR. ANTONIUS: I have a few things  
3 to say about sharing practices.

4                           The first is once some kind of  
5 information has been gathered within one service,  
6 let's say CSIS, and then it is passed on to  
7 another service, say either the FBI or some Arab  
8 country's services, in the process of translation  
9 what was a supposition or a tenuous link becomes  
10 fact, because the conditions in which this  
11 information has been gathered are usually lost in  
12 the process, and it is just the fact that it is  
13 kept.

14                          We have seen the result of that in  
15 the case of not only Maher Arar but others also as  
16 far as Arab countries are concerned.

17                          So given all that we have said  
18 here about the fragility of the information  
19 itself, once it becomes translated or passed on,  
20 this fragility is lost and it is taken as fact.  
21 So that is the first effect.

22                          The second thing, which is more in  
23 the field of my expertise, is that of the very bad  
24 state of human rights in Arab countries. Once  
25 this information is given to security services in

1 countries which are known to be dictatorial, even  
2 if they are very friendly to the West -- I am  
3 thinking of Tunisia or Egypt, for instance, who  
4 are taken as friendly countries, not just Syria --  
5 then the notions that we are used to working with  
6 here are not operating in the secret services over  
7 there.

8 I am not stereotyping; I am basing  
9 myself on something like the Human Development  
10 Report which was conducted under the auspices of  
11 the UNDP by a team of Arab and Muslim scientists  
12 who live there and who have established that the  
13 practices, that the dominant practices in  
14 countries where State-building has not been  
15 achieved, where we have State apparatus that do  
16 not work as institutions, they work with a lot of  
17 arbitrariness, in that context passing on  
18 information to the States becomes very problematic  
19 for Canadian citizens who originate from these  
20 States.

21 MR. GOVER: Dr. Khan, you  
22 mentioned earlier the experience of a Somali  
23 immigrant, Liban Hussein. Can you briefly tell us  
24 about Mr. Hussein's experience in the context of  
25 information sharing?



1 MS KHAN: Mr. Hussein is a Somali  
2 immigrant who lived in the Ottawa area, and he  
3 operated a money transfer business used by  
4 immigrants to send money back home.

5 In the aftermath of September  
6 11th, Canada acted in concert with the United  
7 States and other nations in order to swiftly  
8 freeze assets of suspected terrorist organizations  
9 and those who support them.

10 In keeping with this commitment,  
11 Canada listed Liban Hussein under its U.N.  
12 regulations to freeze the assets of persons and  
13 organizations associated with terrorist financing.  
14 Other U.N. Member States also listed Mr. Hussein,  
15 as did the U.N. Security Council itself.

16 Mr. Hussein was subject to an  
17 extradition request by the United States in  
18 relation to a money-transferring office. But  
19 ultimately on June 2nd, 2002, after an  
20 investigation of the information collected in  
21 relation to the extradition proceedings, the  
22 Government of Canada concluded that there was no  
23 reasonable grounds to believe that Mr. Hussein was  
24 connected to any terrorist activities.

25 The government therefore removed

1 him from the list under Canada's U.N. regulations  
2 and sought to have him delisted at the United  
3 Nations.

4 However, it is still very  
5 difficult to correct a mistake in naming someone  
6 as a terrorist. For example, despite the  
7 Government of Canada's public statements about  
8 him, at least one NGO website still refers to him  
9 as a terrorist.

10 He had all his assets frozen for  
11 about seven months and the terrorist moniker,  
12 although removed, still has ruined much of his  
13 life.

14 MR. GOVER: So the lesson then is  
15 that once an incorrect conclusion about someone  
16 has been shared, it appears to be difficult to  
17 correct it later.

18 MS KHAN: I would say yes. That  
19 is correct.

20 MR. GOVER: Professor Bahdi, I  
21 understand that a focus of your work has been on  
22 the consequences of information sharing in the  
23 post-9/11 era, and perhaps more broadly put the  
24 consequences of any sort of international  
25 information sharing and what responsibility that

1           may entail for Canada in relation to its own  
2           nationals.

3                           MS BAHDI: More generally my  
4           current research involves the question of whether  
5           a State has a duty to protect its nationals when  
6           the nationals are overseas. That, in itself, has  
7           implications for the question of information  
8           sharing between States.

9                           I will try to be very brief on  
10          this one because it can get a little complex.

11                           The starting point is that there  
12          is a theory under international law that if you  
13          are in the territory of another State, you can't  
14          make a claim for protection against your own State  
15          as a matter of right. Your State may choose to  
16          protect you, and there might be good political  
17          reasons for it wanting to do so, but that is the  
18          prerogative of the State. It is not your right as  
19          an individual to claim.

20                           But there has been a movement away  
21          from this starting point in international law to  
22          the effect that you can claim, as a matter of  
23          individual right, the protection of your State  
24          against the acts of other States.

25                           For example, in early 2004 the

1 International Court of Justice decided a case  
2 called the Avena decision that affirmed just that:  
3 that consular protection is the right of the  
4 individual, and it is not simply the right of  
5 access of a consul.

6 That case involved a number of  
7 individuals who had been placed on death row.  
8 They were Mexican nationals in the United States  
9 placed on death row, and they were denied their  
10 consular access. Mexico complained, brought the  
11 U.S. before the International Court of Justice,  
12 and the U.S. argued that this was a right of the  
13 State and that the only remedy that need be given  
14 was an apology from the United States to Mexico.

15 The Court disagreed and  
16 interpreted relevant international treaties as  
17 saying this was the right of the individual and  
18 that the remedy in fact had to be a new trial, in  
19 effect.

20 Other courts, other international  
21 bodies, had reached this decision previously, the  
22 same conclusion; the Inter-American Court of Human  
23 Rights, for example.

24 I think the implications of these  
25 developments in international law -- I can cite

1 other supporting trends, but I won't.

2 Let me just at this point say that  
3 I think that it is significant for our purposes  
4 for a couple of reasons. One is if an individual  
5 has the right to claim protection, then the  
6 corollary is that the State has the duty to  
7 provide protection. From that I think another  
8 corollary is that they must refrain from putting  
9 individuals in harm's way, and I think that has  
10 implications for the question of information  
11 sharing between States.

12 Let me leave it there, and if my  
13 colleagues have anything to add on that point or  
14 if you have another question, I am happy to take  
15 it on that point.

16 MR. GOVER: Perhaps I will take  
17 you now to the final question.

18 The final question is this: Has  
19 the Arab and Muslim community's experience in  
20 dealing with Canadian security intelligence and  
21 law enforcement agencies changed since the  
22 immediate aftermath of 9/11?

23 I think I might preface the  
24 discussion by reference to Exhibit P-129, tab 25.

25 This is an article by Jack Jedwab,

1 Executive Director of the Association for Canadian  
2 Studies -- it is the last tab in the first volume  
3 of the reference materials -- entitled "Collective  
4 and Individual Perceptions of Discrimination in  
5 Canada".

6 I note that the abstract, at the  
7 first page, says toward the bottom of the page:

8 "As observed below some 80%  
9 of Canadians feel that  
10 Muslims are either often  
11 (43%) or sometimes (37%) the  
12 subject of discrimination  
13 followed by Aborigines at a  
14 combined 75% with South  
15 Asians, Blacks and Jews the  
16 next most frequent targets."

17 With that in mind as the  
18 perception of Canadians, let's turn again to that  
19 seventh question.

20 I will ask you, please, to start,  
21 Dr. Khan. In your view, has the Arab and Muslim  
22 community's experience in dealing with Canadian  
23 security intelligence and law enforcement agencies  
24 changed since the immediate aftermath of 9/11?

25 MS KHAN: I believe it has. We

1 can point to a period of maybe six months to about  
2 a year after 9/11 wherein the community actually  
3 relied, for example, on the RCMP and the police  
4 for protection against hate crimes and vandalism.

5 Also to its credit, the RCMP -- I  
6 believe after reading the documents on its  
7 outreach program -- in the immediate aftermath of  
8 9/11 did take pains to have community outreach in  
9 many different cities.

10 That changed. And if I can point  
11 to one particular incident, it would have to be  
12 the Maher Arar incident and then combined with  
13 what happened with the 19 Pakistanis and then  
14 reports of other Muslim Canadians and/or Arab  
15 Canadians being detained abroad.

16 So this whole notion of trusting  
17 the police has really taken a dive.

18 You point to the results presented  
19 by Jack Jedwab. The feeling is that if 80 per  
20 cent of the general public believes that Muslims  
21 are being discriminated against, you can draw your  
22 own conclusions regarding what a body such as the  
23 RCMP or CSIS, which is composed of Canadians, what  
24 is their view towards us as a community?

25 And I don't think that has been

1           done. I know that the RCMP tries to root out for  
2           bias, as does CSIS, but there is that grey area of  
3           what kind of view do you have of Muslims and  
4           Arabs?

5                           In the survey that we released  
6           yesterday, one of the questions that was most  
7           often asked of the males was how often they  
8           practised martial arts and their views of Jihad.  
9           So the sort of view that, you know, somehow  
10          Muslims are a violent people and especially if  
11          they practise martial arts.

12                           I mean, they may have had good  
13          reason to ask those questions of those particular  
14          individuals, but when the word gets out that this  
15          is what they are asking you, and if you have  
16          nothing to hide and no connection, it sends this  
17          message that the police out there have a view of  
18          you and they are going to go and try and paint you  
19          in a corner according to a preconceived notion.

20                           So it is not a very healthy  
21          relationship at this moment, I would say.

22                           MR. GOVER: Professor Antonius?

23                           MR. ANTONIUS: I have nothing to  
24          add to that.

25                           MR. GOVER: Thank you. And



1 Professor Bahdi?

2 MS BAHDI: The only thing that I  
3 might add is that I have heard the term within the  
4 community "to be Arar'd", which refers to the  
5 interpretation of innocent activity through the  
6 lens of stereotyping and preconceived notions and  
7 a lack of cultural understanding.

8 MR. GOVER: Thank you. Those are  
9 my questions.

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

12 Mr. Waldman?

13 EXAMINATION

14 MR. WALDMAN: Perhaps I could just  
15 start off with one question about Mr. Arar and  
16 hear a little bit from the panel about the impact  
17 of that case on the Muslim and Arab communities.  
18 I know you have touched on it, but I wonder if you  
19 could address it specifically in your comments.

20 Is it talked about a lot, a  
21 little? Is it something that is just a Canadian  
22 phenomenon or not? And how has it affected the  
23 communities?

24 I mean, you just mentioned it a  
25 bit, but perhaps you could carry on, if you have

1 anything more to say.

2 MS BAHDI: It is really hard to  
3 pinpoint because I think it is so overwhelming.  
4 --- Pause

5 MS BAHDI: Perhaps here I can  
6 speak of my own experiences and my own concerns  
7 that come out of the Arar incident, and you will  
8 pardon me for being personal here.

9 I do a fair bit of travelling  
10 overseas, and I travel with trepidation, I do. I  
11 teach at the University of Windsor, and often my  
12 colleagues will say, "Let's go to Detroit so that  
13 we can go to an art gallery." I don't go. I  
14 really hesitate to cross the border, and it is  
15 because of what we are learning more and more  
16 about the experiences of Mr. Arar.

17 MR. WALDMAN: Is it something that  
18 is just talked about -- I just want to follow up  
19 with you.

20 Is it something that people are  
21 aware about outside of Canada, and does it have an  
22 impact beyond Canada, as far as you have been able  
23 to see?

24 MS BAHDI: Certainly I have spoken  
25 to individuals outside of Canada about the Arar

1 case. Whether they would have known about it  
2 without my talking to them about it, I am not  
3 sure. I don't know. But the Internet is really  
4 quite an amazing tool. I know that they have told  
5 people about it, and that there has been interest  
6 in it and they have gone to the Internet and found  
7 information about the case and they are quite  
8 surprised that this kind of thing would happen in  
9 Canada.

10 MR. WALDMAN: Ms Khan...?

11 MS KHAN: Just very briefly. You  
12 know, within the community, I think there is a  
13 sense of disbelief that something like this could  
14 happen here in Canada. Canada is seen as, you  
15 know, like a beacon of opportunity and basic human  
16 rights, and you don't associate police state with  
17 the term Canada. So there is a sense of disbelief  
18 that something like this has actually happened.

19 What is more disturbing is that it  
20 has not just happened to him, as we get reports of  
21 what has happened to other people, such as  
22 Abdullah Almalki and a few others. Now people are  
23 seeing it as a part of a pattern and it is eroding  
24 the trust.

25 I would just like to say something

1           that I don't think has been said yet.

2                           As Muslims and Arabs, we are not  
3           separate from Canadian society, we are part of  
4           Canadian society, and we are as much concerned  
5           with security as anyone else. We should not be  
6           seen as part of the problem. We are here to be  
7           part and parcel of Canada, to help preserve its  
8           security against those elements which are  
9           extremist.

10                           But police actions, rendition --  
11           you know, I am sorry to say, what looks like  
12           outsourcing of torture to elicit information is  
13           really making that job very hard.

14                           So I think it is going to have  
15           ramifications in the long run.

16                           Just for rendition. I wanted to  
17           share this quote with you, which was broadcast on  
18           The Current back in 2003, November, when they  
19           actually interviewed with someone from the CIA who  
20           said, on national radio, he said:

21                                   "The rumour in intelligence  
22                                   circles is that if you want  
23                                   someone to disappear, you  
24                                   send them to Egypt. If you  
25                                   want them to be really leaned

1                   on very hard, you send them  
2                   to Syria. And if you want an  
3                   intelligence interrogation,  
4                   you send them to Amman,  
5                   Jordan."

6                   These kinds of things are now  
7                   known, and people from those parts of the world  
8                   are very fearful.

9                   MR. WALDMAN: I will get to you,  
10                  Professor, in a second, but I just want to follow  
11                  up on something you said. You said it is had a  
12                  very serious impact on the community, and we have  
13                  talked about the distrust.

14                 How do you think it impacts on the  
15                 willingness of the community to cooperate with the  
16                 security services in terms of national security  
17                 investigations, this fear and distrust that you  
18                 just discussed?

19                 MS KHAN: I think, actually, if  
20                 you distrust a body, it is going to be very  
21                 difficult for you to cooperate with them,  
22                 especially if you don't know how they might use  
23                 that information, if that might be used against  
24                 you. I think it puts people in a dilemma. You  
25                 want to do the right thing, but you are afraid of

1           who you are going to deal with to do the right  
2           thing.

3                           MR. WALDMAN:   So is it fair to say  
4           that the conduct of the security services to a  
5           certain extent is undermining their ability to get  
6           the cooperation of the community that they need in  
7           order to deal with these investigations?

8                           MS KHAN:    I believe with these  
9           high-profile cases, yes.

10                          MR. WALDMAN:   Professor, do you  
11           have anything to add?

12                          MR. ANTONIUS:   I will add to that  
13           two things.

14                           The first thing is -- so I won't  
15           repeat what was said, but just on one thing.  As  
16           far as I am concerned, I used to believe when  
17           these stories started to come out, I was convinced  
18           that, well, maybe CSIS does have the proof and  
19           they don't want to, and maybe the people are  
20           guilty indeed and it is a matter of security.

21                           Gradually, as more and more  
22           details came out, I personally became very -- I  
23           just don't trust CSIS any more.  Therefore, when  
24           there is a real story of a real security threat, I  
25           would not trust -- I would insist now that, yes,

1 all the proof has to be laid out in the public,  
2 and I am less prone now to accept vague  
3 accusations if there is no proof because of this  
4 flaw, in a way; and, yes, the impact is to  
5 undermine CSIS' ability to really get more  
6 information.

7 MR. WALDMAN: What you have just  
8 described is a personal view. Do you believe that  
9 is a generalised experience in the community?

10 MR. ANTONIUS: No. That was my  
11 second comment.

12 The second comment is that not  
13 only is it generalized, but in a way it has some  
14 unfortunate consequence of serving as a paradigm  
15 for understanding how Canada in general, and the  
16 west in general, looks at Arabs and Muslims, and  
17 it has been the basis for a reverse stereotyping  
18 of the west in general, and Canada in particular,  
19 as inimical to Arabs and Muslims.

20 So it has had very unfortunate  
21 consequences, that this situation itself has been  
22 the source of stereotyping among Arabs in general,  
23 among the Arab population, and I see that on the  
24 Internet and in Arab papers and in the Arab public  
25 opinion in general, and in the community here as

1 well, yes.

2 MR. WALDMAN: Thank you. That was  
3 very helpful.

4 As a follow-up question to that --  
5 I think it is been touched -- but would any of you  
6 like to comment on whether the perception is that  
7 the Arar case is just a one-off, or is it  
8 symptomatic of a broader problem?

9 MR. ANTONIUS: I think that most  
10 people see it as symptomatic of a broader problem,  
11 to an extent that it is blown out of proportion,  
12 in my opinion, in the sense that, yes, it is  
13 there, it is significant. It is not the only  
14 case. It has been used quite often. But I think  
15 that its impact is also that it has become, as I  
16 say, paradigmatic. People see that as the  
17 standard way in which Arabs and Muslims are  
18 treated.

19 MR. WALDMAN: Does anyone else  
20 want to comment on that question?

21 MS KHAN: The Arar case is not  
22 seen as a single isolated incident, just because  
23 the other cases have not received the press that  
24 this case has. If anything, it is a testimony to  
25 Mr. Arar and his family, their courage to actually



1           come forward to present their story. But there  
2           are cases in the public, three other cases of  
3           Canadians who were detained in Syria,  
4           interrogated, allegedly tortured, at the exact  
5           same prison where Mr. Arar spent his time.

6                         There are the cases of two other  
7           Canadians -- excuse me, one, Hilmi El-Sherif, who  
8           was detained in Egypt while travelling back, was  
9           detained by the police and asked questions.

10                        Then there is the case of the  
11           security certificates. I know this isn't the  
12           place to discuss them but, again people held,  
13           immigrants were held without having the right to  
14           see the evidence against them, and they all happen  
15           to be Muslims and Arabs.

16                        So you get a general picture that  
17           all these cases of what seem like miscarriages of  
18           justice from a certain perspective all involve  
19           Muslims and Arabs, and it does lend to, you know,  
20           a perception.

21                        MR. WALDMAN: Professor Bahdi?

22                        MS BAHDI: Just to reiterate what  
23           my colleagues have said that it is seen as a  
24           broader problem.

25                        One, because we know that there

1 are other individuals who shared a Syrian cell  
2 with Maher Arar, and there are questions about  
3 what happened to them as well and who was  
4 involved.

5 And then just more broadly  
6 speaking, questions about -- the Maher Arar case  
7 is seen as a very tragic and extreme example, but  
8 still an example that gives rise to questions  
9 about the whole notion of accountability and lack  
10 of accountability within the system, as well as  
11 the value of secrecy within the legal system and  
12 the security system generally.

13 MR. WALDMAN: As a follow-up  
14 question, during the course of the development of  
15 the Arar case, the then Solicitor General Wayne  
16 Easter suggested that what might have happened  
17 might have been the conduct of "rogue elements".  
18 He later, in examination before us, said he was  
19 misunderstood on that point.

20 But the question really is: Is  
21 this seen as something systemic to the security  
22 services, or is the Arar case and the other cases  
23 seen as sort of a small group of people within the  
24 agencies?

25 MR. ANTONIUS: I think it is

1 widely viewed as something systemic.

2 MR. WALDMAN: I see you nodding.

3 MS BAHDI: I would agree with  
4 that.

5 MS KHAN: I agree.

6 MR. WALDMAN: Professor Bahdi, I  
7 am so glad you raised this issue because I tried  
8 to get some help yesterday from one of the  
9 experts, and he didn't. So I want to deal with  
10 you a bit more about the duty to protect because  
11 it is very important to us in our analysis of what  
12 happened to Mr. Arar.

13 I don't want us to go into a  
14 technical legal analysis now, but I just wanted to  
15 ask you a few questions about the duty to protect  
16 and what it extends to.

17 Would you say, in your opinion,  
18 that the duty to protect will require a State to  
19 not provide information to another State if  
20 providing that information would put the person at  
21 risk?

22 MS BAHDI: At risk of torture --

23 MR. WALDMAN: Of torture or  
24 detention or mistreatment?

25 MS BAHDI: Yes, absolutely. The

1 prohibition against torture in international law  
2 is an absolute prohibition, and that would be one  
3 of the first things that would come to mind when  
4 one is talking about a State's duty to protect.

5 MR. WALDMAN: Now, could a State  
6 argue that there was a necessity as a  
7 justification?

8 MR. FOTHERGILL: Commissioner, I  
9 am sorry to interrupt. but I don't believe this  
10 witness has been qualified to give expert evidence  
11 in international law. We have already had an  
12 expert panel on this subject. I am not sure that  
13 this is an appropriate line of questioning for  
14 this panel.

15 THE COMMISSIONER: Mr. Waldman?

16 MR. WALDMAN: Well, she was just  
17 asked all these questions. She has written a  
18 paper on it. She is a professor of law. This is  
19 an area where she studied.

20 THE COMMISSIONER: She wasn't  
21 called to give evidence in this area. I am  
22 content that you ask a few questions if it is not  
23 drawn out.

24 MR. WALDMAN: Yes, it is not going  
25 to be very long. I agree.

1                   With respect to the duty to  
2                   protect, would you say that a State would violate  
3                   its duty to protect if it actively encouraged  
4                   another State to provide information about one of  
5                   their citizens, and if in so doing it might  
6                   encourage that State to engage in torture against  
7                   the individual? Would that be a violation of the  
8                   duty to protect?

9                   MS BAHDI: I think there is an  
10                  obligation on States to consider the reasonable  
11                  consequences of their policies and actions. So in  
12                  that case, yes.

13                  MR. WALDMAN: I will leave the  
14                  duty to protect at that for now.

15                  Dr. Khan, I would like to take up  
16                  a comment that was made about fear of consequences  
17                  of complaining. This goes back to what we were  
18                  just discussing before about people being  
19                  reluctant to come forward.

20                  It has been your experience that  
21                  people have related to you that they are afraid of  
22                  complaining because of fear of the consequences  
23                  that might emerge from complaining?

24                  MS KHAN: Well, just the fact that  
25                  their personal information will be on the record,

1 and I think there is fear that, you know, what  
2 they say will be on the record and will become  
3 part of a public record, and many people are  
4 fearful of having that in the public sphere.

5 MR. WALDMAN: So --

6 MS KHAN: Sorry, that would be  
7 one.

8 The other is fear of retaliation  
9 by the body against whom you are complaining  
10 against. You know, if you file a complaint  
11 against CSIS for what you believe is improper  
12 activity, there is the fear that somehow they are  
13 going to get back at you.

14 So it is twofold, I think.

15 MR. WALDMAN: So what would be  
16 necessary -- and I invite any of the other  
17 panellists to answer this.

18 What would be necessary in order  
19 to make it possible for people to feel -- and this  
20 goes more to phase 2, I think, but I think it is  
21 an important question.

22 What would be necessary in order  
23 for people to feel --

24 What kinds of protections would  
25 have to be put into place in a complaint mechanism

1 when you are dealing with national security  
2 investigations to allow people to feel comfortable  
3 that they could come forward and complain?

4 Do any of you want to talk about  
5 it?

6 MS BAHDI: I am sorry, I am not  
7 sure I understand the question. Are you asking  
8 about what mechanism needs to be put in place?

9 MR. WALDMAN: Well, the issue is  
10 this. We have been told now that people are  
11 afraid to complain. Part of the mandate of the  
12 Commissioner is to create a mechanism of oversight  
13 which would allow for complaints.

14 If people are afraid to complain,  
15 the mechanism will not be helpful.

16 So my question is: What would  
17 need to be put in place to give people the  
18 confidence that if they could complain -- to make  
19 them feel comfortable to complain? I guess that  
20 is really what I am asking.

21 I mean, confidentiality -- I can  
22 think of a series of things. I am just asking if  
23 you have any thoughts on that?

24 MS BAHDI: Well, tomorrow I will  
25 be talking about the whole question of mechanisms

1 and accountability. As you say, we don't want to  
2 get into the mechanics of that.

3 But the think that comes  
4 immediately to my mind is establishment of trust  
5 between decision-makers and, in particular,  
6 security and intelligence services and the  
7 community. So I think that is a crucial thing.

8 Understanding of the community on  
9 the part of decision-makers -- and again, I say  
10 decision-makers and security and intelligence  
11 because I think it is broader than just security  
12 and intelligence.

13 Understanding of the community and  
14 a willingness to examine self for stereotypes.

15 MR. WALDMAN: Does anyone else  
16 have anything to say?

17 MS KHAN: Right now there is a  
18 perception that the security agencies are above  
19 the law, and if there was some mechanism -- I know  
20 we have the Civilian Review Board for CSIS; we  
21 have the RCMP complaints Commissioner, Shirley  
22 Heafy, who has said herself that she can't do her  
23 job properly, and oversight is essentially by the  
24 Commissioner of the RCMP.

25 But if there was some confidence



1           that whatever mechanism that is in place is there  
2           to keep our security apparatus, to have them  
3           accountable, and that they can't just get away  
4           with whatever they are doing, number one.

5                           And (2), that whatever information  
6           they provide, there is somehow -- you know, it has  
7           limits on where it will go, some kind of privacy  
8           of information; that it is not going to be shared  
9           with, you know, a force back in some other country  
10          or it is going to be used against you in some  
11          other way.

12                           It is this fear of negative  
13          repercussions, and there has to be some mechanisms  
14          which will tell the public, no, you will not be  
15          taken to task for coming forth and doing your  
16          civic duty or standing up for your basic civil  
17          rights.

18                           MR. WALDMAN: Thank you. Last  
19          year, if I remember correctly, we heard that CSIS  
20          has prepared a paper on what it calls "Sunni  
21          Muslim Terrorists". I would like to know if you  
22          have any reaction to that term "Sunni Muslim  
23          terrorists"?

24                           Does that strike you as another  
25          example of racial profiling?

1 MR. FOTHERGILL: Just in the  
2 interests of clarity, I think the term used is  
3 "Sunni Islamic Terrorism", which is identified as  
4 a leading threat to national security.

5 MR. WALDMAN: "Sunni Islamic  
6 Terrorism", how do you respond to that term, or do  
7 you not have any response, in relation to the  
8 whole issue of racial profiling?

9 MS BAHDI: In relation to that  
10 particular report or the term itself?

11 MR. WALDMAN: If you haven't seen  
12 the report, I am more interested in the term. If  
13 you have seen the report -- have you seen the  
14 report?

15 MS BAHDI: No, I haven't -- or I  
16 may have, but I am not sure.

17 I think perhaps Dr. Antonius might  
18 have something to say about this, because it  
19 really relates to the whole question of  
20 Islamophobia.

21 MR. ANTONIUS: I have not seen the  
22 report. However, concerning the term itself, I  
23 think debates among specialists about terrorism  
24 indicates that certain acts can be described as  
25 terrorist acts. The minute you glue together

1 terms that refer to terrorist acts with terms that  
2 qualify a community, that becomes problematic.

3 I could envisage one meaning of  
4 the term, which would be people who perform acts  
5 and who justify their acts by reference to a  
6 certain religious outlook. But if you go at  
7 length to explaining that, you know, you can  
8 describe certain acts but it is, I think,  
9 dangerous to shorten this and determine that there  
10 is something called terrorism rather than  
11 terrorist acts, and that it is linked to a  
12 particular religious belief.

13 MS KHAN: I think the issue is,  
14 you know, the lack of familiarity in the west  
15 about Islam. So if their report refers to acts of  
16 terrorism done by a particular group of people who  
17 adhere to the Sunni sect of Islam and, you know,  
18 as Professor Antonius said, they justify their  
19 actions based on a very narrow reading of  
20 scripture -- the thing is that once you put that  
21 title out there in the public, it is a public that  
22 knows very little about Islam and it can't go into  
23 those nuances about what is Sunnism and extremism  
24 and because of a lack of familiarity, it just  
25 enhances the stereotypes and the links of Islam to

1           extremism.

2                               So whereas I can perhaps  
3 understand that they are trying to arrive at an  
4 analysis based on the thought used to do the  
5 extremism, their title, I would hope, would  
6 perhaps be more cognizant of the jumps in the  
7 stereotypes the wider public will make by seeing  
8 such a title.

9                               MR. WALDMAN: So that type of  
10 title, in your view, is not at all helpful?

11                              MS KHAN: No, it is not helpful.  
12 I wish they could have chosen a different title.

13                              For example, an analogous  
14 situation elsewhere where -- you know, put  
15 "Christianity" instead of "Islam" or something. I  
16 mean, here we would all laugh at that because  
17 everyone is familiar with Christianity. But when  
18 people are unfamiliar with Islam, and all they see  
19 are those images on TV, this is just another  
20 reinforcement. So it is not helpful.

21                              MR. WALDMAN: I have about another  
22 15 minutes. Do you want me to finish?

23                              THE COMMISSIONER: I think it is a  
24 good time to break, if it suits you.

25                              MR. WALDMAN: That is fine.

1 THE COMMISSIONER: We will rise  
2 until 2:15.

3 --- Upon recessing at 1:00 p.m. /  
4 Suspension à 13 h 00

5 --- Upon resuming at 2:20 p.m. /  
6 Reprise à 14 h 20

7 THE REGISTRAR: Please be seated.  
8 Veuillez vous asseoir.

9 THE COMMISSIONER: Mr. Waldman?

10 MR. WALDMAN: Yes. I only have a  
11 few more questions.

12 I would like to deal with the  
13 issue of cultural sensitivity in the context of  
14 national security investigations. I am trying to  
15 think of who I -- whichever one of you thinks you  
16 can answer it best, Professor or Dr. Khan.

17 Would you agree that in the  
18 context of police forces investigating national  
19 security issues, that they must have a clear  
20 understanding of the cultural issues before they  
21 draw inferences with respect to the conduct of  
22 people in your community?

23 Do any of you want to comment on  
24 that?

25 MR. ANTONIUS: I could comment on

1           it. I would like to say that sometimes we are  
2           touching an area here which it is much more a  
3           matter of opinion than expert advice, strictly  
4           speaking on some of the issues.

5                           I would say that the lack of  
6           cultural sensitivity has two effects: One, it  
7           antagonizes the community, and I have been active  
8           in the community for a very long and I can see  
9           that, and sense it very strongly. And when it  
10          antagonizes the community, it diminishes the  
11          ability of the security operators to do its job of  
12          security, because I think nobody here  
13          underestimates the importance of doing security  
14          work. It is how you do it and whether you do it  
15          in a way that gets that community to cooperate and  
16          participate fully.

17                          MS BAHDI: Just to reiterate what  
18          Dr. Antonius said, really. It is not just about  
19          being polite; it is about doing the job right. We  
20          can look at other contexts, which we have already  
21          mentioned, the Jane Doe case, for example, the  
22          Kaufman Report. If you don't have cultural  
23          awareness, then the risk is that you are filtering  
24          your decisions and the information you have before  
25          you through stereotypes, and that leads to

1           improper decision-making. That's the concern.

2                           MR. WALDMAN: Okay. A follow-up  
3 question, Professor Bahdi, from that.

4                           You indicated that an annual  
5 seminar is not sufficient. What I would be  
6 interested in hearing from you is what steps do  
7 you think need to be taken for the police services  
8 to have the necessary cultural sensitivity to be  
9 able to do their jobs properly?

10                          MS BAHDI: I think it is a  
11 multidimensional strategy. There is no one single  
12 thing.

13                          Certainly having community leaders  
14 come in and speak is an important part of it, but  
15 there is also the importance of going out and  
16 participating with the community, going to  
17 mosques, for example, not just as a one-off, but  
18 as part of a regular program.

19                          There is also the question of  
20 recruitment and who is actually recruited and how  
21 well those individuals understand various norms.

22                          For example, just the fact that  
23 somebody speaks Arabic doesn't mean that they are  
24 Muslim, so we can't assume from that that they  
25 understand Muslim norms.

1 MR. WALDMAN: In other words,  
2 recruiting would be an important factor, but the  
3 people that are recruited would have to be people  
4 who had themselves the necessary cultural  
5 sensitivity in order for that to be able to assist  
6 the services in understanding what was going on?

7 MS BAHDI: That's right. And then  
8 recruitment in and of itself isn't sufficient.  
9 There also has to be the question of how does  
10 recruitment translate into institutional change?  
11 Do the individuals feel that they can question  
12 what's going on around them, for example, or do  
13 they feel like if they do that, then they are not  
14 actually part of the system and that they are  
15 questioned themselves acting within the system.

16 MR. WALDMAN: Would you agree that  
17 in the context of, say, a national security  
18 investigation involving people of Arab background,  
19 that it would be vital that there were people of  
20 that background who understand the culture that  
21 were part of the investigative team for them to be  
22 effective?

23 MS BAHDI: I think that would be  
24 quite important.

25 MR. ANTONIUS: Might I add that it



1 is quite natural -- I mean Arab and Muslim  
2 migration in Canada is old if you consider the  
3 very first migrants. But in terms of the masses  
4 that are actually here, the volumes and so on,  
5 that is relatively new.

6 So it is understandable that there  
7 is a time lag between the arrival of these  
8 communities and their full incorporation into the  
9 institutions.

10 I think what the story of Maher  
11 Arar indicates is that maybe it is time we move a  
12 little faster on that one, understanding that it  
13 is -- I mean, it is natural that people do not get  
14 incorporated into the system the day they arrive,  
15 but there is enough time lag, there is an  
16 established community. It is about time that this  
17 community be part of the institutions, because  
18 that could help resolve some of these issues in a  
19 positive way.

20 MR. WALDMAN: Thank you very much.  
21 I just have a few more questions.

22 When you were testifying about  
23 investigative techniques, I just wanted to talk to  
24 you about that for a second because you expressed  
25 concerns about use of informants, the lack of

1 reliability, as one of the investigative  
2 techniques.

3 Are you aware that the RCMP,  
4 Deputy Commissioner Loepky told us last year that  
5 basically there is zero tolerance and that all  
6 tips would be investigated?

7 What concerns does that raise for  
8 you, given your previous testimony?

9 MS BAHDI: Zero tolerance? That  
10 was the message that I got when I spoke to the  
11 RCMP yesterday, at least that's the way I  
12 understood it, and that everything would be  
13 investigated.

14 No, I had forgotten about that  
15 particular statement.

16 But what concerns does that raise?

17 It raises concerns about (1)  
18 efficient use of our policing resources; (2) the  
19 consequences for the individuals who are going to  
20 be investigated. If there are enough  
21 investigations and the neighbours of individuals  
22 find out about it, reinforcing the idea that the  
23 Arab and Muslim community is a community that  
24 needs to be policed or investigated, normalizing  
25 that notion.

1                   I think those are the things that  
2 immediately come to mind. I don't know if my  
3 colleagues want to add to that.

4                   MR. ANTONIUS: The problem is zero  
5 tolerance what? Zero tolerance what? What is  
6 considered to be an indication of some terrorist  
7 activity.

8                   And this is where stereotyping  
9 comes, because if you say zero tolerance to acts,  
10 to actions that could have a security impact, I  
11 fully subscribe to that. If you say zero  
12 tolerance to things that may indicate, that may be  
13 perhaps, and the logic being based on the fact  
14 that these people come from a certain religious  
15 and ethnic background, that's racial profiling,  
16 and this is not acceptable.

17                  MR. WALDMAN: One final set of  
18 questions.

19                  Do any of you have any comments on  
20 what impact it would have had on Mr. Arar and his  
21 family, the fact that he was publicly branded as a  
22 member of al-Qaeda, in terms of the community  
23 response to him, how it would have affected him  
24 and his family?

25                  MS KHAN: Well, a terrorist label

1 is almost like a kiss of death. Within the  
2 community people would shun anyone with that label  
3 for two reasons: One, for fear of somehow being  
4 linked to that person because that person is a  
5 terrorist and if I associate with him or her I,  
6 too, may be under investigation or accused of  
7 being a terrorist.

8 We have this in the case of  
9 Brandon Mayfield, if you look at some of the  
10 affidavits submitted by the FBI. They connected  
11 him, and there were like 6-degrees of separation;  
12 they connected the dots where no connection should  
13 have been made.

14 There is this fear that, you know,  
15 he has been labelled as a terrorist. I don't know  
16 if it is true or not, but I don't want to be  
17 labelled as that as well so I am going to shun  
18 him. That is number one.

19 Two, people might assume that oh,  
20 well, there is something, and I don't want  
21 anything to do with him because he may have  
22 connections to al-Qaeda.

23 The thing is the Muslim community  
24 in Canada is roughly about 600,000 people  
25 according to the last census, and most of them

1           reside in major metropolitan centres of Toronto,  
2           Montreal, Ottawa and Vancouver, and within each of  
3           these cities the community is not that big. For  
4           example, in Ottawa, if you go to a mosque function  
5           or a community dinner or a picnic, you see the  
6           same people, roughly the same people, at the same  
7           events. You meet the same people over and over  
8           again. So you have associations, very innocent  
9           associations with people.

10                           What seems to have been brought  
11           home with this is that even your innocent  
12           connections may get you in trouble.

13                           So for Maher Arar to have been  
14           labelled as a terrorist, I think is devastating  
15           for him and his family, especially within the  
16           community, because of all the suspicions and fear  
17           of our security agencies connecting anyone who may  
18           have connection with him. That also sent a chill.

19                           MR. WALDMAN: Thank you very much.

20                           Those are my questions,  
21           Mr. Commissioner.

22                           THE COMMISSIONER: Thank you.

23                           Mr. Joseph, did you have some  
24           questions? Mr. Allmand, you do. Mr. Saloojee?  
25           --- Off microphone / Sans microphone

1 THE COMMISSIONER: Normally the  
2 Attorney General's Department would go at the end.  
3 Do you have any thoughts on that?

4 MR. FOTHERGILL: I don't have  
5 strong views, but obviously I don't know what has  
6 to be asked.

7 THE COMMISSIONER: I think it  
8 probably makes sense if the intervenors go next  
9 and if there is anything that needs to be  
10 responded to --

11 Why don't you go first,  
12 Mr. Joseph, and then, Mr. Allmand, you can follow.

13 MR. JOSEPH: Thank you very much,  
14 Mr. Commissioner.

15 EXAMINATION

16 MR. JOSEPH: My questions are  
17 going to be coming from the perspective of the  
18 Muslim community. I have heard Muslim and Arab,  
19 and my questions are going to be coming from the  
20 perspective of the Canadian Muslim community with  
21 over 80 different cultures. So I want you to keep  
22 it in that context when I ask these questions.

23 I would like to know if you all  
24 agree, from your own direct contact in the Muslim  
25 community in Canada, if you have some sense of the

1 importance to the hundreds of thousands of Muslims  
2 in Canada of this inquiry, the process that is  
3 taking place, and how important it is personally  
4 to those Muslims that this inquiry take place and  
5 these questions be answered?

6 Do you have any sense of that?

7 MS KHAN: Well, I think people  
8 were quite happy once the inquiry was called, but  
9 I think for the first little while they were in  
10 the dark, simply because most of the hearings were  
11 held in camera. That might have added, again, to  
12 this unease that people have with regards to  
13 secrecy and security, and I think it is probably  
14 the public aspects of the hearings which will, I  
15 think, have the most impact.

16 I mean, the testimony that we  
17 heard over the past few weeks about government  
18 involvement, RCMP involvement, has really -- I  
19 think has really shocked people. They didn't  
20 realize what -- you know, whatever little they  
21 know now of what was going on.

22 So I think it does have importance  
23 on revealing what happened, the implications that  
24 it has on people today. I think now people  
25 probably have less distrust of their government,

1 of their Canadian consul officers in other  
2 countries, whether or not they will actually be  
3 there to represent them, to help them out in  
4 trouble.

5 I think, as an optimist, people  
6 will also value this Commission in terms of being  
7 able to bring out facts that you would not  
8 normally be able to get in other ways.

9 MR. JOSEPH: I would be interested  
10 in knowing whether the other two panellists have  
11 the same view: that this is very important to the  
12 Muslim community, to get these answers?

13 MR. ANTONIUS: I would say it is  
14 important on two grounds: first, the question of  
15 trust. In other words, independently of the  
16 conclusions, the very seriousness of the exercise  
17 will go a long way towards building trust. But  
18 then this could be undermined by the actual  
19 results. If the results are serious also and are  
20 taken seriously, then that will go a long way  
21 towards establishing this required trust.

22 MR. JOSEPH: Dr. Bahdi?

23 MS BAHDI: I think I just  
24 reiterate basically that the idea of the  
25 credibility of the entire system is at stake, and



1 in many ways this process goes to the possibility  
2 of repairing that credibility but also it  
3 reinforces -- I think people are looking for  
4 change and looking to see that this process will  
5 make a difference.

6 MR. JOSEPH: Do you have any sense  
7 of the perception of that Muslim community with  
8 respect to things like thousands of documents not  
9 being released? What perception does the  
10 community have with respect to an ongoing inquiry  
11 when national security risks are used on that  
12 basis?

13 Does it have any effect on their  
14 perception of the work of the inquiry?

15 MR. ANTONIUS: I will be brief.  
16 The more transparent the process is, you know, the  
17 bigger the impact will be in terms of  
18 re-establishing trust. Basically that's all I  
19 say.

20 MS KHAN: I think what the  
21 community sees, it is not so much the Commission  
22 but the government which has, you know, blacked  
23 out a lot of information; and if there is any kind  
24 of -- how do I say? -- you know, they are not  
25 sure -- they are not sure of the government and

1           how -- you know, the government's willingness to  
2           actually get to the bottom of this.

3                       MR. JOSEPH:  And this is your  
4           perception of the perception of the Muslim  
5           community?

6                       MS KHAN:  Exactly.

7                       MR. JOSEPH:  And I think it is  
8           important for the Commission to understand that.  
9           You are not talking about the inquiry itself but  
10          the position that the government is taking with  
11          respect to disclosure?

12                      MS KHAN:  Yes.

13                      MR. JOSEPH:  Do any of the  
14          panellists have any comments with respect to the  
15          issue -- because we have heard about criminal --  
16          well, we have heard about racial profiling and we  
17          have heard about religious profiling, which we all  
18          agree is the wrong thing to do.

19                      Do you have any views on criminal  
20          profiling?

21                      MS BAHDI:  I think criminal  
22          profiling as distinct from racial profiling is not  
23          something that I would object to.  I won't speak  
24          on behalf of my colleagues.

25                      We are not saying you can't

1 investigate Arabs and Muslims. What we are saying  
2 is that the use of racial profiling as an  
3 investigative tool is not effective, and I hope we  
4 have given some indication as to why we think  
5 that's the case.

6 MR. JOSEPH: Is it fair with  
7 respect to the other panellists to say that  
8 Muslims in general, if we can say that, from the  
9 community -- I have heard somebody say here today  
10 earlier that Canadian Muslims, I think was the way  
11 that it was worded -- I think it was Dr. Khan --  
12 that Canadian Muslims have as much an interest in  
13 security and preventing terrorism than  
14 non-Canadian Muslims.

15 And I would like to go further and  
16 say: Would you agree with me that in fact the  
17 Canadian-Muslim community has more of an interest  
18 because they are on the direct front lines of the  
19 hate crime, the stereotypes that are out there?  
20 They are the ones that are the first to feel it.  
21 It is not the non-Canadian-Muslims. We have more  
22 of an interest in stamping out terrorism and  
23 increasing national security rather than  
24 decreasing it.

25 Would the panel agree with that?

1 MS KHAN: I would agree with that,  
2 and I will just quote from Michael Ignatieff's  
3 book "The Lesser Evil".

4 He said, in his own view, that he  
5 believes that if there is another attack in the  
6 United States, he thinks the gloves will come off,  
7 meaning the Muslim community, the Arab community  
8 in the United States, there will probably be  
9 harsher provisions against them.

10 And the same here -- you know, God  
11 forbid something happens here -- the Arabs and  
12 Muslims will be at the front end of either hate  
13 crimes and/or government measures to ensure, you  
14 know, security with the suspension of human  
15 rights.

16 MR. JOSEPH: I want to ask my  
17 question with respect to a comment I think  
18 Dr. Khan made when you were asked earlier about  
19 our former Justice Minister, Minister McLellan,  
20 with respect to the issue that she has said in the  
21 past, over and over again, that there is no racial  
22 profiling in law enforcement with respect to the  
23 RCMP and CSIS, after repeatedly being told by the  
24 community that it exists and being given examples.

25 My question to you is this: I

1 want the Commission to understand what that does  
2 to a community that is under siege in that fashion  
3 and has experienced that when they are told by  
4 their top law enforcement officers that it doesn't  
5 exist.

6 Does it have any effect on them?  
7 Does it have any impact on them?

8 MS BAHDI: I am turning to the  
9 Ontario Human Rights Commission Report at tab 28,  
10 Volume 2 in the materials, at page 17, that talks  
11 about the effects of racial profiling and in  
12 particular the victim effects of racial profiling,  
13 and cites the study of the American Psychological  
14 Association that includes things like -- one of  
15 the victim effects can be post-traumatic stress  
16 disorder and other psychological impacts.

17 To have somebody like Minister  
18 McLellan deny the existence of racial profiling  
19 only exacerbates that victim effect. It goes to  
20 what I was speaking to earlier about the three  
21 elements of access to justice and the social  
22 symbolism element. I think it speaks to that as  
23 well.

24 MR. JOSEPH: Can I take from that  
25 that same effect would have the same impact on a

1 community, whereas we heard in the past from Chief  
2 Julian Fantino in the black community that there  
3 is no racial profiling in Toronto? It would have  
4 the same effect on that community that it would on  
5 the Muslim community: negative?

6 MS BAHDI: That's right,  
7 absolutely.

8 MR. JOSEPH: Dr. Khan, I am going  
9 to ask this question of you in particular but feel  
10 free, other panellists, to express an opinion on  
11 it.

12 When I go to a mosque on Friday  
13 for Juma, for prayer, it is not unusual -- and I  
14 want you to be able to either confirm or deny  
15 this -- that at the end of the prayer on Friday, I  
16 might shake hands, meet and speak to three, four,  
17 five hundred people that I have never met before  
18 at the end of prayer.

19 First, is that fact correct?

20 MS KHAN: As a woman --

21 MR. JOSEPH: And I am speaking as  
22 a male in the mosque.

23 MS KHAN: As a male, yes, that  
24 would be true.

25 MR. JOSEPH: So it is not

1 uncommon, I take it, in a mosque, that from the  
2 cultural and the religious aspect, people are  
3 meeting, exchanging greetings, talking to people,  
4 shaking hands, having coffee with people they have  
5 never met before?

6 MS KHAN: That's very common. I  
7 mean, the biggest gatherings are the Eid prayers.

8 MR. JOSEPH: Where thousands of  
9 people --

10 MS KHAN: Thousands, and you kiss  
11 and hug the person next to you, even though you  
12 have never met them in your life before because  
13 this is part of our faith.

14 MR. JOSEPH: And is it fair to say  
15 that if I were a CSIS or RCMP agent looking  
16 outside a mosque at Eid or whatever, seeing that  
17 interaction and not knowing about the religious or  
18 the cultural sensitivities, that I may infer that  
19 people know each other very well and befriended  
20 them, but they could be perfect strangers?

21 MS KHAN: That could be inferred,  
22 yes.

23 MR. JOSEPH: Is that the sort of  
24 things, when Mr. Waldman was asking questions  
25 about law enforcement, in your view, having to be

1           involved in the cultural sensitivities and  
2           education, to know how this works so that they  
3           don't make those wrong conclusions from those same  
4           facts?

5                           MS KHAN:  I think, yes.  And the  
6           other thing is I don't know how law enforcement  
7           evaluates information, but I will give you an  
8           analogy because I am a scientist.

9                           MR. JOSEPH:  Right.

10                          MS KHAN:  If I am trying to assert  
11           some kind of scientific fact, I will use a number  
12           of experiments, not just one, from many different  
13           perspectives and then try and find some common  
14           element to arrive at a conclusion.

15                          I would hope that someone who used  
16           just a chance glance of two people greeting each  
17           other and having coffee to draw some far-reaching  
18           conclusions...

19                          MR. JOSEPH:  Do the panellists  
20           agree with me that criminal profiling as an  
21           effective police tool, versus racial or religious  
22           profiling, is not only ineffective but dangerous?

23                          Do we agree with that proposition?

24                          MS BAHDI:  Yes.

25                          MS KHAN:  Yes.



1                   MR. JOSEPH: I want to ask you  
2 next about the impact in the Muslim community on a  
3 specific group within the community. I want to  
4 ask you post-9/11 on the generation of Muslim  
5 youth, and I am talking about high school,  
6 university students, maybe teenagers.

7                   Are you in a position, from your  
8 own personal experiences and your research and in  
9 the communities in which you live, to be able to  
10 tell us what effect the Arar case, and like cases,  
11 and what's happened with respect to these types of  
12 situations, has had on that group of the Muslim  
13 community in Canada?

14                   And before you answer that, I  
15 wanted to put to you, very specifically, from Nova  
16 Scotia to Vancouver, I have heard cases where  
17 people have changed their names, Bilal becomes  
18 Billy, Mohammed becomes Mike, because of what is  
19 happening in the schools, what is happening with  
20 respect to the media; that they don't want to be  
21 identified.

22                   What can you tell us about the  
23 impact on the youth with respect to somebody  
24 being, or the possibility of being, Arar'd?

25                   MR. ANTONIUS: May I comment

1           briefly on that?

2                           The impact is not uniform.  There  
3           is not a single response.  One response is to deny  
4           your link with the stereotyped community and  
5           change your name from Bilal to Billy and so on.  
6           That's one possible effect.

7                           The other possible effect is what  
8           they say in French, as they call in French, "le  
9           retournement de stigmat", using what stigmatizes  
10          you and claim it, like "Black is beautiful".  
11          Okay?

12                           The third effect is that it makes  
13          people underestimate the importance of real  
14          security issues because then you don't take them  
15          seriously.  It is like crying wolf for nothing.  
16          Then when the real wolf comes, you know, you are  
17          not ready for it.

18                           So that's why it is  
19          counterproductive.

20                           Of course, the general overall  
21          effect of those three possible responses is that  
22          of driving a wedge between this immigrant  
23          community, because most Muslims -- not all, but  
24          most Muslims and most Arabs -- it is a recent  
25          community in Canada.  Although it has roots in the

1 last century, the majority is recent.

2 So it makes identification with  
3 Canada more difficult, more laborious. You have  
4 to do more work. You have to work harder to just  
5 bridge the gap, to rebuild that link.

6 That is how I would describe very  
7 briefly the effect.

8 MR. JOSEPH: Dr. Khan, I would be  
9 interested in your views on Muslim youth, from  
10 your perspective.

11 MS KHAN: In addition to what  
12 Professor Antonius said, I used to be an advisor  
13 for the Muslim Youth of North America about ten,  
14 fifteen years ago. You know, part of it would  
15 involve camps and conferences, youth groups. You  
16 get together to rekindle your spirit, to be with  
17 other youth who share your outlook on life, and  
18 just a bonding kind of thing.

19 I think now some of the youth  
20 might think twice about getting involved in things  
21 like this.

22 I am also concerned because I  
23 think at the age of being a teenager or young  
24 adult, we should be instilling in people,  
25 regardless of what background they are from, the

1 importance of civic responsibility, of being part  
2 of the society and being there to ensure its  
3 flourishing. And as Professor Antonius  
4 mentioned, when you have this racial profiling,  
5 this approach, you are alienating youth and that's  
6 not healthy. It is not healthy for anyone.

7 MR. JOSEPH: Thank you.

8 My last question is with respect  
9 to the impact on the Muslim community with respect  
10 to alms giving, zakat, which is charity.

11 You gave an example earlier, one  
12 of you, I think, with respect to Mr. Hussein.  
13 What effect, if any, in the last two or three  
14 years have you seen with respect to the religious  
15 obligation of Muslims in this country to give  
16 charity to Muslim organizations, or other  
17 organizations, as part of their religious duty?

18 MS KHAN: Well, people are now  
19 hesitant, one. And two -- and I think this is  
20 something which our government should know. Now  
21 instead of giving, let's say, a cheque, people  
22 will give cash so that it can't be tracked. Not  
23 that they have anything to hide, but they just  
24 don't want the hassle of being on a donor's list  
25 or anything. But nonetheless, you have this

1 obligation.

2 The third thing is that a lot of  
3 people would give their zakat, or their alms  
4 giving, to their country of origin. A lot of  
5 people do that. And now with the issue of  
6 transferring money back and forth, that's also put  
7 a chill. So people are in a bit of a bind. You  
8 have this religious obligation of giving a certain  
9 percentage of your wealth for the poor, and now  
10 you are worried about how your money might be  
11 tracked.

12 You are also worried maybe the  
13 charities at the other end, charities you have  
14 trusted. Now some are under a cloud of suspicion.  
15 So it is put a bit of a damper.

16 MR. JOSEPH: Are any of you aware  
17 of any organizations in the United States or  
18 Canada -- I don't want to get into naming them --  
19 but the fact that millions of dollars have been  
20 seized whereby people can't get those funds after  
21 they have donated them to people that need food,  
22 or need clothing, or need housing in the Muslim  
23 community?

24 MS KHAN: Yes. I think it was in  
25 2002, Ramadan of 2002 -- that would probably be

1 December?

2 MR. JOSEPH: Yes.

3 MS KHAN: In the U.S., in the  
4 middle of Ramadan, they froze the assets of a  
5 couple of very large charities, and Ramadan is a  
6 time when people do give their zakat, the most  
7 time of giving, and a lot of that money which was  
8 earmarked towards orphans and widows and the poor  
9 was frozen.

10 MR. JOSEPH: Those are all my  
11 questions. Thank you for your indulgence.

12 THE COMMISSIONER: Thank you,  
13 Mr. Joseph.

14 Mr. Allmand?

15 EXAMINATION

16 MR. ALLMAND: Mr. Commissioner, I  
17 have two questions.

18 First, I want to thank the  
19 witnesses for the testimony they gave this  
20 morning. I am representing the International  
21 Civil Liberties Monitoring Group, which brings  
22 together over 30 NGOs, trade unions and faith  
23 groups very much concerned with these issues.

24 This morning, you presented us  
25 with several cases of abuse which were the result

1 of the use of discretionary powers by front line  
2 officials. You referred to incidents at airports,  
3 interviews, visits to homes, visits to the  
4 workplace. I am talking about incidents other  
5 than Arar. And you described those very well.

6 I would like to know if you have  
7 any views with respect to the abuse or lack of  
8 concern at higher levels, not front line  
9 officials?

10 For example, on any of these  
11 incidents that you referred to were complaints  
12 made to SIRC or to the RCMP Complaints Commission  
13 or the Human Rights Commission, the Canadian Human  
14 Rights Commission, or to the parliamentary  
15 committee concerned, or to the Senate committee  
16 concerned, or to Ministers' offices, or to the  
17 Prime Minister's Office?

18 And if you had referred some of  
19 these incidents, which should have been addressed  
20 by someone, were you satisfied with the responses?  
21 Was any corrective action taken?

22 And if not, have you any  
23 suggestions what could be done at the higher level  
24 with respect to this sort of abuse of  
25 discretionary powers on the front line?

1 I guess maybe, Mrs. Khan, CAIR, I  
2 think part of their responsibilities would be to  
3 make complaints in certain cases.

4 MS KHAN: We never make a  
5 complaint on behalf of someone who doesn't want to  
6 make a complaint.

7 MR. ALLMAND: What about in a  
8 general way?

9 MS KHAN: I don't believe -- at  
10 least with the provincial human rights  
11 commissions, I don't think you can actually make a  
12 general complaint. You actually have to have a  
13 specific person and -- I could be mistaken because  
14 I know that when we have tried --

15 MR. ALLMAND: I know before  
16 parliamentary committees you could request to  
17 testify before the Justice committee and paint a  
18 picture of what is happening in the community.

19 MS KHAN: Which we have. We will  
20 be testifying, for example, before the Senate  
21 committee on Bill C-36, where we will highlight,  
22 for example, the survey, among other things.

23 As we have mentioned, part of the  
24 problem is having people actually be willing to  
25 come forward and approach an institution or a



1 public body to achieve some form of justice. That  
2 is something within the community that we have to  
3 work at, to educate them, to let them know what is  
4 out there, you know.

5 We have offered our help, but you  
6 can only -- you can't force someone to do  
7 something they are not willing to do. That's one  
8 issue.

9 Another issue -- and this goes  
10 back to November of 2002. Because I can't quote  
11 what was said in Parliament per se, but when the  
12 issue of Maher Arar was brought up, one party in  
13 particular, in Parliament, and then outside of  
14 Parliament, completely almost tried him as guilty.

15 And as a citizen of this country,  
16 or even as an immigrant, and you see the  
17 government -- you know, politicians in the  
18 government at very high levels sort of assume that  
19 someone's guilty even though they are -- it sends  
20 a chill.

21 It makes you wonder, how can I  
22 approach my government when one aspect of it is  
23 sure that, you know, he was guilty and he was  
24 shipped off for some reason and case closed?

25 If anything, the Muslim community

1 has found the NDP, for example, quite sympathetic  
2 towards its concerns, and you might see more  
3 movement towards that.

4 But as Professor Antonius pointed  
5 out, it is a relatively young community which  
6 needs to know how the system works. That is  
7 another part of the picture, of standing up for  
8 your rights, having the courage to do so, and  
9 knowing how to do it.

10 MR. ALLMAND: Do the other  
11 witnesses have any comments on the questions I  
12 made about the response at higher levels and your  
13 satisfaction with -- I mean, aside from this  
14 Commission. I am talking about these general  
15 abuses that take place on the front line.

16 MS KHAN: I just want to add,  
17 speaking with Shirley Heafy, who is in charge of  
18 the public complaints against the RCMP, she  
19 indicated -- and I believe it is in one of the  
20 articles here, I am not sure which one. But she  
21 indicated she knew many families that had been --  
22 you know, their homes had been raided, and they  
23 refused to file a complaint. She encouraged them,  
24 but they refused to come forward.

25 And she herself cannot come

1 forward in a general way because of the  
2 constraints and the rules. So there is that  
3 frustration there.

4 Last but not least we have  
5 Minister McLellan saying there is no racial  
6 profiling. That's like a nail in the coffin.

7 MR. ALLMAND: To my second  
8 question: Professor Antonius, and others among  
9 you, spoke about stereotyping, and Professor  
10 Antonius referred to an editorial in The Gazette.  
11 And of course the impact of this stereotyping on  
12 the attitudes the front line officials may have in  
13 using their discretionary power, images build up  
14 as a result of the stereotyping.

15 But I think part of the problem --  
16 and I think you commented on this -- is that in  
17 Canada here, and with the age of the Internet, we  
18 are getting this imaging not only from Canadian  
19 media but a lot from the United States, in  
20 television and radio, magazines.

21 I just saw one recently that I  
22 found absolutely shocking. I was watching, about  
23 two weeks ago, CNN and I saw Ann Coulter being  
24 interviewed by CNN about a bumper sticker that she  
25 had put together which said that: "News magazines

1 don't kill, Muslims kill". And the interviewer on  
2 CNN said "that's a great bumper sticker".

3 I mean, to me it was just  
4 outrageous. This is seen on Canadian -- well,  
5 seen around the world, I guess, on CNN.

6 I don't know what the answer to  
7 that. As I say, even if we were able to clean up  
8 our entire Canadian media and educate them here in  
9 this country, with this overflow of media from not  
10 only the United States but from around the world,  
11 what you can do about this.

12 Do any of you have any comments?

13 I guess if it was in Canada, a  
14 comment like Ann Coulter's could be brought to the  
15 CRTC.

16 Professor Antonius?

17 MR. ANTONIUS: Well, of course the  
18 fact that these things happen in American news  
19 media make it easier for Canadian news media to  
20 repeat the same thing. That's for sure. But the  
21 result goes -- like, you don't need the Americans  
22 to find these kinds of statements. That's all I  
23 am trying to say.

24 When you read, for instance, in  
25 Macleans magazine that the Arab countries take a

1 somewhat different view of life on this earth from  
2 that of the west, Arab culture appears to put the  
3 glory of the tribe or Allah before the individual  
4 suffering or happiness. These are one-of-a-kind  
5 statements.

6 When a person like Daniel Pipes is  
7 invited here to address audiences in universities,  
8 and in Parliament, I believe, and he says that the  
9 arrival of a large number of Muslims in this  
10 country is a danger to the society, it legitimizes  
11 the attitude of the security people who have to  
12 make these discretionary decisions.

13 So there is an impact of  
14 legitimization of these sort of hostile attitudes.

15 So whatever steps are taken at the  
16 top are very important.

17 Right after September 11, I  
18 mentioned this morning that basically there was a  
19 polarization. The antagonistic attitudes were  
20 stronger, but the expressions of support were  
21 stronger as well. And some politicians, the Prime  
22 Minister, and the provincial prime ministers as  
23 well, made very positive statements and they had a  
24 very good impact, a very positive impact.

25 So what I am saying is that the

1 position that the government will take on this  
2 issue will go a long way to rebuild the trust if  
3 the position is correct.

4 MR. ALLMAND: Thank you very much,  
5 Mr. Commissioner.

6 THE COMMISSIONER: Thank you,  
7 Mr. Allmand.

8 Certainly. Would you come  
9 forward, if you would? It's easier to hear.

10 MR. SALOOJEE: I just have a  
11 number of very brief questions.

12 EXAMINATION

13 MR. SALOOJEE: If you could turn  
14 your minds to the issue of Canadian Muslims  
15 travelling to the United States, and certainly  
16 issues surrounding that, I am wondering if the  
17 panellists might be able to speak to what they  
18 know or their experiences about Canadian Muslims  
19 travelling to the United States and the  
20 difficulties that that poses for many of them, and  
21 the challenges that that poses for many of them?

22 MS BAHDI: I can only offer a  
23 limited perspective on this.

24 But let me just say that I myself,  
25 I have said I don't travel to the U.S. if I can

1 help it. I live in Windsor, and I have not gone  
2 over the border for several years, and that is a  
3 conscious decision position born out of fear, and  
4 I will be very blunt about that.

5 My research has revealed a number  
6 of cases where individuals have come under  
7 scrutiny, or been interviewed by members of CSIS  
8 or the RCMP here in Canada, and then effectively  
9 told that they were no longer persons of interest,  
10 but essentially advised informally that they  
11 probably should not travel to the U.S.

12 MR. SALOOJEE: So would you say  
13 that there is ongoing discrimination of Canadian  
14 Muslims when they travel to the United States  
15 after 9/11?

16 MS BAHDI: I don't know that I  
17 have done the research to make that conclusion,  
18 but I can certainly say there is a perception that  
19 there is ongoing discrimination.

20 I am not sure if my colleagues  
21 can speak to that.

22 MR. ANTONIUS: I would just like  
23 to add to that. When people add to the United  
24 States usually what causes, what prompts the  
25 reaction of hostile attitude is the country of

1 birth. In this regard, whether you are a Muslim  
2 or a non-Muslim, coming from a country which is  
3 seen as a dangerous country, you get the same  
4 treatment. So even if you are a Christian coming  
5 from Syria or Palestine or Egypt, you would be  
6 treated the same way.

7 MR. SALOOJEE: Could you enumerate  
8 those countries, those problem countries, so to  
9 speak?

10 MR. ANTONIUS: It is not a fixed  
11 list. It fluctuates with events. Sometimes some  
12 countries are seen as friendly. Usually it  
13 coincides globally with the countries where there  
14 is a Muslim majority or an Arab majority,  
15 countries where there is an Arab majority or parts  
16 of the country where there is a Muslim majority.

17 MR. SALOOJEE: So it would be fair  
18 to say that those countries include Syria, for  
19 example?

20 MR. ANTONIUS: Of course. Sudan,  
21 Palestine, sometimes less Tunisia and Egypt  
22 because they are friendly to the west. This is  
23 the place where it fluctuates.

24 So, yes, it would include most of  
25 the Arab countries. It would include most of the



1 Muslim countries in Asia.

2 MR. SALOOJEE: I think it is fair  
3 to say many of these cases predate Maher Arar, so  
4 problems of Canadian Muslims or Canadian Arabs  
5 crossing the border is something that has been  
6 fairly well publicized, I think, prior to  
7 Mr. Arar; that it is --

8 MR. ANTONIUS: Essentially since  
9 September 11.

10 MR. SALOOJEE: Yes. To your  
11 knowledge, has the Canadian government taken  
12 measures to address this issue, that when its  
13 citizens cross the border into the United States  
14 they are frequently subject to harassment or  
15 second-class treatment? And has that response  
16 been adequate, to your mind?

17 MS BAHDI: Well, we had a travel  
18 advisory at one point. But beyond that, I am not  
19 aware of any specific actions taken.

20 MS KHAN: I just want to bring up  
21 one case, a very high-profile case, that actually  
22 happened not too long ago. This had to deal with  
23 a very respected Muslim cleric, Ahmad Kutty in  
24 Toronto.

25 This is an individual who -- I

1 hate to use the designation, but we talk about  
2 moderate Muslims, and it seems to be an acceptable  
3 description. But this is someone who is just so  
4 well-respected and well-liked by people of  
5 different backgrounds. He is for integration, he  
6 is for participation, he has condemned terrorism.

7 But nonetheless, on a trip with  
8 another associate in the States to go and deliver  
9 a lecture in Florida, he was stopped at Florida  
10 airport, questioned for 16 hours, made to sit in a  
11 prison and wear a prison uniform. Then, at the  
12 end of those 16 hours he was declared inadmissible  
13 and he was offered a choice of returning to Canada  
14 or being held for months in the U.S. to be  
15 considered for admission or not.

16 As one American official told him,  
17 it was actually on the second anniversary of 9/11,  
18 the American official told Mr. Kutty and his  
19 associate, "You picked a bad day to fly."

20 I don't recall any sort of public  
21 outcry by our government or if there was any kind  
22 of public statement by our government regarding  
23 the way these two individuals were treated. There  
24 might have been a statement, there might not have,  
25 but I don't recall one.

1 MR. SALOOJEE: Thank you very  
2 much. Those are my questions.

3 THE COMMISSIONER: Thank you,  
4 Mr. Saloojee.

5 Mr. Fothergill?

6 EXAMINATION

7 MR. FOTHERGILL: Thank you,  
8 Commissioner.

9 I shall start by introducing  
10 myself. My name is Simon Fothergill, and I appear  
11 for the Government of Canada.

12 I think I might address my first  
13 question to the panel generally.

14 There has been a very strong theme  
15 throughout your testimony which relates to a  
16 climate of fear and mistrust, obviously  
17 specifically in relation to our country's policing  
18 and security authorities. But it seems to be more  
19 widespread than that.

20 I wonder if I can ask you: Would  
21 you agree with me that, first of all, this is a  
22 phenomenon which is difficult to understand for a  
23 number of different reasons? It is difficult to  
24 measure. It is difficult to identify its root  
25 causes and therefore in some respects it is

1           difficult to address in a constructive way.

2                           Maybe I will just proceed from  
3 left to right. Professor Bahdi?

4                           MS BAHDI: Your question is: It  
5 is a phenomena that is difficult to understand and  
6 so therefore difficult to address in a  
7 constructive way?

8                           MR. FOTHERGILL: That is what I am  
9 suggesting, yes. I am not saying impossible, but  
10 difficult.

11                          MS BAHDI: Right, it certainly is  
12 difficult, yes, absolutely. I will agree with you  
13 that it is difficult, but I will stress that it is  
14 not not doable.

15                          MR. FOTHERGILL: We will discuss  
16 some possible approaches in the course of my  
17 questions, I can assure you of that.

18                          MS BAHDI: Thank you.

19                          MR. FOTHERGILL: Anybody else want  
20 to comment on that or is that proposition actually  
21 fairly uncontroversial?

22                          MS KHAN: I would say it is not  
23 difficult to understand the community's feelings,  
24 given everything that is happened since 9/11 in  
25 terms of the many cases we have had of people

1 being detained, sent overseas, being part of the  
2 rendition process, high-profile cases which turned  
3 out to not have any merit to them whatsoever.

4 I don't think it is difficult to  
5 understand the fear.

6 MR. FOTHERGILL: Professor  
7 Antonius?

8 MR. ANTONIUS: It is not difficult  
9 to observe. You can observe it easily. Now, it  
10 may be difficult to measure very accurately and  
11 say it is this level of so many per cent. I mean,  
12 if you want to quantify it, I would say, yes, it  
13 is difficult. But you can qualify it very clearly  
14 without difficulty. There is no conceptual  
15 difficulty in identifying it and naming it and  
16 seeing it.

17 MR. FOTHERGILL: All right.

18 MS BAHDI: Can I just quickly add  
19 on thing?

20 MR. FOTHERGILL: Please.

21 MS BAHDI: When I say it is  
22 difficult to address, if I may just elaborate,  
23 what I meant was that often there is resistance  
24 and denial, and it is the resistance and denial  
25 that is difficult to meet; to have a discussion

1           about these issues is difficult in the face of  
2           that.

3                           MR. FOTHERGILL: All right.

4                           Some of the things that you have  
5           identified as contributing to the perception --  
6           and I think it is pretty clear there is a  
7           perception, at a minimum. There may be disputes  
8           about the underlying cause of the perception, but  
9           I think the perception is clearly a problem that  
10          the government clearly has to address, I would say  
11          perhaps not unilaterally but in conjunction with  
12          the communities who hold that perception.

13                          But some of the issues that you  
14          have identified as contributing to the perception,  
15          I think we started the day with an examination of  
16          media portrayals, generally through editorials and  
17          cartoons, and we have heard of a number of  
18          high-profile incidents, not only here in Canada  
19          but a point that was made by Mr. Allmand right now  
20          about CNN and the Brandon Mayfield high-profile  
21          incident, clearly some of the factors that are  
22          giving rise to this climate of fear and mistrust  
23          originate outside of Canada, which poses another  
24          challenge for us.

25                          I suppose we should be careful

1           about what we say about the media because they  
2           will probably have their revenge in the morning.  
3           --- Laughter / Rires

4                         MR. FOTHERGILL:  Would you agree  
5           with me there is a tendency, in all of these  
6           high-profile incidents, to sensationalize them?  So  
7           there is almost an appetite to print stories that  
8           perhaps exaggerate a threat and then also -- I am  
9           now speaking more from the government's  
10          perspective -- to demonize the government if the  
11          threat turns out not to be what it might have  
12          been?

13                        MS KHAN:  Well, in all of these  
14          cases, I believe it was the security authorities  
15          themselves who publicized them.  In the U.S., you  
16          would have then -- you would have John Ashcroft  
17          announce some high-profile arrest himself, and  
18          then it turns out nothing to be there.

19                        So to blame the press for  
20          exaggeration, I think that that is not putting the  
21          responsibility where it lies initially.  I am not  
22          saying the press is not to blame.  I am sure that  
23          the press has a role as well, and there have been  
24          high-profile cases in the United States of where  
25          the press has exaggerated, and that is another

1 issue.

2 But I think the government does  
3 bear some responsibility when it takes the  
4 initiative to hold a press conference, or to issue  
5 a press release announcing: "Look, we have this."

6 MR. FOTHERGILL: Fair comment.

7 But would you agree with me that  
8 there is a tendency in our media reporting in a  
9 country such as Canada to exaggerate in order to,  
10 I assume, sell papers or attract viewers, but the  
11 more intense it can be portrayed as, whether it is  
12 good or bad, that tends to be the portrayal that  
13 we see?

14 MR. ANTONIUS: Yes. I will go a  
15 little further than what you said. When you said  
16 it comes from outside, I would say it fits in  
17 something historical. This notion of Oriental,  
18 this dominant view of the other, is very old,  
19 right?

20 However, that is not an excuse in  
21 the following sense. The population of Canada has  
22 been changing rapidly. I mean, Canada has an  
23 experience with receiving people from other  
24 cultures who are seen as alien. We don't have to  
25 replay the whole history of the 19th century, or



1 the early 20th century, to understand that we  
2 should not do the same with Arabs -- Arab  
3 Muslims -- and it applies sometimes more to  
4 Muslims, sometimes to Arabs, and sometimes to  
5 both.

6 I think the fact that sometimes it  
7 originates outside is not an excuse for not  
8 addressing it properly, and therefore it must be  
9 addressed properly.

10 Now, the tendency to take whatever  
11 is sensational -- true. But what is the  
12 sensationalism built on? If you think of some  
13 artists, they pick sensational things but not  
14 based on their ethnicity.

15 When it comes to Muslims or to  
16 Arabs, the sensationalist part plays a lot, either  
17 on the religion or the ethnicity, if they are  
18 Arab. Therefore, it is very important for the  
19 government to give a signal that official policy  
20 stands in opposition to the stereotyping trends.  
21 And the stronger the foreign elements are, the  
22 stronger the reaction from the government is  
23 needed to counterbalance that.

24 MR. FOTHERGILL: Professor Bahdi.

25 MS BAHDI: Thank you. What I

1 would like to stress is that the fear doesn't come  
2 from reading the newspapers. The fear comes from  
3 the direct experience of members of the community  
4 with decision-makers, or with their knowledge of  
5 family or friends who have that direct experience.

6 So when we refer to newspaper  
7 articles, it is not that we are saying this is the  
8 basis of the fear, it is actually -- at least the  
9 way I refer to it is evidence of the stereotypes  
10 that is operating in decision-making, because it  
11 exists in society at large and gets replicated,  
12 because we are all human, by the human  
13 decision-makers who share those stereotypes.

14 MR. FOTHERGILL: But would you  
15 agree with me that we seem to have almost a  
16 classic case of a vicious circle after a while, in  
17 that you get these kinds of portrayals which shape  
18 the community perception which, in turn, shapes  
19 their attitude towards law enforcement which, in  
20 turn, makes interactions with law enforcement  
21 difficult. And around we go again. It is almost  
22 like a cycle.

23 MS BAHDI: Well, certainly it is  
24 part of the story, but as I have just tried to  
25 suggest, it is not the whole story. The direct

1           experience is a significant part of that  
2           perception.

3                           MR. FOTHERGILL: But the  
4           perception itself can lead to more direct  
5           experiences, I am suggesting.

6                           MR. ANTONIUS: May I comment on  
7           that?

8                           MR. FOTHERGILL: Please.

9                           MR. ANTONIUS: The fact that it is  
10          a cycle of events that reinforces itself should  
11          not distract us from the fact that there is a way  
12          to break the cycle, and that is where government  
13          responsibility comes in. There is a way to break  
14          the cycle. There is a place where you can  
15          intervene.

16                           These things are not mechanical.  
17          We are not in the realm of physics; we are in the  
18          realm of society and meanings and values and  
19          normative behaviour, and that is why we should not  
20          take the cycles metaphor too far.

21                           MR. FOTHERGILL: All right. I am  
22          sure you will understand my perspective. We have  
23          heard generally in the course of the day, which of  
24          course is entirely appropriate, the perspective of  
25          the Muslim community, but I am sure that all of

1           you would agree that there is a policing  
2           perspective and also a security intelligence  
3           perspective, and that this perception is also very  
4           problematic from the police point of view and from  
5           the security intelligence point of view in terms  
6           of discharging their own mandates if they don't  
7           have the support or the confidence or the  
8           cooperation of the communities that they are  
9           trying to protect and police.

10                           What I am going to try to do is  
11           perhaps ask you to agree with me, if you can,  
12           about some of the challenges from the policing  
13           perspective, and then what I will do after that is  
14           we are going to look at some of the initiatives  
15           that the government is pursuing and I would  
16           welcome your views on whether you think they are  
17           constructive or not.

18                           Just before we leave this, one  
19           other factor that I think you mentioned, Professor  
20           Antonius, was that some of the members of Canada's  
21           Muslim and Arab populations arrive in the country  
22           with a certain distrust of authority that can also  
23           colour their perceptions of police and security  
24           agents.

25                           Isn't that correct?

1 MR. ANTONIUS: Absolutely.

2 MR. FOTHERGILL: I want to refer  
3 to the "Know Your Rights" document at tab 9 of  
4 Exhibit P-129.

5 This is the little portable  
6 brochure that provides advice from CAIR-CAN, and I  
7 should probably address my question in the first  
8 instance to Dr. Khan because of your affiliation  
9 with the organization.

10 I know that under the heading "If  
11 CSIS/RCMP Contacts You" the advice is, first of  
12 all:

13 "You do not have to talk to  
14 CSIS/RCMP.

15 You have no obligation to  
16 talk to CSIS/RCMP, even if  
17 you are not a citizen."

18 And then you say:

19 "Never meet with them or  
20 answer any questions without  
21 a lawyer present."

22 I am wondering if you would agree  
23 with me that from a policing perspective, if it  
24 were the case that no citizen would ever speak to  
25 them without a lawyer present, it would in fact be

1 very difficult for them to do their job?

2 They make hundreds of inquiries in  
3 the course of any given day, and if there is a  
4 whole population that refuses to meet with them  
5 without a lawyer present, that actually makes it  
6 very difficult for them to do their job.

7 MS KHAN: It may, but it is their  
8 right. And if we are saying that for people to  
9 exercise their constitutionally guaranteed rights  
10 makes life difficult for the police, then -- to  
11 me, how can you tell people, you know, give up  
12 your right to make the job easier?

13 MR. FOTHERGILL: I don't think  
14 that is what I am suggesting. It would be one  
15 thing if this advice was you have the option of  
16 insisting on the presence of a lawyer. That I  
17 think is a fair articulation of what the legal  
18 right provides.

19 MS KHAN: Sure.

20 MR. FOTHERGILL: This advice seems  
21 to go a little bit further. This says:

22 "Never meet with them or  
23 answer any questions without  
24 a lawyer present."

25 MS KHAN: Well, it is advice that

1 we provided. But even as our survey shows, as it  
2 showed from yesterday, even though people know  
3 they have that right, only I think about 16 per  
4 cent actually exercised that right.

5 We have given advice. People have  
6 chosen, it seems, not to follow it.

7 MR. FOTHERGILL: Another thing  
8 that I thought was noteworthy by its absence is  
9 any encouragement to pursue a complaint mechanism  
10 if the police or CSIS act inappropriately.

11 I know you have explained about  
12 the mistrust again in complaints mechanisms, but I  
13 am wondering: Would it not be appropriate to  
14 alert members of the Muslim and Arab communities  
15 to the possibility of redress?

16 MS KHAN: You are absolutely  
17 right. When people do call us -- for example,  
18 here we talk about writing a letter to the editor  
19 when faced with job discrimination. We didn't  
20 tell people "oh, you could write to your press  
21 council", we didn't say "oh, you could file a  
22 complaint with the human rights commission".

23 MR. FOTHERGILL: Right.

24 MS KHAN: This particular brochure  
25 does not tell people about complaint mechanisms in

1           these different areas. But when people do contact  
2           us, we do definitely tell them of appropriate  
3           bodies that they can go through if they would like  
4           to file a complaint. That is part of our mandate.

5                           MR. FOTHERGILL: One of the  
6           comments that I think was made more than once is a  
7           perception of a lack of accountability for the  
8           police and for the security services, the sense  
9           that they are somehow above the law.

10                           Now, I am sure all of you on the  
11           panel, and indeed all of us in this room, know  
12           that indeed they are not in fact above the law.  
13           They are accountable, and Mr. Waldman gave a us  
14           list, and he mentioned some things I had not  
15           thought of.

16                           We have the Commission for Public  
17           Complaints for the police, we have the SIRC for  
18           CSIS. If we are talking about race-based  
19           discrimination, clearly the Canadian Human Rights  
20           Commission has jurisdiction. Civil actions are a  
21           possibility.

22                           There are a number of redress  
23           mechanisms. But the difficulty, I suggest to you,  
24           if that they are not used, then it feeds this  
25           perception that there is no effective



1           accountability.

2                           I wonder if any of you would like  
3           to comment on that?

4                           MS KHAN: Well, I have said it  
5           before that, yes, these institutions are not being  
6           used to the extent that they should, and I would  
7           say that is an area that we are trying to educate  
8           our community on. It is a relatively young  
9           community.

10                           We have seen progress, for  
11           example, in the area of media. Our community has  
12           long thought the media was biased and this and  
13           this, and we have tried to tell them: If you  
14           don't like something, you write a letter to the  
15           editor -- you know, there are ways to address  
16           issues if you feel that you have been wronged.

17                           People are aware of the CRTC  
18           complaint mechanism. It is an ongoing process.

19                           Could we do a better job? I  
20           believe we could.

21                           I think there is that particular  
22           issue, but I think also this is why this  
23           Commission is so important. I refer to an op-ed  
24           that Maher Arar published in The Globe and Mail a  
25           couple of weeks ago in the Saturday edition, the

1 Focus section, where he points out that my life  
2 has been ruined, and the people who sent me there,  
3 they are still going about their lives as if  
4 nothing happened.

5 And it is that sense of unfairness  
6 or injustice, I think -- you know, people are  
7 looking for some sense of justice for what has  
8 happened in this particular case.

9 Do they concentrate on it  
10 disproportionately? Maybe yes. But nonetheless,  
11 we must -- as Professor Bahdi said, justice must  
12 appear to have been done, and that is what people  
13 are looking for.

14 MR. ANTONIUS: May I comment on  
15 this?

16 I have been involved a lot in  
17 educational activity in the community, and as I  
18 said, the Muslim communities and the Arab  
19 communities, with a lot of variation -- I don't  
20 want to put them all in the same bag -- generally  
21 come from countries where the tendency is to have  
22 rather repressive governments, and therefore not  
23 to trust. So there is a lot of education to be  
24 made here, of course, in the way that you relate  
25 to authority.

1                   But I think that this educational  
2 activity is made harder, much harder, when there  
3 are a few cases of discrimination, and therefore  
4 the importance of not only making sure  
5 discrimination does not take place but also  
6 redressing and -- you know, the necessity for  
7 redress will help us a lot. I won't say us, but  
8 will help those who try to educate these  
9 communities to adapt to the new system. It will  
10 help us a lot if there was redress, if there was  
11 fair treatment.

12                   When there is a very high-level of  
13 double standards, it makes our job impossible.  
14 That is why it is very important for the  
15 government to be absolutely clear on these issues.

16                   MR. FOTHERGILL: I would say that  
17 that is an issue that probably cuts both ways, and  
18 we will be coming to the CAIR-CAN survey in just a  
19 moment.

20                   But one of the things that makes  
21 that document quite problematic from the  
22 government's perspective is that it is allegation  
23 without specificity, without the possibility of  
24 meaningful response because there are no  
25 particulars, and there is no mechanism to resolve

1           it.

2                               We will come to the CAIR-CAN  
3           survey.

4                               But I think you are absolutely  
5           right, Professor, that seeing meaningful redress,  
6           seeing complaints brought forward, seeing them  
7           resolved in accordance with law and having a sense  
8           of justice is important for both sides of the  
9           equation.

10                              MR. ANTONIUS:  Yes.

11                              MR. FOTHERGILL:  Professor  
12           Bahdi -- sorry, were you going to say something?

13                              MS BAHDI:  Sorry.  I just quickly  
14           wanted to address the "Know Your Rights" CAIR  
15           Canada pamphlet and the point about always have a  
16           lawyer present with you.

17                              I think we have to remember that  
18           there is a history to this and that this was  
19           written, as I understand it, in the context of  
20           knowledge that there are consequences to  
21           individuals of not having a lawyer present.

22                              We all know examples of stories  
23           where having a lawyer present made a profound  
24           difference to your fate.  So that is, I think,  
25           where that comes from.

1                   And also my research has revealed,  
2                   and I think my colleagues will agree, that  
3                   individuals are often discouraged from having a  
4                   lawyer present. So that strong statement is in  
5                   fact a response to the discouragement about having  
6                   legal representation.

7                   MR. FOTHERGILL: Right. Professor  
8                   Bahdi, I somewhat hesitate to raise this with you  
9                   because it relates to you personally.

10                  MS BAHDI: That is okay.

11                  MR. FOTHERGILL: But having  
12                  introduced the subject, I do feel obliged to ask  
13                  you some questions about this. It is the Pearson  
14                  Airport incident.

15                  MS BAHDI: And it is not hearsay,  
16                  so we can talk about it.

17                  MR. FOTHERGILL: No, it is  
18                  certainly not hearsay. And, of course, I did  
19                  start the day by saying this is not the forum to  
20                  resolve these sorts of things.

21                  But I do feel obliged to ask you,  
22                  given that you are obviously a community leader,  
23                  legally trained yourself: Why did you not pursue  
24                  it? Why did you not make a complaint? Why did  
25                  you not insist when you went to secondary "I want

1 to know that man's name"? And why did you not  
2 pursue it, if I may say so, as an example, of what  
3 should be done if you are faced with inappropriate  
4 treatment?

5 MS BAHDI: I did get the man's  
6 name, and I may pursue it. I am not sure how, to  
7 be honest with you. Actually raising the issue  
8 here raises that.

9 I will tell you one of the reasons  
10 for my hesitation is that I am not sure that the  
11 incident itself will be understood. I am not  
12 convinced that if I go to the significant amount  
13 of time that it would take to not only file a  
14 complaint but pursue it and take on the  
15 decision-makers at the airport who did this, that  
16 in the end what happened to me would be  
17 understood.

18 When I tell that story to  
19 individuals who come within the community, it is  
20 immediately understood, and I will even share with  
21 you -- you know, to just tell you a little bit  
22 more about it. When I conveyed it to one of my  
23 colleagues who is on faculty, his first response  
24 was, "Weren't you afraid?"

25 Another law professor asked me

1           that question.

2                           But often when I tell the story to  
3 individuals who haven't had those kinds of  
4 experiences, their reaction is, "Well, you know,  
5 what's the big deal?" You know, two minutes  
6 having this back and forth with this person and  
7 nothing ultimately happened to you anyway.

8                           So there are two reasons: One is  
9 not being convinced that the system would  
10 understand; and, two, the significant time and  
11 effort that would go into it; and then, three, as  
12 I said, I haven't closed off that possibility, at  
13 least I don't think I have.

14                           MR. FOTHERGILL: All right. Thank  
15 you.

16                           I also want to ask you about the  
17 anonymous hotline tip experience you had. And I  
18 must confess I didn't fully understand it.

19                           You got this telephone number from  
20 a website, which was not an RCMP website; correct?

21                           MS BAHDI: Well, then I went to  
22 the RCMP website and it was the same phone number.  
23 But originally I had found it not on an RCMP  
24 website, that is right.

25                           MR. FOTHERGILL: And the advice

1           about reporting things like purchasing inordinate  
2           numbers of household cleaners, did that come from  
3           the RCMP or from the other website?

4                       MS BAHDI:  No, from the other  
5           website, as I noted when I first gave the  
6           testimony.

7                       MR. FOTHERGILL:  Mr. Waldman  
8           mentioned Deputy Commissioner Loeppky's testimony  
9           about zero tolerance.  I don't have the transcript  
10          here, but I have worked with him long enough to be  
11          able to say that what he really means by that is  
12          zero tolerance for credible risks.

13                      Deputy Commissioner Loeppky also  
14          testified at great length about a concept he calls  
15          "intelligence-led policing", and he spoke I think  
16          at some length about the recognition within the  
17          RCMP that resources are finite and that if the  
18          RCMP is going to be a modern police force, it must  
19          develop ways of applying its resources where they  
20          are most needed.

21                      Now, there was a suggestion I  
22          think, first of all, that zero tolerance for  
23          non-credible threats, for anonymous tips, would  
24          result in a waste of resources.  I think that is  
25          clearly true.



1                   But I am wondering where you got  
2 the impression that an anonymous tip always  
3 results in investigation?

4                   MS BAHDI: Because I asked the  
5 question: Will you investigate anything I think  
6 of as being unusual?

7                   And the answer that I got was that  
8 we will investigate. Now, the level of  
9 investigation we didn't get into at that point.  
10 So it wasn't that the individual promised me that  
11 immediately they would send a security official  
12 out to track down this person who I was talking  
13 about --

14                  MR. FOTHERGILL: If I may suggest,  
15 it is highly unlikely.

16                  MS BAHDI: I don't know. He  
17 didn't indicate that.

18                  But what I was told was that I  
19 should call in anything where I had this feeling,  
20 and I did say, "You mean, just a gut instinct?"  
21 And that was affirmed.

22                  MR. ANTONIUS: I would agree that  
23 it would mean to me zero tolerance to credible  
24 risks. Fine.

25                  The trouble is, how do I assess

1 credible risk?

2 MR. FOTHERGILL: Absolutely.

3 MR. ANTONIUS: And our whole --  
4 well, I think I can talk for my colleagues as well  
5 on that specific point.

6 What we are trying to communicate  
7 here is that the assessment of what constitutes  
8 credible risks is often based on stereotypes  
9 rather than on rational evidence. That is, you  
10 know, the bottom line. And when it is based on  
11 stereotypes rather than hard evidence or credible,  
12 rational evidence, it gives a signal to the  
13 community, and this is what we were trying to  
14 elaborate on.

15 MR. FOTHERGILL: Absolutely.

16 One final point. I think it was  
17 suggested by one of you that there did not appear  
18 to be any sort of remedy if there was a baseless  
19 tip that resulted in some sort of harassment, and  
20 I was just going to ask you if you are aware of  
21 the mischief provisions of the Criminal Code which  
22 I think would apply.

23 MS KHAN: No, I wasn't, and I  
24 thank you for that. I was aware in the States  
25 that fraudulent tips were actually prosecuted.

1           These were high-profile cases, and I haven't heard  
2           of one yet in Canada. But my ignorance doesn't  
3           mean that the law doesn't exist.

4                       MS BAHDI: This is an anonymous  
5           hotline.

6                       MR. FOTHERGILL: Yes. I think as  
7           far as prosecution is concerned, the Commissioner  
8           will know better than anybody, successfully  
9           prosecuting somebody on the basis of an anonymous  
10          tip would be very hard work in Canada.

11                      It is just gone 3:30. I will be  
12          probably in the region of half an hour to another  
13          45 minutes, so we might want to take a break.

14                      THE COMMISSIONER: Why don't we  
15          take the afternoon break for ten minutes?

16                      THE REGISTRAR: Please stand.

17          --- Upon recessing at 3:34 p.m. /

18                      Suspension à 15 h 34

19          --- Upon resuming at 3:47 p.m. /

20                      Reprise à 15 h 47

21                      THE REGISTRAR: Please be seated.

22                      MR. FOTHERGILL: Dr. Khan, I think  
23          I need your help with a piece of terminology  
24          before I ask my next question.

25                      You expressed some reservations

1 about the term "Sunni Islamic" terrorism or  
2 extremism and you mentioned that you would rather  
3 a different expression had been used. I was  
4 wondering if you could give me a different  
5 expression that would be suitable to capture the  
6 phenomenon of terrorism, clearly criminal  
7 behaviour, which purports to be ideologically  
8 motivated by adherence to Sunni Islamic faith?

9 MS KHAN: Well, I didn't read the  
10 document so I don't know what it said, but  
11 something like "al-Qaeda-based" extremism or  
12 terrorism.

13 MR. FOTHERGILL: Sorry, say again?

14 MS KHAN: "Al-Qaeda-based"  
15 terrorism.

16 MR. FOTHERGILL: Al-Qaeda.

17 MS KHAN: Again, I haven't  
18 seen the report so I don't know what an apt title  
19 would be.

20 MR. FOTHERGILL: I don't actually  
21 recall the report. I do remember a CSIS document,  
22 which I think is from its website, that identifies  
23 Sunni Islamic extremism as the leading threat to  
24 Canada's national security and I think it  
25 encompasses more than just al-Qaeda.

1                   But what you would like to see is  
2                   a specific enumeration of the terrorist  
3                   organizations that are posing a threat?

4                   MS KHAN: I think that would be  
5                   fair, yes.

6                   MR. ANTONIUS: I think one can  
7                   talk about this without enumerating the  
8                   association, but if you want to name the  
9                   phenomenon --

10                  MR. FOTHERGILL: Yes.

11                  MR. ANTONIUS: -- I would talk  
12                  about political violence expressed in religious  
13                  terms, or justified by religious terms, but I  
14                  think the essence of this violence is that it is  
15                  political violence.

16                  MR. FOTHERGILL: Yes.

17                  MR. ANTONIUS: It is expressed  
18                  sometimes in the religious terms.

19                  I think by analysing it like  
20                  that -- like, you don't need to make an overview  
21                  of all the organizations that are involved to name  
22                  the phenomenon, except one has to be careful in  
23                  not reproducing the assumptions by those who  
24                  justify this violence in the name of Islam.

25                  So by calling it Sunni violence or

1 Sunni terrorism, basically what we are doing is as  
2 if we are recognizing as valid the use by these  
3 politically violent groups of their use or misuse  
4 of Islam.

5 That is why I would prefer  
6 political violence expressed in the name of Islam  
7 or something like that.

8 MR. FOTHERGILL: Thank you. I  
9 take it that you would say this is somehow  
10 different from when we use an expression like  
11 "white supremacy", which also uses a sort of  
12 identifier in the context of a form of extremism  
13 which is prohibited?

14 MS KHAN: If I could just answer?

15 MR. FOTHERGILL: Please.

16 MS KHAN: When you say "white  
17 supremacist" movements, and you say that here in  
18 North America, people understand what you are  
19 talking about. That is something I wouldn't use  
20 in a part of the world where familiarity with  
21 western culture or western way of life is very  
22 low, where people have a very monolithic view or a  
23 very shallow view of western civilization.

24 So the term itself, it depends on  
25 where it's used. People in North America, when

1           you say "white supremacist movements", everybody  
2           knows what you are talking about.

3                           Do you see where I'm coming from?

4                           MR. FOTHERGILL: I do.

5                           MR. ANTONIUS: I would add to  
6           that, not only everybody knows about it, but the  
7           society that it uses it sees itself as white. So  
8           by naming this phenomenon, it isolates the  
9           phenomenon from the society at large.

10                           The same way within Islamic  
11           countries, sometimes you have expressions like  
12           that, but when used in an Islamic society it  
13           clearly identifies a very specific group; from  
14           outside it identifies the whole society as being  
15           extremist. In the context of a dominant discourse  
16           about Islam, it becomes problematic.

17                           MR. FOTHERGILL: Thank you. That  
18           is an interesting perspective.

19                           You will see in a minute why I  
20           want that clarification. I have a question for  
21           you, Professor Antonius, about your comments about  
22           international information-sharing.

23                           One of the observations you made  
24           is in the course of sharing information between  
25           countries, you said supposition becomes fact.

1                   I'm wondering, isn't it possible  
2           to share information responsibly in such a way  
3           that you identify whether it is in fact  
4           supposition or corroborated fact, or are you  
5           saying that this really should serve as an  
6           impediment entirely to sharing information?

7                   MR. ANTONIUS: I'm not a  
8           specialist of information-gathering and so my  
9           comments are the comments of a layperson on this.  
10                   What I would say is that given the  
11           state of the information services in most -- I'm  
12           saying most Muslim and Arab countries,  
13           information-gathering you are almost certain that  
14           it is going to be misused. What allows that is --  
15           this is not a technical issue.

16                   There is a desire, at least by the  
17           United States government, to subcontract torture,  
18           So in that context information-gathering becomes  
19           much more problematic, and unless you take all the  
20           precautions, and even if you take all the  
21           precautions, the counterpart in Egypt, or Tunisia,  
22           or Syria will not take the same precaution. So if  
23           you know that they are not going to take the same  
24           precautions, you have to take that into account  
25           before you share information.



1 MR. FOTHERGILL: And you may have  
2 a difficult choice to make.

3 MR. ANTONIUS: And you may have a  
4 difficult choice to make, absolutely.

5 MR. FOTHERGILL: Because I was  
6 going to ask you, in view of the fact CSIS has  
7 identified extremism from Islamic-based  
8 organizations as the number one threat, inevitably  
9 they have to have some knowledge, and I would  
10 suggest some contact, with these countries.  
11 Granted that it is problematic, and it is  
12 problematic on a lot of levels.

13 But I take it you are not  
14 advocating a complete cessation of  
15 information-sharing, just that there be due  
16 regard to the reality within which that  
17 information-sharing is taking place?

18 MR. ANTONIUS: I think so, yes.

19 MR. FOTHERGILL: I would now like  
20 to turn to the CAIR-CAN survey that was released  
21 yesterday. This is at tab 21 of Exhibit P-129.

22 --- Pause

23 MR. FOTHERGILL: So I think again  
24 I will address my questions in the first instance  
25 to Dr. Khan, but others should feel welcome to

1 comment if they wish.

2 You have already been asked,  
3 Dr. Khan, a couple of questions about the  
4 methodology underlying this report and I have a  
5 couple more questions for you.

6 I think you have explained  
7 the reasons why the respondents were granted  
8 anonymity.

9 This compendium of survey results  
10 is based on 467 respondents.

11 Is that correct.

12 MS KHAN: Yes, that is correct.

13 MR. FOTHERGILL: Can you give us a  
14 rough idea of how many surveys were distributed  
15 that resulted in these just under 500 responses?

16 MS KHAN: I can't really say. For  
17 example, we had the questionnaire on our website,  
18 so that was there. We distributed it to our list.  
19 I believe we have about 6,000 to 7,000 list  
20 members. Not all of them are in Canada mind you.  
21 We have a lot outside the country.

22 MR. FOTHERGILL: I see.

23 MS KHAN: So a lot of those would  
24 not respond to something -- to the situation.

25 As far as distributing hard copies

1 at various centres and mosques, I don't have the  
2 number on me right now.

3 MR. FOTHERGILL: I was trying  
4 to get a sense of the take-up rate, how many  
5 people given the opportunity to complete the  
6 survey actually chose to do so.

7 You can't help us with that?

8 MS KHAN: I can't give you -- I  
9 can't answer that, I'm sorry.

10 MR. FOTHERGILL: The next thing I  
11 notice is that hard copies of the survey were  
12 randomly distributed at mosques, Islamic centres  
13 and Muslim community events across the country.  
14 That is where you generated 211, or roughly under  
15 half of the responses. I think it can probably  
16 fairly be said that that represents a  
17 cross-section of the population, the Muslim and  
18 Arab population, assuming that they have at least  
19 some ties to the community.

20 MS KHAN: Well, I mean, if you  
21 look at the ethnicity of those who filled it out,  
22 you could see that 42 per cent were South Asian,  
23 36 per cent were Arab. I don't know if that  
24 replicates the same distribution of ethnicity in  
25 the Muslim population throughout Canada. I would

1 have to look at the Census to speak to that  
2 though.

3 MR. FOTHERGILL: Then we see that  
4 256 respondents, which is actually slightly more  
5 than half, learned of the survey in some way  
6 through a connection with CAIR-CAN.

7 MS KHAN: Yes.

8 MR. FOTHERGILL: That is to say  
9 that either they were already members of CAIR-CAN,  
10 on the mailing list, or they found it by using the  
11 CAIR-CAN website?

12 MS KHAN: Or someone forwarded the  
13 information to them.

14 MR. FOTHERGILL: Right. And  
15 you told us that CAIR-CAN is a grassroots  
16 advocacy organization.

17 So it is reasonable to suppose  
18 that a good proportion of the responses are people  
19 who already have some kind of interest in advocacy  
20 or issues that are in need of resolution between  
21 Canada's Arab and Islamic communities and the  
22 larger community.

23 Is that a fair statement?

24 MS KHAN: Well, actually one  
25 of the things that we did maintain in our

1 database of the questions that we -- of the  
2 responses was: Are you a member of CAIR-CAN? We  
3 did keep that data.

4 From my recollection, I think --  
5 again I would have to verify that, but I believe  
6 less than a third were. So I would say the  
7 majority actually had no connection to us per se  
8 as a member or whatnot.

9 MR. FOTHERGILL: Well, not a  
10 normal connection, but they nonetheless would have  
11 learned of the survey through an interest of some  
12 kind or indirect connection to CAIR-CAN?

13 MS KHAN: Well, for those who go  
14 to the website or receive it electronically, yes,  
15 but for those who fill out the paper copies --

16 MR. FOTHERGILL: No, I agree with  
17 you there.

18 I don't intend these as  
19 criticisms, but just so we understand to what  
20 extent this really is a representative sample.

21 Professor Antonius, I noticed in  
22 your résumé you seemed to have some expertise in  
23 quantification of data in a sociological  
24 perspective. I'm wondering, can you comment on  
25 the methodology used in the survey and what we

1           might infer about the reliability of the responses  
2           and to what extent they would be considered  
3           representative of the community?

4                       MR. ANTONIUS:  Sure.  I have not  
5           studied in detail the methodology, nor discussed  
6           it with the people who did it at CAIR-CAN.  So I  
7           don't have an in-depth knowledge of the  
8           methodology.

9                       But from what we can gather, the  
10          way the survey was handed out and the rate of  
11          response and so on, it is clear that you cannot  
12          say that it is a representative sample.

13                      MR. FOTHERGILL:  All right.  
14          Thank you.

15                      MR. ANTONIUS:  No, no, I'm not  
16          finished.  Saying it is not a representative  
17          sample means you cannot estimate percentages for  
18          the whole population with a known degree of  
19          accuracy.  So if, for instance, one answer was  
20          46 per cent, I cannot say I'm sure that in the  
21          real population it is anywhere between 44 and  
22          48 per cent with 95 per cent chance of being  
23          right.  I cannot say that.

24                      However, I can estimate  
25          qualitatively that this phenomenon takes place and

1           that it is important.

2                           So I can very well come out with a  
3           qualitative sense that there is something there.  
4           It is strong. The only thing I cannot say is  
5           whether it is 46 versus 40 per cent. Right? That  
6           I would not -- because the sample is not -- and  
7           I'm sure that CAIR, the people who did it would  
8           agree with me, that if you said -- if you were  
9           asking everybody in the population you cannot be  
10          very precise with the percentages.

11                           MR. FOTHERGILL: Yes.

12                           MR. ANTONIUS: But if you get  
13          46 per cent -- it might not be 46, it might be 40,  
14          it might be 50, but it is in this order of  
15          magnitude.

16                           So you can certainly determine an  
17          order of magnitude and the importance of a  
18          phenomenon, although you cannot, with precision,  
19          determine a very specific range where the  
20          percentages fall.

21                           So you can still assess that the  
22          phenomenon is there, that it is important, that it  
23          reflects something, but you cannot be very, very  
24          precise with exact percentages. So it takes away  
25          the numerical precision of the results, but it

1 does not take away the overall assessment of the  
2 magnitude of the phenomenon.

3 MR. FOTHERGILL: But are we really  
4 talking about a discrepancy of somewhere between  
5 40 and 46 per cent, or is it --

6 MR. ANTONIUS: I cannot tell. All  
7 I can tell is that there is -- this corresponds to  
8 what we hear, to what we know. So the results  
9 make sense. It is like they don't go against  
10 common sense from what we hear and see in areas  
11 outside of CAIR-CAN.

12 Like, I'm not in the network of  
13 CAIR-CAN in this respect and I would say that  
14 these results are roughly -- you know, they say  
15 something. I would take the phenomenon as  
16 explained there, I would say that the order of  
17 magnitude and the qualitative conclusions are  
18 valid, although I cannot say with precision the  
19 numerical quantity. That's all.

20 MR. FOTHERGILL: Any other  
21 comments?

22 MS KHAN: Yes, I would just like  
23 to add something.

24 What is being said qualitatively  
25 in the survey is actually not something new. I



1 referred to the government's submissions on -- the  
2 summaries of the roundtables, the cross-cultural  
3 roundtables that have taken place. Many of the  
4 participants have voiced these concerns about  
5 racial profiling by security agencies.

6 I don't have the tabs here, but in  
7 least two of the articles that were published well  
8 before the survey we have spoken to some of these  
9 disturbing tactics that actually have been  
10 designated in the survey, or have been written  
11 about in the survey.

12 Recently, Liberal Senator Mobina  
13 Jaffer has also voiced in the media disturbing  
14 tactics that people are calling her about.

15 So what you see in this survey, it  
16 is not something new. It is not a scientific  
17 survey. It is just a window of what we have heard  
18 repeated over and over again from many different  
19 sources and, if anything, we think our government  
20 should take the step to do an independent, proper  
21 survey of this phenomenon.

22 MR. FOTHERGILL: All right. Thank  
23 you. I appreciate that clarification.

24 It really goes back to something I  
25 said at the very beginning of my questions, which

1 is that in some ways this is a difficult  
2 phenomenon to measure. You have also spoken of  
3 problems of proof and the like.

4 But at the same time would you  
5 agree with me that a document like this is in fact  
6 quite difficult for the government to respond to  
7 because of the anonymity, because of the  
8 generalization? It is impossible for either the  
9 government to say, "You are right, that did  
10 happen" or "No, you are wrong, there is another  
11 perspective," because we don't know who is making  
12 the complaint. We don't know the circumstances.

13 Some of these thing, if true, are  
14 very clear violations of very clearly stated  
15 policies, but the government cannot do anything  
16 about it if we don't know who this happened to,  
17 who the perpetrator was.

18 MS KHAN: Well, for example if you  
19 go to Case Summary #3 on page 19, the respondent  
20 actually reported the incident.

21 In particular, I will go to Case  
22 Summary #7. The individual, Mosha Abu  
23 Allah(ph) -- I will identify him because he  
24 himself was at the press conference yesterday.

25 He actually went to the RCMP

1 website after this incident to find out how to  
2 file a complaint. He couldn't find any info on  
3 the RCMP website -- that is what he says -- so he  
4 e-mailed the RCMP to find out how to complain and  
5 he never got a response.

6 So, you know, if the government's  
7 recommendation is, "Well, we can't answer this  
8 because we just don't know who is there," it is  
9 almost -- maybe this may be strong language, but  
10 it is almost like a slap in the face to somehow  
11 deny that there is any kind of issue here.

12 We are presenting this not to  
13 browbeat the government, not to demean them, but  
14 to point out there is an issue here. Can we go  
15 forward together to address it, to find ways to  
16 address it, to redress it, so that if there are  
17 tactics which are outside of policy, they should  
18 cease. That's all. Nothing beyond that.

19 MS BAHDI: Can I just quickly  
20 address that?

21 MR. FOTHERGILL: Please.

22 MS BAHDI: When we ask the  
23 question: Is there anything that the government  
24 can do about it? I think we have to define what  
25 "it" is. If you don't know who the individuals

1 are who were involved, then clearly you can't give  
2 an individual remedy or you can't discipline  
3 individuals.

4 But what can be done is, there can  
5 be acknowledgment that there is a systemic problem  
6 and that that systemic problem has to first be  
7 acknowledged -- that is the first step -- and then  
8 investigated, dealt with.

9 So I think if we are talking  
10 about the "it" being a systemic remedy, there is  
11 something that can be done.

12 MR. FOTHERGILL: All right. Well,  
13 if we can treat it as a wake-up call as opposed to  
14 a scientific survey, then I think we can proceed.

15 I do want to touch very briefly on  
16 a couple of other studies that have been done.  
17 I'm not going to spend too much time on them.

18 I compiled a number of training  
19 and outreach initiatives that are being promoted  
20 by the federal government, as well as some  
21 reports. These were distributed to parties  
22 electronically and we also have additional hard  
23 copies available.

24 I am wondering if this binder  
25 could be marked as an exhibit?

1 THE COMMISSIONER: That would be  
2 Exhibit P-130.

3 EXHIBIT NO. P-130: Binder of  
4 training and outreach  
5 initiatives being promoted by  
6 federal government

7 --- Pause

8 MR. FOTHERGILL: Hopefully there  
9 are a lot of documents here that we can move  
10 through fairly quickly.

11 I did include four reports, which  
12 are some attempts to examine perceptions in  
13 different segments of the Canadian population,  
14 specifically in relation to the Anti-Terrorism Act  
15 which I appreciate is a more narrow subject than  
16 generally you have been addressing.

17 Really the only thing that I  
18 want to establish by bringing these to your  
19 attention is that it is not an easy phenomenon to  
20 identify, and for that reason the possible  
21 solutions to identify the issue -- sorry, to  
22 resolve the issue, can also be quite problematic.

23 But I want to give you the  
24 opportunity to comment on some of these findings.  
25 This is a focus group methodology.

1                   So if I ask you to return to the  
2                   report section of the binder, which is the last  
3                   one. It says "Relevant Reports." And under tab A  
4                   we have a research report prepared by the Research  
5                   and Statistics Division of the Department of  
6                   Justice. It is dated March 31, 2003. You will  
7                   see it is titled, "Focus Group Report: Minority  
8                   Views on the Canadian Anti-Terrorism Act, A  
9                   Qualitative Study."

10                   If we can turn to page 2 of the  
11                   report, after the Executive Summary you will see a  
12                   description of the methodology used here. Under  
13                   section 1.4 we read, under the heading  
14                   "Methodology":

15                   "The national study was  
16                   comprised of 16 focus groups  
17                   that were conducted in  
18                   Halifax, Montreal, Toronto,  
19                   Calgary and Vancouver, with  
20                   138 participants from about  
21                   60 ethnocultural minority  
22                   backgrounds."

23                   I think the first point I have to  
24                   make is that this is not limited to the Muslim or  
25                   Arab communities.

1                   If I can direct your attention  
2           to the approximately fourth paragraph on that  
3           page, which begins, "Participants were recruited",  
4           we read:

5                   "Participants were recruited  
6                   by random sampling procedures  
7                   based on telephone lists  
8                   available for the cities  
9                   chosen."

10                   So I am suggesting that this is a  
11           truly random sample.

12                   Then they were divided into groups  
13           to discuss different issues. You will see that  
14           Group 1 was comprised of individuals reporting  
15           Arab and West Asian ethnic backgrounds, as well as  
16           those of North African and Pakistani ethnicity.

17                   I think just to make our  
18           discussion of this as efficient as possible, I  
19           will just refer to the Executive Summary, which is  
20           on page 1, if you go forward in the document.

21                   As I said, this is specifically  
22           in relation to attitudes towards the  
23           Anti-Terrorism Act. But if we look at the bottom  
24           paragraph on page 1, it reads:

25                   "In general, focus group

1 discussions reveal that  
2 awareness of  
3 terrorist-related legislation  
4 was consistently low among  
5 participants across all  
6 target groups and all  
7 locations."

8 Then it goes on:

9 "However, participants were  
10 generally aware of new  
11 post-9/11 travel-related  
12 security measures, especially  
13 at airports and borders,  
14 including the need for  
15 passports and permanent  
16 resident cards to travel to  
17 the U.S."

18 The conclusions are set out on the  
19 facing page. Some of them are quite specific  
20 about provisions of the Anti-Terrorism Act, but if  
21 we go down to the last three paragraphs I think  
22 they may be of some interest in the context of our  
23 discussion today:

24 "Overall, the majority of  
25 focus group participants felt



1 the risk of having the  
2 Anti-Terrorism Act and its  
3 new police powers were  
4 acceptable to protect the  
5 country and its population.  
6 Most felt safer or the same  
7 with the legislation, and  
8 most hoped their reservations  
9 would not be validated.  
10 People adopted a wait-and-see  
11 approach."

12 That is as of March 31, 2003.

13 "In terms of the impact on  
14 individuals, families, and  
15 communities, participants  
16 confused the legislative  
17 impact of the Act with the  
18 impact of 9/11 events. When  
19 asked about the legislative  
20 impact of the Act, most cited  
21 discriminatory occurrences at  
22 the workplace in daily  
23 activities, when trying to  
24 rent or buy a home, at  
25 schools, places of worship,

1 and in social relationships."

2 Then there is a reference in the  
3 next paragraph to some other external factors that  
4 might have influenced the response.

5 I think the only thing I would  
6 point out here is that it seems to be a somewhat  
7 less negative view than the CAIR-CAN survey,  
8 although clearly concerns are being expressed.

9 Do any of you have any comments  
10 on that?

11 MS KHAN: Can you repeat what you  
12 just said?

13 MR. FOTHERGILL: Yes.

14 This appears to be a less negative  
15 outlook of the impact of this legislation in  
16 particular and, of course, there is a recognition  
17 that many people confuse the impact of the  
18 legislation with the impact of the events of 9/11,  
19 a less negative account than we read in the  
20 CAIR-CAN survey, and I'm just wondering if anybody  
21 on the panel would like to comment on that.

22 Professor?

23 MR. ANTONIUS: Yes. I have  
24 just seen the report so my comments will be  
25 superficial necessarily.

1                   However, what I see is that the  
2 results you quoted on page 1 of the Executive  
3 Summary talk about all three groups.

4                   MR. FOTHERGILL: Yes.

5                   MR. ANTONIUS: You have three  
6 groups, right?

7                   MR. FOTHERGILL: Yes.

8                   MR. ANTONIUS: CAIR-CAN's survey  
9 basically looked at Group 1. So if you wanted to  
10 compare the two to see whether it is important, we  
11 should look at the results for Group 1 alone.

12                   MR. FOTHERGILL: In isolation.

13                   MR. ANTONIUS: I don't know  
14 whether there is -- I'm sure there is somewhere,  
15 but we have to find it out.

16                   MR. FOTHERGILL: We have to go to  
17 the report, yes.

18                   MR. ANTONIUS: For sure, if you  
19 look at a more global population, including people  
20 who are not targeted by the Anti-Terrorism Act,  
21 they will be less aware. So it will be  
22 interesting to look at Group 1 specifically.

23                   MS BAHDI: Can I just jump in  
24 on that?

25                   MR. FOTHERGILL: Please.

1 MS BAHDI: As I look at page 5  
2 of the report -- and I appreciate we are going  
3 beyond the Executive Summary -- but down at the  
4 bottom, the discussion of listing of terrorist  
5 entities. I'm assuming that this comes from  
6 members of the Arab and Muslim participants, only  
7 because of the response.

8 It says:

9 "Overall, many concerns and  
10 questions were raised about  
11 the potential for harm due to  
12 both the public nature of the  
13 list with reference to the  
14 listing provisions of the  
15 legislation and to what were  
16 referred to as grey areas.  
17 These included one fear about  
18 the potential to stereotype  
19 ethnic minorities reminiscent  
20 of the McCarthy era where the  
21 list might contain common  
22 Middle Eastern names or names  
23 similar to those of known  
24 terrorists."

25 Because the list is predominantly,

1 largely Middle Eastern and Arabic names, I'm  
2 assuming that those who fear their names would be  
3 confused would be the Arab and Muslim  
4 participants. I think it is very strong to say,  
5 "fear reminiscent of the McCarthy era."

6 I, in fact, see that as  
7 supporting, in a qualitative sense, the  
8 CAIR-CAN survey.

9 MR. FOTHERGILL: Partly in the  
10 interest of time I'm not going to dwell on the  
11 other reports. I draw these to your attention,  
12 and also to the Commission's attention, in part to  
13 demonstrate that the government is not wholly  
14 unaware of these phenomenon.

15 The report at tab B deals with  
16 public views of the Anti-Terrorism Act more  
17 generally, and it won't surprise you to know that  
18 they are more benign.

19 Then the views of Canadian  
20 scholars is interesting, just for a diversity of  
21 views. This will shortly lead me to the next  
22 subject area I want to explore with you, which is  
23 what to do.

24 But what is interesting is that  
25 when you have 13 eminent legal scholars and other

1 scholars, the range of views is quite striking.  
2 Some see the Anti-Terrorism Act as downright  
3 un-Canadian; others think that it doesn't go far  
4 enough and that we should looking at weakening  
5 several procedural protections. So there is a  
6 healthy range of views expressed.

7 In the last report, which is  
8 probably more on the negative scale, is the  
9 Summary Report of Public Consultation with  
10 Ethnocultural and Religious Communities on the  
11 Impact of the Anti-Terrorism Act from  
12 November 29, 2004.

13 There is a list of participants at  
14 the back and you will see that Arab and Muslim  
15 groups are quite well-represented in this  
16 particular set of participating organizations.  
17 They include the Canadian-Arab Federation, the  
18 Canadian Council of Muslim Women, the Canadian  
19 Muslim Lawyers Association, the Coalition of  
20 Muslim Organizations, Council on American-Islamic  
21 Relations Canada, Muslim Canadian Congress and  
22 Muslim Students Association of the United States  
23 and Canada.

24 There I think you will find  
25 some resonance of the concerns expressed in the

1 CAIR-CAN survey.

2 But if I can refer you to  
3 page 9 -- this is one of the three groups that was  
4 discussing the issues -- you will see the first  
5 summarized point is:

6 "The group reported that  
7 while there was an agreement  
8 on the problems there was  
9 strong disagreement on how to  
10 tackle them. Some  
11 participants felt there had  
12 been a total breakdown of  
13 trust in the system as a  
14 result of an overzealous  
15 implementation of the  
16 Anti-Terrorism Act. Police  
17 were racially profiling  
18 people of colour and people  
19 of certain religions,  
20 including Muslims."

21 Then if you go to the  
22 next paragraph:

23 "Other group members  
24 presented an alternative  
25 interpretation, calling for

1                   increased training of police  
2                   and increased resources,  
3                   noting that CSIS has admitted  
4                   its lack of resources."

5                   And on we go.

6                   I want to turn now to some  
7                   of the initiatives that the government is  
8                   currently pursuing and give you an opportunity to  
9                   comment on whether you think that they are headed  
10                  in the right direction or whether improvements  
11                  could be made.

12                  This binder, of course, is not  
13                  comprehensive, but it does provide an overview of  
14                  some of the initiatives.

15                  If we start with CSIS at tab 1,  
16                  on page 1 there is a document with the  
17                  introductory sentence:

18                         "The following provides an  
19                         overview of the initiatives  
20                         within CSIS that touch on  
21                         cultural diversity."

22                  It begins by a strong statement  
23                  of commitment to employment equity principles.  
24                  We will see that in the recruitment materials  
25                  as well.



1 I take it you would agree with  
2 me that that is a core value that CSIS is properly  
3 embracing and promulgating throughout its  
4 organization?

5 --- Pause

6 MS BAHDI: Is your question that  
7 we are agreeing -- are you are asking us to agree  
8 that it is a core value --

9 MR. FOTHERGILL: Yes.

10 MS BAHDI: -- or that CSIS is  
11 properly embracing it?

12 MR. FOTHERGILL: Well, you can  
13 answer either or both.

14 I'm suggesting to you that it is,  
15 at least in the literature, stated to be a core  
16 value. I take it you would agree with me that  
17 that is appropriate?

18 MS BAHDI: Yes.

19 MR. FOTHERGILL: But I detect some  
20 concern on your part about whether it has been  
21 genuinely embraced.

22 MS BAHDI: No. I just wanted to  
23 clarify the question because there is a  
24 distinction in my mind.

25 MR. FOTHERGILL: Of course.

1 MS BAHDI: Let me just say that I  
2 think it is a very important value. We discussed  
3 earlier I think that there needs to be a  
4 multifaceted approach and that that is certainly  
5 one of the elements. So, yes.

6 The one thing I would like to say  
7 is that multiculturalism has a very broad  
8 definition, employment equity has a very broad  
9 definition, so you can't talk about all racialized  
10 groups and addressing the concerns of one segment  
11 by saying that you have a broad multicultural or  
12 employment equity policy, though.

13 MR. FOTHERGILL: Thank you. You  
14 will see a reference on this page with regard to  
15 the recruitment of personnel:

16 "CSIS continues to seek  
17 representation from the  
18 various ethnic communities."

19 We will have a look at the  
20 recruitment pamphlets in just a moment.

21 This page reports that:

22 "Currently 10% of CSIS  
23 employees have  
24 self-identified as coming  
25 from a visible minority

1 community."

2 We don't have particulars of which  
3 community, and that is obviously less than the  
4 minority population of Canada, which I think  
5 currently stands -- if you take the country as a  
6 whole it is slightly under 14 per cent. We will  
7 get to that in a moment.

8 Again, I don't want to bore you by  
9 reading all of this, but I do want you and I also  
10 want the Commission to be aware that these  
11 initiatives are underway.

12 If we look at the Training  
13 Development description on the next page, the  
14 Intelligence Officer Entry Training, not only are  
15 there specific modules on the subject, but you  
16 will see approximately a third of the way down  
17 the page:

18 "The issue of cultural  
19 diversity is woven into the  
20 fabric of numerous sessions  
21 offered during the initial  
22 training course:  
23 professional image in the  
24 workplace, communications  
25 strategy, human sources..."

1 I know there was some concern  
2 expressed about that.

3 "...foreign liaison and  
4 visits, trade craft,  
5 counter-terrorism and  
6 counter-intelligence."

7 I don't think there is any dispute  
8 that if I suggest to you that CSIS recognizes that  
9 if they are going to be effective they need to  
10 bring Arab and Muslim communities on board. In  
11 fact, I think CSIS would like nothing better than  
12 being able to recruit more effectively from these  
13 communities.

14 So these interests are not  
15 necessarily mutually exclusive.

16 You agree with that?

17 If I can turn to the  
18 recruitment brochure? This will be my last --

19 THE COMMISSIONER: Just a moment.  
20 I think they have some comments.

21 MR. FOTHERGILL: I'm sorry.

22 Professor...?

23 MR. ANTONIUS: I'm sorry, I could  
24 not respond right away because I was trying to  
25 check some parts of this document

1 MR. FOTHERGILL: I'm sorry, I am  
2 moving very quickly.

3 MR. ANTONIUS: I would say that at  
4 CSIS and the government the notion that all the  
5 citizens are equal, that there should be an effort  
6 to accommodate everybody is always said.

7 We are not saying that CSIS or the  
8 government is saying that we should discriminate  
9 against Arabs or Muslims. The trouble is, how do  
10 they go about doing it, number one. Then, in what  
11 way they define equal treatment and in assessing  
12 the risks.

13 What I'm saying is that in  
14 assessing the risks, in determining what should be  
15 done and so on, stereotypes enter into account.

16 To give just an example, I'm  
17 afraid -- I hope it doesn't distract from the  
18 issue -- but I have seen Members of Parliament who  
19 have a reputation as strong human rights defenders  
20 saying, "We support the rights of all people in  
21 the Middle East", and then they define the present  
22 situation as one of justice. You see? So it is a  
23 way of emptying the principles of equality from  
24 their content.

25 So I think that what one should

1 look at in these documents is not the stated  
2 principles, it is how they are put into  
3 application. That is my comment.

4 MR. FOTHERGILL: All right.  
5 Thank you.

6 Dr. Khan?

7 MS KHAN: I know this refers to  
8 CSIS and you will probably get to the RCMP, but  
9 there is one thing that also came to our  
10 attention.

11 In 2003, in Winnipeg, there was a  
12 national day-long training of emergency  
13 preparedness personnel and the session was on  
14 educating people about Islam and Muslims. It  
15 was sponsored by B'nai Brith, and they brought in  
16 -- actually the name escapes me -- an  
17 organization, a conservative organization from the  
18 United States to basically educate people about  
19 Muslims and Islam.

20 Right now that is the subject of a  
21 human rights complaint so I can't comment on it,  
22 but this is our concern. Who is training or  
23 educating field officers and whatnot and people  
24 who are at the front lines about the Arab and  
25 Muslim communities?

1                   MR. FOTHERGILL: I think,  
2           Commissioner, partly in view of the time, I'm not  
3           going to review much more of these materials. I  
4           think they may provide a useful reference resource  
5           for you and certainly any of the other  
6           participants who want to make comments at the  
7           appropriate time.

8                   The CSIS recruitment brochure for  
9           intelligence officers, for example, states that:  
10                   "Successful recruits should  
11                   be adaptable, empathetic and  
12                   sensitive to the cultural  
13                   morays of changing Canadian  
14                   society and embrace new  
15                   experiences with confidence."

16                   We will see very similar comments  
17           in the RCMP materials.

18                   The policies I think are clear. I  
19           take the panel's comments that the proof of the  
20           pudding is in the tasting in that it is really a  
21           question of how these things are implemented, but  
22           we will see here a multifaceted strategy that does  
23           involve consultation with the communities who are  
24           the subject of protection by both the police and  
25           the security service.

1                   I think perhaps all I can say,  
2           either for Part 1 or Part 2, is that if there are  
3           participants who have the opportunity to read  
4           these materials and they have comments that they  
5           would like to take into account, I for one would  
6           encourage them to do so.

7                   THE COMMISSIONER:  If I take the  
8           suggestion, Mr. Fothergill, I think it is a good  
9           one.  Obviously there would be a lot here.  But if  
10          anybody looking at those materials, and I direct  
11          to the panel, if there are comments that you have  
12          with respect to them, if you would forward those  
13          to the Inquiry I will certainly be pleased to  
14          receive them.  A copy of any comments would  
15          obviously be made available to the government.

16                   In just my observation, if I  
17          can -- I know we haven't had any re-examination  
18          yet -- but I think this type of dialogue even in a  
19          very small way started here is useful.  So I would  
20          encourage you to respond and to look at this, if  
21          it is not too onerous.

22                   I would certainly appreciate  
23          having comments about the programs that are in  
24          place or the steps that are being taken, positive  
25          and negative, or positive comments, critical



1           comments, whatever, would be helpful to me.

2                           That is what you envision,  
3           Mr. Fothergill?

4                           MR. FOTHERGILL:   That is it  
5           exactly what I envision.   Thank you very much.

6                           Those are my questions.   Thank you  
7           very much for your perspective today.

8                           THE COMMISSIONER:   Mr. Gover, do  
9           you have any re-examination?

10                           MR. GOVER:   I do, very briefly,  
11           Mr. Commissioner.

12           EXAMINATION

13                           MR. GOVER:   It starts with the  
14           CAIR-CAN pocket brochure, Dr. Khan, which is found  
15           at tab 9.   This is the pocket brochure "Know your  
16           rights", or a pocket guide.   Of course  
17           Mr. Fothergill asked you several questions  
18           about it.

19                           Because this panel is concerned  
20           with the impact of 9/11 and its aftermath on  
21           Canada's Muslim and Arab communities, I would like  
22           to determine when this brochure was prepared.

23                           MS KHAN:   This brochure was  
24           actually prepared in, I believe, 2000, I think a  
25           year, or a year and a half before the events of

1 9/11, because even at that time we were getting  
2 reports of people being questioned  
3 inappropriately. So we put this guide out well  
4 before 9/11, because there was already a climate  
5 of racism or discrimination or instances where  
6 people needed to know their rights.

7 MR. GOVER: Dr. Khan, in response  
8 to a question asked by Mr. Allmand regarding  
9 complaints, you referred to an article that quoted  
10 Shirley Heafey.

11 Is that correct?

12 MS KHAN: That is correct.

13 MR. GOVER: At the time you said  
14 that you were unable to turn up the tab where the  
15 article appeared?

16 MS KHAN: That is correct.

17 MR. GOVER: If I could take you to  
18 tab 11 of Exhibit P-129, here we have an article  
19 that appeared in The Toronto Star on August 1,  
20 2003, written by Riad Saloojee, the Executive  
21 Director of CAIR-CAN. This article appears to  
22 refer to the comments made by Shirley Heafey, the  
23 RCMP's civilian watchdog, as described in the  
24 article.

25 Is that right?

1 MS KHAN: That is correct.

2 MR. GOVER: Is this the article  
3 that you were referring to?

4 MS KHAN: Yes, it is.

5 MR. GOVER: I note that the  
6 article says that:

7 "Ms Heafey said at the time  
8 she had no way of knowing  
9 whether the RCMP was misusing  
10 its new anti-terrorism  
11 powers."

12 And she said that:

13 "Although her office had  
14 received five formal  
15 complaints about the RCMP's  
16 anti-terrorism activities,  
17 and many other Canadians had  
18 told you they had been  
19 harassed but feared the  
20 attention of public  
21 complaint, she said, 'We  
22 can't investigate unless  
23 there is a complaint and even  
24 if there is a complaint we  
25 can't see the information.

1                                   For all practical purposes,  
2                                   there is no civilian  
3                                   oversight.'" "

4                                   Is that the comment that you were  
5                                   referring to?

6                                   MS KHAN: That is correct.

7                                   MR. GOVER: Finally, in  
8                                   connection -- and I certainly invite you, as the  
9                                   Commissioner just did, to provide your comments at  
10                                  a time when you have had more time to consider  
11                                  what has become Exhibit P-130.

12                                  But in relation to the first  
13                                  report that Mr. Fothergill took you to, his  
14                                  proposition was that it suggested a less negative  
15                                  outlook regarding the impact of the Anti-terrorism  
16                                  Act than does the CAIR-CAN report just issued  
17                                  yesterday.

18                                  If you could turn up at the tab  
19                                  towards the back "Relevant Reports", and tab A,  
20                                  and if you turn, for example, to page 1 of the  
21                                  Executive Summary, I note that at the bottom of  
22                                  the page it is dated March 2003.

23                                  I note, of course, that the panel  
24                                  has given its evidence concerning the  
25                                  methodological issues surrounding this and other

1 reports.

2 Mr. Fothergill also took you to a  
3 report dated 2004.

4 My question for you, Professor  
5 Antonius, is: Do you attach any significance to  
6 the time at which that report and the other report  
7 that Mr. Fothergill took you to, the time at which  
8 they were prepared, as compared to the CAIR-CAN  
9 report?

10 MR. ANTONIUS: I would have to  
11 look precisely. I don't have in mind all the  
12 events that happened in terms of the steps that  
13 the law went through, and the discussion and the  
14 timetable. I am sure one could make comment after  
15 comparing the time with events, but I will have to  
16 do that afterwards. I cannot do it now.

17 MR. GOVER: Dr. Khan, do you  
18 attach any significance to the fact that this  
19 report, which suggests a less negative outlook,  
20 was from March of 2003?

21 MS KHAN: Well, in March 2003  
22 Maher Arar was in Syria and his case was not given  
23 as much media attention at that time. I believe  
24 March 2003 was also just before the Madrid  
25 bombings. And we know that after the Madrid

1           bombings, there was -- at least in the United  
2           States; I can't speak for Canada -- there was an  
3           increase in attempts to gather intelligence.

4                           This is just my personal opinion.  
5           It seems that it was a relatively quiet time in  
6           Canada with regard to security issues. That is  
7           just an observation.

8                           MR. GOVER: Thank you. And  
9           Professor Bahdi, any comment in that respect?

10                          MS BAHDI: The same comments as  
11           Dr. Khan came to my mind. Thank you.

12                          MR. GOVER: Thank you very much.  
13           Those are my questions.

14                          THE COMMISSIONER: Thank you.  
15           Mr. Gover.

16                          Well, that's it. It has been a  
17           long day but a very, very instructive and helpful  
18           day. I think it was extremely important having  
19           you come here and having a panel of leaders like  
20           yourselves from the Muslim and Arab communities  
21           has been most illuminating. The way you have  
22           answered the questions and your clear exposition  
23           of perspectives has been a help to me certainly  
24           and I think a help to everybody in the room.

25                          So I am very appreciative and

1           thank you very much for the time and effort you  
2           have put into it.

3                         MR. ANTONIUS: Thank you.

4                         MS KHAN: Thank you.

5                         THE COMMISSIONER: Mr. Joseph?

6                         MR. JOSEPH: There were just a  
7           couple of questions I had as a result of my  
8           friend, and I appreciate that.

9                         THE COMMISSIONER: Certainly.

10                        EXAMINATION

11                        MR. JOSEPH: My friend had asked  
12           you as an official representative, as counsel for  
13           the government, about this problem that he had  
14           with the issue in the brochure about never  
15           speaking to law enforcement or the RCMP or CSIS  
16           without the benefit of counsel.

17                        I think it is important that this  
18           Commission know of what your personal knowledge is  
19           with respect to comments being made by law  
20           enforcement officials to the effect, if not  
21           quoting, time and time again, "You don't need a  
22           lawyer unless you are guilty."

23                        Now, is that an experience -- I  
24           have experienced with clients. Is that an  
25           experience any of the panel can speak to with

1           respect to their organizations, or their  
2           knowledge?

3                           MS KHAN: Well, we have had  
4           several reports of people being told, "You don't  
5           need a lawyer." I can't recall specifically if  
6           that was, you know, connecting or insinuating  
7           about someone's guilt or not. But we have had  
8           numerous reports of people being discouraged to  
9           have a lawyer. Or when they do agree to meet in  
10          the presence of a lawyer, the agent, the security  
11          agent, is no longer interested in interviewing the  
12          individual.

13                           We have also had reports of agents  
14          telling people that our organization, CAIR-CAN, is  
15          making trouble for CSIS and security agencies by  
16          letting people know their rights of having someone  
17          present, a third party present.

18                           MR. JOSEPH: So it is not unknown  
19          in your organization, when these complaints come  
20          to you, that when somebody is called upon to be  
21          interviewed by CSIS or the RCMP, and they exercise  
22          that right, or attempt to say "I want to speak to  
23          a lawyer first", they may or may not ever hear  
24          from them again if counsel is going to be there?

25                           MS KHAN: That is correct. And I



1 believe this is what happened in the case of Maher  
2 Arar. He was contacted, he contacted his lawyer,  
3 who called the RCMP, and never heard from them  
4 again.

5 MR. JOSEPH: My last question is  
6 with respect to the issue that my friend was  
7 talking about, white supremacist. I think this is  
8 important because, in my view, there is no  
9 correlation between the title or labels that we  
10 put on people with respect to the white  
11 supremacists and trying to compare that, as that  
12 is being identified as a label, versus, for  
13 example, Islamic or Sunni terrorists.

14 And my question is this: We know  
15 that we have a direct link, whether it is media or  
16 law enforcement or whatever, with respect to an  
17 entire religious faith, of being of the Islamic  
18 faith, and criminal acts directly linked. Yet,  
19 does the panel have any knowledge of, for example,  
20 with Timothy McVeigh professing to be a strong  
21 Christian, or anti-abortionists killing doctors in  
22 the name of the Bible -- has this panel ever been  
23 aware where those people have been described as  
24 being Christian terrorists, or people that kill in  
25 the West Bank as Jewish terrorists?

1                   Do you ever see that link for any  
2                   other group when you are talking about  
3                   Christianity, Judaism, Islam, or is it just  
4                   referred to with respect to the Islamic linkup?

5                   MS BAHDI: I have seen the link  
6                   between Judaism and terrorism, but rarely. And  
7                   Timothy McVeigh is understood as an individual.  
8                   He is not understood as a representative of his  
9                   community. Not so as the label suggests when we  
10                  talk about Muslim terrorists.

11                  MR. JOSEPH: Doctor?

12                  MR. ANTONIUS: I would say also,  
13                  that yes, occasionally, when some of the acts of  
14                  terrorism are committed by Jewish terrorist  
15                  organizations, occasionally it would be mentioned.  
16                  Often it would not, and often the acts themselves  
17                  would not be qualified as terrorism in the first  
18                  place.

19                  So, for instance, when people get  
20                  killed -- when kids get killed in the West Bank,  
21                  this is not reported at all as terrorism, you  
22                  know?

23                  Yes, there is a singling out of  
24                  the Islamic character of the perpetrators when the  
25                  perpetrators are Muslim, more often than for other

1 ethnic or religious groups.

2 MR. JOSEPH: Professor, do you  
3 have anything you would want to add to that? Do  
4 you agree with that statement?

5 MS KHAN: I agree with everything  
6 you have said.

7 MR. JOSEPH: Thank you very much  
8 for your patience.

9 THE COMMISSIONER: Thank you.  
10 That completes today's  
11 proceedings. Tomorrow, as was indicated earlier,  
12 is our second roundtable. It will take place here  
13 and starts at 9 o'clock tomorrow morning.

14 So we will rise and resume then.  
15 --- Whereupon the hearing adjourned at 4:40 p.m.,  
16 to resume on Friday, June 10, 2005, at  
17 9:00 a.m. / L'audience est ajournée à  
18 16 h 40, pour reprendre le vendredi  
19 10 juin 2005 à 9 h 00

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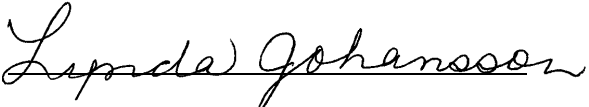
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Lynda Johansson,

C.S.R., R.P.R.

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