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Thursday, December 6, 2007

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Chair

Mr. Garry Breitkreuz

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• (0905)

[English]

The Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)): I'd like to call this meeting to order.

This is meeting number nine of the Standing Committee on Public Safety and National Security. We are continuing our examination of Bill C-3, An Act to amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act.

We welcome our witnesses this morning. I presume that those who aren't here will show up in the next little while, but I think we'll go ahead and begin.

We have with us the Justice for Mohamed Harkat Committee. I'll ask you, gentlemen, to introduce yourselves. Then we have the Canadian Council on American-Islamic Relations and Coalition Justice for Adil Charkaoui.

The usual practice at the committee, gentlemen, is that we allow you an introductory statement of approximately 10 minutes, and then we'll have questions and comments from the people who are on the committee.

We'll ask the people for the Justice for Mohamed Harkat Committee to introduce themselves.

Gentlemen, you may begin.

[Translation]

Mr. Christian Legeais (Spokesperson, Justice for Mohamed Harkat Committee): Good morning. My name is Christian Legeais and I am a spokesperson for the Justice for Mohamed Harkat Committee.

My comments on Bill C-3 will follow Mr. Harkat's statement explaining the consequences of the security certificate process for himself and his family, as well as what we expected following the Supreme Court ruling in February.

Mr. Harkat.

[English]

Mr. Mohamed Harkat (Justice for Mohamed Harkat Committee): Good morning. My name is Mohamed Harkat.

On December 10—Human Rights Day—five years ago, our nightmare started. After 43 months of detention without charge or access to the evidence, one year in solitary confinement, time spent in Guantanamo North, and one and a half years under house arrest

under the toughest bail conditions in Canadian history, I am here to demand justice.

For the past 18 months, my wife and I have been imprisoned in our own house. We have surveillance cameras in the house. I wear a GPS tracking device. My wife or mother-in-law have to supervise me 24 hours, seven days a week. I've never been left alone in my house or in the backyard. All visitors and family members coming to our house have to be screened by CBSA. Our computer room is under lock, and I have a curfew. We have only three four-hour outings, and all outings are booked and pre-approved by CBSA at least 48 hours in advance. All mail and phone is intercepted. I am followed by two CBSA officers. And the list goes on.

My life has been nothing short of the worst nightmare, and yet I have never been charged with a crime. I don't know the evidence against me.

This grave injustice continues for my family and me. This is not the Canada I dreamed of. Today I am here to urge the Canadian government to give me a fair and open trial so that I can defend myself openly. I strongly believe security certificates won't take me anywhere. My hope for a fair trial died when Bill C-3 was created. This is legislation that will continue to violate my rights as well as the charter.

What little glimpse I did have of a hope for justice is now gone. This is the worst kind of injustice. All of the allegations against me have ruined our lives.

I'm outraged that my case is based on and tried on secret evidence. I am here today because I want all Canadians to know the truth. I want the truth to come out. I want justice. I deserve a chance to clear my name, and that's what other Canadians are standing for.

How long will I be submitted to this terrible treatment—inhuman bail conditions and mental torture—by the Canadian government?

I would like to ask each one of you to reflect on this new legislation and ask yourselves if you would like to be in my shoes. Would you accept this process? Would you put your lives in the hands of special advocates who can't communicate openly with you?

Why is there this two-tiered system? Why am I being punished even though I have never been charged with anything? I have never committed a crime.

Is the special advocate process good enough? It still means years of detention and does not give me equality in the eyes of the law when actual criminals don't need special advocates. Would you trust this system enough to put your lives in the hands of an appointed lawyer without choosing him or her?

I therefore urge the Canadian government to allow me a fair trial. My community, other organizations, and my family and I will continue to fight until justice prevails. As a human being in this country, I expect justice, and today I am demanding justice.

I would like to thank the committee for giving me this chance to speak.

• (0910)

The Chair: Thank you very much.

If you have more comments, Mr. Legeais, go ahead.

[*Translation*]

Mr. Christian Legeais: As regards Bill C-3, our Committee sees it as an attempt on the part of the government to leave the impression that these changes to the security certificate process will make it fairer and consistent with modern standards of law enforcement and fundamental justice.

In the guise of protecting rights, it in fact does the opposite. It sustains the hysteria surrounding terrorism to provide for an exceptional power in the law and remove all opportunity for common rational discussion of the terrorism or security issue.

What is the specific nature of the problem? And how should it be addressed? We believe there needs to be a fulsome discussion on the reasons for abolishing the security certificate mechanism and the secret trials. Yet Bill C-3 retains the security certificate mechanism and, in some cases, makes the situation worse. It maintains the secret trials, secret evidence and the impunity of government-sponsored enforcement agencies, notably the political police force or CSIS. All of the condemnation and criticisms made by the Justice for Mohamed Harkat Committee with respect to the security certificate process in front of the Sub-Committee on Public Safety and National Security on September 21, 2005, and subsequently in front of the Standing Committee on Citizenship and Immigration on November 9, 2006, are still relevant, and I invite Committee members to read the record of those proceedings. We said at the time that the security certificate mechanism and secret trials are medieval instruments, constitute a violation of fundamental rights and have no place in a modern society.

Bill C-3 is presented as the government's response to the Supreme Court ruling in the Charkaoui, Harkat and Almrei case and as being warranted by exceptional circumstances, namely the need to combat terrorism. Not only does Bill C-3 not satisfy the Supreme Court's ruling in terms of the need to ensure consistency with several sections of the Canadian Charter of Rights and Freedoms, it betrays the very essence of that ruling: that these rights violations are not acceptable, are rejected by the people of Canada and are unconstitutional.

With Bill C-3, what we have been told is exceptional and isolated is now to become the standard. In addition to that, the impunity of the State and its enforcement agencies is also maintained, a course of

action which is certainly not bound to ensure society's collective safety and security. We also note that Bill C-3 proposes the use of a special advocate, a mini version of the British model which was also designed to grant minimal rights and access to justice while getting around the principles of fundamental justice. This special advocate can speak to no one without the authorization of the judge. He is not authorized to speak to the person named on the security certificate and may be dismissed by the judge, thereby hampering his independence.

Furthermore, the use of secret evidence, if such evidence exists—because, so far, we have seen only allegations—is maintained. There is no prohibition on the use of evidence or information obtained under torture. The evidentiary standard with respect to security certificates remains the same: reasonableness, which is the lowest evidentiary standard in the Canadian system. Bill C-3 maintains the opportunity to make a decision based on information or intelligence, as opposed to evidence. Information or evidence that would normally be inadmissible in front of a normal court is admissible in this process. It perpetuates the threat of deportation to torture, disappearance or death.

The appeal process that is proposed is a truncated and incoherent process. A judge that sustains the security certificate will have the authority to indicate what avenues of appeal are open to the named person. The transitional measures introduced in this Bill legalize indefinite detention. It is clear that the new version of the security certificate process and accompanying secret trials simply preserves, completely intact, the system now in place. No right is strengthened in this Bill—quite the opposite. This attempt to reform the security certificate mechanism makes it clear that reform simply is not possible and that this medieval instrument must be abolished once and for all.

Thank you.

• (0915)

[*English*]

The Chair: Okay. We'll now move over to the Canadian Council on American-Islamic Relations.

Please introduce yourself, sir, and go ahead.

Mr. Sameer Zuberi (Communications and Human Rights Coordinator, Canadian Council on American-Islamic Relations): Thank you.

I believe I have 10 minutes?

The Chair: Yes.

Mr. Sameer Zuberi: My name is Sameer Zuberi. I'm with the Canadian Council on American-Islamic Relations. We are an Ottawa-based advocacy group that works nationally across the country, with representatives from Montreal to Vancouver. We have worked on a number of different issues, from the Arar inquiry to security certificates to, in Quebec, the reasonable accommodation issue. These are the types of cases we work on.

We work on a national level on campaigns that people know about, such as the certificate, and we also work on smaller, unknown campaigns and unknown cases that never actually go to the press.

I want to thank everybody in this committee for listening to us. I'm sure you have to spend a lot of time to do this all the time, and it's not necessarily an easy thing to do.

I also want to thank you for giving us the opportunity because I know that at first you wanted to go quickly through this, so that you could get the legislation enacted, which is a fair and responsible thing to do. I also want to thank you for taking the time to hear from us because, while there are serious concerns that we have as a council, there are also other individuals who have serious concerns.

I want to preface what I'm about to say by first saying that I believe we Canadians and Canada should be strong on terrorism. There is zero tolerance for terrorists, and we must prosecute them and ensure that such acts are not allowed to occur. That has always been our position.

At the same time, we cannot throw out human rights just because we are trying to find terrorists.

What we need to do, and what we are seeking to do, is to find a balance between finding people who actually do crimes and protecting the rights of individuals so that they are not thrown into jail when they have not committed any, or when we cannot prove they have committed something. I want to preface what I'm about to say with that.

We're here to discuss today the special advocate. We have looked at the case of security certificates historically as one that is very important for the Muslim community in Canada. It's one that today the Muslim community, which numbers 2% of this country, is very heavily looking at and is constantly aware of. We're watching it on a daily basis. If you talk about it with people on the streets, they know about it; it's something people are following.

What's happening in this room is important to people in this country. The statistics came out the other day that 20% of Canadians are foreign-born, and these 20% of Canadians look towards issues like the security certificate as a litmus test of whether or not the government listens to the concerns of newly landed people.

In terms of the certificate and Bill C-3, we think that the security certificate should have criminal standards. I'm not going to say that the security certificate should not be under the Immigration and Refugee Protection Act, but what I will say is that if we keep it under the Immigration and Refugee Protection Act, what we should look towards is inserting criminal standards within it so that people know what they're up against. We can keep it in the Immigration and Refugee Protection Act; that's just fine. But let's insert those criminal standards so that people can see the evidence against them. That is only fair.

I was sitting here the other day when Warren Allmand was giving his presentation, and he made a very valid point. He said we don't want to be deporting people who we feel are serious threats to other countries, because that in the end will not be responsible of us as Canadians, but will give our responsibility to the rest of the world. Because we now live in an increasingly global society, what happens here at home affects other parts of the world and vice versa; therefore, if we don't address the issues responsibly here in Canada, they may just come to bite us later on, in the future. We certainly don't want that.

The special advocate system does not resolve the question involving certificates of a two-tiered justice system, wherein we have two standards of justice, one for immigrants and another for citizens. This is certainly not fair; it is not equitable; it is un-Canadian. This is something that, if we in this room were subject to it, we would certainly not appreciate.

● (0920)

The special advocate amendments do not lead to a resolution of the questions on indefinite detention and deportation to torture. For us at the Canadian Council on American-Islamic Relations, these are two very valid points, two that we still need to look at and are of concern to us.

Indefinite detention cannot be allowed. It's something that is not just. And deportation to torture is abhorrent and is something that we, as Canadians, cannot allow. Why? Because people around the world look to us for standards in terms of how to create their own legislation. They look to us to see how they should be implementing their policies, and if we will allow deportation to torture, other countries will follow suit. They will follow our model.

Finally, I'd like to close on whether a point of evidence being brought forth in the security certificate process has been addressed responsibly in Bill C-3. Bill C-3 still allows for secret evidence to be brought forth. Yes, you now have another individual who comes and looks at the information. However, whether this individual can actually vet this information thoroughly is a major question. There is no back and forth process between the special advocate and the named individual. That is a concern. How can the special advocate actually see that the information is correct, sound, and accurate if he or she cannot dialogue with the named person?

What we saw in the Arar commission, with the most recently released documentation, was that national security claims were used to hold back embarrassing information that would basically have shown that national security agencies made a mistake. Who is to say that the special advocate process will not lead to the same sort of occurrence: it will be said that something cannot be released due to national security concerns only because it would embarrass CSIS or the RCMP if it were divulged to the public?

We saw recently the taser incident, which, while unrelated to security certificates, really showed that when evidence is brought forth openly and people get a chance to evaluate what's there, we can actually come to the truth. If this passenger had not taken his video camera and start recording, would we have known today that this person, the Polish man, actually did not fight back against officers? Maybe not. Maybe we would have accepted the story that was given to us. But now, because of the actual evidence having been brought forth and because of people seeing it, we were able to come to the truth. In the end, that makes us a better country and that makes us more responsible and better able to deal with the issues.

In terms of balancing human rights and the need to prosecute real, serious criminals, we must look at that seriously. But if we are really to eliminate terrorism in this country and around the world, we need to do so in a just and equitable way. Otherwise, we will not address the issues and we'll not be able to get to the heart of the problem.

I'll close on that. This is a very important concern for Canadian Muslims and for immigrants in general in this country.

The Chair: Thank you.

We'll go to Mr. Charkaoui.

[*Translation*]

Mr. Adil Charkaoui (Coalition Justice for Adil Charkaoui): Good morning. I will be speaking French.

I would like to begin by thanking you for giving me this opportunity to address honourable members of the Committee. Before I actually discuss Bill C-3, I would like to introduce myself. If you read the CSIS report, you will see that I am depicted as a monster, a dangerous terrorist, a member of al-Qaeda, someone that needs to be controlled, handcuffed, and placed in a cell, a cage. Those comments are ones you may have heard over past months and years.

I am truly delighted to have this opportunity to give you the other side of the story. Indeed, if you only believe what CSIS is saying, with all the propaganda that is out there against the Muslim community, and particularly immigrants who do not benefit from the full protection of the Charter of Rights and Freedoms, there is the possibility that abuse can occur, as the Supreme Court stated, in its ruling on the Charkaoui, Harkat and Almrei case.

I was born in Morocco in 1973 into a family with two children; I have a sister. In 1995, we decided to immigrate to Canada—my father, my mother, who live here, and my sister. For me, Canada has always been a dream: the dream of living my life in French, because I am Francophone, and living in a multicultural country that respects the Charter of Rights and Freedoms and the Universal Declaration of Human Rights. In Morocco, I studied French literature. So, I am a supporter of the values embodied in the French Revolution.

When I came to this country, I did not expect to be treated this way. I was treated like an animal, a savage, which I am not. We arrived here in 1995 and I began studying French literature at the University of Montreal. I was here, not as a Canadian citizen, because I did not yet have that status, but as a permanent resident.

When Mr. Stockwell Day stands up and asserts, at every possible opportunity, that we are foreigners, terrorists and dangerous people,

that is absolutely false. It's propaganda. I am not a terrorist. I have never been charged with anything under the Criminal Code. I have never committed a crime. Mr. Stockwell Day's allegations are therefore false. I am an honest citizen and I have nothing to reproach myself with. If the government claims—and I'm talking about CSIS—that I am a terrorist, well, they have the courts. They can charge me and introduce their evidence.

In 1995, I arrived here with my parents dreaming of a better world, of a country where I could live and build my future. Today I am married, with three children—two girls and a boy—who are all Canadian. My parents are Canadian. I am a permanent resident. I am not a foreigner; I did not land in Canada by parachute; I was selected. I demonstrated that I had no criminal record: Interpol did an investigation. So, when I came to Canada, I did not come as a dangerous enemy, but rather, as a permanent resident.

I completed my university studies and began to work as a teacher. I applied for Canadian citizenship in 1999 and attended a security interview in the offices of Immigration Canada.

What is striking is that I am here today speaking to you as members of the Standing Committee on Public Safety and National Security, and not the Committee on Immigration. What the security certificate tells us is that there have to be two systems: one for immigrants and the other for citizens.

This legislation, Bill C-3, really changes nothing, other than making a few cosmetic changes, such as adding the special advocate, who will not have solicitor-client privilege and will not be able to defend me—really just a clown. As far as I'm concerned, the special advocate is a clown. As I see it, there is no circus and no clown. I don't want a circus; I simply want a fair trial.

When I got to the offices of Immigration Canada, I was asked to go up. I met with CSIS. I was asked questions about my religion, my prayers and the mosque. I am not a fundamentalist, I am not an extremist, but I was asked questions about my values, what I thought of the Palestinian conflict, and what I thought of Saddam Hussein. Those questions have nothing to do with Canadian citizenship.

I told them that I was not a terrorist and that I thought Palestine was occupied. Indeed, that land is actually referred to as the "occupied territories". I told them that I was against terrorism and violence.

•(0925)

In 1999, I was asked to become a CSIS informant and rat on my own community. I refused. CSIS hasn't left me alone since. That was in 1999. It is now 2007, and I am still subject to retaliation from CSIS.

Unfortunately, Bill C-3 cannot protect me against CSIS's abuse, for several reasons.

I'm going to stop talking about myself now. I only have 10 minutes, so I didn't really introduce the Coalition Justice for Adil Charkaoui, which does excellent work.

I will move on now to Bill C-3.

When I was arrested, I was handcuffed and put in a six by ten foot cell. Fortunately, I was in Quebec—I have said this before and I'll say it again—because the other detainees were treated like animals in Ontario. They told me: “Mr. Charkaoui, we have evidence that you fit the profile of an al-Qaeda sleeper agent”. Those were the first allegations.

I was given a 400-page document. I went through it with a fine-toothed comb in prison; I read it and re-read it. My file contained ten or more biographies of Osama bin Laden, a document on how to build bombs, documents on speeches made by Saddam Hussein and a report on weapons of mass destruction in Irak. There were 14 pages about me. In those 14 pages, it stated that Mr. Charkaoui speaks several languages: English, French and Arabic; he is a university student, is studying for a Master's degree and would like to do a Ph.D.; that he is married—marriage is just a cover, as far as they're concerned; that he has a restaurant with his family to finance terrorist activities. But there is no evidence; just vague allegations. It also said that he had travelled to Pakistan. I didn't travel to Pakistan. I have travelled all over the world, but they talked about only one trip and ignored all the trips made to the United States, Germany, Spain and Egypt. They only talked about one trip. They also talked about people I don't know, with whom I have no contact whatsoever; their names were written. They started to talk about the Khadr family, people I don't know but whose names were inserted in my file for propaganda purposes—just to scare the judge.

Judge Simon Noël detained me for 21 months because I refused to testify. As far as I'm concerned, it's a travesty of justice. There is no justice when evidence is secret, when you're dealing with a certain amount of evidence and reasonable grounds to believe, and when torture is authorized. One of the so-called informants is Abu Zubaydah. Mr. Bush recently admitted publicly that he was detained at a black site—a secret CIA prison. How can his word be accepted? Up until now, the Canadian government has used it against me, even though the court temporarily rejected it. That was the first depiction of me. I had the profile of a sleeper agent.

When I was preparing to leave prison, they changed the allegations. They said that I no longer had the profile of a sleeper agent. Indeed, the Director of Sunni-Islamic Counterterrorism—I don't know his name because it's a secret, since he is a CSIS agent—testified before the court and stated that he had no evidence that Mr. Charkaoui was a member of al-Qaeda. After my release, I took a polygraph test four times to show them that I wasn't a terrorist. They changed the allegations and said I was a member of al-Qaeda. After my release, there was another change in the allegations against me. They said I was no longer a member of al-Qaeda, but that I had become a member of GICM, a Moroccan group.

So, every time I and my lawyers came forward with evidence, to show that the allegations were ridiculous, the government—and I'm still talking about CSIS, because we're not dealing here with the government or the RCMP, but rather, CSIS—simply turned around and changed the allegations.

In terms of the evidence I was given and that was made public subsequently...

● (0930)

[English]

The Chair: You'll have to wrap it up, sir. Try to reach your conclusion.

[Translation]

Mr. Adil Charkaoui: I will be quick; thank you.

In terms of the evidence, I was given CSIS reports and report summaries. The absurd part of all of this is that the Crown attorney admitted in court that part of the secret evidence had been destroyed. They kept me in detention for 21 months on the basis of secret evidence and ended up admitting that the secret evidence had been destroyed. The Supreme Court will hear my case again on January 31 with respect to the destruction of secret evidence. And this is not the first time they have done that.

This legislation gives even more power to CSIS. How could I be protected from CSIS if CSIS is the authority who will practically choose the special advocate? Who gives security clearances, accreditation and security classifications? CSIS does. It's a travesty of justice. You are giving them the power to choose among potential advocates; I won't even have the right to choose my own advocate. Indeed, the term “*défenseur*” is ridiculous, it's a sham; this person will not be a “defender”; the appropriate term is *amicus curiae*.

My final point relates to checks and balances and the lack thereof in this Bill. We have the Milgaard case here in Canada, and there are known miscarriages of justice that have occurred. With the security certificates, there is no right of appeal, and judicial review is meaningless, in my opinion. As a consequence...

● (0935)

[English]

The Chair: I'll interrupt you there—

[Translation]

Mr. Adil Charkaoui: Thank you for your patience.

[English]

The Chair: —in fairness to the other witnesses and to the questioners. You've gone way over time.

We'll begin now with the official opposition.

Mr. Dosanjh, do you want to go first, please?

Hon. Ujjal Dosanjh (Vancouver South, Lib.): Thank you.

Thank you all for being here, particularly Mr. Harkat and Mr. Charkaoui, and of course the others as well.

What I'm hearing from all of you, essentially, with the exception of Mr. Zuberi, is that you don't believe we should proceed with Bill C-3. So it may be irrelevant for me to ask you what changes you think we should make to Bill C-3, but I'm going to do that nonetheless, because this is the bill the government has proposed, and because this is the bill we have to make an effort to make better if we can. So all of you can perhaps answer the question of how you would like us to change this bill in one or two or three or four ways.

I know you talked about the special advocate. How is that going to be put together? Who is going to put together the roster? You want to talk about the choice of counsel and whether or not you should have the freedom. I understand that within the roster, the detainee may have the freedom to choose one of the roster. I'm assuming the roster is going to be put together with CBA and others participating, so there will be some independent process.

I would really like to hear from you as to what you think are the two or three or four things you'd like to change that might make this legislation better. Otherwise, we could argue back and forth and try to find out what happened in your situations. That would take a long time, and we don't have that kind of time.

The Chair: Thank you very much.

Who would like to go first?

[*Translation*]

Mr. Christian Legeais: The best way to improve the security certificate process would be to ensure that it is consistent with fundamental justice and international standards of justice. That is the first change that needs to be made. But, Bill C-3 does not do that.

I am having some difficulty answering your question because it really is not up to us to make improvements to a system that persecutes people like Mohamed Harkat, Adil Charkaoui, Mohamed Mahjoub, Mr. Jaballah and Hassan Almrei. That is not our role as a committee. However, I did list a number of areas that we find unsatisfactory or unacceptable in Bill C-3, and you should make amendments in all of those areas.

We could talk about any of the transitional measures set out in the Bill. They legalize indefinite detention. That should be changed. Persons named in a security certificate should be released.

The appeal process that is proposed is a truncated and incoherent one. The judge who upholds the reasonableness of the certificate would be the one determining what avenues of appeal are available. That has to be changed. A real right of appeal has to be provided.

Bill C-3 perpetuates the threat of deportation to torture, disappearance or death. Bill C-3 should state in no uncertain terms that no person can be deported to a place where he or she could disappear, be tortured or be killed. International law makes that clear, but Canada has opted for a made-in-Canada solution which makes that legal. This is not a conceivable or acceptable balance.

The evidentiary standard for security certificates remains the same—that is, reasonableness, which is the lowest standard. The criteria laid out in the Criminal Code should be adopted instead, and the persons named in a security certificate should be entitled to a fair trial.

The fact that the evidence can be secret in no way prohibits the use of information or evidence obtained through torture. The legislation should say that this is unacceptable. There are many other such elements here.

The special advocate is not allowed to speak to anyone without the authorization of the judge. He can be removed by the judge. That has to be changed. Give this individual a lawyer. I don't think Federal Court justices will accept the special advocate concept. They

refused it in the case of Mohamed Harkat. Judges believe they have the required competence and jurisdiction and see no need for the addition of another independent, more competent individual. With this system, we have an independent judge and an independent advocate who will decide on information provided by an incompetent agency. Where is the logic in that? Get rid of that.

Those are the main points that stand out from a quick review of Bill C-3.

As I already said, the Supreme Court ruling basically asserts that security certificates are unconstitutional. Indeed, that is the perception of the people of Canada. Now the government comes along and introduces legislation that proposes the exact same system that is currently in place, with a few minor changes.

● (0940)

[*English*]

Hon. Ujjal Dosanjh: How much time do I have?

The Chair: You're almost out of time, but take a minute.

Hon. Ujjal Dosanjh: You want an answer. Let me ask you another question, and then you can answer.

One of the themes we hear from many presenters, including you, is that this is an immigration process and we have a double standard. The fact is that immigration law applicable to both residents and visitors has been separate and different. You can be deported for different reasons. Even if you're not a terrorist or a very dangerous criminal, sometimes you're deported. That standard has been in existence for several decades. Security certificates came into being to deal with organized crime several decades ago. Yes, they've been around since 1970-71, but one of the things I hear is that that's unconstitutional.

Are you then suggesting that we shouldn't have those standards embedded in the Immigration Act that deal differently and can send people out of the country—even permanent residents—on things that citizens couldn't be exiled for?

[*Translation*]

Mr. Adil Charkaoui: Thank you for your question. There is no doubt that Canada, like every other country in the world, has to protect itself from terrorism. That is why we have laws like the Anti-Terrorism Act and the Criminal Code. It is equally clear that Canada, like any other country in the world, has the right and even the duty to control immigration. It has the right to refuse foreigners the right to enter Canada. We are not talking about immigration or terrorism, however; we're talking about how the Anti-Terrorism Act is used, an Act that contains no oversight mechanism or counterweight with respect to deporting people and combating terrorism. That is the problem with security certificates, and that is why the Canadian Bar Association, the Barreau du Québec, Amnesty International and all these groups are opposed to Bill C-3. And that is why we intend to challenge it before the Supreme Court of Canada. It's the use...

The Supreme Court ruling was clear: in order for security certificates to be constitutional, they must, at the very least, be associated with a fair trial. What is a fair trial? I believe many of you are well qualified to determine that, and are even lawyers. If we're talking about a fair trial, the first thing is to have access to the evidence against you or be able to test or challenge it. It means being told of the allegations.

Let me answer your first question: how can Bill C-3 be improved? If it were up to me to choose, there would be no Bill C-3. The criminal law, which applies to everyone, already exists. If we want to improve it, we must first resolve the matter of the evidentiary standard. Second, we have to look at the quality of the evidence. It can be obtained under torture. In such cases, that is not evidence. The use of the term "evidence" is also a sham. This is intelligence, not evidence. There is no evidence against me; there are only CSIS reports.

Third, there is the definition of "terrorism".

● (0945)

[English]

The Chair: We have to wrap it up. The question was quite clear.

Mr. Ménard, please.

[Translation]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Mr. Charkaoui, you are certainly the most pleasant example, among the people who come to see us. Your case obviously calls into question the whole security certificate process. You were in Canada for four years, you were married, you have children who are Canadian citizens, your parents are here and CSIS got in touch with you to ask that you work as a double agent; when you refused, that's when your problems began.

As I've also said, when there is a lack of information, rumours circulate. Rumours are almost always worse than the truth, but that is the situation you find yourself in. There is a connection to be made here with an answer given by Mr. Zaccardelli when he was questioned about security certificates. He told us that at least that gave him the chance to stop someone from becoming a Canadian citizen.

Furthermore, you absolutely fit the profile of a member of a sleeper cell. A sleeper cell has members who, as citizens, are beyond reproach, because they want to go unnoticed. As a result, they lead a life that is beyond reproach. I don't know whether I fit the profile of a sleeper cell agent—I probably have too many flaws for that. But that's what a sleeper cell is, is it not?

However, you have travelled a great deal and I would like you to explain why you travelled that much and whether you took those trips with your family. Were these trips taken for the purposes of tourism or study? Of course, the judge that heard your case was probably more concerned about your trip to Pakistan and the people you met with there.

Mr. Adil Charkaoui: Coming back to my own life, there is no doubt that travel broadens the mind. I was almost conceived in Malaga, Spain. As you know, Morocco is located south of Spain, and

only the Mediterranean Sea separates us from Spain. At the end of every month, we would take a trip together.

At the age of 17, I started travelling on my own. I went to Egypt. Finally, we came to Canada. I arrived here in 1995 at the age of 21, and I began travelling in the United States and Europe. I didn't only go to Pakistan. The trip to Pakistan was not really a teenage project, since I was already 24 years of age at the time. But I wanted to discover part of my own culture. You may say that I am an Arab and that Pakistan's culture is not Arab, but Muslim. I had a choice among a number of countries—Syria, Saudi Arabia and Pakistan. The most practical one for me, monetarily-speaking, was Pakistan, where the cost of living was lower. I left with my knapsack on my back and travelled around the country for five months. I discovered the Pakistani Muslim culture, which is different from Arab culture and is more like Indian culture in terms of the cooking and local culture. I came back to Canada. I went on a legal visa. I did not use forged papers, as the government claims time and again. I filed this evidence with the judge and provided a detailed explanation with respect to that trip. It was after that that he released me. So, that is the travel side of it.

The fundamental problem with security certificates is that someone can look at any given aspect of my life and make me out to be a terrorist. If I tell them I don't have a beard and don't dress like a member of the Taliban, they'll say I'm a sleeper agent. But, if I have a beard and am a devoted follower of Islam, they will take me for an extremist. An extremist can also be deported if he presents a threat. If I'm unmarried, I pass for someone who could become a suicide bomber; if I am married, it's nothing but a cover. If I don't work, I'm getting money from abroad; if I work, I'm giving money to other people. If I have an education, I am studying for a doctorate and I take a trip somewhere, people will say that I am an ideologue; if I have no education, they'll say that I'm just going to be brainwashed. In all of these cases, I come out the loser. That is not a fair trial; those are just unproven rumours and allegations. It's the theory [Inaudible—Editor]. In that kind of situation, I am always the loser.

● (0950)

Mr. Serge Ménard: We're often told that security certificates are like a three-walled prison. There is an exit wall, which allows you to get out—in other words, agree to be deported. Could you tell us why you do not and cannot accept that solution?

Mr. Adil Charkaoui: The coalition that was founded following my arrest, by my parents and activists in Montreal who are part of the Muslim, old-stock Quebecker, Jewish and other communities, is called the Justice Coalition for Adil Charkaoui.

What I am seeking most is justice. I cannot adequately describe the stigma that goes along with security certificates. My wife and my children are ostracized, as are my parents and my family in Morocco and even my in-laws in Tunisia. I can't go off and travel anywhere I want to in the world with the label of alleged al-Qaeda sleeper agent still associated with my name. I will be stigmatized for life. Even here, when I walk down the street and I see people looking at me, I'm not sure whether they are looking at me sympathetically or whether they're afraid. I carry with me the continued shame of having to live with that label, without anything having been proven. But I have to live with that. Every day, I am stigmatized in my family life, social life and daily life. Another thing...

Mr. Serge Ménard: I have very little time left. Perhaps you could tell us why you are afraid to be stigmatized as a terrorist in Morocco, which is your country of origin, and the implications that could have for you.

Mr. Adil Charkaoui: In order to answer your question, I would like to refer to an Immigration Canada ruling. In 2004, when I was in prison, an officer with the Border Services Agency gave me the PRRA ruling. An Immigration Canada officer believed I would be tortured in Morocco and that my life was in danger. However, in applying the ruling of the Supreme Court in the Suresh case, something the government did incorrectly, they weighed the threat I pose to Canada against the risk of my being tortured. Even though there was a danger that I would be tortured, they were sending me back. I can give you all a copy. You can read it; that's what it says.

Last October, there was a second assessment...

Mr. Serge Ménard: We have very little time left, Mr. Charkaoui.

As I understand it, you believe that you may be tortured, or worse, in Morocco, if you return.

Mr. Adil Charkaoui: There is a ruling from Immigration Canada certifying that.

Mr. Serge Ménard: But what do you, personally, think?

Mr. Adil Charkaoui: Personally, I cannot leave Canada to go to any other country until I have cleared my name. If I end up somewhere else in the world... If I go to the United States, I will end up in Guantanamo. If I go to Morocco, there are secret prisons there for alleged terrorists. So, wherever I go, I will be arrested. Stockwell Day says it's a three-walled prison; that's wrong. The consequences are serious.

[English]

The Chair: Ms. Priddy, please.

Ms. Penny Priddy (Surrey North, NDP): Thank you, Mr. Chair.

Thank you very much, everybody, for being here this morning, and to your families who are in the audience today.

I always do this at the beginning, just to put some context around the questions I ask.

The NDP, as you may know, is not supporting this piece of legislation because we think there are certain violations of democracy that are inherent in Bill C-3. And even with special advocates and all the things that people have talked about, I don't think it in any way does away with what those basic foundation pieces of democracy are.

I would like to ask just a couple of questions, though, if I might.

I'd like to know this, either from Mr. Harkat or Mr. Charkaoui. When you've travelled in other countries, and you obviously have, have you in any way run into a set of circumstances, probably not the same as this but similar to this, in which people accused you of nefarious activities because you were travelling or accused you because you'd been previously in a certain country, and your passport said that?

• (0955)

Mr. Mohamed Harkat: Actually, I left Algeria almost 19 years ago and it was the first time I left Algeria. I went to Saudi Arabia to

try to study or to work there because of the political situation in Algeria that time, which I was involved in, and the army and the police started looking for me. There was no plan for coming back, and suddenly, when I went to Saudi Arabia, I found it a lot different. If it was because it was the first trip for me, I don't know. You need a permit to work there. I had 15 days.

That's why I ended up in Pakistan working in a refugee camp that time. I worked four years there. I didn't have plans to go to Algeria, I wanted to stay to work, and those were the only things, to support myself and to be working.

When the situation went bad in Algeria, when the army took over the democracy in Algeria they started looking everywhere in Algeria. I was in Pakistan. They had suspicions in Algeria; the government wanted to bring back any Algerians overseas.

That's why I ended up here in Canada. I heard about Canada and how it can protect human rights and how it was doing peacekeeping at the time. It was the best democracy, and you could explain yourself. And that's what I did. I came here and explained myself, and I was here for seven years. I didn't have a problem anywhere in other countries; it only happen here five years ago, when I got arrested. I had never been arrested in any country. I never was charged. I never committed any crime anywhere.

Ms. Penny Priddy: Thank you.

Mr. Charkaoui, I know yours is a somewhat different set of circumstances, but you've obviously travelled extensively. Have you encountered any kind of similar concern about your travels, your activities, the number of stamps on your passport, whatever?

Mr. Adil Charkaoui: We'll answer in French, I'm sorry.

[Translation]

I was never harassed, but my problems began after my initial contact with CSIS, when I applied for Canadian citizenship. In 2000, I was getting ready to travel to Morocco with my wife, who was three months' pregnant at the time. I was stopped at Dorval Airport, my baggage was searched, and Corporal Duval, an RCMP officer who testified in my case, warned me, saying that if I took that plane I would be harassed in Morocco. So I asked him why I would be harassed. He answered that my name was on a list. It was the first time I realized I was being tracked by CSIS. I told him that I had done nothing wrong and that I was going to leave anyway.

So, I left and, when I arrived at the airport in Morocco, my bags were searched once again and I was questioned. A member of my family works at the airport, and he was told that someone had called from Canada to say that the most dangerous terrorist ever would be arriving in Morocco that day. I was released with my wife. I was followed everywhere. Two unmarked cars followed me everywhere I went and actually spent the entire night on the street outside my family home in Morocco.

On my way back, I was basically kidnapped by the FBI, and that has been documented. The Canadian government acknowledged that. Like Mr. Maher Arar, I was taken off the plane, had guns pointed at me and was told: "Follow me or I will shoot you". I got off the plane with my wife; she was really scared. I said that I was a Moroccan citizen and a permanent resident of Canada. They told me that I was on U.S. territory. I spent 10 hours in the basement of JFK Airport and was questioned about every aspect of my life. They knew everything about me. They finally released me. The FBI agent told me they had nothing against me and that I had a problem in Ottawa.

So, the people who really got me in hot water—pardon the expression—were CSIS agents. That is documented before the courts and I can provide you with all that evidence.

• (1000)

[English]

Ms. Penny Priddy: I understand that. I have read it. I just didn't know if in your travels you had received similar treatment, or similar kinds of very intensive questioning, in any other country.

My second question would be to anybody who wants to answer it, but certainly to Mr. Charkaoui or Mr. Harkat. If you had come to Canada and—I'm not saying you were—had indeed been involved in a terrorist activity, if there was evidence you had in one way or another, what would you expect to have seen happen?

The Chair: There's time for a brief response.

Ms. Penny Priddy: I'm saying "if". If this were the truth, and you had a terrorist activity, what would you have expected to see happen, knowing about Canada?

The Chair: Mr. Harkat.

Mr. Mohamed Harkat: Somebody should be treated with the Criminal Code and sentenced like anybody else. If there is some suspicion of me, I'm not supposed to be standing in front of you here. I'm not coming to face you, I am innocent. I'm just looking for justice. Already the Canadian government said, okay, if you want to leave, leave. I don't think so. Somebody else is going to say here in front of you...they let him be.

Ms. Penny Priddy: So you would have expected to be charged under the Criminal Code.

[Translation]

Mr. Adil Charkaoui: If you're dealing with a dangerous terrorist, he should be tortured, burnt alive and you should re-establish the Inquisition. I find it quite incredible that people can ask those kinds of questions in the 21st century. I am absolutely outraged. What should be done with a dangerous terrorist? Well, you need to torture him, throw him in a prison with dogs and strip him naked. That's the answer that comes to mind.

[English]

Mr. Sameer Zuberi: Perhaps I could reply very quickly.

Mr. Dosanjh said previously that Care Canada doesn't support Bill C-3 but is proposing amendments. As it is right now, we don't support Bill C-3 and we stand strongly against the security certificate. We think criminal legislation is a standard that should be there, that should be put in place. If you want to keep it under the

Immigration and Refugee Protection Act, insert criminal legislation standards into that act so these men can know what they are up against and can defend themselves, as we can, in an open court. That's what our position is.

The Chair: Okay.

Mr. Brown, please.

Mr. Gord Brown (Leeds—Grenville, CPC): Thank you very much, Mr. Chairman.

I'd first like to say it is probably quite extraordinary for people who are subject to security certificates or their equivalent in other countries to have an opportunity to have a say in a government committee on how the government may be changing legislation. I think that's a real testament to the Canadian system.

We've heard from Mr. Ménard that the security certificate regime process has been described as a three-walled prison, and that those who are subject to security certificates have the opportunity to leave the country if they so choose.

Maybe, Mr. Harkat, we didn't hear from you. We did hear a little bit from Mr. Charkaoui on why you don't take that option.

Mr. Mohamed Harkat: I don't take that action because if we accept that Canada is built on justice, if I can't have the opportunity to defend myself in this country—compare it to Algeria, which has the worst justice system—how are we going to accept that you're going to let me go?

I'm now in a bail hearing. I wear a bracelet and CBSA follows me in this country. What about Algeria? Would Algeria just let me go free like that? For sure I would be tortured and sent to jail. With the allegations building in this country, if they send me there with all the suspicions about me here, it will be impossible to clear my name over there too.

Mr. Gord Brown: Okay.

Mr. Charkaoui.

[Translation]

Mr. Adil Charkaoui: It is a well-known fact that the countries of the Middle East and the Maghreb are not democracies. Everybody knows that. I don't have to prove that in these countries, the rule of law does not apply. But, what is worse, after 9/11, the world changed. We know that there is a process called exceptional rendition, which means being sent somewhere to be tortured.

The security certificate process under Bill C-3 is unconstitutional because it represents deportation to legal torture. When I say "legal", I use that term advisedly. What I can expect in Morocco is to be tortured. Immigration Canada even told me that. They repeated that on October 19. They told me that I would be tortured and that my life would be in danger, but that I would be deported anyway, because they could not protect me under the Geneva Convention.

I don't want to be protected under the Geneva Convention; I want to be protected against CSIS. I want to have an opportunity to clear my name. I have asked for a public commission of inquiry. I've asked for a trial. I have done nothing but repeat the same things over and over since 2003. I've been saying the same thing for four years now. So, the consequences are serious for me and for my family.

I was given diplomatic guarantees in 2004, as was Maher Arar. I was told I could go to Morocco and I would be protected. In 2005, a Radio-Canada reporter, Mr. Jean-François Lépine, went to Morocco and did an investigation for the program *Zone Libre*. He discovered that the diplomatic guarantees were false and that an unsigned arrest warrant had been issued by Morocco. That reporter gave me a copy of it which was then filed with the court.

• (1005)

[*English*]

Mr. Gord Brown: Thank you.

I have quite a few other questions.

The fact is that this bill has passed second reading and was referred to this committee. One would assume from that it's the will of the House of Commons that this not die in February, otherwise the House would not have passed it through second reading, so it was referred to this committee.

In Mr. Harkat's committee report under "spin", it says that the Supreme Court decision essentially upholding the security certificate process is misleading. The fact is that the Supreme Court did uphold the constitutionality of the process, so we are here to see if there is any way it can be improved. I know that Mr. Dosanjh already asked that question, but I think that's really what we need to stick to as much as possible.

I realize you believe that the whole process should be scrapped, but at this point it's likely that we can either improve it—that's what the purpose of this committee is—or here's another opportunity. I realize that you would like to see it more under criminal standards, but I think the court is trying to find a balance between the security of Canadians and human rights.

Fire away. Each of you has an opportunity, and I think we may have a few minutes left, so go ahead.

[*Translation*]

Mr. Christian Legeais: At this point in time, I don't believe there is a balance between those rights. National security reasons take considerable precedence over Charter considerations, human rights considerations and respect for rights in Canada. Under the guise of national security, anything goes. And it is that impunity and the fact that national security is given precedence over the rights of Canadians that makes the whole process illegal.

The role of CSIS has already been mentioned. CSIS is not responsible only for security certificates; it is also responsible for deportation, for the removal from Canada of 9,000 to 10,000 foreigners, immigrants and refugees, on an annual basis.

We're told that CSIS was created to protect national security and that without its agreement, no one gets into Canada—which makes it a political police force. CSIS was created following the McDonald

Commission, which brought to light the RCMP's role in rights violations in Canada.

In my opinion, CSIS must have its responsibilities with respect to immigration removed. That is one thing that has to be done. It is not up to CSIS to decide who can live in Canada and who cannot. There are other means available.

Now, let's talk about constitutionality. The Charter of Rights and Freedoms represents limited rights, in the sense that all rights are not set out in it. Many people see it as archaic and inspired from the British model. The fact is that many rights are not protected by the Charter of Rights and Freedoms, hence the difficulty of turning legislation, such as the one dealing with security certificates, into a statute that is constitutional. Parliament was not the one to say that security certificates do not jibe with certain sections of the Charter of Rights and Freedoms; the judges did.

The role of this Committee and of Members of Parliament is to produce legislation that respects all human rights. Our impression—and I think that many members of the community have the same impression—it is that a knife has been planted deeply in our flesh. With this Bill, we are being told that the knife is being pulled out a little and that is presented as progress. But that is not the way it works. That is not what life is all about for people who are subject to a security certificate; that is not the way it is for the Arab Muslim community; that is not the way it is for refugees; and that is not the way it is either for the people of Canada. Most of the provisions relating to security certificates are found in the Anti-Terrorism Act.

• (1010)

[*English*]

The Chair: Okay, we have to wrap it up.

Mr. Cullen, please.

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chair.

Thank you to the witnesses, especially to Mr. Harkat and Mr. Charkaoui.

The government has used security certificates sparingly over many years, but the reality is that the times it does use them it affects individuals like you in a very fundamental way, and I appreciate your coming here today.

I know you're opposed to Bill C-3 and security certificates, but one of the items being proposed regarding the special advocates is that if this bill passes in some form, a special advocate will have a chance to challenge the information that is presented by CSIS and RCMP and other sources. I know there's a debate around how complete and effective that could be, etc., but at least that would happen.

I know you're fighting this because you want to clear your names.

Mr. Harkat, in the brief you distributed, it says that "recent information about the human rights situation in Algeria make it clearer...that even his deportation to that country would be to send him to torture".

I think, Mr. Charkaoui, you're saying the same would be true if you went back to Morocco. I know, Mr. Charkaoui, you're saying that CIC said this based on whatever intelligence or lack they had.

But what would be the motivation for the authorities in Algeria or Morocco to torture you if you went back to your respective countries? Torture normally is to punish someone or to extract more information. What's your sense of why they would cause you harm if you went back to your countries of origin?

The Chair: Who'd like to go first?

Mr. Harkat.

Mr. Mohamed Harkat: Recently an Algerian in London just went back, because we all want to go back, and he was sentenced to eight years in jail. He just went back to say he was not.... Algeria is not like.... There is no idea about how the system works in Algeria. I was born there, and I know how the system works. When you are in a police station, there's no lawyer; here you have to choose a lawyer. The government will choose for you anyone they want, and they get any information they want. You can't say no. Even if you are innocent—and remember, when you go to the police station, they beat you on the face until you admit to something. That's the only thing that will save your life. They just want from you what they want. You can't go against them. If they stop you on the street, you're doing something wrong; you're going to get punished for no reason, even for a traffic light.

• (1015)

Hon. Roy Cullen: I understand. I've never visited either Algeria or Morocco, but I believe what you say in terms of the environment there.

I'm just curious. In your particular case and that of Mr. Charkaoui, if you went back to your respective countries, you're saying that they would jail you and torture you just because you've come back. Is that it?

Mr. Mohamed Harkat: We have come back from where—from here?

Hon. Roy Cullen: Well, if you took the option under the securities certificate of going back—

Mr. Mohamed Harkat: All the questions they're going to ask you are about coming from Canada. If Canada made these allegations about you, and you didn't clear your name there.... They think the process with security certificates is fair, but to me it's not fair. I don't have the evidence to defend myself.

If you go to Algeria and explain to them that you lost against the certificate, that you went to the court and you can't clear your name, what do you expect? I don't have a fair trial even in this country.

I said before that it's the worst justice system there. You're never going to clear your name, and they're going to come after you all the time. You just see the United States going all over the world to arrest suspects, and you're going to Algeria with these kinds of names. You're always the enemy of the state in Algeria. It doesn't matter how it is.

Hon. Roy Cullen: Mr. Charkaoui.

[*Translation*]

Mr. Adil Charkaoui: I have two points to make.

My first point is this. The secret services in these countries are not filled with a bunch of crazy people who jump on the first person they see and torture him just for the fun of it. At the same time, we are dealing here with what I call a “terrorist fabrication”. In 1999—in other words, long before 2003—I was free; I didn't wear a bracelet and I could go wherever I wanted in Montreal. If you had tried to Google me then, you wouldn't have found anything. If you do it today, however, you will see what's there. I've gone from being a perfect unknown to a big fish. Everyone is talking about Charkaoui. In my country of origin, people follow the press and the media. Relying on allegations, they come up with the picture of the emblematic terrorist. When people meet me, they are hesitant and wonder whether the allegations are true. It is that doubt that bothers me most.

My second point is this: one of the things I most enjoyed reading over the last year was the O'Connor report on the Maher Arar affair. What I don't understand is why the Canadian government, after spending that kind of money on a commission of inquiry, is not acting on Justice O'Connor's recommendations. That's incredible; I don't understand. Maher Arar was tortured in Syria by his jailers, and they themselves told him they knew he was innocent, but that they had been asked to verify whether that was true or not. He was forced to confess to certain things. In fact, he testified against Mr. Harkat, which is quite incredible. He was forced to confess things that were untrue. He was forced to sign reports. In those countries, intelligence is a lucrative business. People sell information and CSIS buys it. There is quite a market for it.

Personally, I am not afraid to go to Morocco. I was told I would be tortured. But I have done nothing wrong. I am very close to Canadian Conservatives, who have always supported me. But if I were tortured, I might say that I had been funded by the Conservative Party, for example. I could say anything under torture.

[*English*]

The Chair: Your time is up. Do you want to have a quick, short response?

Hon. Roy Cullen: Just for the record, the purpose of this session is not to try Mr. Harkat or Mr. Charkaoui again, but I have in front of me the decision of the Federal Court judge with respect to Mr. Harkat.

You talked about your travels, and I'm not going to get into the decisions of the Federal Court judge, but he or she is quite specific and he or she alleges that you lied about many of the things you said when you immigrated to Canada—I'm not going to go into all of that here—about certain aliases, about certain associations with some very senior people in al-Qaeda.

So just for the record, I know you challenge that information. I know you want the opportunity to challenge it in a process that you think is more fair. We generally agree with that; it's just a question of the how.

Security certificates. Outlawing them completely? I'm not sure that's the will of the Parliament of Canada, but we'll find out soon enough.

The Federal Court judge made some pretty serious and very specific statements about the evidence you submitted when you applied to come to Canada.

• (1020)

The Chair: Our time is up. We'll have to go over to Monsieur Ménard.

Monsieur Ménard, did you have another follow-up?

[Translation]

Mr. Serge Ménard: Mr. Charkaoui, there is one last question that troubles me. In a way, as a former criminal lawyer, I am reluctant to ask it, because I have always believed in the right to silence. However, given the exceptional circumstances we're dealing with, I would like to ask you why you did not testify previously, in front of Justice Noël.

Mr. Adil Charkaoui: For 21 months, that was a decision made jointly with my lawyers, the Coalition and my family. I felt that the whole process was a travesty of justice. By testifying, the Attorney General could simply stand up and say that I wasn't credible. And if I lost all credibility, I was finished at that trial. So, it was a question of credibility. It was my word against CSIS's word.

So, I decided not to testify. Thanks to my university professors, my friends and my family, I proved that I was not a terrorist. I had to wait until the Honourable Justice Noël extended a hand to me and said that if I was telling the truth in my testimony, he would release me. I took a polygraph test four times. My lawyers hired someone with a lot of experience, an ex-Commander of the Sûreté du Québec who teaches RCMP officers how to use the polygraph test. He came to prison. He gave me the test, and I passed it. Then I went to testify in front of Justice Noël and I told him, with supporting evidence, that I was not a terrorist or a member of al-Qaeda, and that if the government had anything on me, it had to prove it in the context of a fair trial.

I may give you the impression today that I am disappointed and frustrated, but please understand. I spent four years fighting, all the way to the Supreme Court, to have this legislation declared unconstitutional. I see now that Bill C-3 is a real disappointment. It's the same law with just a few cosmetic changes that don't guarantee me either protection or justice.

I want to thank you for hearing me out. I know that in other countries, I would not have had that opportunity. I am not ungrateful.

Mr. Serge Ménard: Mr. Charkaoui, you were not confident that Justice Noël could properly weigh the credibility of your testimony. Do you believe that initially, he had a favourable bias towards CSIS?

Mr. Adil Charkaoui: No, not at all.

Mr. Serge Ménard: So, why didn't you talk to him?

Mr. Adil Charkaoui: You know, armed guards escorted me to court in handcuffs, with a chain around my stomach and cuffs on my ankles. The weapons were allowed in court. Can you imagine that? The first time, there were sharpshooters on the roof. If I had been Justice Noël, I would obviously have been scared. When you see

someone in that kind of situation, you automatically assume the person is very dangerous.

When Justice Noël held the *ex parte* in camera proceeding, members of CSIS told him heaven knows what, without my having had an opportunity to challenge their allegations. He listened to them but I could not contradict them. I didn't know what they were saying. They could testify as agents, saying that I was dangerous and associated with dangerous people, without my having an opportunity to refute their allegations.

Mr. Serge Ménard: I would also like to make a comment to Mr. Legeais.

We will be proposing all of your recommendations in the form of amendments, with the exception of the last one, which was a little confusing.

Do you understand that the type of decision that has to be made with respect to terrorism these days is necessarily based on evidence that must remain secret because it comes from undercover double agents who would be in danger of being killed, if their identity were to be known, because unfortunately they are working with allies who don't believe in all the same principles that we do? Some of them apply the same principles as we do, or pretty much, and give us the intelligence on the condition that we keep it confidential.

Where terrorism is involved, we cannot afford to have investigative methods disclosed, as happens with organized crime, where counsel systematically plead not guilty on behalf of their clients in order to have access to the evidence. That way, they are able to gain a good understanding of police infiltration methods, which is a risk that we simply cannot afford to take when dealing with terrorism. So, we need to have independent people who can look at the evidence and form an opinion on whether a person is dangerous.

Do you believe that judges in Canada have the necessary independence to be able to analyze this secret evidence?

• (1025)

Mr. Christian Legeais: You talk about the independence of the courts. Judges are independent, according to the law. But I believe that the question you are really raising has to do with how to protect Canada from terrorism. In my opinion, that discussion cannot occur in the context of immigration legislation. Instead, it should occur within a more general framework, to allow for a rational discussion of ways of protecting Canada against terrorism.

The second problem relates to secret evidence: we have no way of knowing how it was obtained. In the case of Mohamed Harkat and Mr. Charkaoui, some of it came from Abu Zubaydah and was obtained under torture.

Mr. Serge Ménard: In the case of Mr. Harkat, like my colleague here, I read Justice Dawson's decision. A number of his reasons are based on the testimony of Mr. Harkat himself. So, that may not be the best...

Mr. Christian Legeais: Yes, but I can cite another case. Let's take Mr. Jaballah, for example. Two days ago, the Canadian Border Services Agency...

Mr. Serge Ménard: No. Do you believe that...

Mr. Christian Legeais: ... produced evidence...

Mr. Serge Ménard: We really don't have much time.

Mr. Christian Legeais: ... but it isn't evidence. They're wrong.

Mr. Serge Ménard: Mr. Legeais, it is really important that you answer that question. Do you believe that we have independent judges here in Canada?

When you say "according to the law", you seem to be suggesting that they are from a legal standpoint, but that in reality, they are not.

Mr. Christian Legeais: They are according to the law. However, I question the information and allegations brought forward to them.

Mr. Serge Ménard: I think they are independent.

Mr. Christian Legeais: We don't know what the secret evidence contains. The problem for lawyers dealing with cases that involve security certificates is that they are really on a fishing expedition. They know nothing and they have no basis on which to draw any conclusions. That has nothing to do with the judges' independence. The judges' hands are tied.

You have probably heard the statements made by certain justices of the Federal Court, saying...

Mr. Serge Ménard: I know Justice Hugessen very well. He is an excellent judge.

Mr. Christian Legeais: ... that they are not comfortable with this system. It's not a matter of questioning the independence or integrity of a judge. The system itself and the secret evidence are the problem.
[English]

The Chair: That was a very good question, Monsieur Ménard, and I let you go a little longer.

Do you have a final comment? Are you done? Do you have any more? It was a good question. I let you go way over, so if you have anything else....

You are the last questioner. Nobody else has indicated that they have anything.

[Translation]

Mr. Serge Ménard: Other participants may want to tell me whether they understand the kind of situation we're facing here.

Quite frankly, putting a judge in that situation... The fact is that judges are independent. I don't think you doubt the independence of Justice O'Connor, and other judges are also appointed for life.

I guess you can assume that their intellectual honesty could cause them to doubt some of the secret information they are given and the means by which that information was obtained. So, they have to weigh the pros and cons. They are presented with secret information that has to remain that way, for the reasons I cited earlier and that you also understand.

What we need is a system that would allow us to assess the danger in relation to the respect we have to show for all citizens, even if they're not Canadian.

• (1030)

Mr. Adil Charkaoui: I do not question judicial integrity and independence. However, nine justices who sit on the highest court of the land, the Supreme Court, clearly stated that security certificates are unconstitutional. The Barreau du Québec and the Canadian Bar Association also said that this Bill is unconstitutional. That is the problem.

Mr. Serge Ménard: They're going to ignore it.

Mr. Adil Charkaoui: The judges' hands are tied. The nine justices that sit on the Supreme Court, which is the highest court in the land, have already said that this is the law and that they have to work within a restricted framework. But you are the ones that impose that law on them. The justices have now put the ball back in your court. It is up to your Committee and Parliament to ensure that the security certificate process becomes a constitutional one. In order for that to happen, it has to be associated with a fair trial.

[English]

The Chair: I think everybody has had the opportunity to make their points. I appreciate the presence of the witnesses before the committee today.

We'll meet again this afternoon.

This meeting stands adjourned.

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