

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">C A N
A D A COURS UNIFIES DU QUBEC

PROVINCE DE QUBEC

CHAMBRE CRIMINELLE ET PNALE

DISTRICT DE MONTRAL

CAUSE NO.: 500-01-017372-928

TAPE: PROCES - SUITE

PRSENT: L'HONORABLE JUGE MARTIN FRASER, J.C.Q. ET JURY

NOM DES PARTIES:

SA MAJEST LA REINE

Plaignante,

c.

VALERY FABRIKANT

Accus,,

COMPARUTIONS:

Me Jean Lecours
PROCUREUR DE LA PLAIGNANTE

DATE DE L'AUDITION: LE 11 MAI 1993

FICHER: 3208

TABLE DES MATIERES

PAGE

WITHOUT JURY 3

WITH JURY 12

EXPERT WITNESS: CLAUDE POTHEL

Examined by Me Lecours 16

WITNESS: JEAN DION

VOIR-DIRE

Examined by Me Lecours 98

WITNESS DECLARED EXPERT

Examined by Me Lecours 101

Cross-examined by Mr. Fabrikant 153

PROCES - SUITE

WITHOUT JURY

THE COURT :

I came in alone to settle one or two small housekeeping details before we commence. The article 672.28 of the Criminal Code reads as follows:

"Where the verdict on trial of the issue is that an accused is fit to stand trial..."

Which is the case here:

"...the trial shall continue..."

I'm editing as I go:

"...as if the issue of fitness of the accused had never arisen."

I interpret that to mean, and it's new law, I interpret that to mean that just as a "voir-dire" in the traditional sense, the fitness hearing is a separate hearing, and that the Jury must be instructed to disregard all of the evidence which has been heard during the fitness hearing. In this fitness hearing there was extensive evidence heard that may later, may

well later bear on the Defense. I would be interested in hearing your views on that interpretation of 672.28 before I so instruct the Jury, it will be a very short instruction.

Me JEAN LECOURE :

My interpretation is that we shall continue with proper instructions from the Judge, in time, or right now.

THE COURT :

Yes, but simply... Yes, right now.

Me JEAN LECOURE :

To me it's crystal clear, it's black and white.

THE COURT :

That it is a separate issue, it is a trial within a trial, and that the evidence heard does not and cannot be considered on the trial of the issues.

Me JEAN LECOURE :

That's the way I see it.

THE COURT :

Mr. Belleau, is that how you see it too?

Me BELLEAU :

Oh well, insofar as the interpretation that you put on the section, I agree that it's, in parenthesis, an issue that should not contaminate the trial.

THE COURT :

The trial. Now...

Me JEAN LECOURE :

I think we should ask Mr. Fabrikant's opinion.

THE COURT :

I'm going to ask it. Now, Mr. Fabrikant, what is your view the same of article 672.28?

MR. VALERY FABRIKANT :

Well, I don't want to disappoint you but...

THE COURT :

But yes...

MR. VALERY FABRIKANT :

No, no, no, you would be disappointed very much if I say that I agree with you, therefore I do not want to disappoint you and I'm saying that I do not agree with you.

THE COURT :

All right. Okay.

MR. VALERY FABRIKANT :

So here we go.

THE COURT :

So what does that mean, that you feel what?

MR. VALERY FABRIKANT :

I feel very simple thing. If you remember, you were so concerned the Jury God forbid hear anything, let's say about torture in Pinel, that you sent the Jury out and you wanted witness to testify. Then you got even more scared, you didn't allow witness even to testify without the Jury. By using your logic, it would have been very simple, okay, Jury heard something, you just direct to disregard that the Jury forgotten this. No way, you understand that this is not how human being works. You cannot just say: "Cross it out from your mind" and continue as nothing happened. This is not how human beings are. Therefore I bring to your attention that Jury has been contaminated to such an extent by evidence presented here that no matter what you say, they have heard that I am such a callous person who most likely to

commit heinous crimes without having any remorse, and this is just, if it is in their mind, they would not be... hear properly any of my defense. They heard that I'm paranoid and I'm delusional about persecution, and all my defense is about persecution. If they think that this is just a fruit of my delusion, they would not take it seriously. So either... I don't know if there is any provision for such thing, we can kind of try some kind of issue of the Jury, or ask the Jurors to discuss whether they believe any of those allegations of psychiatrist.

THE COURT :

I will do no such thing.

MR. VALERY FABRIKANT :

Well...

THE COURT :

I will do no such thing.

MR. VALERY FABRIKANT :

I know.

THE COURT :

I'm sorry, you're completely wrong.

MR. VALERY FABRIKANT :

I am just asking if there is such thing, if there is no such thing, then my impression is that you should announce mistrial and commence anew, because no matter what you say to the Jury, they've heard all this, and it is just not in human power, and you are not a magician to erase it from their memory what they have heard, especially taking into consideration that you spent yesterday about forty (40) minutes repeating it all over again, without giving any criticism to what you were saying. Now yesterday you told them that I am such, such, such, such, such and such, according to Morisset. Now today you are going to tell them: "Okay, erase it all and we start in new, and everything is fine". This is not how human beings are. So I ask you to ask your own conscience -- well, I hope there is something there to ask, and I hope that something will respond to you that it is time to announce a mistrial. That's all.

THE COURT :

Thank you. First of all, when a special issue is ordered in the course of a trial, the code provides, that is, the Legislator who makes the law, not I, provides that the issue will be decided by the Jury, which has been empanelled to hear the case. First principle. I can't change that, that's the law of the land. Secondly, in dealing with a special issue, two elements must be proved. 1) the presence of a mental disorder, because absent a mental disorder there is no need for the Jury to go to the second question of whether it impedes the hearing, it impedes the accused's ability to defend himself or understand the proceedings. So, inasmuch as a special issue was ordered, it became imperative that, in the first place, the psychiatrists who were named, Lafleur and Talbot, discussed and testified on the question of mental disorder. They did, and they raised the question of personality problems. The matter, of course, could have ended there. I was in no way in error, in my view, in permitting them to testify on that; quite to the contrary, if I had not done so, there would have been no basis for the issue

even to have been debated. You tell me that the Jury has been contaminated. I doubt it very much. I have more faith in human beings, perhaps, than you do.

MR. VALERY FABRIKANT :

Ha, ha, ha. Did I not prove otherwise?

THE COURT:

I'm speaking Mr. Fabrikant, it will be your turn. You proved nothing. I'm, in my view, I do not believe that the Jury has been contaminated. I underline that you were the one who elected to go in detail into the question of paranoia and narcissism in your cross-examination of both Lafleur and Talbot, and you are the one who decided to ice the cake by bringing along Morisset, and having Morisset testify for whatever reason you gave, which, in my respectful view, and I did not say this to the Jury, was furious. Secondly, or thirdly...

MR. VALERY FABRIKANT :

What it means furious?

THE COURT :

Look it up. Thirdly, I agree there are those who hold the view that a Jury may find it difficult to put certain things out of their minds. You will find various Courts of Appeal, in certain circumstances, making the point. You will find the same Courts of Appeal making the point that it is sometimes difficult for Judges to put certain things out of their minds when they have to instruct themselves to do so. But by and large, by an large, our law recognizes that jurors in good faith will follow the directions of the Judge, just as Judges will follow their own directions to themselves. Parliament has made the jurors judges of fact. In my book that put them on every bit the same plane as any other judge who is sitting, whether he be deciding facts or whether he be deciding law, and to say that on one hand the judge is capable of putting certain things out of his mind but on the other hand jurors are not is pure egoism, pure egoism and nothing else, and furthermore the law foresees, particularly in conspiracy trials, it happens every day, that jurors are instructed in determining first of all whether there is a conspiracy to ignore a whole raft of evidence in coming to the initial decision as to whether there is a conspiracy, and only after, arriving at that particular point, may they take into account that evidence. If Parliament, in its wisdom, had shared your concern, then I have to conclude that another mechanism would have been put in place. I concede that if something is serious enough, something is damaging enough, sometimes there is a situation which is irredeemable. This is not one. This is not one at all. You have announced that your defense is one of persecution. I don't know, if that's what you propose to call it when you choose to present it. There is no such thing in my book as a defense of persecution. Whatever it may be, I would suppose that you propose to lead the same evidence as you led during the fitness hearing. If that is so, all of the issues that you take strong exception to, are going to be brought before the Jury again. If your defense is one of persecution, if that's what you propose, which is, I say, doesn't exist, the only place where I can see a

defense of persecution insofar as it provokes an inability to form and intent is simply a fancy way of saying insanity, and I don't think that's what you're saying at all, and I've taken note of the fact that you have pointed out in a number of occasions that you do not propose to plead insanity. If you propose to plead provocation or whatever, or some other defense that is recognized by the law, that is one thing, and whatever evidence I deem admissible will be admitted, but all of this arose, and I think I'm serving to clear the air at the moment, as far as I'm concerned, all of this arose out of the simple, simple question, you always manage to complicate the simplest issue, which I raised. I'm of the view, and I note that you're not, Crown prosecutor is and Mr. Belleau is, that the special issue was a separate issue, therefore, once the Jury is instructed to disregard it, you cannot and should not take for granted that that proof has been made. If you wish to put that proof in evidence again you will have to remake it, and I caution you that if you propose to raise with the witnesses, when comes the time for the defense that you've alluded to, the question of what they said during the special issue, then you should now take the steps you have to take to have the evidence transcribed, because we are not going to be going on an expedition of listening to tapes, and let it not be said that I didn't make my position crystal clear on that point. That is all I have to say. Jury please.

MR. VALERY FABRIKANT :

Well... So, do I understand correct...

THE COURT :

Just a minute.

MR. VALERY FABRIKANT :

Do I understand correct that the motion for mistrial has been denied?

THE COURT :

The motion for mistrial, if that's what it was, you normally tell me when I refuse to entertain one of your motions that you haven't made it, if it is a motion for mistrial, is that what it is?

MR. VALERY FABRIKANT :

Yes.

THE COURT :

It is dismissed.

THE JURY IS PRESENT

THE COURT :

Good morning ladies and gentlemen, let me first of all thank you again very much for the attention you took in reaching the verdict that you reached last night. Let me read to you article 672.28 of the Criminal Code. It provides as follows:

"Where the verdict on trial of the issue is that an accused is fit to stand trial, the trial shall continue as if the issue of fitness of the accused had never arisen."

Now, what that means is that all of the evidence that you heard during the fitness issue does not form part of the trial of Mr. Fabrikant on the indictment which has been returned against him, and cannot be taken into consideration by you in arriving at your verdict on the charges against him. I realize that this is sometimes of troublesome intellectual exercise to ask you to perform, particularly since a number of statements were made, and relating to the incidents of the twenty-fourth (24th) of August, but your duty at this point, as with everything you read, whether in the newspapers or heard on the radio, is to strike it all from your mind, and when, in the (inaudible) of time, you get around to deciding the issues, then you will decide them only on the issues of the trial itself and not either on any of the evidence, or on any of the arguments that were made during the hearing of the special issue. Now, before we start, I received a note from you last week, that I didn't deal with until today, which reads as follows:

"Your Honor, we, the Jury, are requesting that after your eating, if we can be liberated so we are able to take a walk, do banking, et cetera."

The short answer is yes, with the following qualification. At the moment, just as you're free to go home in the evening and return in the morning, so too are you free to go out at lunchtime and do any banking or personal business or whatever, from a legal point of view. So in that sense the answer is yes, and I'm not going to interfere with that. But I would draw this to your attention, and this is something which makes the constables particularly nervous. Perhaps nervous isn't the word, concerned would be a better word. The constables are the ones who are responsible for you while you're in the Courthouse. This is a trial that, like it or not, has attracted some sort of attention, and you know, often walking down 14th Avenue or St-Catherine Street or whatever, you're not really likely to be approached by anybody, but here in the Courthouse, following in its immediate "environnement" you are quite likely to be approached by somebody who may well offer you their gratuitous view on what these proceedings are here. When this happens, and if that happens, it causes a really serious problem for me and for everybody else involved in the trial. It sometimes means that I have to launch an investigation into what's happened, and it could lead to... I'm not saying it would lead, but it could lead to the loss of a juror, and we're operating with eleven at the moment, I don't wish to take any risks. So that is why, as a counsel of caution, it's a better idea, a much, much better idea, that you lunch together, that you stay together. Now, if you speak to the constables, they will certainly arrange to take you all for a walk together during the lunch hour, and I'm perfectly prepared to accommodate you in this regard, if there's a time problem, but I don't think there is, because between twelve thirty (12:30) and two fifteen (2:15) there's almost two hours. So I would be much much happier if you would remain together, because it reduces this risk of Tom, Dick or Harry coming up and

saying to you: "Hey, by the way..." That's my reason. Now, we're getting back to the trial today. It looks to me as if, if I can judge from what I've seen so far that it may take some time. Why don't you think about whether you wish to get off on Friday afternoons in order to look after personal affairs such as banking or whatever, maybe that might be a solution to the difficulties that some of you have, talk it over and juror number 5 will, who's the foreman, will... at least I think he's the foreman, I don't know whether you voted him for the duration, or simply for the special issue, you might want to settle that too, given the length of the trial. Anyway, whoever your foreman is, can send me a note and let me know whether you think that might be an idea, now if your view is: "No, come on, let's push on five days a week", that's all right with me too, but you talk it over, and if there are any problems of an administrative nature like that, put it in the note and I'll be happy to consider it. Okay. Mr. Lecours.

Me JEAN LECOIRS :
Dr. Claude Pothel please.

INTERPRETER - FRENCH/ENGLISH
SANDRA TRAYNOR - DULY SWORN

Me JEAN LECOIRS :
At this point, My Lord, I would like to open a voir-dire in order to establish Dr. Pothel is an expert in the field of pathology.

THE COURT :
Very well.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993),
this eleventh (11th) day of the month of May, personally
came and appeared:

CLAUDE POTHEL, born on March 16th, 1937, pathologist,
Montreal Forensic Laboratory,

WHOM, after having been duly sworn doth depose and say
as follows:

EXAMINED BY Me LECOIRS
ATTORNEY FOR THE CROWN :

Q. Dr. Pothel, could you summarize your education, training
as well as experience for the benefit of the Jury?

MR. VALERY FABRIKANT :
Maybe for the shortness sake we'll just announce him an
expert and continue.

THE COURT :
You're prepared to admit that he is an expert, is that
correct, in the field of pathology?

MR. VALERY FABRIKANT :
Yes.

THE COURT :
Very well. Then the Court recognizes Dr. Pothel as an
expert in the field of forensic pathology.

Me JEAN LECOIRS :
Okay.

Q. But still very briefly, could you still explain your

education, training and...

-Q. Très brièvement, pourriez-vous résumer votre expérience, votre éducation ainsi que votre formation dans le domaine de la pathologie?

A. J'ai obtenu mon diplôme de médecin en soixante-trois (63), en Haïti...

-A. I obtained by Doctorat of medicine in nineteen sixty-three (1963) in Haïti...

A. ...et ... partir de dix-neuf cent soixante-cinq (1965) j'étais au Québec, et par la suite aux États Unis pour faire des études de spécialisation en pathologie.

-A. ...and as if nineteen sixty-five (1965) I came to Quebec, and then I went to the states in order to obtain a specialization certificate in the field of pathology.

A. J'ai mes certificats de spécialiste en pathologie...

-A. I have certificates of specialization in the field of pathology...

A. ...et aussi de "Fellow" en pathologie...

-A. ...also a Fellowship in pathology...

A. ...par le Collège des Médecins du Québec et le Collège Royal du Canada.

-A. ...issued by the College of Physicians of Quebec and the Royal College of the Physicians of Canada.

A. Je pratique la pathologie depuis dix-neuf cent soixante-onze (1971).

-A. And I've been practicing pathology since nineteen seventy-one (1971).

Q. And approximately how many autopsies did you perform in your career?

-Q. Et vous avez effectué, approximativement combien d'autopsies au cours de votre carrière?

A. J'ai pas le nombre exact mais j'ai pratiqué, plus de deux mille (2000) ... trois mille (3000) autopsies.

-A. I don't have the exact figure but I conducted roughly between one thousand (1000) and two thousand (2000) autopsies... from two thousand (2000) to three thousand (3000) autopsies.

Q. And have you been recognized in the past as an expert witness?

-Q. Vous a-t-on reconnu comme expert par le passé, ... titre de pathologiste dans le domaine?

A. Oui, lors de nombreux témoignages en Cour, j'ai toujours été reconnu comme témoin expert en pathologie.

-A. In the course of various testimonies in Court, I have always been recognized as an expert witness in the field of pathology.

Me JEAN LECOURE :

I have no further questions on voir-dire.

THE COURT :

I've already said that, in view of Mr. Fabrikant's admission.

Me JEAN LECOURE :

Q. Dr. Pothel, I think it will be easier to follow your testimony. Did you first prepare an autopsy report concerning a corpse bearing Coroner's notice number 60388, identified as Dr. Michael Hogben?

-Q. Docteur Pothel, avez-vous effectué, une autopsie sur le corps de monsieur Michael Hogbe, le numéro d'avis du Coroner serait le 60388?

A. En effet j'ai pratiqué, tel autopsie et rédigé, un rapport complet.

-A. Yes, I did perform such an autopsy and written up an extensive forensic report.

Q. I would like you to file the French version as P-53.

-Q. J'aimerais que vous produisiez la version française sous P-53.

Q. Yes. I would like to file as well the translation as P-54.

THE COURT :

Is there any objection to the translation?

MR. VALERY FABRIKANT :

No.

THE COURT :

No. Thank you.

Me JEAN LECOURES :

Q. And doctor, I also believe that you made a sketch...

-Q. Et je crois que, docteur, vous avez ,galemment pr,par, un croquis?

A. En effet, oui.

-A. Yes, indeed.

Q. So let's file it as P-55.

-Q. Nous allons le produire sous P-55.

THE COURT :

Has Mr. Fabrikant seen the sketch?

Me JEAN LECOURES :

I think he got it at the preliminary hearing, but he might have a copy.

THE COURT :

Then would you pass him a copy for the moment please?

Is this the original sketch? I notice it's labelled in English.

Me JEAN LECOURES :

I asked the doctor to do it in English.

THE COURT :

I see. Okay.

Me JEAN LECOURES :

Q. So doctor, you indeed performed an autopsy on the body of Mr. Michael Hogben on August the twenty-fifth (25th)...

-Q. Alors docteur, en fait vous avez effectu, une autopsie sur le corps de Michael Hogben le vingt-cinq (25) ao-t...

Q. ...could you explain your autopsy and give all the details?

-Q. ...pourriez-vous r,sumer votre autopsie et donner les d,tails aussi?

A. Alors j'ai commenc, l'autopsie le vingt-cinq (25) ao-t quatre-vingt-douze (92)...

-A. I started the autopsy on August twenty-fifth (25th) nineteen ninety-two (1992)...

A. ...vers quatorze heures quarante-cinq (14 h 45)...

-A. ...around fourteen forty-five (14:45)...

A. ...et l'autopsie a ,t, termin,e le lendemain, vingt-six (26) ao-t, vers dix heures trente (10 h 30) a.m.

-A. ...and the autopsy was concluded August twenty-sixth (26th), at about ten thirty (10:30) in the morning.

Q. Please go on.

-Q. Veuillez poursuivre je vous prie.

A. Alors j'ai fait un examen externe.

-A. So I conducted an external examination.

A. J'ai fait prendre des photographies des diverses l,sions not,es sur la victime.

-A. I had photographs taken of the various injuries and regions on the victim.
A. J'ai aussi pris cinq radiographies de la t[^]te et du thorax...

-A. I also had five X-rays taken of the head and thorax...
A. ...qui montrent la pr,sence d'une balle au niveau du crfne...
-A. ...which show the presence of one bullet in the crania...
A. ...avec quelques fragments de balle...
-A. ...with some fragments, bullet fragments...
A. ...et ,galement la pr,sence de deux balles au niveau du thorax.
-A. ...and also the presence of two projectiles on the thorax.
A. Et par la suite j'ai not, les v[^]tements, les signes individuels.
-A. And afterwards I noted the clothing and the individual marks.
A. Alors concernant les v[^]tements, les v[^]tements du tronc pr,sentent des perforations d'entr,es...
-A. Concerning the clothes of the trunk which show perforations of entrance...
A. ...au niveau de la partie avant du c"t, droit...
-A. ...in the right front face of the body...
A. ...et aussi au niveau de la partie arriŠre, ... droite.
-A. ...and also on the right posterior face.
A. Et comme signes individuels, c'est un homme de race blanche qui pŠse quatre-vingt-dix (90) kilos...
-A. And as individual characteristic, it is the body of a caucasian male, weighing ninety (90) kilograms...
A. ...et mesurant un mŠtre soixante-dix...
-A. ...measuring one point seventy meters...
A. ...soit cent quatre-vingt-dix-huit (198) livres et cinq pieds sept (5'7").
-A. ...which would be the equivalent of a hundred and ninety-eight (198) pounds and measuring five foot seven (5'7").
A. Alors comme marques de violence not,es sur le corps...
-A. As traumatic marks or marks of violence noted on the body...
A. ...alors j'ai constat, la pr,sence de plaies de projectiles d'arme ... feu...
-A. ...I noticed the presence of marks or wounds made by firearm projectiles...
A. ...et j'ai not, que la victime a ,t, atteinte de trois projectiles d'arme ... feu.
-A. ...and I noted that the victim sustained three firearm projectile injuries.
A. Et ces plaies sont num,rot,es pour fins de r,f,rence...
-A. These wounds were numbered for reference purposes...
A. ...mais #a ne veut pas dire l'ordre chronologique de ces plaies.
-A. ...and it does not mean that this is the chronological order of the wounds.
A. Alors si on se r,fŠre au diagramme...
-A. If I refer to the schematic...
A. ...qui montre, enfin mon num,ro de laboratoire de m,decine l,gale...
-A. ...which shows my forensic laboratory number at the top...

A. ...alors le num,ro 1...

-A. ...number 1...

A. ...c'est la plaie d'entr,e au niveau du c"t, droit de la t^te...

-A. ...corresponds to the entrance wound at the right-hand side of the head...

A. ...ou ce qu'on appelle la r,gion pari,tale...

-A. ...we refer to this area as the parietal region...

A. ...et ... l'oeil nu je ne vois pas d',vidence de stigmat,e, c'est-...-dire de d,p"t qui indique une proximit, de tir...

-A. ...and to the naked eye this does not show evidence of close range firing such as powder or soot...

A. ...et en dessous de cette plaie, quand j'ai fait les incisions au niveau du cuir chevelu...

-A. ...and under the wound, when I made the incisions under the scalp...

A. ...il y a de l'infiltration h,morragique marqu,e...

-A. ...there was marked haemorrhagic infiltration...

A. ...et un trou d'entr,e au niveau de l'os du crfne ... droite...

-A. ...and an entrance wound in the cranium bone, on the right-hand side...

A. ...et de nombreuses fractures ... partir de ce trou d'entr,e...

-A. ...and numerous fractures from that entrance wound...

A. ...qui vont du c"t, droit et aussi du c"t, gauche, en arriŠre de la t^te.

-A. ...which go from the right side, and also the left side, at the back of the head.

A. Maintenant l'os ... gauche, en arriŠre, pr,sente un trou de sortie...

-A. Now, the bone on the left-hand side presents an exit whole...

A. ...mais une balle de plomb d,form,e...

-A. ...but a deformed lead bullet...

A. ...est retrouv,e entre les os bris,s du crfne et le cuir chevelu.

-A. ...was found between the fractured bones of the cranian and the scalp.

A. Alors le cerveau pr,sente de l'h,morragie au niveau des m,ninges...

-A. And the brain presents haemorrhage in the meningeal area...

A. ...et des lac,rations, c'est-...-dire des d,chirures extensives du cerveau.

-A. ...and lacerations, extensive tears in the brain.

A. Le long de la trajectoire qu'a fait le projectile, dans le cerveau.

-A. So it was the trajectory of the projectile within the brain.

Q. So what is this trajectory?

-Q. Quelle est cette trajectoire?

A. Alors cette trajectoire est ,tablie selon la position anatomique internationale...

-A. The trajectory was given in the international anatomical position...

A. ...c'est-...-dire qu'on prend l'individu comme debout, faisant face ... nous, faisant face ... l'examineur.

-A. ...in other words we take the individual and he is in a position which would be standing up, and would be right

in front of the examiner, or facing the examiner in an upright position.

A. Alors cette trajectoire, correspondant ... la balle num,ro 1...

-A. This trajectory, corresponding to wound number 1...

A. ...alors se fait du c"t, droit vers le c"t, gauche...

-A. ...run from the right-hand side to the left-hand side...

A. ...de haut vers le bas...

-A. ...from top to bottom...

A. ...et d'avant vers l'arriŠre.

-A. ...from front to back.

A. Alors le projectile a ,t,, par la suite, soumis ... la section de balistique pour des analyses sp,ciales.

-A. And the projectile was then submitted to the ballistic section for expert analysis to be performed.

Q. Okay. We'll file them at the end of your...

-Q. Nous allons les produire ... la fin de votre t,moignage.

A. Maintenant, concernant le deuxiŠme projectile, c'est le num,ro 2...

-A. Concerning the second projectile, that would be number 2...

A. ...qui est la plaie d'entr,e au niveau de la partie avant et vers le haut du thorax, ... droite...

-A. ...which is the entrance wound on the front part, on the right-hand side of the thorax, the upper section of the thorax...

A. ...et ... l'oeil nu cette plaie ne pr,sente pas de d,p"t traduisant une proximit, de tir.

-A. ...and to the naked eye there is no evidence of close range firing.

A. Alors il y a un trou d'entr,e au niveau de la paroi thoraxique ant,rieure ... droite...

-A. So there is an entrance wound on the right interior thoracic wall...

A. ...qui se situe entre les troisiŠme et quatriŠme c"tes droites...

-A. ...and this hole is located between the third and fourth ribs on the right side...

A. ...et la balle va suivre le trajectoire en perforant le p,ricarde, c'est-...-dire la membrane qui entoure le coeur.

-A. ...and the trajectory of the bullet ran through the pericardium, that is the envelope that protects the heart, or the membrane that protects the heart.

A. J'ai not, des lac,rations, des d,chirures extensives d'un gros vaisseau qui part du coeur, qui est l'aorte...

-A. And I noted lacerations and extensive tears in a large vessel, that is the aorta to the part...

A. ...c'est #a qui part du coeur...

-A. ...which is the main artery, the mean heart, cardiac artery...

A. ...et ,galement...

THE COURT :

He said which goes from the heart.

THE INTERPRETER :

Oh, I'm sorry.

THE COURT :

Qui part du coeur.

-A. ...which goes from the heart, excuse me.

A. Il y a ,galement des lac,rations extensives de l'artŠre pulmonaire principal...

-A. There are extensive lacerations in the main pulmonary artery...

A. ...et j'ai not, des perforations du poumon gauche...

-A. ...and I noted perforations in the left lung...

A. ...il y a ,vidence d'h,morragie interne...

-A. ...there is presence of internal haemorrhage...

A. ...sous forme de collection de sang dans la cavit, qui entoure le coeur...

-A. ...there is an accumulated amount of blood in the cavity surrounding the heart...

A. ...et aussi dans les deux cavit,s thoraxiques...

-A. ...also in both thoracic cavities...

A. ...pour un total de mille cinq cents (1500) c.c. de sang au niveau du thorax.

-A. ...containing a total quantity of one thousand five hundred (1500) c.c. of blood for the thoracic area.

A. Il y a ,galemnt un h,matose, c'est-...-dire une collection de sang au niveau des tissus du thorax...

-A. So there is an amount of blood collected in the tissues of the thorax...

A. ...qu'on appelle le "m,diastin"...

-A. ...and we call that the "mediatina"...

A. ...et apršs avoir travers, les organes et les vaisseaux mentionn,s...

-A. ...after going through the organs and the vessels mentioned...

A. ...le projectile va sortir au niveau de la paroi thoraxique arrišre gauche...

-A. ...the exit wound would be in the left posterior thoracic wall...

A. ...sur le quatrišme c"te gauche, qui est fractur,e.

-A. ...on the fourth rib, on the left side, which is fractured.

A. Alors en laissant la paroi thoraxique, le projectile va sur l'omoplate gauche, qui est fractur,e...

-A. So upon leaving the thoracic wall the projectif hits the left shoulder blade which is fractured...

A. ...et une balle de plomb, qui pr,sente de petites encoches, a ,t, extraite des muscles de la r,gion de l'omoplate gauche.

-A. ...and a lead bullet presenting small nicks was extracted from the muscles of the left shoulder blade area.

A. Alors la trajectoire se fait donc du c"t, droit...

-A. Therefore the trajectory runs from the right side...

A. ...vers le c"t, gauche...

-A. ...through the left side...

A. ...#a se fait d'avant vers l'arrišre...

-A. ...from front to back...

A. ...et l,gšrement de haut vers le bas.

-A. ...and slightly from top to bottom.

Q. And what about the...

A. Alors le projectile a ,t, soumis ... la section de balistique pour des expertises.

-A. And the projectile was submitted to the ballistic section for expert analysis.

Q. And what about the third projectile, or the third...

-Q. Qu'en est-il du troisišme projectile ou...

Q. ...the third wound?

-Q. ...la troisišme plaie?

A. Alors la cl, d'entr,e num,ro 3...

- A. Entrance way number 3...
- A. ...se situe ... la partie arriřre droite du thorax.
- A. ...is located at the back side, on the right-hand side of the thorax.
- A. Et ... l'oeil nu j'ai pas not, d',vidence de d,p"t indiquant une proximit, de tir.
- A. And to the naked eye there was no evidence of close range firing.
- A. Alors les l,sions caus,es par le passage de ce projectile...
- A. So the lesions caused by the passage of this projectile...
- A. ...#a se fait dans les muscles de la r,gion qui sont perfor,s et infiltr,s de sang...
- A. ...and which were made in the muscles of the area, and the muscles were perforated and noted some...
- A. C'est #a, qui sont perfor,s et infiltr,s de sang.
- A. ...and there was blood infiltration in the muscles.
- A. Et une balle a ,t, extraite, une balle de plomb, non d,form,e, a ,t, extraite dans un tissu mou du dos.
- A. And a non-deformed lead bullet was extracted from the soft tissues of the back.
- A. Alors cette balle se trouve sous la plage d'ecchymose qui est marqu,e ici...
- A. That bullet was located under this ecchymose, this area here, located...
- A. la partie sup,rieure gauche...
- A. ...in the upper right-hand side...
- A. ...et c'est l'h,morragie qu'on voit en surface sur la peau.
- A. ...and that's the haemorrhage, the superficial haemorrhage that we can see on the skin, on the body.
- Q. Was it as well transmitted to the ballistic department?
- Q. Est-ce qu'on l'a transmise ,galemment ... la section balistique?
- A. En effet, cette balle a ,t, soumise ... la section de balistique pour les expertises...
- A. Yes, the bullet was submitted to ballistics for expert analysis...
- A. ...et la trajectoire, comme l'indique la petite flřsche...
- A. ...on the trajectory, as indicated by the small arrow...
- A. ...se fait donc de bas vers le haut...
- A. ...ran from top to bottom...
- A. ...de droite vers la gauche...
- A. ...from right to left...
- A. ...et trřs l,gřrement donc d'arriřre vers l'avant.
- A. ...and very slightly from back to front.
- A. Ća n'a pas p,n,tr, ... l'int,rieur de la cage thoraxique, c'est rest, dans les muscles.
- A. Therefore it did not penetrate the thoracic wall, it remained within the muscle area, or in the muscles.
- Q. What about your other findings during the internal examination?
- Q. Et qu'en est-il des autres trouvailles au cours de votre expertise?
- A. Le reste de l'examen externe est n,gatif pour la pr,sence d'autres l,sions traumatiques, comme au niveau de l'abdomen...
- A. And as the abdominal area, the rest of the examination reveals to be negative in terms of other perforations...

A. ...et ... la fin de l'autopsie, divers prélèvements ont été faits...

-A. ...and various samples were taken at the end of the autopsy...

A. ...du sang, pour la recherche éventuelle d'alcool...

-A. ...blood to conduct a "alcoholemia" report...

A. ...et des spécimens de sang, d'urine, de contenu gastrique et la vésicule biliaire...

-A. ...and samples of blood, urine, gastric content and gall bladder...

A. ...pour des analyses toxicologiques.

-A. ...for toxicological analysis.

A. Du sang et des cheveux ont été soumis ... la section de biologie pour des expertises.

-A. Blood and hair samples were taken and sent to the biology section for expert analysis also.

A. Quant ... la section de balistique, cette section a reçu les vêtements du tronc...

-A. As for the ballistic section, they received clothing of the trunk...

A. ...pour voir s'il n'y a pas de marque de dépôt de proximité, de tir.

-A. ...to see if there were any marks of close range firing.

A. ...des cheveux autour de la plaie d'entrée ont été prélevés pour voir s'il n'y a pas de dépôt de stigmata qu'on ne peut pas voir ... l'œil nu...

-A. ...hair surrounding entrance wound number 1 was submitted to make sure, or to check if there was any evidence of close range firing to the naked eye...

A. ...ainsi que les trois projectiles extraites de la tête, de la région de l'omoplate gauche et de la partie arrière du dos.

-A. ...as well as the three projectiles coming from the head, from the thorax area at the back and...

A. Au niveau de la partie supérieure du dos.

-A. ...the upper part of the back.

A. C'est à ces projectiles ont été soumis en balistique pour les expertises.

-A. These projectiles were sent to the ballistic section for purposes of expert analysis.

Q. And doctor, could you elaborate on your conclusions?

-Q. Pourriez-vous, s'il vous plaît, élaborer sur vos conclusions?

A. Alors pour vous résumer, alors les principales trouvailles...

-A. So to summarize the main findings...

A. ...qu'il y a un projectile qui a fait un passage au niveau de la tête, avec plaie d'entrée au niveau de la région pariétale droite...

-A. ...one projectile in the head, and the entrance wound at the right parietal region...

A. ...causant des lésions cérébrales extensives...

-A. ...causing extensive cerebral lacerations...

A. ...de l'hémorragie au niveau du cerveau et des méninges...

-A. ...and cerebral meningeal haemorrhage...

A. ...et des fractures multiples du crâne.

A. ...and multiple skull fractures.

A. Passage d'un autre projectile au niveau du thorax...

-A. And a passage of another projectile on the thorax...

A. ...avec plaie d'entrée ... la partie avant droite...

-A. ...with an entrance wound at the right frontal area of the body...

A. ...causant une h,morragie intra-thoraxique abondante...

-A. ...causing abundant intra-thoracic haemorrhage...

A. ...avec collection de sang dans les deux cavit,s thoraxique...

-A. ...with blood in both thoracic cavities...

A. ...pr,sence de sang autour du coeur...

-A. ...presence of blood in the heart area, around the heart area...

A. ... etcollections de sang dans les tissus du m,diastin, dans les tissus du thorax...

-A. ...and also a collection of blood in the thorax tissues, in the mediastinum...

A. ...lac,rations de l'aorte thoraxique...

-A. ...lacerations in the thoracic aorta...

A. ...de l'artŠre pulmonaire...

-A. ...the pulmonary aorta...

A. ...du p,ricarde, c'est-...-dire la membrane qui entoure le coeur...

-A. ...the pericardium, that is the membrane surrounding the heart...

A. ...et lac,ration du poumon gauche.

-A. ...and laceration to the left lung.

A. Fracture de la quatriŠme c"te gauche et de l'omoplate gauche...

-A. Fracture of the fourth rib on the left side and the left shoulder blade...

A. ...passage de troisiŠme projectile d'arme ... feu au niveau des muscles de la paroi thoraxique en arriŠre...

-A. ...passage of a projectile in the muscles of the back thoracic wall...

A. ...avec plaie d'entr,e du c"t, droit.

-A. ...with an entrance wound at the right side.

A. Et par la suite j'ai ,tabli les causes du d,cŠs.

-A. And then I established the causes of death.

Q. And what are these causes?

-Q. Quelles sont ces causes?

A. Le d,cŠs est d- aux l,sions et combin,es graves...

-A. The cause of death is attributed to the serious lesions...

A. ...et irr,versibles....

-A. ...which are irreversible...

A. ...au niveau de la t^te et du thorax...

-A. ...in the head and in the thorax...

A. ...soit les l,sions au niveau du cerveau et du crfne...

-A. ...such as the lesions in the cranium and in the brain...

A. ...et aussi l'h,morragie interne...

-A. ...and also the internal haemorrhage...

A. ...secondaire aux lac,rations de l'aorte, de l'artŠre pulmonaire, et du poumon gauche.

-A. ...secondary to the aorta, pulmonary artery and left lung lacerations.

A. Alors des trois projectiles deux ont caus, des l,sions mortelles.

-A. So out of the three projectiles two caused fatal wounds.

Q. So, doctor, I will show you a projectile labelled C-62906...

-Q. Docteur, je vous montre un projectile identifi, sous le num,ro C-62906...

Q. ...could you examine it?

-Q. ...pourriez-vous, s'il vous plaEt, l',tudier?

A. Alors c'est bien mon ,criture avec mes initiales...

-A. That is my handwriting there and my initials...

A. ...la date...

-A. ...the date...

A. ...et le num,ro d'exhibit...

-A. ...the exhibit number...

A. ...qui correspond ... la balle extraite de la r,gion de l'omoplate gauche.

-A. ...which corresponds to the bullet that was extracted in the left shoulder blade area, at the back.

Q. So which trajectory... you numbered 3 trajectories, (inaudible).

-Q. Alors vous r,f,rez ... quelle trajectoire? Vous avez mentionn, trois trajectoires.

A. Alors cette balle correspond ... la plaie d'entr,e num,ro 2.

-A. This bullet corresponds to entrance bullet number 2.

Q. I would like you to file it as P-56.

-Q. J'aimerais que vous la produisiez sous P-56.

THE COURT :

Would you like to see that? No? I can't hear you when you shake your head, you have to speak.

MR. VALERY FABRIKANT :

No.

THE COURT :

Fine.

Me JEAN LECOURE :

Q. Now I'm showing you another projectile labelled C-62907, could you examine it?

-Q. Maintenant je vous montre un autre projectile identifi, sous le C62907, pourriez-vous l',tudier je vous prie?

A. Alors c'est le num,ro d'exhibit C-62907...

-A. That is the exhibit number C-62907...

A. ...avec mon ,criture et le num,ro de (inaudible) et la date...

-A. ...bearing my handwriting, the forensic laboratory number, the date and my initials...

A. ...et cette balle avec ce num,ro d'exhibit correspond ... la balle extraite du dos ... gauche.

-A. ...and this bullet corresponds to the wound...

Q. Trajectory number 3?

A. Alors c'est #a, c'est la balle qui a ,t, extraite de la partie sup,rieure gauche du dos...

-A. It was extracted in the upper part of the left -- the left upper part, in the back, and it corresponds to trajectory or wound number 3...

A. ...correspondant exactement ... la plaie d'entr,e num,ro 3.

-A. ...corresponding precisely to entrance wound number 3.

Q. I would like you to file it as P-57.

-Q. J'aimerais que vous la produisiez sous P-57.

Q. And then I'm showing you a projectile labelled C-62908, could you examine it and see whether you recognize your handwriting?

-Q. Je vous montre le projectile identifi, sous le C-62908, pourriez-vous l',tudier je vous prie et me dire si oui ou non vous reconnaissez votre ,criture?

A. Alors c'est bien mon ,criture...

-A. That is my handwriting...

A. ...avec mes initiales...
-A. ...bearing my initials...
A. ...et le num,ro d'exhibit C-62908...
-A. ...exhibit number C-62908...
A. ...correspondant ... la balle et aux petits fragments de balle...
-A. ...corresponding to the bullet and the small bullet fragment...
A. ...extraite de la t^te.
-A. ...extracted from the head.
A. Alors cette balle correspond ... la plaie d'entr,e num,ro 1.

-A. So this bullet corresponds to entrance wound number 1.

Q. Would you file it please as P-58?

-Q. Pourriez-vous, s'il vous pla^t, la produire sous P-58?

Me JEAN LECOURE :

So, My Lord, I suggest we take our break now, we will continue...

THE COURT :

Before you embark on the...

Me JEAN LECOURE :

(Inaudible).

THE COURT :

Okay. So we'll stop for fifteen (15), twenty (20) minutes.

MR. VALERY FABRIKANT :

Is it possible for me to confer with Me Belleau during the break?

THE COURT :

Certainly. Mr. Belleau, would you care to speak to Mr. Fabrikant during the break?

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

EXPERT WITNESS: CLAUDE POTHEL -- UNDER THE SAME OATH

CONTINUATION OF EXAMINATION BY Me LECOURE

ATTORNEY FOR THE CROWN

Me JEAN LECOURE :

Q. Doctor Pothel, did you, on August the twenty-sixth (26th) nineteen ninety-two (1992), perform an autopsy on the body of, corpse bearing the Coroner notice number 8-60391, identified as doctor John Saber?

-Q. Docteur Pothel, avez-vous effectu, une autopsie le vingt-six (26) mai mil neuf cent quatre-vingt-douze (1992), portant le num,ro d'avis du Coroner A-60391 et identifiant le corps de monsieur Jean Saber?

A. En effet, j'ai pratiqu, une telle autopsie le mercredi vingt-six (26) ao-t, quatre-vingt-dix (90), vers onze heures dix-sept (11 h 17).

-A. Yes, in fact, I did proceed to such an autopsy on August twenty-sixth (26th) nineteen ninety-two (1992), at approximately eleven seventeen (11:17).

Q. Did you, as well, write a report and a diagram relating to that autopsy?

-Q. Avez-vous r,dig, le rapport et en fait pr,par, un croquis relativement ... cette autopsie?

A. J'ai un rapport complet mais c'est un diagramme montrant les l,sions.

-A. I have a full report as well as a schematic showing, displaying all the lesions, wounds.

Q. At this point I would like to file the original version in French as P-59.

-Q. A ce moment-ci j'aimerais produire la version originale en français sous P-59.

Q. The official translation under P-60.

-Q. Et la traduction officielle sous P-60.

Q. As well as the diagram under the quote P-61.

-Q. Et le schéma sous P-61.

Me JEAN LECOURE :

You don't have to give to Mr. Fabrikant all the time, he already has copies.

Q. You have the original with you?

-Q. Vous avez l'original avec vous docteur?

A. En français, oui.

-A. In French, yes.

Q. I will ask you to file the original and give to Me Belleau.

-Q. Alors je vais vous demander de produire l'original et de donner la copie ... maître Belleau.

Q. This diagram as P-61.

-Q. Et le schéma sous P-61.

Q. So doctor, could you relate the process and the details of your autopsy?

-Q. Alors docteur, pouvez-vous relater le procédé, et le détail de votre autopsie?

A. Alors on les fait comme de routine, j'ai demandé, de prendre des photographies de toutes les lésions notées sur la victime...

-A. In fact the routine procedure is to ask for photographies to be taken, as I did, of the lesions and the wounds on the body of the victim...

A. ...trois radiographies de la tête et de l'abdomen ont été prises...

-A. ...three X-rays of the head and the abdomen were taken...

A. ...et elles montrent la présence d'une balle à niveau de la tête, du côté, droit...

-A. ...they show the presence of a bullet in the head on the right-hand side...

A. ...et j'ai pratiqué, l'examen externe puis interne et fait des prélèvements.

-A. ...and I conducted the internal, external examinations and proceeded to taking samples.

A. Alors le corps que j'ai examiné, le corps est nu...

-A. The body that I examined was naked...

A. ...mais toutefois, sur la civière, j'ai noté, un sac en plastique...

-A. ...however the stretcher, or the body was on a stretcher, and I noted a plastic bag...

A. ...qui contiendrait les vêtements de la victime...

-A. ...which would contain the clothing of the victim...

A. ...ainsi que deux cartes, dont une carte médicale de l'Hôpital Royal Victoria.

-A. ...and two cards, one of which from the Royal Victoria Hospital.

A. Alors les vêtements sont souillés de sang...

-A. The clothing are soiled with blood...

A. ...et parmi ces vêtements il y a une chemise ... carreaux, bleue, beige et rouge...

-A. ...and among these a checked blue, beige and red shirt...

A. ...qui a ,t, ant,rieurement coup, aux ciseaux...

-A. ...which was previously cut with cissors...

A. ...et qui pr,sente une perforation par projectile d'arme ... feu...

-A. ...and displaying a perforation made by firearm projectile...

A. ...au niveau de la partie avant droite.

-A. ...in the front right side of the body.

A. De m^me qu'une perforation de sortie ... la partie arriŠre droite.

-A. As well as an exit hole on the right back side.

A. Alors cette chemise a ,t, soumise ... la section de balistique pour des expertises.

-A. And this shirt was submitted to Ballistics for the purpose of expert analysis.

A. En tant que signes individuels, alors c'est un homme de race blanche...

-A. So as an individual characteristic this is the body of a while male...

A. ...pŠse quatre-vingt-quinze point quatre-vingt-dix (95.90) kilos, soit deux cent onze livres (211)...

-A. ...whose weight is ninety-five point ninety (95.90) kilograms, that is two hundred and eleven pounds (211)...

A. ...mesure un mŠtre soixante-dix-neuf (1.79), soit cinq pieds dix pouces et demi (5'10«").

-A. ...whose height is one point seventy-nine (1.79) meters, that is five, ten and a half (5'10«).

A. Alors cette personne pr,sente une longue cicatrice ancienne d'une op,ration ancienne au niveau de la partie avant du thorax et de l'abdomen.

-A. And there is a long, an old long, an old longinal scar on the front part of the...

A. Du thorax et de l'abdomen.

-A. ...on the front side of the thorax and the abdomen.

Q. And what about traumatic marks?

-Q. Qu'en est-il des marques traumatiques?

A. Alors j'ai not, en fait des marques de violence sur le corps.

-A. I noted marks of violence on the body.

A. Disons qu'avant de d,crire ses l,sions, je dois dire que la victime porte de nombreux bandages chirurgicaux...

-A. Before describing his lesions I must note that the victim was wearing many surgical bandages...

A. ...ainsi que du mat,riel m,dical...

-A. ...as well as medical material...

A. ...nous t,moignant de traitements reęus dans un centre hospitalier...

-A. ...indicating that the victim received medical treatment in a hospital...

A. ...il y a un bandage autour de la t^te...

-A. ...there is a bandage all around the head...

A. ...avec une incision chirurgicale r,cente sutur,e...

-A. ...with a sutured recent surgical incision...

A. ...au niveau du front et de la r,gion pari,tale au sommet de la t^te du c"t, gauche.

-A. ...in the left frontal parietal area.

A. Une petite incision chirurgicale au dessus de l'oreille droite.

-A. And a small surgical incision above the right ear.

A. Il y a un tube au niveau de la bouche.
-A. There is a tube in the mouth.
A. Un tube au niveau de la narine droite.
-A. In the right nostril.
A. Et de larges bandages chirurgicaux au niveau du c"t, droit de l'abdomen et du thorax...
-A. And large surgical bandages on the right side of the abdomen and thorax...
A. ...et ces bandages recouvrent une longue incision chirurgicale r,cente...
-A. ...and these bandages cover a long recent surgical incision...
A. ...qui est partiellement sutur,e...
-A. ...which is partially sutured...
A. ...au niveau du quadrant, enfin de la partie sup,rieure droite de l'abdomen.
-A. ...and is located at the upper right part of the abdomen.
A. Il y a d'autres cath,ters, des aiguilles un petit peu partout sur le corps.
-A. There are catheters and needles somewhat all over the body.
A. La victime pr,sente des plaies secondaires au passage de deux projectiles d'arme ... feu...
-A. And the victim is displaying wounds, has wounds resulting from firearm projectiles...
A. ...et ces plaies sont num,rot,es pour fins de r,f,rence.
-A. ...and these wounds were numbered for reference purposes.
A. Alors si on prend... et le diagramme pr,par, pour cette autopsie...
-A. Si we look at the schematic prepared for the purpose of the autopsy...
A. ...on note la pr,sence d'une plaie d'entr,e num,ro 1...
-A. ...we note the presence of an entrance wound, which is number 1...
A. ...au niveau de tempe droite...
-A. ...that is in the right temple...
A. ...et cette plaie ne pr,sente pas, ... l'oeil nu, de d,p"t de proximit, de tir.
-A. ...and to the naked eye there is no evidence of close range firing.
A. Alors les l,sions secondaires au passage de ce projectile...
-A. So the lesions secondary to the passage of this projectile...
A. ...il y a de l'infiltration h,morragique diffuse au niveau du cuir chevelu.
-A. ...are as follows, there is haemorrhagic infiltration in the scalp area.
A. Pr,sence d'un h,matome, c'est---dire une collection de sang...
-A. There is also a a hematoma, or an amount of blood in this area...
A. ...et au niveau de la r,gion de l'oreille droite, de la r,gion qu'on appelle masto,dienne...
-A. ...in the masto;d region near the right ear...
A. ...j'ai not, la pr,sence d'une balle chemis,e...
-A. ...I noted the presence of a jacketed bullet...
A. ...l,g'srement d,form,e.
-A. ...which was slightly deformed.

A. Or la vo-te du crfne...

-A. So the roof...

A. C'est #a, la partie convexe, c'est #a.

-A. ...the roof of the skull, the convex area...

A. ...elle pr, sentait des fractures au niveau du c"t, droit...

-A. ...presented fractures on the right side...

A. ...et on voit qu'il y a une zone avec perte de fragments osseux.

-A. ...and we see that there's an area where there are bone fragments in this area.

A. C'est #a, de la r, gion de l'oreille droite.

-A. Near the right ear.

A. Alors le cerveau pr, sente de l'h, morragie au niveau des m, ninges...

-A. So the brain shows haemorrhage in the meningeal area...

A. ...et on voit des lac, rations extensives...

-A. ...and there are extensive lacerations...

A. ...c'est #a, au niveau de la r, gion de la tempe et de la r, gion pari, tale du cerveau.

-A. ...in the temple and parietal region of the brain.

A. Alors il y a aussi des foyers de contusions...

-A. And also contusions, and contused areas...

A. ...au niveau du cerveau...

-A. ...in the brain...

A. ...et en coupant le cerveau il y a des lac, rations extensives, de m^me que des foyers de contusions.

-A. ...and upon cutting the brain shows extensive lacerations and all kinds of recent contusions.

A. Alors la base du crane pr, sente , galement des fissures et une zone d'enfoncement au niveau du rocher droit.

-A. And the base of the skull displays fissures and also a depression zone on the right side.

A. La trajectoire se fait d'une fa#on oblique...

-A. The trajectory is done diagonally, in an oblique fashion...

A. ...de gauche vers la droite...

-A. ...from left to right...

A. ...de haut en bas...

-A. ...top to bottom...

A. ...et l, g#rement de l'arri#re vers l'avant.

-A. ...and slightly from back to front.

A. Alors d'apr#s cette trajectoire, vraisemblablement il y a eu un changement de direction du projectile, ce qu'on appelle un ricochet...

-A. So from this projectile there was very likely a change of direction of the projectile, that is the projectile would have "ricoched"...

A. ...en frappant l'os du rocher droit.

-A. ...off the (inaudible) part of the right temple bone.

A. Et la balle s'est dirig, e l, g#rement vers l'arri#re, donc en arri#re de l'oreille droite.

-A. And the bullet deviated slightly towards the back and near the right ear.

Q. What do you call the "petrus" bone or the...

A. Les os de la r, gion de l'oreille.

-A. The bones located in the ear area.

A. C'est #a.

Q. Okay.

-Q. D'accord.

A. Alors ce projectile a , t, extrait et soumis ... la section

de balistique pour des expertises.

-A. So this projectile was extracted and submitted to the ballistic section for the purpose of expert analysis.

Q. And you spoke about another passage of firearm projectile?

-Q. Vous avez parl, d'un autre passage de projectile d'arme ... feu?

A. En effet, si on suit encore le diagramme...

-A. Indeed, there again if we look at the schematic...

A. ...il y a une plaie d'entr,e, num,ro 2...

-A. ...there is an entrance wound, referred to as number 2...

A. ...qui se trouve ... la partie avant et vers le bas du thorax...

-A. ...located on the front part of the body and the lower part of the thorso (inaudible)...

A. ...pršs du rebord (inaudible)...

-A. ...near the costal edge...

A. ...et cette plaie ne pr,sente pas, ... l'oeil nu, de d,p"t anormal.

-A. ...and to the naked eye this wound does not display any close range of firing evidence that would be irregular or abnormal.

A. A cette plaie correspond la plaie de sortie num,ro 3...

-A. Wound number 3 corresponds, exit wound number 3 corresponds to wound number 2...

A. ...qui se trouve ... la partie arrišre et vers le bas, ... droite.

-A. ...and is located on the back side of the body, on the right, a little bit below, or the lower part of the right-hand side.

A. C'est #a, du tronc.

-A. Of the trunk.

A. Alors les l,sions caus,es...

-A. So the lesions caused...

A. ...il y a une collection imporante de sang, ce qu'on appelle un h,matome...

-A. ...there is an important amount of blood which was collected, which is referred to as a hematoma...

A. ...au niveau des tissus qui se trouvent vers la partie arrišre du corps...

-A. ...and the tissues located at the back side of the body...

A. ...et on voit aussi une collection de sang qui descend vers la r,gion du bassin.

-A. ...and we also see an amount of blood which collected, and going down towards the pelvic area.

A. Du c"t, droit.

-A. On the right-hand side.

A. Le foi est retrouv, entre-ouvert...

-A. The liver was parted, or opened...

A. ...et on voit qu'il est maintenu en place ... l'aide de cinq larges compresses chirurgicales...

-A. ...and was held in place by five large fabric compresses, surgical compresses...

A. ...ainsi qu'un long morceau de gaz...

-A. ...as well as a long piece of gauze...

A. ...que les chirurgiens ont laiss, en place probablement pour contr"ler l'h,morragie et les lac,rations du foi.

-A. ...that the surgeons would have left in place in order to control the haemorrhage and the lacerations of the

liver.

A. Alors l'orifice d'entr,e se fait au niveau du septiŠme espace intercostal, donc entre la septiŠme et la huitiŠme c"te droite...

-A. Therefore the entry hole is located just above the edge of the ribs, at the seventh intercostal space were fractures of the seventh and eighth right ribs.

A. C'est #a, ses deux c"tes sont fractur,es...

-A. Bot ribs are fractured...

A. ...et le foie pr,sente des lac,rations extensives...

-A. ...and the liver presents extensive lacerations...

A. ...non seulement du lobe droit...

-A. ...not only at the right lobe...

A. ...mais aussi la r,gion situ,e entre le lobe droit et le lobe gauche.

-A. ...also the area located between the right and left lobes.

A. Et il y a beaucoup d'infiltration h,morragique...

-A. And there's presence of an abundant haemorrhagic infiltration...

A. ...ainsi que des foyers de n,crose, c'est-...-dire de destructions des tissus...

-A. ...as well as necrosis, that means damage in the tissues...

A. ...et on voit les zones o- les chirurgiens ont essay, de faire une exploration et une excision des tissus d,chir,s.

-A. ...and we see that the surgeons conducted a surgical exploration and debridement of the areas or zones as such.

A. Le rein droit est absent...

-A. The right kidney is missing...

A. ...et on voit que la r,gion autour du rein droit pr,sente beaucoup d'infiltration h,morragique...

-A. ...and we see that there is abundant haemorrhagic infiltration in the area of the right kidney...

A. ... traduisant que le rein a ,t, enlev, r,cemment, lors d'une intervention chirurgicale...

-A. ...which means that the right kidney had been removed recently, during the surgical intervention...

A. ...et l'orifice de sortie est au niveau de la douziŠme c"te droite, vers l'arriŠre.

-A. ...and the exist hole is located at the twelfth right rib, at the back.

A. Et la trajectoire se fait d'avant vers l'arriŠre...

-A. The trajectory is as follows, from front to back...

A. ...de haut vers le bas...

-A. ...from top to bottom...

A. ...et l,gŠrement de gauche vers la droite.

-A. ...and slightly from left to right.

A. Alors pour le reste des examens...

-A. For the rest of the examination...

A. ...alors le coeur, qui est trŠs gros...

-A. ...the heart is very dilated, very large...

A. ...et on voit qu'il y a eu intervention chirurgicale ancienne...

-A. ...we saw that there was a previous or an old surgical intervention...

A. ...et j'avais d,j... mentionn, la cicatrice au niveau du thorax et de l'abdomen en avant...

-A. ...I had already mentioned the scar in the thorax and

the abdomen, on the front part of the body...

A. ...et ceci est dû ... la présence... enfin au remplacement d'une valvule aortique...

-A. ...which was due to the replacement of an aortic valvula...

A. ...et ils ont installé, un prothèse au niveau de la valvule aortique.

-A. ...and a prosthesis was installed in the aortic valve area.

A. Alors le reste des organes ne montrent pas d'autres lésions...

-A. The remaining organs do not show any other lesions...

A. ...et j'ai peut-être oublié, de mentionner qu'il y a eu, évidence aussi des interventions chirurgicales au niveau de la tête.

-A. ...I forget to mention that there were also surgical interventions in the head area.

A. Alors par la suite j'ai fait des prélèvements...

-A. Afterwards I took some samples...

A. ...du sang et des cheveux que j'ai envoyés ... la section de biologie pour des expertises.

-A. ...blood and hair samples were taken and sent to a section for expert analysis.

Q. And what is your conclusion?

-Q. Quelles sont vos conclusions?

A. Alors les conclusions, le passage d'un projectile d'arme ... feu au niveau de la tête...

-A. Conclusions are as follows, the passage of a firearm projectile in the head...

A. ...avec plaie d'entrée au niveau de la région de la tempe droite...

-A. ...with an entry wound located at the right temple region...

A. ...et une balle extraite au niveau de la région mastoïdienne droite...

-A. ...and a bullet extracted from the right mastoid region...

A. ...projectile qui a causé, de l'hémorragie au niveau des méninges...

-A. ...and a projectile which caused haemorrhage in the meningeal area...

A. ...des contusions, des lacérations cérébrales marquées.

-A. ...marked cerebral lacerations and contusions.

A. Il y a de l'œdème du cerveau, c'est-à-dire que le cerveau est un petit peu augmenté, le volume...

-A. There's cerebral oedema, that is the brain was enlarged somewhat...

A. ...et il y a des fractures du crâne.

-A. ...and there's skull fractures.

A. Présence d'un autre projectile d'arme ... feu au niveau de l'abdomen...

-A. There is the presence of another firearm projectile in the abdomen...

A. ...avec plaie d'entrée dans la partie, ... la partie avant et inférieure du thorax ... droite...

-A. ...with an entrance wound located at the lower right front section of the thorax...

A. ...et plaie de sortie en arrière, ... droite.

-A. ...and exit wound at the back, on the right side.

A. Projectile qui a causé, donc un hématome, une collection de sang au niveau des tissus de l'abdomen et du

bassin...

- A. Therefore this projectile caused a hematoma in the tissues of the abdomen and the pelvic area...
- A. ...des lacerations extensives du foie...
- A. ...extensive lacerations were made to the liver...
- A. ...et des fractures des septième et huitième côtes droite...
- A. ...and there were fractures of the seventh and eighth right ribs...
- A. ...et tout en mentionnant, également qu'il y a eu, évidence d'une intervention chirurgicale au niveau de l'abdomen...
- A. ...and in mentioning also that it was obvious, or there was evidence of a surgical intervention in the abdomen...
- A. ...avec enlèvement du rein droit...
- A. ...with the removal of the right kidney...
- A. ...et, évidence de "craniotomie"...
- A. ...and evidence of "craniotomy"...
- A. ...et, également il y avait un tube de drainage au niveau du thorax ... droite.
- A. ...and there was also drainage on the right thorax.
- A. And in your opinion, doctor, what is the cause of death?
- A. Et quelle est la cause du décès ... votre opinion, docteur?
- A. Le décès est dû ... l'œdème du cerveau et aux lésions du cerveau et des méninges...
- A. The death therefore turned due to cerebral oedema and to cerebral meningeal lesions...
- A. ...alors, lésions graves et irréversibles dues au traumatisme crânien...
- A. ...serious and irreversible damages in the skull or due to trauma in the skull...
- A. ...résultant du passage du projectile d'arme ... feu au niveau de la tête.
- A. ...resulting from the passage of a firearm projectile in the head.
- Q. Le projectile au niveau de l'abdomen...
- Q. The projectile in the abdomen...
- A. ...a aussi causé, des lésions potentiellement mortelles.
- A. ...also caused potentially fatal lesions.
- Q. And then doctor, I'm showing you projectile label C-62915, could you examine it?
- Q. Maintenant je vous montre un projectile sous le C-61915, pourriez-vous l'étudier je vous prie?
- A. Alors c'est bien ce sac en plastique, avec le numéro d'exhibé C-62915...
- A. It is this plastic bag with exhibit number C-62915...
- A. ...c'est ça, avec mes initiales...
- A. ...bearing my initials...
- A. ...et cette balle correspond ... celle qui a été extraite au niveau de la tête, région mastoïdiennes droite.
- A. ...and this bullet corresponds to the wound in the head in the right mastoid region.
- Q. Would you please file it as...
- THE COURT :
- P-62.
- Me JEAN LECOURS :
- Q. ...P-62.
- Q. Pourriez-vous la produire, s'il vous plaît, sous P-62.
- Q. And did you as well, doctor, on September the twenty-

fifth (25th) nineteen ninety-two (1992)...

-Q. Le vingt-cinq (25) septembre quatre-vingt-douze (92), est-ce que vous avez ,galemment effectu,, docteur...

Q. ...did you perform the autopsy on a corpse bearing the Coroner's notice number 60438 and identified as Dr. (Inaudible) Ziogas?

-Q. ...une autopsie portant le num,ro d'avis du Coroner 63438 et se r,f,rant au corps de monsieur (inaudible) Ziogas?

A. J'ai pratiqu, une telle autopsie...

-A. Indeed I did perform such an autopsy...

A. ...vendredi le vingt-cinq (25) septembre dix-neuf cent quatre-vingt-douze (1992) vers huit heures trente-deux (8 h 32).

-A. ...the twenty-fifth (25th) of September nineteen ninety-two (1992) at about eight thirty (8:30).

Q. And did you write a report concerning that autopsy?

-Q. Est-ce que vous avez r,dig, un rapport concernant cette autopsie?

A. J'ai un rapport complet de cette autopsie.

-A. I have a full report of this autopsy.

Q. And I understand that you did not write any diagram for this person?

-Q. Et je comprends que vous n'avez pr,par, aucun sch,ma pour cette autopsie?

A. En effet.

-A. That's correct.

Q. Why didn't you?

-Q. Pourquoi pas?

A. C'est parce que le corps portait tellement de bandages chirurgicaux, de drains...

-A. Because the body was filled with surgical bandages, drains, drainage tubes...

A. ...de nombreuses incisions chirurgicales au niveau du thorax, de l'abdomen...

-A. ...numerous surgical incisions in the thorax and the abdomen...

A. ...et des plaies qui ont ,t, difficiles ... identifier d'une fa#on formelle...

-A. ...and wounds which were difficult to identify formally...

A. cause du remaniement chirurgical...

-A. ...because of the surgical handling...

A. ...et de la cicatrisation de ces plaies...

-A. ...and the scaring process of these wounds...

A. la suite d'une hospitalisation prolong,e.</pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">-A.

...following an in-hospital stay of a long term or duration.

Q. I would like you to file your original as P-63.

-Q. J'aimerais que vous produisiez votre original sous P-63.

Q. And I'd like to file as well the official translation as P-64.

-Q. J'aimerais ,galement produire la traduction officielle sous P-64.

Q. So doctor, could you give the particulars of your autopsy of doctor (Inaudible) Ziogas?

-Q. Docteur, pourriez-vous nous donner les d,tails de l'autopsie sur le corps de monsieur (Inaudible) Ziogas?

A. D'abord de nombreuses photographies ont ,galement ,t, prises...

-A. Numerous photographs were also taken...

A. ...et quatre radiographies de la t^te et de l'abdomen ont ,t, prises...

-A. ...and four X-rays of the head and the abdomen were taken...

A. ...et une balle a ,t, retrouv,e au niveau... du c"t, droit de l'abdomen.

-A. ...and the presence of a bullet on the right side of the abdomen was also found.

A. A l'examen externe...

-A. For the external examination...

A. ...il s'agit d'un homme de race blanche, pesant quatre-vingt-huit point soixante-trois (88.63) kilos, cent quatre-vingt-quinze (195) livres...

-A. ...it is the body of a white male weighing eighty-eight point sixty-three (88.63) kilograms, that is a hundred and ninety-five (195) pounds...

A. ...et mesurant un m^tre soixante-treize (1,73), soit cinq pieds huit (5'8").

-A. ...whose height was one point seventy-three (1.73) meters, that is five foot eight (5'8").

A. Au niveau des yeux il y a une coloration jaunftre mod,r,e, ce qu'on appelle une jaunisse ou un ict^re...

-A. There a moderate jaundice in the eye area, that is there is a presence of a yellow color in the eyes...

A. ...et ,galement le reste du corps et des organes internes, pr,sente cette coloration jaunftre.

-A. ...and the rest of the body and organs, internal organs, also present this yellowish color.

A. Le visage est augment, de volume...

-A. And there is facial oedema...

A. C'est #a, c'est l'oed^me, c'est---dire de l'infiltration de liquide, une r,tention de liquide au niveau du visage...

-A. An oedema, that is there is facial liquid retention...

A. ...et ,galement au niveau des mains, des jambes, des pieds.

-A. ...this was the same for the hands, the legs, the feet.

A. Alors sur le corps j'ai not, la pr,sence de mat,riel m,dico-chirurgical et abondant...

-A. On the body I noted abundant medical chirurgical material...

A. ...sous la forme de nombreux bandages, ainsi que de nombreux tubes.

-A. ...which includes numerous bandages and tubes.

A. Alors les bandages, au niveau des r,gions des clavicules...

-A. The bandages were located in the clavicular areas...

A. ...couvrant des sites de piq-res et des tubes, des cath,ters...

-A. ...covering injection marks and plastic tubes...

A. ...larges bandages souill,s de sang au niveau de l'abdomen...

-A. ...large bandages soiled with blood at the abdomen...
A. ...bandages au niveau du c"t, droit du thorax...
-A. ...bandages on the right side of the thorax...
A. ...bandage au niveau de la r,gion inguinal gauche.
-A. ...bandage at the left inguinal region.
A. Bandage sur le c"t, gauche du thorax...
-A. Bandage at the left side of the thorax...
A. ...recouvrant un large drain en plastique, passant au travers d'une incision de drainage.
-A. ...covering a large plastic drain, passing through a drainage incision.
A. Deux tubes de drainage au niveau du c"t, droit du thorax...
-A. Two drains on the right side of the thorax...
A. ...avec une longue mšche de gaz.
-A. ...with a long strip of gauze.
A. Deux incisions de drainage en voie de cicatrisation sur le c"t, droit du thorax...
-A. Two other drainage incisions in the healing process on the right thorax...
A. ...pr,sence d'un tube dans la narine gauche.
-A. ...presence of a tube in the left nostril.
A. Alors ce type de tube va dans l'estomac.
-A. This type of tube goes in the stomach.
A. Pr,sence d'un tube en plastique ins,r, dans une orifice de trach,ostomie...
-A. A plastic tube inserted in the tracheostomy opening...
A. ...au niveau de la face ant,rieure du cou...
-A. ...in the frontice side of the neck...
A. ...pr,sence d'un cath,ter au niveau de la r,gion de la clavicule ... gauche.
-A. ...and a tube in the area, the clavicular area.
A. Deux sacs de colostomie avec du mat,riel sanguinolent et noirftre au niveau de l'abdomen...
-A. And two colostomy bags containing sanguinolent and blackish material in the abdomen area...
A. ... un large tube de caoutchouc de drainage au niveau de la partie sup,rieure gauche de l'abdomen...
-A. ...a large rubber drain at the upper left quadrant of the abdomen.
A. Deux cath,ter au niveau de la partie sup,rieure droite de l'abdomen...
-A. The presence of two catheters at the upper right quadrant of the abdomen.
A. Un large tube en plastique passant au travers, ,galement, de l'orifice au niveau de l'abdomen...
-A. And also a large plastic tube passing through an opening in the abdomen...
A. ...deux larges tubes en plastique sur le c"t, droit de l'abdomen...
-A. ...two large plastic tubes on the right side of the abdomen...
A. ...passant au travers de deux orifices.
-A. ...passing through two orifices.
A. Pr,sence de deux cicatrices, c'est-...-dire des plaies qui sont complštement cicatris,es...
-A. Presence of two scars, that is there were wounds in the healing process, or fully healed.
Q. Et au niveau de la partie sup,rieure droite de l'abdomen...
-Q. And in the upper right quadrant of the abdomen...
Q. ...pr,sence d'un cath,ter qui va dans la vessie...
-Q. ...presence of an in-bladder catheter in the urethra...
A. C'est #a, (inaudible).

-A ... in the bladder.
A. Pr,sence d'une cicatrice semi circulaire au niveau de la r,gion frontale gauche...

-A. And the presence of a semi circular scar on the left side of the forehead...

A. ...et situ,e au niveau de l'extr,mit, interne de l'arcade sourcilliŠre gauche.

-A. ...located at the inner tip of the left supercilliary arch
A. Et il m'est difficile d'interpr,ter cette cicatrice comme celle laiss,e par une plaie superficielle d'un projectile d'arme ... feu.

-A. And it's difficult for me to interpret this scar as that left by a superficial wound made by a firearm projectile.
A. Alors pr,sence d'une longue incision chirurgicale m,diane, verticale au niveau de l'abdomen...

-A. The presence of a long vertical "chirurgical" incision on the mid-line of the abdomen...

A. ...avec des bandages de gaz entre les bords de cette incision.
-A. ...with gauge bandages between the edges of this incision.
A. Sur le c"t, droit, large plaie chirurgicale obstru,e par des mŠches de gaz...

-A. On the right side one notices a large surgical wound obstructed by strips of gauge...

A. ...et au travers des orifices de colostomie...
-A. ...and through the colostomy openings...
A. ...alors #a c'est l'intestin qu'on ext,riorise en dehors...
-A. ...that is the colon is removed, or taken outside, out of the body...
A. ...et on voit cette muqueuse de l'intestin qui est irrit,e et oed,mici,e.
-A. ...and we see the mucosa, the intestinal mucosa is irritated, is reddish and swollen.
A. Il y a une cicatrice ovoïde au niveau du cadran inf,rieur gauche, partie inf,rieur gauche de l'abdomen...
-A. There is an ovoïd scar at the lower left quadrant of the abdomen...
A. ...mais encore il m'est difficile d'interpr,ter cette cicatrice...
-A. ...and there again it is difficult for me to interpret this scar...
A. ...comme pouvant ^tre une plaie d'entr,e de projectile d'arme ... feu...
-A. ...as being an entrance wound caused by firearm projectile...
A. ...donc tout ceci est difficile ... cause du remaniement chirurgical de toutes les plaies de drainage, d'op,rations subies au niveau de l'abdomen.
-A. ...so all this is very difficult to due surgical incisions and drainage in the abdomen area.
A. Je dois dire aussi que j'ai consult, le dossier m,dical venant de l'h"pital.
-A. I also must note that I did consult the medical records coming from the hospital.
A. Il y a ,galement une plaie ovoïde...
-A. There's also an ovoïd wound...
A. ...au niveau de la r,gion arriŠre droite de la t^te...
-A. ...at the upper right back area of the head...
A. ...et cette plaie est en voie de cicatrisation...
-A. ...the scar is in the healing process...
A. ...et cette plaie repr,sente, peut repr,senter vraiment le passage superficiel oblique d'un projectile d'arme ... feu.
-A. ...and this could be the result of a (inaudible) and

superficial passage of a firearm projectile.

A. Alors ni cette cicatrice au niveau de l'arcade sourcilliŠre droite...

-A. So nor that wound in the supercilliary arch on the right-hand side...

A. ...ni cette plaie au niveau de la r,gion arriŠre droite de la t^te...

-A. ...nor that wound at the back side of the, on the right back side of the head...

A. ...ces plaies ne sont pas associ,es ... une p,n,tration de la bo^te cr^nienne par des projectiles.

-A. ...and these wounds do not present penetration by a projectile in the cranian area.

A. Alors l'examen interne...

-A. So the internal examination...

A. ...tout d'abord au niveau de la t^te...

-A. ...in the head...

A. ...il n'y a aucune infiltration h,morragique en profondeur...

-A. ...there is not haemorrhage infiltration deep in the scalp or in the head...

A. Dans le cuir chevelu.

-A. In the scalp.

A. ...et le cr^ne ne pr,sente pas de fractures.

-A. ...and the scalp does not present any fractures.

A. Le cerveau pr,sente une congestion marqu,e...

-A. And the brain does show marked congestion...

A. ...et sa surface est recouverte de foyers h,morragiques dissimul,s, donc un peu partout.

-A. ...and the surface does present disseminated haemorrhagic dots, which means almost everywhere, scattered all around.

A. Et en coupant le cerveau on voit qu'il y a des foyers de destruction h,morragique...

-A. And upon cutting of the brain you can see that there are multiple areas of haemorrhage in the brain...

A. ...de m^me que des foyers (inaudible), c'est-...-dire de mort du tissu c,r,bral...

-A. ...as well as (inaudible) of the cerebral tissues...

A. ...avec h,morragie marqu,e.

-A. ...with heavy haemorrhage.

A. Alors ces l,sions, comme beaucoup d'autres que je vais d,crire, sont secondaires ... des complications h,morragiques survenues en cours d'hospitalisation.

-A. And these lesions are secondary to in-hospital surgical interventions, complications.

A. On parle de complications h,morragiques...

-A. We're speaking of haemorrhagic complications...

A. ...survenues pendant l'hospitalisation...

-A. ...which occurred during the stay at the hospital...

A. ...secondaires ... des troubles de coagulation.

-A. ...secondary to coagulation problems.

A. Alors au niveau du cou il y a l'orifice de tracheostomie.

-A. So in the neck you have the tracheostomy opening.

A. Au niveau du thorax il y a beaucoup d'adh,rences...

-A. And in the thorax you have adhesions...

A. ...secondaires ... la pr,sence de drains...

-A. ...secondary to the presence of drainage tubes...

A. ...et aussi ... la broncho-pneumonie marqu,e au niveau des deux poumons.

-A. ...and also to broncho-pneumonia presence in both lungs.

A. Alors dans les voies respiratoires on a la trach,e et les bronches...

-A. So in the trachea and in the bronchi...
A. ...on voit qu'il y a des s,cr,tions purulentes...
-A. ...we see that there are purulent secretions...
A. ...secondaires ... la broncho-pneumonie extensive.
-A. ...which are secondary to the extensive bronchial pneumonia.
A. Alors les poumons ils ont augment, de volume...
-A. So the lungs are swollen...
A. ...ils sont pesants, indur,s...
-A. ...they are heavy and consolidated...
A. ...et il y a effectivement cette brocho-pneumonie extensible
... tous les lobes des deux poumons.
-A. ...and there is extensive broco-peunomia in both lboes of the
lungs.
A. Alors c'est de complication secondaire ... l'hospitalisation prolong,e.
-A. And these are secondary complications due to the in-hospital
stay, which was of a long duration.
A. Maintenant au niveau du coeur...
-A. Now, in the heart area...
A. ...j'ai not, la pr,sence de plusieurs foyers de n,crose,
c'est-...-dire de mort tissulaire...
-A. ...I noticed the presence of areas of necrosis, that is
deadening of the tissues...
A. ...et ces foyers sont secondaires aux complications survenues
en cours d'hospitalisation.
-A. ...and these foci are secondary to the in-hospital stay.
A. Dans l'abdomen...
-A. In the abdomen...
A. ...il y a un ,panchement de s,cr,tion h,morragique et
fibrileuse...
-A. ...there is fibrinal haemorrhagic exudase...
A. ...'est-...-dire qu'il y a des adh,rences, c'est ce qu'on
appelle un d,p"t de fibrine d- ... un processus inflammatoire...
-A. There are adhesions, that is a fibrous deposit due to
inflammation.
A. De m^me qu'il y a du mat,riel purulent, comme du "pu"...
-A. There's also purelent material, such...
A. ...valu, ... environ deux cents (200) c.c.
-A. ...such as puss evaluated in the amount of two hundred (200)
c.c.
A. Il y a encore une p,ritonite, c'est-...-dire une inflammation de
la membrane qui recouvre les intestins et la paroi
abdominale...
-A. There again there's an inflammation of the membrane
surrounding...
A. La membrane qui recouvre les intestins.
-A. ...covering the intestines...
A. ...et la paroi de l'abdomen...
-A. ...and the abdominal wall...
A. ...et il y a ce mat,riel encore inflammatoire qu'on voit sur
la surface du p,ritoine.
-A. ...and there again there is inflammation that we can note on
the surface of the perinotium.
A. Alors l'estomac contient un large tube...
-A. So the stomach contains a large tube...
A. ...dans les intestins. J'ai not, la pr,sence d'un tube au
niveau de la partie... c'est-...-dire la partie au d,but de
l'intestin, le duodenum...
-A. ...I noted a tube in the intestines, at the beginning, at the
root of the intestines, that is in the duodenum ...
A. ...et on voit qu'il y a ,vidence d'intervention chirurgicale
sous forme de h,micolectomie, c'est-...-dire la partie droite du

gros intestin qui a ,t, enlev,e...

-A. ...and there is evidence of surgical intervention, that is a hemicolectomy in the right side of...

A. ... la v,section donc de la partie droite du gros intestin.

-A. ...therefore the right section of the large intestine was removed.

A. Et il y a des zones d'anatomose, c'est-...-dire d'intervention chirurgicale pour mettre les intestins ensemble...

-A. There are areas of anastomosis, that is to suture the intestines together.

A. C'est #a. Et ainsi que les sites de colostomie, c'est-...-dire d'ext,riorisation de l'intestin.

-A. And there is a colostomy, that is the removal of the intestines, exteriorisation of the intestines.

A. Le foie est augment, de volume..

-A. The liver is swollen...

A. ...et il y a une zone de destruction h,morragique au niveau du foie...

-A. ...and there is haemorrhagic damage in the liver area.

A. La vessicule biliaire contient deux drains...

-A. The gall bladder contains two drains...

A. ...secondaires ... une intervention chirurgicale.

-A. ...which is secondary to a surgical intervention.

A. Au niveau du pancr,as...

-A. And the pancreas...

A. ...il y a des foyers de destruction, des foyers de n,crose...

-A. ...there are areas of necrosis or damage...

A. ...et tout autour du pancr,as il y a encore des foyers de n,crose...

-A. ...and all around the pancreas you have there again areas of necrosis...

A. La rate pr,sente des foyers de n,crose...

-A. The spleen presents areas of necrosis...

A. Le rein droit est absent.

-A. The right kidney is missing.

A. A ,t, enlev,.

-A. Therefore was removed.

A. Et au niveau du rein gauche, il y a des foyers de n,crose...

-A. And in the left kidney there are areas of necrosis...

A. Il y a une grosse veine au niveau de l'abdomen.

-A. And there's a large veine in the abdomen.

A. La veine cave inf,rieure, c'est son nom.

-A. The lower vena cava...

A. Qui pr,sente des lac,rations sutur,es sur le c"t, droit.

-A. Which presents sutured lacerations on the right side.

A. A la suite d'incisions au niveau du dos...

-A. Following incisions in the back...

A. ...j'ai extrait une balle chemis,e, non d,form,e...

-A. ...I extracted a non deformed jacketted bullet...

A. ...dans la graisse sous-cutan,e...

-A. ...in the subcutaneous fat...

A. ...au bas du dos ... droite.

-A. ...therefore on the right side of lower back.

A. Et on voit que cette balle est entour,e de tissu fibreux.

-A. And we see that the bullet is surrounded by fibrous tissues.

A. Alors, ... cause des nombreuses complications, j'ai pr,lev, du sang...

-A. Due to numerous complications I took samples of blood...

A. ...et ,galemment des ,chantillons des poumons...

-A. ...and also samples of both lungs...

A. ...de la cavit, abdominale...

-A. ...the abdominal cavity...

A. ...pour des examens microbiologiques, c'est-...-dire pour rechercher des bact,ries...

-A. ...for a microbiological testing to look for bacteria...

A. ...et effectivement le rapport du microbiologiste...

-A. ...and in fact the microbiologist's report...

A. ...a montr, l',vidence de bact,ries dans le sang...

-A. ...showed the presence of bacteria in the blood...

A. ...et ,galement au niveau du poumon gauche...

-A. ...and also in the left lung...

A. ...de la cavit, abdominale...

-A. ...of the abdominal cavity...

A. ...et la balle qui a ,t, extraite au niveau du dos a ,t, soumise ... la section de balistique pour les expertises.

-A. ...and the bullet that was extracted in the back was sent to the ballistic section for the purpose of expert analysis.

Q. And what is your conclusion doctor?

-Q. Quelles sont vos conclusions docteur?

A. Alors mes conclusions ... la suite de l'autopsie...

-A. Following the autopsy my conclusions were as follows...

A. ...il s'agit d'un ,tat de septic,mie, c'est-...-dire d'infection du sang...

-A. ...there is a condition of septicemia, that is an infection of the blood...

A. ...d- ... la prolif,ration de bact,ries dans le sang...

-A. ...due to the proliferation of bacteria in the blood...

A. ... ,vidence de p,ritonite g,n,ralis,e...

-A. ...and generalized peritonitis...

A. ...avec des s,cr,tions inflammatoires...

-A. ...with inflammatory secretions...

A. ...pr,sence de broncho-pneumonie marqu,e au niveau des deux poumons...

-A. ...marked broncho-pneumonia in both lungs...

A. ... ,vidence de trouble de coagulation...

-A. ...and there was presence of coagulation complications...

A. ...alors c'est un processus, c'est dissimin,...

-A. ...it's a disseminated process...

A. ...qui a entraen, des foyers, des zones de n,crose, de destruction...

-A. ...which caused foci in the area of necrosis...

A. ...au niveau du cerveau...

-A. ...in the brain...

A. ...du coeur...

-A. ...the heart...

A. ...du foie...

-A. ...the liver...

A. ...de la rate, du rein gauche.

-A. ...spleen and left kidney.

A. Il y a ,vidence du pancr,as... d'une inflammation du pancr,as, d'origine traumatique...

-A. An inflammation of the pancreas of a traumatic origin...

A. ...avec n,crose, destruction des tissus tout autour...

-A. ...with necrosis and damage on the tissues all around...

A. ...alors j'ai not, l',vidence qu'il y a eu de nombreuses interventions chirurgicales...

-A. ...I noted that there were numerous surgical interventions...

A. ...avec enlšvement du rein droit...

-A. ...with removal of the right kidney...

A. ...et toutes sortes anastomoses au niveau du petit intestin...

-A. ...and all sorts of anastomoses in the small intestine...

A. ...des section de segments du petit intestin...

-A. ...and removal or resection of segments in the small

intestine...

A. ...galement un tube au niveau de l'estomac.

-A. ...a tube in the stomach.

A. Enlšvement de la moiti, droite du gros intestin.

-A. Removal of the right half of the intestine on the right-hand side.

A. R,paration de lac,ration d'une grosse veine de l'abdomen...

-A. And the repair of large veines of the abdomen, lacerations...

A. ...galement de tubes dans la vessicule biliaire, secondaire ... les lac,rations du canal qui transporte la bile.

-A. ...and tubes in the gall bladder secondary to lacerations to the channel of the... that conducts the bile.

A. vidence de drainage au niveau du thorax.

-A. And there was a presence of drainage in the thorax.

A. Trach,ostomie.

-A. Tracheostomy.

A. Et j'ai not, l',vidence d'un passage de projectile d'arme ... feu au niveau de l'abdomen.

-A. I noted the presence of a passage of a firarm projectile in the abdomen.

A. Alors un projectile extrait au bas du dos, ... droite.

-A. And a projectile was removed in the right lower back.

A. Alors la plaie, en voie de cicatrisation au niveau de la r,gion occipitale droite...

-A. And the wound in healing process in the right occipital area...

A. ...repr,sente vraisemblablement le passage superficiel...

-A. ...very likely represents a superficial passage...

A. ...et tangenciel d'un projectile d'arme ... feu...

-A. ...and tangential passage of a firearm projectile...

A. ...et il y a cette coloration jaunftre, ce qu'on appelle ictšre.

-A. ...and there is a jaundice, yellowish coloration...

A. ...avec l'oedšme de tissu.

-A. ...with oedema in the tissues...

A. ...ce qui repr,sente des complications m,dicales secondaires ... l',tat de la victime.

-A. ...which indicates surgical complications secondary to the condition of the victim.

Q. And doctor, what is the cause of death?

-Q. Et docteur, quelle est la cause du d,cšs?

A. Alors les multiples complications observ,es c'est des complications graves, irr,versibles...

-A. The multiple complications observed are serious and irreversible...

A. ...comme la septic,mie, la prolif,ration de bact,ries dans le sang...

-A. ...such as septicemia, that is the proliferation of bacteria in the blood...

A. ...la p,ritonite...

-A. ...peritonitis...

A. ...alors cette p,ritonite est secondaire aux perforations des intestins qui libšrent du mat,riel infect,...

-A. ...it's secondary to the perforation of the intestines, which release infected material...

A. ...la broncho-pneumonie...

-A.broncho-pneumonia...

A. ...et les troubles de coagulation.

-A. ...and the coagulation complications.

A. Alors ces complications r,sultent du passage du projectile d'arme ... feu au niveau de l'abdomen...

-A. And these complications result from the passage of firearm projectile in the abdomen...
A. ...qui ont causé, de multiples perforations d'organes internes et de vaisseaux.
-A. ...which caused multiple -- which were also of multiple perforations of the internal (inaudible) vessels.
Q. Doctor, I'm showing you a projectile labelled C-67747...
-Q. Je vous montre, docteur, un projectile identifié, sous le numéro C-67747...
Q. ...could you examine it and...?
-Q. ...pouvez-vous l'étudier?
A. En effet, c'est...
-A. Indeed...
A. ...il y a un petit sac en plastique ... l'intérieur...
-A. ...there's a small plastic envelope inside...
A. ...avec mon écriture...
-A. ...bearing my handwriting...
A. ...portant le numéro C-67747...
-A. ...bearing number C-67747...
A. ...qui correspond ... la balle extraite de la graisse au bas du dos, ... droite.
-A. ...which matches the bullet removed in the right lower back, in the outside (inaudible).
Q. That's the projectile you sent to ballistic?
-Q. C'est le projectile que vous avez envoyé, ... la section de balistique?
A. En effet.
-A. Correct.
Q. I would like you to file it as P-65.
-Q. J'aimerais que vous produisiez sous P-65.

Me JEAN LECOURE :

At this point, My Lord, could we give a four minutes break to the interpreter?

THE COURT :

Certainly. Certainly. We'll adjourn for a few minutes, ladies and gentlemen.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

EXPERT WITNESS: CLAUDE POTHEL -- UNDER THE SAME OATH

CONTINUATION OF EXAMINATION BY Me LECOURE

ATTORNEY FOR THE CROWN

Me JEAN LECOURE :

Q. Doctor Pothel, on August the twenty-fifth (25th) nineteen ninety-two (1992) did you perform the autopsy of a corps bearing the Coroner's notice number 8-60387 and identified as doctor Mathew Douglas?
-Q. Docteur Pothel, le vingt-cinq (25) août mil neuf cent quatre-vingt-douze (1992) avez-vous effectué, une autopsie sur le corps portant le numéro d'identification du Coroner le 8-60387 se référant au corps de monsieur Mathew Douglas?
A. En effet, j'ai pratiqué, une telle autopsie le mercredi, vingt-cinq (25) août, vers dix heures (10 h 00) du matin.
-A. Yes, in fact I did practice an autopsy on Wednesday, August twenty-fifth (25th) at ten o'clock (10:00) in the morning.
Q. And did you prepare a report concerning your autopsy?
-Q. Avez-vous rédigé, un rapport concernant cette autopsie?
A. En effet, j'ai un rapport complet.

-A. Indeed, I have a full report.

Q. Okay. I would like you to file the original as P-66.

-Q. J'aimerais que vous produisiez l'original sous P-66.

Q. And I would like to file the official translation as P-67.

-Q. La traduction officielle sous P-67.

Q. And I understand you prepared a sketch, a diagram?

-Q. Et je comprends que vous avez pr,par, un sch,ma, un croquis?

A. En effet, oui.

-A. Indeed, yes.

Q. And I would like you to file as P-68.

-Q. J'aimerais que vous le produisiez sous P-68.

Q. Okay. Doctor, could you provide the members of the Jury with the particulars of your autopsy?

-Q. D'accord docteur, pourriez-vous donner les d,tails aux membres du Jury sur votre autopsie?

A. Alors des photographies de toutes les l,sions ont ,t, prises...

-A. Photographs of all the lesions were taken...

A. ...deux radiographies de la t^te et une radiographie du poignet droit ont ,t, prises...

-A. ...two X-rays of the head and one of the right wrist were taken...

A. ...et ces radiographies montrent la pr,sence de deux balles au niveau de la t^te.

-A. ...and they show the presence of two bullets in the head.

Q. Okay.

-Q. D'accord.

A. Alors au point de vue de signes individuels...

-A. For individual characteristics...

A. ...c'est un homme de race noire, pesant soixante-quinze point quarante-cinq (75.45) kilos, cent cinquante-cinq (155) livres...

-A. ...it is the body of a black male, weighing seventy-five point forty-five (75.45) kilograms, that is a hundred and fifty-five (155) pounds...

A. ...mesurant un m^tre soixante-cinq (1.65), soit cinq pied cinq (5'5").

-A. ...whose height is one point sixty-five (1.65) meters, that is five foot five (5'5").

A. Au niveau de la bouche j'ai not, la pr,sence de d,tachement de quatre dents ... la partie sup,rieure gauche...

-A. In the mouth I noted that four teeth on the upper left-hand side were missing...

A. ...et des fragments de dents bris,es sont incrust,s dans les tissus mous, les gencives, et la langue.

-A. ...and broken tooth fragments are lodged in the soft tissues of the gums and tongue.

A. Alors le visage est tr^s souill, de sang, coagul,...

-A. So the face contains coagulated blood, it's very soiled with blood...

A. ...et on note la pr,sence de sang au niveau de la bouche et des narines.

-A. ...and there's presence of blood in the mouth and in the nostrils.

A. Alors la victime a ,t, atteinte de quatre projectiles d'arme ... feu...

-A. The victim sustained four firearm projectile injuries...

A. ...et les diff,rentes plaies sont num,rot,es pour fins de r,f,rence.

-A. ...and the various wounds are numbered for reference purposes.

A. Alors tout d'abord, passage d'un projectile d'arme ... feu au

niveau de la t[^]te...

- A. Firstly, passage of a firearm projectile in the head...
- A. ...la plaie d'entr,e num,ro 1 est situ,e au niveau du sommet de la t[^]te, l,gion pari,tale droite...
- A. ...the entrance wound number 1 is located in the head, in the right parietal region...
- A. ...donc cette plaie ne pr,sente pas, ... l'oeil nu, de d,p"t de proximit, de tir...
- A. ...and this wound does not show evidence of close range firing to the naked eye, such as powder soot...
- A. ...mais toutefois des cheveux ont ,t, pr,lev,s autour de cette plaie et envoy,s ... la section de balistique pour des analyses.
- A. ...but the hair surrounding that wound was taken and sent to the ballistic section for expert analysis.
- A. Alors la l,sion provoqu,e, le cuir chevelu est perfor,, en dessous de la plaie d'entr,e...
- A. The lesions caused are as follows, there is perforation of the scalp under the entrance wound...
- A. ...avec de l'infiltration h,morragique marqu,e...
- A. ...with heavy infiltration of -- of haemorrhagic infiltration...
- A. ...un trou d'entr,e au niveau de l'os pari,tal droit du crfne...
- A. ...there is an entrance wound at the right parietal bone of the cranium, or the skull...
- A. ...et on voit ,galement des fractures au niveau de la base du crfne.
- A. ...and there are also fractures at the base of the skull.
- A. Le cerveau pr,sente de l'h,morragie au niveau des m,ninges...
- A. And the brain displays haemorrhage in the meningeal area...
- A. ...le cerveau pr,sente des lac,rations, des d,chirures marqu,es...
- A. ...there are marks, cerebral lacerations and tears...
- A. ...et ,galement -- et on note des lac,rations au niveau d'une partie du tronc c,r,bral.
- A. ...and there are also lacerations in part of the cerebral brain stem.
- A. Alors il y a de l'h,morragie autour du cervelet et du tronc c,r,bral...
- A. And so there is haemorrhage in the..
- A. De la partie arriŠre du cerveau.
- A. ...that is the back part of the brain...
- A. ...et autour du tronc c,r,bral.
- A. ...and around the cerebral stem.

THE COURT :

Brain stem.

- A. ...or the brain stem.
- A. Alors une balle chemis,e...
- A. There is a jacketted bullet...
- A. ...retrouv,e au niveau de la partie inf,rieure du tronc c,r,bral...
- A. ...in the lower part of the brain stem...
- A. ...et cette balle a ,t, envoy,e ... la section de balistique pour des expertises.
- A. ...and this bullet was sent to the ballistic section for the purpose of expert analysis.
- A. Alors la trajectoire, selon la position anatomique et internationale...
- A. So the trajectory is given in the international anatomical position...
- A. ...s',tablit de droite ... gauche...

-A. ...and runs from right to left...
A. ...de haut en bas...
-A. ...from top to bottom...
A. ...et l, gŠrement d'arriŠre vers l'avant.
-A. ...and slightly from back to front.
A. Num,ro 2...
-A. Wound number 2...
A. ...c'est une plaie d'entr,e au niveau du visage...
-A. ...is an entrance wound in the face...
A. ...c"t, gauche de la lŠvre sup,rieure.
-A. ...the upper left side of the lip.
A. Alors il n'y a pas d',vidence, ... l'oeil nu, de d,p"t de proximit, de tir.
-A. So there is no evidence of close range firing to the naked eye.
A. Alors les l,sions caus,es par ce projectile c'est des lac,rations de la lŠvre sup,rieure...
-A. So the lesions caused or lacerations in the left upper lip...
A. ...avec infiltration marqu,e des tissus...
-A. ...with marked haemorrhagic infiltration of the tissues...
A. ...donc fractures des dents sup,rieures, c"t, gauche...
-A. ...therefore fractures of the upper left teeth...
A. ...lac,rations de la langue, du c"t, gauche...
-A. ...lacerations of the tongue, the left side...
A. ...et des tissus mous au niveau de la mfchoire inf,rieure gauche...
-A. ...and lacerations of the soft tissues at the lower left jaw...
A. ...et les os de la mfchoire inf,rieure gauche sont bris,s.
-A. ...and the bones in the lower left jaw are fractured.
A. Une balle chemis,e, d,form,e est retrouv,e au niveau du bord inf,rieur de la mfchoire inf,rieure gauche...
-A. A deformed jacketted bullet was recovered from the interior edge of the lower left jaw...
A. ...entre les fragments bris,s de l'os.
-A. ...between the fractured segments of the bone.
A. Alors la trajectoire de ce projectile a ,t, annot, num,ro 2 se fait donc de droite vers la gauche...
-A. So the trajectory of this projectile in wound number 2 runs from right to left...
A. ...de haut en bas...
-A. ...top to bottom...
A. ...et d'avant vers l'arriŠre.
-A. ...and from front to back.
A. TroisiŠme projectile, avec plaie d'entr,e num,ro 3.
-A. Third projectile, wound number 3.
A. Alors cette plaie est situ,e sur le c"t, interne...
-A. This wound is located on the inside...
A. ...c'est juste sur le rebord...
-A. ...slightly on the edge...
A. ...du poignet droit...
-A. ...of the right wrist...
A. ...il n'y a pas d',vidence de d,p"t de proximit, de tir...
-A. ...and there is no evidence of close range firing...
A. ...et ... cette plaie d'entr,e o— on appelle sortie num,ro 4...
-A. ...and to this entrance wound, then you have exit wound number 4...
A. ...qui est situ,e sur la face dorsale, sur le dos du poignet droit.
-A. ...which is located on the back side of the right wrist.
A. Alors la trajectoire des deux plaies est de trois

centimètres...

- A. So the trajectory between both wounds is of three centimeters...
- A. ...et elle n'intéresse que les tissus sous-cutanés, superficiels du poignet droit.
- A. ...and involves the subcutaneous tissues of the right wrist.
- A. Il n'y a pas de fracture d'os ... ce niveau.
- A. And the bones are not fractured in this area.
- A. Alors la trajectoire se fait de gauche, si on prend la position anatomique internationale, de gauche ... droite...
- A. So the trajectory runs from left to right according to the international anatomical position...
- A. ...de bas en haut...
- A. ...from bottom to top...
- A. ...d'avant vers l'arrière.
- A. ...and from front to back.
- A. Quatrième projectile...
- A. Fourth projectile...
- A. ...au niveau de la main et du poignet droit...
- A. ...in the hand and the right wrist...
- A. ...avec plaie d'entrée numéro 5...
- A. ...this is entrance wound number 5...
- A. ...donc plaie qui a un aspect plus ou moins étoilé,
- A. ...si it is more or less star-shaped.
- A. Au niveau de la paume de la main droite...
- A. In the palm of the right hand...
- A. ...il y a une certaine teinte noirâtre...
- A. ...there is a certain blackish tint...
- A. ...au niveau de cette plaie, et j'ai prélevé, cette plaie pour être examinée par les experts en balistique.
- A. ...on this wound, and I removed this wound and sent it to ballistics for expert analysis.
- A. Pour voir si ça pourrait être soit du noir de fumée...
- A. To see if it corresponds or matches soot or powder...
- A. ...qui peut traduire une certaine proximité, de tir.
- A. ...which were translated to close range firing.
- A. Alors ... cette plaie numéro 5, trouvée sur la plaie de sortie numéro 6...
- A. So to wound number 5, partly we would have wound number 6 matching wound number 5, wound number 6 being an exit wound...
- A. ...qui est située sur le dos du poignet droit...
- A. ...located at the back side of the right wrist...
- A. ...près du bord externe.
- A. ...near the edge.
- A. Alors la trajectoire est superficielle...
- A. The trajectory is superficial...
- A. ...intéressant les tissus sous-cutanés...
- A. ...involving the subcutaneous tissues...
- A. ...d'une longueur de six centimètres...
- A. ...over a length that was six centimeters...
- A. ...sans évidence de fracture des os.
- A. ...without any presence, or the bones were not fractured in any way.
- A. Alors la trajectoire se fait de gauche ... droite.
- A. The trajectory runs from left to right.
- A. D'avant vers l'arrière...
- A. From front to back...
- A. ...et de bas vers le haut.
- A. ...and from bottom to top.
- A. Il y a quelques autres lésions traumatiques mineures sur le visage par exemple...

-A. There are other minor traumatic lesions on the face for example...

A. ...sous forme d'ecchymoses, c'est-à-dire d'infiltration de sang au niveau des tissus...

-A. ...which present themselves as ecchymoses or blood infiltration in the tissues...

A. ...et aussi sous forme d'abrasion, c'est-à-dire de perte de l'épiderme.

-A. ...which are also abrasions, which means a loss of epidermis.

A. Alors au niveau du front, ... gauche...

-A. So on the forehead, on the left-hand side...

A. ...la région intersourcilieuse...

-A. ... in the entrance of the superciliary region...

A. ... la racine du nez...

-A. ...the root of the nose...

A. ...et il y en a également au niveau du coude gauche...

-A. ...there are some also on the left elbow...

A. ...jambe gauche...

-A. ...left leg...

A. ...et le flanc droit.

-A. ...and the right flank.

A. C'est des lésions mineures qui peuvent correspondre ... un affaiblissement de la victime.

-A. And these are minor lesions which could correlate the collapse of the victim.

A. Alors le reste des organes internes ne présentent pas de lésion traumatique...

-A. So the remaining internal organs do not reveal any traumatic lesions...

A. ...et ... la fin de l'autopsie des prélèvements ont été faits.

-A. ...and at the end of the autopsy samples were taken.

A. Prélèvement de sang pour la recherche éventuelle d'alcool.

-A. And for alcohol content blood samples were taken.

A. également des échantillons de sang, d'urine, de contenu gastrique pour des analyses toxicologiques...

-A. Blood, urine and gastric content samples were taken for toxicological examinations or analysis...

A. ...des échantillons de sang et de cheveux en biologie...

-A. ...and blood and hair samples for biological testing...

A. ...et des échantillons pour la balistique, soit les cheveux autour de la plaie d'entrée numéro 1...

-A. ...samples were taken for ballistics, that is the hair surrounding wound number 1...

A. ...la plaie d'entrée au niveau de la main, numéro 5...

-A. ...entrance wound in the hand, that is wound number 5...

A. ...et la balle extraite au niveau du cerveau...

-A. ...and the bullet extracted from the brain...

A. ...et également la balle extraite ... la mâchoire inférieure gauche.

-A. ...and also the bullet from the interior face of the jaw.

A. Alors tous ces spécimens ont été envoyés ... la section de balistique.

-A. All these samples were sent to ballistics.

Q. And doctor, what is your conclusion?

-Q. Et docteur, quelles sont vos conclusions?

A. Alors mes conclusions c'est le passage d'un projectile d'arme ... feu au niveau de la tête...

-A. So my conclusions are as follows, passage of a firearm projectile in the head...

A. ...avec plaie d'entrée ... la région pariétale droite.

-A. ...with an entrance wound at the right parietal region.

- A. Je vais faire une correction ici l..., c'est r, gion pari, tale droite, c'est possible que sur le rapport c'est marqu, temporal.
- A. In the right parietal region, it's possible that in the report I would have right temporal region, I would like to correct that.
- A. C'est une erreur de dactylographie.
- A. It's a typing error.
- A. Alors les l, sions caus, es par ce projectile au niveau de la t^te...
- A. The lesions caused by passage of this projectile in the head...
- A. ...c'est les lac, rations extensives du cerveau...
- A. ...are as follows, that is extensive brain lacerations...
- A. ...des lac, rations du cervelet et du tronc c, r, bral...
- A. ...lacerations of the cerebellum the brain stem...
- A. ...l'h, morragie au niveau des m, ninges et du cerveau...
- A. ...cerebral meningeal haemorrhage...
- A. ...et les fractures du crâne.
- A. ...and skull fractures.
- A. Passage d'un projectile au niveau du visage...
- A. Passage of a projectile in the face...
- A. ...avec plaie d'entr, e ... la lèvre sup, rieuse, c"t, gauche...
- A. ...entrance wound in the upper left lip...
- A. ...le projectile causant des fractures du maxillaire inf, rieur gauche...
- A. ...which caused fractures of the inferior left maxillary...
- A. ...fracture de quelques dents sup, rieures gauche...
- A. ...fractures of some upper left teeth...
- A. ...des lac, rations de la langue.
- A. ...tongue lacerations.
- A. Passage de deux projectiles d'arme ... feu au niveau de la main et du poignet droit.
- A. Passage of two firearm projectiles in the right hand and wrist.
- Q. And in your opinion, what is the cause of death?
- Q. En votre opinion quelle est la cause du d, c'ss?
- A. Alors le d, c'ss est d- aux l, sions graves et irr, versibles du cerveau et du tronc c, r, bral...
- A. The cause of death is attributed to serious and irreversible brain and cerebral trinkl lesions, or brain stem lesions...
- A. ...et secondaire au traumatisme crânien...
- A. ...secondary to cranial traumatism...
- A. ...et r, sultat du passage du projectile d'arme ... feu au niveau de la t^te avec plaie d'entr, e ... la r, gion pari, tale droite.
- A. ...and resulting from the passage of a firearm projectile in the head with the entrance wound at the right parietal region.
- Q. I'm showing you an envelope containing a projectile labelled C-62889...
- Q. Je vous montre un sachet contenant le projectile identifi, sous le C-62889...
- Q. ...would you tell the members of the Jury what it is?
- Q. ...pourriez-vous dire aux membres du Jury de quoi il s'agit?
- A. Alors c'est bien le sac en plastique avec le num, ro d'exhibit C-62889, avec mes initiales et les , critures...
- A. That is the plastic bag identified as C-62889 bearing my initials...
- A. ...il correspond au projectile retrouv, ... la face inf, rieuse du cerveau.
- A. ...which matches the projectile found at the inferior face of the brain.

- Q. Which corresponds to the first wound number 1 on the diagram?
A. C'est bien...
- Q. Qui correspond ... la plaie d'entr,e num,ro 1 sur votre sch,ma?
A. C'est bien #a.
-A. That's correct.
- Q. I'm showing you an envelope, I would like you to file this as P-...
-Q. J'aimerais que vous le produisiez sous P-...
Q. ...69. Now I'm showing you another envelope containing another projectile labelled C-62890...
-Q. Maintenant je vous montre une autre enveloppe identifi,e par le C-62890...
Q. ...could you identify this exhibit?
-Q. ...contenant un projectile, pourriez-vous, s'il vous plaEt, identifier cette piŠce ... conviction?
A. Alors c'est bien le num,ro d'exhibit mentionn,...
-A. That is the exhibit number mentioned...
A. ...avec mon ,criture et mes initiales...
-A. ...bearing my handwriting and my initials...
A. ...et c'est la balle qui a ,t, extraite au niveau de la mfchoire inf,rieure gauche...
-A. ...this was the bullet that was extracted in the lower left jaw...
A. ...et cette balle correspond ... la plaie d'entr,e num,ro 2.
-A. ...this bullet matches entrance wound number 2.
Q. I would like you to file this exhibit as P-70.
-Q. J'aimerais que vous produisiez cette piŠce sous P-70.

Me JEAN LECOURS :

I have no further questions.

THE COURT :

Okay. We'll break at this point until two fifteen (2:15).

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

EXPERT WITNESS: CLAUDE POTHEL -- UNDER THE SAME OATH

MR. VALERY FABRIKANT :

Is it all right telling the Court I'm not feeling well?

THE COURT :

Certainly, it's not disturbing me.

MR. VALERY FABRIKANT :

I don't have any questions.

THE COURT :

You have no questions.

Q. Thank you very much, doctor Pothel.

-Q. Merci beaucoup, docteur Pothel.

AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOURS :

The next witness is Mr. Jean Dion, the expert in ballistic, but in order to save time, I would appreciate a break of a few minutes to sort out all the bullets and projectiles and exhibits to make sure we don't wait and search for them, because the door was locked, we could not get in before.

THE COURT :

Okay. So...

Me JEAN LECOURS :

But not more than five minutes.

THE COURT :

...after the whole (inaudible) wait, we'll take another five minutes.

SUSPENSION OF THE HEARING
RE-OPENING OF THE HEARING

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this eleventh (11th) day of the month of May, personally came and appeared:

JEAN DION, born on May 14th, 1950, expert in forensic ballistics,

WHOM, after having been duly sworn doth depose and say as follows:

Me JEAN LECOURS :

I would like, at this point, My Lord, that the Court declares this witness expert in the field of ballistics, I would like to open a voir-dire.

THE COURT :

So would you go ahead with your voir-dire please?

EXAMINED BY Me LECOURS (VOIR-DIRE)
ATTORNEY FOR THE CROWN :

- Q. Mr. Dion, could you summarize your education, training and experience in the field of ballistics?
- Q. Monsieur Dion, pourriez-vous résumer votre éducation et votre formation et expérience dans le domaine de la balistique?
- A. J'ai commencé, ... manipuler les armes ... feu comme chasseur en dix-neuf cent soixante (1960)...
- A. I started handling firearms as a hunter in nineteen sixty (1960)...
- A. ...en mil neuf cent soixante-huit (1968) j'ai fait un an dans l'Armée Canadienne...
- A. ...in nineteen sixty-eight (1968) I was in the Canadian Forces for one year...
- A. ...en mil neuf cent soixante-quinze (1975) j'ai obtenu un baccalauréat en science ... l'Université, Laval.
- A. ...in nineteen seventy-five (1975) I obtained a bachelor's in sciences from Laval University.
- A. En mil neuf cent quatre-vingt-sept (1987) je suis rentré, pour le Ministère de la Sécurité, publique...
- A. In nineteen eighty-seven (1987) I was hired by the Public security minister...
- A. ...dans la section balistique, et c'est là que j'ai suivi ma formation qui a duré, environ deux ans.
- A. ...in the ballistic section, and that's where I underwent training for a period of approximately two years.
- A. Comme expert j'ai donné, j'ai signé au-dessus de quatorze cents (1400) dossiers de signés...
- A. As an expert I signed fourteen hundred (1400) files...
- A. ...j'ai été, reconnu plusieurs fois comme expert ... la Cour.
- A. ...and reports and I was recognized as an expert witness several times, on several occasions in Court.
- A. Je donne de la formation aux inspecteurs, des policiers...
- A. I also provide training for police officers or inspectors...
- A. ...aux agents de conservation au Ministère des loisirs, chasse et pêche...

-A. ...and also for officers who are with the recreational hunting and fishing Ministry...

A. ...aux étudiants en technique policière au niveau collégial...

-A. ...and students in police science of collegial level...

A. ...et aussi aux étudiants universitaires en droit.

-A. ...and also to university students in the field of law.

Me JEAN LECOURE :

No further questions on voir-dire.

THE COURT :

Cross-examination on voir-dire Mr. Fabrikant?

MR. VALERY FABRIKANT :

Well, you know from preliminary inquiry he used the wrong bullets, he used wrong calibers...

THE COURT :

I don't know a thing from the preliminary inquiry, now don't talk about...

MR. VALERY FABRIKANT :

What can I say about him?

THE COURT :

Please don't talk about the preliminary inquiry for the minute. I asked you, have you anything to ask him in cross-examination...

MR. VALERY FABRIKANT :

Well I think whatever I ask you will admit him an expert anyway, so there is no point to examine.

THE COURT :

All right, so you have no questions to ask.

The Court recognizes Mr. Dion as an expert in forensic ballistics.

THE WITNESS IS DECLARED EXPERT

EXAMINED BY Me LECOURE

ATTORNEY FOR THE CROWN :

Q. Mr. Dion, did you get the occasion to perform various analysis in the field of your expertise concerning this very case?

-Q. Monsieur Dion, est-ce que vous avez eu l'occasion d'expertiser certains prélèvements d'échantillons concernant cette présente cause dans le domaine de la balistique, ... titre d'expert?

A. C'est exact, votre Honneur.

-A. That's correct, Your Honor.

Q. As well did you have the occasion to write several reports?

-Q. Est-ce que vous avez eu également l'occasion de rédiger certains rapports?

A. J'ai rédigé cinq rapports.

-A. I drew up five reports.

Q. So for a better comprehension of your testimony I will ask you...

-Q. Pour mieux comprendre votre témoignage je vais d'abord vous demander...

Q. ...to first file the original French report...

-Q. ...de produire les rapports, les originaux en français...

Q. ...and after the translation. Let's start with the first one...

-Q. Alors donc nous allons débiter avec le premier et ensuite produire la traduction...

Q. ...dated September the fourth (4th) nineteen ninety-two (1992)...

-Q. ...celui en date du quatre (4) septembre quatre-vingt-douze (92)...

Q. ...and starting with the exhibit C-64035.

-Q. ...débiter avec la pièce ... conviction C-64035.

Q. You have the original with you?
-Q. Est-ce que vous avez l'original avec vous?
A. Les originaux sont donnés aux policiers.
-A. The originals are provided to the police officers.
Q. Okay.
Me JEAN LECOURE :
I have a clean copy, do you mind if we work with the copies?
Mr. Fabrikant, can we work with copies?
MR. VALERY FABRIKANT :
Sure.
Me JEAN LECOURE :
Okay.
Q. So I would like to file the first one as P-71.
-Q. J'aimerais produire le premier sous P-71.
Q. And I would like to file the official translation as P-72.
-Q. Et la traduction officielle sous P-72.
Q. So Mr. Dion, I'm showing you an exhibit P-17, labelled C-64035, could you...
-Q. Alors monsieur Dion, je vous montre la pièce C-64035, c'est le P-17, est-ce que vous pourriez...
Q. ...could you, from now on, for each exhibit, examine it and describe it, and give your conclusions for the members of the Jury.
-Q. ...d'abord, étudier chaque pièce ... conviction et la décrire pour nous aux membres du Jury et procéder de la même façon pour les autres.
A. Dans mon rapport j'ai une pièce P-64035...
-A. In my report I have an exhibit by the number of C-64035...
A. ...c'est un pistolet sans chargeur...
-A. ...it is a pistol without magazine...
A. ...de marque Bersa...
-A. ...the make is Bersa...
A. ...modèle quatre-vingt-quatre (84)...
-A. ...model eighty-four (84)...
A. ...et j'ai examiné ce pistolet, et ce pistolet est en parfait état de tir.
-A. ...and I examined this pistol and it's in good working order, good firing condition.
A. Et j'ai même tiré, avec.
-A. And I even fired with it.
Q. Could you specify the serial number, capacity and caliber.
-Q. Pourriez-vous préciser le numéro de série, la capacité, et la longueur du canon et le calibre?
A. C'est un modèle quatre-vingt-quatre (84) de calibre 7.65 millimètres...
-A. It's an eighty-four (84) model of 7.65 millimeter caliber...
A. ...un calibre 7.65 qu'on peut aussi dire sur le système Américain un point .32 auto.
-A. ...we can also refer to this 7.65 millimeter caliber as a .32 auto for the American system.
A. Et le numéro de série est 51228.
-A. Serial number is 51228.
Q. Capacity?
-Q. Capacité,
A. La capacité, lorsqu'on met un chargeur, la capacité du chargeur est de huit cartouches.
-A. When a magazine is loaded into this weapon the capacity is if eight cartridges.
Q. P-12, labelled C-64072.
-Q. P-12, identifié, sous C-64072.
A. C'est un revolver de marque Smith and Wesson...

-A. It's a Smith and Wesson revolver...
A. ...le modŠle 37...
-A. ...37 model...
A. ...de calibre 38 sp,cial...
-A. ...38 special caliber...
A. ...et le num,ro de s,rie est 327361...
-A. ...the serial number is 327361...
A. ...o.k., et la capacit, du barillet est de cinq.
-A. ...capacity of the cylinder or the drum would be five cartridges.
A. On peut mettre cinq cartouches dans le (inaudible).
-A. Five cartridges can be inserted in the cylinder.
A. L... aussi cette arme a ,t, examin,e, elle est en parfait ,tat de tir, et j'ai tir, avec.
-A. And this weapon, there again I examined, it is in good firing condition and I fired with it.
Q. And now P-10, labelled C-64073.
-Q. P-10 identifi, sous C-64073.
A. C-64073...
-A. C-64073...
A. ...c'est un pistolet avec chargeur...
-A. ...is a pistol with magazine...
A. ...le chargeur...
-A. ...with the magazine...
A. ...de marque Meb...
-A. ...the make is Meb...
A. ...modŠle 125...
-A. ...the model is 125...
A. ...de calibre 6.35 millimŠtres...
-A. ...6.35 millimeter caliber...
A. ...ou systŠme Am,ricain qu'on peut appeler .25 acp.
-A. ...or .25 acp American system.
A. Le num,ro de s,rie est 162823.
-A. Serial number is 162823.
A. Ce pistolet a ,t, examin,, il est en parfaite condition de tir, et j'ai tir, avec.
-A. This pistol was examined, it is in perfect firing condition and I fired with it.
Q. Now, I'm showing you P-32, labelled C-64022.
-Q. Je vous montre maintenant P-32, ,tiquett,e C-64022.
A. Un sac en polythŠne contenant une douille.
-A. A polythene bag containing one cartridge or casing rather.
A. O.k. La diff,rence entre une cartouche et une douille...
-A. The difference between a cartridge and a shell...
A. ...c'est que la cartouche elle n'est pas tir,e et la douille elle est tir,e, c'est-...-dire que le projectile sur la douille il est parti.
-A. ...the cartridge was not fired and whereas the shell, when it is the shell, it has been fired, and the projectile is missing, the bullet is missing.
Q. Okay. And did you examine this exhibit?
-Q. Est-ce que vous avez ,tudi, cette piŠce?
A. Oui.
-A. Yes.
Q. J'ai examin, cette douille dans un microscope, qu'on appelle un microscope de comparaison...
-Q. I examined this shell with a comparison microscope...
A. ...c'est-...-dire que j'ai pris mes propres tirs exp,rimentaux...
-A. ...I took my own experimental firings...
A. ...que je mets sur un plateau, et l'exhibit sur un deuxiŠme

plateau...

- A. ...that I place on a slide and then the exhibit on a second slide...
- A. ...et ça me permet de voir les deux pièces en même temps, dans le même oculaire.
- A. ...and this enables one to look at both exhibits at the same time with the same eye piece.
- A. Et je recherche des marques qui sont caractéristiques. Alors dans mon rapport j'ai pu noter que l'examen microscopique a révélé, positivement qu'une douille a été percutée par le pistolet de marque Meb, numéro de série 162823, pièce C-64073.
- A. I was looking for characteristic markings and in this case I can say that the microscopic examination positively revealed that this casing or this shell was fired by the Meb pistol bearing serial number 162823, exhibit C-64073.
- A. Donc c'est--dire que cette douille a été percutée par ce pistolet hors de tout doute.
- A. Therefore beyond any shadow of a doubt this casing was fired by this pistol here.
- Q. When you say characteristic marks, could you give examples? What are you looking for?
- Q. Lorsque vous parlez de traits ou de marques caractéristiques, est-ce que vous pouvez nous donner un exemple? Qu'est-ce que vous recherchez exactement?
- A. O.k. C'est comme une empreinte digitale...
- A. It's like a fingerprint...
- A. ...chaque arme laisse des marques qui lui sont propres.
- A. ...each weapon will leave marks that are characteristic or typical of that weapon.
- A. Il y a eu des tests de faits...
- A. Tests were conducted...
- A. ...sur des armes sur une même chaîne de montage...
- A. ...on weapons in the same production line...
- A. ...et en tirant avec trois armes qui se suivaient...
- A. ...and upon firing with three consecutive weapons...
- A. ...les spécialistes ont pu déterminer les projectiles et les douilles, avec quelle arme qu'ils avaient été tirés.
- A. ...the experts were able to assess and to determine which shells were fired from which weapon.
- A. Alors ces marques que nous recherchons sont vraiment des marques qui sont propre à l'arme et non pas à une autre arme, même si c'est le même modèle ou la même marque.
- A. So these marks that we're looking for are typical and characteristic of one weapon and not of another.
- Q. And what usually causes these marks?
- Q. Qu'est-ce qui cause ou provoque ces traits caractéristiques habituellement?
- A. O.k. Sur une douille...
- A. On a shell...
- A. ...il y a plusieurs points où on peut trouver des marques caractéristiques.
- A. ...there are several points where we can find characteristic traits.
- A. C'est--dire il y a le percuteur qui vient frapper l'amorce...
- A. That is -- the firing end will strike the (inaudible)...
- A. ...et il y a explosion...
- A. ...and there is an explosion...
- A. ...la pression, une forte pression, des gaz...
- A. ...and the gases that are emitted, the pressure...
- A. ...vient accoter le métal...

-A. ...will strike the metal...
A. ...sur la chambre de l'arme.
-A. ...on the chamber of the weapon.
A. Et les d,fauts qui sont dans la chambre...
-A. And the defects within the chamber...
A. ...vont s'imprimer sur la douille.
-A. ...will leave an imprint on the shell.
A. Alors nous avons parl, du percuteur...
-A. So we spoke of the firing pin...
A. ...nous avons le derriřre de la douille qu'on appelle... qui vient frapper la culasse de l'arme...
-A. ...and we have the back of the shell which strikes the (breechblock) of the weapon...
A. ...o.k., nous avons la chambre tout le tour...
-A. ...we have the chamber all around...
A. ...lorsque le feu est produit dans un pistolet...
-A. ...when shooting occurs with a pistol...
A. ...la pression des gaz va reculer la culasse...
-A. ...the pressure of the gases will move the (breechblock) backwards...
A. ...la douille vient frapper l',jecteur...
-A. ...the shell will strike the ejector...
A. ...cet ,jecteur va laisser des marques caract,ristiques...
-A. ...and that ejector will leave characteristic traces...
A. ...et de plus nous avons aussi l'extracteur pour... lorsque la culasse recule la douille recule.
-A. ...furthermore we also have the extractor, which means that when the (breechback) goes back, the...
A. C'est ,ject, sur l'extracteur.
-A. ...it will be ejected from the extractor.
Q. Okay.
A. Puis l'extracteur va laisser des marques qui lui sont caract,ristiques.
-A. And the extractor will leave characteristic marks.
THE COURT :
Q. Excuse me, would it be more accurate to say that it will be extracted by the ejector, the extractor pulls it backwards and then it shoots off, is that it?
A. J'ai l',jecteur et l'extracteur.
-A. I have the ejector and the extractor.
Me JEAN LECOURE :
Q. Okay. And what are the characteristic marks on the projectiles, and what causes them?
-Q. Quelles sont les traits caract,ristiques sur les projectiles et qu'est-ce qui les produit?
A. O.k. Ce sont de fines stries...
-A. They are fine lines...
A. ...que nous trouvons dessus...
-A. ...that we find on the casings...
A. ...#a pourrait ^tre des formes aussi...
-A. ...they can also be shapes...
A. ...qui sont particuliřres ... l'arme.
-A. ...which are very specific to the weapon itself.
A. Nous ne retrouverons pas ces m^mes stries ou ces marques-l... sur les autres armes de m^me marque.
-A. And sometimes these lines cannot be found on other weapons of the same make.
Q. What creates these lines?
-Q. Et qu'est-ce qui cr,e ces stries?
A. Les stries c'est la pression des gaz.
-A. The pressure of the gas is what creates these lines.

Q. And is there any rubbing against the canon or something?

-Q. Y a-t-il un frottement ... l'intérieur du canon?

A. O.k. C'est parce que je donnais l'explication juste pour la douille, si on parle du projectile...

-A. I gave you an explanation just for the shell, now if we speak of the projectile...

Q. We're talking about projectiles.

-Q. Je parle d'un projectile.

A. O.k. Habituellement le projectile, avec la pression des gaz, va pousser dans le canon...

-A. With the gas pressure, of course the projectile will push inside the barrel.

A. O.k. Le canon c'est cette pièce ici en avant...

-A. The barrel is this part here at the front...

A. ...le projectile, en passant dans le canon, va tourner...

-A. ...the projectile, upon going through the barrel, will revolve on itself...

A. ...puisque dans un canon vous avez des rainures et cloisons...

-A. ...since you have lands and grooves inside a barrel...

A. ...pour faire tourner le projectile.

-A. ...to make the projectile revolve.

A. Ce frottement du canon sur le projectile...

-A. And the rubbing of the barrel on the projectile...

A. ...va laisser, des stries, des marques qui lui sont caractéristiques au canon.

-A. ...will leave lines and characteristic traits which are specific to the barrel itself.

A. La même chose que la douille...

-A. Same thing for the shell...

A. ...nous pouvons relier un projectile hors de tout doute avec un canon qui a frotté,

-A. ...we can relate a projectile with a barrel, without any shadow of a doubt, on which it rubbed against.

Q. So I understand you don't compare the projectile with the canon but you compare the projectile with an experimental projectile shot by the same barrel?

-Q. Alors je comprends que nous n'établissons pas la comparaison entre le projectile qui a frappé, ... l'intérieur du canon mais plutôt...

Q. The comparison is not between the projectile and the barrel, it's the...

-Q. La comparaison n'est pas entre le projectile et le canon, c'est plutôt...

Q. ...it's between the projectile and...

MR. VALERY FABRIKANT :
I believe he's asking leading question.

THE COURT :
Yes, he sure is. He sure is. He's allowed to ask questions that are leading to an expert witness, but in any event...

Me JEAN LECOURE :
Well, I can restrain.

THE COURT :
I wish you would.

MR. VALERY FABRIKANT :
Because expert is answering wrong.

THE COURT :
That's something else, but...

Me JEAN LECOURE :
Q. If I don't ask a leading question, could you repeat your explanation about the presence of lines on projectiles from the barrel?

-Q. Pourriez-vous r,p,ter votre explication sur la pr,sence de stries sur le projectile ... partir du canon?

A. Le projectile qui passe ... travers un canon...

-A. A projectile going through a barrel...

A. ...va frotter dans ce canon.

-A. ...will rub against the barrel.

A. Le frottement de ce canon sur le projectile...

-A. And the rubbing of the barrel on the projectile...

A. ...comme le canon c'est de l'acier dur...

-A. ...since the barrel is made of hard metal...

A. ...et que le projectile, soit l'enveloppe ou c'est du plomb, un mat,riel mou...

-A. ...and the projectile, that is its casing or its envelope is made of soft metal...

A. ...donc le canon va marquer ce projectile.

-A. ...therefore the barrel will leave marks on the projectile.

A. Et ces marques-l..., c'est ce qu'on appelle une signature.

-A. And these marks are referred to as a signature.

A. Ça va ^tre de fines stries.

-A. They will be fine lines.

A. Ce ne seront pas les rainures et cloisons...

-A. They won't be the land and grooves...

A. ...puisque les rainures et cloisons ce sont des caract,ristiques g,n,rales.

-A. ...since land and grooves are general traits or characteristics.

Q. And when you look at your microscope, you compare what with what?

-Q. Et lorsque vous regardez ... l'int,rieur de votre microscope vous comparez quoi avec quoi?

A. Lorsqu'on prend un pistolet nous faisons des tirs exp,rimentaux...

-A. When we take a pistol we make experimental firings...

A. ...nous r,cup,rons les douilles et les projectiles...

-A. ...we recover the shells and projectiles...

A. ...que nous avons tir,s...

-A. ...that we fired...

A. ...et sur le microscope de comparaison, comme les douilles, nous comparons toujours deux m^me objets, c'est-...-dire deux douilles...

-A. ...and in the comparison microscope, as in the case of the shells, we always compare two same objects, for example here these are the shells...

A. ...ou deux projectiles.

-A. ...or two projectiles.

Q. Okay. And can you state again your conclusion relating to exhibit C-64022?

-Q. Et pourriez-vous encore une fois relater vos conclusions en ce qui touche la pišce C-64022?

A. C'est que cette douille-l.....

-A. This shell here...

A. ...a ,t, percut,e par ce pistolet-l... hors de tout doute.

-A. ...was undoubtedly fired by this pistol here.

Q. Okay. I'm showing you now P-31, labellee C-64025.

-Q. Je vous montre maintenant la pišce P-31, ,tiquett,e C-64025.

A. C'est un sac en polythšne qui contient un projectile chemis,.

-A. This is a polythene bag containing one jacketted projectile.

Q. Okay. What do you mean by jacketted projectile...

-Q. Que voulez-vous dire par projectile chemis,...

Q. ...standard projectile?

-Q. ...contrairement ... un projectile r,gulier?

A. O.k. Si vous remarquez sur ce c"t,-ci...

-A. If you note on this side here...

A. ...o.k., vous remarquez que la surface grise est du plomb.

-A. ...you will see that the grey surface is lead.

A. ...si vous regardez l'autre au c"t,...

-A. ...and if you take the other side...

A. ...o.k., vous apercevez ce qu'on appelle une chemise...

-A. ...you will see what we refer to as a jacket...

A. ...de cuivre.

-A. ...in copper.

A. C'est-...-dire que le plomb est enrob, d'une chemise de cuivre, c'est ça qu'on appelle un projectile chemis,.

-A. That is the lead is covered by a copper jacket, and that's what we refer to as a jacketed bullet or projectile.

Q. What is the purpose of covering a projectile with a jacket?

-Q. Quel est le but de recouvrir un projectile avec une chemise?

A. Un des premiers buts c'est que si du plomb frotte dans un canon...

-A. One of the first objectives is that if lead rubs inside a barrel...

A. ...le plomb va fondre...

-A. ...the lead will melt...

A. ...alors lorsque vous avez des projectiles en plomb, il faut ajouter de la graisse...

-A. ...therefore, when you have lead projectiles, a fatty substance has to be added...

A. ...pour empêcher le plomb de coller dans mes canons.

-A. ...to prevent the lead from sticking to the inside of the barrel.

A. Si vous ajoutez une chemise de cuivre...

-A. If you have a copper jacket...

A. ...comme c'est un m,tal plus mou que la scie du canon...

-A. ...since it is a softer metal than that of the barrel...

A. ...vous allez avoir un m^me effet... vous allez empêcher le plomb de fondre dans votre canon.

-A. ...one will prevent the lead from melting inside the barrel.

A. De plus, comme ,tant quand m^me plus dur que le plomb...

-A. Furthermore, although it's harder and since it is harder than lead...

A. ...vous allez obtenir une meilleure p,n,etration.

-A. ...you'll have a better penetration.

Q. Okay. What was your conclusion concerning this exhibit?

-Q. Et quelles ,taient vos conclusions concernant cette piŝce?

A. L'examen microscopique a r,v,l, que ce projectile a les m^me largeurs de rainures et croisons que le pistolet de marque Meb...

-A. The microscopic examination revealed thta this projectile has the same land and groove widths as that of the Meb pistol...

A. ...mais il m'a ,t, impossible de le relier sp,cifiquement ... cette arme.

-A. ...but it was impossible for me to match it up with this specific weapon.

A. C'est-...-dire que ce projectile peut avoir ,t, tir, par ce pistolet-l... ou...

-A. That means that this projectile could have been fired by this weapon here or...

A. ...ou tous les canons qui ont les m^mes largeurs de rainures.

-A. ...or all the barrels having the same land and groove widths.

Q. Now I'm showing you P-30, labelled C-64026.

-Q. Maintenant je vous montre la piŝce P-30, portant l',tiquette C-64026.

A. C'est un sac en polythène qui contient un morceau de plomb...

-A. It's a polythene bag containing a piece of lead...

A. ...il n'y a eu aucune expertise de balistique d'effectu, sur ce fragment ,tant trop avari,.

-A. ...no expert analysis and ballistics was conducted on this piece since it was too damaged.

Q. And P-29, labelled C-64027.

-Q. P-29 portant l',tiquette C-64027.

A. O.k. C'est un sac en polythène qui contient un projectile chemis, de calibre 6.35 millimètres.

-A. It is a polythene bag containing one jacketted projectile of 6.35 millimeter caliber.

A. L'examen microscopique a r,v,l, positivement que ce projectile a ,t, tir, par le pistolet de marque Meb, le num,ro de s,rie 162823.

-A. The microscopic examination positively revealed that this projectile was fired by the Meb pistol, serial number 162823.

Q. Okay. I'm showing you P-28...

-Q. Je vous montre P-28...

Q. ...labelled C-64028.

-Q. ...portant le num,ro C-64028.

A. C'est un sac en polythène qui contient une douille de marque F,d,ral, calibre 6.35 millimètres.

-A. Polythene bag containing one Federal shell of 6.35 millimeter caliber.

A. L'examen microscopique a r,v,l, positivement que cette douille a ,t, percut,e par le pistolet de marque Meb...

-A. The microscopic examination positively revealed that this casing or shell was fired by the Meb pistol...

A. ...num,ro de s,rie 162823.

-A. ...serial number 162823.

Q. Now, P-27, labelled C-64029...

-Q. Et maintenant P-27, portant l',tiquette num,ro C-64029.

A. Un sac en polythène qui contient une douille de marque F,d,ral, calibre 6.35 millimètres.

-A. Polythene bag containing one Federal shell of 6.35 millimeter caliber.</pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;"> A.

- L'examen microscopique a r,v,l, positivement que cette douille a ,t, percut,e par le pistolet de marque Meb, num,ro de s,rie 162823.
- A. The microscopic examination positively revealed that this casing was fired by the Meb pistol serial number 162823.
- Q. P-26, numbered 64030.
- Q. P-26, portant l',tiquette num,ro C-54030.
- A. Un sac en polythšne contenant une douille de marque F,d,ral, calibre 6.35 millimŠtres.
- A. A polythene bag containing one Federal casing of 6.35 millimeter caliber.
- A. L'examen microscopique a r,v,l, positivement que cette douille a ,t, percut,e par le pistolet de marque Meb, num,ro de s,rie 162823.
- A. The microscopic examination positively revealed that this casing was fired by the Meb pistol, serial number 162823.
- Q. P-25, numbered 64033.
- Q. P-25, portant le num,ro C-64033.
- A. Un sac en polythšne contenant une cartouche de marque F,d,ral, de calibre 6.35 millimŠtres, type chemis,e.
- A. A polythene bag containing one jacketed type Federal cartridge of 6.35 millimeters caliber.
- A. Ici vous pouvez voir une cartouche, la diff,rence avec tant"t qu'on parlait de douille.
- A. Here you can see the difference between a cartridge, as we have here, as opposed to what we spoke earlier, which was a shell.
- A. On voit le projectile, donc cette cartouche-l... n'a pas ,t, tir,e.
- A. We see the projectile, therefore this cartridge was not fired.
- A. Donc on appelle #a une cartouche.
- A. And we call this a cartridge.
- A. Cette cartouche, naturellement, peut ^tre tir,e par le pistolet de marque Meb, ,tant du m^me calibre.
- A. This cartridge can be fired by the Meb pistol since it is of the same caliber.
- Q. Okay. Now I'm showing you P-16, labelled C-64034.
- Q. Je vous montre maintenant P-16 identifi, au moyen du C-64034.
- A. Un sac en polythšne qui contient un chargeur de calibre 7.65 millimŠtres de capacit, huit cartouches.
- A. A polythene bag containing eight cartridge magazine of 7.65 millimeter caliber.
- A. Ce chargeur s'adapte au pistolet de marque Bersa.
- A. This magazine fits on the Bersa pistol.
- Q. Which one? Could you point it?
- Q. Lequel? Pourriez-vous l'identifier?
- Q. What is the number of the label?
- Q. Quel est le num,ro de l',tiquette?
- A. C-64035.
- A. C-64035.
- Q. I'm showing you P-18, numbered C-64036.
- Q. Je vous montre P-18, identifi, au moyen du num,ro C-64036.
- A. Un sac en polythšne contenant une douille de marque Cellier et Belleau, calibre 7.65 millimŠtres.
- A. A polythene bag containing a Cellier and Belleau casing, 7.65 millimeter caliber.
- Q. And what was your finding observing this exhibit?
- Q. Et quel ,tait votre r,sultat sur cette pišce ... conviction?
- A. L'examen microscopique a r,v,l, positivement que cette douille

a ,t, percut,e par le pistolet de marque Bersa, num,ro de s,rie 51228.

-A. The microscopic examination positively revealed that this casing was fired by the Bersa pistol, serial number 51228.

A. Pišce C-64035.

-A. Exhibit C-64035.

Q. And now P-19, numbered 64037.

-Q. Et maintenant P-19, ,tiquette num,ro C-64037.

A. Un sac en polythšne contenant une douille de marque Cellier et Belleau, calibre 7.65 millimštres.

-A. A polythene bag containing one Cellier and Belleau casing of 7.65 millimeter caliber.

A. L'examen microscopique a r,v,l, positivement que cette douille a ,t, percut,e par le pistolet de marque Bersa, num,ro de s,rie 51228, pišce C-64035.

-A. The microscopic examination positively revealed that this casing was fired by the Bersa pistol, serial number 51228, exhibit number C-64035.

Q. P-20, number 64038.

-Q. P-20, C-64038.

A. Un sac en polythšne contenant une douille de marque Cellier et Belleau, calibre 7.65 millimštres.

-A. A polythene bag containing one Cellier and Belleau casing of 7.65 millimeter caliber.

A. L'examen microscopique a r,v,l, positivement que cette douille a ,t, percut,e par le pistolet de marque Bersa, num,ro de s,rie 51228, pišce C-64035.

-A. The microscopic examination positively revealed that this casing was fired by the Bersa pistol, serial number 51228, exhibit number C-64035.

Q. P-21...

-Q. P-21...

Q. ...numbered C-64039.

-Q. ...num,ro C-64039.

A. Un sac en polythšne contenant un projectile chemis,, calibre 7.65 millimštres...

-A. A polythene bag containing one jacketted projectile of 7.65 millimeter caliber...

A. L'examen microscopique a r,v,l, positivement que ce projectile a ,t, tir, par le pistolet de marque Bersa, num,ro de s,rie 51228, pišce C-64035.

-A. The microscopic examination positively revealed that this projectile was fired by the Bersa pistol, serial number 51228, exhibit number C-64035.

Q. P-22, labelled C-64040.

-Q. P-22, C-64040.

A. Un sac en polythšne contenant un projectile chemis,, calibre 7.65 millimštres.

-A. A polythene bag containing one jacketted projectile of 7.65 millimeter caliber.

A. L'examen microscopique a r,v,l, positivement que ce projectile a ,t, tir, par le pistolet de marque Bersa, num,ro de s,rie 51228, pišce C-64035.

-A. The microscopic examination positively revealed that this projectile was fired by the Bersa pistol, serial number 51228, exhibit number C-64035.

Q. And now I'm showing you a big bag in polythene...

-Q. Maintenant je vous montre un grand sac en polythšne...

Q. ...containing various items numbered...

-Q. ...contenant divers objets...

Q. ...1 to 13...

-Q. ...num,rot,s de 1... 13...

Q. ...I will first give you the bag...

-Q. ...d'abord je vous remets le sac...

Q. ...which is labelled P-9, it will include inside all the various items.

-Q. ...nous allons y inclure divers objets.

Q. I'm showing you the item number 1.

-Q. Je vous montre l'objet num,ro 1.

A. Un sac en polythšne contenant un projectile en plomb, calibre 38.

-A. A polythene bag containing item number 1, a polythene... one lead projectile of .38 caliber.

A. L'examen microscopique a r,v,l, que ce projectile a les m^mes largeurs de rainures et cloisons que le revolver de marque Smith and Wesson, num,ro de s,rie 327361, pišce C-64072.

-A. The microscopic examination revealed that this projectile has the same land and groove widths as that of the Smith and Wesson revolver, serial number 327361, exhibit C-64072.

A. Il m'a ,t, impossible de la relier ... une arme sp,cifique puisqu'il y a insuffisance de marques caract,ristiques.

-A. It was impossible for me to match it up with a specific weapon due to the insufficient number of characteristic marks.

A. C'est-...-dire que ce projectile-l... peut avoir ,t, tir, par cette arme, c'est compatible...

-A. It means that this projectile could have been fired by this weapon, it is compatible...

A. ...mais toute arme qui a les m^mes caract,ristiques de rainures et cloisons...

-A. ...but any weapon bearing the same land and grooved characteristics...

A. ...peut avoir tir, ce projectile.

-A. ...could have fired this projectile.

Q. Item number 2.

-Q. Objet num,ro 2.

A. Un sac en polythšne contenant une douille de marque Cellier et Belleau, calibre 7.65 millimštres.

-A. A polythene bag containing one Cellier and Belleau casing of 7.65 millimeter caliber.

A. L'examen microscopique a r,v,l, positivement que cette douille a ,t, percut,e par le pistolet de marque Bersa, num,ro de s,rie 51228, pišce C-64035.

-A. The microscopic examination positively revealed that this casing was fired by the Bersa pistol, serial number 51228, exhibit number C-64035.

Q. Item number 3.

-Q. Pišce num,ro 3.

A. Un sac en polythšne contenant une douille de marque Cellier et Belleau, calibre 7.65 millimštres.

-A. A polythene bag containing one Cellier and Belleau casing of 7.65 millimeters.

A. L'examen microscopique a r,v,l, positivement que cette douille a ,t, percut,e par le pistolet de marque Bersa, num,ro de s,rie 51228, pišce C-64035.

-A. The microscopic examination positively revealed that this casing was fired by the Bersa pistol, serial number 51228, exhibit number C-64035.

Q. Item number 4.

-Q. Pišce num,ro 4.

A. Un sac en polythšne contenant un projectile chemis,, calibre 7.65 millimštres.

-A. A polythene bag containing one jacketted projectile of 7.65

millimeter caliber.

A. L'examen microscopique a r,v,l, positivement que ce projectile a ,t, tir, par le pistolet de marque Bersa, num,ro de s,rie 51228, pišce C-64035.

-A. The microscopic examination positively revealed that this projectile was fired by the Bersa pistol, serial number 51228, exhibit number C-64035.

Q. Item number 5.

-Q. Pišce num,ro 5.

A. Un sac en polythšne contenant une douille de marque Cellier et Belleau, calibre 7.65 millimštres.

-A. A polythene bag containing one Cellier and Belleau casing of 7.65 millimeter caliber.

A. L'examen microscopique a r,v,l, positivement que cette douille a ,t, percut,e par le pistolet de marque Bersa, num,ro de s,rie 51228, pišce C-64035.

-A. The microscopic examination positively revealed that this casing was fired by the Bersa pistol, serial number 51228, exhibit C-64035.

Q. Item number 6.

-Q. Pišce num,ro 6.

A. Un sac en polythšne contenant une douille de marque Cellier et Belleau, calibre 7.65 millimštres.

-A. A polythene bag containing one Cellier and Belleau casing of 7.65 millimeter caliber.

A. L'examen microscopique a r,v,l, positivement que cette douille a ,t, percut,e par le pistolet de marque Bersa, num,ro de s,rie 51228, pišce C-64035.

-A. The microscopic examination positively revealed that this casing was fired by the Bersa pistol, serial number 51228, exhibit number C-64035.

Q. Item number 7.

-Q. Pišce num,ro 7.

A. Un sac en polythšne contenant une douille de marque Cellier et Belleau, calibre 7.65 millimštres.

-A. A polythene bag containing one Cellier and Belleau casing of 7.65 millimeter caliber.

A. L'examen microscopique a r,v,l, positivement que cette douille a ,t, percut,e par le pistolet de marque Bersa, num,ro de s,rie 51228, pišce C-64035.

-A. The microscopic examination positively revealed that this casing was fired by the Bersa pistol, serial number 51228, exhibit number C-64035.

Q. Item number 8.

-Q. Pišce num,ro 8.

A. Un sac en polythšne contenant un projectile chemis,, calibre 7.65 millimštres.

-A. A polythene bag containing one jacketted projectile of 7.65 millimeter caliber.

A. L'examen microscopique a r,v,l, positivement que ce projectile a ,t, tir, par le pistolet de marque Bersa, num,ro de s,rie 51228, pišce C-64035.

-A. The microscopic examination positively revealed that this projectile was fired by the Bersa pistol, serial number 51228, exhibit number C-64035.

Q. Item number 9.

-Q. Pišce num,ro 9.

A. Un sac en polythšne contenant un projectile chemis,, calibre 7.65 millimštres.

-A. A polythene bag containing one jacketted projectile of 7.65 millimeter caliber.

- A. L'examen microscopique a r,v,l, positivement que ce projectile a ,t, tir, par le pistolet de marque Bersa, num,ro de s,rie 51228, pišce C-64035.
- A. The microscopic examination positively revealed that this projectile was fired by the Bersa pistol, serial number 51228, exhibit C-64035.
- Q. Item number 10.
- Q. Pišce num,ro 10.
- A. Un sac en polythšne contenant un projectile chemis,, calibre 7.65 millimštres.
- A. A polythene bag containing one jacketted projectile of 7.65 millimeter caliber.
- A. L'examen microscopique a r,v,l, positivement que ce projectile a ,t, tir, par le pistolet de marque Bersa, num,ro de s,rie 51228, pišce C-64035.
- A. The microscopic examination positively revealed that this projectile was fired by the Bersa pistol, serial number 51228, exhibit C-64035.
- Q. Item number 11.
- Q. Pišce num,ro 11.
- A. Un sac en polythšne contenant une douille de marque F,d,ral, calibre 6.35 millimštres.
- A. A polythene bag containing one Federal casing of 6.35 millimeter caliber.
- A. L'examen microscopique a r,v,l, positivement que cette douille a ,t, percut,e par le pistolet de marque Meb, num,ro de s,rie 162823, pišce C-64073.
- A. The microscopic examination positively revealed that this casing was fired by the Meb pistol, serial number 162823 exhibit C-64073.
- Q. Item number 12.
- Q. Pišce num,ro 12.
- A. Un sac en polythšne contenant un projectile chemis,, calibre 6.35 millimštres.
- A. A polythene bag containing one jacketted projectile of 6.35 millimeter caliber.
- A. L'examen microscopique a r,v,l, que ce projectile a les m^mes largeurs de rainures et cloisons que le pistolet de marque Meb, num,ro de s,rie 162823, pišce C-64073.
- A. The microscopic examination positively revealed that this projectile has the same land and groove widths as that of the Meb pistol, serial number 162823, exhibit C-64073.
- A. Il m'a ,t, impossible de relier ce projectile ... une arme sp,cifique puisqu'il y a insuffisance de marques caract,ristiques.
- A. It was impossible for me to match it up, to match this projectile with a specific weapon due to the insufficient number of characteristics.
- A. C'est-...-dire ce projectile-l... a les m^mes largeurs de rainures que le pistolet ici...
- A. That is this projectile has the same land and groove widths as this pistol over here...
- A. ...mais toute arme qui a les m^mes largeurs de rainures et cloisons peut avoir aussi tir, ce projectile.
- A. ...but any weapon bearing the same land and groove widths could have also fired this projectile.
- Q. And item number 13.
- Q. Et pišce num,ro 13.
- A. Un sac en polythšne contenant quatre douilles et une cartouche...
- A. A polythene bag containing four shells or casings and one

cartridge...

A. ...quatre douilles de marque Cascade, calibre 38 sp,cial.

-A. ...four Cascade casings of .38 special caliber.

A. L'examen microscopique a r,v,l, positivement que ces douilles ont ,t, percut,es par le revolver de marque Smith and Wesson, num,ro de s,rie 327361.

-A. The microscopic examination positively revealed that these casings were fired by the Smith and Wesson revolver, serial number 327361...

A. ...pišce C-64072.

-A. ...exhibit C-64072.

A. Une cartouche de marque Cascade, calibre 38 sp,cial, bout en plomb...

-A. And a Cascade lead cartridge of .38 special caliber...

A. ...cette cartouche qu'on ne voit plus ici a servi pour faire des tirs exp,rimentaux avec le revolver de marque Smith and Wesson.

-A. ...this cartridge that we no longer see was used for experimental firing with the Smith and Wesson revolver.

Q. Okay. In your report you also mention exhibit C-64072...

-Q. Dans votre rapport vous avez aussi mentionn, la pišce C-64072...

Q. ...did you just refer to that or...

-Q. ...est-ce que vous venez tout juste de vous r,f,rer ... cela ou...

A. C'est exact, c'est la pišce que (inaudible) au revolver.

-A. Yes, that's the exhibit corresponding to the revolver.

Q. Okay. And you also mentioned the exhibit C-64067.

-Q. Vous avez aussi mentionn, la pišce C-64067.

A. On en a pas parl, encore.

-A. We didn't get to that yet.

Q. Okay. Could you please?

-Q. Est-ce que vous pourriez en parler s'il vous plaEt?

Q. Okay. I'm showing it to you.

-Q. Je vous montre la pišce.

Q. That was filed as P-11.

-Q. C',tait une (inaudible) P-11, ou produite comme P-11.

A. Un sac en polythšne contenant un chargeur et huit cartouches.

-A. A polythene bag containing one magazine and eight cartridges...

A. ...un chargeur de calibre 7.65 millimŠtres, capacit, huit cartouches.

-A. ...and eight cartridge magazine of 7.65 millimeter caliber.

A. Ce chargeur s'adapte au pistolet de marque Bersa.

-A. This magazine fits on the Bersa pistol.

A. Huit cartouches de marque Cellier et Belleau, calibre 7.65 millimŠtres, type chemis,...

-A. Eight jacketed Cellier and Belleau cartridges of 7.65 millimeter caliber...

A. ...on en retrouve plus que cinq puisque trois cartouches ont servi pour les tirs exp,rimentaux avec le pistolet de marche Bersa.

-A. ...only five remain since three cartridges were used for experimental firing with the Bersa pistol.

Q. And now I'm showing you three paper bags...

-Q. Je vous montre maintenant trois enveloppe en papier...

Q. ...could you examine them, tell the members of the Jury what it is?

-Q. ...pourriez-vous dire aux membres du Jury de quoi il s'agit?

A. Lorsqu'on examine les armes...

-A. Upon examning the weapons...

A. ...j'ai dit au d, but qu'on tirait avec...

-A. ...I said at first that we fire with them...

A. ...dans ce dossier nous avons trois armes...

-A. ...in this case we have three weapons...

A. ...et naturellement nous allons retrouver trois enveloppes de tirs exp,rimentaux.

-A. ...and of course we'll end up with three envelopes bearing experimental firings.

A. Alors dans ces enveloppes contiennent les tirs exp,rimentaux des trois armes.

-A. So these envelopes contain the experimental firings of these three weapons.

A. Que j'ai tir,s moi-m^me.

-A. That I fired myself.

Q. Okay. Which one concerns the Bersa pistol?

-Q. Alors lesquelles touchent le pistolet Bersa?

A. Cette enveloppe contient des tirs exp,rimentaux du Bersa.

-A. This envelope contains the experimental firings of the Bersa pistol.

Q. Okay. How many of these projectiles are in there?

-Q. Alors combien de projectiles contient-elle?

A. Il faut toujours les compter parce qu'on peut en perdre lors des tirs exp,rimentaux.

-A. We always have to count them because some of them can be lost during experimental firing.

Q. Could you open?

-Q. Pourriez-vous ouvrir l'enveloppe?

A. Dans cette enveloppe je retrouve trois douilles et trois projectiles.

-A. In this envelope I have three shells and three projectiles.

Q. And I understand that you took them from the previous exhibits?

-Q. Et je comprends que vous avez tir, ... partir des autres exhibits ou des autres pišces?

Q. Because there was extra cartridges in the...

-Q. C',tait des cartouches suppl,mentaires.

A. O.k. C'est que dans la pišce P-11, ou pišce C-64067...

-A. For exhibit P-11, or C-64067...

Q. It was not P-11. Was it?

-Q. Ce n',tait pas P-11. Est-ce que c',tait P-11?

A. On m'a dit P-11.

-A. Well, I was told P-11.

Q. Well, it could be...

THE COURT :

Just a second. Just find the exhibit.

Me JEAN LECOURES :

Q. Okay. It comes from P-11, that's what you're telling us?

-Q. Alors #a provient de P-11, c'est ce que vous nous dites?

A. C'est #a. J'ai dit ce matin qu'il y avait huit cartouches, et on en retrouve plus que cinq.

-A. There were eight cartridges and now only five remain.

A. Et dans le rapport c'est marqu, trois cartouches ont servi pour les tirs exp,rimentaux.

-A. And in the report it is written that three cartridges were used for experimental firing.

Q. So this is the explanation that there's only five instead of eight?

-Q. Alors c'est l'explication ... l'effet qu'il y en ait cinq au lieu de huit?

A. C'est exact.

-A. That's correct.

Q. Okay. I would like you to file this paper envelope as P-73.

-Q. J'aimerais que vous produisiez cette enveloppe de papier sous P-73.

Q. And then...

-Q. Ensuite...

Q. ...let's consider the other one, Meb.

-Q. ...passons ... l'autre, celle du Meb.

A. Dans ce cas-ci nous retrouvons trois douilles et trois projectiles.

-A. In this case we have three shells and three projectiles.

A. Deux projectiles sont entr,es dans les douilles.

-A. Two projectiles are inside the shells here.

A. Qu'on peut voir (inaudible).

-A. We can see them.

Q. How do you explain that?

-Q. Comment pouvez-vous expliquer ce fait?

A. Ah, je veux dire, si vous prenez un projectile, si je le mets dedans, il rentre.

-A. If you take a projectile and you just insert it in, it will go in.

A. Ici ça s'est rentr, normalement dans l'enveloppe.

-A. And this happened naturally inside the envelope.

Q. Okay. And where did you take these experimental cartridges?

-Q. Et o— avez-vous pris ces cartouches exp,rimentales?

Q. We're talking about the Meb now?

-Q. Est-ce qu'on parle du Meb maintenant?

A. Oui, on parle du Meb.

-A. Yes, we are dealing with the Meb now.

Q. Okay. I refer you to exhibit C-64073, last line.

-Q. Je vous r,fšre ... la pišce C-64073, dernišre ligne.

A. Cette cartouche n'a pas servi, elle est encore dans le sac puisque c'est marqu, que cette cartouche peut ^tre percut,e.

-A. This cartridge was not used since it's still inside the bag and it's written that this cartridge can be fired.

Q. We're talking about 64073?

-Q. On parle du C-64073?

A. Ah.

-A. Ah.

Q. Which is the pistol Meb.

-Q. Qui est le pistolet Meb.

THE COURT :

The question, I thought, was very simple, where did you get these three shells?

Me JEAN LECOURS :

Yes, but he's looking, My Lord.

THE COURT :

Or these three cartridges.

Me JEAN LECOURS :

I'm helping him.

Q. I'm just bringing your attention to the last line concerning the Meb pistol.

-Q. J'attire votre attention ... la dernišre ligne concernant le pistolet Meb.

A. C'est exact, lorsque nous avons reu ce pistolet il y avait aussi une cartouche de marque F,d,ral...

-A. That's correct, when we received this pistol there was also a Federal cartridge...

A. ...de calibre 6.35 millimštres, type chemis,...

-A. ...a jacketted cartridge of 6.35 millimeter caliber...

A. ...et cette cartouche qui se trouvait avec le pistolet a servi dans les tirs exp,rimentaux.

-A. ...and that cartridge that was with the pistol was used for experimental firing.

Q. Okay. And you have two more I understand?

-Q. Et vous en avez deux autres je comprends bien?

A. O.k. Soit qu'on les avait - je les ai re ues du policier pour... suffisamment pour faire des tirs exp,rimentaux ou...

-A. I received them from the police officer for experimental firing or...

A. ...lorsqu'on ne nous fournit pas de cartouches, on emploi nos propres cartouches.

-A. ...when we're not provided with cartridges we use our own.

Q. Okay. So I would like you to file this envelope...

-Q. Alors j'aimerais que vous produisiez cette enveloppe...

Q. ...as P-74.

-Q. ...sous P-74.

Q. And the last paper envelope, could you have a look at it?

-Q. Et la derni re enveloppe, est-ce que vous pourriez l'ouvrir?

A. O.k. Ici nous retrouvons six douilles...

-A. Here we have six shells...

A. ...et six projectiles.

-A. ...six projectiles.

A. Et une de ces cartouches...

-A. One of these cartridges...

A. ...dans la pi ce, item 13...

-A. ...under item 13...

A. ...il y avait une cartouche de marque Cascade, et cette cartouche a servi ... tirer avec le revolver Smith and Wesson.

-A. ...there was a Cascade cartridge that was used for experimental firing with the Smith and Wesson revolver.

Q. And what about the others?

-Q. Qu'en est-il des autres?

A. Les autres, soit qu'ils ,taient dans les autres pi ces, ou encore proviennent de la munition du laboratoire de police.

-A. The other ones are either with the other exhibit or come from the police amunition at the laboratory.

Q. Could you file that please as P-75?

-Q. Pourriez-vous le produire sous P-75 je vous prie?

Q. Did you also receive some items from the pathology department?

-Q. Avez-vous ,galement re u des pi ces du service de pathologie?

A. J'ai produit quatre rapports de pi ces provenant du docteur Claude Pothel.

-A. I filed four reports on exhibits coming from Dr. Claude Pothel.

Q. Okay. Let's start with the first one...

-Q. D,butons par le premier...

Q. ...dated September the fourth (4th)...

-Q. ...en date du quatre (4) septembre...

Q. ...and the first exhibit is labelled C-62906.

-Q. ...et la premi re pi ce sous le num,ro C-62906.

Q. Let's file it as P-76.

-Q. Nous allons le produire sous P-76.

Q. I'd like to file the official translation as P-77.

-Q. (Inaudible) P-77.

Q. I show you exhibit P-56, labelled C-62906.

-Q. Je vous montre la pi ce P-56, identifi,e au moyen du num,ro C-62906.

A. Un sac en polyth ne contenant un projectile en plomb de calibre 38.

-A. A polythene bag containing .38 caliber lead projectile.

A. L'examen microscopique a r,v,l, positivement que ce projectile a ,t, tir, par le revolver de marque Smith and Wesson, num,ro

de s,rie 327361 pišce C-64072.

-A. The microscopic examination positively revealed that this projectile was fired by the Smith and Wesson revolver, bearing serial number 327361, exhibit number C-64072.

Q. I show you P-57, number C-62907.

-Q. Je vous montre la pišce P-57, repr,ésentant le C-62907.

A. Un sac en polythšne contenant un projectile en plomb de calibre 38...

-A. A polythene bag containing a .38 caliber lead projectile.

A. L'examen microscopique a r,v,l, positivement que ce projectile a ,t, tir, par le revolver de marque Smith and Wesson, num,ro de s,rie 327361, pišce C-64072.

-A. The microscopic examination positively revealed that this projectile was fired by the Smith and Wesson revolver, bearing serial number 327361 exhibit C-64072.

Q. And P-58, number C-62908.

-Q. P-58, pišce C-62908.

A. Un sac en polythšne contenant un projectile en plomb, calibre 38 millimštres.

-A. A polythene bag containing a .38 caliber lead projectile.

A. L'examen microscopique a r,v,l, positivement que ce projectile a ,t, tir, par le pistolet de Smith and Wesson, num,ro de s,rie 327361 pišce C-6402.

-A. The microscopic examination positively revealed that this projectile was fired by the Smith and Wesson revolver, bearing serial number 327361, exhibit number C-64072.

Q. And in your report you also mention two other exhibits, which we won't file, but what are they?

-Q. Dans votre rapport vous avez mentionn, deux autres pišces, que nous n'allons pas produire, mais de quoi s'agit-il exactement?

A. On m'a envoy, une pišce C-62909...

-A. Exhibit C-62909 was submitted to me...

A. ...c'est un sac en polythšne qui contenait des cheveux.

-A. ...consisting in a polythene bag containing some hair.

A. Nous avons fait un examen microscopique pour voir si on ne trouverait pas des traces de poudre.

-A. We conducted a microscopic examination to see whether or not there was presence of gun powder particles.

A. Et l'examen s'est r,v,l, n,gative.

-A. And the examination was negative.

Q. Okay. And for the other item?

-Q. Qu'en est-il de l'autre pišce?

A. Pišce C-62910...

-A. Exhibit C-62910...

A. ...un sac en polythšne contenant des v^tements.

-A. ...a polythene bag containing some clothing.

A. L'examen microscopique a r,v,l, la pr,sence d'un grain en arrišre, sur le blouson, pršs du trou.

-A. The microscopic examination revealed the presence of one particle on the back of the jacket near the hole.

A. L'analyse chimique a confirm, qu'il s'agissait d'un grain de poudre explosive.

-A. The chemical analysis confirmed that it was a gun powder particle.

A. La distance de tir est inf,rieure ... quatre pied pour une arme courte.

-A. The firing range is less than four feet for a short weapon.

A. C'est-...-dire qu'avec une arme courte...

-A. That is with a short weapon...

A. ...dans ces genres-ci...

-A. ...of these types...

- A. ...on ne trouvera pas de poudre si le bout du canon est plus loin que quatre pieds.
- A. ...we won't find any particles if the tip of the barrel is further than a distance of four feet.
- Q. Would you agree with me that one particle is not... it's not much?
- Q. Est-ce que vous seriez d'accord avec moi que la pr,sence d'un grain n'est pas ,norme?
- A. C'est que plus vous ^tes prřs...
- A. The closer one is located...
- A. ...plus vous allez trouver de grains...
- A. ...more particles will be found...
- A. ...et plus vous allez approcher du quatre pied, moins vous allez trouver de grains.
- A. ...and the closer you'll get to the four feet, less particles you will find.
- A. En trouvant juste un grain, on peut assumer qu'on devait ^tre trřs prřs de quatre pieds.
- A. And in finding only one prarticle, one can assume that one was very close within that four-foot range, or closer to the four foot range.
- Q. Okay. Did you prepare also another report dated September the fourth (4th)?
- Q. Avez-vous ,galement pr,par, un autre rapport en date du quatre (4) septembre?
- A. C'est exact.
- A. That's correct.

THE COURT :

Before you get into that one would you like a break at this point or are you...

THE INTERPRETER :

Maybe five minutes, My Lord. Thank you.

THE COURT :

Fine.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITNESS: JEAN DION -- UNDER THE SAME OATH

CONTINUATION OF EXAMINATION BY Me LECOURS

ATTORNEY FOR THE CROWN

Me JEAN LECOURS :

- Q. Okay Mr. Dion, I would like you to file your report of September the fourth (4th).
- Q. J'aimerais que vous produisiez, monsieur Dion, votre rapport en date du quatre (4) septembre.
- Q. Whose first exhibit is C-62915...
- Q. Dont la premiřre piřce est le C-62915...
- Q. ...as P-78...
- Q. ...sous P-78...
- Q. ...and we will file the official translation as P-79.
- Q. ...et la traduction officielle sera le P-79.
- Q. And now I'm showing you P-62, numbered C-62915...
- Q. Je vous montre maintenant le P-62, portant le num,ro C-62915.
- A. Un sac en polythřne contenant un projectile chemis,, calibre 7.65 millimřtres.
- A. A polythene bag containing one 7.65 millimeter caliber, jacketed projectile.
- A. L'examen microscopique a r,v,l, positivement que ce projectile

a ,t, tir, par le pistolet de marque Bersa, num,ro de s,rie 51228, pišce C-64035.

- A. The microscopic examination positively revealed that this projectile was fired by the Bersa pistol, bearing serial number 51228, exhibit number C-64035.
- Q. And you also mentioned in your report another exhibit, which we won't file, what is it?
- Q. Vous avez aussi mentionn, une autre pišce dans votre rapport que nous n'allons pas produire, de quoi s'agit-il?
- A. Pišce C-62916.
- A. Exhibit C-62916.
- A. Un sac en polythšne contenant une chemise...
- A. A polythene bag containing one shirt...
- A. ...c'est une chemise, un v^tement.
- A. ...piece of clothing.
- A. L'examen microscopique n'a pas r,v,l, la pr,sence de grain de poudre explosive.
- A. The microscopic examination did not reveal the presence of gun powder particles.
- A. Donc on ne peut pas donner de distance de tir.
- A. Therefore the firing range cannot be established.
- Q. You also wrote a report dated October the sixth (6th) nineteen ninety-two (1992)...
- Q. Vous avez r,dig, un rapport ,galement en date du six (6) octobre quatre-vingt-douze (92)...
- Q. ...there is only one exhibit in it? I would like you to file it as P-80.
- Q. ...j'aimerais que vous le produisiez sous P-80, qui contient uniquement une pišce.
- Q. And the translation, we will file it as P-81.
- Q. Et la traduction que nous allons produire sous P-81.
- Q. And now I'm showing you exhibit P-65, numbered C-67747.
- Q. Je vous montre la pišce P-65, num,ro 67747.
- A. Un sac en polythšne contenant un projectile chemis,, calibre 7.65 millimštres.
- A. A polythene bag containing one jacketted projectile of 7.65 millimeter caliber.
- A. L'examen microscopique a r,v,l, positivement que ce projectile a ,t, tir, par le pistolet de marque Bersa, num,ro de s,rie 51228, pišce C-64035.
- A. The microscopic examination positively revealed that this projectile was fired by the Bersa pistol, serial number 51228, exhibit number C-64035.
- Q. And you also wrote a last or another report dated September the fourth (4th) nineteen ninety-two (1992)...
- Q. Vous avez ,galement r,dig, un autre rapport...
- Q. ...whose first exhibit is C-62889.
- Q. ...en date du quatre (4) septembre mil neuf cent quatre-vingt-douze (1992) dont la premišre pišce est identifi,e au num,ro C-62889.
- A. C'est exact.
- A. That's correct.
- Q. And it's P-82.
- Q. Qui deviendra P-82.
- Q. The translation as P-83.
- Q. La traduction sous P-83.
- Q. I'm showing you P-69, number C-62889.
- Q. Je vous montre P-69, pišce C-62889.
- A. Un sac en polythšne contenant un projectile chemis,, calibre 6.35 millimštres.
- A. A polythene bag containing one 6.35 millimeter caliber,

jacketted projectile.

A. L'examen microscopique a r,v,l, positivement que ce projectile a ,t, tir, par le pistolet de marque Meb, num,ro de s,rie 162823, pišce C-64073.

-A. The microscopic examination positively revealed that this projectile was fired by the Meb pistol, bearing serial number 162823, exhibit number C-64073.

Q. And finally I'm showing you P-70, number C-62890.

-Q. Et finalement je vous montre le P-70, pišce C-62890.

A. Un sac en polythšne contenant un projectile chemis,, calibre 6.35 millimštres.

-A. A polythene bag containing one 6.35 millimeter caliber jacketted projectile.

A. L'examen microscopique a r,v,l, positivement que ce projectile a ,t, tir, par le pistolet de marque Meb, num,ro de s,rie 162823, pišce C-64073.

-A. The microscopic examination positively revealed that this projectile was fired by the Meb pistol, bearing serial number 162823, exhibit number C-64073.

Q. And finally I'm showing you exhibit P-33, could you...

-Q. Finalement je vous montre la pišce P-33...

Q. ...could you examine this exhibit and tell the members of the Jury whether these cartridges could be fired by any of the firearms already filed in this case?

-Q. ...pouvez-vous ,tudier cette pišce et dire aux membres du Jury si oui ou non ces cartouches pouvaient ^tre tir,es avec les armes qui sont pr,sentes devant nous et impliqu,es dans cette cause?

A. Ce sont toutes des cartouches de calibre 38 sp,cial...

-A. They're all cartridges of .38 special caliber...

A. ...de marque C.C.I.

-A. ...of the make C.C.I.

A. Et ces cartouches peuvent ^tre percut,es, tir,es par le revolver de marque Smith and Wesson, qui est de m^me calibre.

-A. These cartridges can be fired by the Smith and Wesson revolver, which is of the same caliber.

Q. Okay. You have this exhibit in your hand, which exhibit number is it?

-Q. Vous avez cette pišce en main, quel est le num,ro d'identification de pišce?

A. C'est la pišce P-12.

-A. Exhibit P-12.

A. Num,ro de pišce C-64072.

-A. Bearing number C-64072.

Q. I am showing you exhibit P-34, could you examine it?

-Q. Je vous montre la pišce P-34, pourriez-vous l',tudier s'il vous plaEt?

Q. And tell the members of the Jury what it is.

-Q. Et dire aux membres du Jury de quoi il s'agit.

A. Ce sont des cartouches de marque F,d,ral...

-A. These are Federal cartridges...

A. ...et c'est marqu, dessus de calibre 25 auto.

-A. ...and it's written on them 25 caliber auto.

A. 25 auto c'est de m^me calibre que du 6.35...

-A. 25 auto is the same caliber as 6.35...

A. ...millimštres.

-A. ...millimeter.

A. Il y en a un qui est dans le systšme anglais et l'autre est dans le systšme m,trique.

-A. One is the British system and the other is the metric system.

Q. You just said one is English and one is British.

-Q. Vous avez dit un est anglais et l'autre est britannique.
A. Il y en a un qui est le systŠme m,trique, o.k., et l'autre est le systŠme anglais, imp,rial qu'on appelle.
-A. One is the imperial system, one is the metric system.
A. Autrement dit un en pouces et l'autre en m,trique. On se comprend bien.
-A. In other words one in inches and the other one (inaudible) metric system.
A. De toute faÇon, sur l',tiquette vous voyez 25 auto, et entre parenthŠses 6.35 millimŠtres.
-A. In any case, you can see here on the flap 25 auto, in parenthesis 6.35 millimeters.
Q. I'm showing you P-35, again... before showing P-35, you just describe this exhibit, these cartridges, could they or couldn't they be fired by any of the firearms filed already in this case?
-Q. Maintenant la piŠce que vous venez de d,crire, est-ce que les cartouches ci-incluses pourraient ˆtre tir,es par les armes qui sont produites ici dans cette cause?
A. Ces cartouches-l..., de calibre 6.35 millimŠtres, peuvent ˆtre tir,es par un pistolet de mˆme calibre, le pistolet de marque Meb, qui est la piŠce P-10.
-A. These cartridges here could be fired by the Meb pistol, identified... which is P-10, identified as...
A. PiŠce C-64073.
-A. Exhibit number C-64073.
Q. Was it inside the small paper you were...
-Q. Est-ce que le petit sachet ,tait ... l'int,rieur?
Q. All that was there or?
-Q. Tout cela ,tait ... l'int,rieur ou ... l'ext,rieur.
A. Il ,tait ... l'int,rieur puisque c'est un pistolet avec chargeur.
-A. It was inside since it is a pistol with magazine.
Q. Okay. And now I'm showing you P-35, could you examine it, describe it, and tell whether it could be fired or not with the filed firearms.
-Q. Je vous montre maintenant la P-35 et j'aimerais que vous puissiez l',tudier, la d,crire, et nous dire si oui ou non #a peut ˆtre percut, ou tir, avec l'une ou l'autre des armes ici (inaudible).
A. O.k. Sur les cartouches c'est ,crit la marque Cellier et Belleau...
-A. On the cartridges it is written Cellier and Belleau make...
A. ...de calibre 7.65 millimŠtres.
-A. ...of 7.65 millimeter caliber.
A. On peut appeler aussi ce calibre-l... du 32 automatique comme inscrit sur la boÇte.
-A. And this caliber could be referred to as 32 automatic as written on the box.
A. Ces cartouches peuvent ˆtre tir,es par le pistolet de marque Bersa, et de mˆme calibre, le calibre 7.65 millimŠtres.
-A. And these cartridges can be fired by the Bersa weapon of the same caliber, that is 7.65 millimeters.
Q. You're referring to?
-Q. Vous r,f,rez?
A. # la piŠce P-17.
-A. Exhibit P-17.
A. PiŠce C-64035.
-A. Exhibit C-64035.
Q. And finally I'm showing you P-36, again could you describe it?
-Q. Alors encore je vous montre...

- Q. And tell the members of the Jury whether this could be fired by any of the weapons already filed in this case.
- Q. ...je vous montre la pišce P-36, est-ce que vous pourriez nous dire si oui ou non cette pišce peut-^tre percut,e ou tir,e ... partir des armes que nous avons devant nous impliqu,es dans cette cause?
- A. O.k. Les cartouches, celles qui sont identifi,es de marque Cellier et Belleau...
- A. The cartridges identified as Cellier and Belleau...
- A. ...calibre 7.65 millimŠtres...
- A. ...of 7.65 millimeter caliber...
- A. ...ces cartouches-l... peuvent ^tre tir,es par le pistolet de marque Bersa...
- A. ...these cartridges can be fired by Bersa pistol...
- A. ...et ,tant le m^me calibre...
- A. ...being of the same caliber...
- A. ...pišce P-17...
- A. ...exhibit P-17...
- A. ...num,ro de pišce C-64035.
- A. ...number C-64035.
- Me JEAN LECOURE :
I have no further questions.
- Q. Je n'ai plus de questions.

CROSS-EXAMINED BY VALERY FABRIKANT :

- Q. Well, I don't know if it makes any sense. During preliminary inquiry, if you remember, there was a very heavily damaged bullet...
- Q. Au cours de l'enqu^te pr,liminaire, je ne sais pas si vous vous rappelez, il y avait une balle qui ,tait tršs endommag,e...
- Q. ...and you claim that you have identified it nevertheless?
- Q. ...et vous avez dit que vous avez r,ussi quand m^me ... l'identifier?
- A. C'est exact, c'est pas n,cessairement - un projectile peut ne pas ^tre avari, du tout...
- A. That's correct, a projectile could be totally undamaged...
- A. ...et il se peut que nous ne r,ussissions pas ... le relier positivement.
- A. ...and it's possible that we won't be able to relate it very positively.
- A. Un projectile avari,...
- A. And a damaged projectile...
- A. ...qui a suffisamment de signatures...
- A. ...which has a sufficient amount of signatures...
- A. ...peut ^tre reli, positivement.
- A. ...could be positively related or linked to a weapon.
- Q. Now, could you demonstrate this signature? I asked you during preliminary inquiry to bring the picture so that we could see how...
- Q. Pourriez-vous d,montrer cette signature? Je vous ai demand, au cours de l'enqu^te pr,liminaire d'apporter des photographies pour identifier...
- Q. ...so that we could see how the picture looks like so that you identified one bullet and another.
- Q. ...nous montrer les photos qui d,montreraient les signatures apparentes sur la balle.
- A. O.k. J'ai expliqu,, lors de mon premier t,moignage, pourquoi je ne pouvais amener de photos.
- A. I explained in the course of my first testimony the reason why I couldn't bring any photographs.

A. Dans un premier mouvement...
-A. Firstly...
A. ...l'appareil photographique perd de la sensibilit,..
-A. ...the camera loses sensitivity.
A. Ce que nous voyons avec nos yeux, nous ne pouvons le voir exactement avec une photographie.
-A. What one can see with the naked eye cannot necessarily see with a photograph, or on a photograph.
A. Comme le microscope grossit un projectile...
-A. Since a microscope will enlarge a projectile, or blow-up a projectile...
A. ...il faudrait pas n,cessairement prendre une photo mais il faudrait en prendre plusieurs...
-A. ...one photo would not be sufficient but we would have to take several photographs...
A. ...et je crois que ça m^lerait beaucoup plus le Jury...
-A. ...and I think that it would confuse the Jury more than anything else...
A. ...puisque ça prend deux ans de formation...
-A. ...since it requires two years training...
A. ...pour devenir expert ... remarquer ces signatures-l.....
-A. ...to become an expert capable of noticing these signatures...
A. ...et je ne crois pas que des gens, en cinq minutes, puissent prendre de l'exp,rience de quelqu'un qui a au dessus de six ans d'exp,rience.
-A. ...and I don't believe a person could acquire experience within five minutes, as that of a person who has six years of training.
A. Il faut d'abord prendre des photographies qui se chevauchent...
-A. We have to take photographs which would overlap...
A. ...et ça ça deviendrait trřs compliqu,..
-A. ...and that would become very complex and difficult...
A. ...puisque nous pouvons prendre de une journ,e ... deux jours pour pouvoir relier un projectile.
-A. ...since it can take from one to two days to match up a projectile.
A. Alors vous pouvez comprendre que prendre des photos dans ces conditions-l... ça devient impossible.
-A. So you can understand that taking photographs in these conditions becomes impossible.
A. Naturellement, si on aurait juste une photo ... prendre ce serait beaucoup plus simple, ce qui n'est pas le cas.
-A. Naturally, if only one photograph would be required it would be far more simple, but it is not the case.
A. Il ne faut jamais oublier que la photographie, vous perdez de la pr,cision.
-A. And one must never forget that with photography, precision is lost.
A. Alors je ne pourrais vous montrer ce que j'observe lorsque je vois directement.
-A. So I cannot show you what I observed when I looked at the item or the object directly.
Q. Well, would it be correct to say that majority on this planet thinks...
-Q. Serait-ce exact de dire que la majorit, sur cette planette croit que...
Q. ...that photography...
-Q. ...la photographie...
Q. ...can reveal to us...
-Q. ...peut nous r,v,ler...

Q. ...incredibly more...

-Q. ...beaucoup plus...

Q. ...than our own eyes.

-Q. ...que nos propres yeux.

Q. You seem to have eyes which are different from everybody else's.

-Q. Vous semblez avoir une vision qui diffère de toute autre.

A. Ce n'est pas mon opinion, c'est une constatation que je viens de vous dire.

-A. It's not my opinion but an observation that I've just related to you.

A. Je ne suis pas un spécialiste en photographies.

-A. I am not a specialist or expert in photography.

A. Ce que nous avons constaté,...

-A. What we observed...

A. ...c'est que nous perdons de la précision avec une photographie.

-A. ...is that precision is lost through a photograph and the photograph taken.

A. Et comme je viens de vous le dire...

-A. And as I've just stated to you...

A. ...c'est beaucoup plus complexe qu'on pense.

-A. ...it's much more complicated than one might think.

A. Ce n'est pas une question d'une photo, c'est une question de peut-être une infinité, de photos.

-A. It's not just a question of one photograph but rather a multitude, infinity of photographs.

MR. VALERY FABRIKANT :

This is terrifying. He's just misleading the Court.

THE COURT :

Ask your questions.

MR. VALERY FABRIKANT :

Q. Have you ever heard about microphotography, extra speedy...

-Q. Avez-vous déjà entendu parler de la microphotographie...

Q. ...photography...

A. Votre Honneur, je ne suis pas spécialiste en photographies.

-A. Your Honor, I am not a specialist, an expert in the field of photography.

Q. Maybe then you will just admit that photography can reveal much more than eye.

-Q. Peut-être que vous pourrez ensuite dire que la photographie peut donner beaucoup plus que l'œil nu.

Q. Rather than your statement that eyes sees more than photography can possibly see.

-Q. Plutôt que l'œil pourrait révéler beaucoup plus que la photographie, tel que vous l'avez mentionné.

A. L'équipement que nous avons au laboratoire...

-A. The equipment that we have at the laboratory...

A. ...révèle qu'il y a moins de détails qui sortent sur une photographie.

-A. ...reveals that less details will come out on a photograph.

A. Alors soit que les appareils, il faudrait qu'ils soient de plus grande qualité,...

-A. Either the instruments would have to be of superior quality...

A. ...mais comme je vous l'ai dit, ce n'est pas mon domaine la photographie.

-A. ...but as I've stated to you, photography is not my field of expertise.

Q. But taking into consideration that you even used the wrong diameter of bullet...

-Q. Mais tenant compte que vous utilisez le mauvais diamètre de

balle...

Q. ...how on earth one can trust your testimony?

-Q. ...comment est-ce que quelqu'un peut faire confiance en votre t,moignage?

A. Si vous faites r,f,rence...

-A. If you are referring to...

A. ...au calibre 38...

-A. ...to caliber 38...

A. ...dans mes propres tirs exp,rimentaux...

-A. ...in my own experimental firing...

A. ...j'ai expliqu, lors de mon premier t,moignage...

-A. ...I explained in the course of my first testimony...

A. ...que ce projectile-l... avait ouvert...

-A. ...that that projectile had split up or opened up...

A. ...de la base.

-A. ...at the base.

A. Un projectile qui ouvre de la base...

-A. So a projectile that opens up at the bottom...

A. ...c'est tout ... fait normal que le diamētre ne soit plus le m^me.

-A. ...it's perfectly normal for the diameter to be different and will not be the same one.

Q. Well...

A. Ce que je peux vous confirmer...

-A. What I can confirm...

A. ...c'est que tous les tirs qui sont dans mes enveloppes...

A. ...is that all the firings that are inside the envelopes...

A. ...on ,t, tir,s par moi-m^me.

-A. ...were fired only by myself.

Q. This doesn't change a solitary thing. Didn't you admit yourself that initial diameter of bullet was smaller than...

-Q. N'avez-vous pas admis vous-m^me que le diamētre d'une balle au d,part ,tait plus petit que...

Q. ...than the usual bullets used in this caliber?

-Q. ...que les balles utilis,es habituellement, les balles de ce calibre usuellement ou habituellement utilis,es.

A. Je m'excuse, je ne comprends pas la question.

-A. I'm sorry, I didn't understand the question.

Q. Okay. I'll ask another question.

-Q. Je vais demander une autre question.

Q. When you shot from pistol Bersa...

-Q. Lorsque vous avez effectu, un tir ... partir du Bersa...

Q. ...did you measure where the shells fall?

-Q. ...avez-vous mesur, ou ,tabli o- #a rendait les balles?

Q. Not "balles", shells.

-Q. Les douilles, pardon.

Q. No, shells... it's...

Me JEAN LECOURE :

The (inaudible) casings.

MR. VALERY FABRIKANT :

Yes. "Douilles", yes, "douilles", correct.

Q. Where the shells fall?

-Q. O- aboutissaient ou att,rissaient les douilles?

A. Si je comprends bien la question...

-A. If I understand the question correctly...

A. ...vous voulez dire lorsqu'on tire avec un pistolet...

-A. ...you mean when we fire with a pistol...

Q. Yes.

-Q. Oui.

A. ...la distance que les douilles sont ,ject,es?

-A. ... you mean the distance at which the casings or the shells

are ejected?

Q. What direction and what distance?

-Q. Quelle direction et quelle distance?

THE COURT :

And the question was, when you fired with the Bersa, that's what he wants to know in relation to.

-Q. Et la question ,tait, lorsque vous avez utilis, le Bersa pour ces tirs, la question ,tait ... cet effet.

A. O.k. Je n'ai pas remarqu, la distance de tir puisque lorsque je fais mes tirs exp,rimentaux...

-A. I did not note the firing distance since when I conducted my experiments of firing...

Q. No, not firing distance...

THE COURT :

No, the (inaudible) distance.

MR. VALERY FABRIKANT :

Q. The shells. Ejecting shells, how far they fall from himself.

-Q. L',jection des douilles, ... quelle distance tombent-elles? Les douilles aboutissent ... quelle distance?

A. O.k. Normalement, lorsqu'on parle d'une arme en g,n,ral...

-A. Normally, when we speak of a weapon, generally speaking...

A. ...o.k., environ une dizaine de pieds.

-A. ...approximately ten or so feet.

Q. In what direction?

-Q. En quelle direction?

A. D,pendant de l'arme, la plupart des armes font ,jecter ... droite.

-A. Depending on the weapon, most of the weapons will eject to the right.

Q. Directly to the right or at the angle, let's say forty-five (45) degrees from direction of firing?

-Q. Imm,diatement ... la droite ou disons ... un angle de quarante-cinq (45) degr,s de l'arme de tir?

A. D,pendant des armes.

-A. Depending on the weapon.

Q. Okay. Bersa, I'm interested in Bersa.

-Q. Je suis int,ress, ... la Bersa.

A. O.k. Je n'ai pas fait de test d',jection sur le Bersa.

-A. I didn't conduct any ejection test on the Bersa.

Q. Why didn't you?

-Q. Pourquoi pas?

A. Parce que ce qu'on m'avait demand, c'est est-ce que l'arme est en ,tat, et si je pouvais les relier au projectile.

-A. Because I was asked if the weapon was in good firing condition, and if I could match up the weapon with the projectiles.

Q. Well, is it still possible to do this experiment?

-Q. Est-ce toujours possible d'effectuer ces essais?

A. C'est toujours possible.

-A. It's always possible.

Q. Could you make it and come and report this finding?

-Q. Pourriez-vous les effectuer et r,diger un rapport ... cet effet?

A. Oui, je pourrais...

-A. Yes, I could...

A. la demande de la Cour.

-A. ...at the Court's request.

THE COURT :

Q. Do you understand exactly what Mr. Fabrikant wants you to do?

-Q. Est-ce que vous comprenez exactement ce que monsieur Fabrikant veut que vous fassiez?

A. Monsieur Fabrikant veut que je prenne le Bersa...

-A. Mr. Fabrikant wants me to take the Bersa...

A. ...que je fasse des tirs...

-A. ...that I fire with the weapon...

A. ...dans ce cas-ci vous voyez qu'il faut absolument que la douille soit ,ject,e ... droite...

-A. ...in this case you see that the shell must be ejected to the right...

A. ...puisque la fen^tre d',jection...

-A. ...since the ejection window...

A. ...se trouve ... droite.

-A. ...is located on the right-hand side of the weapon.

A. Alors d,finitivement que sur cette arme-l... la douille va ^tre ,ject,e ... droite.

-A. So automatically, on this weapon, the shell will be ejected to the right.

A. D,pendant de la surface...

-A. Now depending on the surface...

A. ...si c'est une surface trřs lisse la douille peut rouler assez loin.

-A. ...if the surface is very smooth the shell can roll off pretty far away.

Q. Now would you (inaudible) surface?

MR. VALERY FABRIKANT :

Q. No, I want you to measure where it falls, could you do that?

-Q. Je veux que vous mesuriez la distance ... laquelle elle tombe, o- elle tombe.

A. Sur un tapis, sur une surface lisse?

-A. On a carpet, a flat surface?

Q. On the surface like this.

-Q. Une surface telle celle-ci.

A. C'est parce que pour faire des tirs #a me prend une salle avec un tapis.

-A. In order to conduct experimental firing I need a room with a carpet.

A. C'est parce que ma salle de tir...

-A. My firing room...

A. ...c'est un plancher de ciment.

-A. ...comprises of ciment floor, concrete floor.

Q. Just where initial fall is, regardless where it goes after that is irrelevant, where...

-Q. La chute initiale, ce qui se produit par la suite n'est pas pertinent...

Q. ...where the initial fall is, could you make that?

-Q. ...la chute initiale, pourriez-vous ,valuer cela?

A. Normalement environ cinq, six pieds. Normalement.

-A. Normally approximately five, six feet. Normally.

Q. Okay. And could you do it near a wall, let us say...

-Q. Pourriez-vous le faire prřs d'un mur disons...

Q. ...five meters from the -- half a meter from the wall.

-Q. un demi mȘtre du mur.

A. Oui.

-A. Yes.

Q. Okay.

A. Pour observer quoi?

-A. To observe what?

Q. Where the shells fall.

-Q. (Inaudible).

A. Si elles vont frapper le mur?

-A. If they must strike a wall?

Q. Well, first of all if they do strike the wall...

-Q. D'abord si elles frappent le mur...

Q. ...and if yes, where they fall after that.

-Q. ...et si oui, o--elles chutent par la suite.

THE COURT :

Did you say near the wall or did you give a distance?

MR. VALERY FABRIKANT :

In say half a meter from the wall.

-Q. Disons ... un demi mètre du mur.

THE COURT :

And either note or have somebody with him note where it falls and give you the distance from where he's standing.

MR. VALERY FABRIKANT :

Hum-hum. Distance and direction.

THE COURT :

First thing, distance and direction.

MR. VALERY FABRIKANT :

Yes.

THE COURT :

He's already told you it will eject to the right.

MR. VALERY FABRIKANT :

Well, that's clear, but how much right, and what direction, and how long and all this.

A. Il faut bien penser, votre Honneur...

-A. One must know, Your Honor...

A. ...que chaque douille ne tombera pas exactement toujours ... la même place.

-A. ...that each shell will not always fall on the same place.

MR. VALERY FABRIKANT :

Q. Well, this is the second question, how stable is the effect?

-Q. Alors c'est la prochaine question, l'effet est stable ... quel point?

THE COURT :

Secondly, you want him to stand about a meter from a wall?

MR. VALERY FABRIKANT :

Not meter, no, more closer than that. Half a meter...

THE COURT :

Half a meter from a wall?

MR. VALERY FABRIKANT :

...or even less than that.

THE COURT :

And you want to know, first of all, if the shell bounces off the wall...

MR. VALERY FABRIKANT :

And if yes, where it falls.

THE COURT :

Where it falls.

MR. VALERY FABRIKANT :

And of course it would be interesting if I could be present during this experience.

THE COURT :

I suppose it would.

MR. VALERY FABRIKANT :

Well, because the evidence which was presented here, you heard yourself, I just pray for people who get convicted on his evidence, because in my case, likely, there is no doubt it was I, the bullets are mine, so it's not an issue here. But in cases where people get convicted on his testimony, it is terrifying thought, because what he said here, it's such a nonsense that his eye is better than photography, that he needs infinite number of photographs to identify signature, it is such absurd. It's incredible.

THE COURT :

You're not being fair, he said that A) I'm not a photographer.

He said, at the lab, our experiences show that with the equipment we have, it doesn't permit us to show you the detail that we can see with our eye in the comparison microscope. I infer from that, if I can infer anything, that...

MR. VALERY FABRIKANT :

Well, this is just not true. Any microscope allows...

THE COURT :

It depends on the equipment you have Mr. Fabrikant.

MR. VALERY FABRIKANT :

Any microscope allows attachment of photograph, and photograph, everyone knows, even six years old child knows that photograph can reveal such things which eye just cannot get, neither in speed, neither in detail, neither in color, it's nonsense what he was saying here.

THE COURT :

His testimony is there, and he didn't come here as a photographer. Let's not lose sight of what he came at, and he came, and he put his hand on the Bible and he said: "Listen, I did this, this, this, this and this is what I saw".

MR. VALERY FABRIKANT :

Well, with all due respect I repeat...

THE COURT :

But that's what he said.

MR. VALERY FABRIKANT :

I know...

THE COURT :

I can't change it.

MR. VALERY FABRIKANT :

But with all due respect, I repeat once again, in this particular case, likely my conviction or no conviction is not based on this because I admit it was I, but let's assume that there is someone against who their only evidence is this testimony that those bullets were fired with this firearm, and the person...

THE COURT :

I think you're out of line.

MR. VALERY FABRIKANT :

I think it is mind-boggling...

THE COURT :

You're quite out of line making that sort of statement. I think you're quite out of line making that sort of statement.

MR. VALERY FABRIKANT :

Well, didn't you hear his testimony? He couldn't explain how grooves occur, he couldn't explain how on the shell, how shell can be identified, how bullet...

THE COURT :

Are you talking about... What are you talking about?

MR. VALERY FABRIKANT :

When he was questioned by Mr. Lecours, do you remember the point when I said that he is asking leading questions, because he was answering total absurd. Mr. Lecours asked him how the signature occurred and he said it is gas pressure. It is such an absurd...

THE COURT :

You can clarify that and you can ask questions on that in cross-examination.

MR. VALERY FABRIKANT :

But I don't have to ask him, he is expert, he's supposed to answer correctly. He didn't -- Mr. Lecours knows better the answer than him. How on earth is it possible such a shameful thing to present that person as an expert to a Court? It's

total disrespect of Court.

THE COURT :

Here we go, here we go round the mulberry bush again.

MR. VALERY FABRIKANT :

All right. In my case -- it is irrelevant to my case but I pray for people...

THE COURT :

Now do you want him to fire shots and see what... I know what you're talking about...

MR. VALERY FABRIKANT :

You understand me.

THE COURT :

Fine. I understand what you're talking about about the (inaudible).

MR. VALERY FABRIKANT :

It is not my "paranoïdal" nature right now speaking. He doesn't know what he's talking about.

THE COURT :

Q. Mr. Dion, if you understand what -- do you understand what experiment he wishes you to conduct?

MR. VALERY FABRIKANT :

Well I would like to be present there, there's nothing wrong with me being there.

THE COURT :

You're not going to be present.

MR. VALERY FABRIKANT :

He's unqualified person, he cannot be trusted.

THE COURT :

Q. Do you understand what you have been asked to do?

-Q. Est-ce que vous comprenez ce que vous devez faire?

A. Il veut que je me mette ... un demi mètre du mur...

-A. He wants me to position myself half a meter from the wall...

A. ...naturellement le mur de droite...

-A. ...of course the wall on the right-hand side...

A. ...et que j'observe o- vont aller frapper les douilles sur le mur...

-A. ...and that I note where the shells will strike against the wall...

A. ...et qu'ensuite, qu'est-ce qu'elles font lorsqu'elles arrivent ... terre.

-A. ...and then what happens to them when they hit the floor.

Q. Where they fall when they hit the floor, because you don't have a carpet.

-Q. O- elles tombent lorsqu'elles tombent au sol.

Q. And then he wishes you to fire well away from the wall...

-Q. Ensuite il veut que vous tiriez ,loign, du mur...

Q. ...and observe, or have observed the fall pattern on the floor...

-Q. ...pour observer le...

Q. ...of the spent casings.

-Q. ...la chute de ces douilles vides.

Q. Would you fire six and six?

-Q. Est-ce que vous pourriez en tirer six d'une part et six de l'autre?

A. Oui, votre Honneur.

-A. Yes, My Lord.

Q. And to that... now, you have identical ammunition to what has been produced as exhibits at the lab, do you?

-Q. Vous avez des munitions au laboratoire identiques ... celles qui ont ,t, produites ici, c'est exact?

A. Ça devrait, votre Honneur.

- A. Should, yes, My Lord.
A. Pour le Bersa je pense que c'est la F,d,ral.
-A. For the Bersa I believe it's Federal make.

MR. VALERY FABRIKANT :

No, I want to use this Bersa.

THE COURT :

Yes, yes, yes, he's going to use that Bersa. Okay. To that effect, madame Desrosiers, would you indicate in the "procès-verbal" that I authorize Mr. Dion to withdraw the Bersa and the magazine in order that he may perform that experiment.

THE COURT :

Mr. Lecours, if you and Mr. Belleau wish to observe this performance, then it might be a good idea.

Me JEAN LECOURES :

Well, My Lord, I think it's better to trust, because I might be called as a witness.

THE COURT :

No, no, no, it's not a question that you may be called as a witness. It's a question of you... it's the next question I'm coming to. That's the next question I'm coming to. There's not going to be any question of anyone being called -- of either of you being called as a witness, if there is, then I agree with you, there is absolutely no...

Me JEAN LECOURES :

I would prefer (inaudible).

THE COURT :

Fine. If you would prefer... Fine.

MR. VALERY FABRIKANT :

What would be wrong if I'd be present?

THE COURT :

You know something? Nothing would be wrong if you be present, not I think of that. Nothing would be wrong if you would be present. That's perhaps a good idea, because you're not very far away from there in a way, so we'll have an order that you will -- Mr. Dion, you will contact the prevention center at Parthenais, when you're ready to conduct this experiment, half an hour before you're prepared to conduct this experiment, and Mr. Fabrikant, there will be an order that Mr. Fabrikant will be brought up to the laboratory so that he can witness you performing this experiment, you are not performing it under his instructions, you will perform it as it has been detailed to you in the questions, and Mr. Fabrikant can be there to observe this, I think that's an excellent idea.

MR. VALERY FABRIKANT :

If I'm not sleeping we are moving towards fair trial.

THE COURT :

And this can be carried out before tomorrow morning. So we'll resume your cross-examination at nine thirty (9:30) tomorrow morning.

TRIAL CONTINUED TO MAY 12TH, 1993 - 9:30

Je soussigné, Michel Daigneault, sténographe officiel
bilingue, certifie que les feuilles qui précèdent sont et
contiennent la transcription de bandes d'enregistrement
mécanique, hors de mon contrôle; et est au meilleur de la
qualité, dudit enregistrement. Le tout conformément ... la Loi.

Et j'ai signé,

Michel Daigneault,
Sténographe officiel bilingue

-----</pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">C A N
A D A

COUR SUPRIEURE

(Chambre criminelle)

PROVINCE DE QUBEC

DISTRICT DE MONTRAL

CAUSE NO.: 500-01-017372-928

TAPE: PROCES - SUITE

PRSENT: L'HONORABLE JUGE J. FRASER MARTIN, J.C.S. ET JURY

NOM DES PARTIES:

SA MAJEST LA REINE

Plaignante,

c.

VALERY FABRIKANT

Accus,,

COMPARUTIONS:

Me Jean Lecours
PROCUREUR DE LA PLAIGNANTE

DATE DE L'AUDITION: LE 12 MAI 1993

FICHER: 2789

TABLE DES MATIERES

	PAGE	
WITHOUT JURY	3	
WITNESS: JEAN DION (WITHOUT JURY)		
Cross-examined by Mr. Fabrikant	10	
WITHOUT JURY	22	
WITH JURY	25	
WITNESS: JOAN RIMKUS		
Examined by Me Lecours	26	
Cross-examined by Mr. Fabrikant	29	
WITHOUT JURY	62	
WITNESS: NORMAND HBERT (WITHOUT JURY)		
Examined by Me Lecours	64	
WITNESS: JULIEN FORTIER (WITHOUT JURY)		
Examined by the Court	69	
WITHOUT JURY	82	
WITNESS: DENISE MAISONNEUVE		
Examined by Me Lecours	87	
Cross-examined by Mr. Fabrikant	93	
WITNESS: ROBERT MORRIS		
Examined by Me Lecours	105	
Cross-examined by Mr. Fabrikant	112	
WITNESS: ELIZABETH HORWOOD		
Examined by Me Lecours	122	
Cross-examined by Mr. Fabrikant	129	
WITHOUT JURY	155	WITHOUT JURY
Me BELLEAU :		
Good morning, My Lord.		
THE COURT :		
Good morning, Mr. Belleau. I was asked to come in without the jury.		
Me BELLEAU :		

Yes, for a brief request on behalf of the accused. There was a question yesterday of the transcripts of the testimonies of Dr. "Shownen", Osman, Kenniff and Swamy. And my understanding is that through the normal channels the transcripts could not possibly be ready before about sixty (60) days, and they will be done faster if the Court so orders. So on behalf of the accused I'm applying for such an order.

THE COURT :

Then the Court so orders, so they will be done through the abnormal channels, or whatever those are, but they will be done quickly, because... anyway.

Me BELLEAU :

Yes, because it's needed urgently.

THE COURT :

It is needed. It is needed, sure.

Me BELLEAU :

Thank you.

THE COURT :

Now, while we are here without the jury, madame Desrosiers handed me a card from... perhaps you can enlighten me, Mr. Fabrikant, I do not know, from a professor Herrmann in Berlin, which is dated Berlin, May the fifth (5th), ninety-three ('93):

"The Presiding Judge. Your Worship,
under date of April twenty-ninth
(29th)..."

I open a parenthesis, therefore I suppose it was in relation to the special issue, I close the parenthesis:

"...I was informed that your bailiff appeared at the premises of Concordia's Department of Political Science, Bishop between de Maisonneuve and Sherbrooke, to subpoena me as a witness in re the trial of Valery Fabrikant. I left Montreal on January thirty-first (31st) on a sabbatical leave of absence and I shall not be back in Montreal until August first (1st). I stand ready to testify but such testimony would have to be taken here in Berlin, possibly on the premises of the Consulate General of Canada, World Trade Center, "Freidastrassa". Your very truly. Klaus J. Herrmann, associate professor of political science, 25 Henley."

Is this no longer a problem? I mean I presume it was in relation to the special issue, I do not know.

VALERY FABRIKANT :

Well, I will need that testimony anyway, maybe professor Newsham would be sufficient though, because that was related to the hearing, but this hearing is even more pertinent to defense than it was to the fitness hearing.

THE COURT :

Okay. Well, I will simply produce this for the minute in the Court record, but we gather from this that he will be back on August the first (1st), I do not know what the rhythm of this trial is going to be, so we will...

VALERY FABRIKANT :

Should we make some special arrangement if, for example, professor Newsham become unavailable or some problem occurs there?

THE COURT :

Well, there will have to be a determination at one point, but today is not the day.

VALERY FABRIKANT :

Yes.

THE COURT :

Of whether this is relevant to the Defense. Now, you and I may end up disagreeing on that subject, I do not know. But in any event, I leave it open, I have no idea, I do not know at the moment. So why don't we leave it for the minute?

VALERY FABRIKANT :

Yes.

THE COURT :

Jury please.

Me JEAN LECOURE :

Well, My Lord, before...

LA COUR :

Un instant, monsieur "Serra".

Me JEAN LECOURE :

I want to inform you that the experiment ordered by the Court yesterday could not be conducted, because there was no "ordre d'amener" to let Mr. Fabrikant out. And Sergeant Detective H,bert has a report about that, what happened, one for Mr. Fabrikant. On the other hand, I learned through Mr. Dion that this morning he performed the experiment in the company of one of his assistants, and he has... he followed everything in your order, he has... he stood at one... at the specified distance and the impact of the shells were all noted on the wall, and there were measurements and everything. I just give you the information and maybe we could have some comments from the accused as well before the jury gets in.

THE COURT :

Well, we will see, but I find this... I find this thoroughly annoying. You know, I mean what the public security need, to be taken by the neck and shaken?

Thank you very much, Mr. H,bert. I will produce this in the record for the moment, we will try to attempt... We will attempt to continue with the cross-examination of the witness for the time being and I will deal with this later.

VALERY FABRIKANT :

Well I, frankly speaking, fail to understand what was the problem except the bureaucracy. I see no justification whatsoever in...

THE COURT :

Well, let us try to continue with the cross-examination for the minute and we will see how that goes.

VALERY FABRIKANT :

But there is nothing to talk about since...

THE COURT :

Well, you heard what Mr. Lecours said this morning, the tests were apparently performed, albeit in your absence this morning, and I do not know whether you will be satisfied with what you hear.

VALERY FABRIKANT :

So I would suggest that we postpone this until experiments are made, and if...

THE COURT :

It has been made.

VALERY FABRIKANT :

Well, if it's been made, I didn't see them.

THE COURT :

I know.

VALERY FABRIKANT :

So let's postpone until...

THE COURT :

Let us try... I said what we will try to do is continue with the cross-examination, then if after that you have representations to make to me, you will make them to me.

VALERY FABRIKANT :

But I have no other questions.

THE COURT :

Well, you have questions on these experiments, they have been done, they have been performed, that is what Mr. Lecours said.

VALERY FABRIKANT :

Well, I want to see those results before...

THE COURT :

Well, all right.

VALERY FABRIKANT :

...I can form any questions.

THE COURT :

Well fine, if you want to see the results, I really do not think it is a question of you seeing the results, you asked that the experiment be performed, it was performed. Now, if you would like, if you would like, let us run through the results, put your questions without the jury and then, if you have representations to make to me after that... I have no idea what the results are neither.

VALERY FABRIKANT :

Okay. Let him show what he found.

THE COURT :

Okay. But you put your questions, he will show what he found, we will do it without the jury for the minute, and then we will see whether there is a (inaudible). You may be quite satisfied with them, I don't know.

VALERY FABRIKANT :

Okay.

SANDRA TRAINER - OFFICIAL INTERPRETER

DULY SWORN

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twelfth (12th) day of the month of May, personally came and appeared:

JEAN DION, born on May fourteenth (14th), nineteen hundred and fifty (1950), Ballistics expert, confidential address;

WHOM, after having been duly sworn, doth depose and say as follows:

CROSS-EXAMINED BY VALERY FABRIKANT :

Q. What time did you perform those experiments?

-Q. A quelle heure avez-vous effectu, ces essais?
A. En rentrant au bureau ce matin, ... huit heures et demie (8 h 30).
-A. Upon arriving at the office this morning, at eight-thirty (8:30).
Q. Well, eighty-thirty (8:30) I was still at Parthenais, you could have called me.
-Q. J',tais toujours ... Parthenais ... huit heures trente (8 h 30), vous auriez pu m'appeler.
THE COURT :
Continue with your questions, that was not...
VALERY FABRIKANT :
Q. Show the results please.
-Q. Veuillez nous montrer les r,sultats, je vous prie.
Q. Describe what you did and what are the results.
-Q. D,crivez ce que vous avez effectu, et montrez les r,sultats.
A. On m'avait demand, de faire des tirs exp,rimentals avec le pistolet de marque Bersa...
-A. I was asked to conduct experimental firing with the Bersa pistol...
A. ...d'employer la m^me munition...
-A. ...to use the same type of amunition...
A. ...j'ai employ, la munition de calibre 7.65 millimŠtres...
-A. ...I used the 7.65 millimeter amunition...
A. ...de marque Cellier, Belleau.
-A. ...of Cellier and Belleau make.
A. J'ai plac, l'arme ... environ un demi-mŠtre du mur...
-A. I placed the weapon at about half a meter from the wall...
A. ...sur le mur j'ai plac, une feuille de papier...
-A. ...on the wall I pinned up a sheet of paper...
A. ...et sur la feuille de papier j'ai indiqu, la hauteur de la fen^tre d',jection.
-A. ...and on the sheet of paper I indicated the height of the ejection window.
A. La croix ici repr,sente la fen^tre, un mŠtre cinquante-deux de haut.
-A. And the X here indicates the height of the ejection window, which is one point fifty-two meters high.
A. Les impacts ont ,t, marqu,s par des X plus haut.
-A. The points of impact were indicated by an X a little higher up.
A. Donc, on remarque que l'arme ,jecte, ... cette distance-l..., plus haut et un peu plus en arriŠre.
-A. Therefore, we can see that the weapon ejects a little higher up and to the back.
A. Ceci, pour les premiers six tirs.
-A. And this was for the first six shots.
A. Nous avons effectu, six autres tirs...
LA COUR :
Q. O.K. Allez. Continuez.
-Q. Go ahead.
Q. Continue.
A. Nous avons effectu, six autres tirs exp,rimentaux...
-A. We conducted six other experimental shots...
A. la m^me position, toujours ... un demi-mŠtre du mur...
-A. ...at the same position, still half a meter up from the wall...

- A. ...et nous avons port, notre attention o-- tombait la douille sur le plancher.
- A. ...and our attention was drawn to the point or the location where the spent casing would fall on the floor.
- A. Les distances sont par rapport au mur...
- A. In relation to the wall the distances were...
- A. ...au mur de droit, je veux dire...
- A. ...the wall on the right-hand side I mean to say...
- A. ...et les distances ont donn, un mŠtre trente-quatre...
- A. ...distances were as follows, one point thirty-four meters...
- A. ...un mŠtre trois...
- A. ...one point zero three meters...
- A. ...un mŠtre quarante-neuf...
- A. ...one point forty-nine meters...
- A. ...deux mŠtres vingt et un...
- A. ...two point twenty-one meters...
- A. ...vingt-neuf (29) centimŠtres...
- A. ...twenty-nine (29) centimeters...
- A. ...vingt-sept (27) centimŠtres.
- A. ...twenty-seven (27) centimeters.
- A. Par rapport ... la chambre, si #a tombait en avant ou en arriŠre...
- A. In relation to the chamber, if the casings fell forward or backwards...
- A. ...les n,gatifs indiquent en arriŠre et les positifs indiquent ... l'avant de la fen^tre.
- A. ...the negative figures indicate the back of the weapon and the positive figures in the front of the ejection window.
- A. Le premier tir a donn, moins cinq centimŠtres...
- A. The first shot was minus five centimeters...
- A. ...plus vingt-trois (23) centimŠtres...
- A. ...then twenty-three (23) centimeters...
- A. ...moins quatre-vingt-quatre (84) centimŠtres...
- A. ...minus eighty-four (84) centimeters...
- A. ...plus vingt-quatre (24) centimŠtres...
- A. ...twenty-four (24) centimeters...
- A. ...plus quarante-sept (47) centimŠtres...
- A. ...forty-seven (47) centimeters...
- A. ...plus cinq centimŠtres.
- A. ...and five centimeters.

THE COURT :

Would you like to look at the sheet of paper?

VALERY FABRIKANT :

Yes, I would like to take a look at that.

Q. So here, not a single shell goes forward?

-Q. Alors donc, ici pas une seule douille est tomb,e en avant?

Q. Not a single shell is in front of the chamber?

-Q. Pas une seule douille est tomb,e en avant de la chambre ou de la fen^tre d',jection?

A. Sur le mur c'est exact.

Q. And nevertheless you found them falling in front of chamber?

-Q. Et n,anmoins vous les avez vu tomber devant la chambres?

A. C'est que la douille, en frappant le mur, d,pendant...

-A. Upon impact against the wall, the shell, depending on the...

A. ...lorsque la douille est ,ject,e, la douille va tourner, et d,pendant de la maniŠre qu'elle va frapper

le mur, elle va prendre une autre direction. Elle peut prendre une autre direction.

- A. ...when the shell is ejected, and when it strikes the wall, it will revolve on its axis and will possibly change direction.
- A. Ce que je vous ai donn, l... c'est ce que nous avons constat, ce matin.
- A. And the information I gave you this morning is what we observed this morning.
- Q. And after they fall on the floor...
- Q. AprŠs qu'elles aient tomb,es sur le sol...
- Q. ...the figures are kind of so different...
- Q. ...les chiffres diffŠrent vraiment...
- Q. ...it is so unstable, is it?
- Q. ...c'est si instable, n'est-ce pas?
- A. Je suis d'accord avec vous.
- A. I agree with you.
- Q. In the second, did you notice in the second...
- Q. Au cours du deuxiŠme, est-ce que vous avez remarqu,...
- Q. ...in the second shooting, whether...
- Q. ...au cours du deuxiŠme tir...
- Q. ...the shells also made the same pattern to the back?
- Q. ...avez-vous remarqu, si les douilles avaient le m^me patron, le m^me mode de chute vers l'arriŠre si vous voulez?
- A. Si vous faites attention sur la feuille...
- A. If you pay attention to the sheet...
- A. ...vous pouvez voir quelques petites marques qui ne sont pas marqu,es au crayon.
- A. ...you'll see some small marks that weren't written in in pencil...
- A. ...ce sont les marques des deuxiŠmes tirs.
- A. ...those are the markings for the second firing.
- Q. Yes. Okay. So it looks like they are stable?
- Q. Alors elles semblent stables?
- A. Oui.
- A. Yes.
- Q. There's one, two, three, four...
- Q. Un, deux, trois, quatre...
- Q. ...I don't see anymore but I see at least four...
- Q. ...je n'en vois pas d'autres mais j'en vois au moins quatre...
- Q. ...to the back.
- Q. ...vers l'arriŠre.
- A. C'est exact.
- A. That's correct.
- Q. Now, they ricocheted from the paper, not from the wall then?
- Q. Maintenant elles ont rebondi sur le papier et non pas le mur?
- A. Le papier ,tait coll,... bien, coll,, ,tait broch, sur le mur.
- A. The paper was pinned up against the wall, or on the wall.
- Q. So this is not a clean experiment.
- Q. Alors donc, ce n'est pas une exp,rience proprement dite? Une bonne exp,rience proprement dite?
- Q. Well, you agree that ricochet from the wall would be different than the ricochet from soft paper?
- Q. Vous ^tes d'accord que la douille rebondissant contre le papier ou contre le mur pourrait diff,rer?

A. Sur l'impact du mur, ça ne changera pas...

-A. Upon impact against the wall it will not change...

A. ...sur l'impact qui peut arriver sur le sol, peut naturellement, l'impact peut varier.

-A. ...and an impact on the ground, of course, could slightly differ.

A. Mais ce qu'on peut conclure, ce que vous avez constaté, en donnant les mesures sur le sol...

-A. But upon giving the distances on the floor, one can note...

A. ...il y a une bonne variable sur le sol.

-A. ...that there's a good variable on the ground, on the floor.

A. Donc si, dépendamment naturellement si on le fait sur le mur, est-ce qu'on va le faire sur un mur de ciment, sur un mur de plâtre, sur un mur de bois?

-A. So if we do it against the wall, are we going to do it on a concrete wall, on a wooden wall, on a plastered wall?

A. Naturellement vous allez avoir des variantes, mais je crois que des données principales vont quand même rentrer dans le même schéma.

-A. Naturally you'll have variables, but I think that the main data will more or less give the same results.

A. On peut faire cent (100) tirs, et vous allez avoir cent (100) résultats.

-A. We can conduct a hundred (100) experimental firings and one will obtain a hundred (100) results.

Q. Well, you are just not specialist in mechanics. The impact on the paper is definitely different from the impact on the hard wall.

-Q. L'impact contre le papier est définitivement différent que l'impact contre le mur.

Q. Okay. And repeat once again, on the floor...

-Q. Veuillez répéter encore une fois, sur le sol...

Q. ...what were the coordinates on the floor?

-Q. ...quelles étaient les coordonnées ou les distances sur le sol?

A. O.K. Par rapport au mur de droit...

-A. In relation to the wall on the right side...

A. ...les douilles ont tombé, ... un mètre trente-quatre...

-A. ...the shells fell at one point thirty-four meters...

A. ...du mur de droit...

-A. ...from the wall on the right side...

A. ...un mètre trois, toujours du mur de droit...

-A. ...one point three meters, still off the wall on the right side...

A. ...un mètre quarante-neuf...

-A. ...one point forty-nine meters...

A. ...deux mètres vingt et un...

-A. ...two point twenty-one meters...

A. ...vingt-neuf (29) centimètres...

-A. ...twenty-nine (29) centimeters...

A. ...vingt-sept (27) centimètres.

-A. ...twenty-seven (27) centimeters.

A. Pour ce qui est de la distance par rapport ... la chambre...

-A. As for the distance in relation to the chamber...

A. ...d'éjection, fenêtre d'éjection...

-A. ...the ejection chamber, the ejection window...

A. ...ce qui est négatif a tombé, en arrière...

-A. ...the negative figures indicate that the shell fell in the back of the weapon, or backwards...

A. ...et le positif c'est qu'il est tombé, en avant de la fenêtre.

-A. ...and the positif figures, the shells that fell in front of the weapon.

A. Et nous avons obtenu moins cinq centimètres...

-A. And we obtained results of minus five centimeters...

A. ...plus vingt-trois (23) centimètres...

-A. ...twenty-three (23) centimeters...

A. ...moins quatre-vingt-quatre (84) centimètres...

-A. ...minus eighty-four (84) centimeters...

A. ...plus vingt-quatre (24) centimètres...

-A. ...twenty-four (24) centimeters...

A. ...plus quarante-sept (47) centimètres...

-A. ...forty-seven (47) centimeters...

A. ...plus cinq centimètres.

-A. ...five centimeters.

VALERY FABRIKANT :

Oh, I can tell only one thing...

- Je peux vous dire uniquement une chose...

...I needed to see the experiment to see the details how it has been done because the way the results are presented, they are so... how to say, dispersed that absolutely no conclusion of any kind can be made.

THE COURT :

It may well be that there is no conclusion, the expert gave you his opinion, you can do a hundred (100) tests and you will get a hundred (100) different results.

VALERY FABRIKANT :

Well if there be that situation, then I believe there would be nothing wrong to show it to me. The fact that they didn't show, chosen not to show, and all this bureaucracy here, it is in the same building, I don't believe they needed any order to move me from one floor to another, in such a building they have total jurisdiction over where to move me. So at this stage, I just cannot put any questions the way it has been done, I still reiterate my request to conduct experiments in my presence, that's all I'm...

THE COURT :

I did wish you to be present at this experiment, and I said that last night.

VALERY FABRIKANT :

Well, I'm still alive.

THE COURT :

Oh, yes.

VALERY FABRIKANT :

So let us postpone, let's make the experiment.

THE COURT :

Yes. We will postpone Mr. Dion's cross-examination.

Madame, would you... I'm going to adjourn for ten minutes, would you have Fortier, the director of Parthenais here?

Me PAYETTE :

Votre Seigneurie, je représente, avec votre permission, l'établissement Parthenais, on a, t, informé... monsieur Fortier est présentement au Palais de justice ... Laval avec un autre problème, avec un autre détenu. S'il y avait eu un mandat d'amener ou un ordre de la Cour il n'y aurait eu aucun problème, ils sont disponibles pour

le faire avec un mandat d'amener ou un ordre de la Cour.

THE COURT :

Fortier here when he is finished in Laval, I do not care if it is this afternoon or tomorrow but Fortier here.

So we will interrupt the cross-examination of Mr. Dion, I will suspend for five minutes and we will go on with... I do not think anything will come to any harm if we do that, and we will go on with the testimony of the Crown's other witnesses.

Q. Mr. Dion, you will have to return...

-Q. Monsieur Dion, vous devrez revenir...

Q. ...once I have settled the question of this experiment that was done last night.

-Q. ...une fois que j'aurai réglé, cette question sur les essais qui ont été effectués, ou qui devaient être effectués hier soir.

THE COURT :

So we will adjourn for five minutes.

AND FURTHER DEPENDENT SAITH NOT

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITHOUT JURY

THE COURT :

Do you have sufficient witnesses to continue with during the day?

Me JEAN LECOURES :

I have... I expected to start with civil witnesses from Concordia this morning, I have four civil witnesses this morning and two others in the afternoon, I can get more in the afternoon, I guess.

THE COURT :

I see. Well then I would like Mr. Dion to be available at the end of the day in order that the experiment can be repeated according to the instructions which I gave yesterday, and with Mr. Fabrikant present. And when Fortier, who apparently is the director of Parthenais, arrives, the proper instructions will be given so that Mr. Fabrikant will be taken to be present and to witness this whole thing.

Me JEAN LECOURES :

So it will be after four-thirty (4:30)?

THE COURT :

Obviously, because I am not going to interrupt the day's sitting, I think that I can quite easily interrupt Mr. Dion's testimony in order to have that aspect completed.

Me JEAN LECOURES :

Okay.

VALERY FABRIKANT :

Could you tell me who is testifying and in what order?

Me JEAN LECOURES :

Yes. Mrs. Rimkus...

THE COURT :

Jury please.

Me JEAN LECOURES :

Yes. Well, Mr. Fabrikant asked a question.

LA COUR :

Un instant, s'il vous plaît.

Me JEAN LECOURES :

Mrs. Rimkus, Mrs. Maisonneuve, de Maisonneuve...

VALERY FABRIKANT :

So you took it from the bottom?

Me JEAN LECOURS :

Yes.

VALERY FABRIKANT :

Why didn't you advise me about it?

THE COURT :

Mr. Fabrikant, the Crown may decide to call witnesses as the Crown wishes.

VALERY FABRIKANT :

That's all right, but they should advise me kind of... at least an hour before maybe, is it too much to ask for?

Me JEAN LECOURS :

Shall I continue giving the names?

THE COURT :

Would you continue giving the names please?

Me JEAN LECOURS :

Mrs. Rimkus, Mrs. Maisonneuve, Mrs. Horwood, and Mr. Morris are here this morning.

VALERY FABRIKANT :

Well, I need half an hour at least suspension to take a look at their statements.

THE COURT :

To what?

VALERY FABRIKANT :

At least half an hour suspension to take a look at their statements, because I thought that at least it will not be in such an order that the whole (inaudible) goes first.

Me JEAN LECOURS :

Mrs. Rimkus is number 34.

VALERY FABRIKANT :

He could have told me yesterday about it, there would be no problem, and if you could tell me in advance about the order of other witnesses that would be nice too.

Me JEAN LECOURS :

I will certainly because I determine the order on a daily basis, depending on the availability of the witnesses.

VALERY FABRIKANT :

Well, that's fine, but just give it to me an hour at least...

Me JEAN LECOURS :

No problem, I will.

THE COURT :

Okay. So you say you require half an hour to look at the statements of these people?

VALERY FABRIKANT :

Yes.

THE COURT :

Fine. You will have your half hour.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

MEMBERS OF THE JURY ARE PRESENT

THE COURT :

Good morning, ladies and gentlemen, please excuse the delay in commencing. For reasons that I have not been able to fully determine at the moment, the instructions I gave last night were not followed, and accordingly I have interrupted, decided to interrupt the testimony of Mr. Dion and go on to hear other witnesses, the cross-

examination of Mr. Dion will continue in all probability tomorrow morning, I don't think that decision on my part will really interrupt your appreciation of the proof.

Mr. Lecours?

Me JEAN LECOURE :

Mrs. Joan Rimkus.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twelfth (12th) day of the month of May, personally came and appeared:

JOAN RIMKUS, born on September second (2nd), nineteen hundred and thirty-seven (1937), assistant to the president, Concordia University Faculty Association;

WHOM, after having been duly sworn, doth depose and say as follows:

THE COURT :

Excuse me a second. Did you have the intention of asking for exclusion of witnesses as far as the... Fine. Would you pronounce the exclusion of witnesses please?

EXCLUSION OF WITNESSES DECLARED BY THE COURT

EXAMINED BY Me JEAN LECOURE

ATTORNEY FOR THE CROWN :

Q. Mrs. Rimkus, did you know an individual named Dr. Michael Hogben?

A. Yes, I did.

Q. What was your relationship with him?

A. I worked as his secretary, as his assistant.

Q. Okay. What was he doing?

A. He was president of the union of the Concordia University Faculty Association.

Q. Okay, what we call CUFA?

A. That's right.

Q. Okay. What is the meaning of each letters of CUFA?

A. Concordia University Faculty Association.

Q. Okay. Were you working full time for him?

A. Yes.

Q. As a professor and as an assistant for CUFA, your duties, were they only with CUFA or as well being his assistant?

A. No, I was assistant to him and secretary as well. Secretary assistant to the president.

Q. Okay. Was your full load of work related to CUFA?

A. Yes, it was.

Q. Okay. When you were working with CUFA, did you get to know an individual named Valery Fabrikant?

A. Yes.

Q. Could you look around in the courtroom and see if you recognize that individual?

A. Yes, he's sitting here.

Q. Okay. On August the twenty-fourth (24th), nineteen ninety-two (1992) did you have communication with Valery Fabrikant?

A. That would be on the Monday morning?

Q. Yes.

A. He called our office.

Q. Yes. Could you recognize his voice?

A. Yes.

Q. Why you could recognize his voice?
A. Because he called many times, and he has a distinctive voice.

Q. And were you also in a physical contact with him...
A. Yes.

Q. ...in the past?
A. Yes.

Q. Okay. Could you relate that call please?
A. He called asking where the French courses were being held.

Q. Okay. Which French courses?
A. They were French courses given in the summer for faculty members...

Q. Okay.
A. ...and Michael Hogben was taking that course.

Q. And was Mr. Hogben indeed taking French courses this morning?
A. Yes.

Q. And did you give him this information?
A. I didn't know which room the courses were being held in, and I did know the times, I gave him the time, and I said that if he called continuing education they probably could give him the room number.

Q. Okay. And did you mention previously to him that Mr. Hogben was taking French courses?
A. I had mentioned previously to so many people that would call, Dr. Fabrikant was one of them, that in the mornings Dr. Hogben was not available because he was at French courses.

Q. Okay. And was there anything else said in the conversation?
A. No, he thanked me very much for the information and hung up.

Me JEAN LECOURS :
No further questions.

CROSS-EXAMINED BY VALERY FABRIKANT :

Q. I have in front of me "aide-m,moire" of yours, could you tell me when was it typed?
A. It was typed immediately following the shootings.

Q. Did anyone ask you to type it?
A. Yes.

Q. Who was that?
A. The vice-president, who was then the acting president, asked that I record everything that I could remember at that time rather than wait until memory was obscured.

Q. Uh, huh. And you typed it on the computer which you have at CUFA?
A. Yes.

Q. Okay. Could you take cognizance, is this what you typed?
THE COURT :
Mr. Belleau, would you pass... No, no, you stay, you stay there, Mrs. Rimkus, please.

A. Okay. Thank you.

Q. Take your time, look at it and...
A. Yes.

VALERY FABRIKANT :

Q. What kind of system, and what kind of printer do you use to print it?
A. We have a lazer printer, but this was sent by fax, which would explain why it's not as clean a copy as I would

normally get on a lazer printer, this was faxed.

Q. That was not my question, I am not concerned with the quality, I am just asking what kind of printer do you have there?

A. We have a lazer printer.

Q. Lazer what?

A. It's a Hewlett Packard, I believe it is.

Q. Hewlett Packard. Okay. This is the only printer you have, you don't have any other printer?

A. No.

Q. No. Okay. Now, from what you've written here, could you recall to the jury the whole context, because I think it is important for the jury to know the whole thing, what happened on August nineteenth (19th)?

A. Okay, that would be the Wednesday?

Q. Yes.

A. You called our office requesting a copy of the collective agreement. Michael Hogben came in the office a little later and I told him that you had planned on coming in to pick up a copy of the collective agreement. He asked if you didn't already have one, and I said at that time, I may be incorrect, I said I thought you had at least three or four, because we had sent copies out to everyone. Then I recalled you requesting one by mail, and I didn't know if you had requested another one or not, so that may be inaccurate, but I thought you had at least more than one. Anyway, when you came in the office Michael Hogben came out, and he spoke to you, and he asked you if you didn't have another copy, and you didn't respond. And then Michael Hogben said to me: "Give him a copy of the contract". So I went over to the cabinet and I took out a copy of the contract, which you took from me, and as you started out of the office Michael said to you: "I believe you filed an injunction against the university". And you stopped immediately, you turned, and you looked at him with such hate that he actually took a step back, I could see the hate, and I was sort of tensed as well. This is what I saw.

Q. Did he say it once or he said it on several occasions that: "I understand you have filed injunction against university"?

A. He may have said it twice when you didn't respond the first time.

Q. Maybe, if you recollect better, maybe he said it three times?

A. Maybe he did, I can't be absolutely certain, I just know that this is what he said.

Q. Well, could it be that after third time I returned the glance at him, not after the first time?

A. That's possible it was after, I can't be absolutely certain that it was after the third. I believe... I know this is what he said, and I know you didn't respond.

Q. Yes. So why do you think he, three times, mentioned to me that he knows that I filed injunction against university? Why would that be so important to him? Do you have any idea? Did he share any thoughts with you in this regard?

A. No.

Q. No. But you do recall that he, several times, not just once...

A. I recall at least once, it's possible that he also said it again, I was just...

Q. Well, just try your memory...

A. Uh, huh.

Q. ...that maybe it was kind of a nagging attitude which I glanced at him, disapproval, let's put it this way. Could that be the situation? If I didn't respond once, normal person should not approach it again and again, could that be the situation?

A. Well, I didn't think that he had asked you three times, I would have thought possibly two, because you were on your way out, and you stopped when he said it and turned.

Q. Well, I didn't stop, at the first time...

A. No.

Q. ...I just ignored it, right?

THE COURT :
Mr. Fabrikant, do not say what you did from there, put questions.

VALERY FABRIKANT :

No, I'm asking.

Q. Did I just ignore his first, I didn't glance at him, I didn't threaten him...

A. No.

Q. ...I just ignored what he said?

A. You did.

Q. Now, could it also be that I might be just upset that, since I requested two copies and I paid my dues, and you have sufficient number of extra copies, then maybe I just thought that that was unreasonable limitation?

A. That's possible, I don't know what you were thinking at the time.

Q. But could you at least confirm that you had more than enough copies to provide me with?

A. We did have more than enough.

Q. So there was really no problem with copies?

A. Except that he felt, I believe, that you didn't require any more and he thought...

Q. Well, you confirmed yourself that he knew that I filed injunction against university, so might he have known that I needed those copies just to deposit in Court?

A. Well, that's possible. I didn't know this at the time, I'm just relating exactly...

Q. This is why I needed...

THE COURT :

Excuse me, if you are going to establish what the witness knew...

VALERY FABRIKANT :

Yes.

THE COURT :

...you have to establish with the witness through a conversation with Mr. Hogben had that knowledge, but you cannot expect her to read his mind.

A. No.

VALERY FABRIKANT :

Yes, that's what I'm asking.

Q. All right. Do you have any idea as to why he knew that I filed an injunction? Who informed him? Did he tell you anything about it?

A. No.

Q. No. You never asked him: "How do you know that he filed an injunction?"

A. Because he walked back into his office immediately, and the phone rang and we got on to other things, and I didn't ask.

Q. And that was the first time you ever heard about injunction?

A. I had heard a rumor before.

Q. Uh, huh. Rumor about injunction.

A. So I wasn't entirely shocked when he asked you that because I had heard a rumor, but...

Q. Okay. Do you recall this rumor was initiated from who?

A. The university rumor network, because you can't put a name on, you just hear these things, and you don't know whether they are true or whether they're rumors.

Q. You just don't recall who it was?

A. No.

Q. All right. Were you surprised that he tried to intervene into my legal conflict with the university? Were you surprised of that, by his question: "I know that you filed injunction against university"?

A. No, I wasn't unusually surprised because he was president of the union...

Q. And...?

A. ...and...

Q. Was it part of his duty to intervene in legal law suits between members...

A. Not in legal saw suits, but you may have come to him as a union member for advice.

Q. Did it look like I ever come to him for advice?

A. No.

Q. So... this supposition doesn't hold, does it? That I could come to him for advice?

A. No, not...

Q. No.

A. ...from past experience, no.

Q. No. All right. Let's go to the next day, Thursday. What happened on Thursday?

A. You called the office...

Q. Uh, huh.

A. ...requesting to see documentation...

Q. Uh, huh.

A. ...you mentioned possibly arbitral decisions, you were vague, and you said that you would be in the office, I think you gave a time, approximately between twelve thirthy (12:30) and one (1:00) or one thirty (1:30).

Q. Okay.

A. Michael Hogben called the office, and I told him that you intended to come in to look at documents, and he suggested that someone be in the office, should you come in, and that he couldn't be there, so therefore he would leave a message on your answering machine asking you not to come in until he would be there. In the meantime, he asked our treasurer if he would come down and stay in the office should you come. But the treasurer came down, he was only there about maybe three quarters of an hour, and he decided that you probably would not be coming, and so he left, but then you did come. And I had been told that I was not to let you in unless someone was present, and so I didn't. And then I heard voices in the hallway, and Michael Hogben had arrived,

and you spoke with him in the hallway, and you didn't enter the office. So I don't know what was said in the hallway.

Q. Okay. You didn't hear a single word of what was said?

A. I could not hear anything, I just heard Michael Hogben's voice.

Q. And you...

A. And I could hear your voice, but I couldn't distinguish the words.

Q. Okay. Was the conversation loud? Was the conversation normal voice? What was it?

A. It was loud enough that you could hear voices, but not loud enough that I could distinguish what was being said.

Q. Well the door, is it thick door?

A. No, it's not, it's not a very thick door.

Q. Would it be correct to say it is a very thin door?

A. It's a normal size door, it's not thick, it's...

Q. Okay. Would it be correct to say that thickness is about that?

A. Possibly.

Q. And through this door it's very easily to hear even normal conversation?

A. For some reason it isn't, people can talk outside that door and you can distinguish voices but you cannot actually hear... you can't hear the words.

Q. All right.

A. And I don't know why.

Q. All right. You didn't hear, you didn't hear.

A. No, I didn't.

Q. Were you aware that Hogben had offered me, in the name of administration, three years salary as a shut-up money and to get out of the university, to resign from the university?

A. No.

Q. No?

A. I had no knowledge of that.

Q. And if I don't do that, then I will go to jail?

A. I had no knowledge.

Q. Even university rumors...

A. I've heard that since in the paper.

Q. ...even university rumors didn't bring you that?

A. No, they didn't, that was totally... The first I heard that was published in the Gazette during this trial.

Q. Would you be surprised to hear a tape where Hogben does do that? It would be total surprise for you?

A. Well, it wouldn't be now because you've testified that he did say this to you.

Q. No, I mean taking the nature of his character, you know him well, would that be surprising to that kind of behavior?

A. I have never been in the presence of Michael Hogben when he has been trying to solve a problem by bringing in other conditions or... when he has performed this sort of duty he has usually been with the person involved, and perhaps a grievance officer, or perhaps a chair of the department so... no, I really cannot comment on that.

Q. Probably I didn't put the question...

THE COURT :

But I think it is not the witness' impressions that

count, it is what the witness knows and the facts to which the witness can testify. And she has said to you: "No, I had no knowledge of that".

VALERY FABRIKANT :

Well...

THE COURT :

Now, whether the witness said: "I would be surprised", or: "I wouldn't be surprised" is neither here nor there.

VALERY FABRIKANT :

No, it was just an imprecise question.

Q. The question I would like to ask, would you consider such an ultimatum be of high moral standards or not so high moral standards?

Me JEAN LECOURES :

This is an opinion, My Lord.

THE COURT :

Of course it is an opinion. Is that an objection?

Me JEAN LECOURES :

Yes, My Lord.

THE COURT :

The objection is maintained.

VALERY FABRIKANT :

Q. Now, let's go to the statement. He expressed concern and told you not to let me in, now could you elaborate on that? What? He was afraid that I might harm you?

A. I don't know, he felt that he should be present, or someone else should be present in the office should you come in.

Q. Well...

A. That would indicate... that did indicate to me at the time that perhaps he was a bit apprehensive.

Q. Didn't you ask at all why you shouldn't let me in while you are alone? This sounds like threatening.

A. I think he felt perhaps I was nervous if I was alone because on several occasions, when you had come in the office, and your grievance probably hadn't been processed in a way you felt it should have been, or something else you had asked did not happen as quickly as you wanted, you did exhibit anger.

Q. Well, did I ever exhibit anger towards you personally?

A. Not towards me personally. No.

Q. Then...

A. But if you had, I suppose the worry was there that if you did come in the office, and I was unable to help you in any way, or if I refused to do something, you may have become angry at me, so perhaps that was a form of protection that... I don't know, I'm using supposition.

THE COURT :

Yes, well that is what, Mr. Fabrikant, you cannot do, I do not want the witness using supposition. If the witness and Mr. Hogben had discussed this, that is one thing, but to ask the witness to speculate in what Mr. Hogben's motives were, if she does not know, is inadmissible.

VALERY FABRIKANT :

Okay.

A. The only thing that I could say in response to this is that at one time I had told him that I sensed a lot of anger in you, that at that time was suppressed.

Q. Well.. but not anger towards you?

A. No, just anger. Suppressed anger. So he, from that, perhaps felt that I was afraid or... That's all I can say.

Q. Well, if you know that I never threatened you, I've never been impolite with you, if person is angry at somebody else, why on earth you should be concerned?

A. Well, I don't know if you were angry at all the people that were shot either, so it's hard to now in retrospect make any statement.

Q. Yes, but that was not my point. Since I was not angry at you, and I never expressed any evenn slightest disrespect, why would he tell you not to let me in? Isn't it kind of...

THE COURT :
That is again a supposition, it will not work.

VALERY FABRIKANT :
Okay. I would like to ask it differently.

Q. Did you ever treat any other member of the university in the same way as not just to allow him to enter his own association? Did you ever treat this way anybody else, to your memory?

A. I was never asked to refuse entrance to anyone else, no.

Q. So it was only with respect to me?

A. Correct.

Q. Now, you realize that I could have felt anger against Mr. Hogben?

Me JEAN LECOURS :
That's an opinion again, My Lord.

THE COURT :
Yes. Unless you have not finished the question.

VALERY FABRIKANT :
I haven't finished the question.

THE COURT :
Finish the question.

Q. Do not answer the question first of all, we will see what it is.

VALERY FABRIKANT :

Q. So you could have thought that I might have some anger against Mr. Hogben but not against you. Then does it look logical to you that he propose to be present when I come in, isn't it more dangerous for you and him like this than I just come in and you are there?

THE COURT :
In a very convoluted fashion, you are doing the same thing. Unless Mr. Hogben gave the witness the reasons why, then the witness has already told you: "I don't know what his motives were", that is all she can say. She is not here to speculate on what Mr. Hogben's motives for anything might have been.

VALERY FABRIKANT :
Well...

Q. Don't you think that every normal person would be very angry if he's treated...

Me JEAN LECOURS :
That's an opinion, My Lord.

THE COURT :
Objection maintained.

VALERY FABRIKANT :

Q. Now, did you personally have any reason to feel scared or any other similar feeling at that time with respect

to me?

- A. Only, as I said before, that I sensed this anger in you, whether it was the right... I didn't feel it was specifically directed at me, I just felt it was directed generally, that you were angry, and that anger was controlled at that time.
- Q. Okay. Are you sure it was anger or it may be just feeling of very unfairly treated?
- Me JEAN LECOURES :
- She already gave her answer, My Lord.
- VALERY FABRIKANT :
- Well, if she could answer that she felt it was anger, she could answer...
- THE COURT :
- Yes, you are right, the question is permitted. The question is permitted.
- VALERY FABRIKANT :
- Q. Could it be that I just felt that I was extremely unfairly treated, and this feeling might be confused with just pure anger?
- A. I felt both. I felt that you believed you were unfairly treated, and I also felt, or sensed the anger as well.
- Q. All right. Okay. Now August twenty-first (21st), could you describe what happened on August twenty-first (21st)?
- A. It's Friday afternoon.
- Q. Yes.
- A. You arrived at the office, unannounced, I saw your car pull up, and I followed the instructions that were given to me and I didn't answer the door. And then I thought: "Perhaps I better just get out of the office", so I walked around and out into Modern Languages, which is at the back.
- Q. Why did you do that if you knew that I never threatened you, I never behaved in any threatening way towards you? Why did you do that?
- A. Because I was instructed not to open the door, and I thought, if you become angry and open the door, or because the door is not a strong door, I didn't want to be sitting there as you got the door opened and then you would realize that indeed I had sat there and deliberately not open the door. So I went out into Modern Languages, into that department, and then you came down from upstairs, some place into Modern Languages.
- Q. It never crossed your mind that every normal person treated this way would just get angry just because he's treated this way? Did it ever cross your mind?
- A. The only thing that crossed my mind is that I was told not to open the door, I was all alone...
- Q. But you never thought that this attitude in itself is extremely insulting?
- A. No.
- Q. You didn't?
- A. No, I didn't simply because I was concerned with myself at the moment and about getting out of the office, and not being there should you get in. And then I thought he will be extremely angry if he knows that I have sat there and deliberately not opened the door, what excuse could I give you? So I needed, I thought my best plan is to go into the next department.

Q. So you understood that you treated me unfairly and with no reasons?

A. I didn't feel... I was following instructions.

Q. Well, I understand in communist countries they follow instructions, this is...

THE COURT :

That question is not fair. That question is not fair, and neither was the last one, the witness did not say that at all. That is a conclusion that you are drawing, and you are attempting to have the witness draw the same conclusion as you from...

VALERY FABRIKANT :

Q. Well, didn't you realize that the instruction was extremely wrong and unfair, that I'm a member of association, I pay my dues, and I'm entitled to protection, not on seeing locked doors?

A. I believed at that time that Michael Hogben must have had a good reason for telling me this.

Q. Oh, oh, that's okay.

A. I could not speak with him because he was extremely busy, he was hardly in the office. When we spoke it was very briefly, it was to give him a message, it was for him to respond to something that I would ask. Our conversations only lasted about four, five minutes, so I did not have time to say to him: "Why do you want me to do this?" I just... I felt that he had a good reason. He was dealing with your case, I thought he knew a lot more about your case than I did because he was handling it himself.

Q. Well, why is such a secrecy to ask: "What reason do you have?" It takes maybe three seconds, because treatment was really unusual, and it would be natural for you to ask: "What reason on this earth do you have to behave that way?"

A. I felt perhaps he saw I was nervous on my own, for one reason, as I said before because I had mentioned to him that I sensed a lot of anger suppressed in you. So there were so many things happening at that time that when he instructed me to do this I followed the instructions.

Q. All right. Did you realize when I found you that I knew very well that you were there, and I just wanted to show you that I do understand all what you are doing?

A. No.

Q. No. Well, because I was, as usually, polite, correct?

A. You were very polite that day, yes.

Q. So, you realize that it was not by accident that I went from upstairs to find you at another place, do you realize that?

A. I did not.

Q. Well...

A. I thought it was by accident, because if you know that building, it's like a maze, if I go up one stairs, I come down quite often still in another department.

Q. Well, was it really so difficult to understand if I came, I knocked the door, nobody answered, you went to the other side, and here I am...

A. Uh, huh.

Q. ...on the other side.

A. I thought you had...

Q. Isn't it clear that I just totally understood what you

were doing and I was trying to tell you politely that you are doing it wrong?

A. No, I did not.

Q. You did not.

A. I thought you had accidentally ended up in the other department, because you would have to know our building. I didn't think you would know how to go upstairs and get down in Modern Languages, because there are about four, five different staircases, they all go into different parts of the building.

Q. Well, you definitely underestimated me.

A. Obviously.

Q. But when you saw me, when I found you there, did you feel any kind of regret that you have not treated me fairly?

A. No, I didn't think I hadn't treated you fairly.

THE COURT :

Excuse me. First of all, your question, again, you see, always contains a hooker, because it presumes something that has not been established. The witness has answered the question, but the question itself is totally illegal.

VALERY FABRIKANT :

What?

THE COURT :

Because...

Me JEAN LECOURE :

My Lord, she gave a great answer, so...

THE COURT :

She did. She gave a good answer.

VALERY FABRIKANT :

What was wrong with the question?

THE COURT :

What it was all about was that you assumed in your question that she believed she treated you unfairly, and that had never been established.

VALERY FABRIKANT :

No, I just asked her that when I came there, and I was still polite, and I still didn't misbehave in any possible way, that she did the wrong thing by locking the door. What was wrong with this question?

THE COURT :

Anyway, the question has been answered, so...

VALERY FABRIKANT :

Well no, not really. The question was normal.

Q. All right. Now, let's go to August twenty-fourth (24th), what you said there, you did not give details of your conversation with Mr. Hogben. So after my call on twenty-fourth (24th), which again you say was polite, there was nothing threatening in it?

A. No.

Q. And Mr. Hogben called you for messages...

A. Uh, huh.

Q. ...and you told him... please give more details of this conversation.

A. He called for messages, I told him, I related to him the events of the previous Friday, that you had come to the office, that I had gone into Modern Languages, and so on, and that you had called that morning asking where the French classes were being held. And he said: "Oh", and he sounded very agitated, because normally, as you

know, he was a very calm person, he did not overreact to anything normally. And he said to me: "Joan, if you see Dr. Fabrikant's car pull up to the building, you get out immediately, you get in your car, and you drive home". And he said: "I'm ordering you to do this, and I don't care what time of day it is". And I said: "Oh, my gosh", I believe that was what I said, and he said: "I can't talk, I've got to go".

Q. But didn't you find this kind of strange?

A. Absolutely, I was now alarmed, but he hung up, and he left.

Q. Yes. Now, don't you find this extremely strange that he is... I read your words here, you wrote here:

"He was most emphatic."

Not agitated, "most emphatic".

A. He was most emphatic about... he was agi... his voice had... he sounded agitated. But when he told me what to do, he was most emphatic.

Q. So he felt that you are in mortal danger?

A. I don't know.

Q. Well, can it be interpreted like this?

A. It could be interpreted like that, I don't know. I was shocked when he said this to me, and I thought only he knows what went on.

Q. He did know, that he did know. He did know what he was doing, yes.

THE COURT :

Are you making statements or are you asking questions?

VALERY FABRIKANT :

I'm sorry.

THE COURT :

All right.

VALERY FABRIKANT :

It was just outbreak, I apologize. He knew what he was doing. Yes.

Q. But you never asked him why on earth if I on Friday was even finding you at a different place, you might assume that I found you coincidentally or I wanted to demonstrate to you that I know where you are and I just disapprove the way you do things. But assume you didn't understand that, fine, still nothing happened on Friday which would threaten you in any way. So why on earth didn't you ask him, what is going on?

A. Because I didn't have a chance.

Q. He just hung up on you?

A. He hung up, he said to me: "I cannot talk anymore, I have got to go", and he left, and he did hang up. I did not have a chance to clarify that.

Q. Well, I understand why he did so. But inside yourself, did you ever believe that you were in any danger whatsoever?

A. Only after I thought we may have been in danger.

Q. At least at that time you did not believe that you might be in danger?

A. Well, not until he said that to me, and then I thought maybe he knows something that we don't know.

Q. Oh yes, he did.

THE COURT :

Ladies and gentlemen, you have heard about four or five asides which constitute testimony on the part of Mr. Fabrikant, he is not testifying at this point, he is

asking questions. So...

VALERY FABRIKANT :

Yes, I'm sorry. But I will be testifying on that.

THE COURT :

That's something else.

VALERY FABRIKANT :

Q. Now, did you also wonder... no, let me put it differently. Did you realize that if I felt anger or dissatisfaction, or whatever you call, it was towards Mr. Hogben, correct?

A. Yes.

Q. Now, did it ever cross your mind that his desire to be present when I am there is not serving your safety in any way? Okay, let me clarify the question, because since I'm angry at him, then I might theoretically undertake some kind of action against him, and when a person is enraged, he might take his rage on somebody who is nearby. But when Mr. Hogben is not there, then probably you are safer alone. Did this thought ever cross your mind?

A. No.

Q. No. But when I am saying this, do you find this logical to think...

Me JEAN LECOURE :

He's arguing with the witness, My Lord.

THE COURT :

Yes. It is not what the witness finds logical, you asked her is it crossed her mind, she said no, that is the fact of it. Whether she found it logical or not, or what her thought processes are is not relevant.

VALERY FABRIKANT :

All right. I just wonder why I could ask similar questions other witnesses and it never met with any objection, right now I'm getting into objections. Why? Why the similar questions were allowed with respect to other witnesses?

Me JEAN LECOURE :

Because there was no objections before, My Lord.

THE COURT :

Ask your next question.

VALERY FABRIKANT :

All right.

THE COURT :

Quite frankly, I do not like to cut into your questions, I am far happier if the Crown objects, and rule on the matter simply on that basis. I have stopped you on my own on some occasions because the questions are purely illegal, but I am uncomfortable having to interrupt you, but I wish you would simply ask questions on facts and then that would not happen.

VALERY FABRIKANT :

All right.

Q. Did you do anything else on August twenty-first (21st) except what you've written in your "aide-memoire"?

A. Are you referring to the phone call from you later?

Q. Well, I don't remember, did I call later on?

A. Yes.

Q. Uh, huh. What was it?

A. You called and asked if Michael Hogben had come back to the office. You're now referring to the Friday, the

twenty-first (21st)?

Q. Okay. Hold it. Maybe I will change my question more explicitly. Did you type this letter?

A. No, I did not.

Q. You did not?

A. No, I did not ever see that letter. That was typed by Dr. Hogben downtown.

THE COURT :

Q. Excuse me, your answer was that was typed by...?

A. Yes, that was typed by Dr. Hogben at his office downtown.

VALERY FABRIKANT :

Q. Well, how do you know if you said you never saw this letter?

A. Because he spoke with our executive assistant, saying that he was in the process of typing that particular letter. We did not see it, and that's the only knowledge I have of that letter, I've never seen it until...

Q. Is my understanding correct that usually all his letters are typed by you?

A. No, that is incorrect. He has his own typewriter at his office downtown, and many of his letters were typed by him and sent out, and we got copies after.

Q. Did you get a copy of this letter?

A. No, we never did.

Q. Do you have any idea why he didn't mail it?

A. We assume that that letter was typed on the day that he met you, and that he had no time to get a copy to us.

Q. He didn't meet me on Friday, did he? No.

A. Well when was the letter typed, on the Friday?

Q. Well, if you believe the date, yes, it was...

A. It was typed on the Friday?

Q. Yes.

A. We had no knowledge of the letter until the Monday, and the letter, at that time, was mentioned to Alan Karpman.

Q. So it was not typed after...

A. He told me in the course of conversation that... after he knew you had been there on the Friday, he said: "I am preparing a letter in that regard".

THE COURT :

Q. When you say "he", you mean Mr. Hogben, do you?

A. I mean Dr. Hogben, yes.

Q. Okay.

VALERY FABRIKANT :

Q. Why wouldn't he just use your services?

A. Possibly because...

THE COURT :

Again, that calls for the witness to speculate.

A. Yes, I don't know.

VALERY FABRIKANT :

Q. But you said usually when he types a letter you receive a copy of that in mail?

A. Normally we would receive a copy.

Q. And this letter, according to the date, was typed on twenty-first (21st), there was sufficient time to mail it to you and he didn't mail it to you?

A. We never received it.

Q. Okay. Did he ever mention to you that I threatened him?

A. No.

Q. No. During all these days, you never managed to ask him

as to why he behaves in such a strange way? Is my understanding correct that you never managed to ask him why he is behaving in such a way that not let me in when he's not in, and why he instructs you to run away for your life if even you see me on a distance?

A. I didn't have a chance. I would have asked him about the latter, I did not have a chance that day, that was on the Monday...

Q. Okay.

A. ...and I was speaking with him about one o'clock (1:00), one thirty (1:30).

Q. Okay. Was there any conversation between you and Mr. Karpman to his end?

A. Yes.

Q. Okay. So maybe Mr. Karpman knew and explained to you anything?

A. I just spoke to Mr. Karpman after the conversation with Mr. Hogben and told him what Dr. Hogben had said to me...

Q. Uh, huh.

A. ...and said: "Do you know anything?", and he said no, and he said: "That sounds animus". We were both shocked that he had said that, we thought he must know something that neither of us know. That was our reaction. When you hear something like this you are in shock.

Q. I believe you. Did Mr. Karpman ever not mention to you about the ultimatum of getting three years salary or going to jail?

A. No.

Q. He never mentioned that either?

A. No.

Q. Did he ever mention the first part, just getting three years salary?

A. No. To my knowledge, and this is to my knowledge, I don't believe he knew either.

Q. Now, one more little detail. You mention here that I was vague as to what I was looking for, do you recall that I quite specifically told you that I have a law suit against CUFA and I'm interested in how other cases, similar cases were decided, because you had some kind of a little library of cases, correct?

A. Uh, huh.

Q. You had some... I don't remember how it is called, some kind of legal brochures which summarizes cases...

A. Arbitral cases.

Q. Yes, arbitral cases, and you have this literature in your office, don't you?

A. Yes, we do have some.

Q. And do you recall that what I said, that I want to look through this literature?

A. Yes, I said: "Is there any particular case?" And you said: "No, no, just...", I felt you were vague about what you actually wanted to see.

Q. Well, how on earth could I say anything particular if I didn't see what you have? I just wanted to see what you have, so it is not vague at all, is it?

A. Well...

Q. Do you agree with me?

A. No, I felt you were vague, you didn't say: "I want to look at a particular arbitral case, because this is what I'm involved in".

Q. Well, I just didn't know what you had, when I don't know what you have, how can I say specifically...

THE COURT :

You are arguing with the witness.

VALERY FABRIKANT :

Yes, I'm arguing with the witness.

THE COURT :

You put your question and you got your answer.

VALERY FABRIKANT :

Yes. All right.

Q. Do you find it strange that the letter, I'm referring to this letter, taking into consideration...

THE COURT :

You are referring to P-13, is that right?

VALERY FABRIKANT :

Yes.

Q. ...taking into consideration emphatic behavior of Mr. Hogben on Friday, that he took this letter and could have brought it to me personally, do you find it probable?

Me JEAN LECOURE :

Again...

THE COURT :

Just a second. Just a second.

Me JEAN LECOURE :

He's doing that all the time, I could raise all the time.

THE COURT :

Objection maintained.

VALERY FABRIKANT :

Well, there must be some way to extract an opinion on probability...

THE COURT :

No, there is no way.

VALERY FABRIKANT :

...of certain events.

THE COURT :

No, there is no way to extract an opinion from the witness on any events. The witness either has knowledge of events or does not, but to ask the witness to testify or to come to conclusions on why Dr. Hogben, or you, or anybody else did anything is ridiculous, the witness cannot come to this (inaudible).

VALERY FABRIKANT :

Okay. I will try it differently then.

THE COURT :

Well, do not try the same thing, you know.

VALERY FABRIKANT :

No, not the same thing now.

Me JEAN LECOURE :

You might plead it afterwards, that will be the right time.

THE COURT :

There are a number of possibilities which I would...

VALERY FABRIKANT :

All right.

Q. Did you interpret my call in the morning about French classes as threat to Mr. Hogben?

A. No, I interpreted it as your trying to find Mr. Hogben. You were working for him.

- Q. Exactly. Now, his reaction to this information, did it look to you that he, for some reason, got extremely upset by my looking for him?
- A. I (inaudible) whether it was your looking for him, or I related all the events that had happened on the Friday, because I hadn't spoken with him on the Friday at all. And so on the Monday, when I finally did speak to him after French class, I related the events of the previous Friday and I told him that you had called that morning, looking for him. And he then sounded agitated, and he told me what I just related before, that if I saw you, to leave immediately, and he said: "I can't talk, I have to go".
- Q. So you had pretty long conversation with him since you could relate to him all the events on Friday?
- A. Probably about five minutes. Well, I did the talking.
- Q. Well... And all the events on Friday contained nothing threatening or unusual?
- A. No, only that you had come to the office, that I had not let you in, that you had come then into the other department, that you had then called about an hour later, asking if he were in...
- Q. Yes.
- A. ...also asking if we had a bodyguard.
- Q. All right. Thank you.

THE COURT :

Thank you very much.

AND FURTHER DEPONENT SAITH NOT

THE COURT :

Ladies and gentlemen, I wonder if you would withdraw for the moment, I have an administrative matter that...

Me JEAN LECOURE :

My Lord, it's almost twelve (12:00), maybe we can release the jury for...

THE COURT :

Yes, surely.

Me JEAN LECOURE :

And to come back at two (2:00)?

THE COURT :

Until... Pardon?

Me JEAN LECOURE :

And to come back at two (2:00) or...

THE COURT :

Yes. I think you could go to lunch now if you like, I won't need you before two o'clock (2:00). We'll say two o'clock (2:00).

MEMBERS OF THE JURY LEAVE THE COURTROOM

WITHOUT JURY

I wonder if... Yes?

Me FRANCINE PAYETTE :

Mr. Fortier is now present.

THE COURT :

Yes, I am aware. Excuse me, your name is?

Me FRANCINE PAYETTE :

Francine Payette.

VALERY FABRIKANT :

Maybe we better not do anything, because they will play it back on me at Parthenais, they harass me anyway, and after that it might be even worse than that.

THE COURT :

I had an order that I issued, and...

VALERY FABRIKANT :

Yes, you couldn't care less.

THE COURT :

No, it is not that I could not care less, you are very wrong. You are very wrong indeed. I wonder, Me Payette, if you would care to come forward.

Me FRANCINE PAYETTE :

Yes.

THE COURT :

Mr. Lecours, would you be good enough, please, to have Detective Sergeant H,bert testify as to last night's events?

Me JEAN LECOIRS :

Yes.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twelfth (12th) day of the month of May, personally came and appeared:

NORMAND HBERT, Detective Sergeant at the Montreal Urban Community;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY Me JEAN LECOIRS

ATTORNEY FOR THE CROWN :

- Q. Sergeant Detective H,bert, were you present yesterday afternoon when Mr. Justice Martin pronounced an order?
- A. Yes.
- Q. What was the specific order pronounced by Mr. Justice Martin?
- A. Order was towards Mr. Dion, Jean Dion, to proceed to a ballistic experience to be performed in presence of Mr. Fabrikant. The experience was in two parts, one with the Bersa caliber 7.65 weapon deposited in this case, to see how far would the shells be ejected on the first place, and the second part was to do the same experience about one half meter from the wall, and see where shells would land. This experience was to be repeated six times in each matter.
- Q. Okay. Yes. And was it clear from the Judge's order that Mr. Fabrikant be present?
- A. Yes.
- Q. And what was the Judge's ruling about that?
- A. The Judge's ruling was that it had to be done yesterday night and results would be known and communicated this morning at nine thirty (9:30) to complete the cross-examination of Mr. Dion.
- Q. Did he mention anything about Mr. Fabrikant being in the same building and about the mechanism to be followed?
- A. Well, the experience was to be conducted at the ballistic firing gallery, and it's in the same building as Parthenais, where Mr. Fabrikant is detained. So I arranged, I called first to get a member of our identification squad so we could take pictures, if needed, to relate it to. And then I called Mr. Dion, he went directly to his office first to see if he had the right amunition, same kind. And he was also preparing two different sketches, I mean by that that they have a gallery on the fifth floor, but it's within their

working place, and there is lots of firearms and amunitions there. So for safety reasons he thought that it could be done, there's another firing gallery on the first floor in the parking lot, which belongs to the S.Q.

Q. And after the audience, did you follow Mrs. Desrosiers in order to get a copy of the procès-verbal in which was written the Judge's ruling and order relating to this experiment?

A. Yes, I asked Mrs. Desrosiers to make me a copy of the procès-verbal because I figured that I might need some kind of documentation to bring to Parthenais direction.

Q. Okay. And did you indeed encounter, or meet Parthenais authorities, and did you give them, or show them, or exhibit them a copy of the procès-verbal, and did you ask them for the presence... did you request the presence of Mr. Fabrikant following the Judge's order pending this experiment?

A. I called, yes, I called at seventeen hours twenty minutes (17:20) about at Centre de détention Parthenais, I talked to Mr. Demers, Richard Demers, who is directeur adjoint aux opérations. He was in charge of Parthenais, he was on duty until twenty-one hours (21:00) yesterday night. I explained to him the order, I told him that I had a copy of the procès-verbal, and I told him that we had to conduct that experience yesterday night, so he said that he would do some verifications, and he called me back. At seventeen hours fifteen minutes (17:15), Mr. Demers called me back, and he said that he made some verifications and he would need un mandat d'amener, that copy of the procès-verbal is not a document that they would let Mr. Fabrikant out. So I asked him to call Mr. Fortier, because I knew Mr. Fortier had already testified here for other considerations in the same case. So I thought that I could try to convince him, even though he didn't have a mandat d'amener, that with a copy of the procès-verbal we could try to figure a way out, maybe by making it on the next day, that the procès-verbal or some other kind of agreement. So Mr. Demers told me he would call me back. In fact, he called me back four, five minutes later, told me that he needed a mandat d'amener and that Mr. Fortier wouldn't call me back. So...

Q. Would or wouldn't?

A. Would not call me back. So I checked again, he called me back, I said on that second occasion, I told him that: "I'm at the office, I've got all the personnel, everybody's waiting". And I had checked with Mr. Dion, everything was ready, and I told him to try to reach Mr. Fortier, and at the same time to check if Mr. Fabrikant was back at Parthenais cells, because I figured that it could have been mentioned on the usual mandat de dépôt or transfer paper that is done here by madame Desrosiers. So he told me that there was no such mention, and that there would be no possible way for Mr. Fabrikant to be allowed to do to that experience. So the last contact I had with Mr. Demers is about seventeen hours seventeen minutes (17:17). Then I contacted Mr. Lecours to inform him of the situation and we had to cancel the experience as planned by the Court for yesterday night. But this morning Mr. Dion took on

his own to do some kind of experiment, that he talked to you about. So that relates what happened yesterday night, and I have a copy of the procès-verbal.

THE COURT :

Thank you. Do you have any... No. Fine.

AND FURTHER DEPONENT SAITH NOT

THE COURT :

Madame Desrosiers, was a copy of that procès-verbal included and forwarded to Parthenais last night, apart from with Mr. H, bert? I see. Mr. Fortier.

THE INTERPRETER IS PRESENT

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twelfth (12th) day of the month of May, personally came and appeared:

JULIEN FORTIER, born on December seventh (7th), nineteen hundred and fifty-one (1951), Administrator at Montreal Detention Center;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY THE COURT :

Q. You heard the testimony of Detective Sergeant H, bert?

-Q. Vous avez entendu le témoignage du sergent détective H, bert?

A. Oui, monsieur le juge.

-A. Yes, Your Honor.

Q. And that conversation, in turn, related a conversation which ostensibly took place between you and your deputy?

-Q. Et cette conversation concernait ostensiblement la conversation qui a eu lieu entre vous-même et votre adjoint?

A. Oui.

-A. Yes.

Q. Did... what Detective Sergeant H, bert related accurately summarize the decision that was made last night?

-Q. Ce qu'a relaté, le sergent détective H, bert, est-ce que ça résume bien ce qui s'est produit hier soir?

A. Oui, votre Honneur.

-A. Yes, Your Honor.

Q. Did it occur to you to ask your deputy to look at the Court order which was in Detective Sergeant H, bert's possession?

-Q. Est-ce que ça vous est venu... l'idée de vérifier avec votre adjoint, de demander... votre adjoint de vérifier le contenu de l'ordonnance qui était mise et qui était en possession du sergent détective H, bert?

A. J'ai simplement demandé, de regarder... l'intérieur du dossier qu'on reçoit des services judiciaires, dossier administratif.

-A. I simply asked him to look inside the administrative file that we usually have from legal services, or the file that accompanies the...

Q. Apart from your administrative files, was the question of a Court order mentioned to you?

-Q. À part du fait de la mention du dossier administratif, est-ce qu'on vous a mentionné, le fait d'une ordonnance de la Cour?

A. On m'a mentionné, que monsieur H, bert avait un procès-

verbal...

- A. I was told that Mr. H, bert had the Court minutes...
- A. ...qui ne mentionnait pas n,cessairement qu'on devait sortir monsieur Fabrikant, ou que j'avais l'ordre de faire sortir monsieur Fabrikant de la cour, de la part du juge.
- A. ...which did not necessarily mention that I had order to let Mr. Fabrikant out, or that I had an order by the judge to let him out.
- Q. Is it your habit of looking for a way not to do something or do you look for a way to do something?
- Q. Est-ce que c'est dans votre habitude de voir ... ce que les choses ne soient pas effectu,es ou si vous devez effectuer habituellement, ... la coutume?
- A. Habituellement je me fais le devoir de respecter tous les ordres qui sont donn,s, qui sont ,crits.
- A. Usually it is my duty to comply with all the orders that are issued, written orders.
- Q. Do you not regard Court minutes as a written order?
- Q. Est-ce que vous ne croyez pas que les ordonnances inscrites dans les minutes ou le p.-v. de la Cour constituent une ordonnance ,mise par la Cour?
- A. Je ne suis pas non plus avocat, l..., mais si je peux m'expliquer par rapport ... des instructions ou des directives que le ministŠre de la S,curit, Publique a ,mises ... l'endroit des administrateurs...
- A. I'm not an attorney but if I can relate and interpret the instructions that are issued by the Public Security to the administrators...
- A. ...et que je me dois de respecter...
- A. ...and that I have to abide by...
- A. ...dans mes devoirs d'employ, de l'tat.
- A. ...in my duties as employee of the State.
- A. J'ai apport, avec moi deux instructions minist,rielles.
- A. I brought with me two ministerial instruction orders.
- A. Est-ce que je peux pr,ciser le contenu?
- Q. Sure.
- A. Might I specify the content?
- Q. Oui.
- A. On me dit dans un premier temps que l'administrateur respecte les ordres ,crits des magistrats l'enjoignant d'amener devant la Cour la personne dont on lui a confi, la garde.
- A. Firstly the administrator complies with the written orders of the Court accompanying to bring before the Court the person whose custody is insured.
- A. Vous savez que le document, ... la page 1 de 3 du num,ro 3C2.
- A. And you have the document, page 1 of 3, document 3C2.
- A. Et si vous permettez, je vous r,fŠre ... l'instruction 3I1...
- A. And if you will allow me I will refer you to 3I1...
- A. la page 1 de 2...
- A. ...page 1 of 2...
- A. ...qui mentionne :
- "En jurisprudence, un mandat de d,p"t..."
- A. "In jurisprudence or caselaw a warrant for committal..."
- A. "...est consid,r, comme restrictif..."

-A. "...is considered to be restrictive..."

A. "...et un administrateur ne peut laisser sortir une personne incarc,r,e..."

-A. "...and an administrator cannot release a prisoner..."

A. "...pour fins d'interrogation..."

-A. "...for the purpose of examination..."

A. "...sans que le membre du corps policier qui la r,clame..."

-A. "...without the member of the police force claiming this request..."

A. "...ne soit muni d'un mandat d'amener."

-A. "...have a warrant to bring the prisoner."

A. Et ... la page 2 de 2...

-A. And page 2 of 2...

A. ...on mentionne que si un membre d'un corps policier...

-A. ...it is mentioned that if a member of a police force...

A. ...fait une demande pour amener une personne incarc,r,e ... l'ext,rieur de l',tablissement...

-A. ...files a request to bring a prisoner outside of the institution...

A. ...aux fins de participer ou d'assister ... une parade d'identification...

-A. ...for the purpose of participating or attending a police line-up...

A. ...ou pour toute autre raison...

-A. ...or for any other reason...

A. ...l'administrateur doit exiger une autorisation de la Cour.

-A. ...the administrator must request a Court authorization.

A. Les seuls documents que j'ai eus en main comme ,tant responsable...

-A. The only documents I had in hand as being charged...

A. ...sont sign,s Desrosiers, l..., madame ou monsieur Desrosiers.

-A. ...are signed by Mr. or Madam Desrosiers.

A. C'est un mandat de renvoi ou de d,p"t...

-A. It is a warrant of committal...

A. ...qu'on mentionne "procšs continu, devant l'Honorable Juge Fraser Martin..."

-A. ...which mentions "trial continued before Mr. Justice Fraser Martin..."

A. "... la salle 3.01..."

-A. "...in room 3.01..."

A. "...le douze (12) mai quatre-vingt-treize (93)".

-A. "...May twelfth (12th) nineteen ninety-three (1993)".

A. Pour le fonctionnement d'un centre de pr,vention...

-A. And for the good working order of a prevention center...

A. ...qui retoit environ vingt-cinq mille (25 000) incarc,r,s par ann,e...

-A. ...which receives about twenty-five thousand (25,000) prisoners per year...

A. ...on se doit de respecter ... la lettre les documents l,gaux qu'on retoit de la Cour.

-A. ...we must apply to the letter and follow by the book the instructions we receive from the Court.

A. En aucun temps nous n'avons eu l'intention de se soustraire ... une ordonnance de la Cour...

-A. In no time, at no time whatsoever did we have the intention of not complying with a Court order...

A. ...notre interprétation de la situation n'était pas nécessairement juridique...

-A. ...our interpretation of the situation was not necessarily legal...

A. ...mais bas, e sur des instructions précises de mon ministre.

-A. ...but founded on very specific instructions by our or my ministry.

A. Je tiens ... assurer la Cour...

-A. I would like to reassure the Court...

A. ...qu'advenant un ordre de Cour, un ordre... mandat d'amener...

-A. ...that in the presence of a Court order or warrant to bring a prisoner...

A. ...la direction du centre de prévention dont je suis responsable...

-A. ...the management of the prevention center which I am in charge...

A. ...a toujours donné, suite, et donnera toujours suite.

-A. ...always complied with, and shall always comply with Court orders.

A. Je voudrais aussi mentionner, si la Cour me le permet...

-A. And I would also like to mention, if the Court will allow me...

A. ...que ma juridiction au niveau du 1701, Parthenais...

-A. ...that my jurisdiction as far as 1701 Parthenais is concerned...

A. ...se limite par le décret ministériel...

-A. ...is restricted by a ministerial decree...

A. ...au quatrième, au dixième, onzième, au douzième et au treizième étages.

-A. ...to the fourth, tenth, eleventh, twelfth, thirteenth...

A. ...et une partie du sous-sol.

-A. ...floor, and part of the basement.

A. Je n'ai pas la juridiction sur les autres organismes qui occupent les locaux du 1701, Parthenais.

-A. I have no jurisdiction on all other floors or in all other sections occupied by other ministries at Parthenais.

A. Soit entre autre la direction des expertises judiciaires...

-A. Which might include the ballistic section...

A. ...dont le directeur, monsieur Yves Sainte-Marie...

-A. ...and whose director is Yves Sainte-Marie...

A. ...m'a téléphoné, personnellement ce matin pour lui expliquer ce qui se passait.

-A. ...who called me this morning to ask me to provide an explanation to what was happening and what had taken place exactly.

A. Je lui ai conseillé, de communiquer avec le procureur de la couronne...

-A. I advised him to call the Crown counsel...

A. ...parce que la venue possible de monsieur Fabrikant...

-A. ...because Mr. Fabrikant's possible alternative...

A. ...causait certains problèmes.

-A. ...did cause some difficulties.

A. J'espère que le tout satisfait la Cour.

-A. I hope that everything is satisfactory to the Court.

Q. Well, it is not satisfactory, quite frankly.

-Q. En fait, très honnêtement, ce n'est pas satisfaisant.

Q. I understand that you have rules that you have to follow...

-Q. Je comprends que vous devez suivre certaines règles...

Q. ...and I understand that you are bound by these rules...

-Q. ...et je comprends que vous devez vous y soumettre...

Q. ...but nevertheless there was a valid order made last night...

-Q. ...non, au moins il y avait une ordonnance en bonne et due forme qui était mise hier soir...

Q. ...and I would have thought that anyone with a modicum of good faith...

-Q. ...et je crois qu'en toute bonne foi, que quelqu'un...

Q. ...would have at least taken the trouble to look at what Sergeant Detective H, bert had in his hand, which was a copy of that order...

-Q. ...aurait au moins pris la peine de regarder ce que tenait dans ses mains le sergent détective H, bert, qui consistait justement une ordonnance de la Cour...

Q. ...inasmuch as one was not sent to you on its own.

-Q. ...et même malgré, le fait qu'une copie n'était pas soumise ... vous personnellement.

Q. I'm prepared to consider that what happened last night...

-Q. Je suis prêt ... tenir compte que ce qui s'est produit hier soir...

Q. ...was an oversight.

-Q. ...était un oubli.

Q. But surely...

-Q. Mais certainement...

Q. ...on any verification at all, that order could have been checked, and I am available twenty-four (24) hours a day at the end of a phone.

-Q. ...cette ordonnance aurait pu être vérifiée en n'importe quel temps, et je suis disponible vingt-quatre (24) heures sur vingt-quatre (24) au bout du fil d'un téléphone.

Q. I am aware that this case has not been easy for anybody...

-Q. Je suis conscient que cette cause n'a pas été facile pour quiconque...

Q. ...least of all for your department...

-Q. ...et surtout pour votre service...

Q. ...but the fact remains that not only are you in charge of Fabrikant's custody...

-Q. ...mais il n'en demeure pas moins que non seulement vous êtes responsable de la garde de monsieur Fabrikant...

Q. ...but you are also aware that he is undertaking his own defense...

-Q. ...mais vous êtes aussi conscient du fait qu'il prépare sa propre défense...

Q. ...and that that puts a fairly heavy burden on him.

-Q. ...et que cela lui impose un très lourd fardeau.

Q. I have taken the view throughout...

-Q. Et tout au cours de ce procès...

Q. ...that he is not entitled to any special privileges...

-Q. ...j'ai adopté, l'idée qu'il n'était pas sujet ... des traitements de faveur...

Q. ...save an except what...

-Q. ...sauf...

Q. ...I may order for the proper...

-Q. ...ce que je pourrais ordonner...

Q. ...conduct of his defense.

-Q. ...pour en fait pr,parer sa d,fense.

Q. I would have thought that I could have counted on...

-Q. Je croyais pouvoir compter sur...

Q. ...not just the letter, but the spirit of cooperation from the Ministry of Public Security.

-Q. ...non seulement sur la lettre mais l'esprit de collaboration du ministŠre de la S,curit, Publique.

Q. In order that there be no further misunderstanding...

-Q. Pour ,viter tout autre malentendu...</pre></body></html>

...I now make an order...

-Q. ...j',mets maintenant une ordonnance...

Q. ...that this evening...

-Q. ...que ce soir...

Q. ...between the hours of seventeen hundred (17:00)...

-Q. ...entre dix-sept heures (17 h)...

Q. ...and twenty-one hundred (21:00)...

-Q. ...et vingt et une heures (21 h)...

Q. ...depending upon the availability of Mr. Dion...

-Q. ...selon la disponibilit, de monsieur Dion...

Q. ...that Fabrikant be conducted...

-Q. ...que monsieur Fabrikant soit emmen,...

Q. ...in the company of your guards...

-Q. ...accompagn, par vos gardiens...

Q. ...to the ballistic section...

-Q. la section balistique...

Q. ...in order that he may witness...

-Q. ...afin qu'il puisse voir, ^tre t,moin...

Q. ...the expertise...

-Q. ...l'expertise...

Q. ...to be practiced by Dion.

-Q. ...qui doit ^tre effectu,e par monsieur Dion.

Q. Obviously, at the conclusion of the expertise he will be returned to the prevention center.

-Q. De toute ,vidence, suite ... l'expertise, il sera ramen, au centre de d,tention.

Q. I trust that from now on I can count on your unqualified and (inaudible) cooperation with regard to these matters.

-Q. Et j'aimerais pouvoir croire et penser que je peux compter sur votre collaboration infinie dans cette matiŠre, sur cette question.

Q. I have included, for what it's worth, a mandat d'amener, if this...

-Q. Et j'ai joint un mandat d'amener...

Q. ...is what is required to satisfy your administrative requirements.

-Q. ...si cela satisfait vos exigences administratives.

Q. I don't deem it necessary...

-Q. Je ne crois pas qu'il est n,cessaire...

Q. ...I think a Court order is sufficient...

-Q. ...je crois qu'une ordonnance de la Cour est suffisante...

Q. ...and I propose to adopt that position in any event in the future.

-Q. ...et je suggŠre adopter cette proc,dure dor,navant.

Q. I trust what I have said is perfectly clear.

-Q. Je crois que ce que j'ai dit, et je souhaite que ce soit trŠs clair.

AND FURTHER DEPONENT SAITH NOT

Me FRANCINE PAYETTE :

Would it be possible to have copy of your order you have drawn...

THE COURT :

Surely, madame Desrosiers will make you a copy of the order if Mr. Fortier does not have one. So I will adjourn until two o'clock (2:00).

Me FRANCINE PAYETTE :

This order.

THE COURT :

Oh, this order, yes, you will get it during the day. Two

o'clock (2:00).
SUSPENSION OF THE HEARING
RE-OPENING OF THE HEARING
WITHOUT JURY

THE COURT :

Mr. Fabrikant, you called my office saying you wanted me to come onto the bench at thirteen fifty-five (13:55) my secretary advises me.

VALERY FABRIKANT :

Yes. Since latest events demonstrate at least to me some kind of movement towards, I cannot say fair trial but at least fairer trial, at least permission of experiment, so I thought maybe you would agree to make a revision in general of condition of my detention in terms of how they allow or disallow me to conduct my defense.

THE COURT :

No, I do not think there is any question of opening that up again.

VALERY FABRIKANT :

Okay.

THE COURT :

I make these rulings as I go along, as I see the situation.

VALERY FABRIKANT :

Well, there is... Okay, a second thing. I have finally found the opportunity to go to the Supreme Court of Canada concerning the same motion which you're aware about concerning the condition of my detention.

THE COURT :

That is the decision of the Court of Appeal relating to Judge Biron?

VALERY FABRIKANT :

Exactly, yes.

THE COURT :

Judge Biron's decision.

VALERY FABRIKANT :

Yes. And what I am thinking is, if this decision is favorable, it might come when it is too late. As you know, I always was against any delays in the process, but if there is a chance that I might be given a proper condition for conducting my defense in this case, I would ask you, would you consider maybe then postponement until Supreme Court says its word about it?

THE COURT :

No. I told you before, my position on that is very clear, if the Supreme Court of Canada wishes to issue an ordre de sursis ordering me to stop this trial, I am of course bound to respect it.

VALERY FABRIKANT :

Okay. That's all.

Me JEAN LECOURES :

Wait one second. One minute. You can stay on the bench, because I might change the order of the witnesses, at the request of Mr. Fabrikant. I would just let some people from Concordia know that I will put Mr. Morris before Mrs. Horwood.

THE COURT :

I see. Go ahead.

Me JEAN LECOURES :

Okay.

VALERY FABRIKANT :

Since we're talking about witnesses, if you remember I raised also question about full disclosure, and I gave several

names...

THE COURT :

Uh, huh.

VALERY FABRIKANT :

...back way in March, and I still didn't hear from the Crown. Maybe we could hear it now or at the end of the day, whatever, but I would like to proceed on that matter, I still do believe...

THE COURT :

You gave a number of names saying that you thought that a number of people had made statements...

VALERY FABRIKANT :

Yes.

THE COURT :

...and you did not give a complete list of names but you threw in three names, or two was it? I saw that in my travels through my notes last night. And the Crown...

VALERY FABRIKANT :

You don't know how to draw, your drawing is so outrageous.

THE COURT :

Mr. Fabrikant. Mr. Fabrikant.

VALERY FABRIKANT :

Well, nobody could recognize anybody on these drawings.

THE COURT :

Mr. Fabrikant, the Crown was to check to see whether it was indeed so, to see whether there were any other statements from any of the witnesses.

Me JEAN LECOURES :

No, what I remember, Mr. Fabrikant wanted to know if other people were on the ninth floor, something like that. And indeed, we discovered about forty (40) or fifty (50) or sixty (60) of them that went on the ninth...

VALERY FABRIKANT :

No, that was not... I gave you specific names.

THE COURT :

He gave three names.

Me JEAN LECOURES :

I can report on that as well. I can report on everything that was asked.

THE COURT :

Just a minute, if I can find the name.

VALERY FABRIKANT :

You may draw without looking at me, it's anyway...

THE COURT :

Mr. Fabrikant, please. I will look for these at the recess and see if I can put my hand on the note.

Me JEAN LECOURES :

I might have a look myself.

THE COURT :

Well, let us put it off until the break.

MEMBERS OF THE JURY ARE PRESENT

Me JEAN LECOURES :

Mrs. Denis Maisonneuve please.

THE INTERPRETER IS PRESENT

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twelfth (12th) day of the month of May, personally came and appeared:

DENISE MAISONNEUVE, born on November twenty-fourth (24th), nineteen hundred and thirty-nine (1939), Budget officer, Engineering and Computer Science Faculty, confidential

address,

WHOM, after having been duly sworn, doth depose and say as follows:

Me JEAN LECOIRS :

My Lord, the witness would like to ask your permission to sit down.

THE COURT :

Certainly.

- Certainement.

EXAMINED BY Me JEAN LECOIRS

ATTORNEY FOR THE CROWN :

Q. Mrs. Maisonneuve, were you performing the same duties on August the twenty-fourth (24th), nineteen ninety-two (1992)?

-Q. Madame Maisonneuve, est-ce que vous aviez les m[^]mes fonctions le vingt-quatre (24) ao[^]t mil neuf cent quatre-vingt-douze (1992)?

A. Oui.

-A. Yes.

Q. At that time, was your office located at the same place as now?

A. Non.

-Q. Et ... l',poque est-ce que votre bureau ,tait situ, au m[^]me endroit qu'il est actuellement?

-A. No.

Q. Okay. I will show you Exhibit P-1...

-Q. Je vais vous montrer la pi[^]ŕce P-1...

Q. ...which is an outline of the ninth floor, Concordia University...

-Q. ...qui est un sch,ma du neuvi[^]me ,tage ... l'Universit, Concordia...

Q. ...could you please locate your own office on this sketch?

-Q. ...pourriez-vous s'il vous pla[^]t indiquer votre propre bureau sur ce croquis?

A. Ici.

-A. Here.

Q. Okay. Which is number?

-Q. Quel est le num,ro?

A. 907-9.

-A. 907-9.

Q. Okay. Who is your superior?

-Q. Qui est votre sup,rieur?

A. Monsieur Swamy, le doyen.

-A. Mr. Swamy, the dean.

Q. Okay. And his office, is it located far from yours?

-Q. Est-ce que son bureau est situ, loin du v"tre?

A. Non.

-A. No.

A. A deux portes du mien.

-A. Two doors away.

Q. Okay. Do you know an individual named Valery Fabrikant?

-Q. Connaissez-vous un individu du nom de Valery Fabrikant?

A. Oui.

-A. Yes.

Q. Could you recognize that person in the courtroom?

-Q. Pourriez-vous reconna[^]tre cette personne ici dans la salle?

A. Oui.

-A. Yes.

Q. Could you indicate that person?

-Q. Pouvez-vous l'indiquer, s'il vous pla[^]t?

A. Monsieur Fabrikant.
-A. Mr. Fabrikant.
Me JEAN LECOURE :
Indicating the accused.
Q. At around twelve thirty (12:30) on August the twenty-fourth (24th), nineteen ninety-two (1992) did you encounter that person?
-Q. Vers midi et trente (12 h 30) le vingt-quatre (24) ao-t mil neuf cent quatre-vingt-douze (1992) est-ce que vous avez rencontr, cette personne?
A. Oui.
-A. Yes.
Q. Could you relate the details, please?
-Q. Pourriez-vous nous relater les d,tails, s'il vous plaEt?
A. Oui.
-A. Yes.
A. Monsieur Fabrikant s'est pr,sent, ... mon bureau...
-A. Mr. Fabrikant showed up at my office...
A. ...et puis m'a remis une formule par laquelle nous lui avons accord, mille dollars (1000 \$)...
-A. ...handed me a form by which we had granted him an amount of a thousand dollars (\$1,000)...
A. ...pour assister ... un congrŠs...
-A. ...to attend a conference...
A. ...en Isra%l...
-A. ...in Israel...
A. ...du vingt-deux (22) au vingt-neuf (29) ao-t.
-A. ...from August twenty-second (22nd) to the twenty-ninth (29th).
Q. Okay. And what did he tell you about this convention?
-Q. Que vous a-t-il dit en rapport avec ce congrŠs?
A. Il m'a dit de le canceller, qu'il n'assistait pas.
-A. He told me to cancel it, that he was not going to attend.
Q. Okay. And what did you do with the form?
-Q. Qu'avez-vous fait avec le formulaire?
A. J'ai pris le formulaire, j'ai marqu, "annul,".
-A. I took the form and I wrote "cancelled".
Q. What did you do with the original? Was it destroyed?
-Q. Qu'avez-vous fait avec l'original, il a ,t, d,truit?
A. Oui, je l'ai d,truit.
-A. Yes, I destroyed it.
Q. And the one thousand dollars (\$1,000), was it supposed to be given before or after to Mr. Fabrikant?
-Q. Et la somme de mille dollars (1000 \$) devait ^tre remise ... monsieur Fabrikant avant ou aprŠs?
Q. After, I mean the convention.
-Q. C'est-...-dire la conf,rence.
A. C'est toujours aprŠs, quand il retourne du congrŠs, qu'on leur accorde le mille dollars (1000 \$).
-A. The amount of one thousand dollars (\$1,000) is always submitted to him after the conference.
Q. So I understand that the thousand dollars (\$1,000) was never given to Mr. Fabrikant?
-Q. Alors je comprends bien que la somme de mille dollars (1000 \$) n'a jamais ,t, remise ... monsieur Fabrikant?
A. Non, jamais.
-A. No, never.
Q. Were you in your office, and were you there at Concordia for the rest of the day?
-Q. Est-ce que vous ,tiez ... votre bureau? tiez-vous ... l'Universit, Concordia pour le reste de la journ,e?

A. Oui.
-A. Yes.
Q. Did you notice or were you involved, or could you relate any further incident during the day?
-Q. Avez-vous remarqu, autre chose? Est-ce que vous pouvez relater tout autre incident au courant de la journ,e?
A. Quand monsieur Fabrikant, avant de quitter mon bureau, il m'a demand, si le doyen ,tait ... son bureau.
-A. Before leaving my office he asked me if the dean was in his office.
Q. What did you answer?
-Q. Qu'avez-vous r,pondu?
A. Je lui ai dit qu'il n'y ,tait pas.
-A. I told him that he was not there.
Q. Okay. And later?
-Q. Et plus tard?
A. Et plus tard, environ deux heures aprŠs...
-A. And later on, approximately two hours later...
Q. Around three fifteen (3:15)?
-Q. Vers les quinze heures quinze (15:15)?
A. A peu prŠs.
-A. Approximately.
A. J'ai entendu deux coups de feu...
-A. I heard two shots...
A. ...et puis l..., bien, j'ai ferm, la porte de mon bureau, il y avait d,j... une personne...
-A. ...then I closed the door to my office, there was already somebody in with me...
A. ...et puis on a ,t, embarr,s l... jusqu'... cinq heures trente (5 h 30) le soir.
-A. ...and we were locked in there until five thirty (5:30) in the evening.
Q. And what happened at five thirty (5:30)?
-Q. Que s'est-il produit ... cinq heures trente (5 h 30)?
A. Les policiers sont venus nous ouvrir.
-A. The police showed up and opened the office.
A. Puis il a ajout, que c',tait correct pour nous de sortir.
-A. And he added that everything was fine, we could come out.
Q. Okay. And you said you were locked with another person, who was that person?
-Q. Vous avez dit que vous ,tiez embarr,e avec une autre personne, qui ,tait cette autre personne?
A. Il y avait le docteur Ajoua.
-A. Dr. Ajoua.
A. C'est un membre de la facult,.
-A. A member of faculty.
Q. Okay.
Me JEAN LECOURS :
I have no further questions.
- Plus d'autre question.
CROSS-EXAMINED BY VALERY FABRIKANT :
Q. What time did I come to your office with the document?
-Q. A quelle heure me suis-je pr,sent, ... votre bureau avec le document?
A. Environ midi trente (12 h 30). Entre midi (12 h) et une heure (1 h).
-A. Between twelve (12:00) and one (1:00). At approximately twelve thirty (12:30).
Q. Did I look any different from usual?
-Q. Est-ce que j'avais l'air diff,rent qu'... l'habitude?
A. Non.

-A. No.
Q. Did I behave in any threatening way?
-Q. Est-ce que je me suis comporté, d'une façon menaçante?
A. Non.
-A. No.
Q. Was I polite?
-Q. J',tais poli?
A. Oui.
-A. Yes.
Q. Was I ever impolite with you?
-Q. Est-ce que j'ai été, j... ,t, impoli avec vous?
A. Avec moi, non.
-A. With me, no.
Q. Did I ever harass you in any way?
-Q. Est-ce que je vous ai intimidé, e ou harassé, e d'une façon?
A. Non.
-A. No.
Q. In your written statement you said that dean is in the university but he left for lunch?
-Q. Vous avez indiqué, dans votre déclaration, écrit que le doyen, tait ... l'université, cette journée-l... mais qu'il, tait sorti pour le lunch?
A. Oui, j'ai dit que probablement... c'est vrai que j'ai dit qu'il, tait l... le matin...
-A. Yes, it's true, I said that he was there in the morning...
A. ...mais l... il, tait parti pour le déjeuner.
-A. ...but at the time he was out for lunch.
Q. Your response today was that the dean just wasn't there?
-Q. Et votre réponse aujourd'hui c'est comme si le doyen n',tait pas l... du tout?
A. Je m'excuse.
-A. I'm sorry.
Q. So what you told me, dean is around but he just left for lunch, correct?
-Q. Ce que vous m'avez dit c'est que le doyen n'y, tait pas, qu'il, tait simplement sorti pour le lunch, c'est exact?
A. Oui.
-A. Yes.
Q. Did the dean ever tell you that I threatened him?
-Q. Est-ce que le doyen vous a dit, j... dit que je l'avais menacé, ?
A. Non.
-A. No.
Q. Did anybody else tell you that I threatened dean?
-Q. Est-ce que quelqu'un d'autre vous aurait dit que je l'ai dit, j... menacé, ?
A. Non, personne.
-A. No, no one.
Q. Do you know about bodyguards posted near the dean's office?
-Q. Est-ce que vous êtes au courant des agents de sécurité, ou des gardiens qui, taient affectés au bureau du doyen?
A. Oui.
-A. Yes.
Q. Please elaborate whatever you know about it.
-Q. Est-ce que vous pouvez, laborer l...-dessus?
A. Tout ce que je sais c'est que pendant quelques jours il y avait quelqu'un qui, tait assis ... la porte du bureau du doyen.
-A. All I know is that for a period of a couple of days there was somebody seated at the door to the dean's office.
Q. Could you be more precise, at what days and where this person was seated?
-Q. Pouvez-vous préciser les journées et l'endroit auquel, tait

assis cet individu?

A. Je ne me rappelle pas des jours, es...

-A. I do not recall the dates...

A. ...puis j'ai dit tant qu'ils ,taient assis ... la porte du bureau, de l'entr,e du bureau du doyen.

-A. ...and I said earlier that they were seated near the door to the dean's office.

Q. Well, could you at least approximately say what year it was?

-Q. Pouvez-vous au moins mentionner l'ann,e?

A. C'est s-rement en mil neuf cent quatre-vingt-douze (1992).

-A. It was surely in nineteen ninety-two (1992).

Q. Ninety-two ('92). Could you then elaborate whether it was summer, winter, fall?

-Q. Alors pourriez-vous pr,ciser quelle saison d'ann,e c',tait?

A. C',tait s-rement l',t,.

-A. Certainly in the summer.

Q. Okay. Maybe month?

-Q. Peut-^tre maintenant le mois?

A. Je me rappelle pas, franchement l...

-A. I honestly do not recall.

Q. Well, it was the same month, August?

-Q. C',tait le m^me mois, le mois d'ao-t?

A. C'est possible.

-A. It's possible.

A. C'est l',t,.

-A. Summertime.

Q. Well, if it was August, then it was probably just several days before the tragic events?

-Q. Alors si c',tait au mois d'ao-t, c',tait s-rement quelques jours avant les ,v,nements tragiques?

A. Je peux pas dire les dates exactes, l..., je peux pas arriver puis dire que c',tait quelques jours, quelques semaines, je me rappelle pas.

-A. I cannot give any exact date, I can't say whether it was a few days or a few weeks prior, I do not recall.

Q. Did you notice any bodyguards in ninety-one ('91)?

-Q. Avez-vous remarqu, des agents de s,curit, en quatre-vingt-onze (91)?

A. Jamais.

-A. Never.

Q. How do you know that there was bodyguard in ninety-two ('92)?

-Q. Alors comment savez-vous qu'il y avait des agents de s,curit, en quatre-vingt-douze (92)?

A. Parce que j'en ai vu.

-A. Because I saw them.

Q. What, he has some inscription on him "I am body guard"?

-Q. Pourquoi, il y avait une mention indiqu,e sur lui qu'il ,tait agent de s,curit,?

A. Non.

-A. No.

Q. So how did you know that he was bodyguard then?

-Q. Alors comment savez-vous qu'il ,tait agent de s,curit, donc?

A. C'est parce que je savais qu'il ,tait agent de s,curit,, on me l'a dit.

-A. I knew he was a bodyguard, I was told.

Q. Okay. Then who told you that he was bodyguard?

-Q. Alors qui vous a dit qu'il ,tait agent de s,curit,?

A. Je me rappelle pas l...

-A. I do not recall.

Q. Okay. Did you ask why there is a bodyguard there?

-Q. Avez-vous demand, la raison pour laquelle il y avait un agent

de s,curit,?

A. Non.

-A. No.

Q. Well, it is usual thing to have a body guard near dean's office?

-Q. C'est coutumier de voir un agent de s,curit, pršs du bureau du doyen?

A. Pas que je sache.

-A. Not that I know of.

Q. Well... so were you surprised when you saw that?

-Q. Alors, ,tiez-vous surprise lorsque vous l'avez aperçu?

A. Oui puis non. Non, pas n,cessairement.

-A. Yes. No, not necessarily.

Q. Well, if it is very unusual thing, then why weren't you surprised?

-Q. Mais si ce n',tait pas habituel, pourquoi n',tiez-vous pas surprise?

A. Il y a tellement de gens qui fr,quentent ce bureau-l..., ça aurait pu être pour des ,tudiants, c'est un bureau très actif, il y a toutes sortes de gens qui viennent.

-A. There are many people coming into that office, it could have been for students, many people, this office is very active, all sorts of people come into the office.

Q. Could you indicate on the map where exactly this guard was seated?

-Q. Pouvez-vous indiquer sur le croquis l'endroit exact o- ce gardien ou cet agent ,tait assis?

A. C'est ici.

THE COURT :

Can you turn that around, Mr. Lecours, so that...

Q. Now, would you try and indicate it again?

-Q. Pouvez-vous l'indiquer encore une fois, je vous prie?

THE COURT :

So that the jury can see it, Mr. Lecours.

-Q. Pour que les membres du jury puissent le voir.

A. C'est le 907, l..., il y a un couloir ici...

-A. There's a hallway here...

A. ...et puis il y a l'entr,e du bureau, l..., du doyen, alors c',tait dans le couloir.

-A. ...and there's the entrance to the dean's office, so it was in the hallway, 907 here.

VALERY FABRIKANT :

I still didn't see where, and I don't know if jury saw.

THE COURT :

You see that, ladies and gentlemen? Okay.

VALERY FABRIKANT :

Q. So it was just not entrance to 907 as such...

-Q. Alors ce n',tait pas l'entr,e du 907 comme telle...

Q. ...but exactly where the entrance to the dean's office is?

-Q. ...mais plut't exactement o- est situ,e l'entr,e au bureau du doyen?

A. Oui.

-A. Yes.

Q. Okay. Would you be able to recognize this bodyguard if you saw him again?

-Q. Seriez-vous en mesure de reconna@tre cet agent de s,curit, si vous deviez le revoir encore une fois?

A. Non.

-A. No.

Q. Do you know from what company he was?

-Q. Savez-vous ... quelle compagnie il appartient?

A. Non.

-A. No.

Q. Is there anything unusual in person who does not go to conference returning the documents related to that conference?

-Q. Y a-t-il quelque chose d'inhabituel lorsqu'une personne ne se pr,sente pas ... une conf,rence et rendant les documents suite ... l'annulation d'un tel voyage?

A. Non.

-A. No.

Q. So you were not surprised that when I came, my conference started on twenty-second (22nd) and on twenty-fourth (24th), since...

-Q. Ma conf,rence d,ebutait le vingt-deux (22) et le vingt-quatre (24), lorsque je suis...

Q. ...since it was already too late to go, I came and returned you the documents?

-Q. ...lorsque je me suis pr,sent,, et qu'il ,tait trop tard pour y aller, je vous ai rendu le document?

A. C'est #a.

-A. That's right.

Q. There was nothing surprising there?

-Q. Alors ce n',tait pas surprenant?

A. Non.

-A. No.

Q. Was it any surprising to you that after I gave you the document I exited through the other door?

-Q. Est-ce que c',tait surprenant pour vous de voir que je suis sorti par l'autre porte suite, apr'ss vous avoir remis le document?

A. Je me rappelle pas par quelle porte il est sorti.

-A. I don't recall through which door he left.

Q. Well... I am asking because some people did, to me it also looks...

THE COURT :

Never mind the...

VALERY FABRIKANT :

...irrelevant, but some people did.

Q. But suppose that you did notice that I exited from the other door, not from the door through which I entered, would this be any indication to you of something being wrong?

THE COURT :

No, but the question is hypothetical, because the witness says: "I didn't notice which door you went out". So that is the end of it.

VALERY FABRIKANT :

Well still, can I ask question, if somebody exits through the other door, does it mean some ominous meaning?

Me JEAN LECOURE :

It's hypothetical, My Lord.

VALERY FABRIKANT :

No, I'm not asking hypothetical question, I'm asking, does this fact that someone...

THE COURT :

Yes, you might establish that some people use either door...

VALERY FABRIKANT :

Yes.

THE COURT :

...and you might establish the frequency, sure.

VALERY FABRIKANT :

Okay. Let me put it differently.

Q. There are two doors through which one can either enter or exit from the whole big office, 907, right?

-Q. Il y a deux portes d'accès au 907, deux portes par lesquelles on peut entrer ou sortir, c'est exact?

A. Oui.

-A. Yes.

Q. And one entrance is the main entrance?

-Q. Une entr, e est l'entr, e principale?

A. Oui.

-A. Yes.

Q. And the other is very close to where you are seated?

-Q. Et l'autre est très près de votre poste de travail où vous êtes assise?

A. Oui.

-A. Yes.

Q. So if someone exits through that door after visiting you...

-Q. ...alors si quelqu'un quitte par cette porte-l... suite ... sa visite...

Q. ...would that be indication of some threat or anything else?

-Q. ...est-ce que ce serait une indication de menace ou autre?

A. Non.

-A. No.

Q. Okay. Thank you.

-Q. O.K. Merci.

Me JEAN LECOURE :

Thank you very much.

- Merci, madame.

AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOURE :

Mr. Robert Morris.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twelveth (12th) day of the month of May, personally came and appeared:

ROBERT MORRIS, born on February twenty-sixth (26th), nineteen hundred and sixty-nine (1969), secretary, confidential address;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY Me JEAN LECOURE

ATTORNEY FOR THE CROWN :

Q. Mr. Morris, were you performing the same duties on August the twenty-fourth (24th), nineteen ninety-two (1992)?

A. Yes.

Q. And was it a Concordia University?

A. Yes, it was.

Q. In which department?

A. Mechanical Engineering.

Q. Okay. I will show you P-1 as well as P-7.

Me JEAN LECOURE :

Members of the jury have P-7, we might as well go only with P-7. Okay, we'll work with P-7.

Q. Okay, Mr. Morris, where on this sketch is located your working area?

A. My working area is located here.

Q. Which number?

A. In 929.

Q. 929. Okay. Do you work alone or with somebody else there?

A. There are two other secretaries in that area.

Q. On August the twenty-fourth (24th) who were your colleagues?
A. That day there was Susan Altimas that I was working with, the third secretary was on vacation that day, so she wasn't in the office.

Q. Okay. And at around fourteen forty (14:40) could you describe the incidents and the events that occurred that day?
A. At that time I was with Susan Altimas and Mrs. Elizabeth Horwood.

Q. Who is Mrs. Elizabeth Horwood?
A. She is the chairman's secretary.

Q. Okay. Does she have an office on this floor?
A. Yes.

Q. Could you locate it please?
A. 929-8.

Q. Okay. And where is her boss' office?
A. 929-9.

Q. Okay. And what's the name of the chairman?
A. Dr. (inaudible) Osman.

Q. Okay. So please go on. You were chatting with Mrs. Horwood and...
A. Yes, we were looking at some photographs with Susan and Elizabeth, at Susan's desk.

Q. What was the subjects of these? Do you remember?
A. I believe they were Elizabeth's photos of nephews or relatives.

Q. Okay.
A. Okay. And we were just looking... it was after lunch and just sort of taking a break, and then Dr. Fabrikant, followed by someone who I didn't know...

Q. You're talking about an individual named Dr. Fabrikant, do you recognize that person in the courtroom?
A. Yes, I do.

Q. Okay. Could you indicate?
A. The person in the blue sweater.

Q. Okay.
Me JEAN LECOURE :
Indicating the accused.

Q. Okay. Were you in regular contact with that person?
A. Fairly regular, whenever, you know, he was in I would see him.

Q. Okay. To your personal knowledge where was located his own office?
A. 929-24.

Q. Okay. You can point it there on the...
A. Yes. Right.

Q. Okay. Please go on.
A. So we were looking at these photographs and Dr. Fabrikant, followed by someone who I didn't know, though I had seen before, he was shorter than myself, much heavier set with a big mustache, and they were walking from inside the front door, and passed where we were, and then rounded the corner.

Q. Okay. You mean the corner in front of 929-17, eh?
A. That's correct.

Q. Rounded towards the right or the left?
A. To the right, towards 23, if you will.

Q. Okay. Please go on. Was there any words pronounced at that time?
A. Yes. Well, at that time... well I made contact with both actually...

Q. Which type of contact?
A. I think just regular eye contact, I have a habit of looking at someone in the eye, sort of like a "hello, see you back" type

of eye contact. And then I looked towards Elizabeth and she just looked and she said "CUFA president", and so I understood by that that Dr. Fabrikant was with the CUFA president whom I didn't know the name of.

Q. Okay. And that one was behind Dr. Fabrikant, eh?

A. Yes, Dr. Fabrikant was leading the way. I took it actually that Dr. Fabrikant had a meeting and was leading the way, leading down the corridor, almost like "let's discuss something", it looked like there was a time limit and wanted to discuss.

Q. Okay. And then?

A. Well, it was a little bit after that, well, we finished with the pictures, and Elizabeth went back to her office, and I went back to work. Now because Jane "Crossman" wasn't there, I went to her desk, so I was... though my desk is in 929, I was more in 929-1 after that, working on her computer. It was around three o'clock (3:00) whereby we heard a couple of bangs, and then a groan or a moan, it's hard to describe, and I looked at Susan and she looked at me, and we were wondering what that was, because it was an unusual sound, nothing that we had heard before. But because on the tenth floor they were moving a library, sometimes it would sound like airplanes flying through the department, so an unusual sound wasn't unusual. And I came to the conclusion that, because they're moving the library, they must have dropped one of those steel grates that holds the library books and on a guy's foot, and it just, you know, "bang bang", and then the moan, and that was all we thought about it, and it seemed to be a reasonable answer. Just after that though, Dr. Saber appeared from around the corner.

Q. Okay. Where was located Dr. Saber's office?

A. 929-19.

Q. Okay.

A. And whenever he had a question it would be very usual for him just to pop his head around that little wall and talk to Jane or whatever, but this time he was saying: "What was that sound?" And we talked for not very long but just in terms of... I explained what I thought it was, and it made sense to him, and he sort of gave me the impression that he was going to call about that, to complain about the noise, that it's distracting to the department. Then it gets a little foggier in my mind, because I really don't know why I got out of my seat, the next thing I remember is being behind Susan's desk. And I know that I was making an effort to leave the department, but I don't know what got me out of my seat. As I was rounding Susan's desk, I was looking towards basically - 17, and as I did I saw Dr. Fabrikant walking down that back hall, I mean I didn't get much of a view, just that corridor, which might be about this wide, just walking at a reasonable pace, I can't say fast, I can't say slow, but at a very normal pace. And at which point I remember hearing another shot, a couple of shots, and then not a groan but more like a scream, much higher pitched. At that point I wasn't merely walking out of the department but I started to run because I knew that something was terribly wrong, so I ran out of the department to call for security at another location other than my desk.

Q. Okay. What did you explain to the security?

A. When I spoke to security I... well, not to security, to someone at Computer Services, I said: "Call security", and they looked at me: "Are you serious?", which is probably a very natural reaction. And I just simply repeated again:

"Call security". I didn't tell them why, I just said it's 929, call security. And then I went to hide, I was absolutely more frightened than I've ever been in my life.

Q. Okay. And where did you hide?

A. I hid in an auditorium, which isn't on this... I went right to the back of the auditorium, underneath the desk...

Q. Okay.

A. ...and hid there. After a little bit... there was someone else who followed me in there actually, and they were a little braver than myself and they poked their head out of the corner, we actually came out again, not long after. And I was back at the Computer Srvices desk and I checked: "Did you phone security?", and they said: "Yes, yes, we did it". And then I don't know, while I was there I was looking back towards that whole section and I saw Miss Susan Altimas running, well, very fast walk, in back, in towards the Mechanical Engineering Department. She looked very scared but she was going back in there, at that point I was wondering if I should be going back in to help her, I didn't know what would be in there, but I didn't, instead we went and hid in the Computer Services Department until we were told to evacuate.

Q. Okay. When you saw Dr. Fabrikant passing in the corridor, did he have anything in the hands?

A. I did see him... I only got the left side profile of him, but I saw him walking, and I saw his hand in this position. To say that I actually saw anything in his hand, I can't say that I saw it for sure, it could have been a pen for all I know, really.

Q. You're not sure?

A. No.

Q. Okay.

Me JEAN LECOURS :

I have no further questions.

CROSS-EXAMINED BY VALERY FABRIKANT :

Q. How long have you been working in Mechanical Engineering?

A. I have been involved with the Mechanical Engineering Department since June twenty-fifth (25th), nineteen eighty-six (1986).

Q. Okay. And all this time in 929?

A. No, I was in 929 for probably two years, and then I was working in the B Annex for I guess about four years, and then I went back in 929 again for the last year.

Q. Uh, huh. Was I ever harassing towards you?

A. No.

Q. Did you see me harassing anybody else?

A. No.

Q. Was I polite with you whenever we had any business to do?

A. Yes.

Q. Now, let's go a little bit to the details of August twenty-fourth (24th). Do you recall well the time when you saw me with Dr. Hogben?

A. I wasn't paying attention to my watch, so I know that it was after two o'clock (2:00) for certain, to make it to an actual time I would hard pressed to remember.

Q. Uh, huh. Well, in your statement you say fourteen forty-five (14:45), would it be more or less correct estimation?

A. Yes, if that's... yes.

Q. All right. Could you describe the person who you saw with me in whatever your recollection allows you?

A. Okay. I believe he was probably about five foot six, though

it's a total estimation, he had a part on one side of his hair, it was rather long. He had a thick mustache, he was wearing a suit, I can't recall the color. He was a larger man, certainly not slight of built.

Q. Any briefcase under his arm or anywhere?

A. I can't remember specifically noticing that.

Q. Anything in his hands?

A. I was more interested in seeing a face that I wasn't really familiar with, I wasn't really paying attention so much to what he was wearing or what he was carrying.

Q. Well, how well did you see him, at least that much?

A. Well, I actually must have had... I did have a full view of him...

Q. Uh, huh.

A. ...because I was standing on the end of the counter, and so I would have seen his whole.

Q. Okay. Would it make a difference to you if he was walking like this or like this? Is it kind of conspicuous, or like this, and like this?

A. I can't remember where his hands... how... I don't know what his arms or hands were doing.

Q. But does it sound conspicuous like this? I mean to have, say piece of paper in hands.

A. Perhaps if I knew him better I would have been able to notice things other than his face.

Q. Well... All right. So how much time passed since the moment you saw me and him until you heard the shots?

A. I believe it's approximately twenty (20), twenty-five (25) minutes.

Q. Uh, huh. Did you see before him anyone coming the same way?

A. Just before Dr. Hogben?

Q. Yes.

A. Dr. Fabrikant was leading Dr. Hogben.

Q. Well, before that.

A. Before that? How much before?

Q. Well, maybe ten minutes.

A. No.

Q. No. All right. Did Mrs. Horwood, when she raised your eye brows and said "CUFA president", did she attach some specific meaning to that meeting? Or at least did it look like she attached a specific meaning to that meeting?

A. It looked like she was interested, curious, just perhaps saying: "I wonder what that was about", maybe what the meeting might be about, other than that I didn't read anything else into her, I thought she was more informing me of who was walking down the hall.

Q. Uh, huh. Now, after you heard the shots, could you indicate how many shots have you heard?

A. The first set of shots that I heard?

Q. Yes.

A. Specifically, no, I heard at least two though. Like I said, I thought it was something upstairs, so at least a "bang bang", I couldn't be put down to an exact number though.

Q. It was in pretty rapid succession, was it?

A. Fairly, yes.

Q. Could it be that it was three and you just... two were in so rapid succession that you didn't recognize that?

A. Yes, it could have been three, it could have been four.

Q. Now after the shots, how much time approximately passed before Dr. Saber asked what is going on?

A. Well, there was enough time for me to reach a conclusion with

Miss Altimas and for Dr. Saber... maybe, I'm guessing, but that conversation might have lasted one minute, two minutes. It wasn't ten minutes, it was just a couple of minutes. We resumed work, so the conversation was over before I saw Dr. Saber.

Q. You are sure that it was at least two minutes?

A. Two minutes would be the least I would peg it at.

Q. Okay. Now, after two minutes passed, you were running through the corridor and you saw me before you saw the other bangs or you saw me after the...

A. I saw you before I heard the other bangs.

Q. Are you sure about that?

A. I know that's what I... by the same token I don't know why I got out of my seat, but as my testimony was, I got out of my seat, for whatever reason, then I saw Dr. Fabrikant walk down the hall, then I heard more shots and a high pitched scream.

Q. Could it be that you mixed up the events in terms of in what order they were since you said that you jumped and started running, is it probable that you started running before you realized what is going on?

A. It's quite possible.

Q. So it was in a reverse order?

A. Well, all I know is what I saw and heard.

Q. All right. Where were you in nineteen ninety (1990) and ninety-one (1991)?

A. I was working in 2160 Bishop Street, part of the Mechanical Engineering Department, the center of industrial control.

Q. Uh, huh. All right. Do you know anything about the system which secretaries allegedly... well, not you, I mean Mrs. Horwood and Mrs. Altimas allegedly used to signal one another my approach, do you know anything about it?

A. Vaguely. From what I understand it was more Elizabeth would simply... wanted Susan or Jane, I believe, to warn her if Dr. Fabrikant was on his way to discuss something with her.

Q. Well, do you know the reason of that, why was it necessary? How was it explained to you?

A. To be honest, I never really understood why it might even be necessary or even thought of, it was more that Elizabeth thought she would be more comfortable knowing that, and that was enough reason for me that I would... I never had to because there was someone else, but that's why it would have been done. I didn't often question Elizabeth, she asked me to do something, I was the go-for, I'd just do it finally.

Q. Yes. This is what we do in this country, don't we, and after that we are saying something about communists. I'm sorry. I'm sorry. That day, August twenty-fourth (24th), did I look any different to you than any other day?

A. No, I didn't notice anything different.

Q. Did I ever look to you insane?

A. No.

Q. Do I look to you insane now?

THE COURT :

Mr. Fabrikant, Mr. Fabrikant, that question...

VALERY FABRIKANT :

Well, what's wrong with that question? The circus is being...

THE COURT :

It's not within his competence to say whether you look sane, insane or not.

VALERY FABRIKANT :

The circus goes all over the city, and it is being supported by you, and those people who pretend...

THE COURT :

Mr. Fabrikant, the question is out of order.

VALERY FABRIKANT :

...who pretend drawing me and looking at me while drawing something else, and the same the way they are writing, they pretend looking at you writing about somebody else.

THE COURT :

I hveve ruled on the question, it is out of order, you are not required to answer that question.

VALERY FABRIKANT :

All right. All right.

Q. Do you know any details as to how one could signal my approach through the telephone? The distance is so short that my impression is that there is no way to signal it in time, is it, or maybe I don't understand something. How did it function? Do you know any details?

A. I never did it. I never had occasion to signal.

Q. Uh, huh.

A. So to be honest, I was confused as to how it would work myself, so it's partly why I, you know, I probably never did it. Well, that's probably why I never did it.

Q. But effectively, you were approached too to do that thing?

A. I was informed of it.

Q. Yes. When you were informed of it, how was it justified to you?

A. Elizabeth just seemed she would be more comfortable to know that you were on your way, sort of like if you're having company over to your house, you'd rather know they're on their way as opposed to just showing up unexpected. That's the way I took it.

Q. This is difficult to compare with house, after all it is work, and someone can just go into someone's office and ask questions, is it? For example, if you go to see certain secretary, do you have to announce yourself in advance that you are coming?

A. If they would prefer me to do so, I would.

Q. I understand, but is this the usual practice?

A. No.

Q. But you were never explained why she would be more comfortable?

A. No. No. I didn't know what she would do when she found out, or anything, so...

Q. All right. But if... you know the distances involved there, is it possible, when I passed your place, to dial Elizabeth Horwood that quickly that she would be able to receive before I see her?

A. I would have to be very fast.

Q. Even in this case, just look at the map please. If I appear from here and go this way, it is not clear which way I am going until I am here, and turn to the right, correct? Then the distance which is left to go, is it a sufficient distance to dial any number and to say something?

A. I never tried it, but based on... Yes, I would be... I can't see how it would make much of a difference, but I never had the chance to try it, so...

Q. Well, what I'm trying to say, the only feasible way to do it maybe to have some kind of panic button which acts immediately, but through the telephone it doesn't look possible to advise someone about me coming, is it?

A. I agree.

Q. Yes. Okay. Thank you.

AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOURS :

Mrs. Elizabeth Horwood.

VALERY FABRIKANT :

But you said that you postponed her this morning?

Me JEAN LECOURS :

I inverted.

VALERY FABRIKANT :

But you didn't postpone until tomorrow?

Me JEAN LECOURS :

I inverted the witnesses, I did not postpone.

VALERY FABRIKANT :

Well, Mr. Belleau has advised me that this had been postponed until tomorrow.

Me BELLEAU :

Well, this is what I understood, I'm sorry, I misled Mr. Fabrikant. The problem is that we have subpoenaed the hospital with Miss Horwood's medical file for the purposes of Mr. Fabrikant's cross-examination and that will be available tomorrow morning. I've had a call from the Archives Department during lunch time and they will be here tomorrow morning. So if it's possible to postpone the cross-examination of the witness until tomorrow morning, or...

THE COURT :

Well, that depends how long the examination-in-chief lasts.

Me BELLEAU :

Absolutely. Maybe the question won't even arise, so...

THE COURT :

Maybe not. Go ahead.

Me JEAN LECOURS :

We will cross the bridge...

THE COURT :

We will cross the bridge when we come to it. Yes.

Me JEAN LECOURS :

Mrs. Horwood please.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twelveth (12th) day of the month of May, personally came and appeared:

ELIZABETH HORWOOD, born on April fifteenth (15th), nineteen hundred and twenty-six (1926), Secretary, confidential address;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY Me JEAN LECOURS

ATTORNEY FOR THE CROWN :

Q. Mrs. Horwood...

THE COURT :

Q. Excuse me. Mrs. Horwood, would it be possible for you to speak a little more loudly please?

A. Yes.

Q. Okay.

Me JEAN LECOURS :

Q. Mrs. Horwood, you said you're a secretary, what are your exact functions?

A. I was secretary to the chairman of the Department of Mechanical Engineering, Concordia University.

Q. What is his name?

A. Dr. Sam Osmond.

Q. Are you working right now?
A. No.
Q. Okay. On August the twenty-fourth (24th) were you performing your duties?
A. Yes, I was performing my duties on August twenty-fourth (24th).
Q. Okay. At that time, and even now, did you get to know an individual named Valery Fabrikant?
A. Yes, I know Dr. Valery Fabrikant.
Q. Could you recognize that person in the courtroom?
A. Yes, that's Dr. Valery Fabrikant.
Me JEAN LECOURS :
Indicating the accused.
VALERY FABRIKANT :
I don't think recording will pick up anything of those.
THE COURT :
Would you check and see whether we are recording this at all, because if not we will have to suspend and get one of these neck microphones.
Me JEAN LECOURS :
No, I think it's working.
Q. Did you encounter that person often? Or on what basis did you encounter this person?
A. Well as a secretary, as a messenger between the chairman of the department and Dr. Fabrikant.
Q. Okay. But usually what type of relationship occurs between the chairman and one of the professors?
A. Well, I acted as liaison between the chairman and all the faculty members in Mechanical Engineering.
Q. Okay.
A. Conveying messages, receiving messages, that sort of thing.
Q. On August the twenty-fourth (24th), nineteen ninety-two (1992), at the beginning of the afternoon, could you, in your own words, explain the incident that occurred?
A. I was standing with two secretaries in the Department of Mechanical Engineering, Robert Morris and Susan Altimas, we were in the general secretarial area.
Q. Okay. You have in front of you the Exhibit P-7, could you have a look and tell the members of the jury whether you recognize this area?
A. Yes, I recognize it.
Q. Okay. Could you indicate your own office on that?
A. 929-8.
Q. Okay. And you just said that you were in 929...
A. 929-1.
Q. Okay. And you were looking...
A. We were behind, just standing behind the counter together looking at photographs.
Q. Photographs of what?
A. Of my grandson, it was taken on holiday.
Q. Okay.
A. And Dr. Fabrikant walked by, followed by Dr. Michael Hogben, who's not a member of our department but I knew him by sight, and I knew that he was president of the professors' union.
Q. Okay.
A. And as he turned the corner...
Q. Who was walking first?
A. Dr. Fabrikant.
Q. Okay.
A. And as Dr. Hogben turned the corner to follow Mr. Fabrikant he gave us a big smile, we all saw him full face.

Q. To you or to whom?
A. To the three of us, yes.
Q. Okay. Mr. Hogben?
A. Yes.
Q. What about Mr. Fabrikant?
A. No, he didn't look at us.
Q. And then?
A. And then I went back to my office, 929-8, and I don't know how much longer, perhaps ten to fifteen (15) minutes, Susan Altimas, one of the secretaries that I had been with in the general area, came to my door and said: "Did you hear those sounds? It's Fabrikant, he has a gun". And I went out to her in the corridor, and before she had time to tell me anything, Dr. Fabrikant appeared at the end of the corridor...
Q. Okay. Which is the number of this corridor?
A. 929-90.
Q. Okay.
A. And he appeared, and immediately started shooting at me. I screamed and backed into a wall behind me and turned into my office, to re-enter my office. And my memory said three shots, and one of the shots entered in the back of my right thigh. And I proceeded into, through my office into Dr. Osman's office and closed the door and called our security, 3717. And then I called 911, and I was with them for quite a while, I don't know how long. And then the door opened, a security officer had opened the door with his master key...
Q. Did you know this officer by name at that time?
A. No, I had never seen him before, but he had a uniform, Concordia security guard. And following him was Susan Altimas and Dr. George Abdou, who's a professor, and Susan came up to me to speak to me, and the security officer took the phone from me to continue the conversation with 911. And Susan wanted me to sit down but I didn't want to, and when I looked up there was Dr. Fabrikant again entering the room with a gun.
Q. Okay. You said you were in Mr. Osman's office, which is the...
A. 929-9.
Q. Okay. On the outline we can see two doors, from which door did Mr. Fabrikant enter?
A. From R-11.
Q. Okay.
A. And I was standing near R-12, behind Dr. Osman's desk, which was where the phone was.
Q. Now we're at the moment you see him again.
A. Yes. I don't know if he moved from there but I screamed and Susan said: "Here Elizabeth" and opened the door, and slipped through, and then in order to reach the door I had to go towards it and then turn my back to get through the opening, and I felt... well there was a shot or two, I felt a heat on my bare arm, and I thought I had been hit again, but when they checked in emergency I hadn't, so it might just have been the heat of the bullet going by. And I closed the door behind me evidently, which would have been a habit from accessing that corridor to reach faculty members, but I didn't have my master key. And I remember saying: "Where can we go?", because I thought we've got to hide, he's out to finish me off. And all the doors were locked, of course, and we couldn't... I didn't have my master key. So Susan urged me on through the... back to the secretarial area, to 929-1, and we got out of the department. And we went right across the whole floor, there were stairs closer by but we never used those stairs because

they didn't access the cafeteria on the seventh floor, we were used to going to the other stairs, I don't think they're showed here. And we didn't see a soul, there wasn't anyone on the floor, and I was bleeding quite a bit, and we went down the stairs. And at one point I said: "I don't think I can go on" but Susan took my hand and helped me. And when we got to the bottom, to the lobby, there were police at the elevator and I said: "Room 929". And then I was put on a stretcher and taken to the Royal Victoria Hospital. A nurse and doctor from health services did get into the ambulance but it was agreed that they would wait for more serious cases, because by that time there were four ambulances or so.

Q. In which hospital did you go?

A. It was the Royal Victoria Hospital.

Q. How long did you stay there?

A. Until the following evening.

Q. Okay. When you were shot by the bullet, did the bullet remain in your body or it exited?

A. No, it exited, but of course I didn't know that at the time.

Q. Okay. But when you looked at yourself after, could you see an entry and an exit wound?

A. Urgences Sant, confirmed that there was an entry and an exit wound.

Q. Okay.

Me JEAN LECOURE :

No further questions.

THE COURT :

Before you start I think we will take a break now so that I do not have to interrupt you.

VALERY FABRIKANT :

Well, maybe we postpone until tomorrow.

THE COURT :

No, no, we can continue today.

VALERY FABRIKANT :

Because still I will need...

THE COURT :

Perhaps, but we will take a break now and we will resume.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITNESS: ELIZABETH HORWOOD -- UNDER THE SAME OATH

CROSS-EXAMINED BY VALERY FABRIKANT :

Q. How long do you know me?

A. I think since seventy-nine ('79).

Q. Since seventy-nine ('79). Do you recall any problems in seventy-nine ('79)?

A. Well, I used to... you mean problems...?

Q. Problems between me and you in nineteen seventy-nine (1979).

A. No, I don't recall any.

Q. Nineteen eighty (1980)?

A. Well, it was your manner of speaking. You always spoke with a demand in your voice and an accusation, and you never smiled, and you never... you were not friendly.

Q. So even in nineteen eighty (1980) I was demanding of you?

A. Not of me, no.

Q. Well, we are talking about relation between me and you.

A. As I say, you were never friendly, and you did not say hello when you approached my office, you didn't say good morning or hello.

Q. So it looks like you were the only person I didn't say hello, because every witnesses so far testified that I was polite.

THE COURT :

Well, that makes no difference, you asked the question to the witness and the witness gave you her answer.

VALERY FABRIKANT :

All right.

Q. So I never said hello to you, since nineteen eighty (1980)?

A. You never prefaced a question with a greeting.

Q. So I never said hello to you since my appearance in this country?

A. At work you never said, when you prefaced a question to me, you never said hello.

Q. Well...

A. You may have nodded your head in the corridor but you did not... you came to the office and you suddenly arrived, and you didn't say anything except immediately launched into your question.

Q. And that was in nineteen eighty (1980), in eighty-one ('81), eighty-two ('82), so I never just said hello to you?

A. No, never.

Q. Was there any specific reason for treating you differently from everybody else?

A. You were not a friendly person.

Q. Well, you are the only one so far who said so.

A. Well, I don't know anything about that.

THE COURT :

No, you are back on that and... you know, that will not do.

VALERY FABRIKANT :

Q. All right. So I never said hello. Besides that, what else?

A. Well, you spoke in an agreed manner, as if everything was going wrong for you, and somehow it was the fault of either me or the chairman or the university, it was a very consistent manner of speaking.

Q. Well, I couldn't have possibly done it in nineteen eighty (1980), did I?

A. You always spoke the same way, you never changed.

Q. So what did I imply may be wrong in nineteen eighty (1980)? Did I complain, anything... could you be more specific? What...

A. You were never happy, whatever you had. You started as a research associate, you became a research assistant professor, then you became a research associate professor, and then an associate professor in a tenure track, you were never happy, whatever it was.

Q. And this is why you decided to make a line between other secretaries and yourself whenever I approached, could you elaborate on that?

A. That was purely for my benefit.

Q. Yes.

A. As an employee in a work place, I had the right to take steps to deal with the stress, for me, caused by your questions, and that's what that was all about, it was for my benefit.

Q. Did it coincidence that it happened not in nineteen eighty (1980), not in nineteen eighty-one (1981), or it was there too. In nineteen eighty (1980) you also requested that?

A. It started at the time when you were constantly asking me questions, and asking the secretaries what meetings were going on, and you were always asking strange questions. But I admit that as soon as the DPC's report had been completed, you turned your attention to the dean's office. So it was for that period.

Q. Well, you didn't answer my question. In nineteen eighty (1980), I'm still in nineteen eighty (1980)...

A. Well, I'm not in nineteen eighty (1980).

Q. ...what DPC... don't you feel you... What was in nineteen eighty (1980) that I might ask you about?

A. Dr. Fabrikant, in nineteen eighty (1980) you were not that visible to people, maybe to a few. A lot of people did not know you then, but I was the chairman's secretary then...

Q. Were you?

A. Yes, I was.

Q. Maybe there was another lady chairman secretary at that time?

A. In nineteen eighty (1980)?

Q. Yes.

A. Well, I was the department secretary.

Q. So you were not even chairman's secretary at that time, right?

A. Yes, but I had more to do with you when I was the department secretary.

Q. What did you do with me? Could you just specify...

A. You submitted your work to be done in your unfriendly manner, and in your unprofessional manner.

Q. I submitted my work to be done, what work? What is it you're talking about?

A. Your papers, but we couldn't do them because your equations were so complicated, you eventually ended up doing them yourself.

Q. Did you type my papers?

A. No.

Q. No.

A. I can't read your equations, or your handwriting.

Q. So why is it that I had problems with you if you didn't type my papers, if you didn't do any business with me? Are you fantasizing?

A. You're saying you had trouble with me, that's what you just said.

Q. I never had any trouble with you, you seemed to have trouble with me. I never said I had any trouble with you, did I?

A. I have said that consistently you asked questions in an unfriendly and unprofessional manner.

Q. Well, in nineteen eighty (1980) what kind of questions I could possibly ask you?

A. I cannot remember back to nineteen eighty (1980) with specifics.

Q. So maybe you're just wrong. Could that be?

A. Could you repeat the question please?

Q. If you cannot remember me having any business with you in nineteen eighty (1980), and still you insist that I was unfriendly to you then, maybe your recollection is just wrong?

A. Dr. Fabrikant, you're one of twenty-four (24) faculty members in the department.

Q. Yes, and?

A. So you're not the only one in the department that I was dealing with.

Q. Yes, and?

A. That I worked for. So, how could I possibly remember specifically, all I know is that you had established a reputation for strange un-nerving questions and a hostile approach to people.

Q. Well, in nineteen eighty (1980) what on earth could I be hostile to you if you didn't...

A. You were not happy, even in nineteen eighty-three (1983), eighty-four ('84), eighty-five ('85), you were never happy.

You used to make demands with the previous chairman and I would hear you, and he would have to shout at you to make you shut up. So you never changed, you were like that then.

Q. Well, could you just give facts?

A. That is a fact, that the door to the office was opened, I would hear him... I would hear you demanding, making demands, demands, demands, and he shouting.

Q. How do you know that I made demands if you didn't hear what it was about?

A. The tone of your voice was always a demand.

Q. All right. Did you experience any nervous breakdown because I was mistreating you for all those years?

A. Certainly not.

Q. Certainly not.

A. But I certainly experienced stress in nineteen ninety-one (1991).

Q. Well, how come I mistreated only you? No other secretary has ever complained to anything.

THE COURT :

That question is argument, the witness cannot answer that sort of question.

VALERY FABRIKANT :

Q. Well, do you have...

THE COURT :

And furthermore, that kind of question presupposes that you have already established the veracity of it, which is not so.

VALERY FABRIKANT :

Well, at least one secretary has already testified. All right.

Q. Let's go to the date of when you decided to make this line between you and other secretaries, what made you make such a decision?

A. It wasn't a line.

Q. So what was it? How...

A. It was just, they would phone me if you were coming down my corridor, it's much less stressful for me to hear your questions among secretaries who cared for me than to hear them when I was alone in my office.

Q. Uh, huh. Now, let us take the map and let us see. So I'm going out of my office, while I'm still here nobody knows where I am going. Someone might know where I'm going only when I'm turning right. Do you see it the corridor 929-14?

A. No, I don't see 929-13. 13?

Q. 14.

A. 14, yes, I see that.

Q. Yes. So before I am at this place, nobody could possibly know where I am going, correct?

A. Dr. Fabrikant, secretaries can see you coming around the kitchen, 929-2, and going down the corridor 929-90 to my office.

Q. Well, exactly. Now, the distance here is maybe five meters, correct?

A. I don't know meters or distances.

Q. Well, would it be correct to say that the distance is not more than the width of the jury?

A. Possibly.

Q. Now, while person is walking from one end to another end, try to dial number, the other... try to make connection, on the other hand you have to respond and the secretary has to tell you: "Fabrikant is coming". By the time, just dialing is done, the distance is already travelled, so this system could

not possibly work, correct?

A. Yes, it worked very well.

Q. Well, then it means that you must have had an instant button, did you?

A. No, they phoned me as soon as you walked down my corridor, and you walk very slowly, that is your characteristic walk.

Q. No matter how slowly you walk, you cannot make the phone call and answer and jump out of your office and meet me somewhere in the halfway where the secretaries are, so you... let's suppose...

THE COURT :

Just a second. Just a second. Now that, it is not fair to put it that way because first of all you are arguing, and then you are testifying, do not argue with the witness.

VALERY FABRIKANT :

Don't you worry, I will rephrase my question.

THE COURT :

Well, I have to worry, you see, I am paid to worry about things like that.

VALERY FABRIKANT :

Yes. Okay. I will rephrase my question.

Q. Now, how is it possible... so idea was that you received the call, and you go this way, all the way to where the secretaries are so that they would hear what I'm asking you?

A. Dr. Fabrikant, I am under oath, and I'm telling you that the secretaries called me, I would leave my office and you would perhaps be halfway down the hall, and I would go with you to the secretarial area and say: "Can I help you?", and then you would ask me the question, they could hear.

Q. The fact that you are under oath doesn't prove anything to anyone because...

THE COURT :

Now you are arguing again.

VALERY FABRIKANT :

Yes.

Q. So you find it possible, from the moment I'm here, someone dials, you manage to receive the call, and I'm working here, and you are answering, they're telling you: "Fabrikant is coming", and I'm already here by that time?

A. It's very possible and it worked, it was very reassuring for me.

Q. All right. Now, at twelve forty-five (12:45) you claim you saw Dr. McKay with me going into my office?

A. No, at two forty-five (2:45), or two thirty (2:30), he left your office followed by you.

Q. Oh, he left my office.

A. He passed the counter where I was standing with Robert and Susan.

Q. Uh, huh. All right. What happened after that?

A. Immediately afterwards, immediately.

Q. You saw me with Dr. Hogben?

A. Yes.

Q. Immediately?

A. Immediately.

Q. Maybe some time passed after this?

A. No, immediately.

Q. Immediately. Now... And of course Dr. Hogben was walking with a letter in his hand?

A. I didn't notice the letter, I just noticed his smile.

Q. Did he have any briefcase with him?

A. It would have been below the level of the counter, I would not

have seen that.

Q. Okay. Now after that, how much time passed since the moment...

A. It's impossible for me to judge because afterwards I was in shock, I can't relate.

THE COURT :

Well, I think you better wait for the question, he hadn't finished the question, he said: "From the moment..."

A. Oh.

VALERY FABRIKANT :

Q. Well, when you've written this statement, you indicated time quite well.

A. Well, we're allowed to be accurate.

Q. So at that time you were not in shock?

A. No, it was two days after the event that I wrote that.

Q. Well, now it's even longer than that.

A. I don't follow your logic.

Q. Well, if you were not in shock then, and you could recall the times...

A. No, you cannot... would you like me to describe the experience of being shot at, and what it does to you?

Q. Well, I will give you this opportunity too, but before that give me at least indication, do you confirm what is written in this statement?

A. Yes, I confirm it is approximately as possible, from my memory, two days after the event.

Q. Two days after the event. All right. Now, you said that you were sitting in your office and Susan Altimas came to you and said that Fabrikant had a gun, correct?

A. Yes.

Q. You stood up and started walking along the corridor?

A. No, I stood up and went to her in the corridor, outside my office door.

Q. Okay. So you were standing here, correct?

A. I can't tell you that.

Q. Well, you were standing near the entrance to 929-8, correct?

A. No, I don't believe so, but I don't know, I have a very clear picture of you facing me with a gun but I have no picture of myself, I didn't see myself, so I do not know where I was. All I know is that Susan had no time to tell me who had been shot, as soon as I went in the corridor you appeared at the end of the corridor and started shooting.

Q. Well... so you were standing here, at 9...

A. Dr. Fabrikant, everything happened simultaneously, you're shooting, while you're shooting I scream, I press my back into the wall, and I turn and re-enter my office.

Q. Well, here...

A. Probably a few seconds.

Q. ...here it's written black and white that:

"I went to the corridor and I, as I levelled with the room 929-6..."

You see, the remarkable details which you gave just two days...

A. Well 929-6 covers a whole wall of Dr. Bogat's office, you can see it here. So I could have been right outside my door, against that wall, or at the beginning of 929-6, or further up, I have no idea. There was no mirror on the opposite wall, I could not see myself.

Q. No, here it's written very clearly in detail, without any panic which you are presenting now. Here it's written that:

"I walked with Susan in the corridor, since I was

level with the room 929-6 I saw Fabrikant rounding the corridor, holding a black gun, which he immediately fired at me."

Now if this statement is correct, because this was done just two days after event...

A. Well, even after two days one is in shock.

Q. Well, this is...

A. I have had the experience, so I know.

Q. This is pretty detailed description. If we follow this description, then you must have been somewhere here, correct?

A. I don't know where I was, Dr. Fabrikant, as I said I had...

Q. Well, in the preliminary inquiry you did know.

A. No, I didn't.

Q. Well, let's see what was in the preliminary inquiry.

THE COURT :

No, listen, I am sorry, do not argue, just... Now, if you want to use the preliminary inquiry, there is a way to use the preliminary inquiry, I am sure Mr. Belleau has told you how.

VALERY FABRIKANT :

No, he didn't.

THE COURT :

Well, have you got the preliminary inquiry there?

VALERY FABRIKANT :

Yes. Because here it's also pretty detailed description as to what happened and how it happened, and right now the witness shows total amnesia.

THE COURT :

That is what you're saying. Now, if you want to face the witness with something that she said at the preliminary inquiry, first of all you have to convince me that her testimony today is different from what she said at preliminary inquiry.

VALERY FABRIKANT :

All right.

THE COURT :

So let us start with that.

VALERY FABRIKANT :

Yes.

THE COURT :

Have you got...

Me JEAN LECOURS :

I gave him my copy, My Lord.

THE COURT :

He has your copy?

Me JEAN LECOURS :

Yes.

THE COURT :

Why is there no original copy in the Court record?

Me JEAN LECOURS :

There should be, because it's a big...

VALERY FABRIKANT :

And she confirmed it not only in her...

THE COURT :

Well, do not... just find the bit for the minute. You say the witness said something different in the preliminary inquiry. I mean, at the end of the day, is it going to make that much difference?

VALERY FABRIKANT :

Well, it does make the difference in terms of what really happened, because I must say, maybe I...

THE COURT :

Okay. Okay.

VALERY FABRIKANT :

...maybe I need to explain, because my recollection of events is totally different. My recollection is I've never been to this corridor, this is why I'm asking.

THE COURT :

Okay. Fine.

VALERY FABRIKANT :

My recollection is that the events happened in totally different manner.

THE COURT :

Okay.

VALERY FABRIKANT :

This is why I'm going into details, as painful as it might be, but it is important to establish what really happened. My recollection is totally different, this is why I'm going in details. So first of all what should be believed most of all is the most recent statement right after event, two days after event she stated clearly that she was walking along the corridor with Susan, and...

THE COURT :

Well, there is a way of being fair with the witness, and the way of being fair with the witness is, first of all you have put the question, now let the witness see her statement at this point, after you have put your question and you...

VALERY FABRIKANT :

(Inaudible) forward it to her?

THE COURT :

I think you should and let her see whether that statement refreshes her memory.

VALERY FABRIKANT :

All right.

THE COURT :

Human memory is not a computer.

VALERY FABRIKANT :

Sure. Why not.

THE COURT :

Take your time and refresh your memory with the statement and then put the statement down, after you have done that.

Now, Mr. Fabrikant, let us not try and juggle two things at the one time, if you are working with the statement, work with the statement. And then if you are going on to work with the preliminary inquiry, work with the preliminary inquiry, but you are going to cause total confusion if you work with the two at the same time.

VALERY FABRIKANT :

Well, they are not contradictory, the only contradictory is what she's saying now. Both statements are not contradictory.

THE COURT :

Q. Have you read that?

A. Yes.

Q. Okay. Now, just pass that back.

VALERY FABRIKANT :

Q. So does this statement refresh your memory?

A. Yes, but...

Q. So, you were walking, was Miss Altimas on your right-hand side or on your left-hand side?

A. She was on my right-hand side.

Q. She was on your right-hand side. So you were walking along the wall, correct?

A. Well, I don't remember about that, walking, but I remember seeing Susan walk towards you, in the direction of you while you were shooting at me.

Q. Well, so Susan Altimas was on your right-hand side and you were on the left-hand side. So, if we pinpoint approximately that you were somewhere here, when I started shooting, would that be correct estimation?

A. As I said, I cannot recall myself where I was, I can't see it but I can see you, I cannot recall myself, someone else would have to recall that.

Q. Well you did recall just two days...

A. Well, I did the best of my ability is what I put. It doesn't have to be perfect, it's the best that I could remember two days after the event.

Q. Yes, that's all right. That's all right. Now, as soon as I started shooting you pressed yourself against the wall?

A. I screamed and backed into the wall.

Q. Yes. And you moved...

A. In a semi-circle to re-enter my office.

Q. Okay. Along the wall?

A. In a semi-circle, I mean I had to go in semi-circle because my office door was on the same wall as the wall against which I pressed my back into.

Q. I don't get semi-circle stuff.

A. Well how can you move, I mean, I didn't shuffle along to the right, I moved. I was in terror and fear, and I moved.

Q. Your door opens inside, correct?

A. Yes.

Q. So you could... the simplest way to move back was just to turn around and go along the wall to your office, correct?

A. But one doesn't think like that under shock and horror. You can't know how you're going to think. There's no use trying to analyze what I did or didn't do.

Q. No. Miss Altimas was on your right, correct?

A. I went out to her in the corridor, so obviously I came from my office, so she was opposite me, and before she could say anything you appeared and started firing at me.

Q. No, here you say that she did say that Fabrikant has a gun, this again not corresponds to what is in your statement. You say that she didn't say to you anything, now on your statement it says that Susan Altimas came to your office and she said that: "Elizabeth, did you hear those sounds? Did you hear them, they were shots, Dr. Fabrikant has a gun". It's pretty long phrase.

A. Could you ask me the question please?

Q. Okay. Is there a contradiction in statement which you made just two days ago, you stated that Miss Altimas came to you and told you what is written, she told you. Now you're saying that she didn't have even chance to...

A. Could you ask me the question?

Q. Yes, I'm asking you to clarify this contradiction.

A. All right, I will clarify it. I did say what Susan said to me, but you just told me that... I was just telling you that when I went out in the corridor, she didn't have time to say anything more, she said those words to me that you just quoted before I left my office, that's what took me out into the corridor, towards her.

Q. All right. So this was said?

A. That was said then.

Q. Yes. Okay.

A. Once I was with her in the corridor, there was no time for her

to say, otherwise she would have said who had been shot, she would have said something, but she didn't have time...

Q. Okay.

A. ...because suddenly you were there firing.

Q. All right. And I was standing where? Where was I standing?

A. Dr. Fabrikant, I have a very clear picture in my mind of you shooting at me, that is all I can say, I don't know where you were.

Q. Well here, again, it is quite clear indication where I was:

"I saw Fabrikant rounding corridor, holding black gun which he immediately fired."

So it means that...

A. Well, that's true. That happened.

Q. Yes, but it means that I was rounding the corridor, it means that according to your statement, my position was pretty clear where I was, I was rounding this corridor, so I must have been near the kitchen.

A. You rounded the corner in order to get past the kitchen, that's the way it was.

Q. Yes. So I was here?

A. So you were in front of the kitchen.

Q. Yes.

A. Presumably, but all I know is what I... I mean, I've said that, but I was in shock, and I have the clearest picture of you shooting at me but I can't give inches and meters of where you were.

Q. Well, neither in your statement, nor in preliminary inquiry, did you claim any difficulty of the kind you are claiming now.

A. Yes, I did.

Q. In preliminary inquiry it is, again, it is written clear that...

THE COURT :

Now just a second, if you are going to use the preliminary inquiry now...

VALERY FABRIKANT :

Yes.

THE COURT :

...I presume you want to establish that Mrs. Horwood recalls testifying at the preliminary inquiry and...

VALERY FABRIKANT :

All right.

THE COURT :

Okay.

VALERY FABRIKANT :

Q. Do you recall testifying at preliminary inquiry?

A. Yes, I do.

Q. Okay. Do you recall saying that Dr. Fabrikant was coming around the corner by the kitchen, which has the number 929-2?

THE COURT :

I am sorry to interrupt you again, but so that you do not cause any confusion, would you give the witness the question and answer so that the whole context of the exchange is before the witness and it is not just one phrase or one end of a question or answer.

VALERY FABRIKANT :

All right.

THE COURT :

"Do you recall the following exchange..." question, answer, question, answer, question, answer, and then you put your question.

VALERY FABRIKANT :

Okay.

Q. Question:
"Q. Okay. You are pointing in the corridor in green?
A. Yes.
Q. There is a kitchen in... inaudible something?
A. Yes, there is a kitchen there, and stood outside my office 929-8 and said: Did you hear those sounds, it's Dr. Fabrikant, he has a gun."

So it is in full consistency with...

THE COURT :

Okay. Keep reading and then put your question.

VALERY FABRIKANT :

Q. "...and I got up from my desk and went towards her in the corridor 929..."

Q. 90?

A. Yes. 90. And as I turned, Dr. Fabrikant was coming around the corner, by the kitchen, which has the number 929-2, I think, that's the kitchen.

Q. Yes, you are correct."

Well, it doesn't look like question but it's question.

"A. Yes, okay. 929-2, and he had a black gun which he started firing at me. I screamed and pressed my back against the wall and then turned, and my memory said three shots. As I turned and crossed the threshold of my office I was shot in the back of the right thigh."

Do you recall making this statement?

A. Yes.

Q. Do you still support this statement?

A. Yes.

Q. Yes. So here your behavior is very well defined, you remember everything very well, you pressed against the wall, and you turned around and then you're in your office, which is very natural. So can we consider that this fact has been established?

A. It's what I said, yes.

Q. This fact has been established. All right. Now, I don't know if I may ask such a question, if it is possible to make a drawing of leg and where the bullet entered, where it exited.

THE COURT :

Where is that going to...

VALERY FABRIKANT :

To lead us?

THE COURT :

Sure, you can ask that question.

VALERY FABRIKANT :

Q. Well, maybe you'll take a piece of paper and make a drawing.

A. Oh, I can describe it without drawing it.

Q. Well, it would be better if...

A. I'm not good at drawing. When I crossed the threshold of my office blood spurted out of the front of my thigh, and I knew I had been shot.

Q. Uh, huh.

A. Much later, well actually it was Urgences Sant,, in the ambulance...

Q. Uh, huh.

A. ...pointed out that there was an exit and an entry, he didn't say which way it went. So even then I didn't know, at that time, if I had been shot from the back or the front, because all the blood was in the front. However, it was determined

that the exit always makes more damage than the entry of a bullet.

Q. Uh, huh.

THE COURT :

The witness is not competent to make that statement.

VALERY FABRIKANT :

Anyway...

THE COURT :

But if you want that, that is okay, but...

VALERY FABRIKANT :

We'll have medical records tomorrow, I think.

Q. All right. Yes. And?

A. So then there was more damage in the front than in the back.

Q. Uh, huh.

A. That's my answer.

Q. Well, maybe you still make a drawing with some kind of...

THE COURT :

Q. If you can make a simple schematic, Mrs. Horwood, make a simple schematic.

A. I can't draw. That's here, right? Here.

THE COURT :

Now, would you just pass that to Mr. Belleau please?

VALERY FABRIKANT :

I really cannot understand anything here.

THE COURT :

Well, if you do not wish to file that, you do not wish to file that. Maybe the Crown does, I don't know.

VALERY FABRIKANT :

Well, there is no way to understand anything, it's just two parted lines...

A. Well, it's right here, and it's on the left-hand side on the right thigh. Left-hand side of the back of the right thigh. That is what that indicates, to the best of my ability.

Q. Well, maybe I explain why I'm asking all these questions...

THE COURT :

No, do not please explain to us why you are asking the question.

VALERY FABRIKANT :

Yes.

THE COURT :

Okay. Well, I think we will adjourn until tomorrow morning at nine thirty (9:30).

WITHOUT JURY

Me JEAN LECOURE :

Mr. Dion is here, do you need to talk to him, no?

THE COURT :

Mr.?

Me JEAN LECOURE :

Dion.

THE COURT :

Yes. Mr. Dion is here. Would you make sure that copy of this morning's order and that mandat is attached to whatever goes to Parthenais tonight?

Q. Mr. Dion, I issued an order this morning...

-Q. J'ai ,mis une ordonnance ce matin, monsieur Dion...

Q. ...enjoignant Mr. Fortier to, between the hours of five (5:00) and nine (9:00), I think, if my memory is correct, tonight...

-Q. ...invitant monsieur Fortier qu'entre dix-sept heures (17 h) et vingt et une heure (21 h) ce soir...

Q. ...to bring Mr. Fabrikant to your... I hesitate to call it shooting gallery, but whatever you...

-Q. ...d'emmener monsieur Fabrikant ... votre...

Q. ...your laboratory...

-Q. ...champ de tir, j'h,site ... utiliser le nom, ou laboratoire plut"t...

Q. ...when you are ready to perform the experiment that was proposed for last night.

-Q. ...lorsque vous serez pr^t ... effectuer cet essai, cette exp,rience pour laquelle vous ,tiez pr^t hier soir.

Q. I would appreciate it very much if you would re-schedule that for tonight.

-Q. J'appr,cierais ,norm,ment si vous pourriez rec,duler pour ce soir.

THE COURT :

Mr. Fabrikant, you normally get back to Parthenais when?

VALERY FABRIKANT :

Well, it depends how sadistic these people are. If they want to keep me until the last bus, then I come about eight p.m. (8:00). These people are very...

THE COURT :

Madame Desrosiers, it will take you how long to prepare the papers that have to accompany his file? A few minutes. Okay.

I wonder if you would contact...

- Si vous pouvez communiquer avec...

VALERY FABRIKANT :

Well, may I say something, if they really want to do something, they can take me right now and do this.

THE COURT :

There is something that has to be completed before you ae taken, and I do not want you taken before it is completed so that it is not there. That is...

Q. Would you liaise with Mr. H,bert at approximately six (6:00), six thirty (6:30) tonight...

-Q. Pourriez-vous rencontrer monsieur H,bert vers les six heures (6 h) ou six heures trente (6 h 30) ce soir...

Q. ...and be prepared from six o'clock (6:00) on to do your experiment...

-Q. ...et ^tre disponible ... partir de dix-huit heures (18 h) pour effectuer votre exp,rience...

Q. ...which is obviously useless to do without Mr. Fabrikant, and Mr. H,bert, would you make whatever calls you have to make to...

-Q. ...qui de toute ,vidence serait inutile d'effectuer sans la pr,sence de monsieur Fabrikant...

Q. ...to Fortier, his deputy, his adjutant or his... whoever, to make sure that Mr. Fabrikant is brought up to the lab to witness this experiment. Thanks.

THE COURT :

Okay. Hopefully we'll...

MR. DION :

A. Votre Honneur, j'ai pris des dispositions pour faire des tests exp,rimentals...

-A. Your Honour, I undertook measures to conduct experimental tests...

A. la salle de la S.Q. ... Parthenais.

-A. ...at the S.Q. room, or shooting gallery at Parthenais.

A. J'ai le concours de la S,curit, du Qu,bec...

-A. And the Quebec Security Department is participating in this endeavor...

A. ...mon patron a communiqu, avec le directeur de la prison...

-A. ...my superior contacted the director of the penitentiary...

A. ...pour que tous les gens soient disponibles pour sept heures (7 h) ... la salle de la S.Q. ... Parthenais, au rez- de-chauss,e.

-A. ...to make sure that all the available staff will be available for that time at the S.Q. gallery.

A. Si ça convient ... monsieur Fabrikant et monsieur H,bert.

-A. If it is agreeable with Mr. Fabrikant and Mr. H,bert.

LA COUR :

Ah bon, si de tels arrangements ont ,t, d,j... faits, je vous remercie et je vous f,licite.

Q. If these arrangements have been completed, I thank you very much.

-Q. Si ces dispositions ont ,t, entreprises, je vous remercie beaucoup.

THE COURT :

Would you make sure that as soon as the file is complete... Voulez-vous vous assurer qu'aussit"t que le dossier de monsieur Fabrikant est complet, que monsieur Fabrikant soit transport, dans les meilleurs d,lais ... Parthenais pour qu'il n'y ait aucun d,lai provoqu, ici. Mr. Fabrikant, do you want me to put that in English or did you get it?

VALERY FABRIKANT :

No, no, I understood it perfectly. I just want to finish also the matter with Crown which we started today concerning the documents.

THE COURT :

Well, we will do that tomorrow morning or at some point tomorrow.

TRIAL CONTINUED TO MAY 13TH, 1993

Je soussign,, Michel Daigneault, st,nographe officiel bilingue, certifie que les feuilles qui pr,cđdent sont et contiennent la transcription de bandes d'enregistrement m,canique, hors de mon contr"le; et est au meilleur de la qualit, dudit enregistrement. Le tout conform,ment ... la Loi.

Et j'ai sign,,

Michel Daigneault,
St,nographe officiel bilingue

</pre></body></html>

C A N A D A

PROVINCE DE QUEBEC

COUR SUPERIEURE
(Chambre criminelle)

DISTRICT DE MONTREAL

NO: 500-01-017372-928

DEVANT L'HONORABLE JUGE MARTIN FRASER, J.C.Q.

SA MAJESTE LA REINE,

plaignante

-C-

VALERY FABRIKANT,

accus,

PROCES

COMPARUTION:

Me Jean Lecours,
Procureur de la couronne

LE 13 MAI 1993.

Jocelyne DeMontigny,
St,nographe judiciaire.

500-01-017372-928

S O M M A I R E

	PAGE
Liste des pišces d'appui	3
ELIZABETH HORWOOD	
Cross-examined by Mr. Fabrikant	4
JEAN DION	
Cross-examined by Mr. Fabrikant	33
PETER LAWN	
Examined by the Crown	37
Cross-examined by Mr. Fabrikant	45
VAJISLAV LAKINOVIC	
Examined by the Crown	59
Cross-examined by Mr. Fabrikant	65
GEOFFREY SELIG	
Examined by the Crown	90
Cross-examined by Mr. Fabrikant	99
MARK GABRIEL	
Examined by the Crown	100
Cross-examined by Mr. Fabrikant	107
Re-examined by the Crown	121
OTTO SCHWETH	
Examined by the Crown	125
Representations	135
KIM ADAMS	
Examined by the Crown	142
Cross-examined by Mr. Fabrikant	150
Representations	167

	PAGE
D-2 - Croquis.	8
P-11 - Magasin.	36
P-17 - Arme.	36

L'AN DE GRACE MIL NEUF CENT
QUATRE-VINGT-TREIZE (1993), le treizišme
(13išme) jour du mois de mai.

PREUVE DE LA COURONNE
EN PRESENCE DU JURY

A COMPARU:

ELIZABETH HORWOOD,
Secretary,
BORN: April 15, 1926

WHO, having been solemnly
affirmed, doth, depose and say as follows:

CROSS-EXAMINED BY MR. FABRIKANT,
for the defence:

Q. Is it possible to make a picture, just two
circles, indicating cross-section of two legs
and on this picture to indicate entrance and
exit of the bullet?

THE COURT:

If you are able to do that, Mrs. Horwood, you
perhaps could; if you're not able to do that,
you're not able to do that.

THE WITNESS:

I'm not able to do that. No, your Honour, I am
not.

THE COURT:

You might -- you might by your questions,
illicit the same information as far as this
consists from the knee, for example, or
whatever.

MR. FABRIKANT:

Q. Is it proper that you just show on yourself

where the bullet entered and where it exited?

THE CROWN:

I don't think so.

THE COURT:

I don't think so. I think you have to take a description. Mr. Fabrikant, I said, using the knee as an indicator distance from the knee or whatever.

MR. FABRIKANT:

Q. There is a picture here which --

THE COURT:

Do you mean a diagram or --

MR. FABRIKANT:

Yes; which indicates here that this is right, I believe, and it is entrance written here, but it looks like since this is right, then entrance is in the front and the witness testified that she was hit with that.

THE COURT:

Now, what you have in front of you, I think, by way of explanation is Mrs. Horwood's hospital record.

MR. FABRIKANT:

Yes.

THE COURT:

That's right, and she didn't write that. So, you know, you may take cognicence of that in order to design the questions you wish to ask to her and that's what you're doing, but she didn't write that, she will have to give her answers as best as she understands it.

MR. FABRIKANT:

Right. Maybe witness could take cognicence of the drawing which I've made and just, maybe, confirm that this is approximately what happened in terms of entrance of the bullet and exit of the bullet.

THE COURT:

Well, if the witness understands your drawing, you may have to explain your drawing in some detail; I don't know. Mrs. Horwood, do you understand what --

MR. FABRIKANT:

Now, two circles, it's just like a cross-section of one leg and the other leg. This is the right leg, this is the left leg.

THE COURT:

Have you marked which is the right and the left?

MR. FABRIKANT:

Q. Yes, I have written and here is the front. Now, the bullet allegedly entered in the back of the thigh approximately where I indicated the position. If this is not the right position made, make a correction and exit again, if it's not the right position, you also can make a correction.

A. Well, it's not at an angle -- if this is the right leg looking from the back --

Q. Yes.

A. -- it's not at an angle like that. It's straight from here to there.

Q. Okay, that's all I wanted, yes. So, could you make your own marking on this?

THE COURT:
Now, what you asked the witness to do was indicate as best she could the path of the projectory followed by the bullet through the thigh.

MR. FABRIKANT:
Yes.

THE COURT:
Do you wish to produce that?

MR. FABRIKANT:
I think so. Well, it can be produced.

THE COURT:
D.

THE CROWN:
Maybe the witness should identify her line as opposed to that of the --

THE COURT:
Yes. Would you initial the line put by you. I'll circulate the sketch.
-- EXHIBIT NO. D-2:- Croquis.

THE WITNESS:
I just put my initials.

THE COURT:
Put your initials by the line that you identified and then, if you -- ma@tre Lecours, did you see this?

THE CROWN:
I had a look, my Lord.

THE COURT:
Now, you would agree with me that there is on the sketch which was prepared by you, Mr. Fabrikant, a broken line that indicates entrance and exit and the witness' reply was, it wasn't like that, I'll mark the line where it was and she marked it and put E.H. beside it.

MR. FABRIKANT:
Now, was entrance in --

THE COURT:
Just a second, we'll let the jurors look at the sketch first.

MR. FABRIKANT:

Q. Exit and entrance, are they at the same height or one of them is higher than the other?

A. No; it's the same.

Q. It's the same. So, it's approximately parallel trajectory. Now, I want to refer once again to the preliminary inquiry and I understand that I can just read from and ask the witness to confirm if she still maintains what she testified.

THE COURT:
If you believe that the witness has said something different, then you tell me what day, what day, what page and what line and then --

MR. FABRIKANT:

Well, not really different, except that yesterday she just said that she couldn't recall anything.

THE COURT:

Fine, if that's so, what I should do is give the jury a short direction on how to apply this and then, we'll go to your references to the preliminary inquiry.

(inaudible), ladies and gentlemen, what I've said to you that this case stands to be decided upon the evidence that's heard within these four walls. That rule never varies.

What Mr. Fabrikant is allowed to do is if the witness says something that he believes is at variance with what she has already said at the preliminary inquiry, he is allowed to use what was said at the preliminary inquiry effectively to refresh your memory and see whether she agrees with it or not.

It's for you to decide, first of all, whether there is indeed a contradiction and it's for you to assess whether that contradiction is serious or whether that contradiction is not serious and you'll assess that in the fullness of time in your deliberations. But, what you must always remember is that what you must take as evidence is what the witness says before you today. You must be careful and you must be vigilant not to substitute what the witness might have said in a statement to the police or what the witness might have said at the preliminary inquiry in the event that you find that there is a variance.

All that variance, all the statement made to the police or all the statement made at the preliminary inquiry serves for is a yard stick by which you may measure the witness' credibility, but what counts for you is what the witness says here in Court and to you.

MR. FABRIKANT:

Well, maybe we could (inaudible) out, maybe her memory today is better, so --

THE COURT:

Perhaps, I don't know. Ask your question.

MR. FABRIKANT:

Q. Let us try it out and if her memory doesn't serve, then we'll go to preliminary inquiry. So, the situation was like this; Mrs. A... came to your office, she said, Elizabeth, have you heard those sounds? Did you hear them? They were shots, doctor Fabrikant has a gun. At these words, you stood up and exited from your office together with Mrs. A...

A. Not together.

Q. Well, she was out, so --

A. Yes, I went to meet her.

Q. Yes. And as you turned from your office to the left, you saw me coming from the other side of the corridor and I started shooting at you; correct?

A. Maybe a little more precise; before Suzan said anything else to me, ... had been shot. We started up the corridor and there you were coming at the other end of the corridor with a gun and started firing.

Q. And you were walking on your side of the corridor and Mrs. A... was on the right side of you?

A. That's right.

Q. Correct. Now, when the shots were fired, you tried to -- how to say it --

A. I backed up into the wall.

Q. -- backed into the wall and moved towards your office and entered the office. On the treshold and when you were passing the treshold of your office you were hit by a bullet?

A. Well, I don't really know when the bullet hit me. I only know the blood spurted out as I crossed the treshold and that was the mment when I was aware that I had been shot.

Q. Yes, but you were moving along the wall to your office?

A. Yes.

Q. All right.

A. Turning to go into my office.

Q. On preliminary inquiry, twice you've said --

THE COURT:
Just a second; if you're going to refer to the preliminary inquiry, we will take it that Mrs. Horwood recalls testifying. You tell me the day and the page and let me have that, first of all, so that I can have it in front of me.

MR. FABRIKANT:
October 16th, she said it twice.

THE COURT:
Just a second; October 16th, look at the page.

MR. FABRIKANT:
One is page 75 and the other is page 48.

THE COURT:
Just a second.

MR. FABRIKANT:
Forty-eight, forty-nine.

LA COUR:
Le 16 octobre vous n'avez pas.

THE CROWN:
I have that, my Lord.

THE COURT:
You have it. You might send Mr. S... down again to see whether or not there is more down there.

THE CROWN:
Mr. Fabrikant has them, so --

THE COURT:
Would you read the questions and answers for the minutes.

MR. FABRIKANT:
I will start with the same point.

THE COURT:
The same manner as you proceeded yesterday, Question, answer, question, answer, so that the witness has the question and her answer in

context.

MR. FABRIKANT:

Question, I read before that so it would not be out of context.

THE CROWN:

Which page?

MR. FABRIKANT:

Page 48, first, at the middle:

"Q. There is a kitchen in (inaudible)?

A. Yes, there is a kitchen there and I stood outside my office 929-8 and said, did you hear those sounds, it's doctor Fabrikant, he has a gun and I got up from my desk and when towards her in the corridor of 929-29.

Q. Ninety?

A. Ninety, yes, 90 and I turned -- and as I turned doctor Fabrikant was coming around the corner by the kitchen which has the number 929-2, I think. This is the kitchen.

Q. Yes. You are correct.

A. Yes. Okay, 929-2 and he had a black gun which he started firing at me. I screamed and pressed my back against the wall and then, turned and my memory said three shots. As I turned and crossed the threshold of my office, I was shot in the back of the right thigh. And I continued through the open door into doctor Osmond's office."

So, here it's clear indication as to the moment when she felt being hit, when she crossed --

THE COURT:

All right, you've read what you wished to read, now put your question.

MR. FABRIKANT:

Q. Do you recall testifying like this? Do you still confirm that?

A. Yes.

Q. Now, at page 75, this is examination by judge Cadieux, similar questions you were asked question, in the middle:

"Q. Yes, and Mr. Fabrikant would be aware where the wall is?

A. Yes, that's when he

started coming around.

Q. Well, we estimate about ten feet approximately and you say that you recall or memory tells you three shots?

A. Three shots.

Q. Were you hit once?

A. Once as I came.

Q. In the thigh?

A. As I turned.

Q. Okay. Do you -- when you were shot, do you recall where was your position then?"

Very specific question:

"Q. Where was your position then?

A. Yes, I was stepping across the threshold of my office which the door is parallel, the entrance, the treshold is further to that corridor 929-90 and I just stepped across and as I stepped, I felt --

Q. So, I understand --

A. The hit --"

It's just interruption so, it could effectively be read like this:

"A. And I just stepped across and as I stepped, I felt the hit."

Because it was just interruption by the judge. So, again, it's very specific. Do you confirm that?

A. Yes.

Q. So, you now recall that you felt being hit when you crossed the treshold of your office?

A. As I realized I had been hit when I crossed the treshold because the blood -- I remember stopping for a minute and say "I've been hit", but I don't know when I was hit exactly. I assumed it as I turned and crossed the door.

Q. This is definitely at variance what was said here.

THE COURT:

Pardon?

MR. FABRIKANT:

This is definitely at variance as to --

THE COURT:

Yes. Well, the jury will appreciate, first of all, whether it's a variance and the seriousness of it.

MR. FABRIKANT:

Yes, all right. Now, I would like the jury to be given and the witness to be given the booklet of Mr. Desjardins.

THE COURT:

The jury has it; P-8.

MR. FABRIKANT:

Yes. And I would like the witness to open at number 32.

THE CROWN:

The numbers are written in the back.

THE COURT:

P-8, the photographs of Mr. Desjardins.

MR. FABRIKANT:

Q. So, would you, please, confirm that your office is at the end of this corridor to the right?

A. You can't see the door.

Q. Yes, you can't see the door, yes, but it is at the end --

A. Yes, at the end, yes.

Q. -- of the corridor to the right and at the time of shooting I was approximately where the beginning of the picture is; right?

A. Well, I can't be specific about that.

Q. Yesterday you said that you remember very well me; you don't remember --

A. I certainly remember --

Q. -- your position, but my position was clear to you?

A. I didn't say I remembered your position. I said I remembered you and how you looked and that you were firing a gun at me.

Q. How did you know that I was firing at you and not at Mrs. A... for example?

A. Well, it was rather obvious you were looking at me and firing and then, I got hit. Suzan wasn't at. She walked up the corridor in your direction while I was screaming.

Q. Okay. Now, let us see then picture 35. This is where the first bullet went according to police report. Now, this bullet cannot possibly hit you; can it?

A. I can't answer that.

THE CROWN:

The accused is arguing, my Lord.

THE COURT:

Yes, he is. I don't think -- I think that's a question for argument as to what bullet it was, whether it was the first, second, third or whatever.

MR. FABRIKANT:

Well, I think that it is important for the witness to see the trajectory of the bullets because I wish to offer to the witness after that, my version of events and maybe she will recall that events were not at all the way she tells the jury.

THE COURT:

Yes, but for the minute you're either arguing or testifying when you say that that was the first bullet.

MR. FABRIKANT:

All right, okay.

THE COURT:

Because nobody knows that.

MR. FABRIKANT:

Q. Let's make it different then. Would you, please, take cognicance of picture 35 and see the bullet entrance at the door. You took it.

A. Yes.

Q. Right. Would you, please, look at picture 41.

A. Yes, I have it.

Q. Do you see mark above the door knob on the door?

A. I see, yes, I see.

Q. Well, if it is difficult, then you can turn to picture 42 and it is enlarged.

A. Yes, I see it.

Q. This is second bullet. Now, return back to picture 41.

THE COURT:

Excuse me, I'm sorry, please ignore the series of numbers that Mr. Fabrikant has given you. I don't know if he is putting a question or if he is making a statement, but --

MR. FABRIKANT:

I will put a question. I just want her to take cognicance and I want the jury to take cognicance of those pictures. There is nothing wrong in that; is it?

THE COURT:

No; all what's wrong with your statement, "this is second bullet".

MR. FABRIKANT:

It is; isn't it?

THE COURT:

I don't know.

MR. FABRIKANT:

Well, it was testified there. Mr. Desjardins testified.

THE COURT:

As I understood it, Mr. Desjardins was not there when the bullets were fired, so what was the first, second or third is another question.

MR. FABRIKANT:

Well, okay, one of the bullets.

THE COURT:

Fine, okay.

MR. FABRIKANT:

Then, it's all right?

THE COURT:

Yes, it's okay.

MR. FABRIKANT:

Q. And just go back to picture 41, below the (inaudible), there is another mark.

A. Below the?

Q. Below the Lean?

A. Oh, doctor Lean's name, yes, all right.

Q. Do you see the mark on the door?

A. On the left or down below?

Q. Well, below to the right, below into the right?

A. I see it, I see it.

Q. And if you want it enlarged, go to picture 43.

A. Yes, I see it.

Q. Okay. This is yet another one of the bullets.

Now, if you go back to picture 32 and taking into consideration that your thigh is not more than one meter above the ground, would it be correct estimation?

A. I'm still in feet; what is a meter?

Q. Okay; three feet and one third.

A. I'm five foot one in height.

Q. Well, so, three feet something. Let me make it different. Would the door knob be around your waist?

A. Probably, yes.

Q. Yes. So, then, maybe -- so, my question is, it doesn't look like any of those bullets could hit you, so maybe your memory serves you bad and you were not hit in that corridor after all; could that be?

A. No, it couldn't be because I went directly into doctor Osmond's office and there was blood all over plastic under his chair, so obviously I was bleeding from a wound that I received in that corridor.

Q. Right. But, if you were hit near the wall, there should be a bullet somewhere near the wall?

THE COURT:

Now, you're arguing with the witness.

MR. FABRIKANT:

Right. I have to make it different. Would it be correct to say that trajectory of the bullets, the way they are were rather directed at Mrs. Altimas rather than you?

THE COURT:

That calls for a conclusion on the part of the witness and the witness has already answered that question in any event in the sense where she said that you were looking at her and her interpretation was that you were firing at her and she got hit.

MR. FABRIKANT:

Well -- but, none of the bullets is there.

THE COURT:

That's fine. Now, you will --

MR. FABRIKANT:

There are no bullets which could possibly hit her.

THE COURT:

You may -- you may make that argument at a later stage and I suppose if you make that argument you would say that in your submission the witness is in error. The witness has said, no, I can't be in error because I said what -- I told you what I saw and I went into Osmond's office and I was bleeding. Anyway, there you are and the jury will appreciate all of that at the end, including the argument and come to whatever conclusion they come to.

MR. FABRIKANT:

All right. Then, okay. So, I cannot ask a question that none of those bullets could possibly hit her?

THE COURT:

No, because then, you're asking her to do the jury's job and the jury is going to do that job.

MR. FABRIKANT:

All right, because effectively that's what the whole thing I was aiming at that her story totally doesn't match the pattern of bullets here, so either I was never there and somebody else fired it or she was hit at another place at another time.

THE COURT:

Now is not the time to argue the case.

MR. FABRIKANT:

All right, yes, okay.

Q. Could it be that your memory just serves you bad and you were hit effectively at another place, at a different circumstance and not in that corridor in the first place?

A. There is a tape of me on 9-1-1 in doctor Osmond's office speaking to Urgence Sant,. I never left there until you came back a second time.

Q. You didn't get my question. I have no doubt that you spoke to Urgence Sant,, we have even a record of that. My question is: could it be that your memory serves you so bad that, in fact, you were -- there is no doubt you were shot at and there is no doubt you were wounded, nobody doubts that. Question is: could it be that it happened at a different place, at different circumstances and not in that corridor in the first place?

A. I wasn't in a different place at that time; I was there.

Q. Could it be -- just try to recall -- that I was -- I don't know what it is better to show. Could it be -- you have the map in front of you -- could it be that Mrs. Altimas told you what she told you not in your office, but rather at this secretary's area?

A. She didn't tell me in office. She stood outside my office.

Q. Yes, I understand, but you were in your office at that time?

A. Yes, I was in my office.

Q. Could it be that both of you were not one in the corridor and you in your office, but rather both of you were in the area 929-1?

A. No. It's what I've said, how can my memory, why do you think my memory would be so bad.

THE COURT:

No; just answer the question, Mrs. Horwood, please.

THE WITNESS:

Yes, your Honour.

MR. FABRIKANT:

Q. Well, why? Because none of those bullets there could have hit you, this is why.

THE COURT:

Now, you're arguing, Mr. Fabrikant. Now, you

are arguing. The witness is here to answer.

MR. FABRIKANT:

She has to answer.

THE COURT:

I know, but you can't do it that way. You can put that argument later.

MR. FABRIKANT:

Q. So, could that be the case that you and Mrs. Altimas were at the area 929-1 discussing this?

A. No.

Q. No. And could it be that because you have heard shots in doctor Saber's office, that is what made you to decide that it was I with a gun?

A. I didn't hear shots in doctor Saber's office.

Q. And you didn't hear the first shots in my office either?

A. No, I didn't hear any shots.

Q. Could we interrupt this testimony until Mrs. Altimas is heard?

THE COURT:

No, because if we keep interrupting testimony, we lose all sense of -- I've interrupted one testimony only --

MR. FABRIKANT:

I understand, but you realize all the outrageness of the situation that none of the bullets -- it's so obvious that none of the bullets in the picture could --

THE COURT:

Just a second.

MR. FABRIKANT:

-- could have possibly hit her.

THE COURT:

That's going to be your argument. Now --

MR. FABRIKANT:

I understand that, but it is so obvious.

THE COURT:

No, but it's not -- it's not the way we do it.

MR. FABRIKANT:

Now, I'm just justifying why.

THE COURT:

The Crown calls their witnesses and you cross-examine their witnesses and give everybody the credit for the intelligence to follow through and to put everything together at the end and consider what your argument is. So, no, you go on with this witness.

MR. FABRIKANT:

All right.

Q. So, that was not the case. Could it be that you watched me after that walking in the corridor towards the exit of 929, I mean after 929-19, I started walking this way and you and Mrs. Altimas were standing here to the left of me.

A. Doctor Fabrikant, I was not with Mrs. Altimas and Mr. Morris at that point. I had gone back to my office.

Q. Yes. Could it also be that when you saw me with guns, both of you started running towards your office. So, you crossed my path and started running this way?

A. No, that's not, that didn't happen.

Q. And I, standing here, made several shots and one of those shots hit you?

A. No, this is not the way it happened.

Q. Yes, but that picture would (inaudible) the injury you sustained and everything would be in place; was it?

THE COURT:

Again you're arguing. The witness has said that's not how it happened. That's what she is here to testify as to facts.

MR. FABRIKANT:

I guess we have to assume that it was somebody else who hit her then.

THE COURT:

I don't know.

MR. FABRIKANT:

If those three bullets are mine and I just didn't --

THE COURT:

You consistently mix up the time to argue and the time to ask questions and right now we're at the time to ask questions.

MR. FABRIKANT:

Now, I don't think I have any more questions.

THE COURT:

Okay.

THE CROWN:

Thank you very much.

THE COURT:

Thank you very much, Mrs. Horwood.

AND THE WITNESS SAYS NO MORE.

THE CROWN:

Next witness.

THE COURT:

Mr. Dion hold interview at one point. I don't know whether this would not be the appropriate time to complete the cross-examination of Mr. Dion.

MR. FABRIKANT:

Effectively, I am satisfied with the experiment.

THE COURT:

Just a second; we will call Mr. Dion in and if you have no further questions to put to him when he is in, you announce that and that's fine.

THE CROWN:

In the meanwhile, my Lord, just before the witness is called, we had served a subpoena to the archivist from the Royal Vic; could we liberate the witness?

THE COURT:

Certainly.

(Pour les besoins de cette cause, les questions et r,ponse de l'interprŠte seront pr,c,d,es d'un tiret).

SANDRA TRAINER
INTERPRETE FRANCAIS-ANGLAIS
ASSERMENTEE

APPEARED:

JEAN DION,
Sp,cialiste balistique
judiciaire,
n, le: 14-05-1950,

LEQUEL, aprŠs avoir ,t,
d-ment

asserment, sur les Saints Evangiles, d,pose et
dit ce qui suit:

THE COURT:

Now, you'll recall that we interrupted the
testimony of Mr. Dion before the question of
the experiment on Tuesday afternoon. It was
when the question of the experiment on Tuesday
afternoon was broached.

CROSS-EXAMINED BY MR. FABRIKANT,
for the defence:

Q. Well, effectively I just want Mr. Dion to
confirm that experiment showed that from the
location of shells, there is no way --

-Q. J'aimerais que monsieur Dion confirme qu'...
partir de l'emplacement des douilles ...

Q. -- with any degree of certainty --

-Q. ... avec aucun degr, de certitude est-il
possible de ...

Q. -- to establish location of a shooter?

-Q. ... d',tablir l'emplacement d'un tireur?

R. C'est exact, votre Honneur.

-A. That's correct, my Lord.

Q. That's all I want to know.

-R. C'est tout ce que j'ai ... demander.

THE COURT:

Re-examination?

THE CROWN:

No, my Lord.

THE COURT:

Thank you very much, Mr. Dion, you're free to
go.

L'INTERPRETE:

Merci beaucoup, monsieur Dion, vous ^tes
lib,r,.

LE TEMOIN:

Merci, votre Honneur.

-A. Thank you, my Lord.

MR. FABRIKANT:

Crown again didn't tell me who is going to

testify today.

THE COURT:

Well, I think the Crown hadn't finished with the witness which the Crown planned to hear yesterday, if my --

THE CROWN:

That is correct, my Lord.

THE COURT:

That's correct, so you're continuing.

THE CROWN:

I will gladly provide Mr. Fabrikant with the names.

MR. FABRIKANT:

Who is the next and so on.

THE CROWN:

We can do that at the break, it's 10:41.

THE COURT:

Would you want me to take the break now or can you start?

Let's see if we can go till eleven o'clock and then --

THE CROWN:

So, the next witness is Mr. Lawn and then, Mr. Lekinovic, Selig and Gabriel, Adams and Schwelh.

MR. FABRIKANT:

One second. So, it is Mr. Lawn, then Lekinovic, then?

THE CROWN:

Selig, Gabriel, Adams and Schwelh. So, I guess the Court wants to recuperate the gun.

THE COURT:

The Court certainly wants to recuperate the gun, yes.

THE WITNESS:

Le chargeur.

-A. The magazine.

THE WITNESS:

Et le Bershaw, pišce C-64035.

-A. And the Bershaw, exhibit no. C-64035.

LE TEMOIN:

Pišce P-17, votre Honneur.

-A. Exhibit P-17, my Lord.

APPEARED:

PETER LAWN,
Student, Concordia,
born: April 5th 1966

WHO, having been solemnly affirmed, doth, depose and say as follows:

EXAMINED BY Me LECOURS,
for the Crown.

Q. Mr. Lawn, on August the 24th 1992, what was your occupation?

A. I was a student at Master on Applied Sciences at Concordia University full time.

Q. Did you have a tutor, a specific professor in charge of you?

A. Yes, doctor Saber was my ... advisor.

Q. At the beginning of the afternoon on that day, what were you doing?

A. At around 2:30 that afternoon I had gone with doctor Saber to his office and we began discussing my thesis casually as we often would.

Q. I will show you P-7, it's (inaudible) in front of you. Could you locate, please, doctor Saber's office on this sketch?

A. 929-19.

Q. Please go on.

A. Doctor Saber was on the telephone with his wife at the time and we heard two loud bangs. He looked to me and asked "what was that"? We did not suspect it was a gun. I was not aware of any difficulties or problems which doctor Fabrikant was having, but I was aware that construction was being done on the 10th floor above us and we reached the conclusion which we thought was reasonable at the time that they had dropped a large objet or they were using a nail gun directly above the office. We did not suspect any danger.

Doctor Saber was very annoyed at the noise and he went out to the secretary's area to complain about the noise.

Q. Would you -- could you tell the number of the secretarial area?

A. It's 929-1.

Q. Doctor Saber returned to his office apparently frustrated of his inability to complain to his satisfaction. I would assume that the secretaries were not there, but I was not in a position to see that. All I know is that he had not complained to his satisfaction.

He gets back on the phone with his wife and begins writing a memo complaining about the noise. At this moment, doctor Fabrikant entered doctor Saber's office.

Q. You're talking about doctor Fabrikant; do you recognize that person in the court-room? (indicating the accused).

Did you know his name at that time?

A. No, I did not. I had had no dealings with professor Fabrikant and never had him as a professor or anything. Until the preliminary hearing I did not know the sound of his voice.

Q. So, you're in the office with doctor Saber and Fabrikant is entering?

A. Yes. Professor Fabrikant enters with a gun in each hand, the pistol on the left, the revolver on the right, he points them both at doctor Saber. Doctor Saber stands up from his chair and says, "don't point those at me, I'm not joking". Professor Fabrikant fired twice and left. Doctor Saber screamed in pain, fell to the ground and then, I went over to doctor Saber. The reality of what was happening hit me when I realized that there was a hole in the back of doctor Saber's shirt and blood, at this

point, was starting to come through that area. I immediately went to the secretaries' desk in 929-1 to call security and informed them that doctor Saber had been shot, to call security from doctor Saber's phone I would have had to step over doctor Saber and move him and possibly injure him further which is why I went to the secretaries' area.

I called security, I informed them of the shooting and of doctor Saber's medical condition. Doctor Saber suffers or had an artificial heart valve implanted and was taking blood (inaudible). He would bleed profusely from any wound. He required immediately -- immediate medical attention for any type of wound, whether it be a scratch, a cut or in this extreme case of gunshot.

After phoning security, I went back to doctor Fabrikant's office, which is where we had heard the first shots coming from; by this time I had assumed that they were obviously shots which we had heard initially, which is --

Q. Would you locate on the plan doctor Fabrikant's office?

A. 929-24.

Q. It's right across doctor Saber's office?

A. No, (inaudible) across, it's across from doctor Back's office.

Q. You're at the Fabrikant's office?

A. I am at Fabrikant's office where I saw doctor H... lying face down with minor bleeding coming -- coming through his clothes. He did not seem to be bleeding profusely, but he was motionless and I'm not a medical person, but I would say obviously dead.

Also, after I had called security the first time from the secretaries' desk, a crowd had begun to form outside. I asked them not to come in and I advised them to leave the building. I recognized two professors from the Department of Computer Science and they came in to assist in whatever way they could. They stayed with doctor Saber.

I went -- only then I went towards Elizabeth Horwood's office.

Q. Did you notice anything?

A. Yes; on the floor, there were numerous empty shelves. I did not count them. I would say there was approximately five. I went there because --

Q. Could you give the number of the corridor?

A. 929-96, is that photocopy correct, the (inaudible).

Q. Pardon? Ninety.

A. Ninety, okay, it's a zero; 929-90. I met doctor A... in that hallway as well and he told me not to touch the bullets or the shelves case-in I should say on the floor, which I did not. I then went back to doctor Saber's office, doctor Fabrikant's office back and forth a couple of times trying to determine

what was the best (inaudible) in that situation. I then went back to the secretarie' desk to call security again. By this time only one security guard had arrived and I went more security guards there, I wanted the paramedics there, I wanted everything right away. While I was on the phone with security again, I heard -

-

THE COURT:

Excuse me; you phoned from where?

THE WITNESS:

The secretaries' desk, exactly the same place I had phoned the first time. While I was on the phone with security, I heard more shots from outside the Engineering offices. At this point I jumped under the desk. I considered my options. The mechanical engineering offices have one entrance and exit there and I felt that I would -- I had been serious additional danger if I remained there and I also thought I had valuable information to give the paramedics about doctor Saber's heart condition as well as the police in terms of the number and type of weapons which doctor Fabrikant had.

I ran down to the information desk which is nine floors down, I presented myself there as an eye witness to the shooting to both Concordia security personnel, the police and the paramedics. I immediately told the paramedics of doctor Saber's location and that he had suffered what I believe was two gun shot wounds and of his heart condition. I also told them of doctor H... who I had seen in doctor Fabrikant's office and he appeared dead to me. At the same time I saw Elizabeth Horwood being brought out on the stretcher. She was conscious, but they did not seem to be hurrying with her, she was -- I was under the impression that her life was not in danger.

After speaking to one of the police officers from station 25 they asked me not to leave the area and to report to station 5 to make my -- station 25 to make my statement.

After about 45 minutes with a friend, just trying to relax a bit and over a coffee, I then proceeded to station 25 where I met Mrs. Saber and stayed there until approximately 6:00 in the evening, at which -- during which time I made my statement and after whatever comfort I could to Mrs. Saber.

Q. I have no further questions.

THE COURT:

We will adjourn at this point for 15 to 20 minutes.

THE JURY IS RETIRING

--- Suspension

--- Upon resuming

THE JURY IS PRESENT

PEER LAWN,
UNDER THE SAME OATH

CROSS-EXAMINED BY MR. FABRIKANT,
for the defence:

- Q. What is your estimation of the time which passed between the shots which you have heard and the time I arrived at the door of doctor Saber's office?
- A. During that time, doctor Saber and I reached conclusion what we thought the sound was, doctor Saber went to the secretaries to complain, he returned to his office and he was injured shortly after. Replaying those events in my mind, I would estimate at approximately 15 seconds.
- Q. Fifteen seconds?
- A. Yes.
- Q. Just to stand up and to go somewhere and to say something, even this would probably take more than 15 seconds; would it?
- A. We heard two shots. Doctor Saber says to me "what was that?" I reply, "It could be construction on the 10th floor, I know they're doing construction up there". Doctor Saber replies, "I'm going to complain about this, they're not going to keep this going". He goes out to the secretaries to complain, he returns.
- Q. Hold it, hold it for a second. It's all right the 15 seconds, just this dialogue concern. Just the dialogue which you presented is 15 seconds. Now, try to -- well, try then to stand up and to walk the distance which you walk, you realize that your estimation is very far from reality?
- A. It's an estimate replaying the events in my mind. If you wish me to go specifically through those events, then we can time it.
- Q. So, okay, I don't know if you can do some kind of -- could you give some or less release because you realize yourself that just this dialogue I took my watch, it took 15 seconds.

THE COURT:

If you feel that he can give you a more accurate answer by his reflecting for a few moments on the conversation, the length of time, let him do so and perhaps he can. Take your time.

THE WITNESS:

I've just replayed the events in my mind in 24 seconds.

MR. FABRIKANT:

- Q. Maybe we could replay it not in your mind, but more realistically so doctor Saber was on the phone when those shots were heard?
- A. That is correct.
- Q. So, he needs -- let us start, let's say watch and he needs to say to his wife, okay, hold on, I need to clear up something; correct?

A. I do not recall him speaking to his wife giving an explanation as to why he would get off the phone for a moment.

Q. Well, it's just what -- just talked -- well, even saying anything, you don't do that when you --

A. The noise was very loud. It did startle both of us.

Q. Okay, but when you talk to someone sure you don't drop the phone like this and you say, hold on or at least something?

A. As startled the person might.

Q. Okay; then he has to stand up and walk the distance from where you are approximately to, say, here; would it be correct?

A. No, that would not be correct.

Q. What is the distance then?

A. It would be approximately 20 feet.

Q. Twenty feet, well, would you like to measure 20 feet?

A. I did not bring a tape measure with me.

Q. Well, your step is about three feet, so make six steps.

THE COURT:
No, he is not going to do an experiment; just put your question.

MR. FABRIKANT:

Q. All right, yes, I think we can make it different because definitely the timing of his is very far from the reality. So, just let us recount the events. What doctor Saber did, he left the phone, he stood up, he didn't run; he walked normal pace, right?

A. He walked at an annoyed pace, brisk, but not fast or running.

Q. So, he went to the secretaries' area and he asked them what happened?

A. I do not know if he asked the secretaries, I was not in a position to see. I remained in his office while he went to the secretaries' area.

Q. Well, didn't you testify that he went to complain?

A. I testified that he went to complain to the secretaries, I remained in his office, I was not in a position to see whether or not there was the secretary there, but he returned to his office apparently unsatisfied in his attempt to complain about the noise.

Q. At least, he had to say something, someone should respond something --

A. I was not in a position.

Q. -- to his -- well, all right, just let us recount the event. Someone had to respond something to him, then he was supposed to return back, then you said he took a paper and started writing complaint?

A. No. He started writing the complaint on his computer.

Q. Oh, again, so he started to write complaint on the computer takes even more time because you

have to get into editor first?

A. Which he was already in.

Q. Well, all right, so he started typing on the editor the message and the phone was what, he didn't continue the conversation?

A. He was talking to his wife at the same time as he began to write the message. He picked up the phone and then, he said to Sarah, his wife, that he would call her back. He was in -- he had to write a memo.

Q. Okay. So, he was seating with his -- his computer is on his right?

A. That is correct.

Q. So, sitting at the computer, he would be seating with his back to the door?

A. That is incorrect. Doctor Saber's office is arranged in such a way that when you enter the door, if you turn slightly to the right, you will face doctor Saber. Doctor Saber faces the door.

Q. But the computer is on his right; isn't it?

A. That is correct.

Q. So, if he is typing on the computer --

A. The desk does not face the wall.

Q. All right. So, he started typing on the computer and then, I arrived. Did I say anything?

A. Not a word.

Q. Not a word. Could you show in what position my hands were when I was shooting?

A. I think it makes sense to indicate for the record that --

THE COURT:

Yes, I think -- can you describe the position you have your hands, please?

MR. FABRIKANT:

Q. All right.

A. Being the upper arm was more or less straight down, the lower one was horizontal. This goes in the left, the revolver was in the right hand. But guns were facing doctor Saber.

Q. So, there -- well, how to say it -- upper part of arm vertical and the elbow and hands horizontal.

A. More or less, yes.

Q. So, this means that I was not really pointing at him. It was --

A. Both guns were at the barrel line with doctor Saber. I would call that pointing.

Q. Yes. Well, usually, pointing means like this but --

THE COURT:

You are arguing with the witness now.

MR. FABRIKANT:

All right.

Q. So, this was the position. Now, do you know which one fired?

A. I cannot testify as to which gun fired the bullets. I've heard of --

THE COURT:

Never mind what you've heard. Just stick with

what you know of your own knowledge.

THE WITNESS:

I know that the pistol was in the left and the revolver was in the right hand. I did not see which gun fired or which one might have back --give us like recoil, I did not see which finger pulled the trigger.

MR. FABRIKANT:

Q. Did I make eye contact with you or say anything to you?

A. You did not say anything to me. I was sitting down when you entered the office, I did not look at your face. We did not make eye contact.

Q. Then, after shooting what? I just turned and walked away?

A. That's right.

Q. After that, you said that you entered my office and could you describe in more detail what you saw there?

A. Firstly, I'd like to point out that I did not go to your office directly from doctor Saber's office, I called security, first on the secretaries' desk and then, I proceeded to your office. In your office, I saw doctor H..., a professor who was later identified as doctor H... lying face down with bullet wounds. There was minor bleeding like he appeared completely motionless and he did not seem to be bleeding any more, certainly not in comparison to doctor Saber.

Q. Did you notice any other objects in the office near doctor H...?

A. There was nothing which caught my eyes out of the ordinary.

Q. Well, some briefcase?

A. A briefcase would be an ordinary object in his office. I did not notice one.

Q. All right. So, he was lying face down. In what direction was the body line; do you remember?

A. His hand was in the direction of the secretaries and his feet were more or less in the direction of the conference room. The conference room is 929-23.

Q. You are sure of that?

A. Yes.

Q. Where did you notice the shells?

A. I saw numerous shells scattered in the corner where the kitchen area is in the mechanical engineering department.

Q. Did you notice any shell or bullet in -- not near the kitchen, but in the middle of area -- of the secretaries' area?

A. I did not notice anything there.

Q. Maybe we show witness the same booklet of Mr. Desjardins and the jury too.

THE COURT:

P-8.

MR. FABRIKANT:

Q. If you could open it at number 17.

A. All right.

Q. You see number 1 there?

A. Yes.

Q. And there is a bullet nearby?

A. All right.

Q. Now, the general location if you put the previous picture 16, do you recognize the secretarial area?

A. Yes, I do.

Q. Do you -- could you indicate from which phone did you call security when you were using the phone there?

A. That phone is not visible in that picture.

Q. But it is what, to the left of the picture, to the right?

A. This is not on this picture.

Q. Yes, I understand that.

A. It would be easier to identify it on the map.

Q. All right.

A. Or perhaps in another picture.

Q. But you did not notice bullet at the time?

A. No. The phone which I used was not in that area, I did not go into that area. The secretary area there is relatively large area with a number of desks in it.

Q. Now, would you turn to picture 31. Do you recognize the area?

A. Yes.

Q. Yes. Is this the area when -- where you saw the shells?

A. The area which I saw the shells if you were to continue along this corridor, just around the corner.

Q. Did you go this way?

A. Yes, I did.

Q. Look at that map which you've drawn. No. I mean -- you have your statement there?

A. Yes, I do.

Q. You seem to have indicated at least one shell which would be visible; correct?

A. I drew little circles in that area indicating the general vicinity in which I saw a number of empty shells. I was not casing this area for later testimony, I was doing my best to handle the situation and get aid to the people who were hurt.

Q. Well, I understand that when you were making this drawing, you already helped whoever you could help and that was the time to make the picture?

A. No. When I was making this drawing, I was at station 25, approximately two or three hours after the events, not during when I was helping people.

Q. Yes. So, you agree that at least one shell there is in the area which would be visible here.

A. The way I'm (inaudible), yes, but that drawing is to show the general location that there were shells in that area. I was not measuring where each shell was nor did I count them. I went by and I said, okay, there were shells there and

that was all the attention I gave it.

Q. All right. Now, look at the whole map which you did and you still confirm that this is correct, your presentation of what you saw?

A. Yes.

Q. Okay. Now, you mentioned also that doctor H... was lying face down?

A. Yes.

Q. And his head was erected towards the secretaries' area|?

A. Yes.

Q. And the legs in the opposite side. Now, take a look at picture 8, please.

A. Eighty?

Q. Eight. Is this the way you saw the body of doctor H...?

A. I cannot recognize this person as doctor H... nor have I been in your office on many occasions, so I cannot also confirm that this is indeed your office, but assuming those two to be correct, this is not the way which I recall doctor H... when I saw him

Q. So, this is what you see on the picture, person lying face up?

A. That is what I see.

Q. What you saw at that time was person lying face down?

A. That is what I recall.

Q. The person who lies here, his head is directed towards conference room and legs towards the secretaries' area; correct?

A. As I stated earlier, this is your office. I do not have sufficient reference in this picture to get my bearings on it, but it --

Q. All right. Just place yourself in the corridor. Would you get this map, please?

THE COURT:

P-7.

MR. FABRIKANT:

Q. Now, this is office 929-24. Did you find it?

Okay. Now, the conference area is 929-23.

A. That is correct.

Q. You are standing at the entrance of 929-24.

What is in the picture is what you see if the door is a little bit open. Now, on the picture, would you agree that conference area is to the left up

A. I would agree with that.

Q. Well, at least where the head of this body indicating this is conference area and the legs are directed towards the secretaries' area; correct?

A. That would seem correct.

Q. So, what you saw in my office then, would it be correct statement you saw a person lying face down with head and the legs in directions opposite to what is in the picture; correct?

A. That is what I recall from that day.

Q. Thank you; no more questions.

THE CROWN:

Thank you, sir.

THE COURT:

Thank you, Mr. Lawn.

AND THE WITNESS SAYS NO MORE.</pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">C A N
A D A

COUR SUPRIEURE

PROVINCE DE QUBEC

(CHAMBRE CRIMINELLE)

DISTRICT DE MONTRAL

CAUSE NO.: 500-01-017372-928

TAPE: PROCES - SUITE

PRSENT: L'HONORABLE JUGE J. FRASER MARTIN, J.S.C. ET JURY

NOM DES PARTIES:

SA MAJEST LA REINE

Plaignante,

c.

VALERY FABRIKANT

Accus,,

COMPARUTIONS:

Me Jean Lecours
PROCUREUR DE LA PLAIGNANTE

DATE DE L'AUDITION: LE 14 MAI 1993

FICHER: 3034

TABLE DES MATIERES

PAGE

WITHOUT JURY 3

WITNESS: CECILIA BENAVENTE

Examined by Me Lecours 36

Cross-examined by Mr. Fabrikant 43

WITNESS: KAMAL BOUDARI NEVAD

Examined by Me Lecours 67

Cross-examined by Mr. Fabrikant 70

WITNESS: JOHN HALL

Examined by Me Lecours 80

Cross-examined by Mr. Fabrikant 84

WITHOUT JURY 91

WITNESS: ANN FRANKLIN

Examined by Me Lecours 99

Cross-examined by Mr. Fabrikant 102

WITNESS: DANIEL MARTIN

Examined by Me Lecours 107

Cross-examined by Mr. Fabrikant 135

WITHOUT JURY 144

WITHOUT JURY

THE COURT :

You asked me to...

Me BELLEAU :

Well I asked you to come in without the jury because Mr. Fabrikant has told me last night on the telephone that he had some grievances he wanted to share with the Court, so I will let him proceed.

VALERY FABRIKANT :

Well, first of all maybe we finish the matter which we didn't finish yesterday, I hope Mr. Lecours can tell something about policemen and other statements?

Me JEAN LECOIRS :

Yes, Mr. H, bert is still working on the assignment, I expect him during this morning, because it was... he spent the whole night on that, and this morning he called me and during the morning he will be able to report.

THE COURT :

Okay.

VALERY FABRIKANT :

All right, then postpone it. Now, in general, what I would like to ask you for is, during the whole day, from six a.m. (6:00) till about at least seven p.m. (7:00) I am not able to do any productive work, and after seven p.m. (7:00) it is some necessity like food, like shaving, like cleaning, and at eleven o'clock (11:00) it is dead lock and everything is finished, and I really have no time to prepare defense. And since you do not want to change anything, then what I planned to ask you for is when Crown finishes its presentation, I can call several witnesses, because I still need the documents, those documents. I checked again with my wife, they are not there. To bring the documents and to deposit them in court, and after that maybe I need about five days to study the documents and to prepare a general architecture of my defense. So would that be possible to make my defense in such a way that I will call a certain number of witnesses just for the purpose of bringing the documents and depositing them in court? Then I need some time to study them and to make it in the logical order to be presented, and witnesses to be asked, and then we will proceed with no delays.

THE COURT :

Okay. Taking things one by one, I understood that you were being transported... now, I understood, you will recall that there was someone here from Parthenais one day, and I asked the question as to whether there wasn't a more efficient way to bring you here in such a manner as to... it was all in the context of your problem with another detainee, but so as to avoid your having contact with detainees, or other detainees while travelling, did that... how does that work out? How are you being brought here at the moment?

VALERY FABRIKANT :

Well the same way as usual.

THE COURT :

The same way as usual.

VALERY FABRIKANT :

And it takes from six (6:00) in the morning till nine thirty (9:30), time is lost, it is three and a half hours, and after four thirty (4:30) I arrive there at least at about seven (7:00), it's again two and a half hours. So six hours of the day are lost which I could have spent on at least doing something for my defense, and these six hours are so exhaustively tiring in smoking atmosphere that... whatever you say, it's physically not feasible to contact defense, I am not talking now about access to this, access to that, but just six hours a day to have spent in buses, waiting for search here, waiting for search there, it makes it physically so difficult, there are only twenty-four (24) hours in a whole day, and quarter of that is spent

either on transfer from Parthenais to here or from here to Parthenais, six hours.

THE COURT :

Okay. I'll reflect on that this morning and I'll let you know what I think this afternoon. When I say this morning, I'll reflect on that at lunch time, and see whether or not there's some way in which you can have a little more economical time at your disposal so as not to result in...

VALERY FABRIKANT :

Well, definitely there is a way.

THE COURT :

...losing that.

VALERY FABRIKANT :

It's just ten minutes drive effectively from Parthenais to here, and instead of ten minutes one way I have to spend altogether six hours unproductive.

THE COURT :

Well, I know. There's another principle involved though, and that's the same treatment for everybody else who's detained, and I really don't understand why you should be treated any differently from anybody else.

VALERY FABRIKANT :

Well, Bill Jerma was treated differently, you know that.

THE COURT :

I have no comment to make on why or whatever Bill Jerma was treated the way he was, but I told you before, the only way I can sum it up is you're not Bill Jerma and I'm not Mr. Justice Boilard.

VALERY FABRIKANT :

Well, if you feel that six hours a day...

THE COURT :

So you can interpret that any way you like.

VALERY FABRIKANT :

Well, if you feel that the remaining time is enough for me to conduct my defense, that's fine with me, that's your decision.

THE COURT :

Yes. You've been conducting your defense as it's gone along, and you're aware of what the issues are, and you're aware of what the arguments are you propose to advance, you're endowed with a very good memory, and it doesn't appear to me that it has impeded you in your cross-examination of the witnesses.

VALERY FABRIKANT :

Well, you just don't know what these cross-examinations could have been if I were less tired. You just don't know my ability.

THE COURT :

Okay. Now on the question of the documents, I acknowledge the principle that documents that are relevant, that you want to produce, that you need to look at. I understood during the fitness hearing that Concordia University, in virtue of the Access to Information Act, gave to you a copy of virtually every document that related to you, I didn't see a list, I don't know if they made a list. I don't know who from Concordia University can best speak to what was given to you under the Access to Information Act. I would think that perhaps the answer to that may be at some point one witness who would be able to advise me of that. I'm not

going to order that you be given what you've already been given, so that the first step in talking about documents is you have to identify what you want. And you led me astray at the beginning of this trial because you said: "There is a whole lot of documents that I haven't got, I've got nothing", and it turned out, as we went along, that you had been furnished with boxes of paper in virtue of the Access to Information Act. Now, if you've been furnished with that, you've been furnished with that, and if your wife can come and visit you, or if your student can come and visit you, or whoever can come and visit you, I don't think it's too much to ask, but you make arrangements that these documents be brought to you in batches and that you go through them. So, if I am satisfied... first of all I need to know what you want, not in generalities but in specifics, and if I'm satisfied that the specifics that you want have already been sent to you, or have already been made available to you, then there's not any order I'm going to make in that regard.

VALERY FABRIKANT :

Well, you don't seem to hear what I said.

THE COURT :

I hear what you said, just let me finish...

VALERY FABRIKANT :

There were twenty (20) boxes of my books and so on and so forth, but as far as documents is concerned, I asked my wife to find some specific documents and she says they are not there, period. They are not there. So they provided probably some, some they took away, and since I am not there, and she did her best to locate, she didn't, now to bring the whole twenty (20) boxes to Parthenais, they won't even go into my cell, we have to be realistic.

THE COURT :

How many documents do you need? And what documents do you need? Because this is going to lead us to another question.

VALERY FABRIKANT :

Okay. I need quite a lot of documents, I need documents, first of all related to my grievances with CUFA. I need documents related to Vice-Rector's office. I need documents related to the Code Coordinator, and all the complaints lodged there.

THE COURT :

Sorry, the third one was, you need documents related to Vice-Rector's office, I'm sorry, I missed the next one.

VALERY FABRIKANT :

Yes, the Code Coordinator. Well, there is Mr. Relton who is Code Administrator...

THE COURT :

Uh, huh.

VALERY FABRIKANT :

...and there is extensive documentation there concerning my complaints and how they were treated. Well, definitely I need additional documents from the Dean's file, which are not for example in the Vice-Rector's office, and at this stage I cannot say exactly which are there, which are not. I need documents for example, I need to demonstrate to jury that I tried to do my best in solving problems in a peaceful way so I need

documents, let's say, from the Ministry of Education where I filed the complaints. I need the documents from Natural Sciences and Engineering Research Council, where I also make appropriate signals.

THE COURT :

Sorry? What agency is that?

VALERY FABRIKANT :

Natural Sciences and Engineering Research Council, NSERC, the abbreviation. Now, I need to get Mr. McManus from Quebec Association of University Teachers who made assessment of my complaints with documents, and I would also want him to testify on his findings. I need documents from then Chancellor Gold. I need documents from Chairman of the Board of Governor Gervais. I will need the documents and transcripts from my civil case against Sankar and Swamy, because effectively the whole thing stems from this civil case and contempt of Court motion which was, as you know, closely related to the events. I will need to play the tapes of several conversations, they are all on micro cassettes and I will need certain equipment for that. Well, I don't know if I can tell you right now all of it because it is not in my memory, but this is just an idea of the documents which I will need.

THE COURT :

Look...

Me JEAN LECOURS :

If you allow me, My Lord.

THE COURT :

Yes, I allow you.

Me JEAN LECOURS :

There's absolutely nothing relevant in everything I heard.

VALERY FABRIKANT :

Well, it is relevant.

Me JEAN LECOURS :

Not an iota of that is relevant. Everything is besides the point, that does not constitute a defense in our law, My Lord.

VALERY FABRIKANT :

Well, let me respectfully submit that each defense, there was time which it didn't exist, I believe there was time when insane defense didn't exist, right? And if someone would claim that he was insane, at the time it didn't exist, Crown prosecutor would stand up and say: "Well, this defense just doesn't exist". There is also defense, pretty recent one, as battered women syndrome, you probably know about it?

THE COURT :

Yes, I know about it, but I don't think you fit that.

VALERY FABRIKANT :

Well, in terms of women, yes, but if you call it battered person syndrome, then maybe I am. What I'm trying to say is that there always is time when certain defense does not exist, and when special circumstances occur, defense does appear and looks logical and looks convincing. Besides that, I would like to say that... if you don't like this title of battered person syndrome, I still believe that section 8 of Criminal Code allows me to introduce new defense and let the jury

decide whether it is defense or not a defense, but besides that the defense of provocation is still there, and it is big. Defense of non-insane automatism is still there, and it is legal, and all those require investigation of prior events which might bear on the state of mind at the time of the crime. So, all the documents I am asking are necessary to establish set of events which, in my opinion, did influence, and were quite logically in terms of development of events as to what was then, and I think that this chain of events should be presented to the jury. And unless the whole chain of events is presented, the whole thing will be lost because jury would not be able to comprehend what really happened on August twenty-fourth (24th), and why it happened. And therefore, unless jury is presented with all the facts which explain and... how to say it, I believe that they will diminish criminal responsibility for the action to such an extent that I believe I will be acquitted.

Me JEAN LECOURE :

Well, My Lord, all the materials referred to by the accused clearly don't fit provocation defense, don't fit insanity, but it might, I don't know, but still, it is very strong in the mind of Mr. Fabrikant that he doesn't rate insanity defense, clearly he doesn't fit non-insane automatism. Clearly it doesn't fit battered wife or battered person syndrome because that's another name for self-defense, in accordance with the Lavall, e case from the Supreme Court, it's not our case. Actually, and Mr. Fabrikant seems to have admitted himself, he wants to create... it would fit in a new defense called abused professor syndrome, or something like that, but this is a question of law, this is not a question of facts. And it's for you to decide whether you open this defense or not, and if you don't open this defense, everything that he asked for is irrelevant, My Lord.

VALERY FABRIKANT :

Well, as far as I read about non-insane automatism, it requires prior events to be considered, and battered person syndrome, which is self-defense, again the jury would not be possibly able to understand, for example if I do not produce to the jury the sequence of events, how I tried to settle the matter here, here, here, here and there, and everywhere I encountered totally lawless attitude or just ignoring the whole thing. And when it came to the situation where Mr. Hogben had given me an ultimatum, and he referred that Mr. Gold has taken care of it, that I will go to jail unless I agree to just get out of the university, I think it does fit the provocation in self-defense, because if person is put in a position where his life is threatened in such a lawless manner... Well, I do not want to go into more details of the whole thing but it is clear that all this is relevant.

THE COURT :

Look. You elected to have this discussion at this particular point in time, I didn't. I cannot, of course, at this point require you to tell me anything about your defense, since you've elected to do so, I can certainly give you a reaction. I have always interpreted the word defense and interpret the word

defense now to mean a defense that has been sanctioned in law. The adjuncts of self-defense flowing from the battered women syndrome are an extension of the defense of self-defense in a particular series of circumstances. I cannot see how any facet of the defense of self-defense fits your circumstances. It is true that...

VALERY FABRIKANT :

Well, you just don't know the details.

THE COURT :

I'm sorry, I listened to you, you listen to me. It is true that you do not strictly speaking need to tell me what defense you're advancing, but one thing you do have to do is convince me that the proof you propose to make is relevant to a defense that the law recognizes. And a defense the law recognizes is not one that you may believe the law should recognize, and that you wish to concoct accordingly. That's not a defense in my book. For example, I realize you've said that you're not pleading insanity, but for example, if you were advancing the defense of insanity, and quite frankly I raise this because in a number of statements that you've made you've come very, very, very close to saying out of one side of your mouth what you've said out of the other side you're not advancing. You've said on a number of occasions that: "I, on the day in question, was incapable of intent, I had no criminal intent". And you lectured the jury one day on the fact that if... something that's thought in first of law, if not in any course in sociology, that a criminal act comprises, or at least liability for a crime comprises two things, an act and the question of intent, and you went on to say that you didn't have the requisite intent. Now, that absent provocation which I'll come back to in a moment, or absent... now that absent provocation sounds very, very much like an insanity defense to me. And in an insanity defense you don't have to establish that you were persecuted, what you have to believe, what you have to establish, and what is relevant, is that you believe you were persecuted, and that therefore you acted in the manner in which you did. If your position is that you weren't insane at all, then whether you were persecuted or whether you were not persecuted is no answer, because persecuted or not, it is not a licence to take a gun and shoot people. That simply isn't a defense to the treatment that you allege. If you've been badly treated, if you've been persecuted or whatever, then the law contains a whole panoply of remedies and what you can't do is take the law into your own hands and solve them yourself. So, quite frankly, absent insanity, the evidence you want to make, the whole raft of evidence you want to make might to go motive, nothing else. Now, you want to talk about provocation, the Criminal Code, if I recall the article, says that you may see murder reduced to manslaughter because the intent question disappears if, in the heat of the moment, under sudden provocation, you kill somebody. You may, you may have evidence to advance in support of that defense with regard to professor Hogben, I cannot visualize that that would take us back to nineteen ninety (1990), or nineteen eighty (1980), or nineteen seventy (1970), or nineteen fifty (1950) or anything else, it certainly

would give you some licence to put before the jury the events which transpired with Hogben in the days and hours running up to the incident, the first incident on the twenty-fourth (24th). I have, and I'm prepared to be convinced otherwise, but I have at the moment considerably more difficulty with how you could possibly go in that direction. As I say, I'm prepared to be convinced otherwise, but how you could go in that direction with regard to the other three, because I haven't heard one iota of evidence that any of the other three did or said anything to provoke you in such circumstances that you could argue that under that sudden provocation, "in the heat of the moment I shot Ziogas, or Douglass" or whoever. So absent insanity, which really only needs to bear on your state of mind rather than the fact of what happened, my first reaction is that an awful lot of this, an awful lot of what you want to do, flowing from these documents, is completely irrelevant to any defense that I understand in the circumstances, and non-insane automatism, well, that I understand you explored with Morrisette at one point, I'm not prepared to make any comments on that at the moment because you have made a number of statements from the dock that at least suggest strongly to me that you would have a very difficult time indeed advancing that particular argument, particularly as a result of what you've said about various circumstances that occurred. So I'm prepared to look further at that, but, you know, you can't simply say to me: "I want to go on an expedition through ten sets of documents that I somehow rather think might be relevant", I would be interested in knowing, and I wonder whether Mr. Belleau you could not perhaps explore with whoever is here from Concordia University which of that whole series of A to J, that I noted, and I have them here if you need them, were furnished under the Access of Information Act, because Mr. Fabrikant's access to these documents, if they have been furnished, is one thing, there is surely a mechanical way whereby he can extract from these cases of documents that are in his possession what he needs. And if that has to be done so that he can have access to these documents for his own purposes, or for the purposes of replying to any arguments that the Crown prosecutor has made, or any observations I've made, then that's one thing. It may be cumbersome but these documents can possibly be taken to some martialling point somewhere or other at Parthenais where he can inspect them. And if it's a question of reasonable time to inspect them, I'm prepared to consider that.

VALERY FABRIKANT :

Could it be done in opposite way, for example I be delivered to my house under police escort and try there to analyze, because it's totally impractical to bring twenty (20) boxes, the majority of them are not needed, maximum what I would need is one box, maybe even less. So I think it is not too much to ask maybe to arrange this trip there and I could inspect and take whatever documents I feel needed and bring it with me to Parthenais.

THE COURT :

If that were done it would have to be done under very

stringent conditions and I would wish to hear from the Crown prosecutor on that question too, but it's a possibility.

VALERY FABRIKANT :

What is the problem? You have two policemen with guns, ready to shoot at me.

THE COURT :

There's no point arguing with me, I would prefer...

VALERY FABRIKANT :

That's all. Simple.

THE COURT :

...I would prefer that if it's to be done that way, which is a possibility, then the conditions would have to be laid down. Your access to these things in order to take back to Parthenais what you feel you need is one question, and perhaps that can be settled now. And I would rather you received or you had in your hand the documents you deem you need, but I wouldn't want you to interpret that as being any sort of good housekeeping seal of approval on my part that all of this stuff is relevant, because I've given you my thoughts on that question.

VALERY FABRIKANT :

Well okay. Let me make comparison at least, because I repeat once again, I'm not talking about my defense, I'm just... what I'm telling you right now is hypothetical thing, and take it as hypothetical thing, because I understand that I'm not obliged to reveal to you any part of my defense, but what I'm talking to you right now just take it hypothetically.

THE COURT :

Well, all right, but just let me add one thing, no, you're certainly not required at the moment to reveal to me your defense, but I'm not required to sit here, at whatever cost we're sitting here, with a jury and a courtroom operating, and allow you to make evidence for the next four months against what appears to me the very strong possibility that I may be obliged to say to these people: "Ladies and gentlemen, would you kindly disregard everything we have heard since May the fourteenth (14th).

VALERY FABRIKANT :

Well, I don't think it will be the case, this is exactly what I'm trying to say.

THE COURT :

Well no, but that is why you're going to have to satisfy me in advance of the pertinence of it, and that's why I may have to rule that it is or isn't.

VALERY FABRIKANT :

Well, what kind of... Okay, let me give you just a comparison. In the case against Lavall,e, as you know, she shot her husband when he was leaving the room, her life was not in any danger at the time of the shooting, he was leaving the room, she shot him in the back of his head. So he did not, in any way, prior to shooting, come to her or threaten her or... it was just her state of mind that inevitably, in a not long distance future, if she doesn't do it she will be killed, and this is admitted... Well, according to what you are saying before this happened, this kind of defense would be

totally illegal, and I hope you agree with me, because her life was not immediately threatened, she was not provoked in any way, so it was on her part just an aggression.

THE COURT :

Okay...

VALERY FABRIKANT :

Let me finish please.

THE COURT :

No, but before you go any further, if you expect me to expand or extend Lavall,e one millimeter, I don't intend to do so.

VALERY FABRIKANT :

I don't ask you to expand it one millimeter, I just ask you to follow approximately the same matter. Now, they investigated previous history...

THE COURT :

Well, I can't follow the same matter, because...

VALERY FABRIKANT :

Let me finish the analogy please.

THE COURT :

...because you're not Mrs. Lavall,e, you didn't shoot somebody in the back of the head as they walked away, that's what it covers in the case of a battered wife.

VALERY FABRIKANT :

Let me please continue the analogy, and I hope you will see the analogy here, and the analogy is very simple. When the Court considered what happened before that, how badly she was abused, the jury understood, though it was not in the law at that time, I hope you agree with me, that circumstances of events, according to the law applicable at that time, required that she be found guilty of first degree murder. Instead, when jury heard the evidence, jury acquitted her, and Supreme Court of Canada confirmed it, and from that point on this defense exists, and it is because of courage of the judge presiding there who allowed the defense to proceed. Well, what is the difference here? You don't have to beat someone with a stick, there is a way to get to someone through psychological torture, through totally unfair treatment, contrary to every rules and regulations in whatever contract I had with the university, and you cannot deny that this kind of stuff damages health as much as physical beating. And the proof of that was that as healthy as I am, was, I got a heart attack in ninety-one ('91) due to this torturous treatment, and I had all the reasons to believe, in ninety-two ('92), that my life was in danger. Now, if you assume this analogy, then I think that those two cases differ only, in one case it is woman, in another case it is a man, in one case it is physical beating, in another case it is psychological battery. But I don't think anyone on this planet could say that physical beating can make scars damaging to health and threatening life any less than psychological battery, and this is the argument which I believe should be... at least a chance should be given to present it to the jury. If the jury decides to disregard this information, fine, but I have to be given a chance to present it to the jury.

THE COURT :

Well, before you present it to the jury I have to be satisfied that it's a defense that's admissible in law, and in my book it isn't, purely and simply. I told you, I am not going to extend Lavall,e one millimeter, and you're not asking me to extend Lavall,e one millimeter, you're asking me to extend Lavall,e several miles.

VALERY FABRIKANT :

No, I'm not asking you to extend anything, because battery is battery.

THE COURT :

Did you hear me? We can argue about this all morning but there are witnesses waiting, and there's proof of the Crown to be proceeded with. I'm not going to countenance that defense, it is not a defense as far as I'm concerned.

VALERY FABRIKANT :

Okay. Non-insane automatism is a defense?

THE COURT :

Depending on the circumstances, non-insane automatism is a defense, and I'm not prepared for the minute to comment any further than that, I'd like to look at it.

VALERY FABRIKANT :

Well, anyway...

THE COURT :

But my first reaction is, I was hoping to change my mind but I can't see how you can...

VALERY FABRIKANT :

Since I'm not obliged to tell you what my defense is, I believe I can tell you at this stage that my defense requires all the facts to be presented to the jury attesting to my state of mind at the time of crime. Period. That's all I am saying at this moment. If you rule that you do not allow me to present those facts, that is your ruling, it has to be founded. But what I'm saying right now, that my defense is based on my state of mind at the time of crime, and there is no way I can present adequate defense unless I give the jury all the facts which preceded it, because only in this case the jury would be able to evaluate the degree of criminal responsibility. If you just say it like this that Fabrikant went there and shoot someone, then this leaves me without any defense at all, if you just consider this fact without what happened before, and this is unfair, this does not give me the opportunity to defend myself.

THE COURT :

There is no diminished responsibility beyond what the Criminal Code contemplates, for example in the case of provocation, in the case of self-defense in our law, there is no diminished responsibility, it doesn't exist, you're in the wrong country.

VALERY FABRIKANT :

No, no, you missed one point. There is non-insane automatism too.

THE COURT :

Yes.

Me JEAN LECOURES :

But non-insane automatism is acquittal and you go back by this door.

THE COURT :

That's right.

Me JEAN LECOURES :

It's very, very rare, it's due to concussion or... usually it's... most of the time when there is automatism it's mental illness, very, very tiny examples exist of non-insane...

THE COURT :

Of non-insane automatism.

Me JEAN LECOURES :

And all these documents are nonsense to support non-insane automatism.

THE COURT :

To support that. Of course. Of course.

VALERY FABRIKANT :

Well, how do you know?

THE COURT :

Because of the criteria that you have to establish. But anyway...

VALERY FABRIKANT :

Well, criteria...

THE COURT :

Listen, I don't think there's any point arguing about it this morning, you throw out non-insane automatism from the box this morning, I'm prepared to go and open my book, but...

VALERY FABRIKANT :

Well, you cannot at this stage decide, you do not know what my defense is, I'm telling you that my state of mind is important, at the end of my defense you can do whatever you want. You may say to the jury: "Disregard all this", but I don't think you will be able to say it when you hear the whole story. So I repeat once again, my defense is based... I'm not a lawyer, I do not have to specify specific particular name to defense, all I am saying at this moment that my state of mind is an issue here.

THE COURT :

You certainly don't have to specify it at the moment, but in the confines of this particular case, and in view of what you wish to do, I'm not at all certain that I'm not going to hold that you don't have to specify it in the absence of the jury so that I can make the decision as to whether the evidence is pertinent or not. If you want to call that breaking new ground, perhaps I'll seriously think of breaking it.

VALERY FABRIKANT :

Well, let us seriously think about breaking.

THE COURT :

But you're not going to make four months worth of evidence.

Me JEAN LECOURES :

Four months, maybe four years, My Lord.

THE COURT :

Or whatever.

Me JEAN LECOURES :

It looks like a scandalous waste of time.

VALERY FABRIKANT :

Well, I do not understand...

Me JEAN LECOURES :

(Inaudible) his request.

VALERY FABRIKANT :

If yesterday you ruled yourself, when I asked Latinovic question what was his contribution to my work you ruled yourself that it was a relevant question.

THE COURT :

I said to you, in other words, that I couldn't see the pertinence of this, and then I said to you: "Well, get through it quickly", and you got through it quickly. Please don't conclude that because I let you ask that to Latinovic yesterday that that is your foot in the door in order to take us back to nineteen seventy-nine (1979) and come on up to date, I've told you that before. It may be that I gave you the latitude, I made two observations yesterday to you during your cross-examination of Latinovic to the effect that I didn't see the pertinence of this.

VALERY FABRIKANT :

Well, that's too bad.

THE COURT :

I didn't then and I don't now.

VALERY FABRIKANT :

You'll realize yourself that if you do not allow me to introduce all the documents and facts prior to what happened on August twenty-fourth (24th), you're effectively denying me my defense totally.

THE COURT :

Not at all. You can make whatever defense lies in the case... In any event, I'm not ruling on any of this, you chose to raise it this morning and what you're getting from me are reactions.

VALERY FABRIKANT :

Well...

THE COURT :

I'll rule on it when the time comes. So I think we may as well get back to some profitable work. Jury please.

VALERY FABRIKANT :

Yes. One more thing. Lately my documents are being separated from me and searched out of view. I told guards on several occasions that they are not supposed to do it, on many occasions they tried to read the documents, and again I'm telling them: "You are not supposed to read it", they do it. Now, would you be kind enough to make some kind of order, if you find it inappropriate.

THE COURT :

I find it perfectly appropriate to order that your documents be submitted to the summary search to which they're subject in your presence.

VALERY FABRIKANT :

But they are not doing it in my presence, this is my point. They are taking it somewhere else, and whatever they do to them, I don't know...

THE COURT :

This is happening here you say?

VALERY FABRIKANT :

Yes. And at Parthenais too, when I return to Parthenais my bag is somewhere else, they take it somewhere else, and they search it, and here also they take it and they don't allow me to approach. I say... I want to see what they do, and they keep me at a distance, and I don't know what they do with it.

THE COURT :

I'm prepared to order that any summary search that has to be made of your materials which you require for your defense, any summary search which may require to be made either here or at Parthenais be made in your presence.

VALERY FABRIKANT :

And not only that, that they just search, not read, because they take it like this and he looks, so definitely he reads it.

THE COURT :

Do you think he comprehends it? He's not looking for what's in your thing, I suppose he reads it to make sure it doesn't have a title "break-out plan for twenty-two hundred hours (22:00)".

VALERY FABRIKANT :

Oh no, no, no, I can tell you what he was reading, for example. He was reading a confidential letter of Mr. Belleau, he saw the letter "confidential" so he got interested. So it is all right to read that?

THE COURT :

I've said what I'm prepared to do. I'm prepared to order that the summary search be carried out in your presence.

VALERY FABRIKANT :

Okay. Now, one more question about access to computer files at Concordia. There are certain files there which are important for me to get and to deposit in court. If you remember I spoke about this too.

THE COURT :

Again, do you want to talk about that today?

VALERY FABRIKANT :

Well, those files are confidential, this is why I want to retrieve it myself.

THE COURT :

You're not going to Concordia to retrieve files.

VALERY FABRIKANT :

Okay, I don't have to go to Concordia, it can be done remotely.

THE COURT :

What is the purpose of these files?

VALERY FABRIKANT :

Well, they are important documents.

THE COURT :

Oh, hurray! I know they're important documents but for what purpose?

VALERY FABRIKANT :

For my defense.

THE COURT :

In what context?

Me JEAN LECOURES :

My Lord, didn't we deal already about ten times about this subject?

THE COURT :

Well, I... computer files was not mentioned before.

Me JEAN LECOURES :

No, since January the first (1st). You said many times he should take care of his own defense, if he didn't get a lawyer it's his problem, and period. We're moving now.

THE COURT :

Uh, huh, and we're going to continue to move.

VALERY FABRIKANT :

Lawyer or no lawyer, I do not get much advice from Mr. Belleau in this regard.

THE COURT :

Well, if the question of the computer files is simply another facet of what we've been discussing this morning, first of all it's difficult to know what pertinence these things have.

VALERY FABRIKANT :

Well, if those things were pertinent during fitness hearing, I think that they are even more pertinent for defense.

THE COURT :

Not at all.

Me JEAN LECOURE :

They are less pertinent. The only way why they were pertinent is because one witness...

THE COURT :

Said one thing.

Me JEAN LECOURE :

...said one thing about persecution, and he was entitled more or less to answer to that...

THE COURT :

Yes.

Me JEAN LECOURE :

...but nobody's alleging persecution now.

THE COURT :

Okay. We'll proceed. Jury please.

VALERY FABRIKANT :

One more small thing. I need to talk to Dr. Pothel, and he told me to address you to this regard, I don't know why. Do you have any objection if I talk to him on supposition that I might call him as a defense witness?

THE COURT :

I have no objection to you contacting him at all in that regard.

VALERY FABRIKANT :

Well, I don't know, he told me unless you...

Me JEAN LECOURE :

He phoned Dr. Pothel at home and he wanted to ask him questions about the autopsy, and Dr. Pothel told me, and I said to Dr. Pothel, Mr. Fabrikant had the chance, he did not ask any questions, I said to Dr. Pothel:

"You're not obliged to talk to Mr. Fabrikant, and Mr. Fabrikant would, or should deal with that in Court".

THE COURT :

That's perfectly true. If he wishes... I have absolutely no objection that he call Dr. Pothel surely during working hours.

Me JEAN LECOURE :

But Dr. Pothel doesn't want to be bothered, My Lord.

THE COURT :

If...

VALERY FABRIKANT :

No, no, this is not what he told me, I'm sorry. He didn't tell me that he doesn't want to be bothered.

THE COURT :

If Dr. Pothel doesn't wish to talk to you, then I'm not about to force him to do so.

VALERY FABRIKANT :

No, no, no, this is not what he...

Me JEAN LECOURE :

(Inaudible) advice as well.

VALERY FABRIKANT :

Well, this is not what he told me, he told me that he's perfectly prepared to talk if, first of all Crown prosecutor does not object. When I talked to Mr. Lecours he told me...

THE COURT :

Well, I gather Mr. Lecours, according to what Mr. Lecours says, he's given him that...

VALERY FABRIKANT :

No, he told me address the Judge, because Mr. Lecours now is misinforming you.

THE COURT :

I'm not about to force him to talk to you.

VALERY FABRIKANT :

No, no, no, this is not the story, the story was, he told me he's prepared to talk if he is given permission.

THE COURT :

I'm not the one... I don't give permission for him to talk to you.

VALERY FABRIKANT :

Well, anyway... I can tell him that you have no objection, right?

Me JEAN LECOURE :

Well, but he phoned Dr. Pothel at home at night, and...

THE COURT :

Dr. Pothel was your witness, perhaps you would call Dr. Pothel and relate to him the exchange, and if Dr. Pothel wishes to talk to Mr. Fabrikant, he's certainly not breaking any rule of anybody's in doing so.

Me JEAN LECOURE :

Yes, but he's nervous about the fact of being called at home at night and...

THE COURT :

I can imagine. I can imagine.

VALERY FABRIKANT :

Well, I called him not home, I called him office, I called him home only once, I called him at the office...

THE COURT :

Listen, I think it's time we got on with what we have to get on with.

MEMBERS OF THE JURY ARE PRESENT

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this fourteenth (14th) day of the month of May, personally came and appeared:

CECILIA BENAVENTE, born on August fifth (5th), nineteen hundred and sixty-six (1966), student and receptionist at Concordia University;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY Me JEAN LECOURE

ATTORNEY FOR THE CROWN :

Q. Mrs. Benavente, on August the twenty-fourth (24th), nineteen ninety-two (1992) were you as well receptionist at Concordia University?

A. Yes, I was.

Q. In which local were you?

A. I was in 907.

Q. I would refer you to the exhibit P-23, could you have a look and tell the members of the jury whether you recognize that local?

A. Okay. It's room 907, and it's on this side.

Q. Okay. And could you have a look as well at P-5 and locate your own desk on P-5?

A. Okay. It's right there.

THE COURT :

Q. Now just a second. You look at it and then turn around, so you're talking into the microphone so what you say gets recorded and everybody can hear you.

A. Okay. The front door is right here, this is room 907, and I sit right here, in front.

Me JEAN LECOURE :

Q. That's what you call the reception?

A. Yes.

Q. Okay. Could you tell the members of the jury and the Court the incidents that happened in the afternoon of that day?

A. After coming back from lunch, around two fifteen (2:15), once a man just walked through, and he just walked through quickly and then went through 907.

Q. Okay. Was it a person you knew?

A. I didn't know him at that point.

Q. But did you notice or look at this person long enough to be able to recognize that person?

A. He walked through quickly.

Q. The person, could you recognize the person?

A. Yes, I could recognize.

Q. Okay. Do you recognize the person in the courtroom today?

A. Yes, I do.

Q. Could you indicate?

Me JEAN LECOURE :

Indicating the accused.

A. Yes.

Q. Okay. And maybe if you look at P-1, when you say he entered and he exited, could you locate 907 on this map?

A. Okay.

Q. Okay. We see two entrance or two exits in 907, one is straight in front of your desk and the other one at your left, eh?

A. Okay. So my desk is approximately here, the front door is here.

THE COURT :

Q. Now can you speak a little more loudly, because I can hardly hear you here.

A. The front door is right here, and then there's a back door right over here that you can go out by.

Me JEAN LECOURE :

Q. Okay. This back door leads towards which office?

A. Well, the back doors or the main offices are of the boardroom, Dean Swamy's office.

Q. Which number is the Dean Swamy?

A. Room 907-7.

Q. Okay. And is there, as well, another type of reception not far from this office?

A. June, it was one of the secretaries in the back, that's in room 907-10.

Q. Okay. And is it possible to enter through 907-10, to go

across and to enter in your room 907 by what you call the back door?

A. It depends, sometimes they have it locked, but sometimes you can just walk through and go out, and it locks automatically.

Q. Okay. So it's locked when you come from the corridor but it's usually unlocked when you're in this...

A. Yes.

Q. ...907-10?

A. Yes.

Q. Okay. So could you just describe the way that the person "used"?

A. Okay.

Q. The first time.

A. The first time, I just saw him walking through, he went through 907, walked through the hallway of 907-90, went through and then went out through 907-10.

Q. Okay. But you were not there to see him go out, right?

A. No, I didn't.

Q. Okay. So, and then?

A. That was the first time. The second time he came around and I had a bit of a discussion with him, asking him why he was walking through, and who he was, and I said: "Who are you?" and he explained professor Fabrikant, and then after he left and he walked through again, and one of the secretaries, (inaudible) said: "Do you know who that was?" Then after a while, a few minutes later, there were students in front of me.

Q. Okay. Was he still there in the room at that time?

A. No, no, he went out.

Q. By which way?

A. Through 907-10 again.

Q. Okay. You mean the same way? He did not exit right in front of you by the same door by which he entered?

A. No, he entered through my door, went through, I presume he went out by the back way because I didn't see him in the back. Then I had, some time passed, I had about ten students that I was dealing with.

Q. Was it indeed the time for inscriptions and... at this period?

A. Yes, it was, because September was coming up and students are asking questions how to enrol into classes. Then afterwards, the next thing I knew there was a bit of commotion and one of the secretaries from electrical engineering came in and said that something had happened, and I didn't hear what was going on exactly but I thought that somebody either had a heart attack or had been shot. So I was clearing the area of students, and at the same time I did notice that he walked in with a gun.

Q. Okay. It was the third time you saw him in approximately how much time?

A. I would say it was about two forty-five (2:45).

Q. Okay. And from the first time you saw him, the second time he came, and the third time, total length of time.

A. It was about thirty (30) minutes.

Q. Thirty (30) minutes. Okay.

A. He walked through my area and then I thought it wasn't a real gun, and...

Q. It was not or was? Was not?

A. Was not a real gun. I thought it was a joke. And I

walked... I stayed where I was and I was standing at the moment, and everything kind of happened very quickly, but he walked through, and the next thing I knew the gun was going off, two or three times, I saw him and I heard the shots. And before that I heard somebody in the boardroom, which is in room 907-4, saying: "We better let's talk about this" or "Hold on a minute", and then I heard the shots, two or three shots, and then I heard a thump, and then I noticed there was a real gun, and then I just saw him walking through again, through 907-90.

Q. Which is the corridor from your back door?

A. Yes. And he was heading through to the back area, towards the Dean's office, and I was afterwards... at the same time this was going on I was dialing 911, and after he was cleared out and I didn't see him anymore, I ran out.

Q. Okay. So the third time you saw him he entered again by your front door and exited by the other door?

A. Yes.

Q. Did you see him shooting?

A. Yes, I did.

Q. Did you see at whom he was shooting?

A. No, because the person that was in the boardroom was covered by the door... not the door, but the door was opened, but there's a wall that I couldn't really see but he was shooting at...

Q. Did you see any part of the body of the person that was shot?

A. No.

Q. The third time, when he came, you said he had a gun but at which distance was it from you?

A. My table is right in front of 907, and then a few feet away, he was a few feet away from me...

Q. To your left?

A. To my left, and then he was with the gun, standing there for a few minutes, and I was by myself there, and then he walked around to the boardroom and then he shot.

Q. Okay. Did he make any gesture towards you?

A. He just walked around with the gun, and I can remember saying something, I don't know, I didn't think it was real or something, saying, you know: "What are you doing here?"

Q. Did you say anything to him?

A. Yes, I remember saying: "What are you doing here?" something like that.

Q. Was there an answer?

A. No.

Q. Was at any time the gun pointed in your direction?

A. Yes.

Q. At that very moment?

A. Just for like a glance, but he was just looking for somebody.

Q. But how did you feel at that time?

A. Very scared.

Q. And was the gun pointed at... how many people approximately were there?

A. I was by myself in the front, and then there was somebody in the boardroom that I later found out that is Dr. Douglass.

Me JEAN LECOURE :

No further questions.

CROSS-EXAMINED BY VALERY FABRIKANT :

Q. You said that I stood in front of you, you were gone for several minutes, is this the right estimation?

A. For a few seconds.

THE COURT :

Q. Speak a little more loudly please, I know it's difficult, try.

A. Okay. For a few seconds.

VALERY FABRIKANT :

Q. So it was just wrong word that you used, eh. You said few minutes.

A. Everything happened very quickly that day.

Q. Okay. So it was few seconds rather than a few minutes?

A. Yes.

Q. After that you say that you heard three shots in the boardroom?

A. Yes.

Q. And where were you at that time?

A. I was standing by my desk.

Q. Okay. Did you see me while shooting?

A. Yes.

Q. So I was somewhere at the door?

A. You were in 907 to my left.

Q. Well, could you pinpoint on the map where was I?

A. I was approximately there...

THE COURT :

Q. Now just a second again, indicate on the map and then turn around so that we can...

A. I was approximately here, and you were approximately right there. I was here.

VALERY FABRIKANT :

Q. Where is on your map 907-4? So I was shooting from that distance?

A. No, no, no. You walked in this way...

Q. Yes.

A. ...then when you shot you were right about here, up to the door, not inside.

Q. Uh, huh.

A. And I was standing right over here.

Q. Okay. And what happened after that?

A. Basically after you've shot, you shot two or three times, I looked around and then when I saw you heading towards room 907 in the back area, this way, then I ran out.

Q. So you didn't see me exiting from the other door, did you?

A. No.

Q. So why do you think that I exited through the other door?

A. I didn't know... I don't know if you did or not.

Q. Okay. And after those two shots, you have heard some body has fallen on the floor?

A. Yes.

Q. Okay. You, in your preliminary inquiry, said that you also saw legs...

THE COURT :

Just a second now, you know how to do that.

VALERY FABRIKANT :

Yes. All right.

Q. Do you remember testifying at preliminary inquiry on

October sixteenth (16th)?

A. Yes.

Q. You remember that. Now... and on the page 187, somewhere below the middle, I read:

"Q. How did you find out? Did you go back or what?

A. No, I didn't go back, I never saw the body but I heard three shots.

Q. But you never heard the person who was in the office? You never saw the person who was in the office?

A. I didn't.

Q. Whether prior or after the incident?

A. No, I just saw somebody's feet, and somebody down on the floor has fallen and I heard a thump."

So, do you recall this deposition?

A. Yes.

Q. Okay. So here there is an indication that you saw somebody's feet.

A. Yes.

Q. Okay. Could you elaborate on that?

A. Well, as I was running to... out of 907 I peeked but I saw... I can't remember if I did see feet or not.

Q. Well, the feet, you mean feet of the victim?

A. Yes.

Q. So, if you saw feet then one might assume that the victim was lying feet to the door and had in opposite direction, would that be correct assumption then?

A. I guess.

Q. Since you saw feet but you didn't see head, correct?

A. Right.

Q. So it means that you saw body lying feet to the door, in direction of the door?

A. I can't remember. I can't recall.

Q. Well... Okay, you cannot recall the position of the body but you saw feet but you didn't see the head, I mean...

THE COURT :

The witness told you earlier today that she can't remember if she saw feet or not, that was her answer to the question a few times ago.

VALERY FABRIKANT :

No, this contradicts to preliminary inquiry because she stated here without any hesitation that she saw feet.

THE COURT :

Ask her if she remembers giving that answer.

VALERY FABRIKANT :

Q. Do you remember that you gave the answer that you saw feet and you didn't express any hesitation as to what you saw?

A. I'm not sure if I did or not. I can't remember at this point, all I remember is the shooting and everything going very fast that day.

Q. Well... anyway, maybe now some time has passed and now you no longer recall it well, but at the time of inquiry probably you did recall that you saw feet, could that be the situation?

THE COURT :

I'm sorry, you can't put what was said at the

preliminary inquiry into evidence, I explained that to you. I explained that to you yesterday.

VALERY FABRIKANT :

I'm not putting it into evidence, I'm just asking.

THE COURT :

That's what you're trying to do. I said you can establish it, you've established it, you asked the witness if she recalled saying that, I don't know whether she recalls saying that or not.

VALERY FABRIKANT :

Uh, huh.

THE COURT :

But she said: "Today I can't remember".

VALERY FABRIKANT :

All right.

Q. But you remember that you peeked back to the boardroom, that you remember for sure?

A. Yes.

Q. All right. So you peeked back to the boardroom and what you thought that you saw feet, somebody's feet?

A. I'm not sure.

Q. Okay. Now... But if, let us say somebody was, say half body outside the door, you would have noticed wouldn't you?

A. I was too scared. I don't remember, all I remember is just seeing the shots, hearing them, and then when you were out of there I ran out.

Q. All right.

VALERY FABRIKANT :

I would like to... just booklet, Serge Proulx. P-7.

THE COURT :

Pictures are all numbered one by one.

VALERY FABRIKANT :

Q. The picture didn't look like it when you left?

A. ...

THE COURT :

Would you like me to stop for five minutes?

We'll stop for five minutes.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITNESS: CECILIA BENAVENTE -- UNDER THE SAME OATH

CROSS-EXAMINATION BY VALERY FABRIKANT (CONT'D) :

Q. First of all I want to apologize, I didn't expect reaction to be that strong, just yesterday I showed picture to another witness...

THE COURT :

You don't need to make a speech, you've said what you had to say, if you have other questions to ask, ask them.

VALERY FABRIKANT :

Well, this is an indication of how police changes the picture to...

THE COURT :

Mr. Fabrikant, if you have a question to ask, ask it.

VALERY FABRIKANT :

Let me just finish my phrase please.

THE COURT :

No, I won't let you finish your phrase, your phrase has nothing to do with what you're doing now, which is

engaging in cross-examination of the witness.

VALERY FABRIKANT :

Yesterday... because the reaction is an indication...

THE COURT :

Mr. Fabrikant, would you put whatever questions you have to put?

VALERY FABRIKANT :

Q. Now, do you recall making two statements, one to the police, without a date, do you recall that?

A. Yes, I do.

Q. Do you remember what date it was?

A. August twenty-fourth (24th).

Q. August twenty-fourth (24th). All right. And also you testified at preliminary inquiry on October sixteenth (16th), you recall that too?

A. Yes.

Q. On police statement you said... would you like to consult what you said or you remember? Or maybe I can read it.

THE COURT :

Take your time and read the statement over.

Okay, put your question.

VALERY FABRIKANT :

Q. Okay, do you recall this?

A. Yes.

Q. Okay.

THE COURT :

You just speak loudly, okay, it's got to be recorded.

I'm sorry but it has to be recorded.

VALERY FABRIKANT :

Q. So you say here:

"Approximately three months ago Dr. Swamy told me not to let anyone in the office after six p.m. (6:00), he told me that a professor has threatened to kill him because of a conflict with his work."

Do you recall that statement?

A. Yes.

Q. Okay. In preliminary inquiry you said "couple of weeks ago", you remember that?

THE COURT :

Would you go to the page in the preliminary inquiry?

VALERY FABRIKANT :

Well, I think she remembers it.

THE COURT :

No, I don't care whether you think she remembers it or not, there's a procedure you follow.

VALERY FABRIKANT :

Q. Page 143, close to top:

"Q. Okay. And did you get some specific orders as the receptionist in order to allow people in?

A. Yes.

Q. Did Mr. Swamy or somebody else behind you, behind this reception?

A. Yes, I did, a few weeks before the incident Dean Swamy has asked me not to let anybody in..."

And so on. So here it is two weeks.

Me BELLEAU :

A few weeks.

VALERY FABRIKANT :

Q. Sorry, a couple of a... a few weeks. Yes. And on page 152 I tried to clarify what is... at the end:

"Q. So is it a couple of weeks or three months, which one is true?

A. A couple of weeks could also be three months."

So can we clarify it now with more determination as to when you got this instruction from Dean Swamy?

A. It was approximately two, three months, I'm not sure, it was a long time ago, I was instructed I know that.

Q. So, finally it is months. How did you come to conclusion of months since in preliminary inquiry I tried to elucidate from you and there was no definite answer of any kind as to when it happened. What helped you to give more or less definite answer now?

A. Reading my statement and... I'm not sure if it was three months or a couple of weeks, but it was before the incident, and it could have been three months or two months, I'm not sure. It could have been months.

Q. Or even two weeks?

A. No.

Q. Maybe you recall what was it, summer, spring, like this?

A. It was probably in the spring-time.

Q. If it was spring then it is three months. Why did they... why did you then make in preliminary inquiry statement "a few weeks ago"?

A. I'm not sure. I'm not sure if it was three months, two months. Like I said then, and I say now, I am not sure of the time, but I remember that before...

Q. All right. Now he told you that a professor had threatened to kill him, correct?

A. Yes.

Q. Okay. Where did this happen that he told you that?

A. I was talking one afternoon, before the incident, and we were thinking of putting a little chain near... not to go through the back, and Dean Swamy said that there was a professor that he was having problems with, and also with his secretary Jane.

Q. Jane who? What is the family name of Jane?

A. Jane Benatache.

Q. Okay. And what did he exactly tell you, that this professor threatened to kill him?

A. That's what he said.

Q. Uh, huh. And what was your reaction to that?

A. I just basically asked what was the problem or something, and I was just told it was hearsay from one of the other secretaries to see that, and again it was hearsay from Jane, and the other secretary.

Q. No. I mean did you ask Swamy himself what was the problem?

A. One afternoon we had a small talk, Dean Swamy was there, Jane was there, and we just basically, he just said that he didn't know anybody in the afternoon after six o'clock (6:00) to go in the back, and that there was a professor giving him trouble.

Q. Are you referring now to another conversation on the same subject?

A. No, the same one.

Q. So it was the same conversation?
A. Yes.
Q. You were present, Swamy and Jane Benetache?
A. Yes.
Q. Three people were present. Okay. And when you asked Swamy what was the problem, what did he answer?
A. I don't remember.
Q. Did he answer anything?
A. I'm not sure what he said, it was too long ago.
Q. Well, you said the same thing in October, then it was not too long ago, but even in October you had difficulty to recall the conversation. Do you remember that at preliminary inquiry you were not even sure whether you asked Swamy about reasons for this professor threatening to kill him or you didn't ask, do you recall that?
A. I don't remember what exactly happened but I remember that I just had to stop people from going in after six o'clock (6:00) at night through the office.
Q. Okay. Did you ask the name of professor who threatened to kill him?
A. No, I didn't.
Q. Well, in... Okay. Did you ask him: Who should I watch for?
A. He didn't tell me exactly.
Q. Well, did you ask this?
A. I'm not sure if I did ask then who was the person, but at that point I didn't know that many professors in the university, so I wasn't sure who was who.</pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">Q.

Well, but if dean tells you that someone threatens to kill him and asks you to watch out, then is it natural to ask who am I supposed to watch out for?

A. I might have, I'm not sure.

Q. Again, I refer to page 160, a little bit below the middle:

"Q. Did you ask him: Who I should watch for?

A. I asked him, and he said a professor, and I wasn't sure at that point, I didn't know you, I didn't know who you were or what your name was, or anything at that point."

So here, do you recall answering this question in positive "I asked him..."

A. I'm not sure, it was maybe about a year ago that this happened.

Q. Well... but here you responded: "Yes, I asked him", do you still maintain that you did ask him?

A. I might have asked him.

Q. And what did he respond?

A. I'm not sure what his response was, but he might have said one of the professors, and I'm not sure who that professor was back then, until August the twenty-fourth (24th) when one of the other secretaries pointed out before the actual incident happened.

THE COURT :

Q. Just a minute now, don't relate what another secretary told you. The question was relating to what you were told by Dean Swamy. Okay? If you remember, you remember, if you don't, you don't, you say you don't.

A. I don't remember.

VALERY FABRIKANT :

Q. But just before that you said that during the conversation between you, Swamy and Benetache there was mentioning of professor who has some conflict with his work, do you recall saying that today?

A. Yes, I do.

Q. So it means that you do remember that some reasons were given to you?

A. Yes.

Q. But just recently you said that you don't remember any reasons were given to you, so you do or you don't?

A. I do remember that there were reasons given to me.

Q. So why did you just a second ago say that you don't remember that?

A. I'm nervous.

Q. Well, are you nervous because you are afraid that you might be punished by administration by revealing some dark secrets? Is this why you are nervous?

A. No.

Q. No. Then why you are so elusive to such simple questions?

Me JEAN LECOURES :

She doesn't have to answer that, My Lord.

VALERY FABRIKANT :

Well, isn't it obvious she tries just to elude the questions?

THE COURT :

The witness has said she's nervous, on a number of occasions she said she doesn't remember, what is obvious to you isn't necessarily obvious to me, if you're asking me.

VALERY FABRIKANT :

As far as Concordia goes nothing is ever obvious to you.

THE COURT :

Eleven thirty-nine (11:39), madame Desrosiers, please.

VALERY FABRIKANT :

So I said as far as Concordia goes nothing is obvious to you, or nothing seems to be obvious to you.

THE COURT :

Now, have you another question for the witness?

VALERY FABRIKANT :

Q. Okay. What do you know or did you know in general at the time of August about professor trying to kill Dean Swamy, or threatening to kill Dean Swamy? What was your personal knowledge of that?

A. It is all hearsay from other secretaries.

Q. Well, just give your personal knowledge in terms of... so it would be clear why you behaved in such or such way, regardless the source, what was your personal knowledge?

A. One of the secretaries, the day that it happened, she said: "That's the professor that there's a conflict with in the university".

Q. But before that you mentioned yourself that during conversation Swamy, Benetache and you, there was mentioning of some conflict, right?

A. Yes.

Q. So what was your knowledge by that time? So you had knowledge prior to August twenty-fourth (24th).

A. Just that there had been... there was a professor that was basically giving problems to Dean Swamy and to the university. This I was told by Jane and Dean Swamy one afternoon after five thirty (5:30).

Q. I'm not sure it is being all recorded, but... So you were called one afternoon to Dean Swamy and Jane to Dean Swamy's office?

A. No, it was where I sit, near...

Q. So they approached you?

A. Yes.

Q. Both?

A. They wanted to put a chain around one of the entrances so that people would not walk in and out.

Q. Yes. And you asked why chain or what? Describe the discussion after that.

A. The discussion was basically that I should stop people from coming in after five (5:00) or after six o'clock (6:00), or make sure that you know them, and who they are, and what their business is to do with the dean, and if not, we'll put a chain near the doorway so that people would not be in and out of the office, and I was talking at that point with Dean Swamy and Jane.

Q. I don't think anybody could hear you. I have great difficulty hearing.

THE COURT :

Did you hear her? Jury heard it.

VALERY FABRIKANT :

Well...

Q. And what about threat to kill?

A. I'm not sure about that.

Q. Maybe there was not even saying that someone threatened to kill, maybe it never was said, could that be?

A. I'm not sure.

Q. So it might be that nobody ever told you that professor threatened to kill, could that be?

A. I'm not certain.
Q. So you repeated it twice in your statement to police in preliminary inquiry, now you are saying that you are not sure even if there was such saying on the part of Swamy that professor wants to kill him? Is this what you're saying?
A. I'm not sure, I can't remember.
Q. Well, statement that someone threatened to kill, or no such statement, how is it possible to get confused, was or wasn't such statement made?
A. I'm not sure.
Q. Well...

THE COURT :

Q. Well listen, would you try to direct your mind? I know you wish you were out of here, and I'm sure you really do, but would you try to focus your mind on the question and answer it. You said something at one time, you must have had something to base that on. Now focus your mind and try to answer the question. Go ahead.

VALERY FABRIKANT :

Well, this is general treatment by Concordia people.

THE COURT :

I'm not asking for a speech...

VALERY FABRIKANT :

They are so scared.

THE COURT :

...please put your question.

VALERY FABRIKANT :

God forbid they say wrong word and they will be demolished as they tried to demolish me. Isn't it clear why she behaves that way? You had other witnesses also saying "I got the instructions to do it and I did it".

THE COURT :

Are you finished? Put your question.

VALERY FABRIKANT :

Well, my question...

THE COURT :

Put your question again.

VALERY FABRIKANT :

Q. Yes. My question is, is it an ordinary statement for you to hear that a professor wants to kill dean of a faculty? Is it an ordinary statement for you?

A. No, that isn't an ordinary statement.

Q. Would it be correct to say that it's something extraordinary as a statement?

A. Yes.

Q. Do you remember extraordinary things better than regular things?

A. Yes.

Q. Yes. So, was such statement made by Swamy that a professor wants to kill him?

A. I don't think so.

Q. Now you are saying that the statement was not made. Is my understanding correct?

A. ...

Q. The statement wasn't made?

A. No, basically there was just talk between the three of us, and I'm not quite sure if Dean Swamy did say that.

Q. Say it again, you are not sure what?

A. I'm not sure if Dean Swamy did say that statement.

VALERY FABRIKANT :

Now, is it clear to you, Mr. Martin, that witness clearly does not want to answer rather than being nervous or having bad memory? Is it clear to you?

THE COURT :

I'm not the one appreciating the witness' testimony.

VALERY FABRIKANT :

Well, then maybe you could direct the witness to answer.

THE COURT :

The witness... you've been on the question for the last ten minutes...

VALERY FABRIKANT :

Yes, and I heard all kinds of answers.

THE COURT :

...and you have had all kinds of answers. Now, what do you want, you've had all kinds of answers, there you are, these are the answers.

VALERY FABRIKANT :

And what you are saying, nothing can be done about it?

THE COURT :

You have all kinds of answers, the jury will eventually appreciate the witness' testimony.

VALERY FABRIKANT :

Q. So we finally are that the statement was not made by Swamy, is this where we are now?

A. Yes.

Q. Okay. Anyone at all made the statement? Maybe Jane Benetache said that?

A. It was a rumor from one of the secretaries.

Q. So then what this conversation between you, dean and Benetache has to do with the whole thing? So it was never mentioned during this conversation?

A. It was probably mentioned by maybe one of the other secretaries.

Q. Well... let's return to conversation between Swamy, you and Benetache. If nobody threatened to kill anyone then what was the need to put a chain?

A. He didn't want to be disturbed without having somebody have made an appointment before.

Q. You didn't want to be disturbed?

THE COURT :

No, she said... she answered: "He didn't want to be disturbed", at least that was the way I heard it.

A. Yes. He didn't want to be disturbed, so that would stop the flow of people going in and out of the office, and you would have to make an appointment to see him.

VALERY FABRIKANT :

Q. Well, isn't it how it's always been that nobody barged in his office without appointment? Do you know anyone barging in his office without appointment?

A. People could see him without appointments.

Q. Well... did you see me ever barging in?

A. No.

Q. No.

A. I wasn't there... I had only been there a couple of months before this incident happened.

Q. When did you start working for Concordia?

A. About a year ago, in May, last year, at the dean's office, before that I was working in another department.

Q. Did you see a bodyguard near dean's office?

A. No, but I had heard hearsay from another secretary that there had been a guard.

Q. At what time?
A. I wasn't there, it was before I got...
Q. So was it in winter?
THE COURT :
She said she wasn't there. Now you're getting then from hearsay into double digit hearsay.
VALERY FABRIKANT :
Yes.
Q. All right. So should I conclude that whatever you said on your police statement, which says here, I repeat once again:

"He told me the professor had threatened to kill him because of conflict with his work."
Why did you write this sentence?
A. That's what was on my mind after the incident on August the twenty-fourth (24th).
Q. Well, can something be on your mind which never happened in reality?
A. No.
Q. No. So it means it did happen?
A. ...
THE COURT :
Q. Look, do you have to ponder these questions for so long? Can you not answer them? Or are you totally upset? Do you want me to stop?
A. I can answer them.
Q. Well fine, answer them.
A. Basically what happened was that it's in my statement that the dean had warned me about some professor, but I'm not sure if he did say at the time, it's too long ago, that it was threat to kill or not, I'm not sure, but there was a conflict that I had heard of work, of tenures, there was a lot of things that were said to me that were rumors, that you hear, but on August the twenty-fourth (24th), when I wrote down my statement, and that came to my mind that Dean Swamy had said something similar on those lines, that somebody had threatened, and also that one of the secretaries had told me to see that there had been a few words between the two of you in your office, but that's hearsay also.
VALERY FABRIKANT :
Q. You did not answer my question. Okay. Let me try it differently. You heard a lot of rumors of some professor being in conflict with the whole university, did you ever wonder to say what is the name of this professor?
A. They might have said the name, but I couldn't associate it, and I can't... like when somebody says a name to you, do you remember it unless you know the person? No.
Q. Well, I believe my name is kind of not so usual that at least in the phone book of Montreal there is not second Fabrikant, so I think one could remember it, but again, now that you know my name, do you recall anyone mentioning which sounded similar?
A. No.
Q. Do you remember anyone mentioning the name, regardless how it sounded?
A. I cannot recall.
VALERY FABRIKANT :
No more questions.
THE COURT :
That's all.
AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOURES :
Mr. Boudari Nevad.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this
fourteenth (14th) day of the month of May, personally came and
appeared:

KAMAL BOUDARI NEVAD, born on July fourth (4th), nineteen
hundred and sixty-three (1963), student;

WHOM, after having solemnly affirmed, doth depose and say as
follows:

EXAMINED BY Me JEAN LECOURES
ATTORNEY FOR THE CROWN :

Q. Mr. Nevad, on August the twenty-fourth (24th), nineteen
ninety-two (1992) were you as well a student at Concordia
University?

A. Yes, I was.

Q. Could you tell the Court and members of the jury what happened
on the afternoon of that day?

A. Yes, I was in room 907, I was picking up an application, and
I was talking to Cecilia...

VALERY FABRIKANT :

Q. I cannot hear you.

THE COURT :

Q. Now look, you'll have to speak loudly, it's got to be recorded
and it's got to be heard.

A. Okay. I was in room 907, asking for an application from
Cecilia, the secretary, and...

Me JEAN LECOURES :

Q. Okay. You have in front of you P-23, do you recognize room
907?

A. That's right.

Q. Here, there was a door and...

A. Okay, here's the window (inaudible).

Q. There is the door window here and a blackboard there?

A. (Inaudible).

Q. Okay. You mean in front of Cecilia's desk?

A. Exactly.

Q. Okay. Please go on.

A. And suddenly came another professor, Dr. Ziogas' secretary,
they came in and they shouted: "Call 911 and security,
there's a shooting going on, and Dr. Ziogas has been shot",
and they asked us to leave the room. As I walked out of the
room I saw Dr. Fabrikant coming from the corridor, and I
started to run too, and he was holding a black gun in his
hands, and yelling that "move, move".

Q. Okay. I'm showing you P-1, here is room 907, could you
indicate the corridor which... Okay. The corridor 915 going
to 929-10?

A. Exactly.

Q. Okay. Where were you exactly when...

THE COURT :

Just a second. Would you have the witness look at the map and
then turn around and tell us?

A. Yes. I was here, I was coming out of this door here, and Dr.
Fabrikant was coming this way.

Me JEAN LECOURES :

Q. Okay. The first time you met him, or you saw him, where were

you exactly on this map?

A. I was right here.

Q. Okay. Right in front of the door facing the corridor?

A. Exactly.

Q. Okay. At which distance was he from you when you saw him first?

A. Something like three meters.

Q. Okay. And you say he was saying "move, move", was he talking, yelling, or what...

A. He was calm but he was like loud.

Q. Okay. Did you feel that these words were directed to you, or to anybody, or...

A. Oh, it was like everybody, because we were like five or six people coming out of the room, and he was coming straight towards us.

Q. Okay. And what did you do when you saw the person with the gun and when you heard that sentence?

A. Oh, we had started to run, we went to the corridor here, we went to (inaudible) right here, from around here.

Q. Could you indicate the number?

A. I don't remember exactly the number, but I think it's this room, 975.

Q. But this looks like a stairs.

A. (Inaudible) 947 then.

Q. Something like that?

A. It's a computer room here, I don't know the number.

Q. Okay. This person you call Dr. Fabrikant, do you think you could recognize that person today?

A. Yes, I can see him here.

Me JEAN LECOURE :

Indicating the accused.

Q. Thank you.

Me JEAN LECOURE :

No further questions.

CROSS-EXAMINED BY VALERY FABRIKANT :

Q. Is my understanding correct that some professor and the secretary of professor Ziogas came to 907?

A. Yes.

Q. So there were two people?

A. Yes, two people came in that room, and they were yelling: "Call 911 and security, Dr. Ziogas has been shot".

Q. Just recently we heard it was just the secretary.

THE COURT :

Never mind.

VALERY FABRIKANT :

Q. So you're sure there were two people, not one?

A. Yes.

Q. Not just the secretary?

A. No, the secretary and another professor, I don't know his name but I know who he is.

Q. Could you describe him?

A. Yes, he's Indian, short, around fifty (50), forty-five (45) to fifty (50).

Q. Do you know names...

A. I don't know his name.

Q. And that professor was from electrical engineering?

A. I suppose so, I'm not sure.

Q. Okay. Did they enter 907 or they were shouting from the door?

A. They entered the room.

Q. They entered the room, and they were shouting what you said?

A. Yes.

Q. What happened after that, they left or they stayed?
A. The secretary asked us to leave the room, I don't know what they did after.
Q. The secretary left the room?
A. When I left the secretary was still in the room.
Q. Oh, secretary was still in the room, you mean secretary called Kim?
A. Yes.
Q. She was still in the room, you're sure about that?
A. Yes, I'm sure about that.
Q. Okay. So now situation is you left the room, you look at your left...
A. Yes.
Q. ...and here I am in three meters from you?
A. Almost, yes.
Q. And secretary is still inside 907?
A. Yes.
Q. Are you sure about all that?
A. Yes, I am, positive.
VALERY FABRIKANT :
And you're calling me insane.
THE COURT :
What did you say?
VALERY FABRIKANT :
I said they're calling me insane. They give evidence which totally contradict one another.
THE COURT :
Go ahead with your questions.
VALERY FABRIKANT :
Q. Okay. Now, secretary was inside and there were several more people inside?
A. Yes.
Q. Okay. Could you give an estimation as to how many? Five, six, just...
A. I can say less than ten.
Q. Less than ten but more than five?
A. More than five, because there were students in that room.
Q. All right. And I was just three meters from entrance to 907?
A. You were almost here.
Q. Okay. All right. So you left, you saw me approaching, and saying what: "Move, move"?
A. Yes.
Q. All right. So you just went... you ran or you went, what did you do?
A. I ran towards this way.
Q. You ran.
A. I ran to the computer room here.
Q. So you have no idea what happened after that?
A. No, I stood in the room for five minutes and then we thought everything is over, we opened the door, we heard three gunshots, and then we took the stairs right here and we went downstairs.
Q. So effectively, since I was couple of meters from the door, I might have entered 907 with secretary Kim still there?
A. I don't know, I wasn't there.
Q. But you are sure I was just two meters from the door?
A. First I said three meters, and then I said approximately.
Q. Well, like this distance, would that be correct?
A. This is a bit more than three meters, less than three meters I think.
Q. So it was even closer than that?

A. No, I said... this is not three meters.
Q. All right. Was it closer than that?
A. A bit farther.
Q. A bit farther. Like this?
A. It's getting too technical probably.
Q. All right. And professor who came, he also was still in 907 or he left? Professor who came with Kim.
A. When I left the room he was still in the room.
Q. He also was still in the room. And I was just three meters away. Who did I shout to move then if you were the only person in front of me?
A. I didn't say... I said there were a few people, a few students, two or three students leaving the room at the same time.
Q. Oh, you mean... Okay, but I was shouting at you? I mean at the students leaving the room?
A. This is what I imagined you were doing, yes.
Q. Do you know anybody of other students, in face or by name, who were at the time still there including secretary Kim?
A. I didn't know the students, no.
VALERY FABRIKANT :
He should be testifying in a reverse order.
Q. If you are given photograph of professors from electrical engineering, would you be able to recognize?
A. Dr. Ziogas is the only one I knew.
Q. No, I mean the professor who came, would you be able to recognize him?
A. I think so.
VALERY FABRIKANT :
Can we make that...
THE COURT :
Go ahead, you show him the photographs. Do you have them?
VALERY FABRIKANT :
No, I don't have them, this is the point, I have Me Belleau who is so helpful that I believe he would be able to do so, if he wants to, but he doesn't do anything unless he's directed by Court.
THE COURT :
Where do you suggest that Mr. Belleau gets this photograph?
VALERY FABRIKANT :
Oh, very simple, from any year and photographs, at the end of the year each department has a photograph where all the professors, on top, and all the students graduated, so from any graduating photograph it's just right there, all the professors are there. So, can we make it?
THE COURT :
Continue with your questions, I don't see the point.
VALERY FABRIKANT :
Well...
THE COURT :
Continue with your questions.
VALERY FABRIKANT :
...let me explain the point.
THE COURT :
Continue with your questions.
VALERY FABRIKANT :
Well, I don't have any questions.
THE COURT :
You have no further questions?

VALERY FABRIKANT :

But I would like to explain the point.

THE COURT :

Go ahead.

VALERY FABRIKANT :

The point is that Mrs... what they call Kim, the secretary, testified yesterday that she met me in 915, and she opened the door for me, and she was so convincing that I waved my pistol at her, which I know I didn't, but right now we have evidence that at the time she allegedly opened the door for me from 915 she was in fact, according to this testimony, in 907, and couldn't possibly open the door for me, I was already in three meters from 907, so those two witnesses could not possibly both telling the truth.

A. Can I explain something?

THE COURT :

I don't know whether Mr. Fabrikant wishes you to explain something or not, you've said what you had to say, so...

Mr. Belleau, if it's possible for you to put your hand on the faculty photograph, there is one there but I don't...

Me BELLEAU :

There's one here, and these pictures are pretty small, I don't know, maybe Mr. Fabrikant wants to show it to the witness.

VALERY FABRIKANT :

No, this is mechanical engineering.

Q. My understanding is that it was professor from electrical engineering, right?

A. I think so, I'm not sure about it.

Q. Well... you can take a look at mechanical engineering, but I don't think it could be anyone from mechanical engineering. So I think we need to get pictures from electrical engineering to show the witness and invite that professor to testify, maybe we'll clarify where I was after all, and was I shouting, maybe I wasn't, and maybe I came from different direction in the first place.

THE COURT :

If it's possible for you to get hold of the picture.

Me BELLEAU :

Yes, I'll try to get them from...

THE COURT :

If you do your best, if you can get them from...

Me BELLEAU :

...consenting party, if we don't, well...

THE COURT :

...Concordia, if you don't, you don't. But you would like what, to suspend your cross-examination or you simply wish the name of this... I don't think you've any further questions... You'll have to have him identify.

VALERY FABRIKANT :

At this time I don't have any questions, but I would like...

THE COURT :

Obviously the witness will have to identify whoever it is that you're...

VALERY FABRIKANT :

Yes, he has to identify and after that I would like to call that professor, and I would like also to recall Miss Adams to testify too, because...

THE COURT :

Well, you're perfectly free to do whatever you wish.

VALERY FABRIKANT :

Well, you agree that some clarification is needed here,

this...

THE COURT :

Listen, everyday of the week there are variations in the testimony of people.

VALERY FABRIKANT :

Well, but variation is so appalling.

THE COURT :

That's your word, memories recall things different ways.

VALERY FABRIKANT :

I have difficulty to believe...

THE COURT :

You may, but I don't.

VALERY FABRIKANT :

...(inaudible) she described that.

THE COURT :

And that's what a jury is for, a jury listens to all of this and a jury decides what the facts are. Different people remember different things different ways. Their minds are not video cassette recorders, you know.

VALERY FABRIKANT :

Well, unless the whole thing is just staged to pretend that people really have great, great difficulty to remember.

THE COURT :

Q. Would you come back at two fifteen (2:15) this afternoon, please?

A. I cannot, I have an appointment at one (1:00), that's why I was...

Me JEAN LECOURES :

It's why I inverted the order, he has a job interview.

THE COURT :

I see.

Q. Monday morning?

A. Yes.

Q. Fine. Monday morning, nine thirty (9:30), and we'll suspend your cross-examination until Monday morning, and we'll see whether the pictures are available and then whether you're able to identify the person in question. Okay.

AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOURES :

Mr. John Hall.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this fourteenth (14th) day of the month of May, personally came and appeared:

JOHN HALL, born on August second (2nd), nineteen hundred and twenty-nine (1929), special assistant to the dean;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY Me JEAN LECOURES

ATTORNEY FOR THE CROWN :

Q. Mr. Hall, on August the twenty-fourth (24th), nineteen ninety-two (1992) were you a full time employee or still working in post-retirement contract with the university?

A. I just had started that post-retirement contract on the third (3rd) of August, I had retired prior to that from the Human Resources Department at the end of May nineteen ninety-two

(1992).

Q. Okay. Were you assigned an office on the ninth floor at Concordia?

A. Yes, I was.

Q. Could you look at P-1 and point the number of your office?

A. Okay, 907.

THE COURT :

Q. Okay now, just a second, you're looking at the plan, if you look at the plan, determine what you have to determine and then turn back towards the microphone and indicate to the jury where the office is, and then we can...

A. My office was just down the corridor from the main...

Me JEAN LECOURE :

Q. Okay. What's the number of the corridor?

A. The number of the corridor is 907-91, and my office was 907-15.

Q. Okay. And during the afternoon of August the twenty-fourth (24th), nineteen ninety-two (1992), from your personal knowledge, what happened?

A. I was sitting in my office working, and all of a sudden I heard three bangs, I looked out, I walked out of my office and looked down the corridor, I saw this gentleman walking down the corridor in the opposite direction towards the dean's office, he stopped, turned around, and as he turned around I noticed he had a pistol in his hand, and he was cocking the pistol. He started walking back towards me, at that point I had progressed up the corridor so I was next into the office next to mine, or beside the office next to mine, so then I went into that office, closed the door and called security.

Q. Okay. You were in front of your door, where was exactly the person you've been just talking about?

A. I came out of the office here and started walking down the corridor here, he was in this area here.

Q. You mean the 907?

A. The 907 area, he progressed up the corridor.

Q. You mean he went through the door or...

A. He went through this area here.

Q. What's the number of this corridor?

A. 907-90.

Q. Okay. And you just said that it leads towards Dean Swamy's office?

A. Dean Swamy's office was 907-7.

Q. Okay, but....

A. So he was walking up this corridor here, he stopped about here.

Q. About one third of it?

A. About one third, yes, a few steps beyond the door of 907-12, and then he stopped, turned around, and started walking back here.

Q. Okay. And then you saw the gun. This gentleman...

A. That's when I saw the gun.

Q. Okay. This gentleman, did you know him at that time?

A. I didn't know him personally, I could recognize him if I saw him again, and I also could... I knew, afterwards when I learned that it was Mr. Fabrikant, I knew him by reputation.

Q. Okay. But let's just consider your visual memory. Do you remember how he was dressed that day?

A. Yes, he had a light blue jacket on, a suit jacket, the color was light blue, and his hair was kind of messed up, I noticed that from the back, and then when he turned around, as I said I saw the gun in his hand, and once I went into the office, as

I was moving towards the telephone, I heard three more shots.

Q. Okay. At what point did you hear the first three shots?

A. That was before I realized anything wrong was going on, as I said I had been in my office working, concentrating on my work, I didn't hear anything in the office unusual, and then all of a sudden I realized things were quiet up there, but I thought, well, they're either gone to a meeting or something, and then I heard these three bangs, and...

Q. Okay.

A. ...that's when I got up from my chair and went out of the office.

Q. Okay. And when you saw that man for the last time, in which direction did he go?

A. He was coming back towards the room... as I said he had stopped and turned and he was heading back, and I guess that's the last... when I went into the office he must have been about here, just in front of the...

Q. Inside 907?

A. Just coming into 907, yes.

Q. Okay. And when you entered your office, you did not know which direction he could have taken after that?

A. Not from there, no. Well as I said, as I entered the office I could hear three more shots.

Q. Okay. And the weapon you were talking about...

A. It's a small caliber pistol.

Q. Okay. And this person, could you recognize in the courtroom today?

A. Yes, it's the gentleman in the box.

Me JEAN LECOURE :

Indicating the accused. No further questions.

CROSS-EXAMINED BY VALERY FABRIKANT :

Q. Are you sure about number of shots?

A. What I heard was, I felt I heard three shots first, and then three shots later, that's what I understood, that's what I thought I heard.

Q. Were they in rapid succession? Were they one, one, one something?

A. Basically one, one, one.

Q. So that distant?

A. Pardon?

Q. So it was pretty...

A. Separated, yes, they weren't bang-bang-bang, they were bang, bang, bang.

Q. And you're sure there were three of them?

A. The second time I am sure there were three, yes.

Q. And the first time, also sure?

A. The first time... there was either two or three shots, I didn't really pay much attention because I heard these bangs and I didn't know what they were.

Q. Uh, huh. All right.

A. The second time I realized what they were because I saw the gun.

Q. Yes. When you heard the second series of shots, what did you do? Did you...

A. I was proceeding to the phone to call security.

Q. Okay. You called security, they answered something to you, what happened next?

A. I called security the first time, the line was busy, I waited two or three seconds, I called again, and by this time I got a line, the person at the security desk answered and I said: "There is somebody shooting on the ninth floor", they said:

"We're aware of it, we've sent somebody to investigate".

Q. Okay. And this conversation was before the second series of shots?

A. No, it was after the second series of shots.

Q. After second series of shots. Okay. And what did you do after that?

A. I stayed in my office, I stayed in that office for probably five minutes, and then I listened at the door and I couldn't hear anything, so I opened the door very cautiously, looked out, and started, and proceeded down the corridor towards the general office area, towards room 907.

Q. Okay. What did you see there?

A. When I arrived at the door to 907, I saw a body, the head of a body lying in the doorway of the conference room, which is room 907-4, and I saw this body and realized the person was probably dead from the look on the face and the complexion.

Q. It was face up or face down?

A. Face up. There was blood on the side of the mouth, and then I looked over towards the door at the entrance of room 907, the glass door, and there was a policeman there with a flak jacket on and his gun at the ready, and I waved him in, because I was standing my side to the door, I waved him in like this, he came in, and he said: "Parlez-vous franais?" I said: "Oui, un petit peu", and he said: "Is the guy still here?", and I said: "I don't think so", and then he moved into the side of the desk very cautiously and pointed to the body on the floor, he said: "Well, start moving out", so I moved out. And by that time his back-up had moved up to the entrance of the doorway he had been where I first saw him, and she was wearing a flak jacket and had her gun at the ready. And when I got outside another police woman approached and she said: "Get out of here, it's Polytech all over again". And, so then I evacuated to the stairwell next to the elevators over here, and I met Dr. "Fancot" there, who is the associate dean, and he was talking to a police woman and giving her a description of Dr. Fabrikant.

Q. Okay. Did you see the door of 907-4?

A. Did I see the door?

Q. Yes.

A. Open?

Q. Well... could you make a sketch of 907-4 with the body the way you recall it and...

A. Well, as I recall it, the body was mostly inside the door, but I could see the head of the body on the floor, just on the treshold of the door.

Q. So the head was on the treshold of the door?

A. Yes.

Q. Was there any eyeglasses?

A. No.

Q. You're sure?

A. I don't remember seeing eyeglasses on the body.

Q. But you're not sure if there were eyeglasses or not?

A. It's possible there were.

Q. So the head was just slightly visible?

A. The head was visible, it was, as I said, I suppose... if you want it to be technical, the shoulders would be, or the neck would be on the treshold of the door, the head would be outside the door, and the rest of the body would be inside the conference room.

Q. Uh, huh. What about the door itself, did you have chance to see the door in 907-4?

A. The door opened in, so obviously it was opened and it wasn't pointing out.

Q. No, I understand, but the door itself...

A. It obviously was opened.

Q. Yes. Okay. It was visible to you?

A. I suppose so, I really wasn't looking for a door, I was looking at the body.

Q. I understand. Would it attract your attention if there was something on the door except just the door itself?

A. Not that I would know of. Not that I noticed.

Q. Okay. Suppose that the whole door was all over in blood, then would you notice that?

A. It's possible there was blood on the door.

Q. You mean from top to bottom?

A. Pardon?

Q. From top to bottom?

A. From top to bottom, I don't think so. I don't know, I didn't see.

Q. But if there was you would have noticed that?

THE COURT :

The question is hypothetical, he said: "I didn't see it".

VALERY FABRIKANT :

Q. So you didn't see blood on the door?

A. I was too busy looking around for your presence, and if anybody else was there. As I said, I saw the head of the body, and then I looked over to the door where the policeman was standing, and after that I was concentrating my attention on him and talking to him.

VALERY FABRIKANT :

Well, having previous experience, maybe I just ask the jury to look at picture P-8 and compare with the story of the witness without...

THE COURT :

For the minute you're not arguing your case, so...

VALERY FABRIKANT :

No, I'm just...

THE COURT :

...if you wish to refer the witness to a photograph, refer the witness to a photograph, is you feel you must.

VALERY FABRIKANT :

Well, having previous experience, I don't really want to risk it again.

THE COURT :

I would suggest that if you have to refer the witness to a photograph, that you go ahead.

Q. Mr. Hall, do you think you're strong enough to look at a...

A. I have no problem with that.

Q. You have no problem with that. Fine.

VALERY FABRIKANT :

I just want the jury to take a look and that's it.

THE COURT :

Having the jury take a look at a photograph isn't going to advance very much. If you wish the witness to say something, after having looked at the photograph, that's one thing, but having the jury look at a photograph is something that you can do perfectly adequately when comes the time to argue whatever... put forward whatever arguments you wish to put forward.

VALERY FABRIKANT :

Q. Okay. Let me ask again different question. Did you approach the body closely?

- A. No, I didn't. I advanced to roughly... there is a desk located right here, that's on the chart where it says 907, there is a desk sort of to the right of that 907, and I approached, and there's a small pathway behind the desk, I approached up to the desk and then circled around, as I was being evacuated I circled around that desk and went past the reception desk, which is a counter, reception counter with an entrance here, going out there and out the... So as I said, I saw the body, I would say my distance was probably eight to ten feet, and then I evacuated around the desk and straight out.
- Q. But from the position you've been the door is clearly visible of 907-4?
- A. Well the door opened in, so obviously the door was hidden by the wall so, as I said, and of course when you see a body on the floor you concentrate on that, you don't concentrate on the surroundings.
- Q. No, the body was lying just near the door.
- A. Yes, it was.
- Q. So suppose if the door was all over in blood, there is no way to miss it?
- A. I'm afraid that I wasn't looking at the door, that I was looking at the body, and then my attention was drawn to the front door of the office where the policeman was standing. And from that point on my conversation was with the policeman, and my attention was drawn to him. And as I said, I pointed to the body as I was starting to evacuate, and I presume after I passed him he went over to investigate the body.
- Q. Okay. Thank you.
- THE COURT :
Thank you.

AND FURTHER DEPONENT SAITH NOT

THE COURT :

So we'll adjourn until two fifteen (2:15).

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITHOUT JURY

THE COURT :

While I had asked Mr. Belleau to verify the question of a number of documents this morning, I don't obviously expect any answer from him at this point. I did nevertheless reflect upon, as I promised I would, the question of your examining these documents, and to put it briefly there will be no order whatever permitting you to be taken to your apartment to examine these documents. According to the testimony I received before, the documents were put at your disposal under the Access of Information Act months ago. There has been discussion of the documents since at least the pre-trial process before me. You have been aware that these documents were at your apartment and you have had ample opportunity to have them brought by whoever comes to visit you, or send for them, or whatever. If you have not occupied yourself to go through these documents, then that is something that's entirely within your responsibility, but I'm not going to issue any order authorizing you being taken to your apartment in Montreal to do an audit of these documents and to extract from them what you need. I don't wish anything I've said to be interpreted as an acknowledgement on my part that these documents are in any sense relevant at this point, I do not back up one inch on what I said this morning as far as the

relevance is concerned, and that is something that I will canvass when we come to the question of the defense.

VALERY FABRIKANT :

May I make small remark? You don't seem to hear what I said, my wife looked at all twenty (20) boxes.

THE COURT :

Then you have the boxes brought to you box by box and you look at them and determine what's pertinent.

VALERY FABRIKANT :

Well I trust her, she didn't find it there.

THE COURT :

Then you will have to convince me that the document you're looking for was not provided to you.

VALERY FABRIKANT :

Well, it was not provided, that's what my wife tells me.

THE COURT :

Well, before you tell me it's not provided you'll have to tell me what document we're talking about, and then we will see, but I'm not going to take it from you on faith that an unnamed, or undescribed document was not provided. I have it thus far that everything you asked for, with the exception of a file that was in the Vice-Rector's possession, which was labelled "Fabrikant confidential", was transmitted to you.

VALERY FABRIKANT :

Well, I can name you several more documents which were never transmitted to me.

THE COURT :

I would suggest that what you do is you make a list and that you hand them to Mr. Belleau, and Mr. Belleau, in doing what I asked him to do, will take it up with Concordia as to whether or not these were handed to you or sent to you under the Access to Information Act.

VALERY FABRIKANT :

Well besides that, certain documents are still missing.

THE COURT :

Well, you'll have to spell out chapter and verse of what it is you want and what is missing.

VALERY FABRIKANT :

Gosh, the number of documents is so great...

THE COURT :

I'm not going to argue with you about it, you know what you've got, if you haven't even audited the documents that you've got sitting in your apartment, how can you possibly stand there and tell me that you haven't got them?

VALERY FABRIKANT :

Well, some of them were never provided, so this is for sure I know they are not there, and I can tell you right away, for example, what is missing right now.

THE COURT :

Well, I'm not going to make a list, I would suggest you make a list and that you hand that list to Mr. Belleau, and he will canvass the matter with Concordia University.

VALERY FABRIKANT :

Okay. But in the meantime, I need to start my defense and I cannot do it without the documents, and you will say: "If in ten seconds you don't start your defense I consider it closed", right?

THE COURT :

We haven't come to that problem yet.

VALERY FABRIKANT :

Well, you already tried it once, didn't you?

THE COURT :

We're still in the Crown's case.

VALERY FABRIKANT :

Yes. Didn't you try it once?

THE COURT :

We're still in the Crown's case.

VALERY FABRIKANT :

Crown case is almost finished.

THE COURT :

Well then, what you better do is get your list together over the weekend and give it to Mr. Belleau.

VALERY FABRIKANT :

Well, and then what on Monday would happen? Now Monday nothing will be...

THE COURT :

As far as I'm concerned on Monday we'll continue with the evidence.

VALERY FABRIKANT :

Well, just one person is left there, that's all, and I need to start my defense.

THE COURT :

I believe you have a number of other witnesses to hear from 911. How long would you estimate...

Me JEAN LECOURE :

Tomorrow? You mean on Monday?

THE COURT :

Monday.

Me JEAN LECOURE :

The evidence is the tape.

THE COURT :

Uh, huh.

Me JEAN LECOURE :

They might be requested only to identify their voice, we have to stop the machine and say: "This is my voice" and things like that, but after Mr. Abdou and Martin, the evidence, all the other evidence is just side evidence to make sure the other evidence is admitted.

THE COURT :

Okay.

VALERY FABRIKANT :

So would you be prepared then to suspend for several days then until I can get the whole thing together? I really fail to understand what seems to be the problem to get each of those officials come with their documents, they will produce them one by one, and I will argue each document why it is relevant.

THE COURT :

That's not how we're doing it.

VALERY FABRIKANT :

Why not?

THE COURT :

Because we're not.

VALERY FABRIKANT :

Well...

THE COURT :

You're going to have to decide. You're going to have to decide...

VALERY FABRIKANT :

I understand that this is the legal procedure.

THE COURT :

...how you propose to present your defense, and then you're going to have to present your defense. And if you choose not

to tell me what you're doing, and why you're leading a particular brand of proof, then I am left then to decide whether or not, on the case as I understand it, I deem it pertinent, I'm prepared to listen to any submissions you make to me, I'm certainly not here to force you to tell me anything.

VALERY FABRIKANT :

Well, I'm perfectly entitled to keep open every legal avenue of defense, correct? I don't have to tell you what avenue I'm going but I'm entitled to keep every avenue of defense opened.

THE COURT :

Legal avenue of defense opened.

VALERY FABRIKANT :

Right?

THE COURT :

If that's what... you're entitled to keep every legal avenue of defense opened, yes.

VALERY FABRIKANT :

All right. So we can always find avenue to which this particular document is pertinent.

THE COURT :

You may think you can, but I'm not so sure.

VALERY FABRIKANT :

Well, that's up to you to decide.

THE COURT :

Yes.

VALERY FABRIKANT :

Yes. But in the meantime I see no reasons why it could be done during fitness hearing and that people came with documents...

THE COURT :

Well, if you haven't... if you still fail to appreciate why something was admissible during the fitness hearing, and why it may not be admissible at the defense stage of proceedings I can't help it. If you want to put that to Mr. Belleau...

VALERY FABRIKANT :

Well maybe we need another fitness hearing.

THE COURT :

If you wish to put it to Mr. Belleau, I suppose he'll explain it to you.

VALERY FABRIKANT :

Maybe I display such unfitness that we need another fitness hearing. Actually, according to Criminal Code, it can occur at any stage, so nothing forbids you to conduct yet another fitness hearing, is my understanding correct?

THE COURT :

Oh, your understanding is perfectly correct.

VALERY FABRIKANT :

So, why don't we conduct yet another fitness hearing.

THE COURT :

Might I have the jury please?

MEMBERS OF THE THE JURY ARE PRESENT

Me JEAN LECOURES :

Mr. Franklin.

VALERY FABRIKANT :

By the way, we are going to hear from the police today, eh?

Me JEAN LECOURES :

Yes, we can use the remaining time for that, My Lord.

THE COURT :

Fine.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this fourteenth (14th) day of the month of May, personally came and appeared:

ANN FRANKLIN, born on May thirtieth (30th), nineteen hundred and sixty-five (1965), secretary;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY Me JEAN LECOURE
ATTORNEY FOR THE CROWN :

Q. Mrs. Franklin, where are you secretary now?

A. At the Dean of engineering at Concordia University.

Q. Okay. And on August the twenty-fourth (24th), nineteen ninety-two (1992) where were you working as a secretary?

A. Same job.

Q. Okay. And I understand your office was located on the ninth floor?

A. That's right.

Q. Okay. Which local was it?

A. It was 907-1.

Q. Okay. And could you point it also on this...

THE COURT :

Q. Sorry, would you point that again?

A. Yes, this one right here.

Me JEAN LECOURE :

Q. Could you tell the Court and the members of the jury what happened that afternoon?

A. I had just gone into my office to take my lunch around three o'clock (3:00), and I guess about ten minutes later I started hearing some fuss in the main area...

Q. Which is number?

A. 907, and the reception area. I ignored it for a bit and then I heard someone say: "Oh, my God", and I thought, well, maybe I should go check and see what's happening, and I went out and several people were in the front area, and they were saying that Phoivos had been shot.

Q. Do you know who was Phoivos?

A. I thought it might be Dr. Ziogas, but I wasn't sure. I knew that I had heard the name before but I wasn't sure if it was Ziogas or not.

Q. Okay.

A. But I thought it was. At that point someone said: "Who shot him?", and someone else said: "Fabrikant". Then...

THE COURT :

Q. Now just... Okay, go ahead.

Me JEAN LECOURE :

Q. And then, was there anything else said?

A. Jane said something like: "What an asshole" and stamped out of the room, and then Matt Douglass looked over at me and said: "Call security".

Q. Who?

A. Matt Douglass.

Q. Matthew Douglas?

A. Yes.

Q. Dr. Douglass?

A. Yes. I remembered afterwards, after I did my report that it was him who spoke to me. He told me to call security. So I

went back into my office, and I just reached over my desk and I picked up the telephone and I called security, and I asked them if they had heard about the gunman on the ninth floor, and they said yes, so I hung up, I didn't want to keep the phone busy. I turned around and I stood in my office door, and at that point, while I was on the phone I heard Cecilia telling the students to get out, for everybody to leave. So I was standing in my office door, and she was the only one still there, and we were just standing there, kind of looking at each other, and then I saw a small man in a dark jacket run from this area, this hallway.

Q. Coming from?

A. He was coming from the hallway.

Q. It's 907-90?

A. Yes. And he ran into the conference room, which was 907-4, and at that point I heard a gunshot, and I ran.

Q. Okay. That person, at that time, did you know him?

A. No.

Q. Could you recognize him today?

A. No.

Q. Okay. And what did you do then?

A. I ran out the office, I crouched down behind the desk and I ran, and I ran down the escalators, and everytime I saw somebody I told them to get out of the building because there was somebody shooting people on the ninth floor.

Q. Thank you.

Me JEAN LECOURE :

No further questions.

CROSS-EXAMINED BY VALERY FABRIKANT :

Q. When you get out of your office to see what happened, did you see many students still at...

A. Yes.

Q. Could you give an estimation, five, ten?

A. They were off to the side... I'd say there were at least five...

Q. Okay.

A. ...probably more like ten students, and there were also about six or seven staff members surrounding one of the desks.

Q. The staff, you mean from the Dean's office?

A. No. Not all of them, some of them were faculty members and some of them were staff from the Dean's office.

Q. Could you name those...

A. No. I could name the staff members from the Dean's office but the faculty members I couldn't.

Q. Okay. Who were the staff members?

A. There was "Tevita Taray", there was Jane Benetache, Cecilia was there.

Q. Uh, huh. Did you see Kim Adams?

A. No, I didn't.

Q. You know her?

A. Yes, I know her, but it doesn't mean she wasn't there, I can't remember who was there.

Q. Well, she's a lady difficult not to notice.

A. I was fairly blind to a lot of things at that point because I was in shock, but I know that there were a few people that I saw there, I remember them because they either said something to me.

Q. Uh, huh. As far as professors, how many professors were there?

A. At least two. Okay. I remember that... I remember Matt Douglass was there, and one other professor, I don't...

Q. Do you know "Tulissiranum"?

A. I know him, yes...

Q. Was he in there?

A. ... but at that time I didn't know most of the professors' names.

Q. No. But he was in there?

A. I don't know.

Q. "Ahmad"?

A. I don't know.

Q. Okay. And you said you saw me not just walking but running?

A. Yes.

Q. Running from direction what?

A. From the area of Dean Swamy's office, 907-90, that hallway.

Q. From that area?

A. Yes.

Q. But you didn't see how I got into that area?

A. Not at all. If you came in through the front, I was on the phone at the time, I had my back to you.

Q. Okay. One second. So you went out, there were a lot of people there?

A. Yes.

Q. They were saying different things, you were told to call security, you went back to your office, you called security, in the meantime the whole thing was emptied?

A. Yes.

Q. Ah, okay, now I understand. And when you... okay, the whole thing was emptied. Then you exited from your office and saw me running from this corridor into 904?

A. That's right.

Q. And 907 by that time was empty?

A. There was myself and Cecilia.

Q. You're sure about that?

A. I'm positive about that.

Q. Okay, kind of strange that in such a moment when you see a person with gun you are not...

A. I didn't see a gun.

Q. Well, at least you saw me?

A. Yes.

Q. And you were told that I was the one who was shooting?

A. I saw a man, I had never seen you before in my life, I saw a small man run into the conference room, wearing a dark suit. I saw him from about the waist up.

Q. Uh, huh. But at the time of this commotion you were more in a panic that you cannot remember any professor there?

A. I did not know the names of very many of the professors at the time...

Q. Okay.

A. ...I was a new staff member at that time.

Q. I see.

A. I knew their faces were familiar, that's all I knew.

Q. Uh, huh. But you would be able to recognize them?

A. Not necessarily.

Q. Okay. How many shots did you hear?

A. I heard one, and then I ran, I don't know how many happened after that.

Q. Well if any happened, shot is such a loud sound that even if you ran quickly you would have heard it, wouldn't you?

A. When you're in a panic, and you're just running for your life, you don't necessarily hear anything else. I heard one shot and I ran.

Q. Uh, huh. And you noticed where Cecilia was at that time?

A. Yes.
Q. Well, you were not in that panic, you were pretty good observant. Where was she?
A. She was at the counter, which would be... the counter goes across like that, she was standing here, I was standing in the doorway of my office, we looked at each other, in shock, for a few seconds, then I saw a man run into the conference room and I heard a gunshot, I ran towards her, she ran towards me, I ran out, I don't know what happened after that.

Q. All right. Okay, thank you.

AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOURE :

Mr. Martin please.

SANDRA TRAYNOR - INTERPRETER

DULY SWORN

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this fourteenth (14th) day of the month of May, personally came and appeared:

DANIEL MARTIN, born on December first (1st), nineteen hundred and sixty-nine (1969), student;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY Me JEAN LECOURE

ATTORNEY FOR THE CROWN :

Q. Mr. Martin, what was your occupation on August the twenty-fourth (24th), nineteen ninety-two (1992)?
-Q. Monsieur Martin, quelles ,taient vos fonctions le vingt-quatre (24) ao-t mil neuf cent quatre-vingt-douze (1992)?
A. J',tais agent de s,curit,.
-A. I was security guard.
Q. Could you please relate the incidents in which you were involved the afternoon of August the twenty-fourth (24th)?
-Q. Pouvez-vous s'il vous pla&t relater les incidents dans lesquels vous ,tiez impliqu, l'apr&s-midi du vingt-quatre (24) ao-t mil neuf cent quatre-vingt-douze (92)?
A. Bon. Vers quinze heures (15 h) j'ai commenc, ma patrouille de l',difice de l'universit,....
-A. Around fifteen hundred hours (15:00) I started my patrol of the building at Concordia University...
A. ...puis vers quinze heures quinze (15 h 15), je suis arriv,.... c'est l... que je suis arriv, au neuvi&me ,tage.
-A. ...and I arrived on the ninth floor at fifteen fifteen (15:15).
A. Puis ... ce moment-l... mon sergent, ... l'aide du walkie-talkie m'a demand, ma position...
-A. And my sergeant asked for my position on the walkie-talkie...
A. ...j'ai r,pondu neuvi&me ,tage.
-A. ...I replied ninth floor.
A. Ensuite je me suis dirig, pour faire mon deuxi&me poin&on...
-A. And then I went to punch at the second punching location...
A. ...mais juste avant que j'aie la chance de faire mon poin&on il y a un ,tudiant qui est arriv, en arri&re de moi...
-A. ...just prior to punching a student came up behind me...
A. ...et il m'a demand, pour de l'aide car il y avait deux personnes bless,es ... l'int,rieur du d,partement.
-A. ...and he asked for my help because there were two injured persons in the department.
Q. Okay. I will show you P-7...

-Q. Je vais vous montrer P-7...

Q. ...could you have a look first?

-Q. ...pourriez-vous y jeter un coup d'oeil d'abord?

A. Oui.

Q. Do you recognize that area of the ninth floor?

-Q. Est-ce que vous reconnaissez cet endroit sur le neuvième étage?

A. Oui, parfaitement.

-A. Yes, perfectly.

Q. Okay. Where were you when you were doing your walkie-talkie?

-Q. Où étiez-vous lorsque vous étiez en communication avec le walkie-talkie?

Q. Is it included in this section?

-Q. Est-ce que c'est dans cette section?

A. (Inaudible).

-A. No, it doesn't appear in this section.

Q. And when you encountered a student, were you in this section?

-Q. Lorsque vous avez rencontré un étudiant, étiez-vous dans cette section?

A. C'est environ ici, là, pas loin de...

Q. Okay, to the south.

A. Yes.

-A. I was approximately here, not exactly.

-Q. Alors au sud.

-A. Oui.

Q. Okay. Following that moment what happened?

-Q. Suite ... ce moment-là, que s'est-il produit?

A. Alors, lorsque l'étudiant m'a demandé, de le suivre, j'ai

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">couru
avec lui, nous sommes rentr,s dans le d,partement, c'est---
dire le 929...

-A. When the student asked me to follow him, we ran together and I went inside the department or the 929 rather...

A. ...et ensuite on s'est rendus au bureau... un bureau, et c'est l... qu'il y avait une premišre victime qui gisait sur sa chaise.

-A. ...we arrived in an office and that's where there was a first victim who was in his chair.

Q. Okay. Could you indicate the number, if you can, the number of the office?

THE COURT :

Just a second. I thought I heard the word "qui gisait", was that what you translated or what?

THE INTERPRETER :

I understood who was seated in the chair.

THE COURT :

Q. What did you say?

A. Elle gisait, la victime, la personne elle gisait sur la chaise.

Q. Sur la chaise.

-A. The victim was wounded in the chair.

Me JEAN LECOIRS :

Q. Okay. What did you do?

-Q. Qu'avez-vous fait?

A. Le local c',tait le 929-19.

-A. The office number was 929-19.

A. Alors ... ce moment-l..., ... l'aide de mon radio ,metteur j'ai demand, une ambulance ... mon sergent.

-A. And with my radio I contacted my sergeant and asked him for an ambulance.

A. Mais je ne savais pas l'endroit exact o- est-ce que j',tais, alors je me suis dirig, ... l'entr,e du d,partement...

-A. I didn't exactly know where I was located, so I went to the entrance of the department...

A. ...et j'ai regard, sur la porte, et c',tait ,crit 929, alors par mon walkie-talkie je lui ai dit que c',tait au 929.

-A. ...so I looked on the door and I saw it was written 929, so I mentioned to him on the walkie-talkie that it was office number 929.

A. Alors ... ce moment-l... mon sergent m'a demand, de l'appeler par t,l,phone...

-A. Then my sergeant asked me to contact him by phone...

A. ...alors je l'ai contact,, je lui ai expliqu, la situation...

-A. ...I called him, I explained the situation to him...

A. ...et il m'a dit de faire une compresse, l..., ... la personne bless,e au 929-19.

-A. ...and he told me to make a compress to the wounded person in office number 929-19.

A. Au moment o- je me dirigeais vers ce bureau-l... l',tudiant qui m'avait emmen, en premier lieu sur les lieux...

-A. And when I was going towards that office the student who had approached me at the very beginning...

A. ...m'a dit qu'il y avait une deuxišme victime, et il m'a montr,, l..., ... quel endroit elle ,tait.

-A. ...he told me there was a second victim and he showed me the area where that victim was located.

Q. So what did you do?

-Q. Alors qu'avez-vous fait?

A. Alors l... je suis entr, dans le local...

-A. I went in the office...

Q. When you were told by the student, where were you exactly in the outline?

-Q. Lorsque l',tudiant vous a abord,, o- ,tiez-vous exactement sur le croquis?

A. J',tais ... la r,ception, l..., si vous voulez...

-A. I was in the reception area, if you will.

Q. Okay. The entrance of 929?

-Q. C'est-...-dire l'entr,e au 929?

A. C'est #a.

-A. That's correct.

Q. Which way did you follow to reach what you call the second victim?

-Q. Et quel trajet avez-vous emprunt, pour vous rendre jusqu'... la deuxiŠme victime?

A. Bien, j'ai pris ce chemin-l..., l..., qui mŠne devant le 929-4.

-A. I took this path here which leads me in front of 929-4.

Q. Okay. That's the corridor number 929-...

-Q. Alors c'est le passage du num,ro 929-...

Q. ...90, is it?

-Q. ...90?

Q. Could you have a look there, maybe it's clearer.

-Q. Est-ce que vous pouvez regarder sur le grand sch,ma, peut-ˆtre que c'est plus clair.

Q. Oh, it's the first one here.

A. 90.

-A. 90.

Q. Could you locate that here as well?

-Q. Pouvez-vous le situer ici ,galemment?

A. J',tais ici lorsque j',tait au t,l,phone...

-A. I was here when I was on the phone...

A. ...puis lorsque j'ai suivi l',tudiant, j'ai pris le chemin ici.

-A. ...when I followed the student I walked down this path.

Q. Okay. And your finger is indicating 929-8?

-Q. Et vous indiquez du doigt le 929-8?

A. Oui, c'est le...

Q. And did you cross 929-8?

-Q. Etes-vous entr, au 929-8?

A. Oui.

-A. Yes.

Q. And where did you end up?

-Q. Et vous vous ˆtes retrouv, ... quel endroit?

A. Je me suis retrouv, au 929-9.

-A. I ended up in 929-9.

Q. Okay. What were your findings in 929-9?

-Q. Qu'avez-vous vu, qu'avez-vous trouv, au 929-9?

A. Il y avait une femme bless,e qui parlait au t,l,phone.

-A. There was a wounded woman speaking on the phone.

A. Alors, lorsque je suis arriv, j'ai pris le t,l,phone, j'ai convers, avec la personne au bout de la ligne.

-A. So upon my arrival I took the phone and I spoke with the person at the other end of the line.

Q. Okay. Who was at the end of the line?

-Q. Qui ,tait au bout du fil?

A. C',tait une dame, l..., qui me demandait, l..... bien moi, je me suis rendu compte que c',tait 911, elle demandait des questions sur...

-A. It was a woman, I realized that it was 911 and she was asking questions on the...

A. propos des blessés, l..., des personnes.
-A. ...concerning the wounded.
Q. Okay. And that lady you met, did you get to know her name later?
-Q. Et cette dame que vous avez rencontrée, est-ce que vous avez appris son nom par la suite?
A. Oui. Lorsque j'ai pris le téléphone, la personne au 911 m'a demandé, le nom de cette victime et je lui ai demandé.
-A. Yes. When I picked up the phone the lady at 911 asked me for her name, so I asked the lady for her name.
Q. And?
-Q. Et?
A. Et j'ai donné, le nom de la victime ... la proposition du 911.
Q. And what was the name?
-A. And I gave the victim's name to the 911 attendant.
-Q. Et quel était son nom?
A. Elizabeth Horwood.
-A. Elizabeth Horwood.
Q. Okay.
-Q. D'accord.
Q. And what did you do afterwards?
-Q. Qu'avez-vous fait par la suite?
A. Alors, j'ai expliqué, la situation au propos, du 911...
-A. I explained the situation to the 911 attendant...
A. ...j'ai expliqué, qu'il y avait deux blessés...
-A. ...I explained there were two wounded...
A. ...dont un inconscient.
-A. ...and one was unconscious.
A. Et puis quelques instants plus tard il y a une autre dame qui est venue rejoindre madame Horwood pour la supporter.
-A. And a few moments later another woman came in to support or to help out Mrs. Horwood.
Q. Okay. There are two entrances in 929-9, could you indicate on P-7 which one that second woman used?
-Q. Il y a deux entrées sur le 929-9, est-ce que vous pouvez indiquer ... l'aide du croquis la porte par laquelle cette deuxième dame est entrée?
A. Elle est rentrée par la porte, l..., du corridor 929-91.
-A. She came into the door at the end of the hallway 929-91.
Q. Okay. Please go on.
-Q. Veuillez poursuivre je vous prie.
A. Ensuite, bon, je regardais toujours la blessure de madame Horwood...
-A. I was still looking at Mrs. Horwood's injury...
A. ...et puis ... un moment donné, les deux femmes se sont mises ... crier.
-A. ...and then at one point both women started screaming.
A. Alors je me suis levé, j'ai fait un demi-tour de cent quatre-vingt (180) degrés...
-A. So I got up and I turned around at a hundred and eighty (180) degrees...
A. ...et c'est là que j'ai vu un homme qui rentrait, il a fait feu en direction des femmes.
-A. ...and that's when I saw a man coming in, and he fired in the direction of the women.
Q. He fired with what?
-Q. Il a tiré, ... l'aide de?
A. Avec un revolver.
-A. With a revolver.
Q. It could be... a revolver, a pistol?
-Q. Ça pourrait être un revolver, un pistolet?

A. Bien, c'est un petit pistolet noir, l..., pistolet revolver...
-A. It was a small black pistol, pistol, revolver, I don't know.
Q. Okay. And then?
-Q. D'accord. Et ensuite?
A. Et puis ensuite, l..., lorsqu'il a tir,, moi, j'ai essay, de me sauver mais la porte s'est ferm,e, la porte o- est-ce que les deux femmes (inaudible).
-A. Well then, when he fired I tried to get away and the door closed when the two ladies were getting away.
Q. So I understand the two ladies succeeded in getting away?
-Q. Alors je comprends que les deux femmes ont r,ussi ... s',vader?
A. Oui, c'est #a.
-A. Yes.
Q. Okay. So you were left by yourself with that person?
-Q. Alors vous vous ^tes retrouv, seul avec cette personne?
A. A ce moment-l..., l..., je me suis rendu compte qu'il y avait un autre homme avec moi, l..., assis dans le coin du bureau.
-A. Then I realized there was another man with me, seated in the corner of the office.
Q. Was it the first time you realized there was another man in the office?
-Q. Est-ce que c',tait la premiŠre fois que vous avez r,alis,, constat, qu'il y avait un autre homme dans le bureau?
A. Oui.
-A. Yes.
Q. Okay.
-Q. D'accord.
Q. And that person that entered, could you recognize that person in the courtroom today?
-Q. Cette personne qui est entr,e dans le bureau, est-ce que vous seriez en mesure de reconna@tre cette personne ici aujourd'hui dans la salle de cour?
A. Oui.
-A. Yes.
Q. Okay. Could you please?
-Q. Est-ce que vous pourriez s'il vous pla@t l'identifier?
A. C'est la personne ici ... ma gauche dans la bo@te d'accus,,.
-A. It's the person here on my left in the accused dock.
Me JEAN LECOURS :
Okay, indicating Valery Fabrikant.
Q. Okay. Please, after?
-Q. Et par la suite?
A. Bon l..., quand la porte est ferm,e... lorsque la porte a ferm,, c'est-...-dire, le suspect m'a dit : "Don't move..."
-A. When the door was shut the suspect told me: "Don't move..."
A. ...alors j'ai pas boug, ...
-A. ...so I didn't...
A. ...et puis l... le pr,pos, au 911 m'a demand, ...
Q. You were still on the phone at that time?
A. Oui.
-Q. Alors vous ,tiez encore...
A. J',tais toujours en contact avec le 911.
-Q. ...au t,l,phone ... ce moment-l...?
-A. Yes, I was still in contact, in touch with 911.
A. Alors l'individu du 911 m'a demand, qu'est-ce qui se passait, si la personne arm,e ,tait... o- est-ce qu'elle ,tait.
-A. So the 911 attendant asked me what was going on, where the armed person was.
Q. Okay.
A. Alors, j'ai r,pondu que la personne arm,e ,tait en avant de moi.

-A. I replied that the armed person was in front of me.
A. Alors, le pr, pos, au 911 m'a demand, qu'est-ce qu'il faisait...
-A. And the 911 attendant asked me what he was doing...
A. ...alors j'ai r,pondu qu'il disait qu'il voulait faire une d,claration.
-A. ...and I said that he wanted to make a statement, he was saying he wanted to make a statement.
Q. Okay. Please go on.
-Q. D'accord. Veuillez poursuivre.
A. Ensuite j'ai dit au suspect s'il voulait parler au t,l,phone...
-A. Then I asked the suspect if he wanted to speak on the phone...
A. ...il m'a fait signe que oui.
-A. ...and he nodded yes.
A. Alors, je lui ai pass, le r,cepteur...
-A. So I handed him the receiver...
A. ...parce que lui ne voulait pas bouger de sa place alors j'ai d- faire le tour du bureau et je lui ai tendu le r,cepteur, j'avais toujours le t,l,phone en ma possession.
-A. ...because he didn't want to move from where he was, so I went around the desk and I handed him the phone, because I still had the phone in my hand, so I handed him the receiver.
Q. Okay. At that moment, let's have a look at P-3...
-Q. Prenons maintenant le P-3...
Q. ...could you find 929-9 on P-3?
-Q. ...^tes-vous en mesure de trouver le 929-9 sur P-3?
A. Oui.
-A. Yes.
Q. Okay. When you were giving the phone to that person where was your position, the accused's position and the other person's position?
-Q. O- ,tait la position de l'accus,, votre position et la position des autres personnes dans la piŝce lorsque vous ,tiez au t,l,phone?
A. Avant que je lui passe le t,l,phone?
-A. Before I handed him the phone?
Q. At this moment. Okay. Before and after. Before and when...
A. Bon. Lorsque j',tais au t,l,phone, avant j',tais environ ici...
-A. When I was on the phone before I was here...
Q. In the chair?
A. Non, non, j',tais en arriŝre ou en avant, je m'en rappelle pas, l...
-A. Before or in front...
Q. But standing up, right?
A. Oui, j',tais debout.
-Q. Debout?
-A. Yes, I was standing.
A. Et le suspect ,tait ici.
-A. The suspect was here.
Q. Okay. Near the south wall, exact, is that it?
-Q. D'accord. Prŝs du mur du c"t, sud, exact?
A. Oui.
-A. Yes.
A. Et l'autre personne avec moi ,tait assise sur la chaise dans le coin.
-A. And the other person with me seated in the chair in the corner.
Q. Okay. Did you know the person at that time?
-Q. Est-ce que vous connaissiez cette personne ... l',poque?

A. Je la connaissais pas.
-A. No, I did not.
Q. And did you learn his name later?
-Q. Avez-vous appris son nom par la suite?
A. Bien, après tout l'événement, oui.
-A. After the entire incident, yes.
Q. Okay. What's the name of that...
-Q. Quel est le nom de cette personne?
A. George Abdou.
-A. George Abdou.
Q. Okay. So let's go back to the moment you're giving him the phone.
-Q. Alors, reprenons ... partir du moment où vous lui avez remis le téléphone.
Q. I guess you moved from that...
-Q. Je suppose que vous vous êtes déplacé, de cet endroit?
A. Oui, j'ai fait le tour du bureau...
-A. Yes, I went around the desk...
A. ...j'étais environ ici, là...
-A. ...I was about here...
A. ...et je lui ai donné le récepteur du téléphone.
-A. ...and I passed him the receiver.
Q. Okay. So the distance between you and him was the distance of the cord or of the rope?
-Q. Alors donc, la distance entre vous et lui était la distance du fil de téléphone? Ou la longueur du fil de téléphone?
A. Oui, c'est ça.
-A. Yes, that's correct.
Q. Okay. What happened when he got on the phone?
-Q. Que s'est-il produit lorsqu'il a pris l'appareil?
A. Alors là... il a dit ... la personne du 911 qu'il voulait faire une déclaration, qu'il voulait rendre son histoire publique.
-A. He told the 911 attendant that he wanted to make a statement and wanted to make his story public.
A. Ensuite il a dit, bon, qu'il avait fait plusieurs meurtres et il voulait expliquer la raison pour laquelle il avait fait ça.
-A. And that he had committed several murders and the reason, he wanted to state the reason for which he had done this.
Q. Yes. And afterwards?
-Q. Et par la suite?
A. Bon, la conversation a continué...
-A. The conversation continued...
A. ...et puis lorsque... je dirais peut-être vingt (20) minutes... après vingt (20) minutes de conversation...
-A. ...and I would say about twenty (20) minutes after into the conversation...
A. ...les personnes commençaient ... frapper aux portes, là, environnantes ... notre bureau.
-A. ...people were starting to knock on doors near our office.
Q. Did they give a sort of identification these people knocking?
-Q. Est-ce que ces personnes qui frappaient aux portes, est-ce qu'elles s'identifiaient?
A. Oui, ils criaient "police, sortez".
-A. Yes, they screamed "police, come out".
A. Et puis... bon, ... ce moment-là, lorsque les policiers sont arrivés ... notre porte et ont frappé...
-A. And when the policemen arrived at our door and knocked on our door...
A. ...le suspect leur disait de ne pas entrer...
-A. ...the suspect told them not to come in...
A. ...parce qu'il pourrait y avoir des blessés.
-A. ...because there could be wounded.

Q. Was he still in possession of his weapon at that time?
-Q. tait-il toujours en possession de son arme ... ce moment-l...?
A. Oui.
-A. Yes.
A. Et puis aprřs quelques instants il m'a point, avec son arme...
-A. A few moments later he aimed at me with his weapon...
A. ...il m'a demand, de me tasser vers sa droite...
-A. ...and he asked me to move over to his right-hand side...
A. ...pour que je sois entre lui et les policiers au cas o- les policiers voudraient rentrer dans le bureau.
-A. ...so that I be positioned between him and the police officers in the case where the police officers wanted to come into the office.
Q. And what about your position in relation with the door?
-Q. Et qu'en est-il de votre position en rapport avec la porte?
A. J',tais entre le suspect et la porte, l..., qui mřne au corridor 929-91.
-A. I was between the suspect and the door leading to hallway 929-91.
Q. And did you indeed obey?
-Q. Et en fait est-ce que vous avez acc,d, ... cette demande?
A. Oui, j'ai acc,d,.
-A. Yes, I did.
Q. And afterwards?
-Q. Et par la suite?
A. Par la suite les policiers ont arr^t, de cogner ... la porte...
-A. Afterwards the policemen stopped knocking at the door...
A. ...et l... je me suis remis ... ma position initiale...
-A. ...and then I went to my initial position...
A. ...et bon, la conversation a continu,.
Q. When you're talking about the initial position, is it the one behind the desk or the one when you were ordered to go between him and the door?
-Q. Lorsque vous parlez de position initiale, est-ce que c',tait la position derriřre le bureau ou la position lorsqu'on vous a ordonn, de vous placer entre le suspect et la porte?
A. Non, c',tait la position en avant du bureau.
-A. The position in front of the desk.
A. Je n',tais pas entre la porte et le suspect.
-A. But I was not between the door and the suspect.
Q. Okay.
-Q. D'accord.
Q. And then?
-Q. Ensuite?
A. Bon. Ensuite, moi je tenais toujours le t,l,phone dans mes mains...
-A. I was still holding the phone in my hands...
A. ...et puis ... un moment donn, le suspect m'a demand, de presser sur l'interrupteur...
-A. ...and the suspect asked me to press the button to hang up the phone...
A. ...et il m'a remis le r,cepteur.
-A. ...and he gave me the receiver.
Q. Did you indeed?
-Q. Est-ce que vous avez effectu, ainsi?
A. Oui, j'ai raccroch, le r,cepteur du t,l,phone.
-A. Yes, I hung up the phone, I placed the receiver back on the phone.
Q. Okay. During that time, where was located and what was doing Mr. Abdou?
-Q. Et ... ce moment-l... que faisait monsieur Abdou et o- ,tait-il

situ,?

A. Il ,tait toujours assis sur la chaise, dans le coin du bureau, l..., environ deux pieds du suspect.

-A. He was still seated in the chair in the corner of the office, about two feet from the suspect.

Q. Okay. And next?

-Q. Par la suite?

A. Bon. Par la suite... le suspect s'est assis par terre...

-A. Afterwards the suspect sat on the floor...

A. ...ensuite moi, je me suis assis sur une chaise en face du suspect.

-A. ...then I sat on a chair facing the suspect.

A. Environ quatre pieds de lui.

-A. At about four feet away from him.

A. Et puis quelques instants aprs le t,l,phone a sonn,...

-A. A few moments later the phone rang...

A. ...alors j'ai r,pondu.

-A. ...I answered.

Q. Qui ,tait au bout de la ligne? Who was at the other end of the line?

-Q. Qui ,tait au bout du fil?

A. C',tait un n,gociateur de la police...

-A. It was a police negotiator...

A. ...au nom du sergent d,tective Grignon.

-A. ...his name was Detective Sergeant Grignon.

Q. And what was your reaction then?

-Q. Quelle ,tait votre r,action ensuite?

A. Bon, il m'a demand,, le sergent d,tective m'a demand, s'il ,tait bien au num,ro de t,l,phone qu'il avait compos,.

-A. The detective sergeant asked me if he had dialled the right number.

A. Alors j'ai r,pondu oui.

-A. And I answered yes.

A. Ensuite il m'a pos, des questions sur... ... savoir combien ,tions-nous, s'il y avait des bless,s, si le suspect ,tait arm,.

-A. Then he asked me questions to find out how many we were, and if there were wounded, and if the suspect was armed.

Q. And indeed, was still the suspect armed?

-Q. Et en fait est-ce que le suspect ,tait toujours arm,?

A. Le suspect ,tait toujours arm,.

-A. The suspect was still armed.

Q. After you answered these questions, what did you do?

-Q. Aprs avoir r,pondu ... ces questions, qu'avez-vous fait?

A. A un certain moment le suspect m'a demand, de raccrocher.

-A. At a certain point the suspect asked me to hang up.

A. Alors, j'ai dit au n,gociateur qu'il fallait que je raccroche...

-A. So I told the negotiator I had to hand up...

A. ...l... le n,gociateur m'a dit de donner le r,cepteur au suspect...

-A. ...then the negotiator told me to pass the receiver to the suspect...

A. ...ce que j'ai fait.

-A. ...which is what I did.

A. Ensuite ils ont encore convers, pendant quelques instants...

-A. And then they spoke for a few moments...

A. ...et ensuite le suspect m'a demand, encore de presser sur l'interrupteur.

-A. ...and there again the suspect asked me to hang up the phone.

A. Alors, j'ai press, sur l'interrupteur...

-A. I did so...

A. ...il m'a demand, de composer un num,ro de t,l,phone.

-A. ...and he asked me to dial a number.

A. Ça ne fonctionnait pas.

-A. It wasn't working.

A. Alors, il m'a demand, de lui donner l'appareil t,l,phonique.

-A. Then he asked me to hand him the phone.

A. Alors, je lui ai tendu l'appareil t,l,phonique.

-A. And I did so.

A. Et en prenant l'appareil, il a laiss, son arme ... c"t, de sa jambe droite...

-A. In picking up the phone he left his weapon next to his right leg...

A. ...et c'est ... ce moment-l... que le professeur, George Abdou, a frapp, l'arme avec son pied.

-A. ...and that's when professor Georges Abdou pushed the weapon with his foot.

A. Et ... ce moment-l... moi, j'ai saut, sur le suspect et je lui ai agripp, les deux bras.

-A. And then I jumped on the suspect and grabbed him by the arms.

Q. Did you succeed in mastering him?

-Q. Est-ce que vous avez r,ussi ... le ma@triser?

A. Oui.

-A. Yes.

Q. Okay. Once he was mastered, what did you do, and what did Mr. Abdou do?

-Q. Une fois le suspect ma@tris,, qu'avez-vous fait, et qu'est-ce que monsieur Abdou a fait?

A. Alors moi, j'ai dit ... monsieur Abdou : "Get the door..."

-A. I told Mr. Abdou: "Get the door..."

A. ...alors j'ai cri, aux policiers ... l'ext,rieur qu'on ,tait les deux otages puis qu'on ,tait lib,r,s...

-A. ...and I screamed to the police outside that we were two hostages and we were released...

A. ...et qu'on allait sortir.

-A. ...and that we were coming out.

A. Alors monsieur Abdou...

Q. Did you say that in French or in English?

-Q. Est-ce que vous avez dit ça en anglais ou en français?

A. J'ai dit ça en français.

-A. I said that in French.

A. Ensuite monsieur Abdou a ouvert la porte...

-A. Then Mr. Abdou opened the door...

A. ...et les policiers lui ont dit de jeter l'arme dans le corridor.

-A. ...and the police told him to throw the weapon in the hallway.

Q. So I understand he took the arm with him, the weapon?

-Q. Alors je comprends bien qu'il a pris l'arme avec lui?

A. Oui. Je ne l'ai pas vu prendre l'arme mais d'aprřs ce que les policiers... si les policiers lui ont dit de jeter l'arme c'est parce que (inaudible).

-A. I didn't see him take the weapon but if the police told him to thrown the weapon that's because (inaudible).

Q. Okay. Did he open the door himself or the door was opened by the police?

-Q. Est-ce qu'il a ouvert la porte lui-m^me ou la porte a ,t, ouverte par la police?

A. Je l'ai pas vu.

-A. I didn't see that.

Q. Okay. Was Mr. Abdou saying anything?

-Q. Est-ce que monsieur Abdou a dit quoi que ce soit?

A. Il disait que c',tait pas lui le suspect.
-A. He was saying that he was not the suspect.
Q. Okay. You did not see him carrying the weapon, how he was standing and what was his position when he was going out?
-Q. Vous ne l'avez pas vu porter l'arme, ou sa position, ou de la faon qu'il se tenait lorsqu'il est sorti?
A. Non, j'ai pas vu.
-A. No.
Q. Like his hands or no?
-Q. C'est-...-dire ses mains ou...
A. Non.
-A. No.
Q. Okay. Did you hear any commands from the police at that time?
-Q. Est-ce que vous avez entendu des consignes ou des ordres donn,s par la police ... ce moment-l...?
A. Bon. AprŠs qu'il lui ait dit de jeter l'arme...
-A. After he told him to throw the weapon down...
A. ...ils lui ont dit de mettre ses mains sur la t^te et de sortir.
-A. ...they told him to place his hands on his head and to come out.
Q. Okay. Once Mr. Abdou came out, what did you do?
-Q. Une fois sorti, une fois que monsieur Abdou ,tait sorti, qu'avez-vous fait?
A. Alors moi, j'ai cri, ... la police que j',tais l'autre otage.
-A. I screamed to the police that I was the other hostage.
A. Que j',tais pas arm,.
-A. That I was not armed.
A. Et que j'allais sortir.
-A. And that I was coming out.
A. Alors l..., les policiers... bien l... j'ai lfch, le suspect...
-A. I let go of the suspect...
A. ...et les policiers m'ont dit de montrer mes mains.
-A. ...the policemen asked me to show my hands.
A. Alors, je leur ai montr, mes mains.
-A. I did so.
A. Et puis ils m'ont dit de mettre mes mains sur la t^te et de sortir.
-A. They told me to place my hands on my head and to come out.
Q. Okay. And when you exit, did you exit by the room to go in towards 929-8 or towards the corridor 929-91?
-Q. Etes-vous sorti par la porte menant au 929-8 ou si vous ^tes sorti par l'autre porte menant au corridor 929-91?
A. Je suis sorti par la porte, l..., provenant du corridor 929-91.
-A. I got out through the door leading to 929-91.
Q. Okay. And did you stay in this corridor afterwards?
-Q. Etes-vous demeur, dans ce passage par la suite?
A. Non, les policiers m'ont dit de me d,p^cher, l..., pour ,vacuer la pišce, le d,partement.
-A. No, the police told me to hurry up, to leave the area, to leave the room.
Q. Were you witness of the evacuation of the accused or the arrest of the accused after that?
-Q. Avez-vous vu l'arrestation de l'accus, par la suite et la mise en accusation?
Q. The exit.
-Q. Et la sortie, et sa sortie, je m'excuse, lorsqu'il est sorti de la pišce?
A. J'ai vu la sortie de l'accus, du bureau.
-A. I saw the accused leave the room.
Q. What did you see? What did you notice?

-Q. Qu'avez-vous vu? Qu'avez-vous remarqué?
A. Simplement, rendu ... environ vingt (20) pieds, l..., de la porte de sortie...
-A. About twenty (20) feet from the exit door...
A. ...je me suis retourné, et j'ai vu l'accusé, qui sortait les mains sur la tête.
-A. ...I turned around and I saw the accused leaving the room with his hands on his head.
A. Ensuite...
Q. Yes, please go on.
-Q. Oui, veuillez poursuivre je vous prie.
A. Ensuite les policiers m'ont pris en charge puis ils m'ont fait sortir rapidement du département.
-A. And then the police took care of me and told me to leave the department very quickly.
Q. Okay. Did you see the grabbing and the searching of the accused?
-Q. Est-ce que vous avez vu la fouille qu'on a effectuée sur l'accusé, et la prise en main, la prise en charge de l'accusé?
A. Non, je ne l'ai pas vue.
-A. No, I did not.
Q. Okay. And what happened to you afterwards?
-Q. Et que vous est-il arrivé, par la suite?
A. Les deux policiers qui ont emmené, moi et monsieur Abdou dans un local voisin, l..., du département.
-A. Two police officers took Mr. Abdou and myself in an office nearby, neighboring the area.
Q. Okay. Do you know where it was?
-Q. Est-ce que vous savez ... quel endroit c'est précisément?
A. Ça prendrait...
-A. I would have to take another schematic to...
Q. Okay. And did you...
A. Bien, enfin c'est ici.
-A. Well it's in this area here.
A. Il n'y a pas de numéro.
-A. There's no number there.
Q. And afterwards did you get the occasion to write a declaration about this?
-Q. Par la suite, est-ce que vous avez eu l'occasion de rédiger une déclaration ... ce sujet?
A. Oui.
-A. Yes.
Q. Thank you.
Me JEAN LECOURES :
No further questions.
Q. One minute.
-Q. Un instant.
Q. You recognize that person, do you, before in your testimony.
Yes. Okay.
-Q. Est-ce que vous avez...
Me JEAN LECOURES :
No further questions.
-Q. ...vous avez identifié, la personne au cours de votre témoignage. D'accord. Plus de question.
CROSS-EXAMINED BY VALERY FABRIKANT :
Q. You said that someone from mechanical engineering has called you in for help?
-Q. Vous avez dit que quelqu'un du génie mécanique vous a appelé, pour assistance?
A. Oui.
-A. Yes.

Q. Do you know who it was?
-Q. Est-ce que vous savez qui c',tait?
A. Non.
-A. No.
Q. And he directed you to 929-19?
-Q. Et il vous a dirig, vers le 929-19?
A. Oui.
-A. Yes.
Q. And you saw victim on the chair?
-Q. Vous avez vu une victime sur la chaise?
A. Oui.
-A. Yes.
Q. Are you sure it was on the chair?
-Q. Vous ^tes certain que c',tait sur la chaise?
A. Oui.
-A. Yes.
Q. Was there anybody else except you and that person who invited you and victim?
-Q. Y avait-il quelqu'un d'autre ... part vous-m^me, cette personne qui vous a invit, ... cet endroit et la victime?
A. Je m'en rappelle pas.
-A. I do not recall.
Q. Well, do you know Mr. "Zelec"?
-Q. Est-ce que vous connaissez monsieur Zelec?
A. Non.
-A. No, I do not.
Q. But if there was somebody, could it be that you just don't remember if there was anybody else there?
-Q. Mais s'il y avait quelqu'un, est-ce que ce serait possible que vous ne vous rappeliez pas s'il y avait quelqu'un d'autre avec vous ... cet endroit?
A. Ce que je me rappelle c'est qu'il y avait la victime et l',tudiant qui m'a emmen, ... ce bureau-l...
-A. What I recall is that there was the victim and the student who brought me to that office.
Q. And victim sitting on the chair?
-Q. Et la victime assise sur la chaise?
A. Elle ,tait plut"t ,tendue sur la chaise.
-A. Rather stretched out in the chair.
Q. Would you be able to identify the chair in which he was in?
-Q. Seriez-vous en mesure d'identifier la chaise sur laquelle il ,tait assis?
Q. Was it a big chair with high back?
-Q. C',tait une chaise ou un fauteuil avec un haut dossier?
A. J'en ai aucune id,e.
-A. I have no idea.
Q. So maybe victim was lying on the floor?
-Q. Alors peut-^tre que la victime ,tait ,tendue par terre?
A. Non.
-A. No.
Q. Did you enter any other room like 929-24?
-Q. Etes-vous entr, dans un autre bureau semblable au 929-24?
A. Non.
-Q. Ou par exemple le 929-24?
A. Non.
-A. No.
Q. Did the student tell you that there is yet another victim?
-Q. Est-ce que l',tudiant vous avait dit qu'il y avait une autre victime?
A. Oui, il m'avait dit qu'il y avait deux victimes.
-A. He told me there were two victims.

Q. But he never mentioned to you that there is victim in 929-24?
-Q. Mais il ne vous a jamais mentionn, qu'il y avait une victime dans le 929-24?
A. Non.
-A. No.
Q. And after that he directed you to 929-8?
-Q. Et par la suite il vous a dirig, au 929-8?
A. C'est #a.
-A. That's correct.
Q. And you opened the door...
-Q. Et vous avez ouvert la porte...
Q. ...and there was someone in 929-8?
-Q. ...et il y avait quelqu'un ... l'int,rieur du 929-8?
A. Non, dans le 929-9.
-A. No, in 929-9.
Q. So why did you decide to open yet another door? It was the student who told you that?
-Q. Alors pourquoi avez-vous d,cid, d'ouvrir une autre porte, c'est l',tudiant qui vous a dirig, ainsi?
A. J'ai suivi l',tudiant, c'est lui que je suis. C'est lui qui m'a montr, le chemin jusqu'au 929-9.
-A. I followed the student, he led the way to 929-9.
Q. Uh, huh. And when you opened the door, how many people did you find there?
-Q. Lorsque vous avez ouvert la porte, combien de personnes avez-vous vues l...?
A. J'ai vu une personne.
-A. I saw one person.
Q. One person. Who was that one person?
-Q. Qui ,tait cette personne?
A. Elizabeth Horwood.
-A. Elizabeth Horwood.
Q. Okay. And when did the two other persons arrive?
-Q. Et quand est-ce que les deux autres personnes se sont pr,sent,es?
A. La dame qui la supportait est arriv,e quelques instants appřs.
-A. The lady to assist her came a few moments later.
A. Et puis l'autre, lui, je l'ai jamais vu rentrer, j'ai aucune id,e quand il est arriv,, s'il ,tait l... avant que j'arrive ou s'il est rentr, par aprřs.
-A. And the other person, I never saw him come in, I have no idea if he was there beforehand or if he came in afterwards.
Q. When I arrived, did I shoot at the lady or rather in the air?
-Q. Lorsque je suis arriv,, est-ce que j'ai tir, en direction de la dame ou si j'ai tir, en l'air?
A. Je pourrais pas r,pondre ... #a. Moi, lorsqu'il est rentr,, j'ai vu l'arme et...
-A. I couldn't answer that. When he came in I saw the weapon.
Q. So you cannot say that I shot in the direction of ladies?
-Q. Alors, vous ne pouvez pas affirmer que vous m'avez vu tirer en direction de la dame?
A. Le fusil ,tait point, vers les dames et son regard aussi ,tait fix, vers les dames.
-A. The weapon was aimed at the ladies and his stare was also aimed at the ladies.
Q. Did I tell you that you are not in any danger?
-Q. Est-ce que je vous ai dit que vous n'^tes pas en danger?
A. Oui.
-A. Yes.
Q. Did I tell you it on several occasions even?
-Q. Est-ce que je vous l'ai dit m^me ... plusieurs reprises?

A. Il le disait au pr, pos, du 911.
-A. He said it to the 911 attendant.
Q. And to you also?
-Q. Ainsi qu'... vous-m^me?
A. Il ne parlait pas ... moi, il parlait au pr, pos, du 911, je comprenais...
-A. Well, he wasn't talking to me, he was talking to the 911 attendant, and I understood...
Q. No, I mean before that I told you also...
-Q. Mais avant cela je vous l'ai dit ... vous , galement...
Q. ...you and Dr. Abdou that none of you is in any danger.
-Q. ...que vous et le docteur Abdou n', tiez pas en danger.
A. Oui, il a dit #a.
-A. Yes, he did.
Q. So you didn't really have any reason to fear for your life, as you...
-Q. Alors donc, vous n'aviez aucune raison de craindre pour votre vie...
Q. ...as you gave interviews to the newspapers.
THE INTERPRETER :
Excuse me, could you repeat?
VALERY FABRIKANT :
Q. Well, you didn't really have any reason to fear for your life as you gave interviews to the newspapers.
-Q. Vous n'aviez vraiment pas de raison de craindre pour votre vie selon les entrevues qu'on a vues dans les journaux.
Q. You didn't really have any reason to fear for your life, as you gave interviews to the newspapers.
-Q. Vous n'aviez aucune raison de craindre pour votre vie, contrairement aux entrevues que vous avez donn, es, qu'on a lues dans les journaux.
A. Dans le journaux j'ai dit que j'ai eu peur ... deux occasions.
-A. In the papers, or to the reporters I said that I was afraid on two occasions.
Q. Well, why should you be afraid if I assured you from the very beginning that you are not in any danger?
-Q. Pourquoi avoir peur si je vous ai assur, d's le d, but que vous n'aviez rien ... craindre?
A. Lorsqu'un individu vous pointe avec un revolver, il y a de quoi avoir peur.
-A. When an individual aims at you with a revolver, you have reason to be afraid.
Q. Well, I didn't aim at you with a revolver, did I?
-Q. Je n'ai pas point, le revolver vers vous, exact?
A. C'est pas exact.
-A. That's not correct.
Q. When revolver was kicked away from me and you jumped on me, did I offer any resistance whatsoever?
-Q. Lorsqu'on a pouss, le revolver, on a , loign, le revolver de moi et que vous avez saut, sur moi, est-ce que j'ai montr, une r, sistance quelconque?
A. Non.
-A. No.
Q. So it's not really correct to say that you mastered me, "ma€tris,"...
-Q. Alors, ce n'est pas vraiment exact de dire que vous m'avez ma€tris,...
A. (Inaudible).
-A. I did subdue you.
Q. I just didn't offer any resistance so...
-Q. ...mais je n'ai pas offert de r, sistance.

A. Pas offert de r,sistance mais j'ai ma€tris, pareil (inaudible).

-A. You didn't offer any resistance but I did subdue him in any case, so that he might not move any longer.

Q. In this regard, may I ask you...

-Q. Dans cette optique, puis-je vous demander...

Q. ...were you aware that there was yet another revolver in pocket of my pants?

-Q. ...tiez-vous au courant qu'il y avait un autre revolver dans une poche de mon pantalon?

A. Non.

-A. No.

Q. So when you left me...

-Q. Alors lorsque vous m'avez laiss,...

Q. ...and moved towards the door...

-Q. ...et que vous vous ^tes d,plac, vers la porte...

Q. ...theoretically you put yourself in mortal danger, didn't you?

-Q. ...th,oriquement vous vous ^tes plac, dans un danger ,minent, un danger mortel ,minent?

A. Je le savais pas, je savais pas qu'il avait une autre arme.

-A. I didn't know, I didn't know he had another weapon.

Q. Well... So as a security guard, you acted totally unprofessionally, did you?

-Q. Alors ... titre d'agent de s,curit, vous avez agi avec un manque de professionnalisme, n'est-ce pas?

A. Je crois pas, non.

-A. I don't believe so, no.

Q. Well, I hope next time you act more prudently.

THE INTERPRETER :

Must I translate that, My Lord?

THE COURT :

No, the last wasn't a question.

VALERY FABRIKANT :

No, it was not a question.

LA COUR :

Merci beaucoup, monsieur Martin.

- Thank you very much, Mr. Martin.

AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOURS :

Well, at this point, My Lord, I have other witnesses but it would be without jury, these are witnesses involved in what I told you this morning.

THE COURT :

Okay. So as far as what you have to hear, ladies and gentlemen, your work for this week is finished and we'll resume on Monday morning at nine thirty (9:30), I wish you all a good weekend, thank you very much.

MEMBERS OF THE JURY LEAVE THE COURTROOM

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITHOUT JURY

Me JEAN LECOURS :

Well, at this point, My Lord, I'm ready to introduce the 911 tape into evidence, but as I explained to you, and I had the occasion to discuss with Mr. Fabrikant and Me Belleau, we can save some time. Before arguing whether it's a private communication or not, we agreed to file a consent pursuant to section 189 paragraph 1 b) of the Criminal Code for all the people involved in the conversation, so here is Mr. Daniel Martin. There is a copy for the court record, a copy for Mr.

Martin and a copy for Mr. Belleau. This is the original. VD-1. This is a copy for Mr. Martin and a copy for Mr. Belleau. Mr. Justice Martin and Mr. Fabrikant. So this is the consent from Mr. Martin.

VALERY FABRIKANT :

Well, first of all I want to ask a question, whether the whole thing is relevant, because I am not going to argue about consent, my argument will be based on totally different ground, so I am not sure whether the whole thing is...

THE COURT :

Your argument about what?

VALERY FABRIKANT :

About the tape and its admissibility.

THE COURT :

And your argument will be based on concerning the admissibility of the tape?

VALERY FABRIKANT :

Well, my argument will be based, I tried to get an advice from Mr. Belleau, and I don't really get an advice, at least not advice which would be relevant. I think that the normal argument should be based on Charter of Rights, 24.2.

Me JEAN LECOURES :

Well, we were already involved, can we continue that? It will be filed because...

VALERY FABRIKANT :

So if my argument is based on this, I don't think that the whole filing is relevant in the first place.

THE COURT :

Why don't you go ahead and we'll get to Mr. Fabrikant later.

Me JEAN LECOURES :

Okay. This is the consent of Mr. Claude Gravel, this is the original. Copy for Mr. Justice Martin. Copy for Me Belleau...

THE COURT :

Excuse me, these are VD...

Me JEAN LECOURES :

VD-1, VD-2. Consent from Sergeant Detective Grignon, the original, VD-3. Consent from Mr. Normand Major, VD-4. Consent from Mrs. Anna de Riggi, she's the Urgences Sant, person involved in the conversation, VD-5. Consent from Mrs. Elizabeth Horwood, VD-6. Consent from... that's about it. I'm wondering, My Lord, we had other voir-dire in which exhibits were filed...

THE COURT :

We might have had another voir-dire, I think we did as a matter of fact.

Me JEAN LECOURES :

I think maybe the r, sum, of Dr. Talbot, I don't know what...

VALERY FABRIKANT :

We didn't have any voir-dire about the tape.

Me JEAN LECOURES :

No, I'm just wondering whether we filed any exhibit on voir-dire.

THE COURT :

I don't think... Just a second, I'll know as soon as I look in my other book. Anything that I filed was filed with... there's none. It's okay.

Me JEAN LECOURES :

So let's go then to... I had a discussion with Me Belleau and Mr. Fabrikant, Mr. Sauvageau was here to play the tape, but again, to save time and proceed quickly, we will work with the

transcript. So VD-7, the transcript of the tape. Of course in front of the jury we will file both the tape and the transcript because...

THE COURT :

The tape is the evidence.

Me JEAN LECOIRS :

No, but there is a translation.

THE COURT :

Yes, yes. Okay.

Me JEAN LECOIRS :

The translation is evidence as well.

THE COURT :

Is evidence as well. Yes.

Me JEAN LECOIRS :

Okay. So I'm seeking first a ruling that this very transcription and conversation is not private conversations.

THE COURT :

Did you give me a copy of that transcript?

Me JEAN LECOIRS :

Okay. I believe Mr. Belleau has one and Mr. Fabrikant.

THE COURT :

You don't have one?

VALERY FABRIKANT :

Well Mr. Belleau doesn't need one, he doesn't do anything.

Me JEAN LECOIRS :

No, I will give Mr. Belleau one.

THE COURT :

Okay. Go ahead.

Me JEAN LECOIRS :

Okay. From this transcript, My Lord, you will see that it's a conversation between Mr. Fabrikant and 911 officers, which are civil persons. You will also see that he's speaking in presence of two hostages. You will see that it's announced on the transcript that it's a 911 center. And you will see also that Mr. Fabrikant wants to send a message to the world. So, in accordance with the definition of private communication, I respectfully submit to you, and I refer to Ewaschuk, page 4-3, and paragraph 4...

THE COURT :

Just a second, 4-3 of what chapter, chapter 4?

Me JEAN LECOIRS :

Chapter 4, page 3, and the paragraph is 4.1030. And I read for the benefit of Mr. Fabrikant...

THE COURT :

Just a minute. Yes.

Me JEAN LECOIRS :

"A communication is private only where it is reasonable for a party to expect that it will not be intercepted by any person other than the person intended by the originator thereof to receive it. An objective and not subjective test determines the party's expectation of privacy, thus police broadcasts are not private communications, nor are telephone conversations between the police and an accused holding a hostage, nor telephone calls to a police station, nor it seems it is a tape recorded message sent through the mail to another accused, nor a meeting attended by seventy-five (75) people, nor the messages over an audible pager, nor

telephone calls over a cellular phone."

So in the case, the basic cases are Monacan and Gamble and Nickles. So, my first submission, My Lord, it is obvious that the whole thing is not a private communication, and 911 center never works with authorizations and sealed packs and all these things. But if ever you decide that it is a private communication, and the consents are filed, it is still very admissible pursuant to section 189, paragraph 1 b) of the Criminal Code since all the persons involved expressly agree to the admission of this conversation in evidence.

THE COURT :

Yes.

VALERY FABRIKANT :

Well, first of all not all persons agreed.

Me JEAN LECOURE :

Pardon?

VALERY FABRIKANT :

You cannot say that all persons agreed. I was one of those persons.

Me JEAN LECOURE :

No. All but the accused.

VALERY FABRIKANT :

So, you cannot say all persons agreed.

Me JEAN LECOURE :

One of the persons involved is sufficient.

THE COURT :

Go ahead.

VALERY FABRIKANT :

Now, second thing is pertinence of the tape, because you love to argue pertinence when I present evidence, and you always want to exclude it because it is not pertinent. Now, I would like the Crown first of all to explain the pertinence of the tape, what additional evidence, if any, is needed to strengthen Crown's case with this tape. They had more than enough witnesses who saw me shooting, I for myself do not deny it, so I would like Crown first of all to explain the pertinence of the tape, and then I will argue about something else.

Me JEAN LECOURE :

Okay. On the tape there is a confession of the crime, I think that's more than sufficient. I could have other ground but I prefer not to disclose them at this point.

VALERY FABRIKANT :

Well, I could confess right away, I confessed it on many occasions, so this doesn't bring anything new. What is relevance of that?

THE COURT :

Now, that's all you have to say?

Me JEAN LECOURE :

Well, I can say other arguments.

THE COURT :

No, no, but...

Me JEAN LECOURE :

Can I say more or...?

THE COURT :

As you wish. As you wish. You say what you like.

Me JEAN LECOURE :

Well, it shows also that Mr. Fabrikant is very conscious...

THE COURT :

Yes.

Me JEAN LECOURES :

...that he perfectly realizes what he has done, that he perfectly remembers what he has done, and he's even more accurate than everybody else in describing it. So he's very well connected, it shows basically that he's not an insane person.

VALERY FABRIKANT :

This is funny. 1) you want to make me unfit, then I am insane.

Me JEAN LECOURES :

It's the contrary, I'm saying you're not insane.

VALERY FABRIKANT :

Again, I never claimed that I am insane, so again...

THE COURT :

Now go ahead, have you anything else to add?

VALERY FABRIKANT :

Well, first of all I would like make a decision about pertinence. As far as admission goes, I admit it, and I'm prepared to admit it once again if it is necessary. As far as my sanity goes, I'm prepared to say that I'm not insane, if this is what they want. Then what pertinence is of the tape? I never said that I was insane, I said always I was not in control of myself, this is different story, but I never said, on any occasion, that I was insane, so they have nothing really to prove, there is no pertinence of the tape.

THE COURT :

Well, taking things one by one, I'm perfectly satisfied, without doing anymore than referring to the paragraphs of Ewaschuk to which you've referred me, that a call by a citizen to 911 is not and cannot, in the remotest fashion, be considered to be a private communication. Secondly, the conversation, happening as it did on the very heels of the event, before the arrest of Mr. Fabrikant, is surely relevant to the whole incident which took place at Concordia University, I haven't the slightest doubt in my mind that the conversation is relevant, and... Would you refer me to the page where the confession is to be found?

Me JEAN LECOURES :

There is another argument, My Lord, it's res gestae as well.

THE COURT :

Well, yes, I've effectively said that. When I state at page 7...

Me JEAN LECOURES :

Page 8, there is something...

"Well, I made several murders here and I want to explain the reason why."

It's about one third of the page.

THE COURT :

Yes. When I said a moment ago that following as it did on the heels of the incident prior to his arrest, it would appear to me that you and I both agree that it's part of the res gestae. And inasmuch as it contains a confession, or what the jury may well regard or could regard as a confession, no doubt in my mind that it's both relevant and admissible. There is no need for a monumental work of jurisprudence to establish that.

Me JEAN LECOURES :

That's what I thought, My Lord.

VALERY FABRIKANT :

So you just ignore what I said?

THE COURT :

Yes. I do because what you said makes no sense at all as far

as the admissibility of that document is concerned.

VALERY FABRIKANT :

Well, explain it. I never denied.

THE COURT :

I don't care, the fact that you never denied or the fact that you sit there now and say that I'm going to give an explanation, or I'm going to give this or give that is not something that precludes the Crown from making the proof as the Crown sees fit to make it, and the Crown satisfies me that... We talk about the most ridiculous things in this case, the Crown has satisfied me that a call to 911, transcription of a call to 911, I'm satisfied that it's not a private communication, and it contains... it happened at the same time as the events and it contains a confession from you, I can't think of anything that could be more pertinent, it will be admitted.

VALERY FABRIKANT :

Well...

THE COURT :

Finished. I'm finished. It will be admitted.

VALERY FABRIKANT :

You just don't want to hear.

THE COURT :

It will be admitted, there's no question about it.

VALERY FABRIKANT :

What about Charter of Rights?

THE COURT :

What about the Charter of Rights?

VALERY FABRIKANT :

Don't you feel that to take person who is in shock and talks without really thinking who is he talking to, do you think it is not a shocking experience to shoot four people?

THE COURT :

I have no idea.

VALERY FABRIKANT :

You have no idea, just try to use your imagination, as poor as it is.

THE COURT :

Listen, the Charter of Rights is not your wet nurse, you can't stand there and invoke the Charter of Rights to keep out something that is contemporary with what went on.

VALERY FABRIKANT :

Just listen to what I have to say.

THE COURT :

Go ahead.

VALERY FABRIKANT :

Your comparison is ridiculous, wet nurse, Charter of Rights. Could you be a little bit more professional at least.

THE COURT :

The Charter of Rights is not your wet nurse. Okay? Would you like it again?

VALERY FABRIKANT :

Okay. Say it again, it's very professional for a Judge to say. I think it is morally reprehensible. There is nothing there which I'm not prepared to admit. I never said I was insane, I never denied that I shot four people, and to broadcast this is just act on emotions rather than on anything else, because for the proof as such, Crown does not add that much to what has already been proven. And as far as moral stuff of this, the only result might be is that you put your

administration of justice... well, it's difficult to put it in more disrepute as you already did it, but you definitely managed to put it in a greater disrepute because next time another hostage who would know how his conversation might be used might behave in a different manner. I think that this kind of stuff, provided that I have admitted whatever is there, I think it is morally reprehensible, but it's not the first time you're doing something morally reprehensible so you can continue doing it.

THE COURT :

Thank you.

Me JEAN LECOURE :

Okay. At this point, My Lord, I'm ready to report on yesterday's requirement.

THE COURT :

Fine.

Me JEAN LECOURE :

We use a report... We take cognizance and after we can discuss.

VALERY FABRIKANT :

What is it, fifteen twenty (15:20). The arrival is what, fifteen twenty (15:20)? Who can answer?

Me JEAN LECOURE :

It's what is written.

VALERY FABRIKANT :

Well, I cannot read it good, it is fifteen twenty (15:20) what is written? The number, I have difficulty reading it.

THE COURT :

I read:

"They arrived downstairs around fifteen twenty hours (15:20)."

VALERY FABRIKANT :

Okay. So it is twenty, is it?

THE COURT :

"They then, I gather, proceeded to 907."

VALERY FABRIKANT :

And what was the time of L,pine and Fournier?

THE COURT :

Are you able to reply?

Me JEAN LECOURE :

Mrs. Traynor, could you translate that please?

VALERY FABRIKANT :

No, I understand French.

Me JEAN LECOURE :

No, but let's... it will be shorter if Mrs. Traynor translate it than anything else.

THE INTERPRETER :

"As required by Mr. Justice Martin, office 929-24, the body of Dr. Hogben discovered - there's an arrow - L,pine, R,al, badge number 4846, Fournier Sylvain, 4975. Their arrival at the ground floor around fifteen twenty (15:20), they firstly verified office number 907 with Constable Soucy, Gaston, badge number 2924, Lagac,, Marc, 4500, Bolduc, Robert, 368. For office 907, the body of Dr. Douglass discovered - there's an arrow pointing to the right - Soucy and Lagac,. And it's signed Normand H,bert, detective sergeant, dated ninety-three (93), zero five (05), thirteen (13)."

Page 2. Do I read page 2, My Lord?

Me JEAN LECOURE :

Sure.

THE COURT :

Uh, huh. Go ahead.

THE INTERPRETER :

"Meeting and briefing, director Bujold, Michel. General information and identification of new witnesses. Director Sangollo plus Detective Sergeant Fuller, plus Detective Sergeant Gamache, met Bujold to inform him on the progress, or the development of the meeting which was conducted by Director Sangollo. Information on legal proceedings, judicial proceedings and witnesses hesitant in coming forward. Meeting from fourteen hundred hours (14:00) to fourteen forty-five (14:45) approximately in office number 609. Signed Normand H, bert, detective sergeant, dated ninety-three (93), zero five (05), thirteen (13). Page 3."

THE COURT :

Excuse me just a second.

THE INTERPRETER :

Yes.

THE COURT :

The date of that meeting is what? I see the event number but I don't see a date.

Me JEAN LECOURE :

September twelfth (12th)... second (2nd). Okay. The information, My Lord, is it's September the second (2nd).

THE COURT :

Just a second. September the second (2nd). Okay, Mrs. Traynor, pass to the page 3.

THE INTERPRETER :

There is the event number at the top of page 1, 2, 3 and 4, which is the same one, and it reads as follows 25920824040, and on page 1 there is a mention, additional information to the report, and it was for the first policemen, I suppose, on the scene, and page 2 is for Concordia security, page 3, we are now dealing with the families. Letter A.

"Simpson-Hogben, Margaret, thirty-one (31) zero eight (08) ninety-two (92), Detective Sergeant Pr,fontaine plus Detective Sergeant Pilon. Letter B, Saber, Sara, twenty-six (26), zero eight (08), ninety-two (92), Detective Sergeant Pr,fontaine and Detective Sergeant Pilon. Letter C, Douglass, telephone contacts or communications. No versions or notes. And it's signed Normand H, bert, detective sergeant, ninety-three (93) zero five (05), thirteen (13)."

THE COURT :

Okay. With regard to the 1 and 2, Mr. Lecours, are there notes?

Me JEAN LECOURE :

I believe so, My Lord. May I suggest that we finish the whole...

THE COURT :

Yes, yes. Okay.

Me JEAN LECOURE :

...translation and after we...

THE COURT :

Okay.

THE INTERPRETER :

Page 4, same event number, 25920824040, and now we are talking about discovery.

"Section document management. All the documents, including administrative, operational and informal documents are available in addition to my relevant documentation... "

Me JEAN LECOURE :

My documentation which is relevance to evidence.

THE INTERPRETER :

Oh, ,l,ment. Pardon.

" ...relevant to the evidence."

VALERY FABRIKANT :

I'm sorry, once again, "ils sont disponibles (inaudible)".

THE INTERPRETER :

"In addition to my documentation which is relevant to the evidence."

VALERY FABRIKANT :

I didn't get this right, it means that you have something else which is available for inspection?

Me JEAN LECOURE :

There is a section in charge of documents...

VALERY FABRIKANT :

Yes.

Me JEAN LECOURE :

...which is independent from the documentation relating to the evidence in this case. It's a section relating to Concordia incident, all aspects, and they are managing the whole documentation. I'm in possession of the relevant evidence, the rest doesn't really... you know, I don't want thousands of reports and thousands of boxes of papers, and all these things. We are, as far as the homicide squad is concerned, in charge of what is relevant to establish the case, but we can continue the translation...

VALERY FABRIKANT :

Okay. Okay.

THE INTERPRETER :

"If Mr. Justice Martin considers that these documents are required for Mr. Fabrikant's defense, I will undertake the necessary measures. And it is signed detective sergeant Normand H, bert, dated ninety-three (93), zero five (05), fourteen (14)."

VALERY FABRIKANT :

Well, I think I should be allowed to inspect it and decide by myself whether it is relevant, because there must be definitely some information there which is useful for my defense. So I should be allowed to consult it. You see, we always discover each time something which was not given to me, and I think I should be given full access to whatever is there so that I would be able to decide myself what is relevant, what is not. Because according to Stinchcomb, all this information was obtained by using public funds, and not just for conviction of me but for exoneration too, is there are reasons for exoneration. So I should be given access to it.

THE COURT :

Have you anything to say?

Me JEAN LECOURE :

No, My Lord.

THE COURT :

On page 3, I understand that there are reports concerning the... there are notes...

Me JEAN LECOIRS :

These are notes, eh, rather than reports?

THE COURT :

I don't know what they are.

Me JEAN LECOIRS :

Okay. Yes.

THE COURT :

Concerning Mrs. Simpson and Mrs. Saber.

Me JEAN LECOIRS :

Yes. Yes, My Lord. These are... they are notes, no reports. I have them right now, I never saw them but... Okay. Please go on.

THE COURT :

No, that is...

Me JEAN LECOIRS :

(Inaudible).

THE COURT :

That is one specific thing that was asked for...

Me JEAN LECOIRS :

Yes.

THE COURT :

...and that is one specific thing that bears upon, or that may bear upon the defense that Mr. Fabrikant proposes to offer along the lines of what he explained yesterday.

VALERY FABRIKANT :

So you see, each time we discover something new.

Me JEAN LECOIRS :

There's only one copy, it should take two seconds or... I think we can make copies...

THE COURT :

If you pass these to Mr. Sera, he can make copies of these.

Me JEAN LECOIRS :

I guess four copies.

VALERY FABRIKANT :

Now, I repeat once again, I would like to have full access, and I would like to have certain time allocated for that.

THE COURT :

You would like to what?

VALERY FABRIKANT :

Sufficient time allocated for that.

THE COURT :

You'd like to a full access to... you're talking about page 4, is that it?

VALERY FABRIKANT :

Yes.

THE COURT :

To all administrative, operational and informal documents.

VALERY FABRIKANT :

Well believe me, I am not insane, and I will not be looking at the reports filed by policemen who were directing transport near Concordia. Please think of me about a little bit higher than that, all right?

THE COURT :

Have you anything to say with regard to...

Me JEAN LECOIRS :

My Lord, I was provided with what, to the best of our knowledge, was relevant to do this case, I gave everything to Mr. Fabrikant, what I don't have was deemed to be not relevant. This is an eyewitness case.

THE COURT :

I'm going to take a look at Stinchcomb again in the context of this request over the weekend.

Me JEAN LECOURE :

You should not lose sight...

THE COURT :

I'm not losing sight of that fact.

Me JEAN LECOURE :

...that it is an eyewitness case.

THE COURT :

I'm not losing sight of that.

VALERY FABRIKANT :

Well it's not just eyewitness case, it is eyewitness case for you, for me it is case of documents, because you want to convict, I want to do something quite opposite, therefore what is irrelevant for you is very relevant to me, and I think it's natural.

THE COURT :

I'll re-read Stinchcomb on the weekend and I will let you know what my thoughts are with regard to that request on... of what my decision is with regard to that request on Monday morning.

VALERY FABRIKANT :

Well, you also wanted to think about transportation.

THE COURT :

Pardon?

VALERY FABRIKANT :

You also wanted to think about transportation.

THE COURT :

What do you mean transportation?

VALERY FABRIKANT :

Just this morning you said that six hours which I spent are...

THE COURT :

Ah yes. Yes. Yes.

Me JEAN LECOURE :

Can I just say one last word. The key word in Stinchcomb is the word relevant, so...

VALERY FABRIKANT :

Well, it's not up to you to decide what is relevant, I'm sorry, it's up to me to decide that.

THE COURT :

Well, I never thought Stinchcomb was authority for the proposition that the police department was obliged to place at your feet the entire archives treating any particular investigation, quite frankly I'm not of that view at all.

VALERY FABRIKANT :

Well...

Me JEAN LECOURE :

Stinchcomb is first-hand information, witness declaration, notes of police officers, police reports are not included in... and even the police reports, it's not even included in Stinchcomb.

THE COURT :

I'm not about to make any modification in the rules relating to transport, you have been transported here since January as far as I'm concerned, and you've managed quite handily up to this point, so you can continue to manage as you're managing.

VALERY FABRIKANT :

Okay. Now on Monday, I need to attend medical treatment Monday morning.

THE COURT :

Listen, the last time you were supposed to attend a medical

treatment on Monday morning you chose not to attend it, the jury...

VALERY FABRIKANT :

Have a little bit conscience...

THE COURT :

The jury was given the morning to let you go about whatever you had to do and you didn't do it.

VALERY FABRIKANT :

I didn't do it, you forgot I'm in jail, I was not...

THE COURT :

And what happened was you made your medical appointment, or your medical appointment was made for the Tuesday at noon (12:00).

VALERY FABRIKANT :

Look, you should be ashamed of yourself, you know I'm in jail, I cannot go to doctor myself, I should be called. Don't pretend to be that naive, I'm in jail, I cannot go to doctor.

THE COURT :

Don't you think it might have been useful to have drawn this to my attention before the jury went home for the day?

VALERY FABRIKANT :

Jury can be contacted by the telephone.

THE COURT :

Don't you think it would have been sensible to have let me know before the jury went home for the day?

VALERY FABRIKANT :

Of course it would be sensible.

THE COURT :

Fine. Then I think what you better do is remake your medical appointment.

VALERY FABRIKANT :

Well... but you can contact the jury by the phone.

THE COURT :

I'm not contacting the jury by the phone and I'm not putting anybody to that trouble.

VALERY FABRIKANT :

I don't mean you personally.

THE COURT :

You had plenty time to draw this to my attention before the jury went home, so we'll resume on Monday morning, as planned. So we'll adjourn until Monday morning, when these documents come back they will be sent in. Pardon? Have you a problem?

Me JEAN LECOIRS :

No, I was just wondering about the copies.

THE COURT :

No, Mr. Sera will bring the documents back.

Me JEAN LECOIRS :

Okay.

TRIAL CONTINUED TO MAY 17TH, 1993

Je soussign,, Michel Daigneault, st,nographe officiel bilingue, certifie que les feuilles qui pr,cšdent sont et contiennent la transcription de bandes d'enregistrement m,canique, hors de mon contr"le; et est au meilleur de la qualit, dudit enregistrement. Le tout conform,ment ... la Loi.

Et j'ai sign,,

Michel Daigneault,
St,nographe officiel bilingue</pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">C A N
A D A COURS UNIFIES DU QUBEC

PROVINCE DE QUBEC

CHAMBRE CRIMINELLE ET PNALE

DISTRICT DE MONTRAL

CAUSE NO.: 500-01-017372-928

TAPE: PROCES - SUITE

PRSENT: L'HONORABLE JUGE FRASER MARTIN, J.C.S. ET JURY

NOM DES PARTIES:

SA MAJEST LA REINE

Plaignante,

c.

VALERY FABRIKANT

Accus,,

COMPARUTIONS:

Me Jean Lecours
PROCUREUR DE LA PLAIGNANTE

DATE DE L'AUDITION: LE 17 MAI 1993

FICHER: 2523

TABLE DES MATIERES

PAGE

REPRESENTATIONS 4

WITNESS: KAMAL BOUDARI NEVAD

Cross-examined by Mr. Fabrikant 29

WITNESS: GEORGE ABDOU

Examined by Me Lecours 31

Cross-examined by Mr. Fabrikant 38

WITHOUT JURY 48

WITNESS: ALAIN AUCLAIR

Examined by Me Lecours 52

Cross-examined by Mr. Fabrikant 56

Re-examined by Me Lecours 61

WITNESS: NICOLE MENARD

Examined by Me Lecours 63

WITNESS: GILLES SAUVAGEAU

Examined by Me Lecours 65

Cross-examined by Mr. Fabrikant 72

WITNESS: CLAUDE GRAVEL

Examined by Me Lecours 77

WITNESS: ELIZABETH HORWOOD

Examined by Me Lecours 80

TABLE DES MATIERES

PAGE

WITNESS: ANNA DE REGGE

Examined by Me Lecours 82

WITNESS: DANIEL MARTIN

Examined by Me Lecours 84

WITNESS: NORMAND MAJOR

Examined by Me Lecours 86

Cross-examined by Mr. Fabrikant 88

WITNESS: PIERRE GRIGNON

Examined by Me Lecours 90

WITHOUT JURY

DECISION OF THE COURT 92

REPRESENTATIONS 96

WITH JURY 112

WITHOUT JURY

VALERY FABRIKANT :

Well, I want to say something.

THE COURT :

Fine.

VALERY FABRIKANT :

I looked into the material which was provided to me by Crown, and I must say that I found something extremely useful for my defense, in that material, therefore, what Crown feels might be irrelevant or useless for their case happens to be very very useful and relevant for the defense. And I would not have discovered all this unless I looked through... you know how I discovered it just by looking at what was provided and making some kind of inferences. But I'm pretty sure that there is maybe a lot of documents which I have no even slightest idea they exist, and they might be extremely useful for my defense. Therefore I would like your permission to have a reasonable access to the documents they have, and in particular I can even now formulate what would be useful for me. I need statements from policemen Vachon, "Vasqueles", L,pin, Fournier and Bolduc. I'm sure they made statements. Should I repeat the names?

THE COURT :

Vachon, Vasqueles...

VALERY FABRIKANT :

Vasqueles, L,pin, Fournier, Bolduc.

THE COURT :

...L,pin, Fournier and Bolduc.

Me JEAN LECOURES :

L,pin or L,pine?

VALERY FABRIKANT :

L,pine.

THE COURT :

L,pine.

VALERY FABRIKANT :

L-e-p-i-n-e.

THE COURT :

L,pine.

VALERY FABRIKANT :

L,pine.

Me JEAN LECOURES :

Okay. There shouldn't be any problem if... My Lord...

THE COURT :

If these exist. Okay.

Me JEAN LECOURES :

So maybe this afternoon or sometime this morning.

VALERY FABRIKANT :

Well... but I wish to emphasize once again that me discovering step by step that I need this, I need that, could be avoided if I'm just allowed reasonable access to what they have.

THE COURT :

For the moment I'll answer that later on.

VALERY FABRIKANT :

And also, there are other questions like experts which recounted the situation, I'm telling this to Me Belleau, he in fact acts like, you know, like a stenographer, instead of being a friend of Court, and either supporting me or not supporting me, he acts like a stenographer. And he writes to Legal Aid: "Fabrikant wants this, Fabrikant wants that", without being done any evaluation to say: "I support it because yes, it is relevant", or: "I don't support it because it is not relevant". He acts like a stenographer, and I don't think these are his functions. So he's not doing his job, I told you many times, and my defense is in jeopardy. I need either another friend of Court, or maybe I will try to find a lawyer who will assist me in my defense, because now it is the most responsible part, Crown has finished its case and I need to present mine.

THE COURT :

Well the Crown isn't finished with his case yet, first of all.

VALERY FABRIKANT :

Well today they finish.

THE COURT :

I suppose they may be, I don't know.

VALERY FABRIKANT :

And it's not too late to raise this question.

THE COURT :

Well, it's certainly somewhat far on in the scenario to raise this question.

VALERY FABRIKANT :

Yes, because I raised those questions, if you remember, on numerous occasions.

THE COURT :

I'm not going to define again what Mr. Belleau's

functions are, you know perfectly well what Mr. Belleau's functions are and you know why he's there.

VALERY FABRIKANT :

I know, but he's not doing even those functions.

THE COURT :

He provides you, as you require it, with the mechanical support that you require, such as to issue subpoenas or whatever. It seems to me that it's worked relatively well.

VALERY FABRIKANT :

This is not really what the only thing he's supposed to do. I need, for example, transcripts of Judges Barbeau and Bishop, and I gave him tape, and it was a month ago at least. Now, and I'm pretty sure that this has not been done, on eleventh (11th) May he still writes to Johanne Deslongchamps that: "I write to you because I want to let you know the following requests by Mr. Fabrikant". What the hell, I need him as a secretary to advise Me Deslongchamps of what I need, I could call her myself and tell her this. And after that he just writes what I need, and she writes to him: "No, he doesn't need that". And where we are he's supposed to either say: "Yes, I do need it" and to contact you and to settle the matter, and nothing is settled.

THE COURT :

Well, this isn't the time to settle it. We're going to go on with the Crown's case...

VALERY FABRIKANT :

Well, I think it couldn't be...

THE COURT :

We're going to go on with the Crown's case, and then we're going to then discuss the question you raised on Friday as to whether you require any time, and...

VALERY FABRIKANT :

Well, I do require time, because nothing has been done and I'm delayed in my defense.

THE COURT :

Well, that's your problem, you're the one that elected to architect your own defense.

VALERY FABRIKANT :

It's not my problem, it's Me Belleau is not doing his job.

THE COURT :

Me Belleau is surely doing the job that he was assigned to do. Me Belleau is not your attorney, he's not taking instructions from you. He is there to counsel you, if you seek his counsel.

VALERY FABRIKANT :

Well, who is going to do the transcripts then? I asked him to arrange for that. I cannot do it myself.

THE COURT :

Well, at one point...

VALERY FABRIKANT :

Only that he wrote to Deslongchamps about it.

THE COURT :

At one point you will have to convince me...

VALERY FABRIKANT :

Yes.

THE COURT :

...that the transcripts of civil hearings before Mr. Justice Barbeau and Mr. Justice Bishop are relevant to

your defense, that's going to be an essential first step. And if you don't pass that one, the problem is going to become irrelevant. I make no comment on it, but when I see...

VALERY FABRIKANT :

Well, if you...

THE COURT :

...when I see that I must say I have some question in my mind, but...

VALERY FABRIKANT :

Well, since at issue here is not whether I was the one who did it, then at issue is whether I had specific intent, or whether I had premeditation, you know, all those issues, and this fact will help to prove that, first of all, I could not possibly premeditate this, so definitely it is relevant.

THE COURT :

You eventually are going to have to be a lot more specific than that.

VALERY FABRIKANT :

Well, I am fighting very serious accusations...

THE COURT :

Yes.

VALERY FABRIKANT :

...and I don't think that you would, if I was represented by a lawyer, you would question whether a certain transcript is needed or not, because this lawyer would just order it and that would be the end of it, right?

THE COURT :

That is possibly true.

VALERY FABRIKANT :

So... and you...

THE COURT :

That is possibly true, I wouldn't expect to hear about it until it was proposed to introduce it.

VALERY FABRIKANT :

And you, Judge, should not interfere in that, that's all.

THE COURT :

I'm not interfering in ordering the transcripts, you get your transcripts any way you like, I'm not going to order them made for you.

VALERY FABRIKANT :

Well, you did order those made for me Swamy, and Shenan and all this stuff.

THE COURT :

I said that there was a mechanism that was put in place, and there was a mechanism that was put in place for you to obtain them.

VALERY FABRIKANT :

No, but you made an order to make it urgently, right?

THE COURT :

That's right.

VALERY FABRIKANT :

Just on Friday.

THE COURT :

I said that in the event that you propose to use transcripts of Swamy and Shenan, in the course of your

defense, that I wasn't going to sit here while we listen to interminable minutes of tape, so that you had better take steps to get these transcribed. And I can see that these might be relevant to your defense.

VALERY FABRIKANT :

No, you could have said that whatever was said on fitness is forgotten, it is not there, you could have said that too. That fitness was special issue...

THE COURT :

That's right.

VALERY FABRIKANT :

...and whatever was said there should be forgotten and never mentioned.

THE COURT :

That's what I said. For the minute that's where it stands.

VALERY FABRIKANT :

So you are not consistent with yourself then.

THE COURT :

Of course I'm consistent, that's where it stands for the moment. What was said on fitness is separate, but if you decide to bring these witnesses in your defense, then I can foresee the possibility that something that a witness says may not necessarily dovetail, four-square with what you think the witness said the first time he or she testified, so I can see you wanting to use these transcripts, that's all, it's purely precautionary.

VALERY FABRIKANT :

Okay. But if you know that those shooting was definitely related to the civil case in contempt of Court motion which was introduced in that case, and...

THE COURT :

But I don't know that at all.

VALERY FABRIKANT :

Well, then you will just have to trust me that it is related, because I have a proof of that. So... and if it is related, then those transcripts definitely affected my mind. I mean the decisions. So they are relevant, because they created in my mind definite impression that Judges are corrupt. And I also asked for an expert from, let's say Faculty of Law, to look into these decisions and to confirm that my impression, that decision of Judges was patently wrong to be done.

THE COURT :

That won't happen.

VALERY FABRIKANT :

Why?

THE COURT :

I mean you can get it if you like but it won't be admitted.

VALERY FABRIKANT :

Why not?

THE COURT :

Because it's not admissible. If the Judges erred, then there's a procedure foreseen to correct errors on the part of the Judges.

VALERY FABRIKANT :

Well this is not an issue here, the issue here is whether I had reasonable apprehension that there is no way I can get justice in Court.

THE COURT :

Well a professor of law's opinion isn't going to help you in that.

VALERY FABRIKANT :

Well this professor will say that, yes, indeed, my perception, the Judge was corrupt, and he could not possibly render decision he rendered unless he was totally bribed or ignorant in law. I think it will help me enormously.

THE COURT :

Well, that evidence won't be admitted.

VALERY FABRIKANT :

Why it won't be admitted?

THE COURT :

Because it won't be admitted. Okay?

VALERY FABRIKANT :

Well, you want to protect your friends Judges?

THE COURT :

Not at all...

VALERY FABRIKANT :

So why shouldn't it be admitted then?

THE COURT :

Because the opinion of a law professor on whether a judgment is, as you put it, off the wall or not is not relevant to these proceedings.

VALERY FABRIKANT :

Well, let the jury to decide.

THE COURT :

No, no, no, I decide what goes in front of the jury, and opinions of a professor of law as to the... If you want to say that Mr. Justice Barbeau, or Mr. Justice Bishop rendered a judgment on such and such a date, that is reasonably proximate, I suppose, to the twenty-fourth (24th) of August. And that, as a result of that judgment, you A) consider it unfair, you B) consider that one or the other of these Judges was wrong, whatever you consider, and that this affected your mind, that may be part of the... that may be part of the background that could sustain...

VALERY FABRIKANT :

Yes.

THE COURT :

...an argument based on provocation. Yes.

VALERY FABRIKANT :

Yes. So...

THE COURT :

Yes. But not the opinion of a professor as to whether...

VALERY FABRIKANT :

Okay. So let's (inaudible). So transcript is relevant.

THE COURT :

You continue to mix up...

VALERY FABRIKANT :

Okay. Let us then...

THE COURT :

...proof of truth with proof of circumstances that affect your mind.

VALERY FABRIKANT :

Then you agree that transcript is relevant?

THE COURT :

I don't know, it's hard to say at the moment.

VALERY FABRIKANT :

You just said right now...

THE COURT :

It's hard to say at the moment whether the transcript...

VALERY FABRIKANT :

You just said right now...

THE COURT :

It's hard to say at the moment whether the transcript is relevant and in what sense.

VALERY FABRIKANT :

You just said that it was relevant because it might be provocation.

THE COURT :

It may be.

VALERY FABRIKANT :

So...

THE COURT :

It may be. But listen, don't expect me to set down, you see, because as soon as I rule on these things, one by one by one, you come back, and it may be relevant.

VALERY FABRIKANT :

Okay. So let's take the transcript.

THE COURT :

How long are the transcripts?

VALERY FABRIKANT :

Well, gosh, it's five minutes.

Me JEAN LECOURE :

(Inaudible) My Lord.

THE COURT :

Pardon?

Me JEAN LECOURE :

It looks like it is not relevant.

VALERY FABRIKANT :

The whole transcript, one is fifteen (15) minutes and the other is less than five minutes.

Me JEAN LECOURE :

He should organize himself.

THE COURT :

Yes, he should organize himself, that's the other question. I normally don't... I'm not getting involved in this.

Me JEAN LECOURE :

You should not interfere in his defense or...

THE COURT :

I'm not...

Me JEAN LECOURE :

It's his problem, he has to manage to get this transcript, Me Belleau is not there for that either.

VALERY FABRIKANT :

Well, who is there for that then?

Me BELLEAU :

Well I take exception to that, the problem is that Legal Aid will pay certain costs, and there's an issue between Legal Aid and Mr. Fabrikant as to the relevance of whatever element of proof he wishes the community, the "centre communautaire" to pay for. This is a permanent litigation between him and the "centre communautaire".

THE COURT :

And the "centre communautaire".

Me BELLEAU :

So in that respect, I believe that if he asks for determination by the Court that it's relevant or not, it's only for the purpose, as far as I'm concerned, of convincing the "centre communautaire" to pay for the costs, because otherwise they would probably refuse to pay for those costs, although it's minimal.

Me JEAN LECOURE :

If he's not happy with Legal Aid he can put his money in his pocket and get someone else to do it.

Me BELLEAU :

He has the Legal Aid mandate. We have to assume that he's admissible, eligible.

THE COURT :

Well, I mean, I can't... you know, I can't rule in on vacuum as to what's relevant and what is not. I'll tell you that...

VALERY FABRIKANT :

I don't think in that book...

THE COURT :

I'll tell you simply this, and I'm referring to Ewaschuk, 273100:

"Events prior to an actual killing may be relevant to the accused's state of mind at the time of the killing. Thus a person suffering a series of wrongful acts or insults may more readily lose self-control upon receipt of a further wrongful act or insult proffered immediately before the killing."

And there are a number of cases, "Kraufchuk"...

VALERY FABRIKANT :

(Inaudible).

THE COURT :

Would you be quiet for a moment. Kraufchuk going back to nineteen forty (1940), and more relevant two decisions of the Ontario Court of Appeal in nineteen eighty-five (1985) and nineteen eighty-six (1986), Conway 1985, 17 C.C.C. 3rd, 481, and Devost, 1986, 26 C.C.C. 3rd, 88, both of which I looked at over the weekend. And in saying that the fact that something happened and how he regarded it may be an element. Now, whether the Judge's words are necessary, I don't know, and I can't come to any conclusion on that point just now. The fact that he suffered a reverse in the civil proceedings may be a factor that he wishes to put before the jury as affecting his mind, just stating a possible defense of provocation, I don't know. And I don't know what other defense he proposes to advance, so it's difficult for me to come to any conclusion on that.

Me JEAN LECOURE :

There is no provocation in this case, My Lord, it's not sudden. The fact that he's angered against Concordia, a lot of murders are committed... it's not a defense.

THE COURT :

It may be, but I'm not prepared to come to that conclusion today, that's for sure.

Me JEAN LECOURE :

Well, he should deal with his own defense.

THE COURT :

Well, what the problem is is deciding, or trying to

decide whether or not these may be relevant. We'll see, if it's a question.

Me JEAN LECOURES :

What I foresee is a never-ending story.

THE COURT :

I realize, and it will have to end, and there will have to be some definition to it, because it's not going on forever.

Me JEAN LECOURES :

And not only a never-ending story, an exponential evidence, the more you get the more there is. You said yourself that we may be sitting in nineteen ninety-five (1995) in this case.

VALERY FABRIKANT :

Don't you worry.

THE COURT :

We're going to try to do our best not to...

VALERY FABRIKANT :

It will end this year, and we'll end relatively quickly, if just there is no sabotage to my defense. And what you quoted yourself is the best support there is that what I'm asking for is relevant, and since Legal Aid has always been sabotaging my defense, so I need from you a ruling that this is relevant and transcript has to be made.

THE COURT :

I can't... I'm not going to make a ruling that it's relevant, I'm going as far as I've gone, which is to say that in that context, depending on how proximate it is to the events, it may...

VALERY FABRIKANT :

It is proximate and it is relevant, and shooting took place on twenty-fourth (24th), and one doesn't have to be a genius to understand since the contempt of Court hearing was scheduled on twenty-fifth (25th), and taking into consideration evidence, how frantic Hogben was on the telephone with his secretary.

THE COURT :

I have no knowledge of that.

VALERY FABRIKANT :

Well, have you been here when Rimkus testified, or you were somewhere else?

THE COURT :

Oh, I see what you mean. Okay. Yes.

VALERY FABRIKANT :

Yes. And all this doesn't tell you anything, you still do not understand how these things are related. They are.

THE COURT :

They may be, I don't know.

VALERY FABRIKANT :

Well if they may be, then I'm entitled to full defense and I do not have...

THE COURT :

You are entitled to a full defense.

VALERY FABRIKANT :

...(inaudible), you and the Crown, all the details of my defense.

THE COURT :

You are entitled to a full defense.

VALERY FABRIKANT :

Yes.

THE COURT :

But knowing you, and having seen where we've been before, I am entitled to look at it as closely as I possibly can and to the best of my ability decide whether it's relevant or not. A number of these rulings you haven't liked, and that's just too bad.

VALERY FABRIKANT :

All right. So we spent so far twenty-five (25) minutes...

THE COURT :

You spent.

VALERY FABRIKANT :

You spent, because you could have said: "Yes, it is relevant, I order it to be transcribed". You spent twenty-five (25) minutes during which Mr. Belleau was paid about eighty dollars (\$80.00)...

THE COURT :

Would you like to sit down? I mean, if you want to quibble with me all day, we're simply going to waste our time.

VALERY FABRIKANT :

(Inaudible) what can I do?

THE COURT :

Sit down. Before we go on any further, I got a note from Mr. Marcet on behalf of a number of the reporters present today, particularly Radio-Canada, which I'd like to read:

"My colleagues from radio and T.V. stations understand from the rules of practice of the Court that what they could record on their magnetophones in open Court cannot be used as material for direct broadcast. They would like to know, however, if the rules stands when what has been recorded is an exhibit in today's case, recorded conversation between Mr. Fabrikant and the 911 operator on August twenty-fourth (24th), nineteen ninety-two (1992)."

I must say I reflected on that when I received it, and tried to go through in my mind how I should properly answer it. I guess the start point is the purpose of the rule of practice, I'm not so sure that the purpose of the rule of practice was ever published anywhere but my understanding of the rule of practice was that it was passed to permit journalists to record simply as an "aide-memoire" when they were writing up their stories afterwards, in the interests of accuracy from everybody's point of view. In that context I don't think it much matters whether we're talking about testimony of a witness or a recorded statement that finds its way in front of the jury. I can only give you as a half-way measure a written statement. For example, suppose that a written statement, as a piece of evidence, finds its way in front of a jury, I don't think it could be argued that the content of the written statement as such could be... it could certainly be published but I'm not so sure that it could be published in a photograph form or whatever, it's maybe a bad analogy, I don't know. My

feeling is no, that it can't be done on the rule of practice as it now stands. I think that the underlined and controlling idea is that the rule of practice is there to act simply, or to permit you to have your magnetophones as an "aide-m,moire" but I don't think that you would be able to directly... I don't think you should be able to directly broadcast that simply because it's diffused over a recorder in the courtroom. It is, in the end, evidence for the jury, which is put in front of the jury, yes, you may report on it but not record it directly as you may not record the testimony of Smith, Jones or Pierre, Jean, Jacques directly. So that would be my reaction, Mr. Marcet, without having thought it out any further than that. I appreciate your asking and I appreciate the interest, it's a serious question. Thank you.

How, Mr. Lecours, did you propose to proceed this morning? I came in without the jury also in order to canvas that with you. Do I have to hear this tape first of all?

Me JEAN LECOIRS :

No.

THE COURT :

Are you going to produce any evidence...

Me JEAN LECOIRS :

The first witness would be Mr. Boudari Nevad who would answer one question in cross-examination, you remember about these photographs. My next and last eyewitness is Mr. George Abdou, he's one of the hostages. After that I would like a recess, approximately one hour, to fix the electronic equipment. And also... I will make a short chain of possession for the tape, maybe one or two questions to two or three witnesses. I expect to play the tape, I expect every person speaking on the tape to come and... unless there is an admission, to come and say: "This is my voice". I can talk with Mr. Fabrikant and Mr. Belleau about that. The simplest way would be to liste to the tape, with the transcript, and the person would say: "Each time you see MA, my name is Normand Major, this is my voice". The other possibility, if there is no admission at all, is to play the tape to stop it after each sentence, and someone comes and identifies the voice. As far as Mr. Fabrikant's voice, this is Mrs. Horwood who would...

THE COURT :

Mrs. Horwood is going to...

Me JEAN LECOIRS :

...identify it.

THE COURT :

Okay. That's the manner in which you propose to proceed?

Me JEAN LECOIRS :

Yes.

THE COURT :

Okay. So you will let me know whether there is any admission...

Me JEAN LECOIRS :

Okay.

THE COURT :

...at all in that regard at a given minute, in order to avoid, trying to stop this thing each step of the way,

which is senseless. Jury please.

VALERY FABRIKANT :

So when are you going to settle other questions? I do not understand. Each time I'm asking you're avoiding making a decision, and my defense is being jeopardized.

THE COURT :

Your defense is not being jeopardize one bit, don't talk nonsense.

VALERY FABRIKANT :

So when are you going to settle all this matter?

THE COURT :

When I get around to it. Okay. You raised the question of five police officers this morning, you have the affirmation of the Crown Prosecutor that he'll look to see whether they made statements.

VALERY FABRIKANT :

I raised also question of experts, I raised question of transcripts, and there are other questions...

THE COURT :

As far as I'm concerned, on the question of your expert, that you've mentioned this morning, you have my reaction to that. You can organize yourself in whatever manner you like, and you can bring whoever you like, I will decide when you bring the witness whether the question that you wish the witness to depose upon is pertinent or not, and I'll rule in consequence.

VALERY FABRIKANT :

Well, the problem is that Legal Aid wants you to make decision...

THE COURT :

I am not making these decisions for Legal Aid.

VALERY FABRIKANT :

So they are not paying then, and my defense is being jeopardized.

THE COURT :

I am not making decisions for Legal Aid as to what they do or as to what they do not do.

VALERY FABRIKANT :

Okay. Then Mr. Belleau has to do his job and convince them that it is relevant. He's not doing that either.

MEMBERS OF THE JURY ARE PRESENT IN THE COURTROOM

THE COURT :

Mr. Boudari Nevad is here, My Lord.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this seventeenth (17th) day of the month of May, personally came and appeared:

KAMAL BOUDARI NEVAD, born on July fourth (4th), nineteen hundred and sixty-three (1963), student, Concordia University, confidential address;

WHOM, after having been duly sworn, doth depose and say as follows:

Me BELLEAU :

We were provided with a picture of the class of eighty-nine ('89)...

CROSS-EXAMINED BY VALERY FABRIKANT :

Q. Well, do you recognize the professor who came in?

A. (Inaudible).

THE COURT :

You will have to speak more loudly.

A. I cannot read it properly, I think...

VALERY FABRIKANT :

Q. Thulasirman?

A. Thulasirman, yes.

THE COURT :

Q. What is the name please?

A. Thulasirman, I guess.

Me BELLEAU :

Yes, T-h-u-l-a-s-i-r-m-a-n.

VALERY FABRIKANT :

Q. And what makes you sure that both professor Thulasirman and secretary Kim stayed in the room 907 when you left?

A. Because when they were talking I left, I left very early.

Q. And you saw me in two, three minutes from 907?

A. Approximately three minutes.

Me JEAN LECOURES :

Thank you, sir.

THE COURT :

Thank you, sir.

AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOURES :

Mr. George Abdou.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993),
this seventeenth (17th) day of the month of May,
personally came and appeared:

GEORGE ABDOU, born on July eighteenth (18th), nineteen
hundred and fifty-four (1954), associate professor,
confidential address;

WHOM, after having been duly sworn, doth depose and say
as follows:

EXAMINED BY Me JEAN LECOURES

ATTORNEY FOR THE CROWN :

Q. Doctor Abdou, what was your occupation on August the
twenty-fourth (24th), nineteen ninety-two (1992)?

A. Associate professor in the Department of Mechanical
Engineering of Concordia University.

Q. Could you relate the incidents that happened on the
afternoon of that date, please?

A. I was sitting in my office, and I had a graduate
student, it was about two fifteen (2:15) in the
afternoon.

Q. Okay. If you allow me, I'm showing you, behind you,
P-3, could you locate your own office in this... look at
the number of your office.

A. It was (inaudible).

Q. Okay. Please go on.

A. I was sitting in my office with a graduate student, she
was a new graduate student, I was meeting with her. We
heard shots, you know, so I asked directly... and
screaming of a woman outside.

Q. In the corridor?

A. In the corridor here, in...

Q. Could you...

VALERY FABRIKANT :

I don't see anything.

Me JEAN LECOURES :

Q. Could you give the number of the corridor where you heard the screaming of a woman?

A. 929-90.

Q. Okay.

A. I asked to the student what it is, she said gunshots, I turned the light off and we kept quiet for five minutes, I found the things very silent. I opened the door, I asked my graduate student to stay in the office. As soon as I got out I looked on the floor, there were shells. I looked right and left to see what's going on, nobody was there. I went to the chairman's office, which is 929-8, this door was closed, between 929-8 and 929-9.

Q. Okay. Could you precise what is the nature of 929-9 in relation to 929-8?

A. 929-9 is the chairman's office, 929-8 is Elizabeth, his secretary's office.

Q. Okay.

A. I couldn't see anyone. I went back by the place 929-2, which is a small kitchen, I met Susan, one of the secretaries for the department, and I kept asking her: "What's going on?" She kept telling me: "Where is Elizabeth" for a few times. She was running towards 929-8, I followed her. At that time Elizabeth came out, showing her leg...

Q. Was there...

A. ...it was bleeding.

Q. Okay.

A. And she wasn't walking, of course, normal. Susan took her and we went inside 929-9. There is a desk, a couple of desks like this, and this chair here, Susan tried to accommodate Elizabeth to sit down, and there was already some blood on the chair. And a security guard was here, I know him by the uniform, and I came and I stood here, where the small chair was there, behind me. And in the minutes of this Mr. Fabrikant came from this door.

Q. Okay. You're indicating the accused?

A. Sorry?

Q. When you say Mr. Fabrikant, you knew that person?

A. Yes.

Q. Okay.

Me JEAN LECOURES :

The witness is indicating the accused.

A. He came in, the first thing he did, he had one shot.

Q. I'm sorry, what did you say?

A. He had one, he shot once.

Q. With what?

A. With a gun.

Q. With a gun?

A. Yes.

Q. In which direction?

A. In Elizabeth, in this direction, and Elizabeth and Susan were standing up here, Elizabeth came, (inaudible) looked back to see who was shooting, Elizabeth and Susan weren't there, and we left from that door.

Q. The door leading towards the corridor of 929-91?

A. Dash 91, yes.

Q. Okay.

A. And then, on the way out, they closed the door, he said: "Nobody moves", and he closed the door behind him, this one leading to 929-8, and he asked me to sit down. The security guard was already talking to someone on the phone, and I found him giving... as the lights starting from here, (inaudible) can't get up with a... I mean you need to extend it, so the security guard was carrying the telephone, and he gave the receiver to Mr. Fabrikant here, standing behind the door, and of course he kept talking.

Q. What was he saying in your presence, Mr. Fabrikant?

A. He was telling that he shot many people, he murdered many people, he wants to get a T.V., channel 12, to tell the whole world why he did this. And in the meantime, it was a very slow conversation, like it was a discussion about his name, spelling his name, if he has a wife or he doesn't, and... And he kept asking, you know, to get this reporter from T.V., channel 12, I can't recall the name. And in the meantime the squad force came, they tried to fix this door here between 929-8 and 929-9. When they tried to force entry, he told them: "Don't enter, I'm going to shoot", so they left. They went back from this door here, they tried again where he pointed the gun and he said: "Don't enter, I'm going to shoot", and the security guard helped him in French and English, telling the people not to enter the room. At that time he asked the security guard, he kept talking, he said: "My throat hurts", and he asked the guy on the phone to hang up, he asked the security guard also to hang up and give him the receiver. He asked the security guard to take this chair here and to sit across the place, and he came at this corner here, where he stood up next to me. And from time to time he was putting the gun behind his back. Finally he decided to sit down, when he sat down he had his gun pointed on my left foot, about five inches. Then the telephone rang again, the security guard gave him the phone, and at this moment he's trying to make control because this time the security guard gave them both the receiver and the phone, and he tried to control both, and in the meantime he was trying to release, and as soon as he released the gun I kicked the gun away.

Q. With your foot?

A. With my left foot. I ran directly to the gun, laid down on it, looked back to see what is his reaction, he didn't show any resistance, of course there was a security guard also.

Q. Okay. You, you just said you kicked the gun and you laid on the gun?

A. Yes, Your Honor.

Q. What did you notice about Fabrikant?

A. I looked back, just to make sure that he's not coming after me or... and he was (inaudible).

Q. Okay. What was the participation of the security guard then?

A. He was... of course (inaudible) telephone, you know, I was concentrating on him, but (inaudible) arms, like the security guard was embracing him or...

Q. He was controlling the accused?

A. Yes.

- Q. Did you see him jump on the accused or you just noticed it was... they were...
- A. No, I didn't see any resistance myself.
- Q. No, no, but I mean, when you were looking at the gun, did you see the move of the security guard?
- A. No, I was just concentrating on the gun, I looked, and when I saw everything quiet I looked back, and see he was sitting as he is and with the security guard on him.
- Q. Okay. Did you see the security guard controlling and mastering Fabrikant?
- A. I found him, he was holding him, but at the same time I was concentrating more on him.
- Q. Him... who is him?
- A. Him, like... means Mr. Fabrikant.
- Q. Okay.
- A. I start screaming: "We're set free", the security guard when he saw me that I'm slow in opening the door, or I... he saw, I was just screaming hysterically, he asked me to open the door, so I opened the door. There was squad forces here, so they asked me to drop the gun, and I did, they asked me to lay down, I did, they jumped on me, they dragged me all the way into the main door, up to this point, searching all over. And finally I was, you know, they found I'm not a suspect, so I was going to the first floor at Concordia, in the Hall building.
- Q. Okay. When you exited the office, were you saying anything?
- A. I was saying: "I'm not a suspect, the suspect is inside, I'm not the one". I was just telling them, you know, to hurry to get into the room because Fabrikant is still there.

VALERY FABRIKANT :

I couldn't get his previous testimony, is it because I was not supplied by the Crown of this volume? Is it possible to have, say, ten, fifteen (15) minutes recess and I could take a look at his previous testimony?

THE COURT :

Certainly. Is there a copy of Mr. Abdou's testimony there, amongst this...?

Me JEAN LECOURES :

It was discussed in front of you at the pre-trial conference, he was supposed to have all these transcripts.

VALERY FABRIKANT :

No, I told you I don't, and if you remember I mentioned it to you that I don't have all of that.

THE COURT :

Would you see if you can find... Have you got the date? If you have the date.

Me JEAN LECOURES :

I can lend him a copy.

THE COURT :

Fine. Okay. Well, we'll adjourn for fifteen (15) minutes to let you take cognizance of that.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

THE JUDGE AND THE JURY ARE PRESENT IN THE COURTROOM

WITNESS: GEORGE ABDOU -- UNDER THE SAME OATH

CROSS-EXAMINED BY VALERY FABRIKANT :

- Q. Do you remember making a statement to the police on

August twenty-fourth (24th)?

A. I can't hear, I'm sorry.

Q. Do you remember making statement to the police on August twenty-fourth (24th)?

A. What kind of statement?

Q. Would you like to take cognizance?

A. When you were talking to the police you were saying?

THE COURT :

Q. No, no, he asked you if you remember, if you remember if you made a statement to the police, and you said: "What kind of statement?", and he asked...

A. If I made a statement?

Q. Yes, and he asked you if you would like to look at it. I don't know what it is but...

VALERY FABRIKANT :

Q. Is this your statement?

A. Yeah, I made this statement to the police, yes.

Q. It is yours?

A. At the police station. Yes.

Q. Now, in this statement you say that:

"I also heard that he warned some people to carry a gun and use it if necessary."

A. Yes.

Q. Well, could you elaborate, who told you that?

A. You know, it was just (inaudible) the department, and I heard that some of the people, you know, some of the professors, you know, (inaudible) get in touch with them, that you submitted a permission to carry a gun in the department, and it was rejected. And also I learned that in one of the meetings you had told them that you're going to shoot if necessary.

THE COURT :

Q. I'm sorry, what did you say? I didn't understand that.

A. I said I heard from the secretaries that he submitted a permission to carry gun.

THE COURT :

Mr. Fabrikant, this evidence that you're adducing...

VALERY FABRIKANT :

I know.

THE COURT :

...(inaudible) hearsay evidence, now...

VALERY FABRIKANT :

I know this is not in evidence, what I want to show to the jury, that it was unfounded, all these unfounded rumors, there is no way, in every case, to find the source, that this is all lies. And there is, in each of them who testifies to that, he can never pinpoint the source, so that's all lies, that's what I'm trying to pinpoint here.

Q. So, who did exactly I say this to? To who?

A. I don't know this.

Q. So how dare you to repeat... let me ask you a question. How dare you to repeat this malicious stuff if you don't know to whom, when and what exactly I said?

A. It's so simple, you have done it, and when you have done it I said it.

Q. So after I have done it, everyone is smart, but you said that it was before I done it, that I said it before.

A. No, I... what I'm saying, after you have done it, and I went through this experience, and when I went to the

police station it's so simple, I said: "I have heard...", because I didn't know you, and when I was in the room with you and I heard you confessing it, that you have done it, I said: "I also heard a rumor...", not a rumor: "I also heard from people that you had said this"...

Q. Anyway.

A. ...and you have submitted...

Q. Anyway, you cannot say neither to who, nor then, nor any detail which could identify the source, correct?

A. Yes.

Q. You cannot?

A. I cannot.

Q. Now, here you say that, on the statement, I had made one shot in the air.

A. Yes.

Q. Here you testify that I shoot at the ladies.

A. I said towards the ladies.

Q. Well, shot in the air means in the air.

A. No, let me explain. What I meant is in the air, I mean nobody got hurt, that means that things went out in the air.

Q. Well...

A. It's my interpretation.

Q. If you look at the picture where the bullet went, it was a shot in the air.

THE COURT :

Now you're arguing with the witness or testifying, I don't know which.

VALERY FABRIKANT :

Anyway.

Q. Because for every normal person, shot in the air means in the air and not in direction of somebody, because today you said something different.

A. It's not different to me.

Q. Not different to you?

A. Yes.

Q. Now, you also said here that:

"He looked confused."

You confirm this?

A. About the phone?

Q. Well don't ask me, I'm asking you. You wrote here, "he looked confused", do you confirm this statement?

A. Where is the location in the statement?

Q. Okay.

A. When you entered the room?

Q. No, when I was talking on the phone.

A. Yes, because it's the first time I know you, you were talking very slowly, you were... you didn't want to answer questions. When they asked you about the name or you were trying to spell the name, you were saying it very slowly, letter by letter, this is what I meant by confused.

Q. All right. Now, do you recall that on my appearance I said: "No one is going to get hurt".

A. I did say this in my testimony before.

Q. Yes, but you didn't say it today?

A. I said, "nobody move, nobody gets hurt".

Q. Maybe I missed that. Now, did I threaten that I'm going to shoot?

A. Yes, you did.

Q. Well, we'll see it on the tape if it is there. You're sure that I exactly said: "I'm going to shoot"?

A. Yes.

Q. Now, on the next page you repeat once again that there was one shoot in the ceiling when I entered the room, do you confirm that statement?

A. By the time when I looked, because everything came into few seconds, by the time I looked at Elizabeth and looked back, you were very close to the other door. What I meant, you know, you were shooting, or I found... like there is a hole in... I didn't know, is this a previous one or is this a new one, this is what I meant by a shot in the ceiling.

Q. Well, shot in the ceiling means that I didn't shoot at the ladies.

A. But you were there a couple of times, I was only in the last time, so I didn't know what it is.

Q. But that time I shot not at the ladies, I shot in the ceiling.

A. This is what I meant by shooting in the air, nobody was injured, and this is what I meant by...

Q. Well, you just don't want to say that I didn't shoot at the ladies, correct?

A. You asked me, you had shot the lady before, and it's very normal for me to think that you were shooting again.

Q. Were you present when I shot the ladies?

A. I saw her leg bleeding.

Q. But you didn't see that I shoot the lady?

A. No, I was inside, and it doesn't take an expert to understand that the lady was screaming, the shot was done, that the lady was shot.

Q. You are here to testify what you saw.

A. No, I didn't see it, I saw the lady bleeding, and she told me that you did shoot her.

Q. Well, the shot you viewed was in the air?

A. Right.

Q. Now, do you also recall that on numerous occasions I said: "Nobody will get hurt"?

A. Yes.

Q. Yes. Now, do you also recall that you repeated on several occasions that you have always been on my side? Do you recall that?

A. Sorry?

Q. Well, when I was there with a gun...

A. Yes.

Q. ...you, on several occasions, were saying that you were always on my side in my disputive department.

A. Did I tell you this?

Q. Yes.

A. No, I didn't, because I didn't know you, I didn't know any of the problems, so how can I... (inaudible) tell you, I mean nothing.

Q. Well, would it be correct to assume that people, when someone in front of them with a gun, start saying things just to save their lives, though their lives was not really in danger, could that be...

A. No.

Q. ...the reason?

A. My answer is no, and I never said to you this, because

I didn't know what exactly the problems are, if there is any.

Q. Now, again, this contradicts to what you said, you said you didn't know what the problems are, here you confess that you have read four e-mail computer messages?

A. I got four e-mail messages but I didn't spend time, because I don't have time to go through all of them. And I also, as a fact, remember I got some of the message between you and the chairman for the teaching of two courses, c.c. to all faculty members, I have scanned all of this, but not really reading, understanding.

Q. So how can you reconcile this statement if previous statement that you had no idea of what the problem was?

A. Because I didn't study it. I didn't have time to study what's your problems with the department.

Q. But you just now said that there was problems with two courses, did you?

A. I don't know, I didn't see is the problems, you though there's a problem, but myself, I'm getting assigned courses, I'm taking the load, I don't see this any problem.

Q. You're avoiding question. Let me repeat once again. Just second ago you said you couldn't have told me this because you have no idea if I had any problem with department. In your statement to the police you say that you know that I had problem, that you have read four e-mail in computer, harassing professors, vice-rector...

A. Yes.

Q. ...so you did know.

A. That's what I said, I scanned this, I didn't know what exactly is the problem, there is a difference between reading a newspaper and understanding what the problems are. You sent e-mail, it shows that you're putting certain statements against these people, but why are you doing this, I don't know. I didn't study this, I didn't have time to do it, and so what I said is very consistent with what I am saying now. I didn't study what are your problems, I was new in the department, you know, you were new also for me, on that day, when you have done all of this. So myself I didn't know what is the background between you and the department, so easy, I scanned what I get in the e-mail, I scanned what I read, but not necessarily that I have fully understanding of what's going on.

Q. So you say...

A. So it is consistent in my thing.

Q. So there is no contradiction between your statement that you couldn't possibly said that you were on my side because you have no idea of the problems, and the statement that you have read, or at least browsed through my e-mail and knew even such details that I was complaining about the courses, there is no contradiction between those two statements?

A. Yes.

Q. Okay.

A. And I want to correct...

Q. No, that's fine.

A. ...is not couldn't, I didn't.

Q. (Inaudible). Now, do you realize how potentially dangerous your actions were in kicking out the gun?

A. Yes, I did.

Q. Wouldn't it be safer just to wait for me to surrender?
Because I always said that I'm going to surrender.

A. After the T.V. station would have come. I can't wait,
I waited too long, you had your gun behind the back and
I wanted even to make a move before but I was worried
because I don't know too much about... if you hurt
yourself, and all this. So I waited for the proper
time, the gun was slightly away from your fingers, and
this is what I did.

Q. Well, what would have happened if it were not me but
somebody else, and with not as peaceful intention as
mine, and having a revolver in another...

THE COURT :

The question is purely hypothetical, question is
disallowed.

VALERY FABRIKANT :

Q. So what was described as heroic action probably was
carelessness and nothing else, would you agree with
that?

A. No.

Q. No.

THE COURT :

Thank you, professor Abdou.

AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOIRS :

Now, My Lord, at this point I would need some time to
fix the electronic circuits.

THE COURT :

As far as the... Okay. So we'll adjourn, ladies and
gentlemen, at this point for forty-five (45) minutes.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITHOUT JURY

Me JEAN LECOIRS :

I just wanted to let the Court know that only two
witnesses will be necessary in the chain of possession,
François B, langer and Gilles B, langer are duplication.
I discovered that there was... what they call a hot
shot, it's duplication of system in 911 of the police,
so it won't be necessary. Also, My Lord, in order to
save time in the cumbersome process, I will ask your
permission, because there is exclusion of witnesses,
that the interlocutors in the conversation might sit in
the room, following with the transcript. And after
that, when comes the time to voice identification, I
will ask them if they had the occasion to listen to the
tape, to read the transcript at the same time. And when
there is the abbreviation, let's say HO, Mrs. Horwood
will say: "Each mention of HO was my voice" instead of
playing and stopping the tape at each time, I think it's
perfectly legal to do so.

THE COURT :

Yes. The only improvement on that that I could have
suggested would have been that they had listened
previously to the tape.

Me JEAN LECOIRS :

They have.

THE COURT :

They have?

Me JEAN LECOIRS :

Of course, it's for purpose of the jury.

THE COURT :

Because if they had not listened previously, if they've listened previously to the tape, and you are satisfied that they have listened previously to the tape, then we can go ahead on that basis and they can...

Me JEAN LECOURE :

Well, two times... it doesn't hurt if they follow at the same time of everybody, it will refresh the memory and...

THE COURT :

Uh, huh.

Me JEAN LECOURE :

So you allow them to sit in the room?

THE COURT :

Have you any objection to their sitting in the room?

VALERY FABRIKANT :

Well, first of all I think that it might be useful to hear the tape slowly, word per word.

Me JEAN LECOURE :

We will first, definitely, and after we will discuss the question of identification of voices.

VALERY FABRIKANT :

I mean, since Crown wants to introduce it, then I want it to be heard well. I mean, each phrase.

THE COURT :

Well that's what he said.

Me JEAN LECOURE :

There's no problem.

VALERY FABRIKANT :

No. My understanding is that he wants just to identify it once, and after that goes...

THE COURT :

Not at all, he said the witnesses who he proposes to call in relation to their voices have already heard the tape, that was a question I asked, they have already heard the tape. He asks that rather than be excluded, might they sit in the room during the playing of the tape, because there's an order concerning exclusion of witnesses.

VALERY FABRIKANT :

Uh, huh.

THE COURT :

Unless you've got some violent objection to that, I'm prepared to waive that rule as far as these witnesses are concerned and let them sit in the room and listen to the tape, and then he will ask them if they...

VALERY FABRIKANT :

Well, I may be insane but not that insane.

THE COURT :

Okay.

Me JEAN LECOURE :

I will start with Mr. Alain Auclair.

THE COURT :

Well just a second, we'll bring the jury in.

MEMBERS OF THE JURY ARE PRESENT IN THE COURTROOM

THE COURT :

So the procès-verbal will reflect that I permitted the witnesses who will be called upon to identify their voices to sit in the room, notwithstanding the exclusion rule.

SANDRA TRAINER - INTERPRETER

DULY SWORN

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993),
this seventeenth (17th) day of the month of May,
personally came and appeared:

ALAIN AUCLAIR, born on September thirteenth (13th),
nineteen hundred and fifty-one (1951), supervisor,
confidential address;

WHOM, after having been duly sworn, doth depose and say
as follows:

EXAMINED BY Me JEAN LECOURES

ATTORNEY FOR THE CROWN :

Q. Mr. Auclair, what was your occupation on August the
twenty-fourth (24th), nineteen ninety-two (1992)?

-Q. Monsieur Auclair, quelles ,taient vos fonctions le
vingt-quatre (24) ao-t mil neuf cent quatre-vingt-douze
(1992)?

A. J',tais chef d',quipe au centre d'urgence.

-A. I was a supervisor at the centre d'urgence.

Q. Which centre d'urgence?

-Q. Lequel?

A. Centre d'urgence 911.

-A. 911

Q. Where is it located?

-Q. O- est-il situ,?

A. 750, Bonsecours.

-A. 750 Bonsecours Street.

Q. Okay. Could you explain the general system in centre
d'urgence 911?

-Q. Pouvez-vous expliquer le systŠme en g,n,ral au centre
d'urgence 911?

Q. Summarily.

-Q. BriŠvement.

A. O.K. On parle du systŠme d'enregistrement?

-A. We're talking about the recording system?

Q. That's correct.

-Q. C'est exact.

A. O.K. C'est un systŠme de quarante (40) pistes.

-A. It involves forty (40) tracks.

A. Et chacune des pistes correspond ... une position de prise
d'appel.

-A. And each track corresponds to a position or a call
taking position.

A. Et c'est ta, chaque soir, entre minuit (12 h) et minuit
trente (12 h 30), environ...

-A. And each evening, at approximately midnight (12:00),
twelve thirty (12:30)...

A. ...on change la bande maEtresse, il y a... sur la
machine qui doit fonctionner le lendemain soir.

-A. ...we change the master reel on the master tape
recorder, which has to function until the following
night.

A. C'est pourquoi on a toujours deux machines en
fonction...

-A. That's why we always have two machines working...

A. ...et quand on change la bobine entre minuit (12 h) et
minuit trente (12 h 30)...

- A. ...and when we change the reel between midnight (12:00) and twelve thirty (12:30)...
- A. ...#a implique automatiquement que les deux machines fonctionnent ... ce moment-l...
- A. ...it automatically involves both machines, which would be operating at that time.
- A. C'est en gros le fonctionnement.
- A. And largely that's the operation of the recording system.
- Q. And the purpose of the master reel is to tape the incoming 911 calls?
- Q. Et le but de la bobine ma@tresse est de prendre les appels entrant au 911?
- A. Oui.
- A. Yes, that's correct.
- Q. What is the approximate length in time of a master reel?
- Q. Quelle est la dur,e approximative d'une bobine ma@tresse?
- A. C'est environ, je dirais, de vingt-cinq (25) heures trente (30).
- A. I would say approximately twenty-five (25) and a half hours.
- Q. Okay. On August the twenty-fourth (24th)...
- Q. Le vingt-quatre (24) ao-t...
- Q. ...who put the master reel?
- Q. ...qui a install, la bobine ma@tresse?
- A. C'est moi.
- A. Myself.
- Q. And this master reel was functioning from what time to what time?
- Q. Et cette bobine ma@tresse fonctionnait de quelle heure ... quelle heure?
- A. Le vingt-quatre (24) ao-t, est-ce qu'on parle de la journ,e de l',v,nement?
- A. The twenty-fourth (24th) of August, is that the day of the incident?
- Q. Yes.
- Q. Oui.
- A. O.K. La bobine ma@tresse a fonctionn, de...
- A. The master reel was on from...
- A. ...de minuit (12 h) ... dix-neuf heures cinq (19 h 05).
- A. ...from midnight (12:00) to nineteen-o-five (19:05).
- Q. Was there a specific incoming call that was intercepted between fifteen twelve (15:12) and sixteen ten (16:10) of that day?
- Q. Y a-t-il eu un appel d'origine, ou un appel qui est entr,, plut"t, vers les quinze heures douze (15 h 12) jusqu'... seize heures (16 h) cette journ,e-l...?
- A. S-rement, ,tant donn, que les bobines ,taient en fonction. Cependant, moi, je n',tais pas sur les lieux, l..., ,tant donn, que je travaillais de nuit.
- A. Surely, since the reels were in operation, but I was not on the scene since I was on the night shift.
- Q. Thank you. No other questions.
- Q. Merci. Plus d'autre question.

CROSS-EXAMINED BY VALERY FABRIKANT :

- Q. Could you say how many calls were received by 911 from Concordia University that day?
- Q. Pouvez-vous dire combien d'appels ont ,t, re#us par le 911 de Concordia cette journ,e-l...?

R. Moi, personnellement, non, je peux pas dire.
-R. For myself personally, no, I cannot say.
Q. But someone does know that?
-Q. Mais quelqu'un serait au courant de ce fait?
A. Surement, mais pas moi.
-A. Certainly, but not me.
Q. Is it easy to locate on the master reel...
-Q. Est-il facile de situer sur la bobine ma&tresse...
Q. ...those calls which originated from Concordia University?
-Q. ...ces appels qui provenaient de l'Universit, Concordia?
A. Oui, en ,coutant chacune des pistes.
-A. Yes, upon listening to each one of the tracks.
Q. Okay. And it is easy to indicate from what telephone they were made?
-Q. Et il est facile de d,terminer ... partir de quel appareil ils ont ,t, plac,s?
A. De quel appareil t,l,phonique?

THE INTERPRETER :

Oui. Yes.

A. A l'aide d'une... quand un appel entre au 911...
-A. When a call comes into the 911 office...
A. ...on a automatiquement sur... on appelle #a un ,cran haut plasma...
-A. ...we call it a high plasma screen, we automatically have...
A. ...on a la provenance de l'appel.
-A. ...the origin of the call.
VALERY FABRIKANT :
Q. And this number is recorded?
-Q. Et ce num,ro est enregistr,?
A. Il est enregistr, parce que la provenance de l'appel se transfŠre dans le systŠme d'ordinateur...
-A. It is recorded because the origin of the call is transferred into the computer...
A. ...et ... partir de l'ordinateur c'est possible de sortir une carte d'appel, un imprim, de carte d'appel.
-A. ...and from the computer it is possible to have a print-out of the originating call.
Q. Okay. Do you know if this has been done at that time?
-Q. Est-ce que vous avez si cela a ,t, effectu, ... ce moment-l...?
A. Je pourrais pas dire, moi, j'ai pas fait ce travail-l... personnellement.
-A. I did not undertake that task personally, I could not say.</pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;"> Q.

Do you know who could possibly make it?

-Q. Est-ce que vous savez qui aurait pu possiblement effectuer ce travail?

A. Est-ce qu'on parle des imprimés d'appels?

-A. Are we talking about the call print-outs?

Q. Well, I'm talking about identification and printing of those calls.

-Q. Je parle de l'identification et de l'imprimé, de ces appels.

A. coutez, c'est difficile pour moi de répondre ... ça parce que c'est pas moi qui s'occupe de ça, simplement qu'il y a quelqu'un au 911 qui a fait ce travail-l...

-A. It's hard for me to say because I'm not in charge of these duties, certainly somebody at 911 would have undertaken that task.

Q. Okay. Do you know who?

-Q. Est-ce que vous savez qui?

A. Dans les... c'est difficile de donner des noms, je le sais pas qui fait le travail.

-A. It's difficult to designate anyone, I don't know who undertakes the task of doing so.

Q. Okay. Let me change the question. Is it usually made when major crime occurs...

-Q. Est-ce que c'est effectué, habituellement lorsqu'un crime majeur est effectué,, ou a ,t, commis...

Q. ...that all the calls related to that crime are being printed out and transcribed?

-Q. ...que tous les appels s'y rattachant auraient ,t, imprimés et ensuite transcrits?

R. Vous voulez dire que dans tous les cas majeurs, si ce genre de travail-l... est fait?

-R. You mean in all major cases, if that kind of work is being done?

Q. Yes.

-Q. Oui.

A. C'est difficile pour moi de répondre parce que je suis pas ce qu'on appelle un responsable des opérations au centre d'urgence.

-A. It's hard for me to answer because I'm not what one would refer to as an operations manager at the urgency center.

A. Tout ce que j'ai ... faire comme travail, c'est que je m'occupe de l',équipe qui est en place.

-A. My work relates to the team working on the scene, on location.

A. Quand ça concerne un rapport du genre que monsieur parle, c'est pas moi qui fais ce travail-l..., c'est ce qu'on appelle les responsables des opérations, et c'est ces gens-l... qui pourraient répondre.

-A. And when it relates to these types of reports, such as the one the gentleman is referring to, I'm not the one to answer to this kind of work, it is the head of operations who is in charge of this kind of work.

Q. Okay. Is this information still available on your computer?

-Q. Est-ce que ces renseignements ou ces données sont toujours disponibles sur votre ordinateur?

A. Présentement je le sais pas.

-A. Currently I do not know.

Q. Do you know for how long do you keep this information?

-Q. Est-ce que vous savez pendant combien de temps vous conservez cette information?

A. Information informatique?

-A. Data processing information? Data?
Q. Well, information which would allow to identify the location of call...
-Q. Les donn,es qui permettraient d'identifier l'origine de l'appel, ou l'emplacement de l'appel...
Q. ...it's timing...
-Q. ...c'est-...-dire sa dur,e...
Q. ...maybe its content.
-Q. ...possiblement son contenu.
A. Hum-hum. J'imagine que ça existe, mais comme j'ai dit tant"t, je m'occupe pas de ces choses-l..., je m'occupe du fonctionnement journalier et non du suivi.
-A. I suppose that it does exist, but I'm in charge of the daily operations, if you will. I take care of the follow-up...
Q. Could you tell me...
-A. ... or not... I don't take care of the follow-up.
Q. Could you tell me who would be able to answer all these questions?
-Q. Pourriez-vous me dire qui serait en mesure de r,pondre ... toutes ces questions?
A. C'est ce que j'ai dit tant"t, le responsable des op,rations.
-A. As I stated earlier, the head of operations.
Q. Okay. Could you give me the name?
-Q. Est-ce que vous pourriez me donner son nom?
A. Il y en a plusieurs au centre d'urgence, il faudrait s'adresser peut-^tre ... l'administrateur en chef.
-A. There are several at the centre d'urgence, maybe one would have to refer to the head supervisor administrator.
Q. Okay. Who is the head supervisor?
-Q. Alors qui est le surveillant ou l'administrateur en chef?
A. Madame Cherry.
-A. Mrs. Cherry.
Q. C-h-e-r-r-y?
-Q. C-h-e-r-r-y?
A. Yes.
-A. Yes.
Q. Okay.

Me JEAN LECOURS :

With your permission, My Lord.

RE-EXAMINED BY Me LECOURS

ATTORNEY FOR THE CROWN :

Q. What was the number of the master reel that you put the night?
-Q. Quel ,tait le num,ro de la bobine ma&Etrresse que vous avez install,e cette soir,e-l...?
A. 598A comme Alain.
-A. 598A as Alan.
Q. Thank you.
-Q. Merci.

VALERY FABRIKANT :

Q. So it's four digits, 598A.
A. Hum-hum.
-A. Yes.

AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOURS :

Mrs. Nicole M,nard.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this seventeenth (17th) day of the month of May, personally came and appeared:

NICOLE MNARD, born on June tenth (10th), nineteen hundred and forty (1940), wiretap technician at the centre d'urgence 911,

confidential address;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY Me JEAN LECOURS

ATTORNEY FOR THE CROWN :

Q. Mrs. M,nard, I'm showing you three cassettes, could you examine them...

-Q. Madame M,nard, je vous montre trois cassettes, pourriez-vous les examiner, s'il vous pla&t...

Q. ...and tell the members of the jury what it is?

-Q. ...et dire aux membres du jury de quoi il s'agit?

A. Ce sont des cassettes, je reconnais mon ,criture, ce sont des cassettes que j'ai faites.

-A. They are tapes that I made, I recognize my handwriting.

Q. Okay. Are they faithful copy of the incoming 911 call intercepted at 750 Bonsecours, Montreal, centre d'urgence 911?

-Q. Est-ce que c'est une reproduction exacte et fidŠle d'un appel provenant d'un endroit et destin, au 750, Bonsecours, c'est---dire le centre d'urgence 911?

A. Oui, ce sont des cassettes...

-A. Yes, they are.

Q. What is the number of the master reel from which you copied these cassettes?

-Q. Quelle est le num,ro de la bobine ma&tresse ... partir de laquelle vous avez reproduit ces cassettes?

A. C'est pas moi qui a le document, l..., c'est... je pense que c'est... Je pourrais vous le dire exactement si je regardais mon document.

-A. I don't have the document, I could tell you exactly if I could take a look at the document.

A. Ça c'est vingt-quatre (24) ao-t, c'est la bobine 598A.

-A. It would be reel number 598A.

Q. Thank you. No further questions.

-Q. Merci. Plus de question.

VALERY FABRIKANT :

No questions.

AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOURS :

I would like to produce them at this point.

THE COURT :

Okay.

Me JEAN LECOURS :

So the first one, it's called 2A, 2B and 2C. So 2A will be P-84, 2B would be P-85 and 2C would be P-86. Thank you, madam.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this seventeenth (17th) day of the month of May, personally came and appeared:

GILLES SAUVAGEAU, born on January fifth (5th), nineteen hundred and forty-four (1944), police officer at the Montreal Urban Community;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY Me JEAN LECOURS

ATTORNEY FOR THE CROWN :

Q. Mr. Sauvageau, what is your... do you have a specific function at the M.U.C. police?

-Q. Monsieur Sauvageau, est-ce que vous avez des fonctions précises au sein de la C.U.M.?

A. Oui, votre Seigneurie.

-A. Yes, My Lord.

A. Je suis pr, pos, aux dossiers ... la section surveillance ,lectronique...

-A. I'm in the wiretap section...

A. ...depuis mil neuf cent soixante-quinze (1975)...

-A. ...since nineteen seventy-five (1975)...

A. ...et je me dois de temps ... autre de donner assistance technique...

-A. ...and I have to lend sometimes, on occasion, technical assistance...

A. la section t,l,communication, c'est-...-dire les ondes de police...

-A. ...to telecommunication section, that is the police air waves...

A. ...et le 911, le centre d'urgence.

-A. ...and to the centre d'urgence 911 also.

Q. And you also give assistance to the Court, the courthouse with your electronic material?

-Q. Et vous pr^tez assistance ... la Cour avec votre ,quipement technique ,galement?

A. C'est bien ta, votre Seigneurie.

-A. That's correct, My Lord.

Q. Mr. Sauvageau, I'm showing you P-84, P-85 and P-86.

-Q. Monsieur Sauvageau, je vous montre P-84, 85, 86.

A. Oui, votre Seigneurie.

-A. Yes, My Lord.

Q. Did you, in any way, process these exhibits?

-Q. Est-ce que vous avez particip, ... la manipulation de ces pišces, d'une certaine fařon?

A. Oui, votre Seigneurie, le sergent d,tective H,bert de la section des Homicides...

-A. Yes, Detective Sergeant H,bert from the Homicide section...

A. ...m'a remis lesdites cassettes...

-A. ...handed these cassette tapes to me...

A. ...pour en avoir la transcription mot ... mot.

-A. ...to obtain the word for word transcript.

Q. Okay. I'm showing you a document here, could you examine it and tell the members of the jury if you recognize it?

-Q. J'ai un document ici, je vous demanderais de jeter un coup d'oeil et de dire aux membres du jury si oui ou non, vous le reconnaissez.

A. Oui, votre Seigneurie, c'est exactement le document que j'ai fait faire, et r,vis, par la suite.

-A. Yes, My Lord, that is the document I had made and I revised afterwards.

Q. Okay. Is it a faithful transcript of the content of these cassettes?

-Q. Est-ce que c'est une transcription fidšle du contenu de ces cassettes?

A. Oui, votre Seigneurie, mais lorsqu'on... c'est inaudible, ou la personne qui l'a ,cout,e, ainsi que moi-m^me, apršs l'avoir r,,cout,e...

-A. Yes, My Lord, and when there are parts that are inaudible by either myself or the person who made the transcript, after hearing it...

A. ...il y a des endroits dont c'est inaudible, on peut les

retracer par des petits points.

-A. ...there are segments which are inaudible and are referred to as dots.

Q. Okay. And I understand as well that you gave an abbreviation for each and every interlocutor?

-Q. Et je comprends, galement qu'il y a une abreviation pour chacun des interlocuteurs?

A. C'est bien ça, votre Seigneurie.

-A. That's correct, My Lord.

Q. And at the top of the first page you gave the meaning or the signification of this abbreviation?

-Q. Au d, but, au haut de la page, vous avez indiqu, la l, gende pour ces abreviations, ... ces initiales?

A. C'est bien ça, et ainsi que... enfin les num, ros de r, f, rence, votre Seigneurie, de l', v, nement.

-A. That's correct, and also the reference numbers for the event as such, My Lord.

Q. Please, could you describe these references?

-Q. Pourriez-vous, s'il vous plaEt, , num, rer ces r, f, rences?

A. Oui, votre Seigneurie.

-A. Yes, My Lord.

A. On voir ... gauche le num, ro d', v, nement de l', v, nement.

-A. On the left-hand side the incident, or the even number of the event itself.

A. 25-920824040.

-A. 25-920824040.

A. En dessous de cette inscription on aperçoit la date, soit le quatre-vingt-douze z, ro huit vingt-quatre (92-08-24)...

-A. And under that number we have the date, ninety-two dash zero eight dash twenty-four (92-08-24)...

A. ...et en dessous de ça, galement, de quinze heures douze (15 h 12) ... seize heures et dix (16 h 10).

-A. ...and there again, under the date, we have from fifteen hours and twelve minutes (15:12) to sixteen hours and ten minutes (16:10).

A. Tout ce qui est dans le document de la première page on le retrouve ... la première ligne du premier interlocuteur...

-A. The entire content of the document, that is at the top, from the very beginning, we have the date of the first interlocutor, or the time rather of the first interlocutor...

A. ...soit quinze heures et douze (15 h 12)...

-A. ...that is fifteen twelve (15:12)...

A. ...et ... la dernière page, soit la page 36, au bas ... gauche, l'heure de la fin.

-A. ...and on the last page, page 36, the time of the end of the conversation, sixteen ten (16:10).

A. C'est ça, seize heures et dix (16 h 10).

Q. And the place of interception is also indicated?

-Q. Et l'endroit de l'interception est aussi indiqu, ?

A. Oui, votre Seigneurie.

-A. Yes, My Lord.

A. Ces enregistrements ont, t, faits ... partir du centre d'urgence 911 ... 750, Bonsecours, ... Montr, al, au deuxième, tage.

-A. Yes, the interception, the receiving of the recording of the conversation took place at centre d'urgence 911, 750 Bonsecours, Montreal, second floor.

Q. Okay. We'll have later the occasion to confirm the identify of the participants, but for the purpose of your transcript, who did you identify as being the participants in this conversation?

-Q. Plus tard on procédera ... l'identification des participants de cette transcription, mais pour les fins de la pr, sente qui est devant nous, quels sont les participants, ou les

interlocuteurs qui ont particip, dans cette transcription, cette conversation?

A. Un pr, pos, du centre d'urgence 911...

-A. A centre d'urgence 911 call taker...

A. ...qui sera par la suite identifi, ... gauche dans le texte, soit 911 en chiffres.

-A. ...which shall be referred to in the left-hand margin as 911.

A. On a , galement le HO...

-A. We also have HO...

A. ...qui identifie madame Elizabeth Horwood...

-A. ...which stands for Elizabeth Horwood...

A. ...tout ce que je vais vous donner comme lettres d'identification, on les retrouve sur chacune des pages...

-A. ...all the codes or letters of identification we find on every page...

A. chacun que leur tour vient de parler sous les deux premišres lettres.

-A. ...each time they speak I refer to under the first two letters of their name.

A. HO... Celui-l... je l'ai dit. UR pour Urgences Sant,, ou pr, pos,.

-A. UR for Urgences Sant, or the call taker.

A. MA pour Daniel Martin.

-A. MA for Daniel Martin.

A. FA pour Valery Fabrikant.

-A. FA for Valery Fabrikant.

A. MJ pour Normand Major.

-A. MJ for Normand Major.

A. Et GR pour Pierre Grignon.

-A. And GR for Pierre Grignon.

Q. Okay. I would like you to file this transcript as P-87.

-Q. J'aimerais que vous produisiez cette transcription sous P-87.

Me JEAN LECOURE :

I understand, My Lord, that you already have a copy, and Mr. Belleau and Mr. Fabrikant as well.

VALERY FABRIKANT :

Is this the copy where English translation is made?

Me JEAN LECOURE :

Yes, I'm coming to that. I would like as well to file... most of it is in English but there are a few passages that are in French, so Mrs. Trainer made an official translation, I would like to file an official translation as P-88. This, I believe, Mr. Justice Martin and Mr. Fabrikant and Mr. Belleau don't have a copy.

THE COURT :

I don't have a copy of that. No. Merci.

Me JEAN LECOURE :

Well, I guess we were lacking...

Q. Thank you very much, Mr. Sauvageau.

-Q. Merci beaucoup, monsieur Sauvageau.

CROSS-EXAMINED BY VALERY FABRIKANT :

Q. Could you tell what PH means?

-Q. Pouvez-vous nous dire que signifie PH?

A. PH, votre Seigneurie, c'est un mot qu'on entend, qui a , t, inscrit phon, tiquement.

-A. It's a word that we hear, My Lord, which would have been transcribed phonetically.

A. C'est la consonance, les sons.

-A. It refers to the sounds that we hear.

Q. I'm not sure I understood that. Could you give an example?

- Q. Pourriez-vous donner un exemple?
Q. I may refer to page 8...
-Q. Je peux vous r,f,rer ... la page 8...
Q. ...right after cassette 2B, c"t, A, second line.
-Q. ...juste appřs cassette 2B, deuxiřme ligne.
A. Il faudrait que je r,,couterais la bande, votre Seigneurie.
-A. I would have to listen to the tape again, My Lord.
Q. Anyway, it is some kind of like "uh, huh" that would PH?
-Q. De toute fařon ce serait un genre de "hum-hum", ce serait PH?
A. Non, si c'est řa, l..., ce serait marqu, "hum".
-A. No, if it were that it would be written "uh".
A. Soit avec les lettres "h-u-m", quelque chose semblable, l...
-A. Either with the letters "h-u-m" or something to that effect.
Q. Well, what is then PH?
-Q. Alors donc que signifie le PH?
A. Mais... l... je pourrais pas vous dire, votre Seigneurie, exactement, il faudrait que je le r,,couterais, puis s-rement je pourrais vous donner une r,ponse par la suite.
-A. I cannot exactly say, My Lord, I'd have to listen to it again and then I could provide an answer.

THE COURT :

- Q. We'll adjourn now until two fifteen (2:15). I wonder if you would be kind enough, Mr. Sauvageau, to listen to these references to PH during the adjournment, and then we'll return and you can answer the questions put by Mr. Fabrikant and we'll go on from there.
-Q. Nous allons ajourner jusqu'... deux heures quinze (2 h 15) et pendant l'ajournement, si vous pouvez s'il vous plařt r,f,rer aux r,f,rences PH et ... deux heures quinze (2 h 15), ... notre retour, nous pourrons r,pondre aux questions de monsieur Fabrikant.
A. Bien, votre Seigneurie.
-A. Very well, My Lord.

THE COURT :

So we'll adjourn, ladies and gentlemen, until two fifteen (2:15).

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

THE JUDGE AND MEMBERS OF THE JURY ARE PRESENT

THE COURT :

You had asked Mr. Sauvageau a question about PH...

VALERY FABRIKANT :

Yes.

THE COURT :

...and he was going to listen to the tape.

WITNESS: GILLES SAUVAGEAU -- UNDER THE SAME OATH

VALERY FABRIKANT :

- Q. Well, can you explain it now?
-Q. Est-ce que vous řtes en mesure de l'expliquer maintenant?
A. Oui, votre Seigneurie.
-A. Yes, My Lord.
A. Aprřs avoir ,cout, cette bande, votre Seigneurie...
-A. After listening to that tape, My Lord...
A. ...je peux vous dire que le "sir", on ne l'entend pas clairement comme il est ,crit l...
-A. ...I can tell you that the "sir" is not heard very clearly as it is written here...
A. ...mais ce que j'entends c'est comme un "sa", dans ce sens-l...
-A. ...but what I can here is something like a "sa" in that view.
Q. So PH effectively means that the word was not clear?

-Q. Alors PH veut dire en fait que le terme n',tait pas clair?

A. C'est bien ça, votre Seigneurie.

-A. That's correct, My Lord.

Me JEAN LECOIRS :

Q. Thank you, Mr. Sauvageau.

-Q. Merci, monsieur Sauvageau.

Me JEAN LECOIRS :

Q. Now I would like to ask your service as a technical assistant.

-Q. J'aimerais vous demander votre aide ... titre de technicien.

Q. So we will play these tapes...

-Q. Nous allons maintenant entendre ces bobines...

Q. ...for the benefit of the jury.

-Q. ...en pr,sence du jury.

A. C'est bien, votre Seigneurie.

-A. Thank you, My Lord.

Me JEAN LECOIRS :

Q. Maybe you can explain the functioning...

-Q. Peut-être que vous pourriez expliquer le fonctionnement de ces appareils...

Q. ...and what you propose to do.

-Q. ...et ce que vous proposez de faire.

A. Nous allons ,couter, pour les membres du jury ainsi que la Cour, l'accus, et les avocats...

-A. For the members of the jury, the accused, counsel and the Judge, we are going to...

A. l'aide d'un casque d',coute...

-A. ...listen to the tapes, with the help of these head sets...

A. ...il y a un bouton sur un des deux c"t,s...

-A. ...there is a button on one of the two sides...

A. ...et il s'agit de r,gler le volume comme bon va vous sembler.

-A. ...which enables one to set the volume as requested.

LISTENING OF THE CASSETTES

Me JEAN LECOIRS :

Mr. Gravel, please.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this seventeenth (17th) day of the month of May, personally came and appeared:

CLAUDE GRAVEL, born on March twentieth (20th), nineteen hundred and sixty-three (1963), call taker at centre d'urgence 911, confidential address;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY Me JEAN LECOIRS

ATTORNEY FOR THE CROWN :

Q. Mr. Gravel, were you involved in a 911 conversation on August the twenty-fourth (24th), nineteen ninety-two (1992)...

-Q. Monsieur Gravel, ,tiez-vous impliqu, dans une conversation au 911 le vingt-quatre (24) ao-t mil neuf cent quatre-vingt-douze (1992)...

Q. ...between fifteen twelve (15:12) and sixteen ten (16:10)?

-Q. ...entre quinze heures douze (15 h 12) et seize heures dix (16 h 10)?

A. Oui, je l',tais.

-A. Yes, I was.

Q. Did you get the occasion, a few minutes ago, to listen to the tape of this conversation?

-Q. Il y a quelques instants est-ce que vous avez eu l'occasion d',couter la conversation de cette cassette?

A. Oui, je l'ai entendue.
-A. Yes, I did.
Q. Could you follow at the same time with the transcript?
-Q. Pouviez-vous suivre ... l'aide de la transcription?
A. Effectivement, j'ai suivi.
-A. Indeed, yes, I did.
Q. And is the tape a faithful representation of the conversation in which you were involved, I mean what you said and what you heard?
-Q. Est-ce que la cassette est une reproduction fidèle de ce que vous avez entendu de la conversation?
A. Effectivement, oui.
-A. Indeed, yes.
Q. Okay. And if you look at the transcript...
-Q. Si vous prenez la transcription...
Q. ...everytime there is a sentence preceded by the 911 number...
-Q. ...chaque fois qu'il y a une phrase d, butant par le 911...
Q. ...whose voice is it?
-Q. ...la voix appartient ... quel individu?
A. C'est ma voix.
-A. It is my voice.
Q. No further questions.
-Q. Plus de question.
AND FURTHER DEPONENT SAITH NOT

THE COURT :

No questions?

Me JEAN LECOURS :

Mrs. Elizabeth Horwood.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this seventeenth (17th) day of the month of May, personally came and appeared:

ELIZABETH HORWOOD, born on April fifteenth (15th), nineteen hundred and twenty-six (1926), secretary, confidential address;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY Me JEAN LECOURS

ATTORNEY FOR THE CROWN :

Q. Mrs. Horwood, were you involved in a 911 conversation that occurred on August the twenty-fourth (24th), nineteen ninety-two (1992)?
A. Yes, I was.
Q. Between fifteen twelve (15:12) and sixteen ten (16:10)?
A. Yes, I was.
Q. A few minutes ago did you get the occasion to listen to the tape of that conversation?
A. Yes, I did.
Q. Could you follow as well with the transcript?
A. Yes, I followed that transcript.
Q. And is this tape a faithful representation of the conversation that occurred on August the twenty-fourth (24th), nineteen ninety-two (1992)?
A. Yes, it is.
Q. And if you followed the transcript, each time a sentence is preceded by the abbreviation HO, whose voice is it?
A. It's my voice.
Q. And each time a sentence is preceded by the abbreviation FA,

whose voice is it?

A. Doctor Valery Fabrikant.

Q. Thank you. No further questions.

THE COURT :

Just a minute, Mrs. Horwood.

No questions? Okay. Thank you.

AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOURES :

Madame De Regge.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this seventeenth (17th) day of the month of May, personally came and appeared:

ANNA DE REGGE, born on October tenth (10th), nineteen hundred and sixty-three (1963), pr, pos, e au triage 911, call taker, confidential address;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY Me JEAN LECOURES

ATTORNEY FOR THE CROWN :

Q. Mrs. De Regge, were you involved in a 911 conversation on August the twenty-fourth (24th), nineteen ninety-two (1992)?

A. Yes.

Q. Between fifteen twelve (15:12) and sixteen ten (16:10)?

A. Yes.

Q. Did you, a few minutes ago, get the occasion to listen to the tape of that conversation?

A. Yes.

Q. Could you follow as well with the transcript of that conversation?

A. Yes.

Q. Is the tape a faithful representation of the conversation that really happened on that day?

A. Yes.

Q. Each time, on the transcript, each time there is the abbreviation UR, whose voice is that?

A. It is mine.

Me JEAN LECOURES :

No further questions.

THE COURT :

Thank you very much, no questions on cross-examination.

AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOURES :

Monsieur Daniel Martin please.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this seventeenth (17th) day of the month of May, personally came and appeared:

DANIEL MARTIN, born on December first (1st), nineteen hundred and sixty-nine (1969), student, confidential address;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY Me JEAN LECOURES

ATTORNEY FOR THE CROWN :

Q. Mr. Martin, were you involved in a 911 conversation on August the twenty-fourth (24th), nineteen ninety-two (1992)?

-Q. Monsieur Martin, est-ce que vous avez ,t, impliqu, dans une conversation avec le 911 le vingt-quatre (24) ao-t mil neuf cent quatre-vingt-douze (1992)?

A. Oui, je l',tais.

-A. Yes, I was.

Q. Did you, a few minutes ago, get the occasion to listen to the tape of that conversation?

-Q. Est-ce que vous avez eu l'occasion, il y a quelques moments, d',couter la conversation sur cassette de cette conversation de cette journ,e?

A. Oui, j'ai eu l'occasion.

-A. Yes, I did.

Q. Could you as well follow the transcript of that conversation?

-Q. Pouviez-vous aussi suivre ... l'aide de la transcription cette conversation?

A. Oui, j'ai suivi.

-A. Yes, I did.

Q. And was the tape a faithful representation of the conversation that really occurred?

-Q. Est-ce que la cassette repr,ésentait une fidšle reproduction des ,v,nements qui se sont produits cette journ,e-l...?

A. Oui.

-A. Yes.

Q. And if you look at the transcript, each time there is a sentence preceded by the abbreviation MA...

-Q. Et si vous prenez la transcription et vous voyez qu'... chaque fois il y a une phrase qui d,bute avec l'abr,viation MA...

Q. ...whose voice is it?

-Q. qui appartient la voix?

A. Oh, excusez. C'est bien ma voix.

-A. I'm sorry. That is my voice.

AND FURTHER DEPONENT SAITH NOT

THE COURT :

No cross?

Me JEAN LECOURS :

Mr. Normand Major.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this seventeenth (17th) day of the month of May, personally came and appeared:

NORMAND MAJOR, born on June eighteenth (18th), nineteen hundred and forty-four (1944), operations manager, confidential address;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY Me JEAN LECOURS
ATTORNEY FOR THE CROWN :

Q. Mr. Major, where are you operations manager?

-Q. Monsieur Major, vous ^tes employ, comme surveillant, ou responsable des op,rations ... quel endroit?

A. Au centre d'urgence 911, 750, Bonsecours.

-A. Centre d'urgence 911, 750 Bonsecours.

Q. On August the twenty-fourth (24th), nineteen ninety-two (1992) were you involved in a 911 conversation between fifteen twelve (15:12) and sixteen ten (16:10)?

-Q. Et le vingt-quatre (24) ao-t mil neuf cent quatre-vingt-douze (1992) ,tiez-vous impliqu, au 911, dans une conversation entre

quinze heures douze (15 h 12) et seize heures dix (16 h 10)?

A. Oui.

-A. Yes.

Q. Just now, did you listen to the tape of that conversation?

-Q. Et ... l'instant est-ce que vous avez entendu la conversation sur cassette?

A. Oui.

-A. Yes.

Q. Could you follow as well with the transcript?

-Q. tiez-vous aussi en mesure de suivre sur transcription?

A. Oui.

-A. Yes.

Q. Was it a faithful representation of the conversation that really occurred on that date?

-Q. Est-ce que c',tait une fidŕle reproduction de la conversation qui a eu lieu cette journ,e-l...?

A. Oui.

-A. Yes.

Q. And if you follow, if you have a look at the transcript, each time a sentence, or a paragraph is preceded by the letters MJ...

-Q. Et si vous prenez la transcription et vous regardez, chaque fois qu'il y avait une phrase d,utant par l'abr,viation MJ...

A. C'est #a.

Q. ...whose voice is it?

-Q. qui appartient cette voix?

A. La mienne.

-A. It's mine.

Q. No further questions.

-Q. Pas d'autre question.

CROSS-EXAMINED BY VALERY FABRIKANT :

Q. Are you the right person to ask questions as to how many 911 calls were made at that time?

-Q. Est-ce que vous ^tes la bonne personne ... qui demander combien d'appels ont ,t, plac,s au 911 cette journ,e-l..., ou ... ce moment-l...?

A. Oui, je suis la personne, pour dire le nombre d'appels exacts, mais ce serait difficile.

-A. Yes, I am the right person but to give you the exact number of calls, it would be difficult for me to say.

Q. Okay. Did you make any analysis as to how many calls were made, from what phone, at what time?

-Q. Est-ce que vous avez effectu, une analyse ... savoir combien d'appels ont ,t, plac,s, ... partir de quel appareil et ... quelle heure?

A. Au centre d'urgence 911 ces informations-l... peuvent ^tre obtenues.

-A. At the centre d'urgence 911 that kind of information can be obtained.

Q. But you didn't make that analysis at that time?

-Q. Mais vous n'avez effectu, cette analyse ... ce moment-l...?

A. Effectivement, cette analyse a ,t, faite, mais a ,t, faite aprŕs coup, et les coordonn,es sont pr,sentement au centre d'urgence 911.

-A. That study was conducted afterwards, and currently the information is at 911.

Q. So it can be available if requested?

-Q. Alors si on exige ces renseignements c'est disponible?

A. D,finitivement.

-A. Definitely, yes.

- Q. I mean the phone number, the time of call...
- Q. C'est-...-dire num,ro de t,l,phone, l'heure de l'appel...
- Q. ...the content of the conversation...
- Q. ...le contenu de la conversation...
- Q. ...it is all available?
- Q. ...le tout est disponible?
- A. D,finitivement.
- A. Definitely, yes.

AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOURE :

Sergeant d,tective Pierre Grignon, please.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this seventeenth (17th) day of the month of May, personally came and appeared:

PIERRE GRIGNON, born on August twelfth (12th), nineteen hundred and forty-six (1946), detective sergeant, Montreal Urban Community;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY Me JEAN LECOURE

ATTORNEY FOR THE CROWN :

- Q. Sergeant d,tective Grignon, were you involved in a 911 conversation on August the twenty-fourth (24th), nineteen ninety-two (1992)...
- Q. Detective Sergeant Grignon, ,tiez-vous impliqu, dans une conversation le vingt-quatre (24) ao-t mil neuf cent quatre-vingt-douze (1992)...
- Q. ...between fifteen twelve (15:12) and sixteen ten (16:10)?
- Q. ...avec le 911 entre quinze heures douze (15 h 12) et seize heures dix (16 h 10)?
- A. Oui, votre Seigneurie.
- A. Yes, My Lord.
- Q. Just now, could you listen to the tape of that conversation?
- Q. Et est-ce que vous avez pu ,couter la conversation sur cassette il y a quelques instants?
- A. Oui, votre Seigneurie.
- A. Yes, My Lord.
- Q. Did you follow as well with the transcript?
- Q. Avez-vous suivi aussi ... l'aide de la transcription?
- A. Oui, votre Seigneurie.
- A. Yes, My Lord.
- Q. And is the tape a faithful representation of the conversation that really occurred on August the twenty-fourth (24th), nineteen ninety-two (1992)?
- Q. Est-ce que la cassette contient une reproduction fidŠle et exacte de la conversation qui a eu lieu le vingt-quatre (24) ao-t mil neuf cent quatre-vingt-douze (1992)?
- A. Oui, votre Seigneurie.
- A. Yes, My Lord.
- Q. And if you look at the transcript, each time there is a sentence or a paragraph preceded by the abbreviation GR...
- Q. Et si vous prenez la transcription et regardez les phrases qui d, butent avec l'inscription GR...
- Q. ...whose voice is it?
- Q. qui appartient cette voix?
- A. C'est ma voix, votre Seigneurie.
- A. It is my voice, My Lord.
- Q. No further questions.

-Q.

Plus de question.
AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOIRS :

The Crown declares its case closed.

THE COURT :

Thank you very much, Mr. Lecours. We'll take a break now for about fifteen minutes.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITHOUT JURY

THE COURT :

There was a request this morning for reports written by Constables Vachon, "Visqualis", L,pine, Fournier and Bolduc.

Me JEAN LECOIRS :

I just received them from the gestion des documents, I have only one copy, can we ask Mr. "Serra" to...

THE COURT :

Certainly.

Me JEAN LECOIRS :

Vachon, "Visqualis", L,pine, Fournier and Bolduc. So one copy.

THE COURT :

I have re-read the Supreme Court decision in Stinchcomb, reported at 68 C.C.C. 3rd, page 1. That decision makes it incumbent upon the Crown to make available the evidence, not only which it intends to invoke but also other evidence which is gathered as the fruit of the police investigation, which may be of use to the defense. Stinchcomb is not a curious decision but a limited decision, in that it gives the Crown the duty to make the determination of what is pertinent, the check on that being a review by the trial Court of the information which is made available. It also establishes the principle that the Defense may initiate that review since evidence often only comes into focus once the trial has begun. That is essentially the manner in which we've proceeded in this case, and I think in virtually every instance the information requested has been provided.

Stinchcomb establishes the principle that the proof collected by the Crown is not collected for the purpose of simply convicting an accused but rather of seeing that justice is served. And it's in that spirit that the mechanism to which I have referred was put in place by the Supreme Court, and in that spirit that it's been followed. Stinchcomb does not establish a pond in which the defendant may go and fish for any piece of information that he suspects might possibly be there. And I certainly have no reason to suppose that the Crown, in exercising it's discretion as to what to hand to the Defense in the present case, has acted in anything but, in any other manner than good faith. Therefore, I am not about to render a judgment that would make the files of the C.U.M. police available for scrutiny by Mr. Fabrikant at large, permitting him to go through every piece of paper that relates to this particular case. I am strengthened in that decision by the nature of the evidence, which the Crown led, and as I say, in virtually every instance when a specific piece of information has been requested it has been handed over. So there will be no review at large of the police files which are referred to in Detective Sergeant H,bert's report.

VALERY FABRIKANT :

Can I say something?

THE COURT :

I've just rendered my decision, so I'm not going to argue with you about it. You'll get the five police statements that you wish, and if there's anything else specific that you can bring my attention to, then I will inquire again as to whether or not the Crown has that available.

VALERY FABRIKANT :

Well first of all there is specific, yes, but second, each specific is based, not on some reading on the ceiling, each specific is based on something which has already been provided. And unless I've been attentive to what provided, I would have never asked, for example, for the previous documents which I received, and they happen to be very valuable.

THE COURT :

That may very well be, I don't know.

VALERY FABRIKANT :

Well... but that's what Crown was supposed to give it to me, and they didn't until I found something hidden in another document, and inferred that there must be some other document, and this is not what I'm supposed to do. Unless... it has been on several occasions that Crown did not provide documents which were important, and as you mentioned yourself, documents which are there, they are not just for conviction, they are for defense too, because public funds were spent on that, and purpose of this trial is not necessarily conviction, purpose of this trial is justice to be done. Therefore, all these documents should serve Prosecution as well as Defense. And in this particular case, I on many occasions shown that Crown, let's put it softly, may not "arrive" judgment by not providing documents, and in particular the latest documents have proven to be, I repeat once again, very valuable. Therefore, I request access at least to maybe list of documents which are there, so that I could at least appreciate what is there, and to make a judgment as to what is useful, because until it is done, there is no full disclosure done. If you feel that's all right with you, there is nothing I can do, but I reiterate my request that, according to Stinchcomb, full disclosure has not been made, and you're right now refusing me this full disclosure. Because each document I'm getting it's because I demanded it, and I inferred from other documents that those documents existed, and this is not how it should be done. The Crown could have understood very well itself that, for example, statements of families is relevant information, and they didn't provide it.

THE COURT :

I won't repeat in extenso what I just said. What the Crown did was provide that information when you raised the matter, as you may in the course of the trial, you raised the matter, and when you raised the matter I considered the matter, and in virtually every instance ordered that the information be made available to you. Stinchcomb does not contemplate a fishing expedition at large in the files of in this instant the C.U.M. police, so I have made the ruling that I've made and that's that.

VALERY FABRIKANT :

Well too bad. Now, I see report of Lagac,, and in this report mentions some map, and map is not here.

THE COURT :

Perhaps you could be more specific in drawing to the Crown Prosecutor's attention the document you're referring to.

Me BELLEAU :

Can I see the document?

THE COURT :

Could you show it to Mr. Belleau? It's all right, he'll give it back to you.

VALERY FABRIKANT :

We have a very expensive delivery man, deliver paper from here to there, a hundred and sixty dollars (\$160.00) per hour, fantastic job.

Me BELLEAU :

In the report he said he made the map himself?

VALERY FABRIKANT :

Well, he refers to map. So definitely there must be a map, with all those symbols. You see the legend?

Me BELLEAU :

Yes. Well, it makes sense.

VALERY FABRIKANT :

I know it makes sense, but look, I am not a detective, I should not be forced.

THE COURT :

That's what the review process is for, that's what we're doing, he said he'll look, what more do you want?

VALERY FABRIKANT :

Well, I should not be catching Crown here and there that they did not provide certain document. This is not my job, my job is to do the defense rather than catching Crown, here they didn't provide something and (inaudible) provide me something.

THE COURT :

The Crown is not obliged to deposit at your feet documents by the truck load.

Me JEAN LECOURE :

He says there are six pages in this report and I count six pages, so maybe he was referring to somebody else's map, I don't know.

THE COURT :

Perhaps you could have this checked.

VALERY FABRIKANT :

Well, it's evident he referred to his own map. Me Belleau, you're not interested, give it to me please. That's all right.

THE COURT :

Now, the Crown has completed its case, when are you prepared... are you prepared to start your defense tomorrow morning?

VALERY FABRIKANT :

I would like you to read this letter, which Mr. Belleau has written to Deslongchamps.

THE COURT :

I'm not getting involved in your problems with Legal Aid. There is a mechanism foreseen as far as that is concerned.

VALERY FABRIKANT :

Well, this mechanism doesn't work.

THE COURT :

Well, if that mechanism doesn't work, I'm not going to get involved in...

VALERY FABRIKANT :

You appointed a friend of Court, not me, it doesn't work, read it.

THE COURT :

Is there a particular problem, Mr. Belleau, that you can make me aware of?

Me BELLEAU :

I don't (inaudible)...

VALERY FABRIKANT :

Read this letter.

Me BELLEAU :

... Mr. Fabrikant is complaining of...

THE COURT :

Well, if you can tell me in half a dozen words.

Me BELLEAU :

I don't know what it is. I don't know what he's complaining of.

VALERY FABRIKANT :

Well, it is your letter, isn't it?

THE COURT :

Would you take cognizance of the letter?

Me BELLEAU :

Oh, I've read it, I wrote it.

THE COURT :

You wrote it?

Me BELLEAU :

Yes.

VALERY FABRIKANT :

And the nature of the letter is, he's just like a secretary, reports to her what I need, without any evaluation, without anything saying: "Yes, indeed, I'm a lawyer, I am not a secretary, and I consider that, yes, he needs this, and yes, it has to be paid". There is nothing there, he behaves like a stenographer. I told him: "This is what I need" and he writes to her: "This is what he needs". Is this his job?

THE COURT :

His job was to facilitate your contact first of all with Legal Aid, which appeared to have deteriorated to zero at one particular point in time before Mr. Belleau came into the picture.

VALERY FABRIKANT :

Well, it is now my intent.

THE COURT :

Secondly, his job, which he has done on a regular basis, was to advise you as to particular rules of law with which you might have some difficulty, and in addition to assist you as far as the more mechanical problems of sending subpoenas and what not were concerned. Now, please let's not get side tracked. The Crown has completed its case. You mentioned to me last week that... you mentioned a number of things, you mentioned first of all that you intended to present a defense, I presume that you intend to present a defense, is that correct?

VALERY FABRIKANT :

Yes.

THE COURT :

Good. So if you intend to present a defense, we must then determine when you're going to present it, and you said something about a week, which you'd require...

VALERY FABRIKANT :

Well, it doesn't look even like a week, because if Mr. Belleau continues not doing anything... I just spoke to Deslongchamps right now, and I explained to her why I need specialist in Mechanical Engineering, and she eventually agreed with me, yes, it is relevant, even she agreed that yes, it is relevant, yes, she's prepared to pay. Now I said: "Okay, so may I talk to that person?", she tells me: "No, you have to speak to Mr.

Belleau, all what you told me you have to tell Mr. Belleau, and Mr. Belleau will write to me, and then I will write to you". Then I said: "I already told all this to Mr. Belleau, he knows all this". So she still insists: "No, you talk to Mr. Belleau". Well, how long this God damn comedy is going to last? You think that it's all all right like this, this kind of bureaucracy? I explained everything to Mr. Belleau, he was supposed to explain everything to Deslongchamps, now she says he didn't. I'm not going to verify whether he did or didn't, I explained everything to her now.

THE COURT :

Well, I'm not going to sit here like a kindergarten teacher and try to mediate all of this. You know, and you have known that the defense you want to present is something that you have to put in order. Now, you call your witnesses when you're ready, but when you're ready is a relative term, I mean are you ready to start tomorrow morning, or what? Because I'm not stopping for a week. I'm not stopping until Tuesday next. If you require a couple of days, I'll give you a couple of days, and we'll...

VALERY FABRIKANT :

A couple of days is not enough.

THE COURT :

...and we will resume on Thursday and sit Thursday and Friday, and then you'll have three days of the weekend, which is Saturday, Sunday and Monday, Monday being a holiday. So between tomorrow and Wednesday you'll have had your five days, you will have had to start, yes. But this thing has to end, it's started, it's an expensive process frankly and that's that, it's going to have to continue. You've known for a long time that eventually was going to come the day when the Crown said: "Proof closed", the Crown has said: "Proof closed". The whole thing started on the eighth (8th) of March, and here we are, well on into the month of May.

VALERY FABRIKANT :

Anyway, I did my best, I reiterate once again for you that Mr. Belleau doesn't do his job, I explained to him what experts I need, what help I need, he didn't do anything to make it ready by now.

THE COURT :

Listen...

VALERY FABRIKANT :

Unless you tell him to start doing something, (inaudible).

THE COURT :

I told you what Mr. Belleau's mandate was, and he is not your attorney, you are the one that chose to be the architect of your own defense, now don't try to turn the tables on me with that, this is about the fourth time you've attempted it.

VALERY FABRIKANT :

Don't pretend not to understand, this is what he has written:

"Il insiste pour engager un expert d'ing,nie
m,canique pour analyser ses publications, t,moigner
sur leur qualit,, prouver qu'elles sont de lui et
pour analyser les articles de Sankar et Swamy, il
veut d,montrer qu'ils ne sont pas d'eux."

Now, is this what you want him to write to Deslongchamps or he has to say that yes, he feels that it is pertinent, yes, he feels that this expert should be hired?

THE COURT :

I don't think he's intended to take any position on whether it's pertinent or not pertinent, or...

VALERY FABRIKANT :

Well, who the hell then is going to do that?

THE COURT :

You do. You're the one.

VALERY FABRIKANT :

Well, I did already, I explained everything to him.

THE COURT :

You're not going to recruit him. I mean it's amusing the way you blow up and you blow cold, sometimes Mr. Belleau is the butt of your wrath and sometimes it's others, today it happens to be Mr. Belleau. I mean welcome back, Mr. Belleau. But, you know, if it's not me it's Me Richard who was here, or someone else. Look, you chose, you said very clearly from the beginning: "I'm going to direct my defense and they are going to do what I tell them". That was what your position was as far as a lawyer was concerned, if I can sum it up bluntly. That's not the purpose that Mr. Belleau is fulfilling.

VALERY FABRIKANT :

Now what about this...

THE COURT :

What he's fulfilling is what I can't do. I told you before, it's all very well for an Appeal Judge to say, if we are talking about shoplifting, that the Judge should play an active role in the trial and should help someone who is accused, if not present his defense, at least make sure his defense is presented. That's wonderful theory, you know, that's great stuff for law schools, but that unfortunately is something I can't do sitting here presiding over a murder trial. Mr. Belleau is, to some extent, trying to assist you in that regard, he's there to explain points of law to you if you need an explanation of them. I would suppose there are a number that he's going to have to try to explain to you.

VALERY FABRIKANT :

Well, you're avoiding answering questions. What about this expert?

THE COURT :

I don't... listen, I have...

VALERY FABRIKANT :

Well, I have Legal Aid mandate, I need an expert, what am I supposed to do?

THE COURT :

If the expert arrives to analyze your publications, the expert arrives to analyze your publications.

VALERY FABRIKANT :

But before he has arrived...

THE COURT :

What relevance that might have to your defense, quite frankly, escapes me. But in any event, if an objection is raised when the expert arrives, then I'll deal with the objection at the time. But for the minute it's up to you to get your expert here, I'm not going to call him up for you.

VALERY FABRIKANT :

Don't pretend that stupid, you are not that. I'm talking about expert to pay.

THE COURT :

You're rather arrogant this afternoon, Mr. Fabrikant.

VALERY FABRIKANT :

Because you pretend not to understand what the whole thing is all about.

THE COURT :

Mr. Fabrikant, I have taken the same position right through, I have never deviated, and you know that.

VALERY FABRIKANT :

Just answer the question, what about expert, who is supposed to pay for it?

THE COURT :

Mr. Fabrikant, don't snap at me... don't snap at me to answer your questions.

VALERY FABRIKANT :

I'm not snapping at you...

THE COURT :

I'm not here to answer your questions.

VALERY FABRIKANT :

...I just want you, once in a lifetime, to answer honest question honestly.

THE COURT :

Mr. Fabrikant, you have a mandate from the Legal Aid.

VALERY FABRIKANT :

Yes.

THE COURT :

I would guess that if the Legal Aid bureau don't deem the expert that you wish to retain to be relevant, then you will have to pay for one, but you've just told me that they did...

VALERY FABRIKANT :

You didn't hear what I said.

THE COURT :

...you told me that they apparently did deem it pertinent.

VALERY FABRIKANT :

They deem, but they want me to talk to Belleau once again.

THE COURT :

Well talk to him, I don't know what they want you to talk to him about.

VALERY FABRIKANT :

Well, but you don't give me the time. I talked to him several times already, I already did...

THE COURT :

Mr. Belleau, I'm sure, will be available tomorrow and the day after.

VALERY FABRIKANT :

But I already told him all this. I already told him all the information.

THE COURT :

Well look, you know something, I'm not going to spend from now until the middle of the summer sparring with you as to what witnesses you're going to present on any given day, or what proof you're going to lead.

VALERY FABRIKANT :

You don't hear what I'm saying, I'm talking about expert, and I need Legal Aid to pay for it, and there is a circle between Legal Aid and Mr. Belleau who doesn't do his job. Did you hear that?

THE COURT :

I heard you.

VALERY FABRIKANT :

Well, if you heard that then someone has to tell Legal Aid that, either if they are convinced, then they do not have to make me talk to Mr. Belleau again, I already explained...

THE COURT :

Are you able to shed any light on this, Mr. Belleau?

Me BELLEAU :

Well, it's difficult for me to shed any light because I'm, as you know, bound by my oath of secrecy, so...

THE COURT :

It becomes difficult.

VALERY FABRIKANT :

No difficult.

Me BELLEAU :

...he can sit there and say say whatever he wants.

VALERY FABRIKANT :

As far as...

THE COURT :

Just a second.

Me BELLEAU :

And I can't defend myself, so I'll just leave it at that. I could tell you that the correspondence is there, the purpose of it is exactly so that what my discussions with the Legal Aid are on record, and known, and the decisions of the Legal Aid center, I don't make. If they feel that it's irrelevant, it's their business. I transmit whatever information I get from the accused.

VALERY FABRIKANT :

Not at all, they don't feel that way. You pretend also not to hear what they said. Deslongchamps said, that after I explained it to her, well that yes, she feels it is relevant, that she wants me to talk again to Mr. Belleau. And I said that I already explained all this to Mr. Belleau, he just pretends not to understand or not to have heard it. Now...

THE COURT :

Well, if the purpose of her making that observation is to wonder, or to suggest whether Mr. Belleau discuss with you again the relevance of that evidence, I have no objection if he does that, if Mr. Belleau... if you want to put that question to Mr. Belleau...

VALERY FABRIKANT :

Well, how many times do we have... I already told him at least five times why I needed, and what I needed, and all details of this, and time is passing...

THE COURT :

Well it sure is, because...

VALERY FABRIKANT :

So you are doing it intentionally then?

THE COURT :

I'm not doing anything intentionally.

VALERY FABRIKANT :

Well, why don't you write it in procès-verbal that I accused you again of covering up for Concordia University.

THE COURT :

Let's just say I'm feeling mellow this afternoon.

VALERY FABRIKANT :

Wow!

THE COURT :

Now...

VALERY FABRIKANT :

Maybe just you know that I couldn't care less what you write in this procès-verbal, maybe...

THE COURT :

...are you prepared to start on Thursday morning?

VALERY FABRIKANT :

No, I'm not.

THE COURT :

Well you're going to have to be prepared to start on Thursday morning.

VALERY FABRIKANT :

Well it's up to you but I am not prepared.

THE COURT :

Because what I'm going to do is give you two days, and...

VALERY FABRIKANT :

That is not enough, Mr. Belleau doesn't do any job.

THE COURT :

...you will have the opportunity to address the jury first of all, for the purpose of outlining the defense you propose to make. I therefore will anticipate that you will commence to call whatever witnesses you wish to call on Thursday, and you will do so on Thursday and Friday. You will have a further three days over the weekend, which will permit...

VALERY FABRIKANT :

I do not have those three days, you know that...

THE COURT :

...which will permit you to do the preparations that you have to do in the same manner as you apparently prepared for your fitness hearing.

VALERY FABRIKANT :

On those three days I did not, do not even have access to the telephone.

THE COURT :

Well I'm sorry, this thing has to go on and it's going to go on. You have known for months, you're the one who complained.

VALERY FABRIKANT :

Then make Mr. Belleau work. He doesn't do his job.

THE COURT :

Mr. Belleau will be available to counsel you if you require his counsel.

VALERY FABRIKANT :

He needs to do the expert stuff.

THE COURT :

He is not your lawyer, he is there to furnish you with any information which you might want. You have elected to be your lawyer, you'll be your lawyer.

VALERY FABRIKANT :

You want to do this lawless way, do it lawless way.

THE COURT :

That's an easy word for you to use.

VALERY FABRIKANT :

I couldn't care less, frankly speaking.

THE COURT :

Jury please.

VALERY FABRIKANT :

By the way, I also remind Me Lecours that he promised me to send two booklets to Dr. Pothel.

Me JEAN LECOURES :

It will be done, My Lord.

VALERY FABRIKANT :

Today or tomorrow in the latest.

Me JEAN LECOURES :

Tomorrow. He's not here.

VALERY FABRIKANT :

All right.

MEMBERS OF THE JURY ARE PRESENT

THE COURT :

Well, for this afternoon, ladies and gentlemen, I'm afraid it's going to be hello and goodbye. As you know, the Crown

has completed its case, and now is the time when I must formerly ask Mr. Fabrikant if he has the intention of presenting a defense, so I will ask him that question now. Do you have the intention of presenting a defense?

VALERY FABRIKANT :

Yes, I have the intention to present defense and I need Mr. Belleau to start working, and I need...

THE COURT :

Fine. Thank you.

VALERY FABRIKANT :

...at least ten days to prepare.

THE COURT :

Thank you, Mr. Fabrikant. Sit down. Mr. Fabrikant has indicated to me, in fact today was not the first indication that he made, that he would require some time. And I have pointed out to Mr. Fabrikant that while I am prepared to grant him some time, the trial must of necessity go on. So I have indicated to him that I am prepared to give him Tuesday and Wednesday of this week. We will start again on Thursday, and he can be prepared to do two days of his defense, Thursday and Friday, whereupon he'll have the long weekend, Saturday, Sunday and Monday, in order to continue his preparations, and we'll, then again, resume after the long weekend. So the upshot of all of that is I will not require you tomorrow or Wednesday, and we will commence with the defense on Thursday morning. So thank you very much and see you Thursday.

THE JURY LEAVES THE COURTROOM

THE COURT :

Thank you. Thursday morning, nine thirty (9:30).

TRIAL CONTINUED TO MAY 20TH, 1993 - 9:30

I, the undersigned, Official Court Reporter, hereby certify the foregoing a true and faithful transcript of evidence as taken by mechanical recording, to the best of the quality of said recording.

And I have signed.

MICHEL DAIGNEAULT,
Official Court Reporter

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">C A N
A D A COURS UNIFIES DU QUBEC

PROVINCE DE QUBEC

CHAMBRE CRIMINELLE ET PNALE

DISTRICT DE MONTRAL

CAUSE NO.: 500-01-017372-928

TAPE: PROCES - SUITE

PRSENT: L'HONORABLE JUGE J. FRASER MARTIN, J.S.C. ET JURY

NOM DES PARTIES:

SA MAJEST LA REINE

Plaignante,

c.

VALERY FABRIKANT

Accus,,

COMPARUTIONS:

Me Jean Lecours
PROCUREUR DE LA PLAIGNANTE

DATE DE L'AUDITION: LE 20 MAI 1993

FICHER: 3209

TABLE DES MATIERES

PAGE

REPRESENTATIONS 4

PROOF OF THE DEFENSE

WITNESS: NADINE LEONARD

Examined by Mr. Fabrikant 18

WITHOUT JURY 19

Examined by Mr. Fabrikant (continued) 27

Discussion 32

WITNESS: PATRICK BERRY

Examined by Mr. Fabrikant 34

WITNESS: HENA PATEL

Examined by Mr. Fabrikant 39

Discussion 41

WITNESS: GWEN NEWSHAM

Examined by Mr. Fabrikant 43

Discussion 67

WITNESS: GIOVANNA VENETTACCI

Examined by Mr. Fabrikant 70

WITHOUT JURY 94

Cross-examined by Mr. Fabrikant (on statement) 99

WITNESS: CARMINE DE SANTO

Examined by Mr. Fabrikant 112

Discussion 113

WITNESS: DEBBIE YOUNG

Examined by Mr. Fabrikant 116

WITNESS: FRANK CHAN

Examined by Mr. Fabrikant 119

Discussion 121

WITNESS: ROBERT KIRK

Examined by Mr. Fabrikant 125

WITNESS: JOHN RELTON

Examined by Mr. Fabrikant 128

WITHOUT JURY 135

MEMBERS OF THE JURY ARE PRESENT

Me BELLEAU :

If it may please the Court, the Defense has subpoenaed an attorney by the name of Richard McManus, who is present in the room, and as requested, to ask permission to the Court to be allowed to attend to other duties he would be available on one hour's call. Mr. Fabrikant has not been able to decide precisely at what time he would be called as a witness, so I present this demand to the Court.

THE COURT :

Mr. Fabrikant, I will be calling upon you to make your initial address to the jury, if you wish to do so. Are you in a position to give me even an approximation of how long that will take?

VALERY FABRIKANT :

I think about half an hour, not more.

THE COURT :

Okay. Do you have in your game plan, if I can call it that, a number of witnesses in a certain order that you wish to have heard? I'm not asking you who they are, I'm not asking you in what order, I'm just asking you whether Mr. McManus happens to be the first.

VALERY FABRIKANT :

Well no, he is not the first, and this is why I am in a great difficulty, I understand inconvenience he might have, and it is extremely difficult to know in advance, I can say for example, for each witness more or less how much time it will take me, but I cannot say how much counter-interrogation will take.

THE COURT :

No, obviously you can't.

VALERY FABRIKANT :

And therefore, there is no way to predict, even with slightest degree of accuracy, this is the problem of Court hearing.

THE COURT :

Well, it's not a problem that's unique to this case, it's a problem that arises everyday of the week.

VALERY FABRIKANT :

Yes.

THE COURT :

Mr. McManus, would you come forward please? You've indicated, I think, that you could be available on what, on one hour's...

Me RICHARD McMANUS :

On call, yes.

THE COURT :

On one hour's call. Mr. Belleau, you have the number, do you?

Me BELLEAU :

Yes, I can reach him.

THE COURT :

Well, I think that would be satisfactory, I really think that an effort has to be made to tie up as few people as possible for days and days on end.

VALERY FABRIKANT :

Well sure, I agree one hundred percent. Do you have your opinion with you?

Me RICHARD McMANUS :

I've got all the documents that were...

THE COURT :

Just a second. Okay? Yes, if you would be available on call...

Me RICHARD McMANUS :

Yes, with all the documents I was subpoenaed for.

THE COURT :

Well, I have no idea about that, but if you would be available on...

Me RICHARD McMANUS :

That's for sure.

THE COURT :

...as soon as possible, but after you receive a call, and at the most one hour.

Me RICHARD McMANUS :

At the most one hour.

THE COURT :

At the most one hour, and of course if you can get down quicker than that, then fine, that would be perfectly satisfactory to me and I think it would be to Mr. Fabrikant.

VALERY FABRIKANT :

And if possible make two copies.

THE COURT :

Thank you very much.

Me RICHARD McMANUS :

Thank you.

THE COURT :

Before we adjourned, ladies and gentlemen, Mr. Fabrikant intimated, in answer to a question I put to him, that he intended to present a defense. I will now call upon him to address you, you will remember that at the beginning of the case the Crown prosecutor addressed you for a short period of time outlining the proof that the Crown proposed to make. I will invite Mr. Fabrikant to do the same thing. You should be aware, as I made you aware prior to the Crown speaking that what Mr. Fabrikant says is not evidence but merely an indication of where he plans to go in order to permit you to more easily appreciate the defense or defenses which he proposes to present to you. That is the distinction that you must

be aware of, and that you must make in your minds. Mr. Fabrikant.

VALERY FABRIKANT :

Ladies and gentlemen, members of jury, many of you think that since I have publicly admitted, on several occasions, and you have heard it on the tape, that yes, indeed, I was the one who killed four people, so probably you think that what then to talk about, he's guilty and that's it. How many of you think so, would you raise your hands?

THE COURT :

Don't do that. Don't do that.

VALERY FABRIKANT :

Well, I...

THE COURT :

No.

VALERY FABRIKANT :

Okay. Sorry. I believe it is in human nature, and it is natural to think that the action itself and admission of the action is proof of the guilt. If it were so, then yes, there would be nothing to talk about, but we are all humans, and the circumstances in which certain action took place are important. Sometimes it is so important that it can change the whole perception of what happened, and this is the main reason I have decided to present a defense, because it is not as, for example, you can read in the newspapers, I want to say that it was justified. Murder is never justified, justified is a wrong word because this is action which cannot be reversed. So it is not question of justification but it is question of giving you all the facts which led to what happened, and it will be up to you to determine the degree of criminal responsibility of mine to those actions. This is the main purpose of this defense. We can say thousand times that we need stricter gun laws, that we need this, we need that, it will not change anything because the main reason for violence is injustice or perception of injustice. In some cases this perception might be wrong, in some cases this perception is right, but in all cases, or almost all cases, violence is result of perception of injustice, and if we really want to curb violence, we have to address question of injustice.

In my case, you will see many facts will be presented to you. First of all, I would like to address question of special situation in which I am in right now, that I do not have a lawyer, as you know, and I do not have a lawyer, not because I do not want one, I claimed on several occasions that yes, I do want a lawyer, and yes, I even advertised about it. And the only reason I cannot find a lawyer, because every lawyer wants me to plead insane. Why is it so convenient to make me insane? It is so convenient because... well, insane person can do anything, there are no questions to ask. A person is insane, and insane does whatever... anything, and then we do not have to ask ourselves very serious, a very troubled situation of what really happened at Concordia, what kind of people were they, how did they treat me, and not only me. You have probably read in the newspapers that Fabrikant has introduced squalid morals of crack down into the

university. Now, I wish to tell you, Fabrikant did not introduce any squalid morals, squalid morals at the university always existed. Fabrikant didn't need to introduce them, Fabrikant tried to fight it, but you know what was the end of it. But as far as the morals at the university, you will see what those morals are, I will present you facts and documents. So Fabrikant did not introduce any squalid morals into university, they always existed there. And I will try not only to present my own evidence, I will try to bring some other scientists from the universities who will testify that the situation of mine is not unique, it is very typical for Canadian universities, and not only Canadian universities. They will testify in general that the possibility of abuse is there mainly because government gives grants to a scientist to do the work, and the scientist can spend his money any way he chooses. And if scientist is not very honest, he can hire somebody else from developing country, from (inaudible) Soviet Union, who is much more capable than he to do the research, this person does the research, and he has to include the other one as co-author. And this other one gets the credit and he applies to government and gets more money, and more money means that he can hire more people, and he can hire more people than he (inaudible) a prominent scientist. He has several hundred publications, he is fellow of scientific society, and fellow scientific society in technology is not fellow of psychiatric society, that person has to have significant number of publications, it's not just paying your dues. And significant number of such people, it is not one person, Sankar, or one person Swamy like this, the problem is that there is significant number of people, and they stand for each other, because they know they are all not scientists, and they have to defend each other. You probably noticed also that I didn't choose the jury, and it was in the newspapers that I boycotted the jury. And I think you should know that I had two reasons for that; first, I asked for the procedures of the jurors were chosen and I wasn't given one. After that I saw that madame Desrosiers picked all the cards from top, those cards were never meshed, she picked them all from the top, and again this created impression of... at least impression of something not very good. You also remember by yourselves, when you came here, Crown didn't ask you a single question. Some of you had faces so angry, yes, you, that it was quite obvious that you already convicted me. And you may ask, of course, why did I agree to all that? My reason was similar to why I introduced Morissette, who testified that I am not fit. I was sure that, in principle, you are honest and decent people, but reading what you read in the newspapers, and what you heard on the radio, I would behave the same way you did. I would be the same God damn angry, there would be no difference. And so my main purpose was to demonstrate that I'm not concerned with your possible verdict, it's not that I enjoy to be in jail, it is not that I would not prefer to be with my family, of course not. But to me there are things which are more important. I feel great responsibility on my shoulders, as I told you already, that life has been

lost, and I was the one who did it, though unwillingly, and not being in control of myself, but nevertheless it was I. And therefore, it is my duty, my first duty, to do all I can, because I know there are number of people like I, and not just in the university, and they can be saved. And this is effectively what system doesn't like (inaudible). It would be much easier for everyone to say: "Fabrikant is insane", and this is why you have seen me being sent to Pinel. I don't think any of you ever had any doubt that I am absolutely normal, there is absolutely no reason to believe that I'm out of touch with reality because section 2 of Criminal Code defines that person does not fit to stand trial when he is almost imbecile, and it is definitely not my case. But why was it so important, if you read in the newspaper, there is one article though which I cannot just help not to quote. Someone named Mr. McCormick, who I understand has never been to the trial, but he nevertheless has an opinion, and this opinion is like this, he writes:

"Anyone who can justify murder over the loss of a job or promotion or theft of ideas can be said to have lost his mind."

Well, first of all he puts in my mouth that the shooting took place because of loss of job, or loss of ideas, or loss of promotion, I never said that. And you will see that what triggered shooting was neither of those, those facts were steps which were leading to it, but I would never shoot anyone because I was not promoted, or because my article has appeared with somebody else's name there. Ever. You will see that the facts will show to you that effectively, when I used the word the mafia, this is what I was dealing with, I was dealing with a group of bandits who employed the tactical bandits, who, at the end, you will see the evidence that effectively, they presented me with a choice, either to shut up, get three years salary and get out of the university, or they arrange for me to go to jail. And they told me that former Chief Justice of Quebec made sure that I will go there, and having experience with the judges in my civil cases, when judges I will present as evidence to you too, when judges didn't even bother to look unbiased in any way, they just rendered a decision which was absolutely unsupported in any way, they just didn't want to listen to any argument. And when you are told that anything can happen to you in jail, and believe me jail is a dangerous place, you feel that your life is in danger, and this is a different story. This is not lost job, or promotion, or anything, you are dealing with bandits. And again, you will get the evidence that I didn't want to kill anyone, the only thing I wanted was to scare them to leave me alone, this attempt was done terribly wrong, and you will hear what happened there, and you will decide by yourselves about the facts. But in order to do all this, I need, and I needed certain conditions. I think you should know that I have requested on many occasions that proper conditions just to prepare my defense be given, and I don't have any, because in jail, it's not just that you... if you see for example my hair is not combed, I'm not allowed to have a comb. If... elementary things are

not available there. I have no way to contact witnesses. I have here friend of Court who doesn't do anything, or almost anything, but he's here and he's getting huge salary, for this Legal Aid does not hesitate to pay him special consideration. What for? To create impression in public that Fabrikant has legal assistance. There is no legal assistance, it's just an appearance of legal assistance. And without having access to the major necessities, like to contact experts, I need to have elementary things like access to telephone, which I either in Parthenais, it is telephone which you can only call collect, and if the person does not accept collect call, that's it, too bad. If it is, sometimes they allow me to call from their telephone, then again it is fifteen (15), twenty (20) minutes, and again this is definitely not enough. Imagine coordination of defense of that kind of magnitude and being unable to even enter your cell, suppose you forgot something in your cell, the cell is locked. And I asked Judge for a favor, could you just order that the cell be unlocked so I could enter and exist cell whenever I need, but God forbid, if I didn't take something and went out and cell was closed, then I have to wait an hour until it is opened, and I don't have that many hours. If you imagine, I get up at six a.m. (6:00) in the morning, I go through strip search, then I sit in the smoky room, then I sit in the bus, and I arrive here at about eight o'clock (8:00), and again I am sitting in the cell without being able to do anything, and the same situation reoccurs when I go back. So six hours of the day are being spent only on going from Parthenais to here, from here to Parthenais. And again, I asked our impartial Judge to change this and to at least give me the opportunity to use those hours to present my defense, and the answer was no. And you just imagine what I need just (inaudible), what happened during the day I get the tapes, I need to listen to those tapes, what happened. I need to see if some witnesses testified something which might be important, some witnesses might testify something which I just missed during general presentation. Everything has been done, you of course might think that it is my paranoid personality is talking, but I do believe that too much has been done to make my defense as difficult as possible. If you ever read newspapers and you remember, for example, testimony of Osman here, the newspapers printed Court was told Fabrikant lied about his degree, and this is what the reader gets. It has never been written in the article that Fabrikant didn't lie about his degree, that he has his diploma presented here, no, it was not written. What is written there is just one side, what Osman said. What Fabrikant said doesn't count. And the same goes, not just for media, the same goes with the Judge we have. If you remember his charge to you on the fitness issue, he spent about forty (40) minutes telling you what... what was his name of psychiatrist who testified that I am unfit, Morissette, what he was saying, there was absolutely nothing presented to you of what I was saying, and this one-sided charge of a Judge who is supposed to be impartial Judge. Now, so here I am in front of the jury who I

didn't choose, and I repeat once again, I didn't choose it mainly, not just because I thought that they knew who they are choosing. You remember the Crown never asked you a simple question, he just said: "Okay, this goes, this doesn't go, this goes, this doesn't go". So Crown definitely knew who is who and who thinks what. But I wanted to show to you that my concern is to tell you the truth, it is not my concern what the verdict will be, though definitely I would like positive verdict rather than negative, but it is important to me that you are sure that what I will be telling to you will be truth, because when person is concerned with the sentence he gets, he might lie just to get a lesser sentence, I'm not concerned with that. So what I will be telling to you will be the truth, and I hope you will hear it. Thank you.

THE COURT :

Would you call your first witness?

VALERY FABRIKANT :

Nadine L, onard.

Me JEAN LECOURE :

Could Mr. Fabrikant give me the list of his witnesses on a daily basis, please?

VALERY FABRIKANT :

Well, am I obliged to? I don't think I am.

Me JEAN LECOURE :

I did.

VALERY FABRIKANT :

Well, you did because you are Prosecution.

THE COURT :

No, you're not obliged to furnish the Crown with a list of your witnesses.

VALERY FABRIKANT :

There you go.

Me JEAN LECOURE :

So, even if you're not obliged, do you intend to do so?

THE COURT :

He obviously doesn't intend to do so, so...

Me JEAN LECOURE :

What's the next step?

THE COURT :

...you have to live with the situation.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twentieth (20th) day of the month of May, personally came and appeared:

NADINE LEONARD, born on October thirtieth (30th), nineteenn hundred and sixty-nine (1969), student, confidential address;

WHOM, after having been duly sworn, doth depose and say as follows:

THE COURT :

Q. Can you speak a little more loudly, please...

A. Okay.

Q. ...so that we can all hear you. Now, if you would

prefer to testify in French, there's an interpreter who is here, it's entirely up to you, it's your choice.

A. Well, I think I can do it in English.

Q. Well, it's not a question of whether you can do it in English, it's a question of what you're more comfortable...

A. I'm more comfortable in French.

Q. If you're more comfortable in French, then we'll have Mrs. Traynor come forward and...

A. Okay.

Q. ...the questions will be put in English, they'll be translated into French, you answer in French and she'll put your words in English.

A. Thank you.

SANDRA TRAYNOR - INTERPRETER

DULY SWORN

EXAMINED BY MR. VALERY FABRIKANT :

Q. Did you take any course with me?

-Q. Est-ce que vous avez suivi un cours avec moi?

A. Oui, le cours de statique en première année d'ingénierie.

-A. Yes, engineering statical or static...

A. La première année, en dix-neuf cent quatre-vingt-huit (1988).

-A. ...the first year, nineteen eighty-eight (1988).

Me JEAN LECOURS :

Well, what is the relevance of that, My Lord?

THE COURT :

What is the relevance of that, Mr. Fabrikant? Would you like me to ask the jury to go out while we discuss it or...

VALERY FABRIKANT :

No.

Me JEAN LECOURS :

I suggest it, My Lord.

THE COURT :

Fine. Ladies and gentlemen, I wonder if you'd withdraw, please.

WITHOUT JURY

Me JEAN LECOURS :

Because if it's to say he's a good professor or teacher, I submit to you it's totally irrelevant, we could find hundreds of students that will say black and a hundred of students that will say white, and we discussed about his defense, it doesn't fit any known defense in law, My Lord.

THE COURT :

Mr. Fabrikant?

VALERY FABRIKANT :

Well, it does fit because in order to prove that I was persecuted and unjustly, I need to show that I was a good worker. Second, psychiatrist testified in such a damaging way about my personality that jury might think that I am just person, cold blooded murdered. So the first thing to establish in the question of unfair treatment is to establish that I was good, then I will present evidence that despite all this, I was treated badly, and this accumulated year after year after year, and this is definitely relevant if I decide to invoke defense of provocation, and you know that. Besides that, I quote here from decision of Quebec Court of

Appeal, Regina vs. Toussaint, which says on...

THE COURT :

What's the citation of that case, please?

VALERY FABRIKANT :

I don't know, C.C.C. 3d, 1816.

THE COURT :

Well which C.C.C., they'll be a number before the letters C.C.C.

VALERY FABRIKANT :

18-16 C.C.C. 3d.

THE COURT :

18 or is it 16? 18 C.C.C. 3rd?

VALERY FABRIKANT :

I don't know, this is what I have. You see, I'm having...

THE COURT :

It's either 18 or 16, it's 18 C.C.C. 3rd, and then there's a page number.

VALERY FABRIKANT :

Okay. It is 16 C.C.C. (3d).

THE COURT :

3d, third series. Yes.

Me BELLEAU :

54, I have a copy of it, 544 rather.

THE COURT :

544.

Me BELLEAU :

I have a copy for the Court.

THE COURT :

Okay.

VALERY FABRIKANT :

Regretfully, I can quote jurisprudence only which was provided by Mr. Belleau, and I am not sure that he provided the best jurisprudence or the most effective, or the most relevant, because he demonstrated himself pretty reluctant to do anything for me. And in particular, I asked him to argue the pertinence of the witnesses and he said that it is just none of his business.

THE COURT :

Well, he didn't say... I know what he said, but it's not within his mandate to argue for you the relevance of the witnesses.

VALERY FABRIKANT :

Well...

THE COURT :

That's for sure.

VALERY FABRIKANT :

...isn't he supposed to help me somehow in questions of law?

THE COURT :

He is supposed to answer any questions that you might wish to put to him concerning the conduct of your defense, there's a difference between that and his arguing for you a question of law.

VALERY FABRIKANT :

Well, I asked him if this is pertinent.

THE COURT :

All right, you referred me to Toussaint, what page are you referring to in particular?

VALERY FABRIKANT :

545.

THE COURT :

Yes.

VALERY FABRIKANT :

And here you have Beauregard, line five, it says:

"Administration of justice is best served if the trial judge gives the accused the benefit of doubt and allow him to advance his theory before the jury."

And they also refer to... on page 557, it goes even further, it says:

"It doesn't matter how absurd the defense is, or how unlikely it is that any sensible person would pay at least attention to it, prisoner is entitled to make his defense to the jury, and it is for the jury and not to the judge to decide on its weight."

And on the next page it says also that first and most important thing for the administration of criminal law is that it should appear that the prisoner is having a fair trial, and that he should not be left with any sense of injustice on the ground that his case has not been fairly put before the jury. So I believe I'm entitled to put the facts which I believe are relevant to the jury, and let the jury decide how relevant those facts are. And in this particular case relevance is quite obvious.

Me JEAN LECOURS :

We know the theory of the accused, My Lord. Persecution might have been relevant on the fitness issue but it's not relevant for the case. And what this witness is supposed to say, it's even a step further of persecution, this won't establish persecution at all. You are also bound by section 698 of the Code, you know, the witness has to... it has to be a person likely to give material evidence. The problem in this case is we can fall into a never ending story, an exponential progression of the witnesses if we don't intervene, or if you don't intervene on the ground of relevance.

VALERY FABRIKANT :

Well, how then will I be able to claim in front of the jury that I was provoked unless I show that I was being mistreated, and mistreated unjustfully?

Me JEAN LECOURS :

Well, provocation in terms of the jurisprudence, provocation is physical violence, the two exceptions in the jurisprudence is when you find your wife committing adultery or your children being sodomized, it's not civil litigation or a disagreement between civil parties.

VALERY FABRIKANT :

Well, this is total absurd. This is only cases of what is considered to be immediate provocation, what I'm talking about that set of events, and there is ample jurisprudence on that, that set of events accumulate to a certain point where certain actions, which without this preliminary events, might not be constituted as

provocation, but taking into consideration the previous history, these events become valid proof of provocation.

Me JEAN LECOURE :

I'm sorry, but that's not the state of the law.

VALERY FABRIKANT :

Well, this is the state of the law.

Me JEAN LECOURE :

The last drop in a cup, there's no such theory in law.

VALERY FABRIKANT :

Besides, you cannot reject witness just on the basis that she is a student, you just don't know what she's going to say. Maybe she's going to say that I confided to her that I planned to kill four people, how do you know? How can you reject a witness without hearing her, a single word, and just reject?

THE COURT :

You're absolutely right, the Crown simply anticipated what you were going to cover with the witness, and you basically confirmed what you were going to cover with the witness in the course of your argument, that was all. I would presume that the objection was made at the point where it was made, bearing upon the general relevance of the evidence of this witness.

Me JEAN LECOURE :

In accordance with section 698 you have the right to look into the relevance.

THE COURT :

I'm prepared to permit the evidence, I'll tell you why. I'm first of all not prepared to adopt nearly as narrow a view of provocation as you've outlined to me, Mr. Lecours. Provocation need not be limited to physical deeds, absent the two exceptions that you mentioned. Secondly...

Me JEAN LECOURE :

Well, there is also...

THE COURT :

Secondly... I'm sorry. Secondly, in view of the fact that what has been outlined to the jury was that a particular form of treatment culminated in the events of the twenty-fourth (24th). I don't think it would be fair at this point to say to Mr. Fabrikant that he wasn't allowed to make that evidence, there are several ways whereby he could make it. His defense is based on the proposition, or part of it is, part of his defense may be based on the proposition that he was a good teacher and a good researcher, that notwithstanding he was treated differently from other people which, in turn, if you go to the provocation question, triggered a certain course of conduct. Whether that opens the door to provocation or not, I have no idea, provocation in law is precisely defined. But one thing is sure, if he is not allowed to make the evidence, then it's a little difficult to decide whether or not the defense of provocation is going to be opened. So I would prefer to hear the evidence, I would hope that it will be presented succinctly. And I stress that I'm going to rule on these things on a one by one basis, and it will be my impression, going as I am with the outline that you've given me as to whether or not it is or could be pertinent, but in this instance I'm prepared to permit you to cover that ground. Jury.

MEMBERS OF THE JURY ARE PRESENT

WITNESS: NADINE LEONARD -- UNDER THE SAME OATH

EXAMINATION BY VALERY FABRIKANT (CONT'D):

Q. Okay. Are you still student at Concordia?

-Q. Est-ce que vous ^tes toujours ,tudiante ... Concordia?

A. Non.

-A. No.

Q. Are you working now?

-Q. Est-ce que vous travaillez pr,sentement?

A. Non.

-A. No.

Q. But you graduated from the university?

-Q. Mais vous ^tes dipl"m,e de l'universit,?

A. Oui.

-A. Yes.

Q. You are generally a good student?

-Q. G,n,ralement vous ^tes bonne aux ,tudes?

A. Oui.

-A. Yes.

Q. What is your general grade?

-Q. Que sont vos notes en g,n,ral?

A. B.

-A. B.

Q. Okay. Did you do the course evaluation when I was teaching statics to you?

-Q. Est-ce que vous avez fait le cours en ,valuation lorsque vous avez... est-ce que vous avez fait l',valuation du cours lorsque vous avez pris le cours en statique avec moi?

A. Oui.

-A. Yes.

Q. And did you write in this course evaluation freely what you thought about the teacher?

-Q. Et est-ce que vous avez inscrit dans cette ,valuation ce que vous croyiez, de fa#on libre et volontaire, de ce que vous pensiez du professeur?

A. Oui.

-A. Yes.

Q. There was no fear that if you write something no good that something might happen to you?

-Q. Vous n'aviez aucune crainte que quelque chose aurait pu vous arriver si vous deviez inscrire quoi que ce soit de n,gatif?

A. Non.

-A. No.

Q. All those course evaluations were anonymous?

-Q. Et toutes ces ,valuations de cours ,taient anonymes?

A. Oui.

-A. Yes.

Q. And they were made before the exams?

-Q. Elles ont ,t, faites avant les examens?

A. Oui.

-A. Yes.

Me JEAN LECOURS :

These are all leading questions, My Lord.

THE COURT :

They are.

VALERY FABRIKANT :

Okay.

THE COURT :

I wonder if you wouldn't do that, you know the

difference between a leading question and one that isn't.

VALERY FABRIKANT :

Yes. All right. All right. All right.

THE COURT :

Objection maintained.

VALERY FABRIKANT :

Yes, okay.

Q. At what time, in term, these course evaluations were made?

-Q. Et ces ,valuations de cours ont ,t, effectu,es ... quel moment dans le temps?

A. Peut-^tre quelques semaines avant les examens finals.

-A. Maybe a few weeks prior to the final exams.

Q. Could you... do you recall any questions which you were asked there, and what would be your answers there?

-Q. Vous rappelez-vous de certaines questions qui ont ,t, pos,es et vos r,ponses ... ces questions?

A. Il y avait des questions du style si le professeur ,tait bien pr,par, pour ses classes.

-A. Well, there were questions to the effect if the teacher was well prepared for his classes.

A. J'ai r,pondu positivement ... ces questions-l....

-A. And I answered in a positive fashion to these questions.

A. AprŠs #a il y avait des questions aussi sur le contenu du cours, s'il avait ,t, bien suivi.

-A. And there were also questions on the content of the course, if it had been well followed.

A. J'ai r,pondu positivement aussi.

-A. I also answered positively to that question.

A. Il y avait aussi au niveau de l',valuation des cours, si les examens ,taient "fair".

-A. Also in terms of course evaluations, there were questions to the effect as whether or not the exams were fair.

A. J'ai r,pondu positivement.

-A. I answered positively to that also.

A. C'est ... peu prŠs #a.

-A. And that's about it.

Q. Could you describe in general your impression of me as a teacher?

-Q. Pouvez-vous d,crire de fa#on g,n,rale votre impression de moi ... titre de professeur?

A. Alors, docteur Fabrikant est un professeur qui... comment je pourrais dire #a donc, qui nous inspirait un certain respect envers sa personne...

-A. Dr. Fabrikant did instil a certain respect towards him...

A. ...il ,tait quelqu'un qu'on pouvait aller voir facilement ... son bureau, qui ,tait trŠs disponible.

-A. ...and he was very available, he was someone who was easily approached, we could go to see him at his office.

A. On ne se sentait pas intimid, d'aller lui demander des questions, ou de ne pas comprendre.

-A. We didn't feel intimidated by asking him questions if we didn't understand.

A. Puis tout #a #a a fait en sorte que j'ai trŠs bien r,ussi dans sa classe.

-A. And all this contributes to the fact that I succeeded very well in his class.

A. J'ai des trŠs bons souvenirs de son enseignement.

-A. I have a very good recollection of his teaching.
A. C'est ça.
-A. And that's it.
Q. How many teachers have you encountered at the university?
-Q. Combien de professeurs avez-vous eus ... l'université,?
Q. Approximately.
-Q. Approximativement.
A. J'en ai eu peut-être... cinq cours... une quarantaine.
-A. Forty (40) or so.
Q. What would be your grading of me within these forty (40) professors?
-Q. Et quelle serait votre ,valuation de moi parmi ces quarante (40) autres professeurs?
A. Parmi les cinq premiers.
-A. Among the first five.
Q. Thank you. I appreciate your coming.
-Q. Merci. J'apprécie beaucoup votre visite.
Me JEAN LECOURE :
I have no questions.
- Je n'ai pas de question.
AND FURTHER DEPONENT SAITH NOT
VALERY FABRIKANT :
I need a lawyer to ask this question.
THE COURT :
If you wish to consult with Mr. Belleau I'll suspend.
VALERY FABRIKANT :
He refuses to do it.
THE COURT :
You don't need... you have elected to conduct your own defense.
VALERY FABRIKANT :
No, I asked him to do it and he...
THE COURT :
It is not within his mandate to do it.
VALERY FABRIKANT :
Am I entitled to a lawyer?
THE COURT :
Mr. Fabrikant, we have been through this since January, you have not retained a lawyer since January.
VALERY FABRIKANT :
There is no lawyer there.
THE COURT :
Call your next witness.
VALERY FABRIKANT :
De Santo Carmine.
Me BELLEAU :
Who?
VALERY FABRIKANT :
De Santo Carmine.
Me BELLEAU :
He's not on my list.
VALERY FABRIKANT :
Not on your list. De Santo Carmine.
You mean she might not come yet? That's what you mean she's not on your list, that she might not come?
Okay. Then if she's not there, "Lavis" Peter.
Me BELLEAU :
I told you that Patrick Berry was here.
VALERY FABRIKANT :
Patrick Berry.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993),
this twentieth (20th) day of the month of May,
personally came and appeared:

PATRICK BERRY, born on May twenty-seventh (27th),
nineteenn hundred and seventy (1970), student,
confidential address;

WHOM, after having been duly sworn, doth depose and say
as follows:

Me JEAN LECOURE :

I understand, My Lord, that you maintain your decision
on the relevancy of this witness as well?

THE COURT :

I will see where we're going.

EXAMINED BY MR. VALERY FABRIKANT :

Q. Okay.

THE COURT :

Q. Would you stand up please, Mr. Berry. Thank you.

VALERY FABRIKANT :

Q. Would you please tell the Court which course, and when
did you take in my class?

A. It was for dynamics (inaudible) 243. In fall of...
sorry, in winter of ninety-one ('91).

Q. Winter ninety-one ('91). Okay. Do you consider this an
important course in engineering education?

A. Yes, it's a very important course.

Q. Okay. Could you give your general impression of the
class which you attended? Whatever comes to your
recollection.

A. General as in the course content or...

Q. Well, course content, my behavior, my ability to
teach...

A. I found the course content, it was a very hard course,
hard workload, it was taught very well.

Q. Was... let's put it like in the evaluation form, like
availability for consultation.

A. He's made himself extremely available, we were given a
home phone number where we could reach him, he always
asked if we had any questions, and we were told to come
and ask him any questions we had, he made himself very
available.

Q. Okay. My appearance in class, did I use any books,
notes...?

A. He came in with a piece of chalk and he taught from the
top of his head.

Q. So, did I ever use anything else?

A. No to my recollection.

Q. Did I display any personality disorder, like...

A. No.

Q. Did you notice any...

Me JEAN LECOURE :

This is an illegal question.

THE COURT :

Yes. You can't put that sort of question, you have to
rephrase your question.

VALERY FABRIKANT :

Okay, I will rephrase it.

Q. Did you notice in my behavior anything which would raise
in your head a question of any kind of abnormality?

A. No.
VALERY FABRIKANT :
This is normal question, is it?
THE COURT :
No.
VALERY FABRIKANT :
No. What's wrong in that question?
THE COURT :
I presume Mr. Berry is a student in engineering, he's not a psychiatrist or a psychologist or anything like that, if that's what your question was bearing on.
VALERY FABRIKANT :
No, my question...
THE COURT :
If your question is bearing on the conduct in class, then...
VALERY FABRIKANT :
...that if person is abnormal, you cannot hide it, it's not the psychiatrist...
THE COURT :
Then he's not here to make that sort of judgment.
VALERY FABRIKANT :
No, I'm just asking if he noticed any action which, in his mind, would create impression of...
THE COURT :
I'm not interested in his impressions, what we're interested in are the facts you wish to bring out of his attending your course.
VALERY FABRIKANT :
Yes. Okay.

Q. There is one question in the questionnaire: "Would you recommend this teacher to another student?"

A. Yes, I would.

Q. On the degree from very strongly, strongly, undecided, where would you...

A. When I filled out my questionnaire I filled it out very strongly.

Q. Okay. Now, how many teachers have you encountered so far?

A. Approximately thirty (30).

Q. Thirty (30). In this thirty (30), if you make the grading...

A. Uh, huh.

Q. ...where would you put me?

A. In the top five.

Q. Thank you.

Me JEAN LECOURE :
I have no questions, My Lord.

THE COURT :

Thank you, Mr. Berry.

AND FURTHER DEPONENT SAITH NOT

THE COURT :

Okay. We'll adjourn at this point for fifteen (15) minutes.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

VALERY FABRIKANT :

Call Hena Patel.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993),

this twentieth (20th) day of the month of May,
personally came and appeared:

HENA PATEL, born on February second (2nd), nineteen
hundred and sixty-nine (1969), student, confidential
address;

WHOM, after having been duly sworn, doth depose and say
as follows:

THE COURT :

You will need to speak a lot louder than that if you
want your voice to carry. Okay?

A. Yes.

Q. Fine.

EXAMINED BY MR. VALERY FABRIKANT :

Q. Do you recall taking class with me?

A. Yes.

Q. Okay. When was it?

A. It was my second year in engineering.

Q. In... well, ninety-one ('91), ninety-two ('92)?

A. Ninety-two ('92).

Q. Ninety-two ('92). Okay. What course was it?

A. It was engineering 243, dynamics.

Q. Dynamics. Could you describe your general impression of
me as a teacher, as a person, whatever comes to your
mind?

A. He was a very good teacher, doctor Fabrikant always came
on time, and he taught the course well. The course
itself, I thought, was quite difficult, and he would
just walk in with a chalk, and he was quite prepared.
He would make all the concepts seem quite simple, even
though they, in themselves, were difficult. He also
always stressed that education was very important, and
that we should never miss a day of class because each
class represented a link in our knowledge, and if we
missed a class we would be missing a link. So...

Q. Okay. Did you fill in the course evaluation during that
time?

A. I beg your pardon?

Q. Did you fill in a course evaluation during...

A. Yes, I did.

Q. You did. Do you recall question like available for
personalized consultation?

A. Yes.

Q. What grade did you put there?

A. You were always available for out of time, like when we
were not in class, if we needed extra help, we were
allowed to go to his office and he also gave us his home
phone number, in which case if we were to do assignments
during the weekend and we didn't understand something,
we were allowed to call from nine (9:00) in the morning
to nine (9:00) in the evening, so even out of class he
was always available.

Q. Okay. Did you, as a lady, encounter any different
treatment between male and female students on my side?

A. Never. No.

Q. Two questions here: Would you recommend this professor
to another student? What did you respond to that
question?

A. I said yes, I would.

Q. On the grading of strongly agree, agree, undecided, and so on?

A. I said I would... I think it was agree.

THE COURT :
Pardon?

A. I would agree that I would recommend doctor Fabrikant to other students.

VALERY FABRIKANT :

Q. And overall rate teaching, how did you grade it?

A. Very good.

Q. Okay.

A. Okay.

Me JEAN LECOURES :
No questions.

THE COURT :
Thank you.

AND FURTHER DEPONENT SAITH NOT

VALERY FABRIKANT :
Is Lavis Peter here now.

Me BELLEAU :
I don't think so. Would you call Peter Lavis, please?

VALERY FABRIKANT :
Okay. Professor Newsham.

Me JEAN LECOURES :
You already decided that this witness was irrelevant, My Lord.

THE COURT :
I already decided this witness was irrelevant to the questions of special issue, we will see.

Me JEAN LECOURES :
I believe it was more relevant on the special issue than now.

THE COURT :
We will see.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993),
this twentieth (20th) day of the month of May,
personally came and appeared:

GWEN NEWSHAM, born on April twenty-seventh (27th),
nineteen twenty-seven (1927), associate professor,
Concordia University;

WHOM, after having been duly sworn, doth depose and say
as follows:

EXAMINED BY MR. VALERY FABRIKANT :

Q. Do you recall being on the board hearing my complaints against members of university and university itself?

A. Yes, I do.

Q. During this, I believe both of them, there was questions risen as to me being violent, possibility of such things, do you recall that?

A. Yes.

Q. Okay. So maybe we go to more detail into how it came to that. The first complaint was concerning incident in Department of Mechanical Engineering, do you have those decisions with you?

A. No, when you're called for a hearing board, you go to a meeting, they give you a file, and after it's all over you have to give it back again, so I have nothing.

Q. Okay. What is your... Okay, maybe I will then... because I have the file in front of me, and do you recall this kind of statement which was made by the board, that: "Four members of the D.P.C., Department Personnel Committee, were meeting to refuse Fabrikant's reappointment, it is difficult to see under what regulations of collective agreement that could find grounds for this action, considering their earlier nineteen ninety-one (1991) high praise of him, his research and his teaching", do you recall this part of one...

A. Yes, I do.

Q. Yes, okay. Could you elaborate on this issue, you write: "It is difficult to see under what regulations they could find ground for such action", could you elaborate on that? Did you see that their decision was manifestly unfair or... just elaborate on this subject a little bit.

A. Well, does everybody know what a hearing board is?

Q. Well, maybe it is good idea to explain then what it is.

A. All right, I just would say a hearing board is sort of an internal Court, the union, professors' union, to which I belong, invites a list of people from whom members can be chosen, and I happened to be chosen, there were three of us. I had never heard of any of the people in the case before, people in arts and science don't know very much about engineering. And when you're there, you're just called to a meeting and given this file, you look at the file and then you meet the people and hear both sides. At both of these hearings, both sides agreed on the facts, there wasn't dispute about what happened, it was just an interpretation of what happened, it was what the hearing board was about. As I remember, the defendants in the case in the first hearing board, again, did not dispute the facts whatsoever, and didn't attack professor Fabrikant's qualifications in any way, they agreed with his qualifications and his competence.

Q. Well, nevertheless, they decided not to recommend renewal of my contract, this means that something doesn't match here, right? So could you elaborate on that?

A. Well, the hearing board was about what happened on a certain evening, and as I say, they agreed, both sides agreed to what happened. Each side presents a case, professor Fabrikant presented his view of what happened, the people on the other side presented a list of grievances against professor Fabrikant, they did not address themselves to the... what happened, they seemed to think it was acceptable.

THE COURT :

Q. But this did not have any bearing on any question of professor Fabrikant's reappointment or anything else? This was a separate incident, was it not?

A. It's difficult to say. The D.P.C., the four people under consideration, said that at eleven thirty (11:30) at night they were meeting as a committee, and it did have something to do with his reappointment, in that way...

Q. In that sense, yes, but the incident you were called to rule upon was an incident that occurred, I believe,

between doctor Fabrikant and other people?

A. Yes.

Q. Yes.

VALERY FABRIKANT :

Well, maybe it could be asked in somewhat different manner.

Q. Was it in your mind totally separated the incident itself and the question they were deciding as to not to renew my reappointment, or maybe it was related one to another?

A. As I say, we weren't there to hear on such a ruling, the only connection I could see was that it was rather odd, their defense was not a defense, it was a list of grievances, small ones, that they had against professor Fabrikant.

Q. Okay. Do you recall any of those grievances and whether you found them, in any way, supported by evidence?

Me JEAN LECOURE :

This is all hearsay, My Lord.

THE COURT :

Yes, it is.

Me JEAN LECOURE :

From the beginning.

VALERY FABRIKANT :

Well, all right, let me put it differently.

THE COURT :

I'm waiting to see what the pertinence of this is.

VALERY FABRIKANT :

Well, pertinence of this is that there was extreme abuse at Concordia University, including what constituted an assault.

THE COURT :

Well, that is something that if you wish to make evidence of it, you would have to make evidence through... in a direct manner. But professor Newsham, as one of the ones who was sitting as a judge of these incidents, is not allowed to relate her impressions, or her decision, or the decision of the board, or anything else, that has absolutely no relevance to what we're doing here.

VALERY FABRIKANT :

Well, it is relevant...

THE COURT :

Well, I'm ruling it's not relevant. I'm ruling it's not relevant to what we're doing here.

VALERY FABRIKANT :

They considered this particular question, and they came to certain decisions.

THE COURT :

I don't care what decisions they came to, Mr. Fabrikant, whatever decisions they came to is totally foreign to what the jury is going to be asked to do here. The conclusion another panel came to is of no assistance to the jury here. If the facts that you're trying to put in proof are relevant to your defense, then that's something else, but...

Me JEAN LECOURE :

It's total hearsay. If let's say he says assault is relevant, the only two persons that could testify on assault is the victim of assault and the person that did the assault.

THE COURT :

That's what I've said, I said that Mrs. Newsham can certainly not. I have... that's effectively what I've said.

Me JEAN LECOURS :

That's not the proper witness.

THE COURT :

That's effectively what I have said.

VALERY FABRIKANT :

All right, then I...

THE COURT :

I don't know whether I'm making myself clear or not, but...

VALERY FABRIKANT :

I'll put my question differently then, because I still feel that this testimony is relevant from the point of view of how university has reacted to those events, then this is relevant.

THE COURT :

No. No. What is relevant is what are the events, and what may be relevant is how you perceived them or how they affected you, that may be relevant, but you are not going to put a particular color on these events by having professor Newsham, as a member of a board, come here and relate what the board felt, that's not relevant.

VALERY FABRIKANT :

All right. So I want to relate that there was a meeting of the board and their decisions did affect my mind, therefore I want to relate those decisions to the Court, to the jury, and that is relevant I believe. The fact that there was meeting of the board, and that this board considered certain questions and certain decisions were made which definitely affected myself, this is fact in itself, and this fact I want to relate. So I agree with you that I do not try to establish here the fact that I was assaulted, but what I want to establish that there was a hearing, and this hearing has considered certain things, and had come to certain conclusions, and those conclusions affected me, and my behavior, and my perception of what is going on in the university.

THE COURT :

Then in that context, if you put your question in that context...

VALERY FABRIKANT :

This is exactly what I am doing, this is exactly...

Me JEAN LECOURS :

Every facts in life affects his mind, My Lord.

Everything...

THE COURT :

Look...

Me JEAN LECOURS :

Everything would be relevant then.

THE COURT :

...there might be quite a number of things that are relevant, or there might be quite a number of things that have to be heard before one can decide what is relevant to the defense he proposes to make, that's something else.

Me JEAN LECOURS :

The best to speak about his mind is Mr. Fabrikant

himself, of course he's not obliged to testify but...

He can watch T.V. and be affected in his mind.

VALERY FABRIKANT :

Well, let me put it...

THE COURT :

You put your questions to professor Newsham.

VALERY FABRIKANT :

Yes. And to Mr. Lecours, I just would like to say one thing...

Me JEAN LECOURES :

That's not necessary, sir.

VALERY FABRIKANT :

It's not necessary, well all right.

Q. There was an important thing raised there concerning constant allegations that I have...

THE COURT :

No, I'm sorry, you said you wished to put in evidence a decision, if you wish to put in evidence a decision, put in evidence a decision, but you're not going to go back, after the ruling I've made, and put in evidence the proof that was made before the board. You said there was a decision made by this board that affected your mind, or was a factor that affected your mind, okay, if that's your position, go ahead.

VALERY FABRIKANT :

Okay. Fine.

Q. So part of this decision states that the D.P.C. members were worried that Fabrikant's reaction to denial of contract would manifest itself in some aggressive behavior, no reason for this assumption is furnished, hence it is D.P.C.'s feeling of should rather than will. Now my question is, did it look to you the decision was so outrageous that a normal person could become violent?

THE COURT :

No, I'm sorry, that is not what you are allowed to do vis-...-vis this witness. You've established that this witness was part of a board, that this board rendered a certain ruling, you have said to me, because that ruling by itself is irrelevant unless you can establish, as you've said you will, that that ruling affected you.

VALERY FABRIKANT :

Well definitely, if I read...

THE COURT :

Yes, but you're not going to try, by a side door, to have the witness give her impression of the evidence that was heard by that board, that's not admissible. So, if it's the decision that was reached, and you wish to use this witness as a member of the board to testify as to that decision, it's probably not the best evidence because the decision, I would suspect, was rendered in writing?

VALERY FABRIKANT :

Yes. Okay, can I deposit this decision?

THE COURT :

Well, that would depend on what's in the decision.

VALERY FABRIKANT :

Well, in the decision... well, one of the things in the decision, it says that D.P.C. behaved in such a way outrageous that normal person might become violent and they fear of leaving...

THE COURT :

No, that you can't deposit. That you can't deposit. All you can deposit is the disposition of the hearing, that's all, because otherwise you're trying, through this witness, or through the judgement, to make evidence of a whole lot of factors that it would be unfair to put before the jury. The jury haven't heard all the witnesses who were heard that night and they won't. They haven't heard them in the same context, in the same circumstances, and they haven't heard all of the evidence that bore upon the incident in the Department of Mechanical Engineering.

VALERY FABRIKANT :

Okay. But if witness...

THE COURT :

So all you can make proof of through this witness, who was a member of the board, is the disposition of the grievances, period. Because otherwise, you're getting into facts that are absolutely extraneous to this hearing. And you're not doing it with the correct witness, the witness wasn't... this witness wasn't an eyewitness to what occurred on the night in question.

VALERY FABRIKANT :

Well, she was not an eyewitness but this is something else, she has consulted the documents which were presented, and she and other members has come to the conclusion that behavior was so outrageous that normal person might become violent, so is it really relevant to how it affected my mind?

THE COURT :

I don't believe so, because what you have...

VALERY FABRIKANT :

Didn't it enforce...

THE COURT :

What you have said was that that was... there may have been a number of factors that the committee considered to arrive at their decision, but all that the witness can testify to, that would be relevant to this hearing, is the disposition of these claims. She's not here to give her impression on proof, and I'm not going to permit her to give her impression on proof, and that's the nature of the objection that the Crown has been in pains to make since the beginning. Her impression on the proof she heard is totally extraneous to this hearing. Her credentials may be impeccable but her impression of the proof she heard is not pertinent. She may talk about whatever conclusion they... what their disposition was of the complaint.

VALERY FABRIKANT :

Okay. The decision itself, which says that:

"Professors Hoa, Lin, Osman and Sankar, reprimanded for having harassed and intimidated Fabrikant and for having attacked his dignity, reputation and honor."

Now, is this relevant at all or it is not relevant? Is this documentary proof that I had reason to believe that yes, indeed, I was mistreated, let me put it this way, that having read this document, I became even more convinced that yes, indeed, I was mistreated? It is relevant.

Me JEAN LECOURE :

No, the only thing relevant, My Lord, is Mr. Fabrikant went to a board and he got his claim, and he won his claim.

THE COURT :

That's right, that's what I've said. The decision of the board is all that is relevant.

VALERY FABRIKANT :

Well, so let us deposit decision of the board.

THE COURT :

Well no, because you wish to put into the record, with the decision of the board, a whole lot of material that deals with the proof that was heard by the board, and the board's analysis of it, and that I will not permit. Now, either you, as the Crown prosecutor put it, won your grievance or you didn't win your grievance. It's as simple as that, but you're not going to put through this witness the board's evaluation of the witnesses that it heard.

VALERY FABRIKANT :

Okay, not...

THE COURT :

Not in any way. Not indirectly or any other way.

VALERY FABRIKANT :

But this is not the point I am trying to make, the point I am trying to make, that I had reasons to believe that I was mistreated...

THE COURT :

Well, I have no idea...

VALERY FABRIKANT :

...having read this decision.

THE COURT :

I have no idea whether you had reasons to believe, all you can prove by this witness is what that decision was.

VALERY FABRIKANT :

Okay.

THE COURT :

Whether you had reason to believe or not, I suppose you can develop as you develop your defense.

VALERY FABRIKANT :

Okay. So if I can ask her what this decision was, then I can deposit this document.

THE COURT :

No, you can't deposit that document because you have read to me, from that document, a number of factors that if I let you deposit that document will permit you to do indirectly what I'm not allowing you to do directly. And that is to put before the jury an analysis of all of the evidence that the board heard, and that you're not allowed to do.

VALERY FABRIKANT :

Okay, but this analysis is relevant.

THE COURT :

Well, it's not relevant, nobody else's analysis is relevant, what is relevant is a fact. The fact you are apparently attempting to establish is that the board came to a certain conclusion, ask the witness what the conclusion was the board came to.

VALERY FABRIKANT :

Okay. So I cannot ask why they came to that conclusion?

THE COURT :

No, that's right, you cannot ask why they came to that conclusion, you can ask what conclusion they came to.

VALERY FABRIKANT :

All right.

Q. So could you maybe, if you don't recall, maybe you can read your decision.

THE COURT :

Q. Well, you'll have to read your decision to yourself, and then wait for the question.

VALERY FABRIKANT :

Well, maybe we could just read the decision on record?

THE COURT :

No, you can't read the decision... the final decision you mean, the disposition?

VALERY FABRIKANT :

Yes. This is the fact I'm trying to establish, that board came to this decision.

Me JEAN LECOURE :

Would you mind if I have a look at it?

VALERY FABRIKANT :

And what I tried to read was part of this decision.

THE COURT :

May I see that, please? Okay, the decision commences on the previous page. Yes, the witness may read the decision.

A. "We find that the defendants S. V. Hoa, S. Lin, S. Osman and S. Sankar did harass and intimidate V. Fabrikant on the evening of October thirtieth (30th), nineteen ninety-one (1991). The defendants' conduct constituted an act of assault because V. Fabrikant was physically controlled, unlawfully detained and unlawfully restricted in his movements. These actions are in violation of the rights of members of the university, as laid down in article 2 of the Concordia University Code of Conduct."

THE COURT :

That's the decision.

VALERY FABRIKANT :

Sanctions?

THE COURT :

No. No, sanctions aren't pertinent, that's the decision. The sanctions are what the committee decides to do, either to discourage or punish that conduct, the decision is what is pertinent.

VALERY FABRIKANT :

Okay.

THE COURT :

If anything.

VALERY FABRIKANT :

Q. Now, you have been in the university for how long, how many years?

A. Twenty (20) years.

Q. Twenty (20) years. Do you know of any similar incident

in the history of the university?

A. No.

Me JEAN LECOURES :

Irrelevant, My Lord.

VALERY FABRIKANT :

Well...

THE COURT :

The objection... Pardon?

VALERY FABRIKANT :

The objection...

Me JEAN LECOURES :

She's one person out of how many thousands, what's the point asking that from this person?

THE COURT :

Your problem is that...

Me JEAN LECOURES :

It doesn't establish anything whether she knows or not...

THE COURT :

...it establishes nothing because the witness has already testified that, as a member of the Faculty Association, she was called upon, this time, to sit on a board. There is nothing that indicates that she has sat on that disciplinary board for the last twenty (20) years, there is nothing to indicate that she has knowledge of other incidents that were brought before similar disciplinary boards or anything else, so...

VALERY FABRIKANT :

I am not questioning now her as a member of the board, I am now just asking her questions of her experience in the university, and events like this, they are not secret, they become very well known in the university.

Me JEAN LECOURES :

Then it's hearsay, it's illegal, she has to witness the physical behavior.

VALERY FABRIKANT :

That's what I am asking.

THE COURT :

The objection is maintained. The question is not pertinent.

VALERY FABRIKANT :

Okay.

Q. What was the second complaint which you have discussed the next day?

A. You were making a case against the university for having you arrested.

Q. Uh, huh. Yes. Do you remember who appeared there for the university?

A. I don't... a woman, and I don't know.

Q. Okay. Would you like to consult the decision to refresh your memory?

A. Yes, Catherine MacKenzie, Associate Vice-Rector of Services.

Q. Okay. And are you aware of any fact of anybody else in the university...

Me JEAN LECOURES :

It's hearsay, she has to...

THE COURT :

Wait until the question is asked.

Me JEAN LECOURES :

...have personal knowledge.

THE COURT :

Wait until the question is asked.

VALERY FABRIKANT :

Q. From your personal knowledge, as a witness, did you see anybody else ever at the university, professors being arrested and searched by police?

A. No.

Q. Now, could you please read the decision of...

THE COURT :

Would you show that, first of all, to the Crown prosecutor? May I see it please? Yes, just the decision, not the sanctions. The whole decision.

A. "1. We find that Concordia University, as represented by doctor Catherine MacKenzie, violated article 4 of the Code of Conduct, which is members of the university with supervisory authority of any kind, are to use such authority both on campus and off solely for the purposes stated, or implied in university policies, and with due regard to the overall aims and purposes of the university. MacKenzie did not take due care to ascertain facts, and therefore acted impulsively..."

THE COURT :

To ascertain facts, I think, isn't it?

A. "...ascertain facts, and therefore acted impulsively, abusing her authority, and thus depriving a member of the university of his rights.
2. We find that Concordia University, as represented by doctor Catherine MacKenzie, violated article 2 of the Code of Conduct, she attacked the dignity, reputation and honor of doctor Valery Fabrikant by causing him to be arrested by the M.U.C. police, particularly as such was accomplished in full view of colleagues and the public.
3. While the events of November first (1st), nineteen ninety-two (1992) are part of a larger series of events, we do not find that the evidence presented here indicates that the university administration was involved in what appears to be a campaign against doctor Fabrikant."

VALERY FABRIKANT :

Q. Could you elaborate on the phrase "what appears to be campaign against Fabrikant", was it...

What? I cannot ask to elaborate?

THE COURT :

No, can't elaborate on the phrase, you can make evidence of the decision, period.

VALERY FABRIKANT :

Well, can we deposit this decision in the Court record?

THE COURT :

The decision has been read into the record, if you want to separate the decision and from the sanctions and from the reasons, I've no problem with it being deposited, but you're not depositing the reasons for the decision, and you're not depositing the sanctions, and that is why I thought that to have professor Newsham read the decision would suffice, but you're not going to have her explain the decision.

VALERY FABRIKANT :

Okay.

Q. Was this decision respected by university administration?

A. I understand it was appealed.

Q. It was appealed. Do you know on what grounds it was appealed?

A. No.

Q. Okay. Do you recall receiving a letter of Kenniff stating that he agrees with composition of the hearing board?

A. Pardon me?

Q. Do you recall letter of Kenniff stating that he agrees with composition of the hearing board?

A. No, it's nothing to do with the administration that... CUFA hearing board.

Q. Well, you just don't recall receiving such a letter.

A. Yes.

Q. Okay.

VALERY FABRIKANT :

So, do I understand correct that you don't allow me to ask witness to testify on what happened during the hearing? She saw, by herself, what happened during the hearing, why she cannot testify what she saw.

THE COURT :

She cannot testify as to what took place during the hearing inasmuch as you wish her, in so doing, to testify as to the evidence that was put before the board. If, during the hearing, doctor someone or other threw an egg at you, and she witnessed this, then I suppose she could testify as to that, but you cannot, through her mouth, put into evidence what took place at the hearing in the examination and the cross-examination of the various witnesses.

VALERY FABRIKANT :

Okay. Can't we then play the hearing itself?

THE COURT :

No, not at all.

VALERY FABRIKANT :

Why not?

THE COURT :

Because it is simply irrelevant to the proceedings which are in front of us, let us not get bound up on the content of the hearing. You established the decision, two decisions of the hearing board, you said to me, with a view to making evidence as to the effect, either of these decisions, or of these incidents, I'm not at all sure of which, on your mind, that is where we are.

VALERY FABRIKANT :

Okay. Why cannot I also ask to put in the record certain parts of this reasoning which did affect my mind?

THE COURT :

Because it's not your reasoning.

VALERY FABRIKANT :

It's not mine, but it did affect my mind, and my perception of events.

THE COURT :

You are not going to put into the record the reasoning of the board.

VALERY FABRIKANT :

No, no, I'm not putting into the record reasoning of the board, I am putting into the record the reasoning as it affected my mind and my perception, this is what I am doing.

THE COURT :

The reasoning of the board is not going into the record. I'm ruling...

VALERY FABRIKANT :

I repeat once again, it's not reasoning of the board, it is the way it affected my perception.

THE COURT :

Listen, generally proof is made by a number of elements, one, I suppose, is the testimony of doctor Newsham, or professor Newsham concerning the decisions. Now, beyond that, that is all she can say. I'm not going to detail, at this particular point in time, the manner in which the proof may be complemented in order to arrive at the conclusion at which you wish to arrive, there are many ways to skin a cat, as you know. But you're not going to do it by depositing through this witness the content of the decision. I've ruled on that, you can come back at that twenty-five (25) times, you can come back at that twenty-five (25) different ways, the answer is always going to be the same.

VALERY FABRIKANT :

Well, if you don't allow me to question the witness, what can I do?

Q. Thank you for coming.

Me JEAN LECOURE :

I have no questions.

THE COURT :

No questions. Thank you, professor Newsham.

AND FURTHER DEPONENT SAITH NOT

VALERY FABRIKANT :

Now... Miss Venettacci is here?

Me BELLEAU :

My Lord, if I may, I have subpoenaed, at the request of doctor Fabrikant, a doctor from Urgences Sant, who's been waiting in the wings since ten thirty (10:30), I'd like to be able to tell her when, if she testifies, and I request this from the...

THE COURT :

Are you able to help Mr. Belleau there?

VALERY FABRIKANT :

Well, there is... you see, Mr. Belleau is not doing his job, the witness is mine this time, and therefore I need to know in advance what witness is supposed to say. And at this point I have two versions which are totally contradictory, and if Court somehow allows me to talk to witness prior to testifying, I think that would be the best decision. So I ask permission of Court to confer with the witness before testifying and see whether her

testimony is useful in any way, because Mr. Belleau is just not doing his job, what can I do about it.

THE COURT :

I'm ignoring that last comment.

VALERY FABRIKANT :

Well, you ignore the last, but still, you know, I have been put in a difficult position by calling witnesses who are telling not truth, and I cannot even contradict them because, according to the rules, they are my witnesses, and therefore I cannot even contradict them, and the situation is totally absurd, if you recall.

THE COURT :

Are you going to put questions to this witness at this point or what?

VALERY FABRIKANT :

Well yes, but I would like, since question was raised about doctor (inaudible), I feel really bad that I'm taking her time, therefore I need some kind of decision from you in this regard.

THE COURT :

Well, all right, what we'll do is we will have this witness sit down for the moment, I'll adjourn for ten minutes. Mr. Belleau, would you see whether the doctor is prepared to speak to Mr. Fabrikant, and if so, she may speak to Mr. Fabrikant at the edge of the dock while the Court is not in session, and if that solves the problem, well then that solves the problem.

Me JEAN LECOURES :

My Lord, it should be very clear that the doctor is not obliged to speak to Mr. Fabrikant, she must have felt... feel compelled.

THE COURT :

Did you hear what I said? Did you hear what I said? I asked Mr. Belleau, would he kindly see whether the doctor was prepared.

Me JEAN LECOURES :

Yes. Okay.

THE COURT :

Okay? We'll adjourn for ten minutes, ladies and gentlemen.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twentieth (20th) day of the month of May, personally came and appeared:

GIOVANNA VENETTACCI, born on September twelfth (12th), nineteen hundred and sixty-five (1965), secretary, confidential address;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY MR. VALERY FABRIKANT :

Q. Now, do you recall making statement to the police on August twenty-fourth (24th), ninety-two ('92)?

A. What statement? Oh, yes...

THE COURT :

Excuse me, for the sake of the jury, you might want to

establish, the witness simply said she was a secretary, you might wish to establish where and in what capacity and... before you get to the statement.

VALERY FABRIKANT :

All right.

Q. So, you are working where?

A. In the Faculty of Engineering Department, the Dean's office.

Q. Now, do you recall that you made a statement to the police?

A. Yes, I did.

Q. Okay. In this statement you write: "The Dean was so scared that he hired a security guard to guard his office for a month after that".

A. I don't recall because I haven't read the statement.

Q. All right. Would you like to refresh your memory?

A. Yes, please.

THE COURT :

Now, you are proceeding that way, there is no objection from the Crown, but the proper way to proceed is to attempt to establish, from the witness, through her personal knowledge, the facts that you wish to put in evidence. And if she recalls, if she's able to say what happened at such and such a time she'll say, if she doesn't remember, then you may try to refresh her memory with the statement, but I don't think it's proper examination at all to put the statement in front of the witness simply like that without giving her an opportunity to answer questions pertaining to the Dean's fear, and the security guard. Put the questions and see what happens.

VALERY FABRIKANT :

Well, I try to make it shorter.

THE COURT :

Well, please don't try to cut corners.

VALERY FABRIKANT :

All right.

THE COURT :

At least not in that fashion.

VALERY FABRIKANT :

Q. Are you aware of bodyguards guarding the Dean?

A. I was aware of one bodyguard, yes.

Q. Okay. You saw him with your own eyes I understand?

A. Yes.

Q. Do you remember when it was?

A. Not exactly, I remember it was a winter, I don't know what year, I think it was ninety-two ('92), some months during the winter, maybe December of nineteen ninety-one (1991) actually, so...

Q. December of...

A. I'm not sure.

Q. ...ninety-one ('91). Okay. Now, do you know why this bodyguard was hired?

A. I wasn't given privilege to that information, no. I do know he was hired for the Dean.

Q. For the Dean. Do you remember where exactly he was sitting?

A. He was sitting outside the Dean's office, and at times inside the Dean's office, in the corridor.

Q. Okay. Would it be possible to indicate on the map where exactly was he sitting?

THE COURT :

Mr. Fabrikant, the last answer of the witness could admit of some confusion. She said outside the Dean's office, and at times inside the Dean's office, but I think you might wish to have her make a distinction between the Dean's personal office and the offices of the Dean.

VALERY FABRIKANT :

This is exactly what I'm trying to do, this is why I'm going to the map.

THE COURT :

Fine.

VALERY FABRIKANT :

This is exactly what I am doing.

THE COURT :

Q. Now, just look at the map first of all, and then you turn around and face Mr. Fabrikant, and he'll ask you whatever questions he has to ask you.

A. Okay. He was sitting here outside the Dean's office, Associate Dean's office, if I may.

VALERY FABRIKANT :

Q. Well, would it be more correct to say he was sitting in the corridor, near the door leading to the general area of the Dean's office?

A. That's right, right here.

Q. Uh, huh.

A. And then he was sitting in the corridor leading to the door of the administrative assistant to the Dean's office, the corridor right here.

Q. Could you give the number of the...

A. The room? 907-6.

Q. 907-6. It is the door leading to office of who?

A. The administrative assistant Ann (inaudible).

Q. Uh, huh. Okay. So mostly he was sitting either at the entrance to the general office or at the entrance to...

A. Mostly the general office.

Q. Mostly the general, but sometimes... Did you notice any kind of signs why sometimes here, why sometimes there?

A. No, I wasn't aware, as you may know I sit in the back...

Q. Yes.

A. ...therefore I didn't see.

Q. Okay. Could you please then indicate to the jury where exactly you are sitting, because it might be relevant too.

A. 907-10.

Q. Okay. Now, how do you know that it was a bodyguard?

A. Because it was a security guard, they told me.

Q. Okay. Who they?

A. Well, I don't recall, either Ann (inaudible), someone in the office.

Q. Okay. And...

THE COURT :

Can you now turn and face the jury if you're finished with the map?

VALERY FABRIKANT :

Yes.

Q. How do you know that it was Dean who was scared?

A. Because we were both scared.

Q. You mean you and the Dean?

A. Yes.

Q. Just two people in the Dean's office?

A. Well, at the time I was working with the Dean because his administrative assistant was on vacation. Well, not at that time, I wasn't scared at that time.

Q. So you were effectively sitting in 907-6, yes?

A. No. Let me rephrase that. I was scared, I started to get scared just a little before the murders happened, but during the time of the security guard, no, I was not scared.

Q. Okay. So that's kind of relief. So at that time it was only the Dean who was scared, right?

A. Yes.

Q. Okay.

A. Well, I can't say scared, I can say... that's what I say in my statement.

Q. Well, then at this point I have to refer you to your statement. Oh yes, would you like to refresh your memory?

A. I remember writing this, yes, but it doesn't... you must understand that I was traumatized at the time I wrote this.

Q. Well...

THE COURT :

Mr. Belleau, would you return that document to...

VALERY FABRIKANT :

Q. So, may I remind you what you've written here:

"The Dean was so scared that he hired a security guard to guard his office for a month..."

A. After that.

Q. "...after that."

A. That's what I don't understand, why I put that when it was a month during December nineteen ninety-one (1991), not after the murders.

Q. Not after what?

A. The murders.

Q. No, of course the murders have nothing to do with that.

A. No, no.

Q. I'm not implying that. I'm talking about December ninety-one ('91), and you said here, maybe it makes sense to make a complete phrase so that jury will know what the whole thing is all about. You wrote:

"I know that there is a conflict because he, Fabrikant, didn't get the promotion he was looking for, and because of this I think he went crazy. The Dean was so scared that he hired a security guard to guard his office for a month after that."

Now, my understanding is that your phrase: "I think he went crazy" relates to the time of the murders, right, it's not at the time I didn't get the promotion.

A. ...

Q. Right. All right.

THE COURT :

Q. Would you answer please?

A. Yes.

VALERY FABRIKANT :

Q. But still, one thing is still valid, which is that you relate that allegedly I didn't get the promotion, and because of that Dean was so scared that he hired a

security guard to guard his office for a month after that.

A. That's not what I wrote, no.

Me JEAN LECOURE :

I understand he's skipping a line, my Lord.

VALERY FABRIKANT :

Well, I'm skipping the line because...

THE COURT :

Would you...

VALERY FABRIKANT :

...she herself said...

THE COURT :

Well, don't skip lines, if you're going to read from the statement, if you're going to read from the statement, read the whole part integrally.

VALERY FABRIKANT :

I did. I did read the whole part, but I made it clear with the witness that the phrase: "I think he went crazy" does not relate to nineteen ninety-one (1991), and this is why I skipped it.

Me JEAN LECOURE :

I think the witness should have her statement in front of her.

THE COURT :

If you have a copy.

Me JEAN LECOURE :

I don't have...

VALERY FABRIKANT :

Well, I am prepared to give it to her.

Me JEAN LECOURE :

I don't know in advance...

VALERY FABRIKANT :

I skipped it with the evidence from the witness that this is not what she meant, therefore the phrase: "I think he went crazy"...

Me JEAN LECOURE :

He's not fair with the witness, My Lord, she should have the statement in front of her.

VALERY FABRIKANT :

Sure, I have nothing against that. All right.

Q. So would it be correct reading that the first phrase where you allege that I didn't get some kind of promotion, and right after that to say that Dean got so scared that he hired bodyguard to guard him for a month, because the phrase: "He went crazy" relates to another event and another time, correct?

A. Could you rephrase that? Could you say that again?

Q. Okay. In simple terms, can we just not read the phrase: "He went crazy" because it relates...

A. But that's my opinion.

</pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">question is not about this, my question is, can we read this paragraph with total sense skipping the phrase: "He went crazy"?

A. No.

Q. Okay. Then you just said that "he went crazy" relates to the time of murders.

A. Yes.

Q. But promotion and hiring of bodyguards is nineteen ninety-one (1991).

A. Yes, but I don't mean that he hired a bodyguard because you didn't get your promotion.

Q. All right. Then why did he hire bodyguards then?

A. I don't know. I know he was scared, and I wasn't told why he hired, I'm just his secretary, I'm not told of confidential matters, and to me it seemed like he was scared, and he hired the bodyguard.

Q. Ah, okay.

A. Or a bodyguard...

Q. Okay. So we put it this way, that Dean was scared in December of ninety-one ('91), he hired bodyguards but you have no idea why he was scared or what he was scared of, correct?

A. I knew he was...

Me JEAN LECOURE :

My Lord, he is cross-examining the witness, I think he will have to follow the rules. First to use a statement, section 9 says there must be an inconsistent written statement, and the only thing he can do is bring the attention. And right now he's asking leading questions and considering the witness as hostile, everything is illegal, My Lord, it's his witness.

VALERY FABRIKANT :

What is leading in my question?

THE COURT :

You're cross-examining the witness on the content of the statement rather than simply using the statement to refresh the witness' memory, as I permitted you to do.

VALERY FABRIKANT :

Well, I cannot ask... Okay. Forget about statement, can I ask witness just simple question: "Do you know what the Dean was scared of?"

Me JEAN LECOURE :

Mr. Fabrikant is not in cross-examination anymore.

THE COURT :

No, I know, but he can certainly...

Me JEAN LECOURE :

He's on his own...

THE COURT :

...he can certainly ask the witness what the Dean was afraid of.

VALERY FABRIKANT :

What's wrong with that question?

THE COURT :

That's what he said.

VALERY FABRIKANT :

Yes.

THE COURT :

That's what he said.

Me JEAN LECOURE :

The question was much longer than that, My Lord.

THE COURT :

Would you reformulate your question?

VALERY FABRIKANT :

All I ever said: "Do you know what the Dean was scared of?"

A. At the time when I wrote this the Dean was very scared.

Q. Well...

A. At the time that... just before the murders, and he also was worried at the time of December nineteen ninety-one (1991), yes.

Q. Well, do you know that he was worried about me?

A. Yes.

Q. Yes. How do you know?

Me JEAN LECOURE :

That's a leading question, My Lord, and also it involves hearsay. She must...

VALERY FABRIKANT :

Okay. Okay. I will ask it differently.

Q. Do you know who...

THE COURT :

Just a second. Just a second.

Me JEAN LECOURE :

She must have personal knowledge, if it's told by the Dean, she's not the proper witness.

THE COURT :

That's right.

Me JEAN LECOURE :

That's hearsay.

VALERY FABRIKANT :

Okay.

THE COURT :

So you're withdrawing your question?

VALERY FABRIKANT :

Well, I will just ask differently.

Q. You saw that Dean was scared, look of the Dean was scared?

Me JEAN LECOURE :

This is a leading question.

VALERY FABRIKANT :

Okay.

Q. How did the Dean look at that time?

A. He was worried.

Q. Worried. Now, in your statement you used another word, would that other word be more correct?

A. To describe how he was before the murders, yes.

Q. No, no, no, I'm talking about ninety-one ('91).

Me JEAN LECOURE :

This is another leading question, My Lord. He should ask her: "Did you use another word in your statement?"

VALERY FABRIKANT :

Well, don't you see that the witness is trying to elude questions, maybe then we invoke section 9.2 of Evidence Act and declare witness adverse.

THE COURT :

I'm not prepared to say the witness is trying to elude your questions, your questions are far from clear, and...

VALERY FABRIKANT :

Unclear? I think they're very clear. They're very clear.

THE COURT :

Would you reformulate your question? It's your witness, you see.

VALERY FABRIKANT :

Yes, this is the problem that this is my witness, and you do not wish to see that witness is not really my favorite, you realize that.

Me JEAN LECOURE :
There's absolutely no evidence of that, My Lord.

VALERY FABRIKANT :

No evidence. Well...

Q. So in nineteen ninety-one (1991), what was the look of the Dean?

A. When?

Q. Well, at the time of hiring of bodyguards.

A. Well, it depended on certain days, I don't know how his look was.

Q. All right, I'll put it differently.

THE COURT :

Okay. I think we will stop until two fifteen (2:15).

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITNESS: GIOVANNA VENETTACCI -- UNDER THE SAME OATH

EXAMINED BY VALERY FABRIKANT (CONT'D):

Q. Okay. Did we establish the fact that the Dean was scared in December of ninety-one (91)?

A. Yes.

Q. All right. Were you scared at that time?

A. No.

Q. Was anybody scared in the Dean's office except Dean?

A. I don't know.

Q. Well, at least you are not aware of that?

A. That's right.

Q. Now... and you also mentioned that the Dean was especially scared the week before the shooting?

A. Yes.

Q. Could you give more details to that? How do you know that? What did you see? What did you observe?

A. Well on Thursday, August twentieth (20th), you had walked in front office, went to the Dean's corridor, walked out of my end of the office. I went to the front office to ask if you had spoken to anyone, and which they answered no. So I went to the Dean and told him that doctor Fabrikant just passed by with no apparent reason, no apparent business with anyone, in which he went to discuss the possibility of putting a door in front of the corridor, where the corridor started, so that people who did not have business with him wouldn't be allowed through. And that's when you passed again, and this time you said hello to me, I went to tell the dean that you had passed again and we couldn't see you afterwards. And he was scared, and we told the receptionist that under no circumstances was she to let you through unless you specified your reasons for being there.

Q. Okay. Do you do this to anyone who passes past you, you run to the Dean and say such and such has come, and verify whether that person has any business in front office, do you do it to everyone who passes?

A. It's never come to my attention anyone passing through without having a reason.

Q. Well, how did you know that I didn't have reason until you went to the front office...

A. That's right.

Q. ...and asked them, you couldn't possibly know whether I had any reason, right?

A. Right.

Q. So what made you go to the front office and ask? Do you do it for everyone?

A. Well, at that point I was getting a lot of calls from Dean... from Canada's universities as well as some people in the States telling me that... to ask the Dean to remove your e-mail privileges because it was disrupting their work, and I saw you walking and I asked the front office.

Q. Why is it you were getting calls? Who are you such...

A. Because I was answering the Dean's telephone.

Q. Why would they call Dean instead of just saying me...

A. I don't know.

Q. ...the same thing. Was these calls just on Thursday? You got those calls on Thursday?

A. No, I was getting them all through the week.

Q. So why on Thursday, Thursday appearance was so worse then?

A. At that time that's the way I reacted.

Q. I understand, but you definitely, this impression that you're hiding some more deeper reason for your reaction, isn't it?

THE COURT :
You're cross-examining your own witness.

VALERY FABRIKANT :
Well, the witness is definitely not saying something, because the way the witness explains her action doesn't look natural at all. Someone comes to the Dean's office just once and she immediately runs to the front office to check if I had any business there. This is... Even the police they don't do it I think.

Me JEAN LECOURE :
She gave an explanation, My Lord.

VALERY FABRIKANT :
Really strange, isn't it?

Me JEAN LECOURE :
The e-mail come back.

THE COURT :

Q. Is the e-mail the only explanation of that?

A. Well, I was also hearing things that... he worried me, from what I was hearing, I can't specifically say what I was hearing but I was worried about you at the time, yes.

VALERY FABRIKANT :

Q. Well, unless you can say what you were hearing, we cannot possibly guess why you were worried. Could you tell to the Court what exactly you were hearing? Because your behavior should be explained.

A. I can't answer that at this time.

THE COURT :

Q. You don't know the answer to that or you can't recall?

VALERY FABRIKANT :
She knows the answer.

THE COURT :
Well, you're asking the question, the answer is... what you're inviting is hearsay.

VALERY FABRIKANT :
No.

THE COURT :
What you're inviting is hearsay.

VALERY FABRIKANT :
Not hearsay, I inviting explanation for her behavior, I am sorry.

THE COURT :
She said: "I did what I did because of things I was hearing".

VALERY FABRIKANT :

Q. Well, so what were those things so that we see that her

behavior was justified.

A. I was hearing people being worried, especially due to the fact of your e-mail messages.

Q. Well, who people?

A. The different people, I don't know who their names are, at this point, but the different people who were calling saying that there were letters going through the e-mail that were abusive to the university or whatever. And when I saw you walk in the office I went up in the front to see if you had any business being in the office.

Q. Well, was any threats in those e-mail?

A. No.

Q. No. So...

A. I didn't read the e-mail, I don't know.

Q. Well, you say that...

Me JEAN LECOURE :

No, I think, My Lord, if you refer to a previous statement, you should first show inconsistencies, and I suggest that from now on we follow Milgaard.

VALERY FABRIKANT :

Q. Now, I refer you to statement saying:

"He was sending a lot of e-mail to all parts of the world saying how bad doctor Swamy was, and also the university administration."

So this means that mainly you knew the content of...

A. I didn't know the content, I heard the contents from different people, and I can't say who at this moment, I don't remember.

Q. And that is enough for you to run to the front office...

A. I didn't run, I walked.

Q. Well, all right. You walked to the front office to check if I had any business. Okay. How on earth, from the front office, they could know? Maybe I got to Mrs. Maisonneuve.

A. I, my office is next to Mrs. Maisonneuve.

Q. So you couldn't possibly know whether I was or wasn't there?

A. Yes, it's right next to my office, I know you did not stop to speak to Mrs. Maisonneuve.

Q. Well, you don't see through the walls, do you?

Me JEAN LECOURE :

This is a leading question.

THE COURT :

You're cross-examining your own witness, and... you called the witness, there are rules you have to follow.

VALERY FABRIKANT :

All right. Fine.

Q. Now at that time you said you felt me to be a threat to you too?

Me JEAN LECOURE :

Leading question, My Lord.

VALERY FABRIKANT :

Okay. Well, she said it, I'm just recalling. She already said...

THE COURT :

Go ahead.

Me JEAN LECOURE :

Go to the next question then.

VALERY FABRIKANT :

No, I am just trying here to confirm that, yes.

THE COURT :

All right, go ahead.

VALERY FABRIKANT :

Q. So?

A. I was scared, my gut feeling, I was scared, I can't explain why I was scared but I was scared.

Q. This is nice.

Me JEAN LECOURS :

The accused is not entitled to make comments, My Lord.

THE COURT :

You're correct.

VALERY FABRIKANT :

Q. Did you have any specific reason to be scared?

A. No.

Q. No. Did I threaten you in any way?

A. No.

Q. Did I look at you badly?

A. No.

Q. No. Did the Dean tell you something?

A. No.

Me JEAN LECOURS :

Leading question.

THE COURT :

Maintained.

VALERY FABRIKANT :

Q. Well, did anyone give you any indication as to that you should be worried?

Me JEAN LECOURS :

Leading question.

VALERY FABRIKANT :

This is not leading.

THE COURT :

That question is all right.

Me JEAN LECOURS :

The proper question is: "Did you hear anything?"

THE COURT :

That question is all right.

VALERY FABRIKANT :

It is the same thing: "Did you hear..."

THE COURT :

I said your question was all right.

A. I told you, I heard things and I don't know right now who told me, there was a lot of things going on in the university, a lot of different people were talking.

Q. Well, what are they? So there were specific things which made you scared, not just the fact that I passed through, right?

A. I was worried because of the e-mail messages going around, things that people were discussing, and you walking in the office made me worried.

Q. E-mail is just... Okay. Did you or didn't you hear or knew, or saw anything which would make you really fear? Because the word fear, paper is not dangerous, letter is not dangerous, e-mail is not dangerous. Did you see anything or hear or observe which would make you feel threatened?

THE COURT :

The witness told you, as a result of what she heard concerning the e-mail that was being sent, combined with you walking into the office, worried her. That's what she said. That's what you asked, that's what she said. Now, perhaps you don't like that answer but there it is.

Me JEAN LECOURS :

And more than that, it's hearsay.

VALERY FABRIKANT :

It's not hearsay, I'm asking to explain her behavior, so... it

is not hearsay, it's a normal question.

Q. Okay. Now... so you cannot explain why it sounded like a threat to you?

A. I never said it sounded like a threat to me.

Q. Oh, oh, here I would like to refer you to your own statement:

"He has felt like a threat to me, plus everyone in the office."

A. Is that on my statement?

THE COURT :

Would you show the witness the statement?

VALERY FABRIKANT :

And just recently she said that she was not scared and nobody else was scared. Well, maybe you have the courage to declare the witness adverse and I could really question her?

Me JEAN LECOURE :

We're not proceeding in accordance with Milgaard right now, My Lord.

VALERY FABRIKANT :

Well, I invoke again section 9.2 of Canada Evidence Act. The witness is...

Me JEAN LECOURE :

First thing that the Judge should examine is...

THE COURT :

Yes, yes, I know.

VALERY FABRIKANT :

Well, let us examine.

THE COURT :

May I see the statement, please?

VALERY FABRIKANT :

Please pay attention that not only statement says that she felt threatened prior to shooting immediately, she says that even in September, not only she but everybody else felt threatened, while here she testified that in September, neither she nor anybody else felt threatened. It's where the...

THE COURT :

Just a minute. I wonder, ladies and gentlemen, if you would kindly withdraw for the minute.

MEMBERS OF THE JURY LEAVE THE COURTROOM

WITHOUT JURY

THE COURT :

Your position, Mr. Fabrikant, purely and simply is that there's a contradiction between the witness' testimony this morning and what is written in the statement.

VALERY FABRIKANT :

Not only that, she definitely is not saying all what she knows, she's eluding questions. She is trying, in one case, to say one thing, then another thing, it's obvious case of adverse witness, and from her position it is clear, she couldn't be possibly non-adverse.

A. Can I answer the question?

THE COURT :

No, just a minute.

I wonder if you would explore with the witness the circumstances of the making of this statement.

VALERY FABRIKANT :

Well...

THE COURT :

It was touched on this morning but I would like you to go through it again.

Me JEAN LECOURE :

Can I see it also, because I couldn't find it in my...

VALERY FABRIKANT :

What? I'm not sure I understand. What?

THE COURT :

Well, I think you ought to prove the statement and the circumstances in which that written statement was made, and where.

VALERY FABRIKANT :

What it has to do with the obvious...

THE COURT :

It may have something to do. I don't know yet, but would you please prove where that statement was made and in what circumstances?

VALERY FABRIKANT :

Well, the statement was made on August twenty-fourth (24)th according...

THE COURT :

Would you please... you'll have to establish it through the witness, no point you telling me where it was made, you weren't there and neither was I.

Me JEAN LECOURE :

I don't recall the statement myself.

THE COURT :

Would you hand the statement back to Mr. Fabrikant, please?

VALERY FABRIKANT :

Well, do you think I fabricated it?

Me JEAN LECOURE :

I think I gave you my copy because...

VALERY FABRIKANT :

I'm not that talented.

THE COURT :

Now would you go ahead, present the statement to the witness and have her identify her signature, and please establish for me the circumstances in which that statement was made.

VALERY FABRIKANT :

Well, Mr. Belleau, this is the statement.

Q. Do you recognize your statement?

A. Yes.

THE COURT :

There are now two pages.

VALERY FABRIKANT :

Q. Both pages?

A. Yes.

Q. It is your handwriting?

A. Yes.

Q. Did anyone dictate to you what to write?

A. No.

Q. No. Were you coerced to write something specific by anybody?

A. Was I what?

Q. Were you coerced, I mean anyone forced you to write something specific accusing me of something, or...?

A. No.

Q. No. Anyone was exerting on you any pressure of any kind whatsoever? It was your free expression?

A. Yes.

Q. Nobody threatened you during the writing in any way?

A. No.

Q. No.

THE COURT :

Where was the statement taken, at what time, in what circumstances?

VALERY FABRIKANT :

Well, probably at police station.

Q. Where was the statement...

A. It was taken in the police station after the events.

Q. Yes. At what time approximately?

A. Six o'clock (6:00).

Q. At six o'clock (6:00). Were policemen pressuring you to...

A. I was traumatized. Yes, I was pressured somewhat by the events. I was affected.

THE COURT :

Have you, Mr. Lecours, any questions to put on the taking of the statement?

Me JEAN LECOURES :

No, My Lord.

THE COURT :

Fine. May I see the two pages, please?

A. When I wrote the statement, if I may, I was told to write on my impressions, these are my impressions.

THE COURT :

Well, in looking at the statement, you correct me if I'm wrong, but I note two contradictions between what the witness said today and what the witness said in the statement. And on the second page, the statement says:

"I knew this man was crazy through reading some of the e-mail he sent, and also that the Mechanical Engineering Chairman secretary told us..."

Etc. But I refer particularly to the reading of some of the e-mail. The second one is:

"...that he felt like a threat to me and everyone in the office."

In the light of these answers, and the statement, I'm prepared to permit Mr. Fabrikant to cross-examine the witness on the content of the statement. Jury please.

MEMBERS OF THE JURY ARE PRESENT

VALERY FABRIKANT :

Does it mean that I can cross-examine her too?

THE COURT :

You can cross-examine...

VALERY FABRIKANT :

I mean beyond the...

THE COURT :

You can cross-examine her for the moment on the statement, we'll see after that.

VALERY FABRIKANT :

All right.

WITNESS: GIOVANNA VENETTACCI -- UNDER THE SAME OATH
CROSS-EXAMINATION BY MR. VALERY FABRIKANT ON STATEMENT

Q. So would you like to explain this contradiction which, on the statement you said that in September he was felt like a threat to me and everyone in the office?

A. Because there was a security guard present.

Q. In September. In September?

THE COURT :

You better say what year.

VALERY FABRIKANT :

Q. Do you refer here to September nineteen ninety-one (1991)?

A. I think so, yes.

Q. So, was the bodyguard present in September?

A. Well when I wrote that, I imagine that's what I was talking about. I'm not... it's because I'm reading the statement, and

I haven't had enough time to really reflect on what I've written to try to remember what it was I was saying, I'm just confronted with the statement a year after, and I'm not sure what I wrote, why I wrote it.

Q. Well...

A. And even at the time I was traumatized.

Q. Maybe you just wanted to present me as evil creature, and that was the only purpose to write the way you wrote, could that be the reason?

A. No, it's how I felt at the time.

Q. Well, after shooting it's very easy to feel this way, I would have felt the same way, but you are referring here to the prior facts. So is it true or is it not true what is written here?

A. When I felt threatened was when the security guard was there, I and the people in the office were threatened because of the presence of the security guard, when exactly he was there, I don't remember.

Q. Again, just earlier today you said that you do remember it was December, now you no longer remember that?

A. No, I don't remember.

Q. But just before lunch you did, or at least you said you did. Could you explain this contradiction?

A. No, I can't explain it.

VALERY FABRIKANT :

Is this enough or I should continue?

THE COURT :

Uh, huh.

VALERY FABRIKANT :

I mean, is it enough to declare the witness adverse in general?

THE COURT :

No.

VALERY FABRIKANT :

So what do you need to declare it?

THE COURT :

Are you finished cross-examining on the statement?

VALERY FABRIKANT :

No.

THE COURT :

Then continue to cross-examine on the statement.

VALERY FABRIKANT :

Q. So what is the truth now? Let us kind of make some statement which, from your point of view, is true, the way you know it now. In September, as it's written here, did you, or to the best of your knowledge anybody else, felt me like a threat?

A. If the security guard was present in September, yes, if not, no.

Q. Okay. So mere presence of security guard was signal to you that it was, I am a threat to you?

A. Yes.

Q. Did you have anymore valid reasons to feel that way?

A. No.

Q. Could it be that security guard was posted there intentionally to damage my reputation that you be threatened? Could that be the case?

A. No.

THE COURT :

Unless the witness knows why the security guard was posted, and had something to do with the posting of the security guard, how do you expect her to answer that question?

VALERY FABRIKANT :

Well...

THE COURT :

In all fairness.

VALERY FABRIKANT :

Q. Okay. Here again you write that: "The Dean was so scared that he hired a security guard".

A. It was my impression that that was why the security guard was put there, because he was scared.

Q. Well, what it has to do with you?

A. Well, if there's a security guard there present, there's some form of danger, and I'm in the office.

Q. But just recently today you said that you were not scared until one week prior to shooting, so then you were not saying the truth?

A. Like I said, I just got the statement put in front of me, and I haven't had a chance to read it.

Q. No, no, now I am asking you not on your statement, now I am asking you question on what you testified here, and you testified here, before lunch, that you didn't feel threatened in any way until the last week before shooting, do you remember that?

A. Yes.

Q. So, did you lie then or you're lying now?

Me JEAN LECOURE :

It's not a question of lying, My Lord.

VALERY FABRIKANT :

Okay.

Me JEAN LECOURE :

It's a question of...

THE COURT :

The objection is maintained.

Me JEAN LECOURE :

...trying her best.

THE COURT :

The objection is maintained.

Q. You're not obliged to answer that question.

VALERY FABRIKANT :

Q. Okay. So what is the truth then? Were you telling the truth, when you said that you were not threatened, or now when you say that you were threatened?

Me JEAN LECOURE :

Again, My Lord, it's implying a lie again.

THE COURT :

You can't imply that because two statements are inconsistent it necessarily presumes malice or bad faith on the part of the witness, impressions are tricky things.

VALERY FABRIKANT :

I'm just asking what is the true statement.

A. I felt threatened when the security guard was there, and yes, I felt threatened before, the week before, prior to the murders.

Q. But just before that you said that at that time, when you mentioned December, you did not feel threatened, so which statement is correct?

THE COURT :

The witness said that if the security guard was present she felt threatened. My recollection is that she also said if the security guard wasn't present, she did not feel threatened, is that what you said? Yes.

VALERY FABRIKANT :

Well, but earlier I asked her about this specific incident when she wrote: "Dean was so scared that he hired bodyguard", and I asked her: "Were you, at the time, scared too?", she said no. So this is definitely contradiction to what she says now, because I asked specifically at the time bodyguard was there, and this is a contradiction.

THE COURT :

Well, all right.

VALERY FABRIKANT :

Q. So would you explain this contradiction?

THE COURT :

If she can explain it she'll explain it, if she can't explain it, there you are, and you'll make your argument in due time.

Me JEAN LECOURES :

I think she's waiting for the question.

THE COURT :

Well the question was, are you able to reconcile these two statements, in your mind? Will that do? Is she able to reconcile...

VALERY FABRIKANT :

Yes, yes, yes.

A. No, I'm not able to.

THE COURT :

Q. You're not. Okay.

VALERY FABRIKANT :

So what in this situation one is supposed to do? So, is my understanding correct that I can expect you to declare witness adverse? She clearly makes contradictory statements which she cannot possibly justify in any way. What else is needed to declare witness adverse? How much do you need?

THE COURT :

I've already permitted you to cross-examine the witness on her statement.

VALERY FABRIKANT :

But this is not enough, I need the witness to be declared adverse so that I could question her on other things.

THE COURT :

No, you now need the witness to be declared hostile.

VALERY FABRIKANT :

Yes, adverse, whatever you call it.

THE COURT :

A trial judge has the Common Law power to declare a witness hostile to the party calling the witness, the witness is hostile or has an animus when the witness is not desirous of telling the truth.

VALERY FABRIKANT :

Yes.

THE COURT :

But merely being unfavorable to the party calling him does not, per se, render the witness hostile.

VALERY FABRIKANT :

This is not unfavorable, she has clearly made...

THE COURT :

If you want my impression, and it's my impression that counts since I'm the one that has to declare her hostile, I can't come to the conclusion that the lady is not desirous of telling the truth.

VALERY FABRIKANT :

Okay. She may...

THE COURT :

So no, I won't declare her hostile on the basis of what I've

heard so far.

VALERY FABRIKANT :

She clearly made two statements totally contradictory.

THE COURT :

So what?

VALERY FABRIKANT :

She admits that she cannot reconcile them, and this is not proof to you...

THE COURT :

This is not a laboratory experiment, we're dealing with human beings.

VALERY FABRIKANT :

Yes.

THE COURT :

And human beings have different impressions at different times.

VALERY FABRIKANT :

Well, just one hour before and one hour later it is a different impression.

THE COURT :

The answer is no.

VALERY FABRIKANT :

Well, I think that you are putting yourself in a pretty shameful position as a Judge, you are supposed to be impartial Judge. Clearly, witness...

THE COURT :

I've ruled, now would you go ahead?

VALERY FABRIKANT :

Yes.

Q. So where do we stand now? You felt threatened when bodyguard was there, when bodyguard was not there you didn't feel threatened. Now, before the shooting, was there a bodyguard?

A. No.

Q. No. But you nevertheless felt threatened?

A. Yes.

Q. Okay. You made a statement here: "Especially the Dean who was most scared", what made you make such a statement, "the Dean was most scared"?

A. Because that's the way he appeared to me.

Q. Okay. So he was more scared than you for example or everybody else?

A. I don't know if more than me or anybody else, but my impression of him was that he was scared.

Q. Most scared. Okay. Did he, at any time, tell you that he is scared?

A. When you walked in the office on Thursday, yes, he told me.

Q. What exactly did he tell you?

A. I don't remember.

Q. Okay. Not exactly, just general meaning.

A. That he was scared.

Q. That Fabrikant comes to kill him, something like that?

A. No, that he was scared.

Q. Just scared of what?

A. Of the fact that you were coming in the office for no reason.

Q. Okay. And he decided to lock all doors of his office, the past two weeks, is this a true statement?

A. Because the administrative assistant was away on vacation, yes, we had locked.

Q. So his doors were locked while he was inside his office, is this a true statement?

A. Depending, at times yes, most of the times yes.

Q. Okay. And he locked his door because he was scared of me?

A. No, because the administrative assistant wasn't there.

Q. Well... but still, the phrase looks like this:
"The Dean was the most scared and decided to lock all doors of his office the past two weeks while he was inside his office."

It doesn't say anything about assistant, it just says that he was so scared that he decided to lock all the doors in his office while he was inside.

A. Yes.

Q. Is this correct statement?

A. Yes.

Q. All right. Now, do you know of any specific reasons? For example did I threaten him?

A. No. I don't know of any specific reasons.

Q. Have you been present during meeting between Swamy, you and Venettacci where Dean told her that I threatened to kill him, allegedly? Were you present there?

A. I am Venettacci.

Q. I'm sorry, Benavente.

A. No, I don't recall of the meeting.

Q. You don't recall that meeting at all?

A. No, I don't know which meeting you're talking about.

Q. Well, was there any meeting at which Dean suggested to put a chain somewhere between...

A. Right after you walked in the office, when we were telling Cecilia, who is the receptionist, not to let you in without asking what was your business there first, that was the only meeting...

Q. Uh, huh.

A. ...but it was not said that you threatened the Dean.

Q. So...

A. She may have come to that conclusion, yes, but I don't know.

Q. Well, was there any explanation why me?

A. No, there was not any explanation, we are secretaries, we don't know.

Q. All right. How long have you been working with this university?

A. It's been four years.

Q. Four years. Do you recall the time in nineteen ninety (1990)...

A. Actually, may I answer it, it's been seven years, but four years in the Dean's office.

Q. Do you recall the year nineteen ninety (1990) when there was allegedly some smell in the Dean's office?

A. Yes.

Q. Okay. Did you feel any smell at that time?

A. Yes. I didn't feel, I smelled it.

Q. And did you see any work done there at that time?

A. What kind of work?

Q. Well, they for some reason locked the whole part of the Dean's office...

A. We were removed from the office, yes.

Q. Yes. And there was a strange rule that Dean was again, for some reason, locked in his office, correct?

A. I'm not sure.

Q. You're not sure, you don't remember that time?

A. All I know is I was removed from my office and put in another office.

Q. Uh, huh. When you needed to... where was your office at that

time?

A. Where was which office?

Q. Well, where were you moved to?

A. To room 905.

Q. 905. And when you needed to get into the main 907, do you remember that the door was locked?

A. No, I don't remember.

Q. Do you remember anything of that time?

A. It's been a long time.

Q. Oh yes, it has been so long.

THE COURT :

Mr. Fabrikant, you're outside the statement and you're back in cross-examination.

VALERY FABRIKANT :

Yes, and I'm not allowed. Well for your witnesses, all right, you just don't let me question them.

Me JEAN LECOURE :

No questions.

THE COURT :

Thank you.

AND FURTHER DEPONENT SAITH NOT

VALERY FABRIKANT :

De Santo Carmine.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twentieth (20th) day of the month of May, personally came and appeared:

CARMINE DE SANTO, born on December third (3rd), nineteen hundred and sixty-six (1966), student, confidential address;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY MR. VALERY FABRIKANT :

Q. Do you recall taking course in my class?

A. Yes.

Q. Do you remember what year was it?

A. It was last year.

Q. Nineteen ninety-two (1992)?

A. That's right.

Q. It was a course in statics or dynamics?

A. Dynamics.

Q. Dynamics course. Okay. Would you describe to the jury what is your recollection of me as a teacher, as a person, whatever you wish to say?

A. You're a very good professor, responsible, very accessible to the students, you knew your material, you were clear in your teachings and explanations. You taught the material well.

Q. Okay. What was the human relationship between me and the students? Did you notice any disrespect, any... well, in general what was the relationship between me and the students?

A. It was very good, you respected the students and the students respected you.

Q. How many teachers so far have you met at Concordia?

A. How many have I met?

Q. Yes.

A. How many have I had as professors?

Q. Yes.

A. It's...

Q. Approximately.

A. Around twenty (20), twenty-five (25).
Q. If you would grade them, where would you put me in as grade?
A. As a professor you're one of the... near the high, the top.
Q. I appreciate you coming here.

Me JEAN LECOURE :

No questions.

THE COURT :

Thank you, sir.

AND FURTHER DEPONENT SAITH NOT

VALERY FABRIKANT :

Debbie Young.

Me BELLEAU :

Debbie Young.

Me JEAN LECOURE :

If this is a student, My Lord, could we be told the approximate number of these type of witnesses?

VALERY FABRIKANT :

I think that taking into consideration the hoop-la of media, one should appreciate courage of these people.

Me JEAN LECOURE :

That's not my point.

VALERY FABRIKANT :

Well, this is my point.

Me JEAN LECOURE :

Because we might shorten the debate, that's the only reason why I...

VALERY FABRIKANT :

Well, each takes not more than a couple of minutes.

Me JEAN LECOURE :

...that's why I'm asking the questions.

VALERY FABRIKANT :

If you say that I cannot call anyone, you just say it.

Me JEAN LECOURE :

No, no...

THE COURT :

What the Crown prosecutor is saying is, he may be prepared to make an admission which would shorten this, so...

Me JEAN LECOURE :

I just want to know how many...

THE COURT :

That's all he said.

Me JEAN LECOURE :

...how many others there are.

VALERY FABRIKANT :

I understand two more people are here.

THE COURT :

I see.

Me JEAN LECOURE :

Well, let's hear them then.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twentieth (20th) day of the month of May, personally came and appeared:

DEBBIE YOUNG, born on April twentieth (20th), nineteen hundred and sixty-three (1963), student, confidential address;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY MR. VALERY FABRIKANT :

- Q. What year were you taking class with me?
A. In nineteen eighty-eight (1988).
Q. In nineteen eighty-eight (1988). Was it one class or two classes?
A. I had two courses.
Q. Two courses. What is your recollection in general of the way the teaching was done, the way the human relationship in class was? Tell to the Court whatever you remember from that time.
A. I remember you as a very good professor, and you always encouraged the students to ask questions and to seek additional help if they needed it.
Q. Were those courses, from your point of view... did you use those courses in future courses which you studied, the content of these courses?
A. Yes. The courses are basic engineering, and foundation of engineering.
Q. All right. Was I available for consultation? Did the treatment... was the treatment of students fair?
A. Yes, it was, and you were available at any time, you encouraged the students to call you anytime, at home or at your office.
Q. When you read in newspapers that I am almost insane, do you believe what you read?

Me JEAN LECOURE :

This is...

THE COURT :

That won't... you can't put that question.

VALERY FABRIKANT :

What is wrong with that question?

THE COURT :

The witness is here to testify as to facts, not her impression whether from newspaper articles or anything else of your sanity, or whatever.

VALERY FABRIKANT :

Okay. Can I ask a different question?

- Q. Did you notice any unusual behavior which, in any way, would be...

THE COURT :

Well, you'll get another objection from the Crown there I would suspect, perhaps not, I don't know.

VALERY FABRIKANT :

Well, what is wrong with that question?

THE COURT :

The question is suggestive, and it's your witness, that's what's wrong with it. If there's no objection, ask your question.

VALERY FABRIKANT :

Well, so question is asked.

- Q. Did you notice anything strange in me?
A. No, I wouldn't say.
Q. Have you graduated by now?
A. Yes, I have.
Q. Okay. Now, in general, would you recommend to another student me as a professor?
A. Yes, I did recommend you as a professor.
Q. Okay. Thank you for coming.

Me JEAN LECOURE :

No questions.

THE COURT :

Thank you very much.

AND FURTHER DEPONENT SAITH NOT

Me BELLEAU :

Frank Chan.

THE COURT :

Do you need a few minutes?

VALERY FABRIKANT :

No.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twentieth (20th) day of the month of May, personally came and appeared:

FRANK CHAN, born on September twenty-sixth (26th), nineteen hundred and sixty-nine (1969), student, confidential address;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY MR. VALERY FABRIKANT :

Q. Are you still a student at Concordia?

A. No, I'm a student at McGill University now.

Q. Ah, okay. You're doing your degree...

A. That's right.

Q. ...advanced degree?

A. That's right, I'm doing a Master's.

Q. My recollection was that you were an exemplary student, correct?

A. I did well, yes.

Q. In the level of A's?

A. ...

THE COURT :

Q. You have to answer so it's recorded.

A. Yes.

VALERY FABRIKANT :

Q. Do you recall taking course with me?

A. With you?

Q. Yes.

A. Yes, I took statics and dynamics my first...

Q. Two courses.

A. ...two semesters.

Q. Okay. Were you satisfied with the quality of teaching with the level of presentation... anyway, give your impression of whatever you recall.

A. I was satisfied. At the time, of course, I had nothing to base your performance on, but in retrospect, after having various professors in undergraduate degree, I think I was very satisfied, the performance was very good. I made an evaluation yesterday of all thirty (30) professors that I had in the undergraduate program and in the full faculty I think, based on thirteen (13) points, thirteen (13) criterion, I ranked you seventh out of thirty (30), and in the Department of Mechanical Engineering third out of fifteen (15).

Q. Okay. So you invented your own system of evaluation?

A. That's right.

Q. This is part of your degree?

A. No, it isn't, but I was preparing myself for today, in case you should ask me some questions.

THE COURT :

Q. Sorry, seventh out of thirty (30), and in Mechanical Engineering what did you say?

A. Third out of fifteen (15).

Q. Third out of fifteen (15).

A. I have all the information if anybody's interested.

VALERY FABRIKANT :

Q. Okay. Well, I just wish, if you meet anyone, please tell them I love everybody. Thank you for coming here.

THE COURT :

Thank you very much. If the Crown has no questions.

Me JEAN LECOURES :

No questions.

THE COURT :

No questions.

Me JEAN LECOURES :

Well deducted.

AND FURTHER DEPONENT SAITH NOT

THE COURT :

Okay, well we'll stop here for ten or fifteen (15) minutes.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

VALERY FABRIKANT :

I would like to ask one question. I plan to retain one of the expert professor "Antipa", and I need to be able to communicate with him during...

THE COURT :

You might bring that up at the end of the afternoon, I'll remain on the bench.

VALERY FABRIKANT :

All right. And not to forget tomorrow, in the morning, I have a medical appointment, if it is all right with you.

THE COURT :

What time is that?

VALERY FABRIKANT :

Well in the morning, I'm in jail, whenever they call me. I don't put anything there, I am not a human there. Whenever they call me, whatever they say to me, go here, go there, I go, that's all. If they don't call me, then they don't call me.

THE COURT :

You're the one that makes these medical appointments are you?

VALERY FABRIKANT :

Sorry?

THE COURT :

You are the one that requests these medical appointments, are you?

VALERY FABRIKANT :

Yes, and I've been informed that yes, but once it happened I was there, they never called me, so here we go. I was informed that yes, it is on Friday morning.

THE COURT :

In these appointments, normally, normally the hours you're called are between when and when?

VALERY FABRIKANT :

Well, it's about between ten (10:00) and eleven (11:00).

THE COURT :

So if I contemplate resuming at, let us say twelve o'clock (12:00).

VALERY FABRIKANT :

You see, the procedure there, until I go search, it's not that... you imagine it that it is go and come here. The procedure to go from Parthenais to here takes about an hour and a half because it takes naked search...

THE COURT :

I'm sure, but I'm simply trying to satisfy myself as to whether we can... if you have a medical appointment tomorrow morning, whether we can do anything profitable tomorrow morning, it would appear not.

VALERY FABRIKANT :

Well, if you have any power over Parthenais, then exercise it. You don't have any power, I'm just in jail there.

Me JEAN LECOURES :

I think it's not realistic to expect to work tomorrow morning.

THE COURT :

Certainly not if...

Me JEAN LECOURES :

If you allow, I think you should...

THE COURT :

No, no, I'm obviously going to allow the medical examination in the circumstances, I'm informed of it in good time, and all the rest. If any of these arise again, would you try to let me know several days ahead in order that I can see whether or not I can have it expedited so that you can be brought here as soon as the examination is over and we can get on with things.

VALERY FABRIKANT :

Well, you know that previous two days we were not sitting, so this time it doesn't apply, but in the future, yes, and if...

THE COURT :

Fine. So we will sit, ladies and gentlemen, tomorrow afternoon, we will start at two o'clock (2:00) though. So that gives you the morning to do what you have to do.

VALERY FABRIKANT :

Mr. Kirk.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twentieth (20th) day of the month of May, personally came and appeared:

ROBERT KIRK, born on April twenty-fourth (24th), nineteen hundred and fifty-one (1951), computer center, Concordia, confidential address;

WHOM, after having been duly sworn, doth depose and say as follows:

EXAMINED BY MR. VALERY FABRIKANT :

Q. Well, effectively I called you because I've seen in the newspapers, was it your picture showing somebody with a gun, something, in the newspapers?

A. I believe it was, yes.

Q. Yes. And I infer from that that you did see me with a gun, did you?

A. No.

Q. So you were just showing it to...

A. I had nothing to do with your case actually.

Q. Oh, you were not? All right. Could you name then who was at that day in the window of 925?

A. Who was in the window?

Q. Yes, because I'm looking for people who did see, and I'm sorry to call you here just for that.

A. I don't know who was in the window because I was in the room behind, so I don't know who was in the window.

Q. Would it be possible for you to find it out and to let the Court know about it?

A. How can I...

THE COURT :

Mr. Fabrikant, this is not examination of a witness. You have ostensibly called this witness here to ask him whether or not he knows the names of some people who may possibly be able to serve as witnesses...

VALERY FABRIKANT :

Well, I don't have a lawyer.

THE COURT :

Well listen, Mr. Fabrikant, this is not the way you're going to proceed. Now if you have any questions to put to Mr. Kirk concerning the twenty-fourth (24th) or whatever, then put them, but we're not, I'm not going to sit here while you do this.

VALERY FABRIKANT :

Well, I need to know who was there, and I cannot get it from Mr. Belleau, and I cannot get it from any other source.

THE COURT :

Have you any other questions to put to Mr. Kirk?

VALERY FABRIKANT :

Well, if Mr. Kirk didn't see anything, then no.

THE COURT :

Mr. Lecours?

Me JEAN LECOURE :

No, My Lord.

THE COURT :

Thank you very much, Mr. Kirk.

A. You're welcome.

AND FURTHER DEPONENT SAITH NOT

VALERY FABRIKANT :

This is illustration to you in what position I am, I cannot even find proper witnesses. Mr. Belleau is not doing anything to find proper people...

THE COURT :

Mr. Belleau is not supposed to be finding witnesses for you.

VALERY FABRIKANT :

All right, who then is supposed to do that?

THE COURT :

You're the one that elected to conduct your defense, Mr. Fabrikant.

VALERY FABRIKANT :

I'm not elected, you know damn well that I'm looking for a lawyer, I cannot find one.

THE COURT :

Have you another witness to call?

VALERY FABRIKANT :

Who else is there, Mr. Belleau?

Me BELLEAU :

"Hancock" and Relton.

VALERY FABRIKANT :

Call Mr. Relton.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twentieth (20th) day of the month of May, personally came and appeared:

JOHN RELTON, born on November twentieth (20th), nineteen hundred and fifty-one (1951), code administrator, Concordia University;

WHOM, after having been duly sworn, doth depose and say as

follows:

EXAMINED BY MR. VALERY FABRIKANT :

- Q. Could you just describe to the jury what is Code of Conduct and what are your duties with respect to this Code of Conduct?
- A. Certainly. Every university in North America has a Code of Conduct which usually applies only to students, it's called a non-academic Code of Conduct; we also have an academic Code of Conduct. The academic Code of Conduct deals only with cheating and plagiarism, the non-academic Code of Conduct acts very much like a complaints commission internal to the university. Unlike, to my knowledge, any other university in North America, Concordia's Code of Conduct accepts complaints from any member of the university against any member of the university. So as an example, instead of simply taking complaints against students, we would also process complaints against staff or against faculty, and they could be brought by anyone. My job, as code administrator, is to "staff" those complaints. I advise about the complainant and the parties complained against, I train the hearing panel members, and in fact I am required to pick the hearing panel members from pools that are appointed under the Code of Conduct.

Q. Okay. Have you brought with you all the documents related to my complaints?

A. Yes, I have.

Q. Okay. Could you please start with the first one, which was deposited somewhere late fall of ninety-one ('91)?

A. You mean the first complaint against the members of the Departmental Personnel Committee...

Q. Yes.

A. ...dated the third (3rd) of November, nineteen ninety-one (1991).

Q. Yes. Okay. So it was in November.

VALERY FABRIKANT :

Now, I would like this document to be deposited in Court, because I believe it is relevant to the issue.

Me JEAN LECOURS :

I think the same rules apply, My Lord, the conclusion is relevant but what happens there is not our business and the jury has to evaluate the circumstances, not the file of the administrator is right here... is proper to...

VALERY FABRIKANT :

No, this document is reflexion of events.

Me JEAN LECOURS :

No, that's hearsay.

THE COURT :

No, the document... that's exactly the problem with the document, if the document is a reflexion of events, the document is hearsay. The events may have some relevance to your state of mind.

VALERY FABRIKANT :

Okay. Let me explain then, I do not plan, with this document, to establish the fact that I was assaulted, not at all, I'm not that naive, I want to place this document in evidence of something else, and...

THE COURT :

You may accomplish the object that you have in mind of completing or complementing professor Newsham's testimony by going along the lines which you did with Mr. Relton, and having him establish that indeed you did file a complaint

under the Code, but to go from there, to deposit the document is not going to be permitted.

VALERY FABRIKANT :

No, no, you are missing the point. The point I'm trying to make is, it is not the content of document which I want effectively to present to the jury as evidence of anything, I understand that this is a hearsay. What I want to present in evidence is the following, that I filed a complaint, and it was disregarded for a long, long time, this is the issue.

THE COURT :

Well, I think you might, insofar as that may be relevant, accomplish that object by putting questions to Mr. Relton, he seems to be the appropriate witness.

VALERY FABRIKANT :

Well yes, but still there will be documentary evidence, for example the document was deposited on November third (3rd), and the hearing took place somewhere in June.

THE COURT :

From his records he may well be able to inform the jury of that.

VALERY FABRIKANT :

Well, why cannot we have the documentary evidence of that?

THE COURT :

Because the documentary evidence, as you like to call it, is just that. I don't know what it all contains, but I can imagine that it contains a number of allegations which formed the basis of a disciplinary hearing, or a code hearing of some sort. Some of these allegations may have been proved, some of them may not be proved to the satisfaction of who is another question, I don't... I'm not putting...

VALERY FABRIKANT :

You're again missing the point. What I am trying here to establish, not the allegations in the document, what I'm trying to establish is that administration tried to suppress the hearing of my complaint for a very long time by using various excuses, and those excuses I want them to be documented. The excuse is not to consider my complaint, it's not content of complaint which I am talking about now, I am talking that I couldn't get justice in the university for a long, long time.

THE COURT :

For the minute, put your questions to Mr. Relton, along the lines that you're talking about, and let's see where we get to.

VALERY FABRIKANT :

Well, all right.

Q. So complaint was deposited November third (3rd), was yet another complaint about the same time?

A. Deposited, dated the same day, November third (3rd), a complaint against the university.

Q. Okay. The second complaint was about what?

A. The second complaint was about an incident which you alleged had taken place on November the first (1st) at senate, the university's senate is the governing body, academic governing body, you alleged that you had been arrested and searched at the request of an administrator of the university, and you complained that, under the Code of Conduct, your rights had been breached.

Q. All right. So according to the Code of Conduct, what is the normal delay for processing of this complaint?

A. I wish I could answer that there was a normal delay, the correct response at the moment, and certainly at the time that you lodged your complaint, was that the delay was running anywhere between sixteen (16) to twenty (20) weeks from the deposit to the actual beginning of a processing of a complaint.

Q. Do you have a Code of Conduct with you?

A. The Code of Conduct states that a complaint should be started normally within fourteen (14) days or as soon as possible.

Q. All right. So Code of Conduct doesn't say sixteen (16), twenty (20) weeks?

A. No, but it does say one code administrator, and since my office is the only office processing complaints, the speed with which I can process them is based on my available time, and the number of complaints received in a year.

Q. So still there is nothing in the Code of Conduct which gives you figure sixteen (16) or twenty (20) weeks, right?

A. No, but you asked me how long the normal delay between the filing of and the starting of a complaint was.

Q. As far as I remember... let us get to the Code of Conduct.

Me JEAN LECOURE :

These are all leading questions, My Lord.

THE COURT :

On this point we'll, I think, permit them until we get where we're going.

VALERY FABRIKANT :

Q. Would you please read from the Code of Conduct directly relevant article dealing with timing of processing?

THE COURT :

Are you looking for the article that says fourteen (14) days?

A. I'm...

VALERY FABRIKANT :

No, I'm asking him to read from the Code of Conduct the part which describes what is the normal delay, because he misled the Court. And I will ask to, again, to declare witness adverse later on, I'm going into establishing that he made contradictory statements.

A. I was looking for a copy of the Code of Conduct, My Lord, and it's either in my briefcase in the hallway or sitting on my desk in the office, it was mentioned on the subpoena, and I did put it out yesterday to bring with me, it's not in the binder.

THE COURT :

Q. Okay. Would you go and see if you can put your hand on it and the briefcase.

A. Sorry, My Lord, it's with the subpoena on my desk.

THE COURT :

Mr. Fabrikant, Mr. Relton advises that unfortunately the Code of Conduct is sitting with the subpoena on his desk.

VALERY FABRIKANT :

Well then, I believe we need to adjourn until tomorrow, because this is essential part.

Me JEAN LECOURE :

I wouldn't be surprised if Mr. Fabrikant has one copy.

THE COURT :

Do you have a copy in front of you?

VALERY FABRIKANT :

You want to search me?

THE COURT :

I don't want to search you, I'm asking you if you happen to

have a copy there in order that we can...

VALERY FABRIKANT :

No, why would I...

THE COURT :

I don't know, but you may have one.

VALERY FABRIKANT :

No.

THE COURT :

You don't. All right. So if you don't have one we'll adjourn until tomorrow at two o'clock (2:00), ladies and gentlemen.

VALERY FABRIKANT :

It is not in my interest to delay anything.

MEMBERS OF THE JURY LEAVE THE COURTROOM

WITHOUT JURY

THE COURT :

Q. Mr. Relton, would you make sure that you are armed with what you were asked to be armed with tomorrow...

A. Yes.

Q. ...two o'clock (2:00), and we'll continue then as far as you're concerned. So you're free to go.

A. Thank you.

AND FURTHER DEPONENT SAITH NOT

THE COURT :

You raised something with me when the jury came in and I asked if you would bring it up...

VALERY FABRIKANT :

Yes. Professor Antipa has kindly agreed to serve as an expert, as a scientific expert in my case, and he brought some material with him, and I will need to communicate with him directly, the same way I'm communicating with lawyer. But since he is not a lawyer I ask for a Court order permitting him to either visit me whenever convenient here at Palais de justice in parloir, or at Parthenais in the lawyers' offices.

THE COURT :

Well, he's certainly free to visit you at Parthenais as does the graduate student, is he not?

VALERY FABRIKANT :

No, it's not. There is a rule at Parthenais which says A) I'm allowed only three visits a week, among them two visits during week days and one visit during weekend. Second, the visit cannot last more than an hour. Third, on my visiting list cannot be more than three people. Well, this is enough limitation?

THE COURT :

Have you discussed with professor Antipa a potential time or what?

VALERY FABRIKANT :

Well, I guess that the first visit might be this weekend, so I need your ruling today, if possible.

Me JEAN LECOURES :

First it doesn't even look relevant, My Lord. Why should he need...

THE COURT :

What is the question for the minute, what has the question of relevance got to do with his right to meet professor Antipa?

Me JEAN LECOURES :

It's irrelevant, we don't need to go through...

THE COURT :

Well, I'm not sure I wish to decide simply on the strength of an observation that is not relevant that the meeting shouldn't take place.

Me JEAN LECOIRS :

Well, he outlined his defense.

VALERY FABRIKANT :

You don't even know what we are going to talk about, you already decide that this is irrelevant.

THE COURT :

He outlined his defense, and his defense, as I understood it, was going to be founded on two underlined principles, 1) that he was a very good teacher; and 2) that his work, from a research point of view, sound and invalid. And from that, he proposed to advance the thesis that he had a right to be treated otherwise than he was and...

Me JEAN LECOIRS :

Well, maybe...

THE COURT :

A second, a second. And that as a consequence of the manner in which he was treated, something happened on the twenty-fourth (24th) of August. Now, I don't know what that adds up to, and you don't know what that adds up to. That may add up to a valid defense in law, it may not add up to a valid defense in law, but I really don't see how one can possibly find out by saying the evidence isn't admissible, or the meeting shouldn't take place, that doesn't make much sense to me.

Me JEAN LECOIRS :

No, but if we state first that it's irrelevant, I just told you, we don't have to go through the exercise. Of course you have discretion, I just give you my opinion.

THE COURT :

I tell you, I'm going to exercise my discretion in favor of the meeting taking place, I'm not going to decide on the strength of that observation, that he hasn't even got the right to meet with the expert that he wants to meet with. Now, when professor Antipa comes, and when professor Antipa is questioned, it may be that you will have some objections, if that's so they will be dealt with then.

VALERY FABRIKANT :

Well, may I add to this that Me Lecours definitely coincide with Mr. McCormick who sees Courts as... first function of the Court is a human waste disposal units. How do you like this definition of Courts, human waste disposal.

THE COURT :

I don't know what you're talking about, quite frankly, I... nor do I know what you're citing from, it looks like the grocery store weekly catalog from where I'm sitting, all I can see is the price.

VALERY FABRIKANT :

You are not far from truth, but this is how chief editor of one newspaper defines the first function of the Court, human waste disposal units. Great isn't it?

THE COURT :

Well, there will be an order that Mr. Fabrikant be accorded every facility to meet with professor Antipa.

VALERY FABRIKANT :

Professor Antipa also might come, I understand, with somebody else, yes? So maybe we could put two names there?

THE COURT :

Professor Antipa and who else?

VALERY FABRIKANT :

Well, just say who else might be...

AN UNIDENTIFIED PERSON :

Jean Joseph Marks.

Me JEAN LECOURES :

Who is he?

THE COURT :

Who is he? I mean...

VALERY FABRIKANT :

I understand that this is another scientist from Universit, de Trois-Rivières, Universit, de Qu,bec ... Trois-Rivières.

THE COURT :

Well, is this someone whose services you've retained or what?

VALERY FABRIKANT :

Well yes, I understand that both will be useful as experts.

Me JEAN LECOURES :

Well who is Mr. Antipa? Is he really an expert? We don't know.

THE COURT :

Professor Antipa is a professor of what, mechanical engineering?

VALERY FABRIKANT :

He's professor of physics.

THE COURT :

Physics.

Me JEAN LECOURES :

Where?

VALERY FABRIKANT :

At Universit, du Qu,bec ... Trois-Rivières.

THE COURT :

And Mr. Marks is a professor of what, where? Mr. Belleau, perhaps you could expedite this for me please, I would appreciate very much.

Me BELLEAU :

I wish I could.

VALERY FABRIKANT :

Well, answer please.

THE COURT :

Mr. Belleau, I wonder if you might...

Me BELLEAU :

It's the first news I have from this gentleman this afternoon...

THE COURT :

Okay, if you might...

Me BELLEAU :

...so I was handed a box of documents, I'm taking a look at whatever could be of help.

VALERY FABRIKANT :

Well, I don't see any problem, if one person is allowed, maybe two persons are allowed too.

THE COURT :

Well, it depends on who the persons are and in what capacity is. Is Mr. Marks a professor? And is he someone you propose to retain?

VALERY FABRIKANT :

Yes.

THE COURT :

Or that you have retained?

VALERY FABRIKANT :

Yes. Yes.

THE COURT :

Well, you surely ought to be able to give me some detail as to what he's a professor of.

Me JEAN LECOURES :

He did not know his name, My Lord.

VALERY FABRIKANT :

Well, I know professor Antipa, I communicated with him on two occasions, and he told me that he, first of all, can provide certain expertise and there is another person who also can provide another type of expertise. I never met any of them personally, we were not... Mr. Belleau, would you kindly just close it and put it there?

Me BELLEAU :

Okay, it's none of my business.

VALERY FABRIKANT :

Absolutely not.

Me BELLEAU :

Fine.

THE COURT :

Well I'm sorry, you're going to have to do better than that, at least as far as...

VALERY FABRIKANT :

What do you mean, better than that? He's not doing anything, he pretends to do something. He just pretends to do something, he's not doing anything.

THE COURT :

You've told me that professor Antipa, you propose to consult as an expert, that he's agreed to be consulted as an expert.

VALERY FABRIKANT :

Yes.

THE COURT :

That he's a professor of physics at l'Universit, de Qu, bec ... Trois-Rivišres.

VALERY FABRIKANT :

Yes.

THE COURT :

Now, you then asked me to include, in an order, a further name.

VALERY FABRIKANT :

Yes.

THE COURT :

Which you did not apparently know.

VALERY FABRIKANT :

Yes, I did not know...

THE COURT :

And there's a person here in the courtroom.

VALERY FABRIKANT :

Yes.

THE COURT :

You did not what?

VALERY FABRIKANT :

I did not know the name but he told me that there is yet another person who will be coming with him, and who also could be useful in the same capacity.

THE COURT :

Well, you know, that's a little bit like King John told a man about a man I know, you know, I mean where are we?

VALERY FABRIKANT :

Well, I don't think at this stage I have to disclose any more than that.

THE COURT :

It's not a question of disclosure, if you tell me that you've retained professor Antipa, I'm perfectly prepared to make arrangements that you meet with professor Antipa.

VALERY FABRIKANT :

Yes.

THE COURT :

Unless you have retained the services of Mr. Marks, I'm not prepared to make that order.

VALERY FABRIKANT :

Well I have retained, because he recommended me him and I trust him. Is this enough? Professor Antipa has recommended the second person.

THE COURT :

And what is the second person's... what is he, is he a professor or what is he?

AN UNIDENTIFIED PERSON :

He's a research worker, Your Honor.

THE COURT :

The order will cover professor Antipa for the moment only. On either the twenty-second (22nd), the twenty-third (23rd) or twenty-fourth (24th) of May at Parthenais for...

VALERY FABRIKANT :

Why not both?

THE COURT :

Pardon?

VALERY FABRIKANT :

Why not both? What seems to be the problem?

THE COURT :

Because I'm not satisfied of what I heard, quite frankly. I don't know. A research worker...

VALERY FABRIKANT :

Then ask me what else do you need to know at this stage?

THE COURT :

For the twenty-second (22nd), twenty-third (23rd) or twenty-fourth (24th) of May, for such period as consultations may take, between zero nine hundred (09:00) and eighteen hundred hours (18:00).

VALERY FABRIKANT :

So ask me about the second, what else do you need to know to allow this?

THE COURT :

You told me that he is an expert.

VALERY FABRIKANT :

Yes.

THE COURT :

A research worker is not necessarily an expert, first of all. I don't need to know what you wish to consult him on, but...

VALERY FABRIKANT :

I can tell you only one thing, at least my research worker has Ph.D. degree, which your experts usually do not have, so my experts at least one head above yours, so does this sufficient?

THE COURT :

Does this person work with professor Antipa?

VALERY FABRIKANT :

Well...

AN UNIDENTIFIED PERSON :

Yes, Your Honor.

THE COURT :

You do. Would you include Mr. Jean Joseph Marks in that order, please?

VALERY FABRIKANT :

Okay. Now, I have several micro-cassettes and also, since you

did not allow today to introduce any evidence from this hearing board hearing, I have tapes of that hearing where the persons involved have given certain evidence. Now this might be considered prior statement, so when I, for example, will question Sankar or Osman or Hoa, these tapes could be used to contradict whenever they do some contradictory statements. Now, I tried to have those tapes transcribed, unsuccessfully. The people who do the transcription told me that it is not clear enough; when I heard it, to me it was clear enough, to them it is not. Well, it is not definitely this quality, because there was one microphone and people were far apart, but still it is possible to understand what was said. So I wonder if we could still either engage some enhancing facility which could make tape more distinct, so that it could be used, or I don't know, I would have done it myself but I cannot do it in jail.

THE COURT :

Well, I'm not issuing any order in that regard.

Me JEAN LECOURE :

Moreover, he cannot even use that.

THE COURT :

Pardon?

Me JEAN LECOURE :

He cannot even use that, it's oral statement, to contradict his own witness, unless there is an official transcript of these hearings, I'm sorry.

THE COURT :

There would have to be a transcript of these hearings, now whether you're referring to the Evidence Act.

Me JEAN LECOURE :

There's no, even, transcript to the Court of Appeal in Quebec.

VALERY FABRIKANT :

What it has to do with Court of Appeal? This is oral statement, yes, and I can contradict one oral statement to another oral statement.

Me JEAN LECOURE :

No, not your own witness.

VALERY FABRIKANT :

What do you mean not my own...

Me JEAN LECOURE :

It takes a written statement.

VALERY FABRIKANT :

Oh no, here you are wrong. Any statement... the law specifies prior statement, it does not specify that it should be on paper, I remember when reading it in the...

Me JEAN LECOURE :

No, in cross-examination, not with your own witness.

VALERY FABRIKANT :

With my own witness, if this witness contradicts his prior statement, I can cross-examine him on that. And any statement, including statement which is recorded, is considered prior statement.

Me JEAN LECOURE :

Listen, section 11:

"Where a witness on cross-examination as to former statement made by him relative to the subject matter of the case, and inconsistent with his present testimony, does not distinctly admit that he made the statement, proof may be given that he did in fact make it."

It's section 11.

VALERY FABRIKANT :

Well, so...

Me JEAN LECOURS :

It's cross-examination, it's not with your own witness.

VALERY FABRIKANT :

No. It's applicable to any witness.

Me JEAN LECOURS :

No.

VALERY FABRIKANT :

It's absurd. Section 9.1 deals with it as far as I remember.

Me JEAN LECOURS :

No, the witness has to be hostile first, of course.

THE COURT :

The witness has to be adverse at least.

Me JEAN LECOURS :

Yes.

THE COURT :

There are two lines of jurisprudence dealing with whether adverse as used in the Act means hostile or means simply adverse. Mechanically it would have been useful if you had had these things transcribed.

VALERY FABRIKANT :

Well, I did my best, if you remember the hearing about sabotage of Legal Aid, January thirteenth (13th), that was the first motion you have heard, and if you remember you found that they were not sabotaging my defense. This is exactly the hearing where I mention those tapes, that I need them transcribed, and I still couldn't do it because of sabotage of Legal Aid. I did my best, very well ahead of time, to have it transcribed, but I can do only so much in jail.

THE COURT :

Well, if you haven't had them transcribed, you haven't had them transcribed. If there is any difficulty, should the witnesses be heard, and should the witnesses be examined on these questions, then we'll cross that bridge when we come to it.

VALERY FABRIKANT :

Well, when we cross, I remember that this witness testified different things, and I have those tapes of the hearing, so how are we going to cross it? The tapes are, I believe it's six or seven tapes, it's not a small thing, and to find on those tapes certain specific things, it's a heavy job, so...

THE COURT :

Well, I'm not... it's not up to me to order any expertise with regard to these tapes.

VALERY FABRIKANT :

Well then what, Mr. Belleau is supposed to do it?

THE COURT :

I have no idea how you propose to examine that witness, I have no idea whether a section 9 or section 11 problem will arise when that witness is examined, I have no idea at all. And I'm certainly not going to get myself involved in the transcription of these tapes in anticipation of a problem that doesn't exist at the moment.

VALERY FABRIKANT :

Well, when it exists you are not going to adjourn for ten, twelve (12) days?

THE COURT :

I surely am not going to adjourn for ten, twelve (12) days.

VALERY FABRIKANT :

So you deprive me from my defense then.

THE COURT :

No, I don't deprive you from your defense, you are perfectly at liberty to have taken whatever steps you have to take to have these things reduced.

VALERY FABRIKANT :

How can I do this being in jail, and Mr. Belleau is not doing anything, so...

THE COURT :

The fact that you are in jail is a fact of life that has been such since last August.

VALERY FABRIKANT :

Yes. Yes. And?

THE COURT :

There you are. So you have to...

VALERY FABRIKANT :

Well, how about wet nurse, which is called Charter of Rights?

Me JEAN LECOURE :

Well, the Supreme Court yesterday...

VALERY FABRIKANT :

You remember that wet nurse?

Me JEAN LECOURE :

The Supreme Court yesterday didn't deem important to interrupt this trial. Me Gabbino was in Supreme Court on his habeas corpus yesterday.

THE COURT :

And that was heard yesterday, was it?

Me JEAN LECOURE :

Yes, and we're still proceeding.

THE COURT :

Uh, huh.

VALERY FABRIKANT :

Well, what it has to do with Supreme Court?

Me JEAN LECOURE :

That's been decided about eleven (11) times now his conditions of detention.

VALERY FABRIKANT :

The fact that Supreme Court did not interrupt the process doesn't say anything anyway.

THE COURT :

No, but it simply acknowledges the fact that if you feel you need these things transcribed, then it's up to you to have them transcribed.

VALERY FABRIKANT :

So what Supreme Court is here, it has no relevance, Supreme Court says that since the process is close to finishing, and most probably there will be appeal, so there is no point right now to do anything. This is what Supreme Court told to the best of my understanding, and it has nothing to do with the situation whether tape should or shouldn't be transcribed, it is irrelevant. The tapes, I need it...

THE COURT :

Then if you need the tapes transcribed, it's up to you to take whatever steps you have to take to get them transcribed.

VALERY FABRIKANT :

Well, give me just slightest idea what exactly can I do?

THE COURT :

I'm not here to give you ideas, slight or otherwise, as to what you should do.

VALERY FABRIKANT :

Well, because you know very well...

THE COURT :

But the significance of what Mr. Lecours said just now which is... was, I must confess, news to me, is purely and simply that the question of your detention in the circumstances, during your trial, didn't apparently cause the Supreme Court to order a "sursis" or a suspension of the present proceedings. So we're right back where we were, we're right back where we were at the beginning. I said to you...

VALERY FABRIKANT :

Well, what it has to do with tapes?

THE COURT :

I said to you that if you feel you need these in anticipation of some problem with whoever the witness is, then that's up to you to have these transcribed.

VALERY FABRIKANT :

Yes. Fantastic, you pretend not to understand that I have no means, or ways, or anything to do it. That's what you pretend.

THE COURT :

You said you had attempted to do it, you said that it proved technically unfeasible because of the fact that people were far away from the microphone, there is nothing I can do to change that.

VALERY FABRIKANT :

Well there is, because contemporary technique allows enhancement of tapes, and...

THE COURT :

It is not my function to order any of these steps with regard to your...

VALERY FABRIKANT :

So what you call full defense then?

THE COURT :

You have the opportunity of doing whatever you feel you have to do, and you have had right through from the beginning.

VALERY FABRIKANT :

What kind of opportunity do I have being in jail? Stop pretending.

THE COURT :

You've had opportunity, you've had assistance in sending subpoenas, you've brought witnesses here during the fitness hearing, you've brought witnesses here during this hearing, you've referred me to jurisprudence, you've brought cases out which have apparently been given to you by Mr. Belleau...

VALERY FABRIKANT :

Yes.

THE COURT :

...in reply to questions that you've put to him...

Me JEAN LECOURES :

And moreover he fired four lawyers.

VALERY FABRIKANT :

One of those lawyers was the one who almost put me into mental institution, just imagine what would happen if I didn't fire her. I would be now in Pinel.

THE COURT :

Mr. Fabrikant, we are spinning our wheels.

VALERY FABRIKANT :

We are not spinning anything.

THE COURT :

So we will adjourn until tomorrow afternoon at two o'clock (2:00).

Je soussigné, Michel Daigneault, sténographe officiel
bilingue, certifie que les feuilles qui précèdent sont et
contiennent la transcription de bandes d'enregistrement
mécanique, hors de mon contrôle; et est au meilleur de la
qualité, dudit enregistrement. Le tout conformément ... la Loi.

Et j'ai signé,

Michel Daigneault,
Sténographe officiel bilingue

</pre></body></html>

PROVINCE OF QUEBEC

DISTRICT: MONTREAL CITY: MONTREAL

CASE NO: 500-01-017372-928

TRIAL

PRESENT: HONOURABLE MR. JUSTICE FRASER MARTIN, J.C.S.
(AND AN ENGLISH JURY)

THE QUEEN

vs

VALERY FABRIKANT

APPEARANCES: Me JEAN LECOIRS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

DATE: May 21st, 1993

GS: 1372 FILE: 2614

I N D E X

Page

PROOF OF THE DEFENSE (CONT)

JOHN RELTON

Examination (cont)

3

CONTINUATION MAY 25TH, 1993

(THE JUDGE TAKES THE BENCH)
(THE JURY TAKES THE BENCH)
(DISPENSE WITH THE CALLING OF THE JURY)
(ALL ARE PRESENT)

JOHN RELTON
November 20th, 1951

EXAMINATION BY THE ACCUSED: (CONT)

- Q. So now you have the Code of Conduct with you?
- A. Yes, I do.
- Q. Okay. Could you please read the section which deals with timing of processing of complaints.
- A. Article 52 of the Code states:
"Complaints shall be dealt with as soon as possible, and generally within fourteen (14) working days of receipt."
- Q. So you recall yesterday you claimed that it is sixteen (16) to twenty (20) weeks. Do you recall that testimony?
- A. No, I don't. Yesterday you questioned me as to the average time between the starting... the laying of a complaint and the processing of a complaint currently. You did not ask me what the Code of Conduct stated the time should be.
- Q. So what was your answer then? You mentioned... did you mention the figure sixteen (16) to twenty (20) weeks?
- A. Yesterday, in responding to your question as to the average amount of time that it currently takes me to process a complaint, I responded that it took a number of months. I believe sixteen (16) to twenty (20) weeks was my response.
- Q. Well, that was not my question, but that was your response. Yes. So it has to be done during two weeks according to the Code?
- A. No. According to the Code of Conduct it shall be dealt with as soon as possible.
- Q. Well, then explain to the Court why two weeks time was not respected?
- A. The complaint that you deposed with... the complaint that you gave me dated November third (3rd), you gave my office two complaints under the Code of Conduct. One against four members of the Department of Personnel Committee for having physically assaulted you, and braved your rights under the Code. The second complaint you gave me was against the University because you had been arrested after a Senate meeting on the Friday of the same week. When I started to process the complaint, I ran into a number of problems which led to the delay between the date that you gave me the complaint and the date the complaint was finally heard.
- Q. Well, describe please those problems in detail.
- A. Okay. The first problem that I would have had as I have with each Code of Conduct complaint is finding three hearing panel members. I explained very briefly yesterday that the Code of Conduct creates three pools, very much like a jury pool, from which I get to select the hearing panel members.
The membership of the committee that will hear the complaint is based on the complainant and the person complained against. So in both of your complaints, which were a faculty member complaining against a faculty member, it meant that I was required to find three faculty members from the pool of six to sit as hearing panel members.
At the time,, two of the panel positions were vacant, and

shortly thereafter one or two of the other panel members resigned leaving me with only two members out of six in the faculty pool. I then turned to the people responsible for appointing the people to that pool. Under the Code of Conduct the faculty pool is appointed by the two faculty unions, Concordia Union of... CUFA, the Concordia University Faculty Association, and CUPFA, the Concordia University Part-time Faculty Association. There are six members in the pool. Two of the members are supposed to come from the part-time faculty, if possible. The others from the full-time. The only appointments that have been made to date either were unavailable for a hearing, or as I said, resigned. At that time I turned to CUFA and asked them to complete the complement of six so that, in fact, I could find three people who would be willing to hear the complaint. At that point I ran into a major problem with the faculty association. The Concordia University Faculty Association CUFA told me that it was seeking a legal opinion because of a conflict of interest by their appointing the judges. The President of the Association, Tony Castanza explained to me that if the Faculty Association, which is a union, is required to appoint the panel and in a faculty/faculty complaint all three panel members are, in fact, appointed by the Union and the panel then goes on to recommend a sanction which is covered by the Collective Agreement, the Union would be required to represent in a grievance one of its Union members against a decision reached by three judges that it had appointed.

I've agreed with Professor Castanza that this, in fact, was a conflict and agreed that I would ask the University to change the process by which panel members were appointed. I suggested that they either be picked by faculty councils, or elected University-wide.

I had an ongoing argument with the Faculty Association throughout January, February, March and the beginning of April before they finally agreed that they would, in fact, fill the complement and provide me with the judges required.

The moment I had a full complement and could get three judges to say yes, I sent the paperwork to all parties concerned, advising them of the date of the hearings, and if I remember correctly that would have been approximately April (20th) or twenty-first (21st) that I sent the letters scheduling hearings for the first week of May. The letters were dated April twenty-first (21st), nineteen ninety-two (1992).

Following that there was one other interruption. I received a letter from the four members of the Departmental Personnel Committee stating that because of prior commitments outside of the country and other commitments internal to the University, they would be unable to attend the hearing on that date.

I sent them back a memorandum refusing a postponement unless they clarified exactly what their other commitments were. I received a letter from one of the four members, Dr. Hoa, stating that, in fact, he had already agreed to attend a conference outside of the country on the date set. At that point I agreed to a postponement, moved the two hearings back to be heard on

June first (1st) and second (2nd), which was approximately three to three and a half weeks after the original date set.

Q. Well, I asked you to bring all the letters exchanged with CUFA related to the problem which you described. Have you brought those letters?

A. No, the majority of the exchange that I had with CUFA was not by letter. It would have been on the telephone with Professor Castanza or with Allan Karpman, the Executive Assistant to CUFA, mostly with Professor Castanza. The only thing I would have would be the last piece of correspondence, I believe, where on March eleventh (11th), I wrote him a letter saying:

"I would like to thank you for taking the time to speak with me. I understand your concerns about a potential conflict..."

And it went on to state that:

"If CUFA were to fill its vacant positions on the Supervisory Board..."

The supervisory board is the group that oversees the Code of Conduct and is responsible for amending it. Even though I had agreed that I thought the process by which the judges were appointed was a conflict of interest, the only way to change the Code of Conduct was to get the Supervisory Board to meet. The Supervisory Board couldn't meet because CUFA wouldn't appoint to it either. The Supervisory Board is also representative, made up of two faculty members, two non-faculty employees, and two students. It couldn't meet either. I asked CUFA to appoint the people to it. And then asked them:

"Finally, if you agree to appoint two new judges to the Hearing Boards and reappoint the two who are currently sitting, I would request that you advise them that their appointments would terminate automatically when the new appointment process is approved."

Paragraph 8:

"As soon as I have received a response from you concerning the appointments under the current Code, I'll be able to proceed with the outstanding complaints."

That was dated March eleventh (11th).

Q. Well...

A. I would also have other Minutes to the files that I would have made of conversations that you and I had at the time. I believe the last one I have is dated April the thirteenth (13th) where I stated that I was still waiting for the names of the parties from CUFA and that I would proceed the moment I have them. CUFA finally did, in fact, provide me by telephone with the names of the judges.

Let's see, April the eighth (8th), I explain the current... this is a note to follow the telephone conversation that I had with you at ten-thirty (10:30) that morning. You had called me back. I left a message on your machine at nine-twenty (9:20). I explained the

current problem with judges. You asked for a clarification of conflict between the Code and the Collective Agreement.

April the thirteenth (13th). I called Professor Fabrikant, as I told him I would, to let him know the progress. I told him that I had received a message from CUFA saying that they would supply the names as soon as possible. I also did not mention one other problem that we had had in deciding whether or not I had the jurisdiction originally to handle your complaints. The Code of Conduct was written to fill in the gaps. It was not intended to replace or supersede any existing complaint procedure internal of the University, or to supersede a Collective Agreement. And it specifically states in one of the opening Articles of the Code of Conduct, that if a Collective Agreement applies to the issue, then I don't have the jurisdiction to deal with it.

If I remember correctly one of my first objections to accepting your complaints was whether or not the issues were not covered by your Collective Agreement. I was finally informed that, in fact, as I remember correctly, you attempted to file under both procedures. You had, in fact, attempted to grieve the same issue. And I told you once the Grievance Committee made a decision, if they rejected your complaint, I would then accept it. As soon as I received notification that the Grievance Committee, the Joint Grievance Committee, had rejects your complaints, I then started the processing of them.

Q. I'll try to refresh your memory that this is totally not what you told me at the time. Try to remember better. Did you or didn't you tell me that CUFA informed you in writing about this imaginary conflict of interest?

A. No, I do not remember any such thing.

Q. So... okay, let's proceed on a different... how many years does Code of Conduct exist?

A. The current Code of Conduct came into existence in September of nineteen ninety (1990) replacing one that came into existence in nineteen seventy-eight (1978).

Q. Okay. Under the old Code of Conduct from seventy-eight ('78), would there be any problem of conflict of interest?

A. No.

Q. Why not?

A. The old Code of Conduct was a very different procedure whereby my office, my predecessor's office, as the Code administrator, I would have only actually handled unimportant or lesser coomplaints, and only complaints that were brought against a student. The Hearing pool, and there was only one under the old Code of Conduct, was made up only of students.

If it was a more serious complaint against a student that would potentially lead to suspension or explusion, the complaint was sent directly to the appropriate authority who, in the case of a student, would be the Dean or his or her faculty. The Dean was then required to establish a committee. None of the procedures were written into the Code. The Dean was simply... it simply stated that the Dean would deal with the complaint appropriately. If, however, it was a complaint against a faculty member or a non-academic employee of the University, then the

complaint went directly to the appropriate authority who would be the boss of the person complained against. So, under the old Code of Conduct your two complaints would have been handled... first of all, your complaint against the members of the Departmental Personnel Committee would simply have been a letter from my office advising the Dean of your faculty, Dean Swamy, that you had laid a complaint against these four people, and allowing him to handle it as he saw fit. The complaint against the University would have been directed to the Chairperson of the Board of Governors.

- Q. Okay. When in nineteen ninety (1990), you say this Code of Conduct was introduced?
- A. Correct. September of nineteen ninety (1990).
- Q. September of nineteen ninety (1990). And did you hear any complaints since September of nineteen ninety (1990)?
- A. I'm sorry, I don't understand.
- Q. Well, were there any hearings since September of nineteen ninety (1990)?
- A. I believe so.
- Q. Well, how many?
- A. Each year...
- Q. How many?
- A. ... my predecessor, in nineteen eighty-seven (1987) would have heard less than ten formal complaints. In this last academic year, my office heard six-five (65) formal complaints.
- Q. No, I'm asking you, in nineteen ninety (1990), how many complaints were there?
- A. I don't know. There were complaints. How many went to a formal hearing, or how many were against a faculty member, or how many were faculty versus faculty, I do not remember, and I do not have the statistics.
- Q. Well, just give an idea, five, ten?
- BY THE COURT:
If the witness says that he doesn't remember, you can't force him to give an answer.
- BY THE ACCUSED:
- Q. Anyway, but there were some?
- A. I believe so.
- Q. Okay. And there was no problem of conflict of interest then?
- A. The first time that the Faculty Association raised the conflict of interest was at the end of the first year when, in fact, the Code of Conduct states that the appointments are for one year and are renewable. When I asked for reappointment there was a new President of the Faculty Association. We had also had another major case within the University dealing with the discipline of a faculty member that had made the Faculty Association very wary of my office and of the University's capacity to discipline faculty members. And they were, to say the least, far less helpful than they had been a year before.
- Q. So it is just a mere coincidence. Then Fabrikant's complaint appeared, all of a sudden CUFA remembered that there might be a conflict of interest. Just a coincidence. Right?
- A. Entirely, in fact, there was one other faculty member who I finally told that I would not handle his complaint because it had been outstanding even longer, and I didn't

think it would be fair against the persons complained against. I had the same frustration. I have had the same frustration in dealing with complaints since your complaint. And I am still having the same conflict with the Faculty Association.

Q. Well, do you have any proof of that?

BY THE COURT:

It's not a question of whether he has any proof of that. He has spoken from his experience in dealing with them.

BY THE ACCUSED:

Well, he is...

BY THE COURT:

You asked him the question, you got the answer.

BY THE ACCUSED:

No. I want to show that the witness is not telling the truth.

BY THE COURT:

He is your witness...

BY THE ACCUSED:

This is why I am checking.

BY THE COURT:

He is your witness.

BY THE ACCUSED:

He is my witness. I know that.

BY THE COURT:

You are putting questions to your witness.

BY THE ACCUSED:

Well, I'm putting...

Q. Do you have any proof of that?

A. I can, yeah.

BY THE COURT:

Yeah. He answered the question.

BY THE ACCUSED:

Why are you still trying to protect them?

BY THE COURT:

It's not a question of trying to protect.

BY THE ACCUSED:

You are trying to protect...

BY THE COURT:

You do not...

BY THE ACCUSED:

It was the intention that they delayed my complaint.

BY THE COURT:

You do not have the right...

BY THE ACCUSED:

And he told me they exchanged the letters. Now he says there is nothing, only telephone...

BY THE COURT:

You do not have the right to impeach the credibility of a witness that you called.

BY THE ACCUSED:

Well, I have...

BY THE COURT:

You are the one that's calling the witness...

BY THE ACCUSED:

It's the right that I have to impeach, but the witness is lying...

BY THE COURT:

... and you are the one who is putting questions to him.

BY THE ACCUSED:

I have the right to point it out, and I have the right

then to ask to declare him adverse. And this is what I am trying to do. And don't pretend that you do not understand what I am doing.

BY THE COURT:

When the witness gives you an answer from his own experience, which is what he did, when you say to him: have you got any proof of that? Have you got any documentary proof of that... you are attempting to contradict the witness that you have called. You are attempting to cross-examine him, and you can't do that.

BY THE ACCUSED:

No. I am not attempting doing anything. I am asking for the proof. That's all.

BY THE COURT:

Now, if you want to talk about adverse witnesses...

BY THE ACCUSED:

Maybe he is telling the truth. Why are you so apprehensive?

BY THE COURT:

... or witnesses evading questions, you're a long way from it, because the witness has done everything he can to answer your questions.

BY THE ACCUSED:

Well, maybe he is telling the truth, and I just want the jury to be sure that he is telling the truth. So what's wrong with my question?

BY THE COURT:

You have your answer. Go ahead.

BY THE ACCUSED:

Q. Well, do you have any proof of that?

A. I would, in fact, have correspondence with both the Chair of the Supervisory Board, and I'm not entirely sure, but I believe with my own boss, the Secretary-General of the University. Because of the problem that I was having and because, in fact, of my own frustration with the amount of time complaints were taking, and the fact that I couldn't always, in fact, guarantee that there would be a hearing for a faculty/faculty complaint, I asked for an amendment for the Code of Conduct and met in March of ninety-two ('92). It wasn't of this year, so March of ninety-two ('92). March the twenty-second (22nd) or April twenty-second (22nd) of ninety-two ('92)... with Maureen Habib, the Chair of the Supervisory Board and Berengère Gaudet, my boss, the Secretary-General, specifically to draft an amendment to the Code of Conduct that would change the appointment process and at the same time increase the size of the pool.

So that, as an example, if one or two persons were to resign I wouldn't be stuck in the same situation. I needed three securing panel members. If the panel was increased from six to twelve (12), then I would have less problems.

Q. Well, you are not answering my question.

A. I don't have proof with me today now.

Q. Okay. So can I recall you, once again...

BY THE CROWN:

No, My Lord...

BY THE ACCUSED:

... to present all that proof?

BY THE CROWN:

... it's too far.

BY THE COURT:

It is far too far.

BY THE ACCUSED:

It's not too far.

BY THE COURT:

It is far too...

BY THE ACCUSED:

... because... this is not... this is not what really happened.

BY THE COURT:

You may have your perception of what happened. The witness has his perception of what happened...

BY THE ACCUSED:

Well, then let us... let us go to the bottom.

BY THE COURT:

... and he's stating what he has to state.

BY THE ACCUSED:

Let us...

BY THE COURT:

Simply because something doesn't mesh with your perception of events, or with your recollection of events, doesn't necessarily mean that you're right and he is wrong.

BY THE ACCUSED:

All right. So let's go to the bottom of it and we'll see.

BY THE COURT:

We are not going into a side issue on the question of the experience of the Code Administrator in his relations with the University itself, on one hand, or the Faculty Association, on the other, in a whole series of cases quite apart from yours. You have put the questions in relation to your case and he's given you the answer and he's told you what his difficulties were. You may either like that or you may lump it. But there it is. You have your question answered.

BY THE ACCUSED:

Well, I...

BY THE COURT:

Now move on to your next question.

BY THE ACCUSED:

I want to go deeper into that. That's all.

BY THE COURT:

Move on to your next question, and we'll see.

BY THE ACCUSED:

Well...

BY THE COURT:

But you're not going to have him bring documents relating to what he just testified to when he added a clarification to the question on documentary evidence. You are not going to do that.

BY THE ACCUSED:

You are scared that I will show that he is lying. Yes? Is this the case?

BY THE COURT:

I am... ask your next question.

BY THE ACCUSED:

Ask your next question. Okay.

Q. Right. So you do not recall that you told me that all this stuff is supposed to be in writing, and you just did it on the telephone. No single letter has been exchanged

since November with CUFA concerning my hearing. How come?

A. The problem, in fact, as far as CUFA wouldn't have started until the end of December, or the beginning of January, if I remember correctly because, in fact, my first problem was caused by the resignation... first of all, the refusal of one member, the part-time faculty member, to be involved in any CUPFA complaint. And secondly, finally, by the resignation of Mary Brian, who had been both a member of the Supervisory Board, and for the year prior, a member of the Hearing Panel. My note here, but I can't be positive that, in fact, it related to your case, this is simply correspondence concerning judges, I had left a note for my secretary informing her that it was a professor versus a professor case. We need three faculty members as judges, setting potential dates for the December seventeenth (17th), eighteenth (18th) and nineteenth (19th) at which point Professor Thomas said he would not be available. And it was after that that Mary Brian would have resigned, because on December ninth (9th), she also said that those dates were impossible for her. So it would have been at the beginning of January where she finally resigned, at which point I was below the minimum number of judges that I required for a three person Hearing Panel.

BY THE ACCUSED:

Q. You did not answer my question. You received my complaint somewhere in November?

A. Correct.

Q. You were supposed to inform CUFA if you didn't have a sufficient number of judges immediately in writing, and ask them to provide it. Did you, or didn't you do that?

A. I had no reason to do that at the time.

Q. Be more specific, please.

A. I just explained.

Q. How come you didn't have the reason? You received a complaint. You are supposed to process it. You don't have judges and you have no reason to inform CUFA about it?

A. I just told you that, in fact, until the end of December, I would have had enough judges. It was when I started to process the complaint, set up the Hearing Panel, where one person resigned, followed... following by a second person who resigned, where I was left with only two members out of the six persons, and that would have been at the beginning of January.

Q. Well, let us go into arithmetics then. Aren't you supposed to do it by November seventeenth (17th), according to the Code?

A. No.

Q. No? Why no?

A. Because as I read to you, the Code of Conduct states as soon as possible.

Q. Well, why wasn't it possible to do it November fifth (5th), sixth (6th), seventh (7th), eighth (8), ninth (9th), tenth (10th)?

A. Because your complaint wasn't the only one, although you believed it was, that I was dealing with during that time period.

Q. Well, again, I am asking just why didn't you tell your secretary to write a letter to CUFA concerning judges?

A. Because I didn't have a problem at that time.

Q. So why didn't you set up the hearing then?

A. Because, in fact, I hadn't started to process your complaint, moving towards the hearing. And if you remember correctly, at the time you were still asking me whether or not mediation in both cases was possible.

Q. How many cases have you heard during November?

A. I have no figures with me. I do, however, know that I was dealing with one major case at the time.

Q. Well, just one case a month is not a huge load?

A. I didn't say I was dealing with one case a month.

Q. Well, you... okay. Let us postpone the hearing. Let's bring the statistics of...

BY THE COURT:
No, we shant postpone the hearing, and we shant...

BY THE ACCUSED:
No, I mean, not... I mean this particular witness.

BY THE COURT:
No, we shall not postpone this particular witness, and we shall not bring the statistics by the truckload. You are putting your questions. If this is relevant, it is marginally relevant. Move on.

BY THE ACCUSED:
It is relevant that administration just didn't want to consider my complaint...

BY THE COURT:
That may...

BY THE ACCUSED:
... inventing all the...

BY THE COURT:
That may be your interpretation.

BY THE ACCUSED:
... particular reasons on her.

BY THE COURT:
That may be your interpretation. Mr. Relton is here...

BY THE ACCUSED:
So I want to show to the jury that he wasn't busy. He just wasn't doing his job.

BY THE COURT:
You have put your... you are putting your questions to Mr. Relton. That's how you'll do it. You'll do by putting question. We are not bringing...

BY THE ACCUSED:
Well, don't you realize I need the documents.

BY THE COURT:
We are not bringing documents by the truckload on this point. Now...

BY THE ACCUSED:
This is not a truckload.

BY THE COURT:
There is my decision. Move on.

BY THE ACCUSED:
Well, why don't the jury...

BY THE COURT:
You become extremely tiresome when you don't move on, you know.

BY THE ACCUSED:
I am moving on.

BY THE COURT:
The question is finished.

BY THE ACCUSED:

You are so biased openly. You should be ashamed of yourself.

BY THE COURT:

Next question.

BY THE ACCUSED:

Q. Did you or didn't you send me a copy of the letter which convinced you to postpone the hearing on... from April, from April or May to June?

A. You mean when...

Q. What convinced you to postpone the hearing? You scheduled it once to be in May, then you postponed it for almost a month.

A. The letter from Dr. Hoa stating that, in fact, he had other professional commitments outside, I received an original letter on April twenty-seventh (27th) from and signed by the four members of the Departmental Personnel Committee that you had complained against.

Q. And what was your reaction to that letter?

A. I sent a memo saying:

"I cannot agree to a postponement of the scheduled hearings based on the information which you have provided me."

Q. All right.

A. "In order that I can consider your request, would you please specify who will be out of the country, and for what period, and who will be prevented from attending, based on prior internal commitments, and what are those commitments. Finally, I wish to bring to your attention that in future all correspondence which I receive from any of the parties involved in this case will be forwarded to all other parties."

And I CC'd you.

Q. Okay. And...

A. Following that I received a memo from Professor... first of all, a telephone call, and then a memo from Professor Hoa, one of the four members stating:

"I understand from the telephone conversation between myself and you on April thirtieth (30th), nineteen ninety-two (1992) that you agreed to postpone the hearing regarding the above dossier, from May the sixth (6th), nineteen ninety-two (1992) until a later date. Please let me and the members of the DPC know as soon as that date has been determined."

Q. Did you send me this letter?

A. I'm not sure. The next piece of...

Q. Don't go to the next. Answer this question first.

A. I don't know.

Q. Well, let me then answer... ask you different. Why didn't you send me... you just in the previous warned that every letter will be sent... why you didn't send me this one?

A. I didn't say I didn't send it to you. I said I didn't know.

Q. May I see the Code of Conduct, please.

BY THE COURT:
Do you have the Code of Conduct there? Would you pass it to Mr. Belleau, please.

BY THE ACCUSED:
I believe, to save our time, I believe there is somewhere in the Code of Conduct a notation that one can file a complaint with the Code of Conduct and simultaneously use the grievance or any other procedure?

A. Exactly the opposite, My Lord.

Q. Okay. What is the part of it?

A. Right on the first page, in the second paragraph:
"This section does not replace or supersede a complaint, a grievance, or appeal procedure set out in any Collective Agreement signed by the University, the Code of Conduct, Academic, the University calendars, or the University Policy Manuals, under the complaint procedures part..."
... which is the Code of Conduct defining my office and the jurisdiction that I have, it states specifically that:
"The Code Administrator shall refuse to receive a complaint or to continue the processing of a complaint when the complainant, the respondent or the cause of the complaint itself, does not come within the jurisdiction of the Code."

Q. Well, first of all, let us deal with the first part. The fact that it does not replace, or supersede something, does not mean that one is forbidden. If you recall, I asked you whether I can go to Court with my complaint and simultaneously file it with you, and you said, yes.

A. Most certainly.

Q. Do you recall that?

A. Most certainly.

Q. So one can complain in two different places?

A. Most certainly. But not in two different places internal to the University, as in the Code of Conduct, non-academic, and under a Collective Agreement.

Q. Well, this reading doesn't say.
"This section does not replace..."

BY THE COURT:
Will you stop arguing with the witness about the...

BY THE ACCUSED:
All right.

BY THE COURT:
Thank you.

BY THE ACCUSED:

Q. Now let us go to another complaint of mine which was filed somewhere in April. Do you have it?

A. Possibly could you be more specific?

BY THE COURT:
April of what year, Mr. Fabrikant?

BY THE ACCUSED:

April twenty-three (23).

A. Again, Professor Sankar and Swamy. Dated April twenty-third (23rd).

BY THE COURT:

Q. What year is that, Mr. Relton?

A. Nineteen ninety-two (1992).

BY THE ACCUSED:

Q. Yes. Did you acknowledge reception of this complaint?

A. I don't believe that I acknowledged receipt of any of your complaints, nor am I required to under the Code of Conduct.

Q. Okay. Now...

"Code Administrator shall forward
a copy of complaint to the
respondent."

Did you do that?

A. One the Code Administrator decides that the complaint is, in fact, within the jurisdiction of the Code, which is the first thing that I have to do in processing a complaint, and as I have told you today, yesterday and when I was dealing with you, by that time, after March seventeenth (17th) of nineteen ninety-two (1992), my secretary was off ill, you were not the first complaint that I was dealing with, and I was the only person in the office. I handled each complaint as I finished the last complaint.

Q. Well, it just say:

"Shall forward a copy of the
complaint to the respondent."

What it implies is, you make a copy. You mail it out. Now what seems to be the problem? It requires fifteen (15) minutes of work. You were not swarmed by thousands of complaints. It sixty-five (65) per year. Right?

BY THE CROWN:

These are all leading questions, My Lord.

BY THE ACCUSED:

It is all leading questions. Yes. Because he is avoiding answering the questions.

BY THE COURT:

He's not avoiding answering your questions at all.

BY THE ACCUSED:

Yes.

BY THE COURT:

The objection is maintained.

BY THE ACCUSED:

All right.

Q. So what was the problem just to file a copy as it says of complainant to the respondent? How much time does it take?

A. It takes enough time to decide, first of all, that you're going to accept the complaint.

Q. Okay.

A. And that it's within the jurisdiction of the Code of Conduct, and you were not the only complaint that I was dealing with at the time.

Q. All right. So did you read the complaint?

A. I don't remember.

Q. So you receive a complaint. You don't even read it?

A. I received a complaint. You asked me a question as to whether or not I read it at the time. I do not remember.

Q. Okay. When did you read it?

A. I don't know.
Q. Maybe you never read it?
A. I'm quite sure I did read it.
Q. You did. Ha, ha, ha. But, of course, you don't remember when?
A. Correct.
Q. So just give an idea. Do you think that you are supposed to read it within a reasonable time?
A. As I read to you yesterday, as soon as possible. And as I told you I was already frustrated with the fact that I didn't have the resources to deal with complaints as quickly as I wish I had been.
Q. Well, still, did you read it? And if yes, when?
A. I don't remember.
Q. Do you know what the complaint was about?
A. I have it in front of me here.
Q. So tell the jury what it was about.
A. It's a complaint against Professors Hoa, Osman, S. Sankar, and T.S. Sankar, Zistris, Dean Swamy, and Vice-Rector Sheinin. You then go on to say:

"Hoa, T.S. Sankar, Zistris and Swamy were included as co-authors in several publications of mine, though their scientific contribution to the publications was zero. All the above in one way or the other participated in a campaign of harassment and intimidation which stemmed from my refusal in nineteen eighty-eight (1988) to include anyone who did not contribute as a co-author in my publications. I was denounced in absentia at a secret meeting of the tenured members of the Department of Mechanical Engineering. I was denied a sabbatical and promotion. My tenure consideration was delayed through intimidation. The harassment and the intimidation never stopped, the latest being the illegal and unfounded letter of warning from Dr. Sheinin. Here is the list of publications in which T.S. Sankar, Hoa, Swamy and Zistris are listed as co-author."

It then goes on for four pages.

"Yours sincerely."

Q. Well, four pages goes what exactly? The list of publications. Right?
A. Correct.
Q. So it's not goes on four pages some kind of text. It's just how many publications has been published with people who did not contributed. Right?
A. You list thirty-six (36) publications.
Q. Yeah. So it took us about maybe than less than a minute to read the main content. And you say that you received it, but you didn't bother to read it. Right?
A. No, I didn't say that. I said I don't remember...
Q. Oh, you don't remember.
A. ... when I read it.

Q. Okay. When you read it, because I guess that sooner or later, it did happen. Right?

A. Correct.

Q. It was before shooting or after shooting?

A. Well before.

Q. Oh, well before. So now that means that you do remember something, eh?

A. No. I was off for two months after the shooting.

Q. All right.

A. I know that it was before the shooting.

Q. So...

A. And that I was off for the month before the shooting.

Q. You have a nice life, don't you? You are so busy you have three month vacations?

A. Actually I had hepatitis.

Q. Oh. Okay. So you have finally read the complaint. Was it worrisome for you the text of the complaint assuming that the text of the complaint was correct?

A. Worrisome in what way?

Q. Well, is it the usual thing what is written in complaint? Is it not something out of normal?

BY THE CROWN:
Leading question, My Lord.

BY THE ACCUSED:
All right. I will rephrase it.

BY THE COURT:
Would you please.

BY THE ACCUSED:
Yeah.

Q. So does the text of complaint created some certain feeling in you? And if yes, what kind of...

BY THE CROWN:
Still leading, My Lord.

BY THE ACCUSED:
No, I don't think so.

BY THE COURT:

Q. When you read it, what was your reaction?

A. To be entirely honest, that I was going to have the same problems trying to get him to separate the issues, that, in fact, the Code of Conduct says a person may bring a complaint against another person but, in fact, he had mixed in a number of issues and a number of people, and in fact, a letter of warning from Dr. Sheinin, which would clearly be something which could be grieved under the Collective Agreement, and that I would have to argue with him over that.

BY THE ACCUSED:
Well, that was...

A. About the actual text of the complaint? No feelings.

Q. Okay. So what happened next? Did you finally respond something to me? For this complaint did you...

A. For this complaint, no.

Q. ... was there any response ever?

A. No.

Q. No. Try to remember better?

A. I honestly do not remember or have anything in the file which shows that I responded to that specific complaint.

Q. Okay. Did you receive a revised version of complaint?

A. I do not remember.

Q. Well, do you have it?

A. The only thing... sorry. I have two copies. One is

dated April twenty-third (23rd). The other is dated April twenty-third (23rd). One has no notation as to when it was received. I had started getting better as my own secretary, this one I say I received on May first (1st). As to whether or not it's revised, yes, it's different.

Q. So it has been revised. Issues were separated. You just don't remember that you called me on the phone and said that I have to separate the issues?

A. We had a number of telephone conversations at the time. I don't remember any about this complaint.

Q. Anyway, did I or didn't I separate those issues? You didn't even bother to read it, did you?

A. The first one that I have dated May first (1st) is the one that I just read out loud. The other copy that I have simply states:

"This is a complaint against Professor T.S. Sankar, Dean Swamy, they were included as co-authors on several publications of mine, though their scientific contributions to the publication was zero. Had I refused to include them in my papers I would have lost my job, so I had no choice by that time. Now, though my job is in jeopardy, I can no longer tolerate the situation. Here is the list of publications in which T.S. Sankar is listed as co-author. I hereby request that both write immediate letters of retraction to the editors, with a copy to me in which they should acknowledge the fact that they did not make any scientific contribution to these publications. If the matter comes to the Hearing Board, I request that the hearing be made public. Thank you in advance."

A. So, now everything is separated. Right?

A. They are different.

Q. So the issues are separated. Is it a receivable complaint now? You still don't know, do you?

A. I would have had the same problems that I had when I discussed it with you at the beginning that in fact the issue of, I'm not even sure what you would term it, that in fact I was forced to include other people's names on my papers, comes under the Code of Conduct, non-academic.

Q. Well, let us see if it can. Let us read what it comes to:

"All members of the University must be free to pursue their work, study, creative activity, or research, without undue interference. This includes freedom from any form of violence, harassment, or intimidation. Freedom to teach, create and to learn, to speak freely, to write, or to publish."

Does it fall within this section, too?

A. It also states that:

"The party complained against here and after called the Respondent, shall be indentified, and the nature of the complaint shall be stated with precision, detailing, time and place."

What you stated in your complaint was, in fact, what you claimed to be the effect of their intimidation. At no point do you state what behaviour of theirs you found to be intimidating.

Q. All right. Let us... first of all, did I identify the names? Did I?

A. Yes.

Q. Right. Did I identify the time?

A. You identified the date that publications were published.

Q. Well...

A. But certainly not the date of the behaviour complained against.

Q. Well, this is... this is the time. Because it was not today, not tomorrow...

BY THE COURT:

Are you arguing with the witness, or are you putting a question.

BY THE ACCUSED:

Yeah.

Q. So isn't this timing...

A. Time.

Q. ... because it is a long, long, long, long, long, long procedure...

A. No.

Q. ... of intimidation?

A. No.

Q. No.

A. The way the Code of Conduct is written, the intent of stating here that the complaint shall be written with precision, detailing date, time, and place, is so that, in fact, the person who receives the complaint knows exactly the behaviour that is being complained against, not the effect of the behaviour.

Q. Well, behaviour, wasn't it harassment?

A. You don't state any behaviour in here that was either harassing or intimidating. You state the effects.

Q. Read it again, please.

A. "This is a complaint against Professor T.S. Sankar and Dean M.N.S. Swamy."

Q. Yes.

A. "They were included as co-authors in several publications of mine, though their scientific contributions to the publications was zero. Had I refused to include them in my papers I would have lost my job, so I had no choice by that time. Now, though my job is in jeopardy I can no longer tolerate the situation. Here is a list of publications in which T.S. Sankar is listed as co-author."

It goes on for thirty-five (35) publications.

"Here is a list of publications in which M.N.S. Swamy is listed as co-author."

And that goes on for five.

"I hereby request that both write immediate letters of retraction to the editors with copies to me in which they should acknowledge the fact that they did not make any scientific contribution to those publications. If the matter comes to the Hearing Board, I request that the hearings be made public. Thank you in advance."

Q. Okay. So this, from your point-of-view, does not fall within the following text:

"That all University members might be free to pursue their work, study, creative activity, without undue interference."

It doesn't fall here?

A. What I stated was that it doesn't fall within Article 50:

"The party complained against shall be identified and the nature of the complaint shall be stated with precision, detailing, date, time and place..."

Q. Well, if...

A. "... of the complaint against behaviour."

Q. ... a person is being abused during years and years, then do you want three hundred and sixty-five (365) complaints for each day of abuse? Is this your interpretation?

A. One would have been sufficient, had it said as an example, T.S. Sankar told me on Tuesday, March fourth (4th), that if I did not include him as a co-author, I would be fired.

Q. Okay. What if it was never told, but according to the morals of Concordia University, that was obviously clear. Then what?

A. I don't know how I would have dealt with that.

BY THE COURT:

That is a purely hypothetical question, and it's disallowed.

BY THE ACCUSED:

Well...

Q. So you feel that unless Sankar told it to me explicitly, that if I don't include him, and I'd be fired, then I have no grounds for a complaint? Right?

A. I gave you an example that I would have accepted, that would have, in fact, come within Article 50, which states that:

"The complaint shall be stated with precision, detailing, date, time and place."

And on first reading I did not believe either your original complaint, or your revised complaint, met those requirements.

Q. So that's what I'm asking you. If someone is abused during a long time and he cannot say that it was on a

certain day and time, then he cannot complain?

BY THE CROWN:

Again, it's hypothetical, My Lord.

BY THE COURT:

Absolutely.

BY THE ACCUSED:

What?

BY THE COURT:

It's a hypothetical question.

BY THE ACCUSED:

No, it's not hypothetical. I am asking...

BY THE COURT:

He said that your... he's already answered your question.

If you wish to preface your complaint with the matter taking place over a long period of time, as long as you're able to specify the... he gave a particular time parameter, which he said, if you had put that in, it would have been acceptable.

BY THE ACCUSED:

Well, okay, so I am asking...

BY THE COURT:

In any event, would you come to the point. Would you please establish what happened with the complaint, or whatever.

BY THE ACCUSED:

Well...

BY THE COURT:

Because this bickering over what the Code says and then trying to interpret the Code and all the rest of it is leading nowhere.

BY THE ACCUSED:

Q. All right. So what happened to this complaint, if anything?

A. The last complaint of yours that I dealt with would have been the complaint I rejected against the security guard. I didn't get to this complaint, prior to going off on sick leave, and prior to August twenty-fourth (24th).

Q. So nothing happened. Right?

A. Correct.

Q. You never bothered to do anything with this complaint?

A. Incorrect. As you pointed out, when I received the first one, we had a conversation... in fact, if I remember correctly I would have pointed out to you either after the hearing of the first complaint, your complaint against the Departmental Personnel Committee, that I was still having problems with the complaint, or one of our complaints, because you had not specified the... you had not broken it down so that I could understand it or accept it. That would have been either June first (1st) or June second (2nd).

Q. Maybe you recall it better that the second complaint, you said is fine. Do you remember that?

A. What do you call the second complaint?

Q. Well, the other one which you read. The last one...

A. No, I do not remember.

Q. ... at that time you said it was fine.

A. No, I do not remember.

Q. At that time you said it was fine?

A. No, I do not remember.

Q. You didn't. All right. You don't remember that. Now, let us go to something else. Have you participated in a

meeting, October thirty-first (31st), of nineteen ninety-one (1991) of intervention team?

A. That's not the date that I have. I have November first (1st), but you could be correct.

Q. Well, if you have November first (1st), that's fine. May I see the Minutes of that meeting, please.

A. I don't have Minutes of the meeting. I would have notes that... no, I have absolutely no Minutes of that meeting.

Q. Well, you were asked to bring everything what you have...

A. Correct.

Q. ... concerning me? So why didn't you fulfil what the subpoena asked you to do?

A. I never had minutes of that meeting.

Q. It was a secret meeting which... no record has left? Is that the case?

A. It wasn't a meeting that I called. It was a meeting that I attended and participated in, and I have no Minutes of that meeting.

Q. Is there any record of that meeting anywhere?

A. I do not know.

Q. Who called the meeting?

A. I was asked to attend by another member of the intervention team. I believe the meeting was called by Grendon Haines.

Q. Okay. So it is Mr. Haines who called the meeting. So probably he has. Okay. What is your recollection of that meeting?

BY THE CROWN:

That would be hearsay, My Lord.

BY THE ACCUSED:

No. What is his recollection of that meeting? What was the purpose of that meeting? Who did he see there? I'm asking him about facts.

BY THE COURT:

You'll have to put your questions in a factual manner, one by one.

BY THE ACCUSED:

Well, I'm doing...

BY THE COURT:

Asking him his general impressions and to relate what took place at that meeting is not the way to go about establishing what occurred at that meeting.

BY THE ACCUSED:

Okay.

A. What was the purpose of that meeting?

Q. The meeting had been called by Mr. Haines. The intervention team was a group of people made up of myself, as Code Administrator, Health Services and the Ombuds office, which was simply a group brought together to provide support to anyone dealing with disruptive behaviour.

The meeting had been convened by Mr. Haines to explain the internal regulations of the University to the members of the Departmental Personnel Committee who, in fact, had had an interaction... what led to your complaint under the Code of Conduct had taken place on, I believe, Tuesday of that week. The meeting with the intervention team and the Departmental Personnel Committee would have been Friday of that week. Also present would have been Dean Swamy and Catherine McKenzie.

Q. Okay. So was it the members of the DPC who asked for the

they wanted the University to suspend you under the emergency provisions of your own Collective Agreement in order to safeguard them.

Q. Okay. Did anyone ask what were the reasons for their decision?

A. For why they were afraid of you?

Q. No. Why they come to the decision that I should be fired?

A. No one at that meeting was there for that reason.

Q. Well, still, if you rape someone's daughter, then you run to the police and say, I'm afraid of this guy, then...

BY THE COURT:

Mr. Fabrikant, you are not here...

BY THE ACCUSED:

... don't rape someone's daughter...

BY THE COURT:

... you're not here...

BY THE ACCUSED:

... and you would not have to be afraid of me.

BY THE COURT:

You're not here to put your interpretation on the meeting, why it was called, or anything else.

BY THE ACCUSED:

Well, I'm not putting an interpretation.

BY THE COURT:

Ask your question. The witness has told you...

BY THE ACCUSED:

I'm just making... making a comparison.

BY THE COURT:

Yes, well, please don't make a comparison. Now is not the time for you to be making comparisons.

BY THE ACCUSED:

All right.

Q. Did anyone ask what reason did DPC have for their fear of me?

A. As I remember it, the meeting lasted, I think, well over an hour. It's difficult to remember. My best remembrance is that it was a particularly difficult and nasty meeting, and that we asked time and again what reasons they had for being afraid of you. When they suggested that you had somehow threatened, we asked repeatedly for examples, for the name of anyone who had ever been threatened, or any time that you had ever threatened any one.

Q. All right. And did you get any answer to that?

A. No.

Q. No. Weren't you amazed that something is wrong there?

A. Yes.

Q. Okay. Did you... and if you felt that something is wrong with the DPC, did you do anything about it?

A. At the time I certainly did not understand why they feared you. I certainly walked away from the meeting believing that they did fear you, and that they had not given us a reason for doing so.

Q. Why would they keep it secret?

A. At the time I had no idea.

Q. Okay. As an intervention team, didn't you think that you should intervene with them rather than with me?

A. The purpose of the intervention team is, in fact, to attempt to be supportive of both sides and, yes, we did.

Q. So what exactly did you do then?

A. The first time we met with the intervention team... the intervention team met with the Departmental Personnel Committee on November the first (1st), we met twice again a week later with Dean Swamy, the three members of the intervention team, and Professor McKenzie who, in fact, was there for the November the seventh (7th) and November the eighth (8th), which was the Thursday and Friday. By that time Dean Swamy believed that the Departmental Personnel Committee had reached a decision to recommend your termination and was unsure what your behaviour would be like when they told you the decision. They asked us how to go about putting the explanation of the decision to you.

There was then a meeting on November the fourteenth (14th) with the Departmental Personnel Committee, again, making recommendations to them which were, amongst other things, that there was an internal Code of Conduct, and if you had ever threatened anyone they could and should bring a complaint against you, that if, in fact, you had threatened anyone's lives, there was a Criminal Code and that they could and should bring a complaint against you, and more importantly, explained what we had agreed to do with Dean Swamy as far as making sure that when you were told the decision of the Departmental Personnel

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">Committee, that you would also be told of what your rights were concerning that decision.

Q. And still at no time you asked them what was their reasoning to terminate my employment?

A. It wasn't part of the reason that I was there. That was, in fact, a line decision that... the Departmental Personnel Committee reaches a decision on employment. At that point we still did not know what the Faculty Personnel Committee would decide. We simply knew that it was simply going to go from the Departmental Personnel Committee who were very worried about how you would react. And considering their belief that you had been spying on them on that Tuesday evening, they were afraid for their safety.

Q. Well, did it ever cross your mind that they were afraid because their decision was so blatantly unfair?

BY THE CROWN:

Hypothetical, My Lord.

BY THE ACCUSED:

Q. Did this ever cross your mind?

BY THE COURT:

The objection is maintained. That question is disallowed.

BY THE ACCUSED:

Q. Well, did you try to explore any alternative explanations for their fear?

A. No.

Q. Why?

A. I didn't believe them.

Q. That's what I mean. Since you didn't believe them, then you should ask maybe they are just unfair, and this is why they are afraid?

BY THE CROWN:

Leading, My Lord.

BY THE ACCUSED:

Well, there must be a way to ask... okay.

BY THE COURT:

Ask him what he did.

BY THE ACCUSED:

No.

Q. Can you imagine any other alternative for them to be afraid of me, or... I'll put it differently. Can you imagine any other alternative for people being...

BY THE COURT:

The witness isn't there. He's here to talk about facts. He said to you, I didn't believe them.

BY THE ACCUSED:

Okay.

Q. Then...

BY THE COURT:

Okay. There you are.

BY THE ACCUSED:

... did you try to reach a conclusion what was the real reason for their fear?

A. I certainly did. In my own mind I didn't discuss it with the other members of the committee. We didn't...

Q. All right. Share it with us what was in your mind then.

A. I believed at the time that they had some other reason to fear you and that, in fact, it was your whistle blowing.

Q. Good thinking. And did you try to connect it with their desire to have me fired?

A. Most certainly.

Q. So would you please make it all together. So in your mind was what, that they decided to have me fired because they were afraid of my whistle-blowing, and since the decision was so unfair, they were afraid that a normal person might explode?

A. It was never that clearly connected in my mind. In my mind I knew that they were telling me on November the first (1st) that they were terrified of you and that they had been threatened by you. They could give me no example of any behaviour of yours which would lead anyone to be frightened, other than a threat that you had made verbally along the lines of, now I understand how you do things here in North America. If you want to get any attention, you get a gun and shoot a lot of people. It was a comment that had been made two years before. That was the only example of any type of threatening behaviour that they could come up with.

On top of that, the Tuesday night, although they claimed to have been sitting in the meeting of the Departmental Personnel Committee and opening the door every twenty (20) minutes to check and see if you were spying on them, because they were so afraid of you, they crowded into an elevator with you and chased you into the basement of our parking garage of the Hall Building, and I found that to be very difficult to understand as being the behaviour of someone who actually feared you.

Q. Yeah. So you feel that if a person is afraid of someone, he wouldn't chase someone to the elevator. Right? That's what you want to say?

A. Correct. I also knew there were a good number of other levels of interaction in the department that I was totally unaware of. I knew what the hypothesis that you were putting forward was. I don't know all of the facts that were occurring in your department at the time. I simply know at the time that I thought your hypothesis made sense, this is, that because you were accusing them of not having contributed to material in which their name... of yours... which the names were included, that they had finally decided to try and terminate your contract.

Q. All right. But if you came to such a conclusion... and did you know by that time that my general evaluations, in every respect, were excellent? Were you aware of that?

A. Yes.

Q. So you were aware of that?

A. Yes.

Q. So putting those two together, excellent evaluations and desire of members of Departmental Personnel Committee to have me fired, didn't you have... didn't you feel obligated to inform the Rector or Vice-Rector about the situation?

A. The process had only started. You had a recommendation of the Departmental Personnel Committee. There was still a meeting of the Faculty Personnel Committee that would have to either agree or disagree with the decision. I was told it was unlikely that the Faculty Personnel Committee would agree with such a decision, since the argument for your dismissal didn't make sense.

Q. Who exactly told you that?

A. That would have been an opinion expressed to me by Maureen Habib.

Q. Well, she is not on the Faculty Committee, is she?

A. No.

Q. So her opinion does not really count. You said that...

A. Miss Habib has a decade of experience as Assistant to the

Vice-Rector, Academic, and in the office dealing with faculty promotions, et cetera, is totally without... outside of my own experience. I am not used to looking at faculty files, nor prior to your case was I aware of what went into a faculty promotion or rejection of a faculty promotion.

Q. Okay. What was Swamy's behaviour during all that? Did he support me?

A. Silence.

Q. Silence?

A. He... the only thing he stated during most of the meetings was that he would express absolutely no opinion because he either was a member of the Faculty Personnel Committee to which the decision would be sent, or he chaired it, and he did not know what their decision would be. He simply wanted to ensure that both sides' rights were protected, both the Departmental Personnel Committee and the fear they were showing and your rights.

Q. Okay. Did you, by that time, know that Dean Swamy is one of them?

A. No, I did not.

Q. So you were aware only about my allegations against the Departmental people, but not the Dean?

A. Correct.

Q. Okay. When did you learn that the Dean is one of the Mafia?

A. I didn't.

Q. Oh, you never... you didn't.

BY THE COURT:

Not that question... I'm sorry.

BY THE ACCUSED:

I will change the question.

BY THE COURT:

You will simply ignore that question.

BY THE ACCUSED:

Okay. I will change the question.

Q. When did you learn that the Dean effectively did the same... okay. Let me put it this way. When did you learn that I allege the Dean did the same reprehensible things as other members of the Department?

A. I would imagine when you submitted the complaints in April... I can't say for sure before then... and the intervention team would not have been involved after those original meetings in November and December.

Q. Okay. Did you hear anything about the electronic mail of mine?

A. Yes.

Q. Okay. So when you hear about that?

A. February eighteenth (18th).

Q. So do you recall that in this mail were allegations about the Dean, too?

A. I will take your word for it. I read it at the time. I don't remember what's in it. You published an awful lot on electronic mail.

Q. Well, in February there was just one letter.

A. I'm not attached to the system. Someone sent it to me...

Q. Yes.

A. ... and the material that I received was four pages in February.

Q. Only that?

A. Yes.

Q. And you never received anything else?

A. I did receive... there was some point where there was close to

sixty (60) pages of material at one time?

Q. Yeah, in March.

A. I would have received that, as well.

Q. Okay. And did you read it?

A. I believe so.

Q. And while reading it you couldn't miss my allegations against Swamy?

A. Quite possibly.

Q. Possibly that you missed it?

A. No. You asked me when I became aware that you were also complaining against Dean Swamy.

Q. Uh, huh. So...

A. My response to you was I honestly don't remember.

Q. Okay.

A. I did become aware that you included him the group of people that you were complaining against.

Q. Uh, huh. All right. Okay. Now, let's get to another subject. I understand that you were also present on November sixteenth (16th) of nineteen ninety (1990) at the, how do you call it, confidential meeting, of Vice-Rector, the same members of DPC, Swamy, the intervention team. Okay. Then correct me, please, who were there?

A. The meeting that you're talking about at the Montreal Athletic Association included the people that you've named, and myself, and the Director of Health Services. Neither of us was there as a member of the intervention team. We had never been brought into the case, and I'm not entirely sure that... the intervention team would have been functioning by that time. We functioned from approximately nineteen eighty-nine (1989) till November ninety-one ('91) or early ninety-two ('92). But, in fact, I had been invited to the meeting, again, to explain to the members of the DPC what available internal procedures were there, and Health Services had been invited, again, to allay the fears of the members of the Departmental Personnel Committee.

Q. Well, maybe we're talking about two different meetings.

A. No.

Q. I'm talking about nineteen ninety (1990).

A. I'm talking about exactly the same meeting. I attended only one at... the difference would be that Suzanne Belson was not at the meeting of the Montreal Athletic Association, the meeting in nineteen ninety (1990). There would have been... nor was Mr. Haines. There would have been the four members of the Departmental Personnel Committee, Dean Swamy, Dr. Sheinin, myself, Nancy...

Q. Torbit.

A. ... Torbit. Thank you. The Director of Health Services, and Warren Steiner, Psychiatric Consultant for Health Services.

Q. All right. And did there members of the DPC also express their fear of me?

A. Just the opposite.

Q. Oh, just the opposite. So why did you say that you were there to explain to them what their recourses...

A. Ah, okay, let me... let me explain myself. It wasn't so much their fears as Dr. Sheinin's belief that they would not act because of their fears. Dr. Sheinin was asking the members of the Departmental Personnel Committee in their evaluation of you as a professor to include your behaviour or interaction with other members of the department. The Departmental Personnel Committee absolutely refused. They stated that there were only a number of categories that were to be included, which if

I remember correctly, are teaching, administration and research, and that they would not evaluate you on your behaviour. More importantly, you weren't a problem to deal with, that every time your contract came up, you became a little difficult, but it wasn't anything that they couldn't deal with quite easily.

More importantly that since their recommendation for your hiring had already been approved by both the Departmental Personnel Committee and the Faculty Personnel Committee, if Dr. Sheinin did not sign or approve your hiring, that Dr. Osman would personally grieve against her decision.

Q. Do you by chance have a copy of that letter?

A. The letter from Dr. Sheinin explaining the meeting?

Q. To the Rector.

A. No, I have never seen it.

Q. No. All right. What was the fear of the Vice-Rector in terms of hiring of me? Could you describe that?

A. The Vice-Rector had heard rumours that you had threatened people, that you owned a gun, and that you had threatened to take the Rector hostage when he was acting Vice-Rector, Academic.

Q. Okay. Was there any name attached to that, as to who I said, what I said, when I said?

A. The same as with the meeting in November, nineteen ninety-one (1991), those were exactly the questions that were asked. At no time did anyone say, I was specifically threatened other than the type of example that I gave earlier where someone said that you had use a phrase about, I now understand how things are done in North America. Any of the other rumours, including the threatening threat to anyone, no one could attach to a specific person.

Q. Okay. Now, if you were smart enough to understand that all those rumours were just because my real threat was to blow the whistle, do you believe the Vice-Rector wasn't smart enough to understand the same thing?

A. I only came to that conclusion one year after the nineteen ninety (1990) meeting.

BY THE COURT:

That's the first part of the question. And his opinion on the Vice-Rector's intellectual capacities is not pertinent.

BY THE ACCUSED:

Ha, ha, ha. All right. We'll ask her about her intellectual capacity.

BY THE COURT:

There you are.

BY THE ACCUSED:

Ha, ha, ha. Okay.

Q. Okay. By that time, when you heard about, something about North America, to who did I say it, why did I say it, when did I say it, any information on that?

A. At the time of the meeting in nineteen ninety (1990)?

Q. Yeah.

A. No.

Q. No.

A. At no time could I trace back at that time any of the rumours that were circulating about you, except for the rumour about the gun.

Q. What was the rumour about the gun?

A. That you owned a gun, or you had been asked whether or not you owned a gun, and you had stated, yes.

Q. When was that?

A. To Grendon Haines, during a meeting with him.
Q. Can he confirm it?
A. You would have to ask Mr. Haines.
Q. So he... he said that during that meeting?
A. No.
BY THE COURT:
What the witness said to you was the only...
BY THE ACCUSED:
He was not there.
BY THE COURT:
... right. The only rumour he was able to trace to any source was that question of the ownership of a gun, to any source, and he told you what the source was.
BY THE ACCUSED:
Q. Okay. Was it just that I have a gun, or that I threatened someone with a gun? Because having a gun is not a crime.
A. At the time my understanding was that you had, in fact, made some sort of statement about taking the Rector hostage and that Mr. Haines had asked you whether you owned a gun. I have no idea in what order, or in which meetings those two questions were put to you.
Q. I was asked whether I intend to take the Rector hostage, like this?
A. No. It was stated that you had...
Q. I said it myself.
A. ... made that statement. That's all I am aware of.
Q. Why didn't she call the police?
A. Not she.
Q. Oh, he.
A. At the time the statement was made, there was an acting Vice-Rector which was the Rector. Between Dr. White, who was the Vice-Rector, Academic and Dr. Sheinin becoming the Vice-Rector, Academic, the Rector was the Acting Vice-Rector, Academic, doing that job as well as his own. It was during that time while he was the Acting Vice-Rector that you supposedly made the threat.
Q. Okay. And then... that was the reason they want to me to have fired?
A. That was the only rumour that I could trace back. They wanted you fired because, in fact, they feared you. And they gave as reasoning in... well, you have a copy of the Departmental Personnel Committee report that, in fact, you were difficult to work with, and they attached it by, if I remember correctly, fifteen (15) different pieces of evidence.
BY THE COURT:
Q. Now, you're now talking about nineteen ninety-one (1991), are you?
A. Yes, My Lord.
Q. Yes, because we are jumping back and forth very, very quickly between nineteen ninety (1990) and nineteen ninety-one (1991), and we were...
A. In nineteen ninety (1990), they not only did not want him, they threatened to grieve if he was not hired.
Q. Fine.
BY THE ACCUSED:
Q. Well, can we try to explain from the point-of-view of blow whistling why in nineteen ninety (1990) they supported me, and in nineteen ninety-one (1991) all of a sudden they didn't? Could...
BY THE COURT:
Well, if you're asking the witness to speculate, that won't

do. If you're asking the witness, of his personal knowledge...

BY THE ACCUSED:

Yes.

BY THE COURT:

... that's something else.

A. I honestly have no personal knowledge that connects. The next time that I would have met or dealt with the issue after that meeting in October would have been the following November, when they had done a complete about turn.

Q. Okay. I think we'll break for ten minutes here.

(THE JUDGE LEAVE THE BENCH)

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

SHORT RECESS

(THE JUDGE TAKES THE BENCH)

(THE JURY TAKES THE BENCH)

(DISPENSE WITH THE CALLING OF THE JURY)

(ALL ARE PRESENT)

JOHN RELTON

UNDER THE SAME OATH

EXAMINATION BY THE ACCUSED: (CONT)

Q. So now we got something specific. Did you also hear, for example, that I said to someone that I know where his children are, or something like that?

A. The way I heard the rumour was you had telephoned another professor and said, do you know what your children are wearing today? And when he responded, no. You said, well, I'm across the street from their school yard, and they're wearing the following today.

Q. Ha, ha, ha. Do you know the name of the professor?

A. No.

Q. Well...

A. Regardless of the number of times that we asked.

Q. Well, who told you that? Maybe we'll get to the bottom of that, too.

A. It would have been brought up in the same meeting, which would have been the November first (1st). One of the members of the Departmental Personnel Committee would have raised it.

BY THE COURT:

Q. Excuse me, which year?

A. Nineteen ninety-one (1991), My Lord.

BY THE ACCUSED:

Q. Do you know who?

A. No.

Q. Okay.

A. I would be guessing, and I can narrow it to one of two people.

Q. Okay. Guess one of two.

BY THE CROWN:

Well, we're not here to guess.

BY THE COURT:

No. No, we're not here to guess. Either he knows or he doesn't know. He doesn't know by deduction.

BY THE ACCUSED:

Okay.

A. I honestly cannot remember.

Q. All right. So at the meeting in nineteen ninety (1990)... so

now we are at a different ball game. It looks like in nineteen ninety (1990) you had specific threats mentioned. Right?

A. In nineteen ninety (1990) all of those same rumours, including the one considering the children, had been repeated. They certainly had been repeated to the Vice-Rector, and that was why she was asking the Departmental Personnel Committee to evaluate your behaviour as part of their evaluation recommending your employment.

Q. All right. So now we have one statement at least attributed to Grendon Haines. Now, another statement and now about North America can be attributed to somebody?

A. Yes. To...

Q. Okay. Who is it then?

A. Catherine McKenzie.

Q. Okay. So the second statement is also identified. The third statement, to who?

A. There's a difference, however. The statement made by Catherine McKenzie was that you had made that statement to her.

Q. All right. Yes.

A. Not that she had heard that you had made it to someone else.

Q. Exactly. And Grendon Haines, also, I understand...

A. Correct. I'm sorry.

Q. ... I made it to him?

A. Yes. You're correct.

Q. So this is direct stuff. Now, the third one, can we identify it somehow?

A. Not at all.

Q. Because I believe it's about time, better later than never, to get to the bottom of all this. No. All right. But all this stuff was repeated in nineteen ninety (1990)?

A. Yes.

Q. All right. Anything else in terms of, even without attribution?

A. I responded too quickly. I am not sure that in nineteen ninety (1990) Catherine McKenzie's statement would have been repeated. But certainly the fact that you had a gun and the issue about the child was included in the reasons that the Vice-Rector had called the meeting. During the meeting the members of the Departmental Personnel Committee, in fact, said exactly the opposite, that although you were a little difficult at times they had no reason to fear you and that they wanted to continue to work with you.

Q. Uh, huh. Okay. But using the same logic as you did before, did you know in nineteen ninety (1990) that all my evaluations were the same, excellent. Everything was the same, fine. Did you know it in nineteen ninety (1990)?

A. Well, at that time, yes, because in fact both the Departmental Personnel Committee and the Faculty Personnel Committee had recommended that the contract be extended.

Q. No. That year they recommended me for promotion. All right. So you did know that?

A. Yes.

Q. Okay. But at that time, it didn't cross your mind that maybe the reasons of Vice-Rector were, in nineteen ninety (1990) were exactly the same as the reasons of DPC in ninety-one ('91)?

A. No, it did not.

Q. It did not. All right. So let's go then to nineteen ninety-one (1991). So when you came to the meeting of nineteen

ninety-one (1991) you tried to recall all those specific threats. Were they mentioned again?

A. Yes. The specific threats were mentioned again, and that was the meeting during which we asked time and again for the members of the Departmental Personnel Committee to be specific as to who had been threatened, who had told them this, and we got no answer.

Q. What can be more specific, Grendon Haines and Catherine McKenzie?

A. No. In the issue of the allegation about the child, the allegation that you had threatened other peoples' lives, when we asked the Departmental Personnel Committee, they were not specific.

Q. What do you mean not specific?

A. And they were not referring to the comment made by Catherine McKenzie.

Q. One second. You just said that I threatened to kidnap, or what? What did I threaten the Rector to do?

A. Take hostage.

Q. Take hostage. So that I threatened to take a Rector hostage, that I said that in North America something... those are specific things.

A. Those are not specific things that were discussed in the meeting of November, nineteen ninety-one (1991).

Q. How come? Miss McKenzie was there. Right?

A. For the first part of the meeting.

Q. So...

A. She left to go to Senate.

Q. And there she arrested me?

A. Correct.

Q. Ha, ha, ha. And she what? She kept it secret. She didn't tell the members of the Committee knowing such important quotation...

BY THE COURT:

Put your question to the witness as to what he knows. Leave your own editorial on what she did, or what she didn't do, out.

BY THE ACCUSED:

Yeah. All right.

Q. So did members of the Personnel Committee know about my threat against the Rector, and about my general threat on North America?

A. I believe they knew about your threat against the Rector. I do not recall whether or not they knew about your general... there were a number of meetings, as I've pointed out, over that two week period, including the meeting between you, Dr. McKenzie and the Director of Security. I learned a lot of information during those two weeks, from a lot of people, and it's very difficult for me to remember at exactly which meeting someone raised the issue for the first time.

Q. All right. So it looks like you're contradicting to yourself, because just earlier today... I would like to bring your attention... just earlier today when I asked you whether any specific examples where I threatened anyone, were presented, and you answered, no. Do you recall that?

A. I recall that when we put the question to the members of the Departmental Personnel Committee, who we were there to advise, because they alleged that they were afraid of you, why they were afraid of you, they gave us no specific examples.

Q. But you just said they knew it, then they must have given you those examples that I threatened the Rector... whatever, and

that I said about North America?

A. I honestly don't remember those comments being made in the meeting of November first (1st).

BY THE COURT:

Q. Ninety-one ('91), you're talking about?

A. Correct, My Lord.

BY THE ACCUSED:

Q. So you knew, since you were present in nineteen ninety (1990). Right?

A. Uh, huh.

Q. So you knew about the specific threats?

A. I knew about the rumours.

Q. Well, what kind of rumour is it if it is identified to who exactly I said it. This is no longer a rumour.

A. In nineteen ninety (1990), again, there was a vague statement that you had made a comment to Grendon Haines about a gun.

Q. Ah, ah, this is not a vague at all.

A. The same... the same with the issue of when the Vice-Rector/Rector threat had been made about taking hostage, at no time could I get to the bottom of any of the rumours and get someone to say, yes, the statement was made to me on the following date, the following time, in the following place.

Q. Well, you are not on speaking terms with Grendon Haines? Ha, ha, ha. Do you ever talk to him?

A. Not often.

Q. But you are on speaking terms, are you?

A. Yes.

Q. And you never bothered to ask him, look, I've heard such a thing. Is it true or not? Did you ever ask him?

A. Between the meeting of October, nineteen ninety (1990), when he was not present, and the meeting of November first (1st), when he was present, I certainly never asked him that statement.

Q. Why not?

A. I may have discussed it with him. I don't believe I did.

Q. Why not? Isn't a statement, this kind of statement... how to say it? How to say that it would not be leading? Is it a usual statement which was attributed to me?

A. No.

Q. No. Could it be said stronger than that?

A. I don't understand your question.

Q. Okay. Like very unusual; very, very unusual?

A. Very unusual.

Q. Very unusual. So wouldn't it be natural to verify, taking into consideration that your office and Grendon Haines' office, you just pass by each day at least twice? No?

A. No.

Q. You don't pass by?

A. No. But nonetheless I did not verify with him.

Q. Okay. Let us make it clear where your office is and where Grendon Haines' office is.

A. And that I park at the rear of the building.

Q. Yes. And... and to get to the second floor...

A. I come up the back stairway, and walk to my office. I do not pass his office twice a day.

Q. All right. Still let us make it for the jury clear that the distance between your office...

A. A few hundred feet.

Q. ... and Grendon Haines' office...

A. A few hundred feet.

Q. Maybe even less than that. Right. So, you never bothered to

verify the correctness of the statement?

A. No.

Q. Isn't it obvious the witness is lying?

BY THE COURT:

Mr. Fabrikant...

BY THE ACCUSED:

Okay.

BY THE COURT:

... I am not here to answer your question.

BY THE ACCUSED:

No, no, no. Let me put it...

BY THE COURT:

Okay?

BY THE ACCUSED:

... in this way. I formally apply for Section 9.2 of the Canada Evidence Act. What the witness is saying obvious to the child, either he didn't hear that, or if he did hear, he definitely tried to verify it. We are not children all here, are we?

BY THE COURT:

The witness... the credibility of the witness stands to be appreciated by the jury, not me. As far as I am concerned...

BY THE ACCUSED:

But I need to cross-examine.

BY THE COURT:

... as far as I'm concerned, the witness isn't evading your questions. The witness has been doing his utmost throughout all of the afternoon, from where I'm sitting, to answer your questions as best he can. And your application under Section 9 of the Canada Evidence Act is denied.

BY THE ACCUSED:

Well...

BY THE COURT:

And I further add that about seventy-five percent (75%) of your questions to the witness have been in the form of cross-examination, in any event, because you simply refuse to conform to the rules.

BY THE ACCUSED:

You find it very convenient, on the one hand, not to grant it.

BY THE COURT:

I don't wish an editorial from you on what I grant or what I don't grant. I've told you, your application is denied. I'm not going to come to the conclusion that the witness...

BY THE ACCUSED:

All right.

BY THE COURT:

... is attempting to mislead me...

BY THE ACCUSED:

Okay.

BY THE COURT:

... or to evade the questions you're putting.

BY THE ACCUSED:

Fine. Fine.

BY THE COURT:

The jury will appreciate the credibility of the witness.

BY THE ACCUSED:

All right. All right.

BY THE COURT:

That's something else.

BY THE ACCUSED:

All right.

Q. Okay. So, you, yourself never tried to verify it. Did you try to verify it with Dr. McKenzie?

A. No.

Q. No.

A. You have to remember that in October, nineteen ninety (1990), I was asked to come along to a meeting to explain what the available internal procedures were to a group of people. None of them chose to bring a complaint, as they were advised they had the right to do, by me, during that meeting. At the time I was dealing with another time-consuming complaint. In fact, on the way back from the Athletic Association to the University I spent the ten minute walk with the Vice-Rector, trying to get her to talk about the other case, which I already was working on.

Q. The other case, you mean what?

A. It was... it eventually went to arbitration. It lasted for quite a while.

BY THE COURT:

But this is a case that has nothing to do with Mr. Fabrikant?

A. Absolutely nothing to do with Mr. Fabrikant.

Q. Fine.

A. In October, nineteen ninety (1990), there were no complaints that I was dealing with. I had simply been asked to come to a meeting and to explain to the people there what procedures were available in terms of the University, and I did it.

BY THE ACCUSED:

Q. Okay. So now let's get back to ninety-one ('91), and imagine the situation. Four members who assaulted me...

BY THE COURT:

Listen, we're not here for a discourse on ninety-one ('91) And we're not here to imagine situations. You're here to put questions of fact to the witness as to what...

BY THE ACCUSED:

I am asking a question of fact. I am just...

BY THE CROWN:

Let's skip the editorial, My Lord.

BY THE ACCUSED:

It's not an editorial. It's just... I needed to put the question. That's all.

Q. So in ninety-one ('91), there was a meeting called by Grendon Haines. Now, there Grendon Haines, who knows one statement of mine allegedly. Dr. McKenzie, who allegedly knows another explicit threat. You, who know both, four members of the Departmental Personnel Committee came to complain that they fear me, and you, knowing everything came out of the meeting with a strong conviction that all they are afraid of only is they're afraid of me whistle blowing. Do you recall this statement of yours?

A. No. I did not say I came out of the meeting with a strong conviction. I said I came out of the meeting not believing them, and appreciating your hypothesis, and that there were more facts that I didn't understand, or didn't know.

Q. Well, explain this contradiction. You said yourself that those... first, you said that they didn't give any specific examples. Now, we came out that, first of all, all three of you knew specific examples, and the members of the Departmental Personnel Committee also knew them. So they did give specific examples then?

A. What I said was we could not attribute who had been threatened, who you had supposedly threatened or made the threats to, and at that meeting we were dealing with the four

members of the Departmental Personnel Committee, talking with them. And I said specifically that in questioning them, none of them could give us specific examples of any reason for any threat that you had made specifically to them, or to anyone that they knew of.

Q. Well, you said yourself they knew about my threats to the Rector

BY THE CROWN:

He's cross-examining the witness.

BY THE ACCUSED:

Well, he contradicts to himself. Allow me to cross-examine him.

BY THE COURT:

He said... no, I will not allow you to cross-examine him. But he said at one point that he believed that THE DPC was aware...

A. Correct.

Q. ... of the question of taking the Rector hostage.

A. Correct.

BY THE ACCUSED:

And before that...

BY THE COURT:

And second he added that as far as the North America statement was concerned, he did not know. Is that what you said?

A. Yes, My Lord.

Q. Okay.

BY THE ACCUSED:

But before that, before that, just go before that, earlier than that, go earlier, please. He said that absolutely nothing specific was said, not a single example of anything. Now, this is a contradiction.

BY THE COURT:

Look, what the witness said to you... what the witness said to you was, in nineteen ninety-one (1991), the DPC was asking that the powers of suspension be invoked, and that the powers of suspension be invoked because they were afraid of you. And what he said, if I understood him properly, was simply that as to the specifics of their feelings, I went into it with them, and I came away from the meetings satisfied that they could not ground their fears on any concrete example. Is that right, Mr. Relton?

A. Yes, My Lord.

BY THE ACCUSED:

Yes. And this definitely contradicts to their knowledge that I threatened allegedly to take a Rector hostage. This is an obvious contradiction. It's only... you are the only person in this room who does not see the obvious contradiction.

BY THE COURT:

One set of circumstances, the witness said, grew out of a meeting in nineteen ninety (1990). In nineteen ninety (1990), both the DPC and the Faculty Personnel Committee, according to the witness' testimony, recommended that either your contract be extended or that you be promoted, whichever it was, and that was the question in nineteen ninety (1990). What he was addressing was what happened when in nineteen ninety-one (1991) the DPC made the request that it made. If you want to argue that there was a contradiction in the conduct of the DPC, or whatever, you go right ahead. But that, as I understood it, is what the witness is telling.

BY THE ACCUSED:

No. The witness was first questioned on the facts of ninety-

one ('91). And when questioned on the facts of ninety-one ('91), the witness said the DPC did not present any single specific example of me threatening them, or anybody else.

BY THE COURT:

That's right.

BY THE ACCUSED:

He said that.

BY THE COURT:

Right.

BY THE ACCUSED:

Now, after that we went to nineteen ninety (1990), where the same DPC was present, the witness was present, and he testified that at that meeting it was quoted a) that I threatened to take the Rector hostage, that I threatened... whatever it was... killed many people in North America... something like that.

A. No.

Q. And the DPC was there, but the DPC objected saying that we are not afraid of him. That was his testimony. Then I went back to ninety-one ('91), and here we are at an obvious contradiction, because since the DPC were present in nineteen ninety (1990) and heard all this specific examples of threats, then in ninety-one ('91) when they came, it couldn't possibly be that they didn't quote them. And now we found that they did quote them. So the witness is in obvious contradiction. His previous testimony does not correspond to the testimony now. His testimony before the break does not correspond to his testimony now. Well...

BY THE COURT:

Q. Are you able to clarify that question?

A. Part of it, My Lord.

BY THE ACCUSED:

You are the only person who don't see it.

BY THE COURT:

Okay. Go right ahead.

A. October, nineteen ninety (1990), I did not suggest those threats were discussed in any way. I said that, in fact, Dr. Sheinin was aware of them, and that they were the reasons that she had led to the meeting being called. At the meeting the DPC, as I stated, said that you were not difficult to work with, that in fact your behaviour was a little bit difficult at times, but only when your contract was threatened, and more importantly, that if you were not... if the Vice-Rector did not agree with the recommendation of the Departmental Personnel Committee and the Faculty Personnel Committee, that they would grieve. I did not state that we discussed those rumours at the meeting. It was, in fact, the rumours that caused the Vice-Rector to call the meeting and, in fact, to ask them to include your behaviour as part of the evaluation process.

Q. Well, the witness testified about nineteen ninety (1990), that the Vice-Rector did state all these threats to the DPC explicitly. Correct?

A. Not correct.

Q. Well, she what, made it secret from them. She didn't mention to them that I threatened the Rector, that I threatened to kill a lot of people...

A. There had been...

Q. And she asked them not to hire me. Absurd.

A. There had been a procedure or process that had been going on back and forth between the Departmental Personnel Committee

and the Vice-Rector's office for a period of time, because she was not approving the decision that they had forwarded. She called this meeting to deal with those issues, and asked Health Services to come to explain to them that they shouldn't fear, and asked me to come to explain the internal procedures. And when we met the only thing that the Departmental Personnel Committee actually raised at that meeting was that they were in no way afraid of you. And it was that contradiction between the nineteen ninety (1990) and the ninety-one ('91) meeting that left me not capable of understanding their fear when I walked out of the meeting in nineteen ninety-one (1991), because in one year they had made a complete about face.

Q. Well, you, again contradict yourself. So the Vice-Rector at no point explained to the Departmental Personnel Committee members why is it that she wants to have me fired. She never explained it to them explicitly? Is that what you are saying?

A. I'm saying I honestly don't remember her explicitly raising, or any of the Departmental Personnel Committee raising those specific threats at the meeting in October of nineteen ninety (1990).

Q. Now, what you are saying is the Vice-Rector calls those members and tells them that she wants to have me fired and keeps secret from them that I threatened the Rector, that I threatened to kill a lot of people. Is it what you are saying? She kept it secret from them?

A. That wasn't what I was saying.

Q. She never told them that. Is this what you are saying?

A. What I said was those rumours were not raised at the meeting where I was present. What occurred before, I have no idea.

Q. Again, he just testified earlier that that was the place when he learned about all this, because it was raised there.

A. No.

Q. He is completely...

A. That is not where I learned of it.

Q. Well, this is what you said.

BY THE COURT:

Will you stop arguing with the witness.

BY THE ACCUSED:

Well, I have...

BY THE COURT:

And would you stop giving your impressions. Just put your questions.

BY THE ACCUSED:

Well, I am asking you to rule the witness is completely mixed his testimony several times over.

BY THE COURT:

The witness is answering your questions one by one.

BY THE ACCUSED:

Well, but one by one, he answers one time one thing, and another time he answers something else.

BY THE COURT:

Mr. Fabrikant, that's your impression.

BY THE ACCUSED:

Well, it's not my impression.

BY THE COURT:

You go right ahead and put any questions you have.

BY THE ACCUSED:

Well, we are all here. I want the witness to be declared adverse and I want to cross-examine him.

BY THE COURT:

You know something, you've been putting questions to him which have been of the form of cross-examination all afternoon. In fact, Mr. Belleau, with a slip of the tongue when we came back after the break mentioned cross-examination, then quickly amended it to say examination. That's a Hallmark of what you've been doing since the beginning. Now, would you get this question of adverse witness off your brain, as far as Mr. Relton is concerned, and get on with putting questions to him.

BY THE ACCUSED:

Well, you are doing all this trickery thing again. On the one hand you allow me to cross-examine him. On another hand you refuse to declare him adverse, because he...

BY THE COURT:

Mr. Fabrikant, you are putting your questions and you are getting your answers. Now, would you continue to do so, and would you get this question of 9.1 off your mind. I'm not of the impression that he's trying to evade your questions.

BY THE ACCUSED:

Well, he's just telling one time one thing, and another time he's telling another.

BY THE COURT:

Have you any more questions to put to him?

BY THE ACCUSED:

Of course I do.

BY THE COURT:

Good. Put them.

BY THE ACCUSED:

Of course I do.

Q. Okay. So you... I would like to get kind of the final version of the events, the way you view it now. November first (1st) you had a meeting, a Departmental Personnel Committee, asking you... well, asking whoever it was there to declare emergency measures against me. Emergency measures are declared when someone represents immediate danger. Right?

A. Correct.

Q. Okay. And what you are saying is, did they, or didn't they quote that I threatened the Rector, to the best of your recollection, on November first (1st)?

A. At that meeting they did not.

Q. They did not.

A. Specifically to the best of my recollection at the meeting of November, nineteen ninety-one (1991) I told them specifically that the only way that clause in the Collective Agreement could be used is if there was clear evidence that you were of immediate danger, that they weren't giving us any specific examples, and that at the time you already served the university with a mise en demeure by a good lawyer. I believe Julius Grey at the time.

Q. No, no, no.

A. And the response from the Departmental Personnel Committee was, we don't want to hear about whether or not he has a good lawyer. We just want you to get us a better one, and to get him out of the University. I also said...

Q. Well, none...

A. I also said it was a particularly nasty meeting.

Q. Now, maybe you recall better that Julius Grey, who I fired the next day, was in nineteen ninety (1990), and I hope we will hear from him, also, here. Don't you worry, he will be testifying here, too.

So maybe you call it was not ninety-one ('91). Maybe it was

nineteen ninety (1990)?

A. No. All I said was, to them, that in a previous experience with the University you had use Me Grey?

Q. Yeah. In what year?

A. You would have better knowledge than I do. And if you say nineteen ninety (1990), then nineteen ninety (1990) is probably correct.

Q. Well, but they told you in ninety-one ('91) that I have retained Grey?

A. No. What I said, as an example at the time, was that since we were already locked in an arbitration that had been going on for over a year at the time, over the issue of whether or not we could use that Article in the Collective Agreement, that it was important to, in fact, have some evidence that you were a danger to the community, before even recommending its use.

Q. Okay. But did they or didn't they, in ninety-one ('91), mention that I retained Grey?

A. No, they did not.

Q. Okay.

A. I did.

Q. So where did you get them this phrase that... the complained that I retained Grey and they asked you to give them a better lawyer.

A. Excuse me. I said that in your past experience with the University, you had used Me Grey, and that you had a good lawyer. They said that we don't want to know that he has a good lawyer. We want you to get us a better one.

Q. Well, did they say it in ninety-one ('91)?

A. Yes.

Q. What it has to do with Grey? He was fired the next day.

BY THE COURT:

You're now arguing.

BY THE ACCUSED:

No, I'm not... okay. I will rephrase the question then.

Q. Did they tell you... did they tell you that I have used Grey for any purpose whatsoever?

A. At no time did I say that they told me that you had used Me Grey.

Q. Just five minutes ago he said that. He...

A. Five minutes ago I said that I stated that you had used Me Grey and recommended to them that they be careful and that, in fact, that they followed procedures carefully. They responded, don't tell us who his lawyer is. Get us a better one.

A. I really want to get the tape. Because just a minute ago he said...

BY THE COURT:

Would you stop editorializing and get on with your questions.

BY THE ACCUSED:

Well, he again contradicts to himself. Just a minute ago... he does not remember what he said a minute ago. Just a minute ago he said that the members told me.

BY THE COURT:

Mr. Fabrikant, we've run into this problem continually through...

BY THE ACCUSED:

Now he says that he told the members.

BY THE COURT:

We've run into this problem continually throughout this trial with your interpretation of what witnesses have said at various points in time.

BY THE ACCUSED:

Well, and wasn't I right...

BY THE COURT:

If you are not able to...

BY THE ACCUSED:

... all the time?

BY THE COURT:

If you are not able to nuance what the witness has said, that's your problem, not mine.

BY THE ACCUSED:

Well...

BY THE COURT:

Now would you ask your next question.

BY THE ACCUSED:

... I am wrong in what I'm...

BY THE COURT:

Ask... yes. Ask your next question.

BY THE ACCUSED:

Okay.

Q. So you said them that at one time I used Grey. Right?

A. Correct.

Q. You said them. Not they told you?

A. Correct.

Q. You said them. How do you know that I used Grey?

A. Because I had seen the mise en demeure.

Q. Okay. And did you see any other papers after that whatsoever?

A. Legal papers?

Q. From Grey?

A. No.

Q. So...

A. No.

Q. ... doesn't it mean that I did not use Grey after all?

BY THE COURT:

How can the witness possibly answer that question?

BY THE ACCUSED:

All right.

BY THE COURT:

Now, would we move on to something a little more pertinent.

BY THE ACCUSED:

All right. We'll go to pertinent things, because we get to very important things from minor things.

BY THE COURT:

Yes, I know. But you are supposed to be proceeding at least in a comprehensible direction.

BY THE ACCUSED:

I am proceeding in a comprehensible. If you want to know my direction, I can tell you right away.

BY THE COURT:

Yeah. Well, let's...

BY THE ACCUSED:

My direction is the following, that they intentionally spread rumours, that I threatened someone, because...

BY THE COURT:

Mr. Fabrikant...

BY THE ACCUSED:

... that was the only thing...

BY THE COURT:

Mr. Fabrikant, I didn't ask you to give me ...

BY THE ACCUSED:

No. You asked me where I am going. I'm telling you where.

BY THE COURT:

I'm telling you, let us leave the question of Julius Grey and wherever...

BY THE ACCUSED:

All right.

BY THE COURT:

... and get on to what the witness is supposed to be testifying about.

BY THE ACCUSED:

Yeah. Hooray.

Q. So, at that particular meeting, you were there, and by that time you knew about specific threats allegedly made by me. Correct?

A. I had heard rumours, yes.

Q. Well how could it be a rumour if they are attributed to Grendon Haines who was right there? Correct?

A. The first time that I would have really started, as I told you before, to try and narrow it down who rumours had come from, and as I pointed out to you that I was eventually able to narrow it down two specific incidents, would have been during the meetings that followed November first (1st).

During the period from November first (1st), when there was a specific meeting with the Departmental Personnel Committee members, through to November nineteenth (19th), when you and I met with Dean Swamy, during that time I attempted to get to the bottom of... by talking and discussing with other people where the rumours had come from, who had said what, to whom, and the only two that I was able to get to the bottom of were those two.

Q. And you didn't testify here and today that in nineteen ninety (1990)..

A. I was aware of the rumour.

Q. ... you knew very well at least the source of two of them?

A. I was aware of two rumours at that time.

Q. In nineteen ninety (1990)?

A. That's right. And I continued to classify them at that time along with the one about the children, as being rumours.

Q. No, no, no, no, no. Let's make a difference. Children, you didn't know the source. Correct?

A. Correct.

Q. Those two, you knew the source as early as nineteen ninety (1990). Correct?

A. Certainly the one with Grendon Haines. I can't say with any assurance, the one with Catherine McKenzie.

Q. Okay. So you knew about at least Grendon Haines in nineteen ninety (1990)?

A. I believe so.

Q. And you don't remember that you already testified that about McKenzie's allegations you knew also in nineteen ninety (1990). You do not recall that? You testified today about it.

A. I am not positive as to exactly what I knew in nineteen ninety (1990), what I learned in nineteen ninety-one (1991), or in the two weeks that followed it.

Q. All right. I suppose... So you are sitting there. Grendon Haines is right there in the same room with you, and four members are coming for help. They are scared. Isn't it natural of you to say, Grendon, tell them what you know? Did you ask something like that?

A. No.

Q. Why not?

A. Didn't think of it.

Q. It's what, an unimportant thing?
BY THE CROWN:
This is all cross-examination, My Lord.
BY THE ACCUSED:
Of course it is cross-examination...
BY THE COURT:
Oh, it is cross-examination.
BY THE ACCUSED:
... because he is constantly changing the story. He, at the beginning, he was saying that he knew nothing, that they didn't present anything.
BY THE COURT:
He has told you that, no, he did not ask Haines at that meeting. Okay? There's your answer.
BY THE ACCUSED:
There's my answer. Right. Okay.

Q. Now, can you explain why you didn't ask?
BY THE COURT:
He told you that, too. He said, I didn't think of it.
BY THE ACCUSED:
Well, that's all what you can say? You cannot explain it better than that?

A. No.

Q. No. All right. I'm taking his answer as it is.
And knowing all this, you still got out... when Dr. McKenzie were also there, and she didn't bother, also, to say, you know, he told me...
BY THE CROWN:
Always leading, My Lord. Always, always, always.
BY THE ACCUSED:

Q. Okay. Did Dr. McKenzie, at any time during that meeting, try to contribute something in terms of my threats?

A. As I've told you already, I honestly do not remember Dr. McKenzie having made any statements at that meeting. We had that meeting, the two meetings the following week with the Dean and Dr. McKenzie, and the meeting on the thirteenth (13th) with you, the Director of Security, Dr. McKenzie and myself. When she raised the specific threat and how frightening she found it, at which of those meetings I don't remember. I honestly do not remember her raising the issue at November the first (1st). I do remember her leaving early, along with the Dean, to go to Senate.

Q. Well, early or not early, how long... she was there long enough to raise the issue, wasn't she?
BY THE COURT:
He said, he's told you, I don't remember her raising it. Now, that's the end of it.
BY THE ACCUSED:
Yeah. All right. Correct. All right. Fine. Isn't it fantastic, two people are there, know of certain threats of mine...
BY THE COURT:
Mr. Fabrikant...
BY THE ACCUSED:
... and they do not...
BY THE COURT:
Mr. Fabrikant, I don't need your editorializing.
BY THE ACCUSED:
All right. All right. All right.
BY THE COURT:
This proceeds on the form of question and answer.

BY THE ACCUSED:

Yes. Good. Good. Good. Okay.

Q. So she didn't raise any question there, but terrified she went to the Senate meeting and had me there arrested.

BY THE COURT:

Mr. Fabrikant...

BY THE CROWN:

It's illegal, My Lord.

BY THE COURT:

... this is completely illegal.

BY THE ACCUSED:

All right. All right. All right.

BY THE COURT:

The witness was at the other meeting. She left to go to the Senate meeting.

BY THE ACCUSED:

Okay. Okay. I...

BY THE COURT:

If you want to...

BY THE ACCUSED:

... I accept I will ask her these questions.

BY THE COURT:

Fine.

BY THE ACCUSED:

Right. Good.

Q. So tell about other meetings. The next meeting...

BY THE COURT:

How long do you propose to be with this witness?

BY THE ACCUSED:

Well, I will not finish today. If you want to adjourn, adjourn.

BY THE COURT:

Fine. So I think at this point, before we get on to the other meeting, it would be an appropriate point to break for the day. Tuesday morning, ladies and gentlemen, nine-thirty (9:30). I wish you all a very pleasant weekend.

(THE JUDGE LEAVES THE BENCH)

(MEMBERS OF THE JURY LEAVE THE COURTROOM)

ADJOURNMENT

I, the undersigned, MICHEL DAIGNEAULT, Official Court Reporter, hereby certify the foregoing is a true and faithful transcript of the evidence in the above-mentioned case as taken by mechanical recording, to the best of the quality of said recording.

And I have signed.

MICHEL DAIGNEAULT,
Official Court Reporter</pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">CANADA
COUR SUPRIEURE

(Chambre criminelle)

PROVINCE DE QUBEC

DISTRICT: MONTRAL

CAUSE NO: 500-01-017372-928

TAPE: PROCES

PRSENT: L'HONORABLE JUGE J. FRASER MARTIN, J.S.C. et JURY

NOM DES PARTIES:

SA MAJEST LA REINE
Plaignante,

c.

VALERY FABRIKANT
Accus,

COMPARUTIONS:

Me JEAN LECOURE
PROCUREUR DE LA COURONNE

DATE D'AUDITION: 25 MAI 1993

FICHER : 2889

TABLE DES MATIERES

PRELIMINARY.....	3
JOHN RELTON Examination by Mr. Fabrikant.....	30
WITHOUT JURY.....	71
JOHN RELTON Examination by Mr. Fabrikant (Cont'd).....	74
NORMAND MAJOR Interrog, par M. Fabrikant.....	102
SUSAN ALTIMAS Examination by Mr. Fabrikant.....	131
Cross-examination by Me Lecours.....	155
NORMAND MAJOR Interrog, par M. Fabrikant.....	157
HAROLD PROOPE Examination by Mr. Fabrikant.....	189
WITHOUT JURY.....	216
WITHOUT JURY Me BELLEAU : My Lord, Mr. Fabrikant seems to have a few points that he wants to raise with the Court. THE COURT : Would you like to sit down for a minute. VALERY FABRIKANT : There is one unresolved question about access to computer accounts at Concordia University. I didn't get any help from Mr. Belleau concerning how this can be done, so I need the Court order which would allow me to get such an access. THE COURT : Computer accounts at Concordia, what are you talking about and what could the possible pertinence of these be? VALERY FABRIKANT : Well, there are a number of files there which are relevant to my defense. THE COURT : No, that won't do. VALERY FABRIKANT :	

What do you mean that won't do? There are a number of files there which I do not have in any way except on the computer, and I need those files to use in my defense. And I see no problem in getting me to some remote place at Parthenais...

THE COURT :

Why can these, if they're relevant, why can these not be required by subpoena as can the presence of a) witnesses and b) documents that witnesses may have in their possession?

VALERY FABRIKANT :

Well, because it is in computerized form, you cannot bring computer in here. Computer is huge, you cannot bring it here...

THE COURT :

Well, what good...

VALERY FABRIKANT :

...and even if you do it won't do any good.

THE COURT :

What good will an order from the Court do?

VALERY FABRIKANT :

Well, I will be able to look into those files and retrieve some of them which are necessary, and refresh my memory and... well, those are documents.

THE COURT :

Look, what is on the computer is printable, that much I know. I don't know a hell of a lot about computers but that much I know. So you put on a subpoena what you require and you serve it on Concordia, on the appropriate authority and have the appropriate authority bring the print-out and we'll see if it's relevant.

VALERY FABRIKANT :

Well, I cannot let them print by files, they are confidential.

THE COURT :

Oh, Mr. Fabrikant, you send your subpoena to whoever is in charge of the computer records and require whatever you feel you require and we will see. But don't... I'm not issuing Court orders in the dark, that's for sure.

VALERY FABRIKANT :

Well, it's not in the dark. What I'm...

THE COURT :

I don't take your word for it, do I have to make it any clearer than that? So if you want the document, you require whoever is the custodian of that document at Concordia to produce the document, produce the computer print-out, produce whatever in your lingo you call it. But I'm not issuing a Court order for the thing.

VALERY FABRIKANT :

Well, then I have to disclose to them whatever I have on my computer account.

THE COURT :

I really don't care what your problems...

VALERY FABRIKANT :

You should care.

THE COURT :

...are about their computer accounts. If you want their records...

VALERY FABRIKANT :

You should care because it is my defense and it should

be confidential.

THE COURT :

No, it shouldn't be confidential. At one point, at one point the public interest gets in the way.

VALERY FABRIKANT :

I have interest...

THE COURT :

At one point I have to know what the pertinence of these things is. And as far as I can see, computer accounts at Concordia can cover a vast range of things.

VALERY FABRIKANT :

Well, you want to give me... me to give you example, I cannot go into all the details but I can give you definitely example of what is in there.

THE COURT :

If you can give me an example, you can surely put an example down on a subpoena with a duces tecum attached to it that Mr. Belleau will be very happy to assist you in serving.

VALERY FABRIKANT :

But there are files which are confidential, and I do not want the content to be open until I present it in Court...

THE COURT :

Well, that's your problem.

VALERY FABRIKANT :

...isn't that clear?

THE COURT :

That's your problem not mine.

VALERY FABRIKANT :

Well, this is your problem, you are the trial Judge.

THE COURT :

No, it's not my problem. It's not my problem.

VALERY FABRIKANT :

What seems to be the problem if I be allowed to a micro computer at Parthenais...

THE COURT :

Oh, is that where we're going now? That you be allowed on micro computer at Parthenais... I wondered when this was coming back.

VALERY FABRIKANT :

For one hour.

THE COURT :

I wondered when this was coming back.

VALERY FABRIKANT :

For one hour. Stop your stupid sarcasm.

THE COURT :

I am not authorizing any micro computers at Parthenais, is that clear?

VALERY FABRIKANT :

I'm asking... it is there, you don't need to authorize it. Micro computer at Parthenais is there.

THE COURT :

I am not authorizing anything do to with micro computers at Parthenais. If you require a...

VALERY FABRIKANT :

They're not explosives micro computers. They don't shoot.

THE COURT :

If you... I'm not concerned about what they do or what they don't do.

VALERY FABRIKANT :

So what seems to be the problem?

THE COURT :

What seems to be the problem is...

VALERY FABRIKANT :

I just sit there for an hour...

THE COURT :

No.

VALERY FABRIKANT :

...and get what I need from my computer file.

THE COURT :

No. No. No. You're not going on a fishing expedition of Concordia's...

VALERY FABRIKANT :

It's not fishing, it's my account, what the hell fishing...

THE COURT :

Then it is your account, you subpoena your account.

VALERY FABRIKANT :

I cannot subpoena my account.

THE COURT :

Oh, you should...

VALERY FABRIKANT :

The account is electronic something. Even person with your...

THE COURT :

Then you subpoena...

VALERY FABRIKANT :

...level of intellect can understand that.

THE COURT :

No, no, somebody with my level of intellect has great difficulty, you see, understanding what you're getting at.

VALERY FABRIKANT :

Well, then improve yourself a little bit.

THE COURT :

So what you can do...

VALERY FABRIKANT :

Why don't you do that?

THE COURT :

...what you can do is you can subpoena the custodian of these accounts to bring print-outs. I have learned that much about computers, (inaudible) print-outs.

VALERY FABRIKANT :

Yes, but print-outs they can read them, I do not want them to read it.

THE COURT :

Oh, my goodness me! You know, you and your...

VALERY FABRIKANT :

They can change whatever they want.

THE COURT :

You might remember, you might remember the rights you love to invoke are entitled to respect, yes, they're not entitled to veneration. So no, there will be no order to Concordia concerning your account. If you want your account, you can subpoena your account from Concordia University. Jury please...

VALERY FABRIKANT :

I'm not finished yet. Now I have several tapes which I want to play, here are the transcripts and I want them to copy it and Mr. Belleau says that he is not going to

do that.

THE COURT :

Well, I have no idea what tapes you want to play.

VALERY FABRIKANT :

Well, I want to have played several conversations with professors at Concordia...

THE COURT :

Well then, there's a procedure to follow, I'm sure Mr. Belleau has told you about it, if he hasn't he'll be happy to do so.

VALERY FABRIKANT :

Well, he told me that he's not going to do it unless you order him.

THE COURT :

Well, that depends what we're talking about.

VALERY FABRIKANT :

What is your relationship between you and him, I don't know, but it looks pretty dishonorable to me the whole arrangement.

THE COURT :

If you have tapes that you recorded...

VALERY FABRIKANT :

Yes.

THE COURT :

...then you'll have to satisfy me, first of all, that you recorded them, you'll have to satisfy me as to the condition of the tape that was used, you'll have to satisfy me as to the integrity of the tape, you'll have to satisfy me that the tape wasn't tampered with. And it may well be that the Crown will ask to inspect your tapes so that their own experts can look at them and see if these tapes have been played with in any sense.

VALERY FABRIKANT :

All right, I have nothing against it.

THE COURT :

Now presuming the tapes pass all of these requirements, which I'm stating in a very summary form at the moment, then it may be that your tapes are admissible, I don't know.

VALERY FABRIKANT :

Well, so let us decide it.

Me JEAN LECOURES :

And they have to be relevant as well.

THE COURT :

They would have to be relevant as well.

VALERY FABRIKANT :

Yes. So let us decide it. Here are the transcripts, and Crown may examine them and (inaudible)...

THE COURT :

Well, you better hand the transcripts to the Crown and let the Crown...

VALERY FABRIKANT :

...whatever objection they have.

THE COURT :

You better hand the transcripts to the Crown and let the Crown examine them before we get into the question of the tape.

VALERY FABRIKANT :

Well, here they are. We have the chief transmitter of papers, one hundred sixty dollars (\$160.00) per hour for transmission.

Me BELLEAU :
I got a raise.
VALERY FABRIKANT :
You got a raise?
Me BELLEAU :
Not a minute too soon.
VALERY FABRIKANT :
All right. So give it please to the Crown...
THE COURT :
Now, would you care to tell us what these are?
VALERY FABRIKANT :
It's all written...
THE COURT :
I mean is this what you cart around in your briefcase or
what is it?
VALERY FABRIKANT :
It's all written there, you can read it.
THE COURT :
Oh, I know I can read it but just tell me what they are.
You are saying that you wish to introduce certain
transcripts, I want to know what you want to introduce.
VALERY FABRIKANT :
Read it.
THE COURT :
One more word like that and back they go to you and they
don't go in. Now you tell me what they are. Hand them
back, Mr. Belleau, for the minute. And you tell me one
by one what these are and what you propose to put in
evidence. And if you don't tell me then you're not
putting them in evidence. And if that's not clear to
you then I'll make it very clear to you, I'll simply say
they're not going in. Now first one, what is it?
VALERY FABRIKANT :
All right.
THE COURT :
All right.
VALERY FABRIKANT :
The first one, transcript of conversation with T.S.
Sankar, summer 1988, present Fabrikant and Sankar.
Fabrikant: "Do you remember that..."
THE COURT :
Just a second. Just a second, just a second.
Transcript Sankar, Fabrikant?
VALERY FABRIKANT :
Yes.
THE COURT :
Summer when?
VALERY FABRIKANT :
Nineteen eighty-eight (1988).
THE COURT :
Pardon?
VALERY FABRIKANT :
Summer nineteen eighty-eight (1988).
THE COURT :
Summer nineteen eighty-eight (1988), yes?
VALERY FABRIKANT :
Present: Fabrikant and T.S. Sankar.
Fabrikant : "Do you remember that in
nineteen eighty-five (1985)..."
THE COURT :
No, I don't require you to read me the thing just now,

I just wish to know what it is that you want to put in, that's the first one, okay. What's the next one?

VALERY FABRIKANT :

Transcript of conversation with Hoa, H-o-a, March nineteen eighty-eight (1988), present Fabrikant and Hoa.

You want me to read it?

THE COURT :

Not yet.

VALERY FABRIKANT :

All right.

THE COURT :

Third?

VALERY FABRIKANT :

Third, transcript of conversation with S. Sankar, March nineteen eighty-eight (1988), present Fabrikant and S. Sankar.

THE COURT :

Next one?

VALERY FABRIKANT :

Well, three so far at this time but I have more than that.

THE COURT :

Now, you recorded these tapes yourself, I suppose?

VALERY FABRIKANT :

Yes.

THE COURT :

How... what... The Crown I don't suppose has seen these transcripts yet?

Me JEAN LECOURE :

No, My Lord. I would like to.

THE COURT :

I would presume you wish to commence by looking at them?

Me JEAN LECOURE :

Definitely.

THE COURT :

And you will let me know what your position is after you have seen them?

Me JEAN LECOURE :

Yes.

THE COURT :

As to how far we have to go on voir-dire in order to see whether or not these things are admissible.

VALERY FABRIKANT :

So...

Me JEAN LECOURE :

But at first, when does he want to introduce them?

VALERY FABRIKANT :

Well, as soon as possible.

Me JEAN LECOURE :

Sure... well, they might not be used to cross-examine witness, for sure. It has to be in the evidence (inaudible).

VALERY FABRIKANT :

They might not be used to cross-examine, why not? This is the same as previous statement.

Me JEAN LECOURE :

No.

VALERY FABRIKANT :

I read about it, do not try to mislead me please.

Me JEAN LECOURE :

This is oral statement.

VALERY FABRIKANT :

This is oral statement recorded. It is the same as previous statement.

THE COURT :

What do you base yourself on to say that?

VALERY FABRIKANT :

Well, I've seen it written...

THE COURT :

Where?

VALERY FABRIKANT :

Where? I have legal assistance, Mr. Belleau, I read it somewhere, do you want...

THE COURT :

Would you cite me the authorities please.

VALERY FABRIKANT :

Well, I cannot at this point, but I hope Mr. Belleau will provide me with sufficient jurisprudence. Is this at least part of his duties?

THE COURT :

I'm not here to answer your questions. I asked you on what do you base yourself to say that... to make the statement you made.

VALERY FABRIKANT :

I told you that I read it either in Criminal Code or...

THE COURT :

Well, that won't do.

VALERY FABRIKANT :

That won't do, then...

THE COURT :

You have to cite me chapter and verse.

VALERY FABRIKANT :

Then I need to be consulted by person who gets significant salary for that. So let him provide me this consultation.

THE COURT :

Mr. Belleau, would you discuss this question if you haven't already with Mr. Fabrikant?

Me BELLEAU :

Yes.

THE COURT :

Would you? Okay. Anything else? You might wish to...

I don't know, but you might wish to show these transcripts that you propose to introduce to the Crown.

I don't know what...

VALERY FABRIKANT :

That's what I intend to do.

THE COURT :

Fine.

VALERY FABRIKANT :

Mr. Belleau?

Me BELLEAU :

These transcripts Mr. Fabrikant wants me to make copies, I told him that I will make no further photocopies unless they are Court ordered because the Legal Aid tariff specifically provides that no copies will be refunded to the attorney. And considering the number of documents that the professor has, in my greatest defense I don't intend to go bankrupt on these photocopies.

VALERY FABRIKANT :

So would you please forward this to the Crown.

THE COURT :

Would you hand these to the Crown Prosecutor please and...

VALERY FABRIKANT :

Yes. Now, and maybe we can settle question of copying, because I will have to have quite a number of them. Maybe we could settle it now too, whether Legal Aid, I don't know what grounds Legal Aid...

THE COURT :

What copies are you talking about, I mean you...

VALERY FABRIKANT :

Well, significant number of copies I will need.

THE COURT :

Well, significant number of what?

VALERY FABRIKANT :

Here is just one.

THE COURT :

I mean, if you wish to copy Encyclopedia Britannica, no, I don't think so.

VALERY FABRIKANT :

Well, there is smart remark. I will have to copy for example here is one of the copies of my civil file, because I want to introduce it, because it is relevant material from my civil file against Sankar and Swamy.

THE COURT :

How can your civil proceedings against Sankar and Swamy be relevant to the criminal proceedings?

VALERY FABRIKANT :

Very simple because shooting took place in a way from accusations of contempt of Court which in turn raised from this civil lawsuit, is it sufficient relevance?

THE COURT :

Not on the face of it, no.

VALERY FABRIKANT :

Not on the face of it. Then go deeper than face.

THE COURT :

Well, it's not a question of going deeper. There is absolutely no need, as far as I can see, for copies of civil proceedings to be reproduced and filed in the record. If you are saying that the fact that there was pending a contempt of Court proceeding was a factor in your state of mind on the twenty-fourth (24th), that fact may be relevant.

VALERY FABRIKANT :

Yes.

THE COURT :

What you continually persist in failing to see, probably on purpose, is the difference between the truth of what are set out in all of these proceedings and the fact that they exist. It may well be that the Crown is perfectly prepared to admit that there was scheduled for the following day a contempt of Court proceeding, I don't know. But the civil proceedings out of which it grew or out of which it arose are surely not in chapter and verse in any sense pertinent to this trial.

VALERY FABRIKANT :

Well, certain material from civil proceedings are pertinent, that's what I am saying.

THE COURT :

What may be pertinent is that the civil proceedings have

been instituted, what may be pertinent is the general thrust of the civil proceedings which can be testified to, insofar as the Crown may be prepared to admit the thrust of these proceedings and what they had as their object. As far as the contempt of Court proceedings are concerned, their existence may yes be pertinent. It may be that the motion for contempt of Court itself, the motion itself which cannot be more than two or three pages, I wouldn't think...

VALERY FABRIKANT :

Think more.

THE COURT :

How many pages is the motion for contempt of Court?

VALERY FABRIKANT :

About hundred (100).

THE COURT :

The motion for contempt of Court is a hundred (100) pages long?

VALERY FABRIKANT :

Yes.

THE COURT :

Then in these circumstances we're not... we're not going to burden the record with the motion for contempt of Court. The fact that it was there, and the fact that it was pending, and the fact that it was taken by whoever it was taken by may be relevant in order for you to say this affected your mind, I don't know.

VALERY FABRIKANT :

Well, previous decisions in this case affected my mind even stronger than the motion itself.

THE COURT :

Well, you're in the process of making proof of what you say affected your mind.

VALERY FABRIKANT :

Exactly, exactly.

THE COURT :

You're in the process of making that proof and...

VALERY FABRIKANT :

So all this material is relevant...

THE COURT :

No, all that material, a hundred (100) pages or four (400) hundred pages is not relevant. Eventually this has to be cut.

VALERY FABRIKANT :

You know better my defense than I do.

THE COURT :

You are not going to stand there and tell me my defense simply has to do with my mind, and everything I say relates to my mind is ipso facto pertinent, that you're not going to do.

VALERY FABRIKANT :

Well...

THE COURT :

Particularly if the object of the exercise is either to obtain a micro computer at Parthenais as it was a little earlier this morning, or secondly if the object of the exercise is to dump a truck load of legal documents in front of a jury which have, quite frankly, no pertinence whatever to a murder trial.

VALERY FABRIKANT :

You didn't hear what I said. Micro computer I asked for

an hour of maybe two maximum, and there was no trick there, and you should be ashamed of assuming that. As far as the second goes, so far I didn't introduce a single solitary thing which could be challenged as irrelevant. All what I am introducing is relevant, I'm interested in my best defense not in my (inaudible).

THE COURT :

You may well be interested in your best defense but I still have the job of deciding what... where the line lies, where the line of demarcation lies between what is relevant and what isn't, and I'll decide that, you won't.

VALERY FABRIKANT :

Well, for you line demarcation is wherever Concordia (inaudible) threat and then this is where the line lies for you.

THE COURT :

That is utter nonsense, Mr. Fabrikant, you have been given all sorts of latitude as far as Concordia is concerned.

VALERY FABRIKANT :

You're giving false lies.

THE COURT :

You... all sorts of latitude.

VALERY FABRIKANT :

Because you don't want for example to declare witness (inaudible) allow me to cross-examine with...

THE COURT :

I'm not allowing you to cross-examine witnesses at large who you wish to call, particularly if there's no basis for so doing. The mere fact that these people work for Concordia University doesn't render them hostile in itself.

VALERY FABRIKANT :

Well, I'm not...

THE COURT :

You have a rather misplaced comprehension of the word hostility.

VALERY FABRIKANT :

Well, it's not really hostile, if you wish I would use the other word adverse because witness, when witness is saying one thing then another, then again for... then again another, it is something wrong with the witness, isn't it?

THE COURT :

There also may be something wrong with your manner of interpreting what he says.

VALERY FABRIKANT :

All right, this is exactly what we will try at the beginning of questioning and I hope you will apologize after that, would you?

THE COURT :

I have absolutely nothing to apologize to you for...

VALERY FABRIKANT :

Even if you are wrong you are not going to apologize, eh?

THE COURT :

Jury please.

VALERY FABRIKANT :

One second. And I need extended Court order for

professor Antipa, doctor Max, and also I would like...

THE COURT :

You can bring that up later, we'll get on with the trial.

VALERY FABRIKANT :

All right.

THE COURT :

Would you remind everybody that there's exclusion of witnesses, madame Desrosiers, please?

VALERY FABRIKANT :

Well, and I would like this exclusion not to be applied to professor Antipa, doctor Max and maybe two other professors if they come.

THE COURT :

Well, that's a rather large request.

VALERY FABRIKANT :

It is. But I hope it can be granted because...

THE COURT :

As far as professor Antipa and Mr. Marx are concerned then...

VALERY FABRIKANT :

Doctor Max.

THE COURT :

... doctor Marx are concerned then...

VALERY FABRIKANT :

Max, without R, Max, his name is Max, M-a-x.

THE COURT :

M-a-x.

VALERY FABRIKANT :

Yes, doctor Max.

THE COURT :

If they're here as expert witnesses, it depends what they're here as expert witnesses for. If it's to testify as to something that's being said in here and they require to hear it, then I'm prepared to make an exception. If they are here to testify, as you indicated to me before, on the value of your contribution...

VALERY FABRIKANT :

Well, not only on that.

THE COURT :

Well that, you know... And then when you add and maybe other professors who might happen to... who I might happen to decide to call, well sorry, I'm not making any exception on the basis of anything as vague as that.

VALERY FABRIKANT :

Who after all decides on an exclusion, is it me or is it Crown?

THE COURT :

Me.

VALERY FABRIKANT :

You? Well...

THE COURT :

And I've told you in general that the witnesses are excluded.

VALERY FABRIKANT :

Okay.

THE COURT :

Now, the witnesses include experts, it's simply... there is simply a basis for permitting experts to remain in the courtroom if...

VALERY FABRIKANT :

That's what I mean, he has to be aware what's going on.

Yes.

THE COURT :

What?

VALERY FABRIKANT :

This is my reason, that he has to hear what is going on in the courtroom, because he will maybe asked to comment on that.

THE COURT :

Is there any objection to Antipa and Max remaining in the courtroom?

Me JEAN LECOURES :

I have no objections as expert, but he wants them to comment on his, I don't know, on his treatment or the way he was treated or things like that.

THE COURT :

I don't know what he wants them to comment on, that's...

Me JEAN LECOURES :

He should be restricted to commenting his scientific contribution.

THE COURT :

Perhaps, but for the minute let's settle the question of whether they may remain in.

Me JEAN LECOURES :

I have no objection...

THE COURT :

Quite frankly, whether there's exclusion or not and whether a witness has remained in the courtroom doesn't render the witness inapt as far as the witness is concerned.

Me JEAN LECOURES :

I have no objections for experts to remain in the courtroom.

THE COURT :

Fine.

Me JEAN LECOURES :

As long as they testify as experts.

VALERY FABRIKANT :

Well, doctor Max will testify also as to the facts.

MEMBERS OF THE JURY ARE PRESENT

THE COURT :

If you added at the last minute that he is a witness as to the facts, doctor Max, then he can go outside like every other witness. You're the one that requested him to be outside, so there you are.

VALERY FABRIKANT :

Well, I asked for him to be excepted from that.

THE COURT :

Well no, but you can't... you can't ask for exclusion on one hand, particularly of factual witnesses and then say but I got someone I'd like to keep in.

VALERY FABRIKANT :

Yes, I cannot?

THE COURT :

No.

VALERY FABRIKANT :

No.

THE COURT :

Can't. No, no, it doesn't make sense, not logical.

VALERY FABRIKANT :

Well, it does make sense to me.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), on this twenty-fifth (25th) day of May, personally came and appeared :

JOHN RELTON, Code Administrator, Concordia University, born on November twentieth (20th), nineteen hundred and fifty-one (1951);

WHOM, after having been duly sworn, doth depose and say as follows :

EXAMINATION BY VALERY FABRIKANT :

Q. Okay. First of all I would like to clarify certain inconsistencies of previous testimony. I have prepared a transcript and here is what was said on Friday. At one point it was said, "At no time..." it was discussion of meeting nineteen ninety (1990), do you recall saying the following:

"At no time anyone say I was specifically threatened other than the type of example that I gave earlier where someone said that you had used the phrase: I now understand how things are done in North America. Any of the other rumors including the threatening threats to anyone, no one could attach to a specific person."

Do you recall you testifying that?

A. I'm sorry, I remember October nineteen ninety (1990) more clearly than I remember Friday afternoon. I do not recall word for word what I said Friday afternoon.

Q. Well, this is word per word transcript.

A. Then I said it.

Q. All right. And right after that... So here effectively what... the meaning of what is said here is that the only phrase mentioned is the phrase attributed to McKenzie as we found it later. And if we go just several phrases below that, so here it says, "No one could attach to any specific person any threat." Now if we go just below that on the same page, you say:

"At no time could I trace back at that time any of the rumors which were circulating about you, except for the rumor about the gun."

So now we come to something different. So at the first statement nothing could be identified, just on the same page a little bit later, gun was identified. If you go a little bit further to that, what I asked you: "So all this stuff was repeated in nineteen ninety (1990) when we discovered three threats", I asked you, "All that stuff was repeated in nineteen ninety (1990)?" You answered: "Yes." And then you corrected yourself, "I responded too quickly, I am not sure that in nineteen ninety (1990) Catherine McKenzie's statement would have been repeated. But certainly the fact that you had a gun and the issue about child was included in the reasons that Vice-Rector has called the meeting." So if you compare it with previous statement where you say

"nothing except statement of McKenzie", then just several pages later, you totally reverse yourself and say quite opposite that the gun and the child was there but doctor McKenzie's statement probably wasn't there. But this is not the end of it. The most interesting part comes later on, when he said: "What I said was that those rumors were not raised at the meeting I was present." So here we go yet another twist, none of the rumors was raised there.

Now would you please be able to reconcile all this stuff because I am at a total loss, and I believe everybody else. So I repeat once again, first you said nothing was there except statement of McKenzie, then all of a sudden you remembered about gun, then you respond... I recalled you about the child and you confirmed, yes, all three were there, and then you corrected yourself that McKenzie's statement probably wasn't there. And later on when you were asked to clarify what did you know and what happened and when, you said that none of those rumors were repeated at the meeting. So where are we with the meeting of nineteen ninety (1990)? What did or did not happen there? Now is this enough for you...

THE COURT :

Do what?

VALERY FABRIKANT :

This kind of contradiction is it enough?

THE COURT :

Look, the man is testifying, the jury is listening to him, you're asking your questions, the witness is giving his answers.

VALERY FABRIKANT :

This is not my point, my point about adverse witness.

THE COURT :

It is not enough for me to call the witness...

VALERY FABRIKANT :

Of course.

THE COURT :

...either hostile or adverse.

VALERY FABRIKANT :

I'm not talking hostile, I'm talking adverse, because clearly...

THE COURT :

I'm talking both of them.

VALERY FABRIKANT :

Well, there is no way you can...

THE COURT :

Now have you a question, have you a question you want to put?

VALERY FABRIKANT :

Well, I put already question.

THE COURT :

Well, I know, but that was a somewhat convoluted question, if you forgive my saying so.

VALERY FABRIKANT :

I don't know what convolution has to do...

THE COURT :

What do you wish him to answer? Do you wish him to go back through the whole thing again?

VALERY FABRIKANT :

No, to clarify... Those... all those statements cannot

possibly be true at the same time. So what is true, if anything, of what he was saying?

A. I can clarify quite easily, My Lord. I bounced back and forth during my testimony at your request between a meeting that took place in November of nineteen ninety-one (1991) and one that took place in October nineteen ninety (1990). You also asked me to recall a great deal at the time that I expressed to you that I had learned over a number of days. That certainly was true in November of nineteen ninety-one (1991) when we had a series of meetings, it was also true in October of nineteen ninety (1990). I also specifically pointed out, and you corrected me on it at the time, that I had seen a mise en demeure from ma&Etre Grey which would have been in nineteen ninety (1990) as well. I had been given information by either the assistant to doctor Sheinen or by doctor Sheinen herself in the days prior to and after, more than likely prior to the meeting of October. And in fact, you were sent a letter on October eighteenth (18th), nineteen ninety (1990) by doctor Sheinen which specifically stated, this letter comes after meeting with Mr. John Relton, the Code Administrator. At that time she discussed with me the problems that she believed she had with your behavior, and I recommended a course of action to her. I then went on to testify that at the October nineteen ninety (1990) meeting, during all of our conversations that afternoon, at no time upon questioning by any of the people present did any members of the Departmental Personnel Committee, the Dean of Engineering, or the Dean of Engineering, come up with specific examples of threatening behavior. The only types of examples they came up with were ones where they said you were difficult to deal with at times when your contract was being re-opened for renegotiation. And as an example they brought up "Rick" getting telephone calls from you late at night, the person concerned, doctor Osman, said that if in fact that you were told to stop, you would do so. He also used an example of a particular difficult time the department had had with you when you had an argument with the Purchasing Department over a micro computer or printer, I'm not sure which. At no time during the October nineteen ninety (1990) meeting, did anyone raise a specific example, to my knowledge, to my remembrance of that meeting, of you having specifically threatened a specific individual.

VALERY FABRIKANT :

Q. So all this previous testimony is what, should be discarded?

THE COURT :

I think you'll have to be more specific with your question.

VALERY FABRIKANT :

All right.

Q. Okay. What is differently then? Do you remember the date of that meeting in nineteen ninety (1990)?

A. I honestly don't remember it, it was October, I believe the last day of October.

Q. Not November?

A. Sorry, nineteen ninety (1990)?

Q. Yes.

A. It was an October meeting, I believe.

Q. Not November because the memo of Sheinen is dated November.

A. Excuse me, the... Oh, sorry, the memo of doctor Sheinen that I said on Friday that I had not seen?

Q. Yes, it is dated November.

A. I have no idea what that memo said. I haven't seen it, I haven't read it.

Q. Well, all the recommendations are dated November, therefore the meeting could not be in October.

A. My remembrance was the last day of October, I could be wrong.

Q. Okay. Let's put it last day in October, it doesn't matter. But you said you had a meeting with Sheinen prior to sending her to me the letter of October eighteenth (18th) which you mentioned here?

A. Prior to that I had met with doctor Sheinen and with her assistant at the time and with the university's legal counsel.

Q. Okay. So what did you learn at that meeting?

A. Again... again there were a number of meetings including one with doctor Sheinen, I can't even remember the date, one with the assistant to doctor Sheinen and legal counsel, again I don't remember the date. I do remember what I advised them at the time.

Q. Okay. Did they at those meetings tell you that I threatened to... what... take hostage Rector, Vice-Rector, that I said something about North America and...
Me JEAN LECOURE :
My Lord, it's double and triple hearsay. It might be very interesting (inaudible).
VALERY FABRIKANT :
No, it's not double and triple...
THE COURT :
You are surely sidetracked.
VALERY FABRIKANT :
Well, I'm asking him what and when he learned something.
THE COURT :
You better rephrase your question.
VALERY FABRIKANT :
All right.
THE COURT :
Because for the last question, the objection is maintained.
VALERY FABRIKANT :
Okay.

Q. So did you learn during that meeting prior to October eighteen (18) letter about specific threats allegedly made by me?

A. I can't say with certainty that I learned of them at any of those specific meetings. The only threats that I can say with certainty or perceived threats that I can say with certainty that were discussed at those meetings were doctor Sheinen's worry about your questioning about her health. That was in fact the reason that she sent you the letter amongst the number of telephone calls that you were making to her department. My understanding, or the explanation that I received from her assistant, was that you had specifically said during one of the conversations: "Well, how do you think doctor Sheinen's health is going to be last week." It

certainly wasn't out of context at the time, since in fact doctor Sheinen, I was lead to believe, had cancelled the meeting with you, or not responded to one of your phone calls or memos, because in fact she had been ill prior to that. Because of that perceived threat and the number of telephone calls, doctor Sheinen sent the letter on October eighteenth (18th), nineteen ninety (1990), advising you that she considered your behavior to date to be harassing.

Q. Let me make it clear. I asked how... she cancelled meeting because of her health, and I asked how her health will be next week and she perceived it as a threat, correct?

A. You would have to ask that question of doctor Sheinen, what I explained...

Q. No, no, but that was your understanding of?

A. What I explained was what I was told by an assistant.

THE COURT :

You've asked one question, you've come right up against an objection that what you were inviting the witness to talk about was hearsay. You're doing it again. As soon as it's ruled, you immediately go back to doing whatever you were doing before, and you continue in the vein that you've continued since we resumed this morning to cross-examine your own witness. Now would you put direct questions to the witness but don't suggest the answer and let's see where we get.

VALERY FABRIKANT :

Well, witness...

THE COURT :

You're not allowed to cross-examine the witness and you're going to cross-examine.

VALERY FABRIKANT :

The witness so many times changed his testimony that I should be allowed to cross-examine the witness.

THE COURT :

I told you, you're not allowed to cross-examine the witness because your perception of his testimony and my perception of his testimony perhaps aren't necessarily the same thing. The jury is not bound by my perception of his testimony, but I'm the one that gets to decide whether you ask leading questions of the witness or not, and you're not.

VALERY FABRIKANT :

I think the jury by the end will understand how biased you are.

THE COURT :

(Inaudible) tend to imply (inaudible).

VALERY FABRIKANT :

Q. (Inaudible) at that time advise doctor Sheinen to see a psychiatrist because only "paranoidal" person might interpret that kind of question as threatening, did you?

THE COURT :

That question is not a question which is aimed at eliciting facts. The question is argumentative first of all. And what you're attempting to do through his mouth is add your own testimony to the whole equation. The question is disallowed.

VALERY FABRIKANT :

All right.

Q. Did you find it threatening or harassing question about

somebody's health next time when... at this time he said that somebody's health is no good, does it look threatening to you?

Me JEAN LECOURE :

No, the witness is not here to give his opinion on that.

THE COURT :

Objection maintained.

VALERY FABRIKANT :

Okay, you want to play a comedy you play.

THE COURT :

Ten twenty-seven (10:27).

VALERY FABRIKANT :

I said you want to play a comedy you play.

Q. So during this meeting, did you learn anything about my alleged threats to either Rector or North America or to child?

A. I'm sorry, which meeting?

Q. I'm still talking about meeting with Vice-Rector prior to her October eighteenth (18th) letter.

A. I honestly do not remember when I learned about the supposed threats, therefore I cannot state with certainty that in fact I learned it from the Vice-Rector at that meeting.

Q. Did you learn about all those threats at some point in time?

A. Yes.

Q. You did. Now, could you state when and from whom?

A. Again, I can only state with certainty that I had a number of meetings in October prior to the one at the end of October, and it's certainly by the meeting at the end of October I knew about the threats about: "Now I understand how you do things in North America." When I learned of it or exactly from whom, I honestly can't say.

Q. Okay. About kidnapping or taking hostage Rector?

A. Again, I can't answer with certainty.

Q. Was it again at the end of October nineteen ninety (1990)?

A. That specific threat I knew about by the meeting in November of nineteen ninety-one (1991). As to exactly when I learned it or if with any certainty I was aware of it at the October nineteen ninety (1990) meeting, I can't say.

Q. On Friday you did know that.

A. I knew of the threat. You're asking me now to tell you exactly when I learned of it and I can't answer with certainty.

Q. Well on Friday, you said that:

"At no time could I trace back any of the rumors which were circulated about you except for the rumor about the gun."

And all this conversation were conversation about nineteen ninety (1990). Do you what now reject this testimony?

A. What I'm saying now is you're asking me to be very specific about when I learned something, and what I'm explaining is that, what I'm discussing is a period of two years between... including nineteen ninety (1990) and nineteen ninety-one (1991) and that I cannot respond with certainty exactly when, on what date, at what meeting or from whom I learned about each specific

rumor.

Q. Still, in October of nineteen ninety (1990), you knew about North America, right? Or you are no longer sure about that either?

A. I believe that in October of nineteen ninety (1990) I knew about the threat but I can't answer with certainty.

Q. Okay. Now, if you go to the text of the threat, could you repeat once again complete text the way of your recollection goes, what exactly is attributed for me to say?

THE COURT :

Look, you've brought out the question of the threats, you've got the answer of the witness, I can't say when or on what date or from whom he learned about each specific rumor, okay? There it is. Now you're cross-examining him on the text of the threats. The last question is disallowed, you may not do that.

VALERY FABRIKANT :

I'm not cross-examining, I ...

THE COURT :

Yes, you are.

VALERY FABRIKANT :

I'm asking him to say what text did he get.

THE COURT :

He has already told you at least half a dozen times the threats to which he alluded which he heard from other people.

VALERY FABRIKANT :

No, complete text because just North America is not the text, complete text, what he heard.

THE COURT :

We have been through this on Friday afternoon. Now would you move on to something else.

VALERY FABRIKANT :

Well, why cannot I ask him...

THE COURT :

Because we are not remaining here until Christmas. Move on to something else.

VALERY FABRIKANT :

I asked him text, what is wrong with this question?

THE COURT :

Did you hear, are you receiving me this morning? Move on to your next question. We've been through this backwards, forwards, and sideways. Move on to your next question.

VALERY FABRIKANT :

Well, witness has proven many times to...

THE COURT :

Move on to your next question or sit down, whichever you wish.

VALERY FABRIKANT :

I invoke section 9.2 of Evidence Act and I want to show...

THE COURT :

Have you a further question to put to the witness?

VALERY FABRIKANT :

I have further questions...

THE COURT :

Then put your...

VALERY FABRIKANT :

...but I want to show the contradictory statements of the witness.

THE COURT :

You are not getting any sanction under 9.2 to go into any contradictory statement of the witness in relation to the last answer. Now would you move on with your next question.

VALERY FABRIKANT :

Not to the last answer, I'm talking now about something else.

THE COURT :

Well, I have no idea of what you're talking about.

VALERY FABRIKANT :

So listen. Now...

THE COURT :

Is that a statement that you referred to on Friday afternoon?

VALERY FABRIKANT :

Yes. I want just to quote several statements of his on Friday and to show that they were contradictory.

THE COURT :

Show me the statement please.

VALERY FABRIKANT :

All right. So...

THE COURT :

Show me the statement please. Pass it to Mr....

VALERY FABRIKANT :

Well, it's twenty-nine (29) pages. You want to see them?

THE COURT :

What are you talking about, statements on Friday afternoon?

VALERY FABRIKANT :

Yes.

THE COURT :

You are not going to cross-examine the witness at large on his testimony on Friday afternoon, and your application, your vague application pursuant to 9.2 of the Canada Evidence Act is denied.

VALERY FABRIKANT :

I didn't, I didn't yet present it. You cannot deny it without hearing what I have to...

THE COURT :

You said you were making an application under section 2 of the Canada Evidence Act...

VALERY FABRIKANT :

Yes.

THE COURT :

...to present, to cross-examine the witness on contradict...

VALERY FABRIKANT :

Yes.

THE COURT :

Listen, the jury heard what the witness said...

VALERY FABRIKANT :

Yes.

THE COURT :

...the jury has heard the witness today, the jury will decide whether there is a contradiction. Now would you move on to your next question.

VALERY FABRIKANT :

No, I'm not...

THE COURT :

We are not going to sit here all day while you cross-examine Mr. Ralton.

VALERY FABRIKANT :

I'm now talking about different contradiction. Let me quote it first and then you decide.

Q. Now I'm talking about meeting of ninety-one ('91), do you recall making the following statements, and at the end I will ask you to clarify their consistency. The first statement:

"As I remember, the meeting lasted actually over an hour, my best remembrance was that it was a particularly difficult and nasty meeting, and that we asked time and again what reasons they had for being afraid of you. When they suggested that you had somehow threatened, we asked repeatedly for examples. For the name of anyone who had ever been threatened, for any time that you have ever threatened anyone.

Fabrikant: Did you get any answer to that?

Answer: No.

So meaning of this statement is that no name, no time, nothing was quoted at that meeting. If we go to another page, we'll see something different. Here the witness said:

"They could give me no example of any behavior of yours which would lead anyone to be frightened other than a threat that you had made verbally along the lines of: Now I understand how you do things here in North America. If you want to get any attention, you get a gun and shoot a lot of people. It was a comment that had been made two years before. That was their only example of any type of threatening behavior which they could come up with."

So the first statement nothing, no, zero, zilch. The next we have:

"Yes, they did come two examples and here it was."

But this is not the end of it. If you go to other we have... Now, we're discussing threat of a child. And I asked him who told him about this threat. Answer:

"It would have been brought up in the same meeting which would have been November first (1st). One of the members of Department Personnel Committee would have raised it.

Fabrikant: Do you know who?

I would be guessing I can narrow it to one or two people."

So now we again changing. So it is not only North America, it is also child which was brought at that

meeting. But again, this is not the end of it. If you go further, and again I asked:

"When you came to meeting in nineteen ninety-one (1991), you tried to recall all those specific threats and before we discussed three of them. All those specific threats they mentioned again?"

Answer: Yes. The specific threats were mentioned again and that was the meeting during which we asked time and again for the member of Department Personnel Committee to be specific as to who had been threatened and who had told them and we got no answer.

Fabrikant: What can be more specific, Grendon Haines and Catherine McKenzie?

No, in the issue of the allegation about child, the allegation that you have threatened other people lives when they asked Department Personnel Committee they were not specific, and they were not referring to comment made by Catherine McKenzie."

They were not referring to comment. Now I would like to bring to your attention that just several pages before you said not only did they brought it but there is a complete text of what they said. That you have to shoot a lot of people, bla, bla, bla.

"Fabrikant: One second..."

Me JEAN LECOURS :

What is the question, My Lord?

THE COURT :

I'm not sure what the question is. We seem to be going through a series of questions and answers...

VALERY FABRIKANT :

Well, the question will be for him to clarify this contradiction, because before I read totally contradictory statements of the meeting nineteen ninety (1990). Now, I'm reading how he, on each page, contradicted himself for the meeting of nineteen ninety-one (1991). And my question is to clarify these contradictions.

Q. Well, would you like to clarify this contradiction?

A. There are no contradictions, My Lord. What I explained on Friday was that I learned of the supposed threats during a period of time that stretched over a number of meetings, one of which was November first (1st), the last would have been November the fourteenth (14th). The last actual meeting that I would of had on the case would have been with you November nineteenth (19th).

THE COURT :

Q. This is ninety-one ('91) now?

A. Nineteen ninety-one (1991), yes, My Lord. Specifically what I responded to on Friday was a series of different questions. What I tried to explain and to clarify was that at the meeting with the Departmental Personnel Committee, with Catherine McKenzie and the members of the intervention team which was chaired by Grendon

Haines, we time and again asked the members of the Departmental Personnel Committee of specific threats, who had been threatened, to whom these threats had supposedly been made, and we consistently received the same answer that no one could respond to whom you had made the threats or could actually put a name to any of the supposed threats that had been made. I also said specifically that I did not remember either Grendon Haines, I certainly said on Friday that I did not remember Catherine McKenzie raising the issue of the meeting that she had had with you in nineteen eighty-nine (1989), and I don't remember Grendon Haines raising any issues as he was chairing the meeting on November nineteen ninety-one (1991). It had been called to deal with the fears of the Departmental Personnel Committee, the questions were put by myself and other members of the intervention team to them, they were the ones who responded at the meeting of November the first (1st).

VALERY FABRIKANT :

Q. Well, you didn't clarify anything. Now I will make them specific then. Did you or didn't you testify that at that meeting one of the Department Personnel Committee members quoted me allegedly saying: "Now I understand how you do things here in North America, if you want to get any attention you get a gun and shoot a lot of people." Did he or didn't he?

A. I do not remember that statement being made at the November first (1st), nineteen ninety-one (1991) meeting by any member of the Departmental Personnel Committee.

Q. But this is what you testified just on Friday. Clarify it.

A. I just did.

Q. Well you... Do you accept that you testified this way on Friday?

A. You just asked me to clarify something that I said on Friday, I am clarifying as well as I can. That at the meeting on November the first (1st), nineteen ninety-one (1991) no member of the Departmental Personnel Committee raised a specific threat or could attach a specific threat to a person who had been threatened by you.

Q. So this testimony should be disregarded then?

A. You asked me to clarify, I clarified.

Q. Well, should this testimony be disregarded then?

A. I have no opinion.

Q. Okay. Now did or didn't one of the members of Departmental Personnel Committee raise at that meeting question of threat to some children?

A. What I have attempted to clarify this morning is that at the November the first (1st) meeting of nineteen ninety-one (1991), I do not remember any specific threat being raised by any member of the Departmental Personnel Committee who could in fact attribute any specific threat to any one. More importantly, I explained on Friday and I continue to believe that when I left that meeting, having put the question to the members of the Departmental Personnel Committee a number of times as to why they wanted emergency suspension procedures used against you, why they felt afraid of you, that they could give no reason which I found logical.

Q. So again, this testimony of yours should be disregarded then?

A. I have no opinion.

Q. Fantastic. Is the phrase, I repeat it: "Now I understand how you do things here in North America, if you want to get any attention you get a gun and shoot a lot of people." Is the phrase itself correct?

A. The phrase was repeated by a number of people during a number of meetings, including a meeting between the Director of security, Catherine McKenzie, you and I. It was something along those lines, I'm clearly paraphrasing.

Q. Do you confirm the text the way I read it to you?

A. The supposed threat was something along those lines, that's how I remember it being said.

THE COURT :

He says he's paraphrasing.

VALERY FABRIKANT :

This is why you didn't allow me to ask him, because he would have said something different from what is here.

THE COURT :

Don't...

VALERY FABRIKANT :

When a person is lying, he doesn't remember how he lies.

THE COURT :

Don't comment.

VALERY FABRIKANT :

And next time he will say something else. And you're trying to protect him.

THE COURT :

Don't bother commenting. Don't bother commenting.

VALERY FABRIKANT :

Don't bother to comment, well...

Q. Okay. So where are we now? At the meeting of nineteen ninety-one (1991), any of the threats a) Rector, b) North America, c) child has been invoked by members of DPC or anybody else, ninety-one ('91)?

A. My response to the question is the same. That my clear recollection of the meeting is that when asked time and again, the members to the Departmental Committee could not raise a specific example of someone who had been threatened by you.

Q. Now, I ask more specific question. Was the question of the Rector?

A. I do not remember that question being raised or that threat being raised specifically at the meeting of November nineteen ninety-one (1991).

Q. So it's contradict to your previous testimony. Is it all right with you, Mr. Martin? Now second...

THE COURT :

Everybody heard Mr. Relton's testimony, it will be weighed.

VALERY FABRIKANT :

Q. Yes. Next threat, North America, anyone raised that question?

A. I do not remember any specific threat, I do not remember that specifically being raised at the meeting of November first (1st), nineteen ninety-one (1991) by any of the members of the Departmental Personnel Committee who we were questioning at the time.

Q. Child.

THE COURT :

You've asked that question before and you've had the

answer.

VALERY FABRIKANT :

So it's the same answer.

THE COURT :

You've had the answer. This is the third time we're into that now.

VALERY FABRIKANT :

All right.

Q. So none of the threats were ever mentioned. Fine. Go back to nineteen ninety (1990). Any of the same specific threats were mentioned during that meeting of Sheinen and DPC? I repeat once again. Was the threat of Rector mentioned there? Was it?

A. I do not remember. I do not remember, as I said earlier this morning, any specific threat being raised especially at the meeting of October nineteen ninety (1990). That in fact the members of the Departmental Personnel Committee at the time argued with Vice-Rector Sheinen who wanted you evaluated based on your behavior. They argued at the time that in fact your behavior was at times difficult but in fact nothing that they couldn't and wanted to live with.

Q. Uh, huh. Did any of the members of DPC at that meeting said that they do not want to work with me or near me?

Me JEAN LECOURE :

This is leading, My Lord.

THE COURT :

Yes, objection maintained.

VALERY FABRIKANT :

Q. What did the members of DPC said about their desire or non desire to work with me?

THE COURT :

You better establish that they said anything at all first of all.

VALERY FABRIKANT :

Well, he testified to this on Friday so there is no need to establish that.

A. They wished to continue to work with you. They wished that the university would continue to employ you.

Q. Well, the threat you used Friday was that they wanted to continue working with me...

A. And I'm being far more specific now, they wanted your employment with the university to continue. None of them expressed an opinion they wanted to work with you.

Q. So you're changing your testimony completely now.

A. Not in the least.

Me JEAN LECOURE :

The accused is making the same question as Friday afternoon...

THE COURT :

Of course he is. Of course.

Me JEAN LECOURE :

...and now he's trying to see differences and... Where are we going, My Lord?

THE COURT :

I'm not at all sure where we're going.

Me JEAN LECOURE :

We're wasting our time.

THE COURT :

I'm not at all sure of where we're going but I can't... I fail to see the relevance of it, I...

Me JEAN LECOURS :

But not only relevant once but relevant twice.

THE COURT :

I've laid down... I've laid down...

Me JEAN LECOURS :

He's asking the same questions over and over.

THE COURT :

I've laid down particular lines which I would permit him to get into to show certain things...

Me JEAN LECOURS :

Well, I think we're already sidetracked, My Lord.

THE COURT :

Certainly. So the last answer, the last answer is there, that the DPC considered that the university should continue to employ him.

VALERY FABRIKANT :

All right.

Q. Now, what was the need for meeting of November seventh (7th) and you said eighth (8th)?

A. The two meetings of November seventh (7th) and eighth (8th) included again the members of the intervention team, Catherine McKenzie and Dean Swamy, and it was specifically to discuss how to let you know the decision of the Departmental Personnel Committee, that they had in fact recommended that you be terminated.

THE COURT :

Q. So we are now in ninety-one ('91)?

A. Still in ninety-one ('91), My Lord. One week later.

Q. And one week later, yes, okay. No, no. Well, your last answer...

A. November first (1st)...

Q. ...I'm sorry, where the DPC asked that the university continue to employ him I'm afraid is nineteen ninety (1990).

A. Sorry, My Lord, October nineteen ninety (1990). The... November the seventh (7th) and November the eighth (8th) would have been on the Thursday and Friday...

VALERY FABRIKANT :

That's right.

THE WITNESS :

...following the meeting that had taken place the week before on the Friday with the Departmental Personnel Committee.

THE COURT :

Fine.

VALERY FABRIKANT :

Q. Okay. And how long did the meeting last?

A. I don't remember.

Q. Today...

A. I do remember that whatever the amount of time allocated on November the seventh (7th) wasn't sufficient, the two meetings weren't planned, we got together again on November the eighth (8th) because we hadn't had enough time.

Q. Well, so it lasted pretty long?

A. Not necessarily, we may have simply allocated too little time...

Q. Okay.

A. ...it may have been simply an hour which wasn't sufficient time.

Q. May I see your notes related to that meeting?

A. The only notes that I have in front of me right now are the ones that I took out of my calendar which are in fact the dates of the meeting and the people who I remember as being present. From the meeting on November the seventh (7th) and November the eighth (8th), I don't believe I took any notes, I may have. No, I didn't.

Q. On Friday you mentioned that you took notes of the meeting of November first (1st), did you?

A. No, most certainly not. The meeting of November the first (1st), when I was present to respond to questions, I did not keep or in fact I don't remember taking any notes.

Q. Okay.

THE COURT :

Q. We're again in ninety-one ('91), are we?

VALERY FABRIKANT :
Yes.

THE WITNESS :

A. Still in ninety-one ('91), My Lord.

VALERY FABRIKANT :

Q. Who convened that meeting on seventh (7th) November, ninety-one ('91)?

A. I'm not sure who convened it, I know who was present and I know the reason came out of the meeting on November the first (1st) and the fears raised by the Departmental Personnel Committee. I don't know who convened it.

Q. Who called you to that meeting?

A. I don't remember. I remember that we met November the first (1st), I remember that there were in fact a series of meetings between November first (1st) and fourteenth (14th). I don't remember who specifically decided there would be a further meeting.

Q. So today you are remarkably forgetful. All right. What exactly was discussed there, what you said just how to tell me that they want to terminate me, that's five minutes.

A. The...

Q. You have to spend two days discussing something specific...

A. The level of...

Q. ...what was that?

A. The level of fear in the Departmental Personnel Committee as well as the concerns of Dean Swamy meant that in fact we had to respond not only to how to tell you that the Departmental Personnel Committee had reached a decision against you but more importantly how to allay the fears of the Departmental Personnel Committee.

Q. Okay. But do you remember your own conclusion that their reasons for my dismissal didn't make sense, do you remember that from Friday?

A. I also remember that I walked away from the meeting believing that they actually were afraid.

Q. Yes, and...

A. And the meeting on the seventh (7th) and eighth (8th) was to deal with that fear, the fear was real.

Q. The fear was real but since their reasons for dismissal didn't make sense, did any of you ever thought to tell them, "Look, don't fire him, you would have no fear then."

THE COURT :

That question you can't answer.

VALERY FABRIKANT :

Of course I cannot answer.

Q. Okay. Let me ask you then differently. If we use elementary logic, Department Personnel Committee...

Me JEAN LECOIRS :

We ask for an opinion or an argumentation, the jury should decide by themselves.

THE COURT :

You're supposed to be putting questions on facts.

VALERY FABRIKANT :

Well, I'm asking question on fact.

THE COURT :

Well, put a question on fact, never mind elementary logic.

VALERY FABRIKANT :

Well, so let me still ask the question, then you will rule it out of order, all right?

THE COURT :

Well, let's hear the question.

VALERY FABRIKANT :

Yes.

Q. So you have the problem how to explain to me decision which from your own point of view doesn't make sense, and you know that people who made this decision are afraid. Did it come to anyone's mind that there might be some alternative solution to the problem?

THE COURT :

How can the witness tell you what came to anybody's mind?

VALERY FABRIKANT :

Well, to his mind.

THE COURT :

That makes quite a difference.

VALERY FABRIKANT :

All right.

Q. So did it come to your mind that there is a very simple solution to that problem?

A. No, it didn't. But in fact, the question you're asking is in fact about the employment process. The collective agreement for the Faculty Association specifically states the steps that will be taken. The Departmental Personnel Committee had in fact submitted its report. That report would then go and had not at the time of any of those meetings gone yet to the Faculty Personnel Committee which would then give its opinion prior to passing both opinions on to the Vice-Rector, Academic.

Q. You are eluding my question, my question was not about it.

A. Your...

Q. My question was, is there any simple and reasonable solution to the situation?

A. No.

Q. Could you... No. You cannot guess one?

A. No, I can't.

Q. It requires Einstein's mind...

THE COURT :

Have you another question to put?

VALERY FABRIKANT :

Yes, this is my question. Does it require...

THE COURT :

No, that's argumentative right there.

VALERY FABRIKANT :

How...

THE COURT :

He said, no, I can't visualize a solution, period. Next question.

VALERY FABRIKANT :

Well, I'm asking next question and let me ask the question and then you will rule it out, all right?

THE COURT :

No, if you start to phrase it the wrong way, I'll rule it out right now.

VALERY FABRIKANT :

Well, how do you know that?

THE COURT :

Because you chose to start being sarcastic, Mr. Fabrikant, quite obviously.

VALERY FABRIKANT :

Well, I didn't see in Criminal Code anything which says that questioning cannot be sarcastic.

THE COURT :

You happen to be questioning your witness.

VALERY FABRIKANT :

Well, this witness already proven to so...

THE COURT :

Mr. Fabrikant, put another question, put another question.

VALERY FABRIKANT :

...recount on his own testimony.

THE COURT :

Have you another question?

VALERY FABRIKANT :

It's only Judge like you does not see that he is adverse.

THE COURT :

Have you another question to put...

VALERY FABRIKANT :

Yes.

THE COURT :

Then put it.

VALERY FABRIKANT :

And I would like you to let me finish my question, then you rule it out. Let us at least confirm to the decorum, all right?

THE COURT :

Put your question, we'll see.

VALERY FABRIKANT :

Exactly.

Q. Does it require Einstein's mind to just say to Department Personal Committee people, you have no reason of firing him, then change your decision and you would have no fears and we would not have spent our time here?

A. There's a very clear procedure outlined in the collective agreement negotiated by your union which states the process includes the Departmental Personnel Committee reaching an opinion, which they did. They were well within their rights to reach an opinion.

Q. If the opinion is... doesn't make sense, the reasoning is obviously doesn't make sense, and in your own mind you testified yesterday that all they were afraid of my

whistle blowing. Then taking these two together, wouldn't that be reasonable to say why I was spending a lot of time here? Be honest people and render honest decision. Shouldn't one of you said that to them, no?

A. No.

Q. No, all right. Fine. You prefer to spend two days thinking how to explain to me decision which from your own opinion didn't make any sense, that's what you did?

A. The intent of the meeting was not to spend two days to explain to you the decision.

Q. No, how to explain to me.

A. It was how to put the decision to you. That is the process by which you would be handed a copy of the decision and as well the procedures that would or wouldn't be taken to allay the fears of the Departmental Personnel Committee who did in fact fear you at the time.

Q. Wouldn't they fear anyone if someone is to be confronted with totally unfounded and unfair decision, I think it is dangerous practice, isn't it?

THE COURT :

You're asking for an opinion, question is out of order.

VALERY FABRIKANT :

Okay. Let me put it differently.

Q. As a citizen you are obliged to report a crime, aren't you?

THE COURT :

You're asking for the witness'... Okay, go ahead. Go ahead.

THE WITNESS :

A. If I saw a crime taking place, I would report it.

VALERY FABRIKANT :

Q. Or crime in preparation?

A. I would report it.

Q. Okay. Now didn't it look to you, since you were discussing possibility of violence, this meant that you foreseen possibility of crime, correct?

A. Incorrect.

Q. Well then explain it to the jury why it is incorrect.

A. I told you specifically that when I walked out of the meeting on November the first (1st), I didn't see any rational reason for their fear. I also told you that I believed that they feared you. Certainly the context of a university following cole Polytechnique is very different from the average work place, fear is a reality that we deal with in a great number of cases, whether or not we can see its logical reason for existing we respect that it's there, and attempt to establish procedures which will in fact allay those fears. What we did in the two meetings was try to deal with the fear of the Departmental Personnel Committee which I believed was real.

Q. You didn't answer my question.

A. I did not see...

Q. These people were afraid for their safety, correct?

A. They were afraid of you, correct.

Q. I repeat. They were afraid for their safety?

A. That's what they said, yes.

Q. If someone's safety is in danger, this is... smells like a crime, isn't it?

A. No.

Q. No?

A. If someone in fact during a meeting when questioned specifically as to why or what threats have been said continue to explain that they can't remember any specific threat, when they're told in fact that if you are threatened in any way, that the university has internal procedures under the code of conduct which should be used, and if they have been threatened in any way that in fact the Criminal Code can be used and that they have the right to go to the police, those were issues that were raised during the meeting.

Q. Well, Criminal Code can be used when it is too late as where are here, isn't it?

THE COURT :

You are now arguing with the witness.

VALERY FABRIKANT :

No, I'm asking question. You can use Criminal Code when it is too late and lives are lost.

THE COURT :

You are arguing with the witness, the question is...

VALERY FABRIKANT :

I'm asking question.

THE COURT :

The question's disallowed.

VALERY FABRIKANT :

Too bad, this is the question which has to be answered.

THE COURT :

That is not what we're here for.

VALERY FABRIKANT :

You are wrong.

THE COURT :

I am right.

VALERY FABRIKANT :

Q. Did it ever cross your mind that totally unfounded and unjust decision...

Me JEAN LECOURE :

This is leading, My Lord.

VALERY FABRIKANT :

It is not leading.

Q. Did it ever cross your mind that totally unfound and unjust decision might indeed lead to a violent response?

Me JEAN LECOURE :

It is leading.

THE COURT :

It is leading and it's a question that has no pertinence to the subject.

VALERY FABRIKANT :

It is not pertinent?

THE COURT :

Absolutely no pertinence at all.

VALERY FABRIKANT :

Okay, let me explain the pertinence. These people were meeting together...

THE COURT :

Would you like me to ask the jury to go out while you...

Because there are going to be some rulings on this subject, that's for sure.

Me JEAN LECOURE :

It is already ruled, My Lord.

VALERY FABRIKANT :

I cannot tell you...

Me JEAN LECOIRS :

It is already ruled.

VALERY FABRIKANT :

...what to do in your job, I'm just arguing pertinence.

THE COURT :

You might withdraw for the minute, ladies and gentlemen.

We'll solve this.

MEMBERS OF THE JURY LEAVE THE COURTROOM

WITHOUT JURY

THE COURT :

Sit down, Mr. Relton.

Me JEAN LECOIRS :

First it was argumentative, My Lord, it solves the point. We don't have to go further and waste our time.

VALERY FABRIKANT :

Well, isn't it obvious the situation is those group of people got together, they know very well the decision is unfair and unfounded. And they understand just... they have no evidence of me threatening anyone, and it was admitted. So the only reason for somebody's safety might be that decision is so blatantly unfair that absolutely normal person might get violent. Therefore, this means that these people effectively reckless in their behavior and jeopardizing safety of people by allowing that kind of decision to stand.

THE COURT :

That has absolutely nothing to do with the nature of the defense which may or may not be open to you. You don't give a damn what my rulings are, that's been obvious from the beginning of this trial. But you are not going to turn this into a trial of Concordia University because you are the one who happens to be in the dock facing multiple murder charges. You are not going to be allowed to pass this off as something that is the fault of everyone else. If you wish to show that your mind was affected, you may be permitted a certain latitude in your questioning, but you are not going to be permitted to turn this into a far reaching enquiry with a view to attributing blame to this person, that person or anyone else for what eventually transpired.

VALERY FABRIKANT :

How on earth can I present full defense if I do not show that there was deliberate, reckless attempts to provoke me? And they were numerous and they were deliberate, and they knew perfectly well what they were doing. This is part of my defense. That they did it, not just, you know, accidentally without knowledge, they knew perfectly well what they were doing. They were meeting for days and days...

THE COURT :

To decide how to provoke you?

VALERY FABRIKANT :

Yes.

THE COURT :

Uh, huh.

VALERY FABRIKANT :

Is it relevant?

THE COURT :

It's relevant if it has an air of reality to it.

VALERY FABRIKANT :

Exactly, so let me show that it has air of reality.

THE COURT :

It's relevant if it has an air of reality to it.

VALERY FABRIKANT :

Oh yes, it has.

THE COURT :

And your last question, your last question simply will not fly. Your last question simply...

VALERY FABRIKANT :

I'm not surprised.

THE COURT :

Oh, I'm sure you are not surprised. You rarely surprise me anymore.

VALERY FABRIKANT :

No, I'm not surprised with your ruling. Would you like to write down that you are biased Judge at eleven fifteen (11:15)?

THE COURT :

No, no, no, no. Two for this morning will do fine.

VALERY FABRIKANT :

I can give you more if you want.

THE COURT :

Oh, I'm sure you will, I'm sure you won't miss the opportunity. I think we'll adjourn here for fifteen (15) minutes, I for one need it.

SUSPENSION

REPRISE

MEMBERS OF THE JURY ARE PRESENT

WITNESS: JOHN RELTON -- UNDER THE SAME OATH

THE COURT :

So the objection to the last question was maintained.

EXAMINATION BY VALERY FABRIKANT (CONT'D) :

Q. Okay. Give us please some details as to two days of discussion, there must be awful lot of topics covered?

A. I said there were meetings on two days not two days worth of meetings. I also told you specifically that there wasn't enough time allocated for the first day so we continued at the second. You're probably talking about in total two hours worth of conversation with one, two, three, six people present. The topic of conversation, as I've already explained, was specifically how to give you a copy of the decision from the Departmental Personnel Committee, and how to deal with the fears of the Departmental Personnel Committee.

Q. Well... Okay, and how, what was the ideas ventilated there? Were there suggestions as to what?

A. The decisions that I remember specifically relate obviously to my own involvement, and that meant that when Dean Swamy presented you with the copy of the Departmental Personnel Committee decision, which as I remember, it was November the fourteenth (14th), Thursday, I was present at the meeting as well. The other types of decisions would have been, as an example, the regularity of security patrols in the department. I don't remember what the specific decision was, but it wasn't unusual at the time in response to fear to increase the number of patrols that our Security Department would make through a department. I'm trying to remember any other specific decisions coming from those meetings and I can't. No.

Q. Today you are remarkably forgetful.

Me JEAN LECOURE :

Mr. Fabrikant is always making comments, My Lord...

THE COURT :

Of course he's always making comments, no matter what I do he'll continue to make comments. So I suppose we'll have to continue to live with them.

Me JEAN LECOIRS :

There should be a way to stop that, My Lord.

VALERY FABRIKANT :

What is so terrible?

</pre></body></html>

THE COURT :

Because the witness is your witness, you're here to put questions to the witness, not to regale either me, the jury or the company assembled with your cracks as to whether he's forgetful or whether he's not.

VALERY FABRIKANT :

Well, witness has discredited himself to such an extent that only Judge like you still would keep...

CHANGEMENT DE CASSETTE

VALERY FABRIKANT :

Q. What other measures were discussed at the meeting?

A. I honestly can't remember...

Q. Okay.

A. ...exactly what was discussed at those two meetings.

Q. Now, how to ask question not to be leading. What are the measure of securities which could be theoretically taken, did you discuss several options?

A. I believe at the two meetings there were a number of options that were discussed.

Q. Okay.

A. I don't honestly remember with any details because I'm not responsible for security. It wouldn't have been as important to me at the time as the requirement for me to meet with you and the Dean would be a week later. And as to exactly what procedures were or weren't discussed at those two days of meetings, I don't remember.

Q. Okay. Any question of bodyguards?

A. I don't remember the issue of a bodyguard being raised for anyone at the time. If by bodyguard you mean assigning a specific person, a guard or any outside employee to follow any of the people that we were talking with or the Departmental Personnel Committee, we did not discuss a bodyguard for anyone in the university, no.

Q. How about bodyguard for Swamy?

A. No. There certainly would have been a discussion at the time as to whether or not... there may have been discussion at the time, I know what the outcome was, but eventually a security person was put in the Dean's area. I'm not sure that that was specifically agreed to, the meetings of November seventh (7th) or eighth (8th), or whether it was a decision simply reached by the Director of security or by the Associate Vice-Rector who he reported to, who was also present at the meeting. And in fact it wasn't a bodyguard provided to protect Dean Swamy, it was a security guard put into the Dean's area, and there are a number of people who work in the Dean's area.

Q. Wasn't it someone who was hired from outside security company?

A. I have no knowledge.

Q. Okay. Why was there yet need for an additional meeting of November fourteenth (14th)?

A. The meeting of November the fourteenth (14th) was simply to explain to the Departmental Personnel Committee what procedures we had taken and what the next steps would be, that in fact whatever had been taken, the increase of security patrols, the fact that by that time you had been handed a copy of their decision which had... excuse me, sorry, no. No. There had been a meeting of November the thirteenth (13th), but that would have been between you, I, the Director of security and the Associate Vice-Rector that security reported to and to explain to them the steps that had been taken. And

again, the meeting that we had on November the fourteenth (14th) with the members of the Departmental Personnel Committee was not unlike a number of meetings that the intervention team would of had with a department or a person within a department who had express fear. It was no unusual for us to meet afterwards to explain to the department or to the person the steps that we had taken.

Q. So what were those steps, repeat once again.

A. Again, other than the fact that there was going to be a meeting where the Dean was going to hand you the decisions, that I was going to be present at that meeting, and whatever steps had been taken for security. I don't remember any other specifics of that meeting. In fact, I can't even tell you who was at the meeting other than the intervention team which would have been myself, two other people and the Departmental Personnel Committee.

Q. So Grendon Haines no longer was present there?

A. May or may not have been. I can't say with certainty.

Q. In neither November seventh (7th), eighth (8th) or fourteenth (14th)?

A. Seventh (7th) and eighth (8th)... seventh (7th) I know he was present, eighth (8th) I believe he was present, the fourteenth (14th) I honestly don't remember a great deal about the meeting.

Q. Okay. Do you recall the meeting November eighteenth (18th), I believe it was...

A. No.

Q. ...where Swamy gave me the...

A. I have written down November the nineteenth (19th) but you may be correct.

Q. Nineteenth (19th), all right, nineteenth (19th). Do you remember there was bodyguard just behind the door?

A. I don't remember any such thing, nor did I notice any such thing.

Q. Well, neither did I at that time, just later I understood who this guy was. Do you remember Dean went out, handed me those documents and immediately went out?

A. Correct.

Q. Was it because he was afraid that I will shoot him or what?

A. ...

Q. Was it part of the plan?

Me JEAN LECOURE :

This is an alienable question, My Lord.

THE COURT :

If the witness is aware of why the Dean left after handing him the documents, I suppose the witness may tell us. I have no idea whether he's aware or not.

THE WITNESS :

A. No, I was...

Me JEAN LECOURE :

The person that should be asked is the Dean.

THE COURT :

The question itself is... the form of the question is objectionable, you're right, but...

VALERY FABRIKANT :

Whatever I do is objectionable. Was there any step which you would approve?

THE COURT :

I was using the word in another sense.

VALERY FABRIKANT :

Whatever sense.

THE WITNESS :

A. No, I wasn't aware of what was in the mind of the Dean and no, his leaving the room was most certainly not planned. It was a surprise to me.

VALERY FABRIKANT :

Q. Why were you present there?

A. The Dean wanted to ensure that someone could explain to you, step by step, what the processes still available to you were under the collective agreement, and he thought I could do that more clearly than he could.

Q. How did you feel there knowing what you testified on Friday, that...

Me JEAN LECOURE :

The witness is here to state facts, My Lord...

THE COURT :

Yes.

Me JEAN LECOURE :

...not feelings.

VALERY FABRIKANT :

Well, I cannot ask him whether he felt himself at ease at that meeting?

THE COURT :

Yes, you can ask him that.

VALERY FABRIKANT :

Q. So taking into consideration your previous statement that a) you knew that argumentation of Department Personnel Committee didn't make sense; b) that all what they were afraid in reality was my whistle blowing; c) that I never threatened anyone, did you feel that you are participating in something dishonest or potentially criminal?

Me JEAN LECOURE :

No, the question should be: What did you feel? It should not be leading, My Lord.

THE COURT :

You're right, the question shouldn't be leading.

Q. The question is asked in any event, would you answer?

A. The answer is no, I didn't believe that I was partaking in anything criminal.

VALERY FABRIKANT :

Q. Okay. Is it unheard of when a normal person is confronted with totally unreasonable, unfair decision that that person could become violent?

ME JEAN LECOURE :

This is argumentation, My Lord.

THE COURT :

Of course it's argumentation.

Me JEAN LECOURE :

The normal questions (inaudible) is always argumentation.

THE COURT :

Yes. You see, you're back on your assumption. Your question starts with an assumption that...

VALERY FABRIKANT :

Well, assumption was well established, he confirmed this assumption.

THE COURT :

Well, yes, but he never put it in the words that you put it in.

VALERY FABRIKANT :

All right, we can object that it was not in his words.

THE COURT :

Well, he can't object. Just don't ask the question that way and the problem won't arise.

VALERY FABRIKANT :

All right, I will repeat it in his words.

THE COURT :

So the objection is maintained.

VALERY FABRIKANT :

In his words.

Me JEAN LECOURES :

No, Mr. Fabrikant could plead later. He's coming with this normal person stuff, asking opinions on witnesses.

VALERY FABRIKANT :

No. No....

THE COURT :

I've maintained your objection.

Me JEAN LECOURES :

He could plead later.

VALERY FABRIKANT :

All right, I will change the question.

Q. Were you personally afraid that I confronted all of a sudden if decision which you knew was unfounded... Okay, no. If argumentation which didn't make sense from your point of view that I confronted with such a decision might become violent?

A. No.

Q. Did you by that time know the rumors that I allegedly have a gun, that I threatened to kidnap the Rector, that I allegedly said that I want to kill a lot of people, did you know all this by that time?

A. I believe so.

Q. Then isn't it logical to conclude...

Me JEAN LECOURES :

It's argumentation, My Lord.

VALERY FABRIKANT :

Okay.

Q. So knowing all that, could you explain why you didn't have any fear that I take this gun, which I alleged I had, and use it on you and Swamy?

A. I know that I didn't fear you at that meeting, there was only one meeting where I actually was afraid of you, and that that had occurred the week before, and after the meeting I had rationalized by own emotion at that meeting as being irrational, based on the rumors. I didn't expect the meeting of November the nineteenth (19th) to be anything more than possibly nasty or distasteful. I was not afraid.

Q. Now about the rumors, by that time did you clarify with Grendon Haines that this indeed what I said?

A. I can't remember any personal conversation with Grendon Haines about this case other than what would have been exchanged between us when we were together as a group. The only time that I met with Mr. Haines or discuss this issue would have been at the meeting that you have mentioned. When I was there along with a number of other people.

Q. You didn't answer my question. Did you or didn't you clarify it? Just answer simple question.

THE COURT :

The witness gave you an answer, he said: "Listen, he said, I can't remember any private exchange with Grendon Haines, the only time I discussed with him was at one of the other of the meetings to which I've referred." That's what he said.

VALERY FABRIKANT :

Well, this is eluding question. For any normal person this means eluding question. Maybe you don't see it that way but to me...

THE COURT :

I don't see it that way.

VALERY FABRIKANT :

...it would be, normal answer would be yes, I clarified it or no, I didn't clarify it. And I think for everyone here it would sound the same but not for you.

THE COURT :

Well, hell no, but there again, there again.

VALERY FABRIKANT :

Yes. So how to understand this answer, did he or didn't he clarify it?

THE COURT :

I gather he didn't from what he said.

VALERY FABRIKANT :

I don't know.

THE COURT :

He said that he certainly didn't have any private exchange.

VALERY FABRIKANT :

Q. Well, would you be more precise please, did you or didn't you clarify it by that time with Grendon Haines?

A. Clarify with him?

Q. Well, the alleged threat of kidnapping or whatever, Rector?

A. I don't remember ever having specifically clarified it with him.

Q. Okay. Now today in May of ninety-three ('93) had it been clarified yet or you still had no opportunity to clarify it with him?

A. I have not discussed this case with Mr. Haines.

Q. That's fantastic. So you still don't know whether I did or didn't say it, right?

A. ...

Q. It is still a rumor for you?

A. Since I was not present I do not know what you did or did not say.

Q. You are so not curious, should I put it this way, you were never curious enough to check whether this rumor is confirmed by Mr. Haines or it is not confirmed by Mr. Haines?

A. I did not confirm it with Mr. Haines.

Q. All right. Now, you mentioned here... I'm going a little bit back to November first (1st), nineteen ninety-one (1991), "the meeting was difficult and nasty". Could you be more specific as to why was it nasty?

A. Because members of the Departmental Personnel Committee, specifically doctor Osman, were cutting off anyone who tried to say anything, because there was a lot of yelling and because they weren't listening.

Q. Okay. Why was there yelling?

A. You'd have to ask doctor Osman why he was yelling.

Q. No, I mean yelling on what subject?

A. Most of what doctor Osman did throughout the meeting was yell. It's difficult to limit it to one subject.

Q. Well, did he yell to you or... Let me put it this way, if you recall, in nineteen ninety (1990) Vice-Rector demanded Department Personnel Committee to include my behavior in their evaluation, right?

A. Correct, asked.

Q. Now in nineteen ninety-one (1991), all they did in their so

called recent decision is discussion of my behavior, correct?

A. I haven't read their decision in detail.

Q. Well, how do you know then that they included fifteen (15) pieces of evidence then?

A. You just asked me if that's the only thing, and I'm trying to be extremely careful in my responses, that in fact I read it, I knew that there were fifteen (15) pieces because if I remember correctly they were the same fifteen (15) pieces entered as an exhibit at your code complaint against them on June first (1st). And that at the time you pointed out that it was the same information.

Q. Okay. So it was all behavioral stuff, how I purchased printer, how I did this, how I did that, correct?

A. That's all I remember of the... No, I honestly do not remember the content of all fifteen (15) of the pieces.

Q. Well, how then could you say that their argumentation didn't make sense?

A. Because I remember what I thought at the time.

Q. But you do not remember the details?

A. I do not remember the document.

Q. All right. Could it be that doctor Osman...

Me JEAN LECOURE :

Hypothetical, My Lord.

VALERY FABRIKANT :

What?

THE COURT :

Right, it...

Me JEAN LECOURE :

Could it be that...

THE COURT :

You might be asking the witness to speculate.

VALERY FABRIKANT :

No, no, no, no, no, no. I'm not asking him to speculate. I just started with could it be, but I'm not asking... I'm asking him to testify to the facts.

Me JEAN LECOURE :

Then it would be leading, My Lord.

THE COURT :

So you better rephrase your question.

VALERY FABRIKANT :

What's better for me is to have another Judge who would be fair, who would understand that this is adverse witness and allow me to question him normally. That's what will be better for me.

THE COURT :

Rephrase your question.

VALERY FABRIKANT :

But maybe it will be next time.

Q. Was it nasty because Osman effectively was telling you...

Me JEAN LECOURE :

Leading, My Lord.

VALERY FABRIKANT :

Well, I'm just verifying the facts.

THE COURT :

Could you not...

Me JEAN LECOURE :

The answer... The question should be why was it nasty, period. This is a question (inaudible).

VALERY FABRIKANT :

Well, why was it nasty, yes, but I want to go into detail as to what was shouting.

THE COURT :

You may well go into detail but go into detail legally.

VALERY FABRIKANT :

Well, not to forget, is it possible to get Haines and...

THE COURT :

Ask your question of the witness.

VALERY FABRIKANT :

No, no, no, for a second, because I will forget later on.

THE COURT :

Well, try and remember later on. Put your question.

VALERY FABRIKANT :

It's important because if I call Haines and McKenzie to testify, I will have the same trouble with them. I suggest the Crown to re-open their proof because they have kind of evidence of premeditation. If I said that, that might be interpreted as premeditation. Let them call those witnesses to testify and I will cross-examine them.

THE COURT :

Crown's case is closed, you are now calling your defense witnesses, go right ahead.

VALERY FABRIKANT :

Well, anyway, I will ask the question, you rule it out, you rule it out, I'm not a lawyer. If you want to use the fact that I'm not a lawyer, use it.

Q. So would you confirm that the reason for yelling...

Me JEAN LECOURE :

Leading, My Lord.

VALERY FABRIKANT :

Let me finish the question.

Me JEAN LECOURE :

The witness is not here to confirm anything, he's supposed...

The proper question is what happened.

THE COURT :

Let's wait for the question.

VALERY FABRIKANT :

Q. Okay. Do you recall, this is a good beginning, right? Do you recall that the reason Osman was shouting at you was that they did exactly in ninety-one ('91) what Vice-Rector wanted them to do in nineteen ninety (1990), so why don't you support them. Was this the subject of the shouting?

A. No, as a matter of fact at the meeting of November the first (1st), nineteen ninety-one (1991), there really wouldn't have been a discussion at all of the contents or why they had reached the decision as a Departmental Personnel Committee. We weren't there with the Vice-Rector to discuss your continuing or non continuing employment with the University. We were there to discuss the fears of the Departmental Personnel Committee. The nastiness specifically was from the type of comment that doctor Osman made and the way they were speaking to people, the type of comment they made had nothing do to with your employment. The type of comment which I pointed out on Friday which I found to be nasty was when I commented that it would be important to follow process and procedure carefully because we were already in another arbitration case which had lasted for, I think at that point one year, it took two and a half years, on the issue specifically raised at the meeting. That is the issue of whether or not to use the emergency suspension procedure under the collective agreement. When I raised that it was an issue on which we should be very careful and that we should have a

good reason to raise it, and mention that you had used a lawyer in the past on another issue, doctor Osman yelled at me: "Don't tell us he has a good lawyer, just make sure we have a better one."

Q. Uh, huh. So what was then with professor Trudel, was he re-instated?

THE COURT :

I'm sorry, what was the question?

VALERY FABRIKANT :

I'm asking question concerning the other matter which he mentioned. Well, about the same emergency procedures, I'm asking what was the result of this issue.

Q. So what was the result?

A. He was not re-instated, the arbitration... the arbitrator upheld the procedures used by the university.

Q. Okay. Okay. Now, have you heard yet another rumor of my threats that I was apprehended or something with hit list of certain people which I allegedly planned to kill?

A. No, I haven't.

Q. Well, if you remember, professor "Herman" raised this question during hearing.

A. I do not remember him raising it, he may have.

Q. Today you don't remember anything. All right. Now, another witness here testified that...

Me JEAN LECOURE :

I think he wants to contradict his own witness, My Lord, he's not allowed to.

VALERY FABRIKANT :

I'm not planning to contradict anything, I'm just asking his recollection, that's all.

Q. Do you recall...

THE COURT :

(Inaudible) commence with a witness' testimony, ask the question you want to ask.

VALERY FABRIKANT :

Yes.

Q. So one of the witnesses of Crown witnesses has testified that I allegedly said to some faculty member that I have a gun and I plan to use it. Now this, have any knowledge of this rumor?

A. No.

Q. No. Did you hear various rumors in different variations like... something like instead of saying, "I know what children are wearing" but say "I know where your children are", did you hear any variation of any of those rumors?

A. I may have. Certainly every person who would have repeated them would have repeated them as they remembered hearing them. There was bound to be variations.

Q. Well, could it be...

A. But I do not remember specifically picking out at the time that someone had rearranged the phrase or was telling the story differently.

Q. Well, just Friday you were telling different story differently. So we don't have to go that far to find someone telling different story differently. But could it be that the phrase that allegedly I said to someone that "I have a gun and I'm going to use it" is just variation of "I have a gun and I plan to kidnap the Rector"?

A. I don't know.

Q. Would that be a variation one of another?

A. I don't know.

Q. All right. Now, the last thing that I want you to comment on,

I'm going back to your meeting with Vice-Rector concerning me, how many meetings did you have?

A. With the Vice-Rector?

Q. Yes.

A. That I can say with any certainty, two.

Q. Okay.

A. I would of had one meeting with her to discuss the letter that she sent to you asking you to stop harassing her staff, and I would have been present at the Montreal Athletic Club.

Q. Okay. Now the first one, did she just tell you that I was harassing her staff or she mentioned to you that I threatened to kidnap Rector and North America?

A. As I said earlier today, it's difficult to remember exactly what was raised by whom in that time period. That in fact I met with the Vice-Rector, I met with her assistant and I met with the university's legal counsel who was also involved on the same issue. What any of them raised specifically or which of the rumors they raised, I honestly don't remember.

Q. Well, still now we are coming to the point, what was the reason for firing me in nineteen ninety (1990), because you recounted all your testimony. I wish to remind you that on Friday you testified that reason for firing me in nineteen ninety (1990) was that Vice-Rector heard that I planned to kidnap the Rector, that I threatened some child, that I said something about North America, do you still confirm this testimony?

A. What you asked me and what I would have responded was the Vice Rector was asking the Departmental Personnel Committee to specifically review a decision they had already submitted, and in reviewing that decision to include evaluation of how you worked with your colleagues, and that the reason for her asking for the re-evaluation was because of the rumors she had heard as well as the type of behavior that she herself had been subject to in the time that she was dealing with the contract.

Q. Well, so you confirmed all three rumors by that time?

A. I honestly don't remember.

Q. Well, if I just call someone from her staff, that was the reason to have me fired?

A. As she put it in her letter dated October the eighteenth (18th), nineteen ninety (1990):

"I considered that your many and continued telephone calls to the various members of my office border on harassment of them and me, specifically the frequency of these telephone calls, the tone which you used, your warning that you intend to tape record the conversations, etc, are totally unacceptable. The veiled threats conveyed through my staff and through Mr. Grendon Haines must stop immediately. I must emphasize that I consider such behavior unacceptable and indicate that it will no longer be tolerated."

She then goes on to give you a definition of harassment.

Q. Okay. So what was the veiled threats from Mr. Grendon Haines?

A. You would have to put that question to doctor Sheinen.

Q. No, no. I mean you by that time, did you know, was your personal knowledge as to... you received a copy of that letter, didn't you?

A. I believe at the time... yes, obviously.

Q. So...

A. I believe at the time that in fact it was referring to the

issue of owning a gun, and the issue of the... taking the Rector hostage, since that threat would have occurred prior to the Vice-Rector, Academic, doctor Sheinen, starting her employment with the university. I can't say for sure what she was referring to at that specific date or when I learned of what she knew. I've dealt with this file now and the issues that you continue to raise for a period of two and a half years. I find it difficult to remember during which specific conversation, with whom I learned the details.

Q. But did she discuss it with you all these specific threats?

A. I honestly don't remember the details of the meeting that I had with her other than the fact that I recommended that she send a letter to you, which I've just read parts of.

Q. Well letter is letter, firing is something else. So do you or don't you take back that part of your testimony?

A. Which part?

Q. Let me read it to you. The following question:

"What was the fear of Vice-Rector in terms of hiring me, could you describe that?

A. Vice-Rector has heard rumors that you had threatened people, that you owned a gun and you had threatened to take the Rector hostage. And he was acting Vice-Rector, Academic.

Q. Okay. Was there any name attached to that as to who I said, what I said, when I said?

A. The same as in the meeting of November ninety-one ('91), those were exactly the questions that you were asked, at no time did anyone say I was specifically threatened other than the type of example that I gave early where someone said that you had used the phrase "I now understand how things are done in North America."

And so on. Do you take all this stuff?

A. I don't take a word of it back nor does it in any way contradict what I just said.

Q. All right. So...

A. The only phrase that in fact you just read that I was sure of was the one made by doctor McKenzie. I would not even have been aware that she had been involved in the case until November of nineteen ninety-one (1991), at the point in October of nineteen ninety (1990) when I met with legal counsel, the assistant to the Vice-Rector and with the Vice-Rector. At the time I was being asked for my advice on harassment and the use of the internal university procedures. I gave advice on that specific issue.

Q. Well still, how did you... if you don't take it back then you here say that Vice-Rector had heard rumors that I threatened to take Rector hostage. You couldn't...

A. Your question to me was whether or not she had said it in a specific meeting. And I cannot with any certainty state here today that I remember exactly what someone said to me on a specific date during a specific meeting.

Q. This is not the point. I asked you what reason did she have to have me fired, and you explained because she heard the rumors. And you could not have possibly known that she heard the rumors unless she shared it with you, right?

A. No, she may well have shared it with me, her assistant may have shared it with me, legal counsel may have shared it with me. But in fact, I had a number of meetings with a number of different people discussing the specific issues.

Q. Anyway, so someone then shared with you that Vice-Rector knew

about these threats and that was the reason why she decided to fire me or...

A. The reason that she asked the Departmental Personnel Committee to review its decision and to include in that decision an evaluation of your behavior.

Q. Yes. Was what? The reason was what?

A. That she had heard these rumors, she was asking specifically for them to re-evaluate. At no time do I remember her specifically stating: I've decided I want to fire him, I won't accept your decision. What I remember at the time was her trying to convince them that if they feared you that she would attempt in whatever way possible to try and help then, and that was part of my reason being present on October nineteen ninety (1990) to explain the internal procedures and the reason for the psychiatrist being present, to try and explain to them the type of behavior that they were dealing with, that specifically she wanted to deal with the issue of your behavior. And if it wasn't written into their evaluation report and it wasn't written into the Faculty Personnel Committee report, then in fact it would simply go forward and it wouldn't be dealt with.

Q. So there is no way it looks like, as it stands today, to know when you know what, was Vice-Rector aware of that at that time...

A. You would have to ask the Vice-Rector.

Q. Yes, I believe that we are at a dead end here. All right.

Thank you.

Me JEAN LECOURE :

No questions, My Lord.

THE COURT :

Thank you, Mr. Relton.

AND FURTHER DEPONENT SAITH NOT.

THE COURT :

Your next witness?

VALERY FABRIKANT :

Mr. Major. Just five minutes start.

THE COURT :

Well we can start.

VALERY FABRIKANT :

Sorry?

THE COURT :

We can start.

VALERY FABRIKANT :

You think we'll be able to finish?

THE COURT :

Pardon? Who is the...

Me BELLEAU :

Major.

SANDRA TRAYNOR - INTERPRETER

DULY SWORN

EN L'AN DE NOTRE SEIGNEUR, mil neuf cent quatre-vingt-treize (1993), en ce vingt-cinquième (25e) jour du mois de mai a comparu :

NORMAND MAJOR, responsable des opérations, centre d'urgence 911, n, le dix-huit (18) juin mil neuf cent quarante-quatre (1944);

LEQUEL, après avoir déposé, sur les Saints vangiles, déposé et dit ce qui suit :

INTERROG PAR VALERY FABRIKANT :

- Q. Okay. Have you brought the document which I asked you?
- Q. Est-ce que vous avez apport, le document que je vous ai demand,?
- R. J'ai rapport, ce que maÊtre Belleau a r,quisitionn,, effectivement.
- R. I did bring what Mr. Belleau did ask of me, yes.
- Q. May I take a look at those documents?
- Q. Puis-je les voir, je vous prie.
- Q. While I am looking, please think how to answer the next question because you might need some time to answer.
- Q. Veuillez s'il vous plaÊt r,fl,chir ... la prochaine r,ponse ... la question ... laquelle je vais vous poser, parce que ça pourrait vous prendre quelques moments.
- Q. I played the tape of 911...
- Q. J'ai ,cout, la cassette du 911...
- Q. ...and there is six minutes difference...
- Q. ...il y a une diff,rence de six minutes...
- Q. ...between duration which is indicated on the transcript...
- Q. ...entre la dur,e indiqu,e sur la transcription...
- Q. ...and the way it was played.
- Q. ...et de la faÇon qu'elle a ,t, enregistr,e.
- Q. Can you offer any explanation to this discrepancy?
- Q. Auriez-vous une explication ... formuler au sujet de cet ,cart?
- Q. If you want to think about answer...
- Q. Si vous voulez r,fl,chir...
- R. Ce n'est pas n,cessaire, je pense.
- R. No, it's not necessary.
- R. C'est trřs difficile qu'il y ait une diff,rence dans le temps parce que le tout est fait ,lectroniquement.
- R. It is very difficult to find a difference in time because everything is done electronically.
- R. Et c'est ... partir d'une machine qui s'appelle Dictaphone...
- R. And from a recorder referred to as a Dictaphone...
- R. ...et ... l'int,rieur de cette machine-l... le temps d'appel est entr, et le temps de terminaison c'est le temps qu'on vous pr,sente.
- R. ...inside that machine you have the time the call was received and the time that the conversation ended.
- R. Donc, s'il y a une erreur c'est peut-Être une erreur ... votre niveau parce que la machine est suppos,e d'Être ... point.
- R. So if there is an error, maybe you made the mistake because the machine is supposed to be faultless, if you will.
- Q. Well I...
- R. And I'm not a machine.
- Q. Well, this is effectively the essence of my question because I know that it is done automatically and computer is never wrong.
- Q. En fait c'est le but de ma question parce...
- Q. That is exactly the essence of my question.
- Q. ...l'ordinateur habituellement ne faillit pas et c'est justement la raison pour laquelle je vous pose la question.
- R. Donc, il a sa r,ponse.
- R. Therefore he has his reply.
- Q. No. So I checked it twice, at the time when it was played here, I looked...
- Q. J'ai v,rifi, ... deux reprises et lorsqu'on l'a fait jouer ici...
- Q. ...I looked at my watch when it was played here...
- Q. ...j'ai regard, ma montre lorsque...

Q. ...and it started at two twenty-six (2:26)...

-Q. ...la cassette a ,t, jou,e ici et #a a d,but, ... quatorze heures vingt-six (14 h 26)...

Q. ...and it ended at three twenty-one (3:21).

-Q. ...pour se terminer ... quinze heures vingt et un (15 h 21).

Q. Taking into consideration that there was some time spent on changing the sides of the tape...

-Q. Tenant compte qu'il y a eu un certain moment pour changer le c"t, de la cassette...

Q. ...and taking into consideration that the end of the first tape was repeated at the beginning of the next one...

-Q. ...et tenant compte que la fin de la premiŠre cassette a ,t, r,it,r,e, r,p,t,e au d,but de la prochaine cassette...

Q. ...the discrepancy is even greater.

-Q. ...l',cart est encore plus grand.

R. Est-ce qu'il peut me remettre le document?

-R. Can he give me the document back?

R. Just for a minute.

Q. Well, I just...

R. No, the document that you have in your hand.

Q. This one?

R. Just for a minute.

Q. Sure.

R. Maintenant, la seule r,p,ponse que je peux vous pr,senter...

-R. Now, the only reply I can give you...

R. ...le premier appel est entr, ... quinze heures douze minutes et dix-sept secondes (15 h 12 min 17 s)...

-R. ...and the first call came in at fifteen twelve and seventeen seconds (15:12:17)...

R. ...et lors du dernier appel, pour ce qui est d'ici...

-R. ...and for the last part...

R. ...qui est toujours sur le Dictaphone tel que sp,cifi, sur le document....

-R. ...still on the Dictaphone as specified on the document...

R. ...serait ... quinze heures et cinquante sept et quarante-deux (15 h 57 min 42 s)...

-R. ...would have come in at fifteen fifty-seven and forty-two seconds (15:57:42)...

R. ...et par la suite un appel est rentr, ... l'attention du directeur Sangollo, je crois ... seize heures et deux (16 h 02).

-R. ...and afterwards the call came in I believe at sixteen o two (16:02) for Director Sangollo.

R. Et si vous voulez regarder du premier au dernier appel, ce sont tous des appels qui sont enregistr,s...

-R. And if you take from the first to the last call, all these calls are recorded...

R. ...et vous avez toutes les heures de chacun des appels, donc moi, je ne peux pas vous dire pourquoi qu'il peut y avoir une diff,rence de quelques minutes puisque tout est net, clair et pr,cis sur les feuilles et je ne puis qu'aller ... l'int,rieur de ces faits.

-R. ...and you have all the specific times for all these calls, and all these calls are reported, therefore I cannot explain any better difference in time...

Q. Okay. Would it be possible for you during the break to play it for yourself, if you wish to verify...

-Q. Serait-il possible au cours de la pause de faire jouer les cassettes pour votre utilit, personnelle afin de v,rifier...

Q. ...and after the break when you come in and you will report to the Court what is your finding.

-Q. ...et par la suite aprŠs la pause vous pourriez relater ... la

Cour quels ont ,t, vos r,sultats.

Q. Because I played it twice...

-Q. Parce que je l'ai fait jouer ... deux reprises...

Q. ...once here...

-Q. ...une fois ici...

Q. ...second time I took the Court tapes and played it in jail...

-Q. ...la deuxième fois j'ai pris les cassettes de la cour et je les ai ,cout,es en prison...

Q. ...and I recorded all the time including the time where message was repeated and when the sides were changed...

-Q. ...et j'ai enregistr, toutes les heures, c'est---dire ... partir du moment o- les messages ont ,t, r,p,t,s et les cassettes ont ,t, chang,es de c"t,...

Q. ...and I found discrepancy of about six minutes.

-Q. ...et j'ai trouv, un ,cart d'environ six minutes.

Q. Now, not to put you in any suspense, what I think maybe some part of the tape was just not included in what we heard.

-Q. Maintenant, je crois sincřrement qu'il y a une partie de la cassette qui n'a pas ,t, incluse dans ce que nous avons entendu.

Q. So could it be that six minutes of the tape which I'm missing...

-Q. Alors, est-ce que cela serait possible que les six minutes manquantes ou l',cart...

Q. ...are present somewhere else...

-Q. ...seraient pr,sentes ailleurs...

Q. ...and if yes, would you kindly include them and let us hear the full tape.

-Q. ...et si oui, pourriez-vous s'il vous plaEt les inclure pour nous laisser entendre la cassette au complet.

R. Bon. Dans un premier temps c'est quelle cassette qu'il a entendu?

-R. Firstly, which cassettes did he hear?

Q. Well, I've heard...

R. Is it our conversation?

Q. Yes.

R. Well, if it's our conversation that's not that. That's all the calls that came in. As far as I'm concerned, our conversation is integral, I listened to it here in Court, I listened to it on my own time and for discrepancy, as you say, I mean there's nothing I'll be able to about it. And the entire conversation is there because that's my voice.

Q. Okay. Let us use elementary logic. I agree that your computer is never wrong, computer absolutely correctly records beginning of conversation and the end of conversation. When we play this conversation back, it should come to exactly the same figure. If it does not come to exactly the same figure, then either we are playing with very different speed, which I don't believe is the case, or if this is not the case then part of the tape is missing. Now, I leave it to you to check first of all my allegation that if you play the tape the way it is now, it is about six minutes less than fifty-eight (58) minutes it is supposed to be. Now, this six minutes has to be accounted for something. I don't know for what.

R. If we're talking about the cassette that we heard over here...

Q. Yes.

R. ...if you recall last week, when I was asked to testify, I swear on the Bible to tell the truth, nothing but the truth and the whole truth, do you agree with that?

Q. Yes.

R. And I also said that I followed the conversation while reading

the transcript. And I did come back here and swear on the Bible that everything was fully in that tape.

Q. Well I...

R. I can listen to the tape, if you wish, but I will come back over here and swear again that I did...

Q. No, no, no, this is not my point. I do not raise question whether this transcript corresponds to the tape, it does. My question is that timing does not correspond to the timing of playing. Now, either you give a reasonable explanation because my explanation is, you know I am paranoid, so my explanation is that there is a part of the tape which is missing.

R. Je vais lui r,pondre en français ... ce coup-ci. A l'int,rieur de ta, votre Honneur, m^me si je r,,coute la cassette comme il le demande...

-R. Within that, My Lord, even if I listen to the tape over again, as he's asking me...

R. ...s'il y a une diff,rence de temps...

-R. ...if there's a discrepancy in time...

R. ...ma comp,tence pour expliquer la diff,rence, j'en ai aucune.

-R. ...my credentials or qualifications to explain that discrepancy I do not have.

R. La seule chose ... laquelle je peux vous assurer...

-R. The only thing I can insure you....

R. ...c'est qu'apr's ,coute de la conversation...

-R. ...is that after listening to the conversation...

R. ...c'est effectivement ma voix de A ... Z...

-R. ...it is my voice from A to Z...

R. ...et il ne manque rien.

-R. ...and nothing is missing.

R. Il me semble que s'il veut que je lui dise qu'il lui manque six minutes en quelque part, l..., bien...

-R. Therefore, if he wants me to tell him that six minutes are missing somewhere, well...

R. ...il n'y a aucune possibilit, pour moi de lui expliquer concr'stement, c'est votre "tape" est plus lent, le "tape" est plus vite, je le sais pas.

-R. ...there's no explanation that I can provide to him, whether the tape is slower or faster, I don't know.

R. Mais la conversation est l... en entier.

-R. But the conversation is there intergrally.

Q. Well, let us just...

THE COURT :

Q. If you were to listen to your office master...

R. Yes.

Q. ...with...

R. You have all the times that are there.

Q. ...with that on hand...

R. It will be the same time.

Q. ...would you...

VALERY FABRIKANT :

Q. Well, let us establish the fact that...

A. Well, just one at the same time.

Q. Yes.

THE COURT :

Q. Can you let me know whether indeed it's fifty-eight (58) minutes from your master tape? I believe this was verified from cassettes?

A. Yes.

Q. Which were made from the master tape.

A. The master and the hours that are there are from the master.

Q. Are from the master tape.

A. So if I re-listen to it again, I will come out with the same explanation, the same information, and it won't change.

VALERY FABRIKANT :

Q. So would you please listen not to the master tape but listen to the tape which was provided to the Court...

R. If you want me to listen...

Q. ...check the timing, and if you find that it is not fifty-eight (58) minutes but less than that, please report to the Court that it is less than that. If you cannot explain anything any better...

R. Then I go home?

Q. Then you go home.

R. I cannot explain it any better than what you have on the recording.

Q. But before...

Me JEAN LECOURE :

There's no contradiction, My Lord, there is a point on this transcript where the phone is hung up. The only solution might that be the hang up for six minutes.

THE COURT :

I have no idea.

VALERY FABRIKANT :

No.

THE COURT :

I have no idea.

VALERY FABRIKANT :

The tape never stops, I'm sorry. Phone hang up it continues.

THE WITNESS :

A. Yes.

THE COURT :

All right...

Me JEAN LECOURE :

The (inaudible)...

THE COURT :

Q. I'm sorry, just a second. What I'd like to know to put an end to all of this, okay, the tapes that are here are tapes that have been copied from the master?

R. Yes.

Me JEAN LECOURE :

Well they might not have included all the silence...

THE COURT :

Perhaps.

Me JEAN LECOURE :

...between two phone calls.

THE COURT :

Perhaps. The tapes however that were used to make this were copies of the master. If Mr. Major would be kind enough to listen to the master tape with this in hand and come back and tell us whether the master reflects everything that is on these thirty-seven (37) pages, then...

THE WITNESS :

A. Can I look at it just a minute...

VALERY FABRIKANT :

No, this is not my question. This is not my question and this is not what I want him to do. I want him to listen to the tape which was presented to Court and to report to the Court what is the timing of that tape. That's all I need to know at this moment.

Q. So I would like you to report...

THE COURT :

Just a moment.

THE WITNESS :

A. I can always go back at work and... If you wish.

VALERY FABRIKANT :

Q. Well, is it clear Mr. Major what I want you to do, what I asked you to do?

R. On one hand you want me to listen to your tapes...

Q. No...

R. The master tape?

Q. No. Listen to the tapes which were provided to Court.

R. Well, the one that you had.

Q. Yes.

R. Well, I've already listened to it twice.

Q. Well, listen to the timing.

R. A third time? Okay.

Q. Please just report to the Court the timing, I mean clean timing, not taking into consideration changing of side, and not taking into consideration that part of the conversation on one side is repeated on the other side. So if you could make this timing and report it to the Court after the break, that will be all I need from you. And as far as the information which you have provided... Now, explain please what we have here, it said timing...

R. Now give it back to me and I'll explain it to you.

Q. What is there, it is timing then what?

R. Dans la premièrre partie dans l'annexe A...

-R. in the first part of Annex A...

R. ...vous avez les dix-sept (17) appels qui concernent l',v,nement qui a eu lieu ... Concordia.

-R. ...we have the seventeen (17) calls for the event that took place at Concordia University...

R. l'int,rieur duquel vous voyez ... la premièrre ligne...

-R. ...within which you will see at the first line...

R. ...l'heure de l'arriv,e du premier appel qui ,tait ... quinze heures onze minutes et cinquante-sept (57) secondes (15 h 11 min 57 s)...

-R. ...the time the call was received, the first call that is, fifteen eleven and fifty-seven seconds (15:11:57)...

R. ...et ... la dernièrre page, le dernier appel est rentr, ... seize heures et deux et trente et une secondes (16 h 02 min 31 s).

-R. ...and the following page the last call came in at sixteen-o-two and thirty-one seconds (16:02:31).

R. Dans l'annexe B...

-R. Annex B....

R. ...ou si vous voulez ce sont les cartes d'appels qui ont...

-R. ...those are the calling cards, if you will...

Q. ...qui ont ,t, faites par les pr,pos,s regardant les dix-sept (17) appels qui ont ,t, re#us lors de l',v,nement ... Concordia.

-R. ...made by the call takers who were in charge of receiving all those seventeen (17) calls coming from Concordia University.

R. C'est la g,n,ralit,, l..., de qu'est-ce que vous avez dans... qu'est-ce que je vous pr,sente et qu'est-ce que vous avez demand,.

-R. And that's the general overview of what I'm presenting to you and what you asked me for.

R. Et si vous vous rappelez bien, vous m'avez demand, combien d'appels avaient ,t, re#us.

-R. And if you recall correctly, you asked me how many calls had been received.

R. Donc, il y en a eu dix-sept (17)...

-R. Therefore, there were seventeen (17)...

R. ...et vous m'avez demandé, le contenu...

-R. ...and you asked me for the content...

R. ...donc vous avez le contenu de chacun des dix-sept (17) appels individuellement.

-R. ...and you do have the content of each of those seventeen (17) calls individually.

Q. And the timing of which.

-Q. Ainsi que le minutage, les heures.

R. Tout le minutage des heures selon le temps passé, par les propos, sur l'appel.

-R. Yes, all the timing of each call according to the time spent by each call taker on each call.

Q. Okay. So I would like to...

R. Et, s'il vous plaît, juste deux secondes, l...

-R. One moment, just two seconds.

R. Et ... l'intérieur de ça, l..., vous avez deux pages o— on... heure par heure, c'est—dire le temps, l..., exact, l..., quinze heures et quatorze (15 h 14) jusqu'.....

-R. And within that you have...

R. ...de notre conversation.

-R. ...two pages and a call at fifteen fourteen (15:14) with our conversation appearing in the document.

Q. Okay. So I would like to take it and during break to take a look more detailed at the document and if I have some questions after the break I hope you will be kind enough to answer those questions.

R. Qu'est-ce que j'écoute, ses "tapes" ou le master?

-R. Now what do I listen to, his tapes or the master tape?

Q. No, no, no, no. Listen to the Court tape.

R. To the Court tape.

-R. Les cassettes de la cour.

R. A l'intérieur du "Court tape", l.....

THE COURT :

Q. Listen first of all and to the Court tape, that's fine.

R. That's fine?

Q. And we'll see where we go from there, if we go anywhere.

R. Okay. Only one question though, how can I tell you it's been fifty-eight (58) minutes or... I'll go by my watch? My watch may not be working properly.

VALERY FABRIKANT :

Q. Well, with accuracy of seconds, nobody is saying... I am saying that the difference is about six minutes, if the difference was six seconds, believe me I wouldn't ask you to do that. The difference is six minutes therefore your watch is good enough for that.

THE COURT :

Q. Using what best time piece you have at the office, would you perhaps do what the accused asked you for the moment?

R. Where do I do it, at the office?

Q. I would do it at the office.

R. With his tape?

Me BELLEAU :

Is the exhibit released to the witness?

THE COURT :

Q. I'm prepared to release the exhibit to the witness, if there's no objection.

-Q. On peut libérer la pièce à conviction (inaudible).

Q. Just one last question from my part. Do I understand that this transcription has never been verified against the master tape?

R. No, that's with the master tape and the conversation...

Q. I know that's with... I realize that's with the master tape, but...

R. Okay.

Q. ...this has never been verified in fact with someone playing the master tape and making sure that everything that's on this is...

R. That's the way it's done. Once a master tape starts, there's a print on the machine that gives you the time that it starts...

Q. Fine.

R. ...and you have the time from the beginning...

Q. Right.

R. ...till the end.

Q. Right.

R. That's what's reproduced over here, except I think once or twice there is an overlap of a conversation.

Q. Okay. But when this was made, this was made from what? From the copies or...

R. No, no, no, no. That's made directly... What you're reading there and what you have over here are from the master tape.

Me JEAN LECOURE :
Well, I understand this was made from the copy.

THE COURT :
Yes, so do I. So do I.

THE WITNESS :

A. Oh you mean the...

Me JEAN LECOURE :

Q. The transcript.

R. Well, that wasn't done by us, that was done by...

Q. (Inaudible).

THE COURT :
This was made from the copies?

Me JEAN LECOURE :
That's correct.

THE COURT :
Okay. If necessary, if necessary that may require to be verified against the master tape.

Me JEAN LECOURE :
No problem, Mr. Major is in charge of the master, so he would be the proper witness.

THE COURT :
He would be the proper witness to do that if necessary. So my question wasn't so far out, west left field after all.

VALERY FABRIKANT :
Let's check timing first then we'll...

THE COURT :
Okay, we'll adjourn till two fifteen (14:15).

SUSPENSION

REPRISE

Me BELLEAU :
The problem is the following is that we have eight witnesses including Mr. Major who are waiting and I wonder if it would be possible to discharge a few of them in view of the fact that I doubt very much that they could all be heard this afternoon.

THE COURT :
I haven't the foggiest idea.

Me BELLEAU :
It's an issue of politeness, that's all.

THE COURT :
Absolutely.

Me BELLEAU :

Savoir vivre.

THE COURT :

How many do you anticipate that you can hear this afternoon, Mr. Fabrikant?

VALERY FABRIKANT :

Well, some of those witnesses like from the union, what I would expect them to do, I would even release them right away, just give me the documents and they can go.

THE COURT :

It doesn't work that way.

VALERY FABRIKANT :

Well, this is the problem so... As far as myself is concerned, it's just regretful that they are not willing to cooperate. I wouldn't hold any of them because effectually what I called them for is the documents and...

THE COURT :

How many witnesses...

VALERY FABRIKANT :

...they made themselves difficult time for themselves.

THE COURT :

How many witnesses do you expect to deal with this afternoon?

VALERY FABRIKANT :

Well, I don't know, it depends. I thought that Relton would be for maximum half an hour.

Me JEAN LECOURE :

I can tell the Court that I consider all these witnesses irrelevant and my cross-examination will be rather short or inexistent.

Me HAROLD LEHRER :

Your Lordship, if it pleases the Court, my name is Harold Lehrer, I represent the witness that Mr. Fabrikant has referred to, the Professor Association, and we have brought the documents requested in his duces tecum and the president of the Association is on call and she's quite prepared to deposit with copies for everyone the documents requested.

VALERY FABRIKANT :

So that's it. (Inaudible) no problem.

THE COURT :

You realize that it's not a question in a criminal trial of depositing for everybody, ha, ha, ha. I mean, that much you know, don't you?

Me HAROLD LEHRER :

Yes, Your Lordship.

VALERY FABRIKANT :

Well, what seems to be the problem?

THE COURT :

What seems to be the problem is that there is a question of relevance as far as documents are concerned, and there's a question of the competent witness to produce them.

VALERY FABRIKANT :

Well relevance will be discussed later when I call witness to examine.

THE COURT :

No, the relevance will not be discussed later.

VALERY FABRIKANT :

Okay, discuss it now.

THE COURT :

You're going to have to discuss the relevance document by document.

VALERY FABRIKANT :

Well discuss it now. I asked them to produce one of those things might...

THE COURT :

Excuse me. Mr. Major, if you wish to go ahead and start doing what you have to do, we'll appreciate it.

Me JEAN LECOURE :

Could you release the transcript as well, My Lord?

THE COURT :

Certainly. He may have P-87, madame Desrosiers.

VALERY FABRIKANT :

Well, we can make it then privately. We can make it arrangement like this, you can give me the documents and I will consider that I never subpoenaed you, and if this is satisfactory for you that's it, the matter is closed, at least for now.

THE COURT :

Well, the only problem we run into there is how are you going to produce the document unless it's produced by consent?

VALERY FABRIKANT :

Well, don't you worry about me, at the time I need to produce it, I will produce it.

THE COURT :

Oh, but you won't, because perhaps the document will be subject to an objection, I don't know.

VALERY FABRIKANT :

Well, document will be subject to objection anyway. As far as Crown is concerned, Crown is prepared to say I admitted killing therefore let us convict him, period.

THE COURT :

I don't know, but as far as i'm concerned, if you have subpoenaed documents...

VALERY FABRIKANT :

Yes.

THE COURT :

...given the way this trial is proceeding...

VALERY FABRIKANT :

Well...

THE COURT :

....you better produce these documents through the competent witness.

VALERY FABRIKANT :

Well, in the meantime I think it is none of the Judge's business if some private person wants to submit to me some private documents...

THE COURT :

It's certainly not any of my business if some private person wishes to submit to you some document, they are perfectly free to do so.

VALERY FABRIKANT :

Well, let us treat it this way so far.

THE COURT :

Well I'll treat it no way at all. It's none of my business whether somebody wishes to submit to you a document.

VALERY FABRIKANT :

So if, for example, your client is prepared just to give me the document...

THE COURT :

Mr. Fabrikant, I'll leave before you have your chit-chat with Mr. Lehrer. As far as I'm concerned, if you and Crown agree that documents can be produced a certain way, that's one thing. I'm the first person who will say liberate the

witnesses and spare them having to sit out there.

VALERY FABRIKANT :

Yes, why don't we agree with Crown if that...

THE COURT :

I'm not party to that agreement first all.

VALERY FABRIKANT :

All right.

THE COURT :

That's the first thing. The second thing is, if you and the Crown don't agree...

VALERY FABRIKANT :

Yes.

THE COURT :

...then the documents will have to be produced through whoever the witness is who is their custodian.

VALERY FABRIKANT :

Well, I understand all that but the main problem is that when witness comes with documents and I have no cognizance of those documents, I'm not prepared to examine the witness.

THE COURT :

If...

VALERY FABRIKANT :

Do you understand that simple thing?

THE COURT :

If... if they're prepared, if somebody's prepared to show you documents it has nothing to do with me.

VALERY FABRIKANT :

All right, so let us do that. How about Crown, is Crown prepared to...

THE COURT :

How about...

Me JEAN LECOURE :

What is the difference between filing a document as an exhibit or providing the accused with...

THE COURT :

Of course there is, that's what I'm saying...

Me JEAN LECOURE :

I don't even have a word to say if someone wants to provide the accused with the exhibits.

THE COURT :

Wants to provide him with an exhibit.

VALERY FABRIKANT :

Okay. Now, when at the time...

Me JEAN LECOURE :

The point is there is a person subject to a subpoena waiting for days in the corridor, that's not even my problem either.

I did not subpoena the person.

VALERY FABRIKANT :

Well, that's what I say.

Me JEAN LECOURE :

But I'm not ready to admit anything that I don't know.

THE COURT :

Fine, that's what...

Me JEAN LECOURE :

That's the only thing.

THE COURT :

That's what I'm saying.

VALERY FABRIKANT ;

Well, you don't have to admit anything, just let us do it in "conveniencing" people. If someone is there, who is prepared just to give me those documents, let them give me those

documents, let them....

THE COURT :

You know, your concern for everybody today is so touching.

VALERY FABRIKANT :

Oh yes, yes.

THE COURT :

If Mr. Lehrer wishes to show you the documents, that's up to Mr. Lehrer, I have nothing to say about that. Otherwise you...

VALERY FABRIKANT :

I will look at them...

Me HAROLD LEHRER :

Your Lordship, if you permit me, we will discuss privately with Mr. Fabrikant of turning over evidence. If he indicates to me that he's prepared to liberate our witnesses, is that satisfactory to the Court?

VALERY FABRIKANT :

Yes.

THE COURT :

Listen, if Mr. Fabrikant is prepared to liberate your witnesses after getting hold of the documents, that's perfectly satisfactory to me. I would not wish that to be interpreted as saying that I have agreed that these documents shall be filed without them being filed through the competent witness. Particularly if I'm facing an objection from the Crown and the Crown doesn't propose to participate in your discussion with Mr. Fabrikant. So, you know, that's clear to you?

Me HAROLD LEHRER :

Perfectly.

VALERY FABRIKANT :

So using your remarkable phrase, we'll cross that bridge when we come to it. Because after examining the documents maybe I will decided that they are not relevant, and the matter will be closed. So you see how conscientious I am?

THE COURT :

No, I don't see how conscientious you are at all, because your problem usually is that you attempt to go one bridge too far, if not two.

VALERY FABRIKANT :

Anyway, at this time I will...

SUSPENSION

REPRISE

THE COURT :

Could you call Mr. Major, please? Well, it's my impression that we might as well finish with Major before going on to the next witness. So if he's not here I think we may as well adjourn for a few minutes until he gets here.

VALERY FABRIKANT :

Well, we can start with another witness, I have no objections to that.

THE COURT :

How long will you be with Mr. Major, you don't know I don't suppose?

VALERY FABRIKANT :

Well ten, fifteen (15) minutes maybe.

THE COURT :

Ten, fifteen (15) minutes? Well okay.

VALERY FABRIKANT :

Well, it depends how he answers.

THE COURT :

Yes, yes.

VALERY FABRIKANT :

If he answers directly, if he answers something else then...

THE COURT :

Well, perhaps you would call another witness, we'll interrupt Mr. Major's testimony for the minute and...

VALERY FABRIKANT :

Okay, Miss Altimas.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), on this twenty-fifth (25th) day of May, personally came and appeared :

SUSAN ALTIMAS, secretary, born on September nineteenth (19th), nineteen hundred and forty-eight (1948);

WHOM, after having been duly sworn, doth depose and say as follows :

EXAMINATION BY VALERY FABRIKANT :

- Q. Do you recall in twenty-fourth (24th) August of nineteen ninety-two (1992), professor McKay, did you see Professor McKay passing to my office?
- A. McKay?
- Q. Yes, from computer service?
- A. No, I didn't.
- Q. You didn't see him, okay.
- A. Doctor Hogben.
- Q. Okay. You saw doctor Hogben, could you describe how he was dressed, briefcase, whatever?
- A. I was sitting at my desk below the counter.
- Q. Uh, huh. Did you see anything at all in terms of what he had in his hands?
- A. No.
- Q. Nothing, okay. After that you... Okay, describe what you have heard after that. So you saw doctor Hogben passing with me?
- A. Yes.
- Q. And after that how long time did it pass till you hear something?
- A. I returned from lunch at two forty-five (2:45) and...
- THE COURT :
- Q. Could you turn and face the jury please, Miss Altimas, that might be better.
- A. Yes. I had been at lunch and I returned about two forty-five (2:45) and I was sitting at my desk which was in the middle, and the Elizabeth and Robert, the other secretary, were with me, we were looking at family photos of Elizabeth Horwood. And shortly after doctor Hogben and doctor Fabrikant passed, Elizabeth left and Robert went to sit at the right of me. And then I heard a sound that sounded like, I thought it was a piece of wood slapping on the desk (inaudible). I thought it was doctor Fabrikant, perhaps agonizing or something. And Robert turned to me, the other secretary, and asked me: "What was that?" And I said: "It's doctor Fabrikant." And Robert said: "No, it's the construction on the tenth floor" because things were... the tenth floor was on the process of being moved. And then within seconds there was another sound like that. And a moan, and Robert again asked me that question. And I said: "It's doctor Fabrikant." And in the meantime doctor Sabar came around the corner and looked at me and... and he asked what was happening, and I said: "It's doctor

Fabrikant." And he left, back around the corner, and then Robert got up and ran behind me, and as he was running down the corridor, he was looking over his shoulder at that corridor where the... the commotion was coming from. And I got up, because then I knew something was very wrong, and I ran to the left corridor to warn Elizabeth because I thought Elizabeth was alone down the hall. And I had just reached the beginning of the corridor beside the kitchen door when doctor Fabrikant arrived. And Elizabeth came out... I yelled to Elizabeth that something was happening, and she came out of her office, which wasn't what I had been thinking of but... And doctor Fabrikant and I were side by side and Elizabeth came out and he began shooting at her. And Elizabeth was screaming and I guess there might have been four shots... and then I turned to doctor Fabrikant because we were side by side and... No, what I did was I jumped behind the kitchen door that was open on the corridor, and I looked at doctor Fabrikant, and we looked at one another and he proceeded down the hall. So I ran to the side of the building, to 907 to get some help. And Ann (inaudible) who is a friend of Elizabeth and who is secretary to the Dean and whose office joins the... and Ann wasn't there but the Dean came in through a back door and he said to me: "What's the matter?" And until that point I hadn't been able to speak, because everything was quite normal everywhere else, and I told him what happened, he said: "Lock the door and stay." And in the meantime he picked up the phone to phone someone, Maureen what's her name, and I tried to telephone Elizabeth but there was no answer, so then once again doctor... Dean Swamy said: "Lock the door and stay." And I said to him: "Elizabeth's alone." And I left, and I ran back, and I ran down the corridor, everything was quiet, Peter Lawn was there, doctor Saber's student, and he was telling everyone to leave. And I was calling to Elizabeth but there was no answer. And then doctor Abdou came out of his office, which was on the corner, I didn't know he was there and he grabbed me and he asked me what was happening and I told him. And then Elizabeth came out of her office, with her skirt up, and she was wounded. Doctor Abdou and I put her back to her office, to her office, to Dr. Osman's office. And my back was to the wall, I was trying to get Elizabeth to sit in doctor Osman's chair which would be facing the doorway, I didn't think... we didn't about the door, and I tried to sit Elizabeth behind a chair and she said she wouldn't sit down because she would ruin the chair, but then there was a chair beside the other door that went on to the other corridor. So I had just got her seated and then she screamed and I turned around and doctor Fabrikant was there. And he said something but I couldn't hear it, it was more like a mumble to me. And then I grabbed Elizabeth and I said: "We've got to go, we've got to get out." And I think I went out the door before her but I really can't remember. We both went out the door, we ran across the hall...

Q. Okay. Sorry to interrupt you. Could you show on the map here or on the picture where, according to your recollection, was I standing, near the kitchen door?

A. Yes. We were shoulder to shoulder to the kitchen door.

Q. The kitchen door. And you never managed to come to Mrs. Horwood's office and tell her that at least to tell her anything at all?

A. Well she heard me. I was calling to her but I couldn't get that far because you were there so quickly. It happened very

quickly. She came out when she heard me. And then you were there, and it began.

Q. Do you remember, she just appeared from the door of her office and I started shooting and she immediately got back?

A. No. She came out of her office and I was frozen because she was out by, I would say, I'm not good at distance, it's a very short corridor, she was out by maybe two feet.

Q. From her office?

A. From her office door and against the wall.

Q. And against the wall, she was against the wall.

A. And then... and at that... and then you were there.

Q. Uh, huh.

A. And so we were there, you and I, and she was there to peek from her door.

Q. Against the wall...

A. Well...

Q. ...the wall which was close to her office?

A. ... she ended up against the wall when you were shooting, when you began to shoot she was sort of... to me sort of like, like sort of rolling on the wall, like to protect herself and to get back to her office.

Q. Okay. And she's standing her back to her wall, moved to her office, like this?

Me JEAN LECOURS :

This is all leading questions, My Lord.

VALERY FABRIKANT :

Okay.

Q. Just describe the way she moved. She was standing her back to the wall...

A. She was trying to protect herself, she... and she circled or semi-circled trying to get back to her office... trying to get back to her office. And you and I were still there, and then when you... when I looked at you from behind the door, we looked at one another, and then you proceeded down the hall. And then I went to get help.

Q. Did you have any impression that I really noticed you?

A. Yes, you looked right at me. We looked right at one another. You were very calm, you never said anything.

Q. But was your impression that I recognized you or noticed you?

A. Yes. We looked at one another.

Q. Yes, I understand that but...

Me JEAN LECOURS :

The witness already answered, My Lord.

VALERY FABRIKANT :

All right.

Q. If you... Is it possible to give witness the book of...

Me BELLEAU :

Which one?

VALERY FABRIKANT :

...Desjardins, picture 32. 32.

Q. This is the corridor where the whole thing took place, you recognize the picture?

A. Yes, I do.

Q. Yes, okay. Where approximately would you place me on that picture?

A. Well we were here, the kitchen door is here, which isn't in the photograph...

Q. Yes.

THE COURT :

Q. If you can take the photograph up like that and point to the

members of the jury, incline yourself the other way, okay, turn... Okay, now indicate to Mr. Fabrikant and then indicate to the jury, And then don't speak till you turn on again, okay?

A. This is where the kitchen door is. This... you just enter here onto this hallway. And Elizabeth's office was down at the very end here, and the kitchen door is open onto the hall here. And we were standing here.

Q. So I was standing at the beginning of the picture and I was shooting in that direction?

A. That's right.

Q. All right. And Mrs. Horwood was standing near the wall?

A. She was about here. She never made it mid-way.

Q. No, okay. And she... How did she move, could you indicate on the picture how did she move to her office?

A. She... You were firing the gun and Elizabeth was standing...

Q. So...

A. ...you know, maybe at... this is doctor Abdou's door, not quite that far. And...

Q. Well, doctor Abdou's door is very close here.

A. Yes, she hadn't made it that far.

Q. She had not made it.

A. Not even...

Q. Not even half...

A. She wasn't even mid-way down the hall, not even. And...

THE COURT :

Q. Miss Altimas, would you now turn around so that your words are recorded, okay?

A. Okay, so Elizabeth's motion, she was trying to protect herself, maybe at one point she was in the middle of the floor, but mostly I remember her going to the side to protect herself, and to be against the wall and to... I assume get back to her office.

Q. Okay. So leaning to the wall, she went to her office?

A. Yes, although I never saw her arrive. Because then I saw you proceeding down the hallway, at which time I ran out to go to 907.

Q. Uh, huh. Okay. If we take this white spot on the picture, was Mrs. Horwood closer to her office than this white spot or... relative to this white spot, where was she?

A. I would say she was... that would be about the distance she might of arrived at. I don't remember her ever coming as close as... not even two feet within my... withinn us, I don't think she even arrived within two feet...

Q. From her office.

A. ...from me.

Q. She didn't go even two feet from her office?

A. From me. She didn't get that close to me, she never arrived that far.

Q. Well sure, because you were standing here.

A. Yes, I was standing at the door, which is the beginning of the corridor. Elizabeth made it to that white spot approximately, I would say, to the one in the middle of the floor. She may have made it that far. But she never got to the end of the corridor. Because once she came out of her... I couldn't get any further than the kitchen door because you were there, so she... and then she had come out so she souldn't come any closer.

Q. You said that I started shooting as soon as she appeared from her office?

A. Well, when Elizabeth came out and you were there, I began to

hear gunshots, it was very fast. Your arrival at the door was very fast. Like Robert... You know... doctor Saber had come out, he had gone back and then I guess Robert realized what was happening, and he was going out and looking over his shoulder, and then I was up and I was going to the door, I didn't know yet anything about doctor Saber. And you were there right beside me, I could only get as far as the kitchen door, calling to Elizabeth, meaning to warn her but she came out to hear what I saying to her. And then you were there. And it happened very quickly.

Q. Okay. Now let us get to the picture in the Dean's office. So you run from there to the Dean's office, you saw Dean where?

A. The Dean?

Q. Yes, where did you see him, in what...

A. I went into Ann (inaudible) office...

Q. Okay.

A. ...and Ann wasn't there. And then I looked into to Dean's office and as I looked in he was coming in through the back door, his back door. He has a back door in his office, which I wasn't aware of.

Q. So could you show on...

A. Well you see, I'm not familiar with his office, that was the first time I had really been in it. But he came in through a back door in his office and he said to me: "What's the matter?"

Q. Uh, huh. Yes. You could enter the office of...

A. Ann (Inaudible).

Q. You could enter that office?

A. It was open and the Dean's door was open onto Ann's office.

Q. Yes, uh, huh, and...

A. And he came through his back door in his office.

Q. From the corridor?

A. From his office, he came like in the back of his office there's a door. He seemed to come through a door in his back office, because suddenly the door opened and there he was. And that's when he asked me what was the matter.

Q. So it was effectively in his office that conversation took place?

A. Well, I was standing in Ann's office, I never went into his office.

Q. Oh, okay.

A. He spoke to me from behind his desk while he was making a phone call.

Q. Okay. And you told him what happened and he told you: "Lock the door"?

A. He said: "Lock the door and stay."

Q. You mean lock the door of this office where you are?

A. I guess Ann (Inaudible) door.

Q. And... Okay. And that was the end of conversation, you're around there?

A. Then he repeated one more time, andn I mentioned Elizabeth, that Elizabeth was alone, and I left, I ran back.

Q. Okay. And could you tell me something about the system of warning which you had in the department, what was it?

A. You mean about nine months prior?

Q. Well, was there any system according to which you were supposed to call Mrs. Horwood and tell her that I was coming?

A. Well, we had had a meeting about nine months previous of secretaries.

Q. Meeting nine months previous it's somewhere, what, November?

A. Just to...

Q. November ninety-one ('91)?
A. November. Approximately November.
Q. November ninety-one ('91). Yes.
A. To, you know, to discuss how we felt and what would we do if anything were to ever occur, what to do if there were an emergency, or something were to happen.
Q. Who called the meeting?
A. I don't know who arranged the meeting, I attended the meeting. I don't know who arranged it.
Q. Okay. Who was present at that meeting?
A. The secretaries.
Q. Only?
A. Well, from our office there was Elizabeth and I, I think Jane may have been away, then there were Elenore was there, Elenor Morris from (inaudible), doctor Sankar's secretary and two of his secretaries. There were some officials there, I don't remember their names.
Q. Officials from where?
A. Well officials, there were women presiding over the meeting sort of conducting the meeting, you know, guiding, guiding us through the meeting.
Q. Would you be able to recognize these people?
A. Yes, the... one was a nurse...
Q. Mrs. Torbit?
A. I'm sorry, I can't remember their names, they're not so familiar to me.
Q. But from health services?
A. Yes.
Q. All right. And the other one was... do you know doctor McKenzie?
A. No, I don't. I couldn't tell you truly.
Q. Okay. How many people were there conducting that meeting?
A. They weren't conducting the meeting, they were... I guess they were there to help us along.
Q. Yes. How many people were there conducting meeting? So there was one...
A. Well...
Q. ...from health services, I understand?
A. I would say actually that, you know, we more or less conducted the meeting, the secretaries did, just going around the table saying how we felt, if we were worried, what we would do in an emergency.
Q. But still the meeting was to be started by somebody else. So you came... Where first of all the meeting took place, where was it, what room?
A. In the building on Guy Street, the...
Q. The building on Guy Street.
A. Yes.
Q. Which building is it?
A. There's an engineering office in that building, it's also a medical center, doctors...
Q. Where metro station is in this big building?
A. No, no, on Guy Street above de Maisonneuve. I'm sorry, I can't remember...
Q. Above de Maisonneuve, oh, okay, I understand which one it is. Okay. Do you remember on what...
A. They recently had the renovation.
Q. Yes, yes, yes, yes. On what floor was that?
A. ...
Q. You don't remember?
A. I couldn't tell you.

Q. All right. So in one of the rooms of this...

A. It was medical services, medical services. It was in that... Now I remember, the office of medical services.

Q. The office of medical services, all right. Okay. So you were invited there just secretaries of Mechanical Engineering Department?

A. Yes. Doctor Chan was there.

Q. Doctor Chan was there?

A. Yes.

Q. Okay. Anybody else from faculty?

A. No.

Q. No. So doctor Chan was the only faculty member there?

A. Yes.

Q. Okay. And who else was there of... How many people were there who you don't know?

A. Well two women I recall, I would remember them if I saw them, and I would say hello to them, I'm sorry, I don't remember their names, they're not women I made contact with ever since that day.

Q. Okay. So two women and was there any men?

A. No. It was just a meeting held to... Like you asked me what kind of... I forget your question there.

Q. No, no, it's all right, it's all right, just continue. So there were two...

A. You wanted to know what?

Q. It's all right, you're answering perfectly. Two ladies who were there, nobody else who you did not know was there?

A. No.

Q. No.

A. Basically it was the secretaries. That really was the...

Q. Okay.

A. Who were at the meeting.

Q. Okay. So it was secretaries, doctor Chan and two ladies in the room...

A. From health services.

Q. ...of health services. All right. Now, how first of all you were told that there is a meeting, you are invited, what did they tell you, why there is...

A. It was like the question you asked me, what did we... what we were told to do in the case of an emergency, and this is what that meeting was for. If anything should ever occur in the office, what we would... how we would conduct ourselves.

Q. So this is effectively what the lady there asked you or what?

A. No. There were really no questions, what we did was we went around the table and we said how we felt, were we afraid and what would we do in an emergency. And in answer to the question actually which you first asked, was that I was... well, what I should have done was to pick up the telephone from my desk and phone Elizabeth. But I felt that I was in a hurry just to get to Elizabeth, I didn't think about picking up the phone and I wouldn't have had time to pick up the phone.

Q. One second, we probably are jumping. I'm still at this meeting. So the meeting started with what, there was some introductory remark, someone stood up and say, okay, ladies you are welcome here, we invited you for...

A. We introduced ourselves to one another, mostly we knew one another, the secretaries, it was really nothing of any import really, only that it was a meeting that was called to help us express if we had any fears.

Q. So somebody asked you if you had any fears, correct?

A. We were each asked if we were afraid.

Q. So that lady there asked each of you...

A. No, I don't even know that it was her, I don't know that it was her. I think we just voluntarily went around table. Nothing was elicited from it, we just went around the table and said how we felt, you know.

Q. Okay. Did I ever, in our personal relationship, have I ever been disrespectful to you?

A. No.

Q. No. Have I ever been aggressive in any way towards you?

A. ...

Q. No. So did you have any reason whatsoever to be afraid of me?

A. Myself, no.

Q. Were you then surprised that someone asks you that question?

A. No, I wasn't surprised.

Q. Okay. Then explain please if you on the one hand confirm that there was absolutely nothing threatening in my behavior, then why would be a question whether you are afraid?

A. Well, I was one among many in that room who were asked. My response was: "No, I'm not afraid of doctor Fabrikant."

Q. All right. The other secretaries who I never met were they afraid?

A. Some people there expressed fear, yes. But these were people who weren't... you know, who... I think, I don't know, I think maybe they had just met you recently, and weren't used to your ways, you know, your manner. Which, you know, some professors will come in and be joking or jovial or very professional and very serious, and we're all different, you know, and when you get used to a person you understand... you know what to expect of them more or less, you know...

Q. Okay. But secretaries from other buildings, I understand, they majority of them either never met me or if they met me be once or twice?

A. I wouldn't know. I just...

Q. Okay. Did they express any specific reasons for fear whatsoever?

A. I can't recall truthfully.

Q. Okay. What was the reason, how did you understand in your mind, what was the reason to call secretaries and ask them if they are afraid of me?

A. Well, I guess there had been... You know, there had been threats, or there had been... I had heard about this, I had heard that you had made a motion with your hand in a meeting.

Q. That I did what? Say it again.

A. Had made a motion with your hand in a meeting, maybe like a gun, you know what you do in America, this is what I heard, this is one of the few things that I heard. Now, you know, people were hearing things, I guess, and truthfully I wasn't very much a part of taking in what was going on, you know, I was busy with my work, I didn't understand the politics of the situation, I had heard things and I had, you know, this had been a meeting that had been called that I was also to attend.

Q. Okay. Did you ask what meeting, to who I made this motion, any detail whatsoever?

A. I asked no questions.

Q. No.

A. I wasn't eager to know, I don't talk much, to tell you the truth, I mind my own business usually.

Q. Okay. How was it explained to the secretary that this meeting is about me, not about somebody else? Was it somehow

explained at the meeting...

A. I don't... I can't tell you, I can't tell you for sure. All I recall was a meeting, was there was a meeting called we were to attend, and the meeting was for how we would conduct ourselves if anything should happen in our office.

Q. Well...

A. There were also, there had previously even been threats of, you know, things coming in the mail, you know, maybe from a student with bombs in them, you know, that had come up once before, I mean it was just, you know, to help us to have some kind of a plan to conduct ourselves if anything should go wrong in the office.

Q. Could we place this meeting in time more or less accurately, say beginning of November?

A. It was sometime in November. I couldn't say...

Q. Sometime in November. If you try your memory in terms of was it first half of November or second half of </pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">November?

A. I couldn't say.

Q. You couldn't say. All right. Who first... I understand my name was mentioned there, correct?

A. Yes.

Q. Who mentioned my name first?

A. Truthfully, you know, doctor Fabrikant, I even forgotten... I had even forgotten about the meeting until you mentioned the... something at the beginning about emergency or what we were supposed to do or...

Q. All right. Did anyone specify what kind of emergency might take place? Emergency like what?

A. Mostly what I remember was were we afraid. Each of us going around the table answering whether we were afraid or not. That's what I remember most.

Q. You...

A. And people talked and...

Q. You remember that the whole meeting made you afraid, correct?

A. No, I wasn't afraid.

Q. Okay. You said we were afraid. Who we?

A. No. The thing that I recall most about the meeting was each person at the table, the question going around the table, are you afraid.

Q. Yes.

A. And people responding to that. And what my response was that I was not afraid, no.

Q. Okay. You were not afraid.

A. No.

Q. All right. Now, what was the... And did they give you some advice in terms of what to do?

A. Well, I guess what I should have done is pick up the phone and phone Elizabeth on that day.

Q. No, no, no. One second, I'm still at that meeting. I'm still at that meeting. At that meeting...

A. We were to warn one another. If anything seemed unusual we were to warn... For example, Elizabeth would need to be warned because she was in the back, she wasn't in the center of the office where, you know, for example one of us might notice some unusual behavior.

Q. Uh, huh. And...

A. And truthfully, we weren't looking for unusual behavior. I could speak for myself and even Jane.

Q. But were you or weren't you told that any time when I try to go to the... Mrs. Horwood's office, regardless, you are supposed to call her and tell her that I'm coming, was that in place?

A. I couldn't say for sure.

Q. Did you personally never do it?

A. I think I went to her office once but I can't remember for sure.

Q. No, that was not my question. I mean on ordinary day, not on August twenty-fourth (24th), on ordinary day, if I'm in the office and for some reason I go into the direction of Mrs. Horwood's office, into that corridor, that you were supposed to phone her and tell her that I'm coming, was there any arrangement like that?

A. I can't answer that with certainty, truthfully.

Q. Well, you can answer that for yourself with certainty. Was this arrangement made with you ever?

- A. I truthfully can't remember. Maybe it was, but I can't say that to you, that I know this to be a fact.
- Q. Well, it was not that long time ago. Now suppose, you know office very well, you don't know where, suppose you are sitting at your desk, you have no idea where I'm going when I'm passing by you, correct?
- A. On a normal day?
- Q. Yes.
- A. I assume you're going to your office, you usually did.
- Q. No, I mean when I pass you in the opposite direction from my office.
- A. No.
- Q. You don't know until I turn into that corridor to the kitchen?
- A. Yes, and I... truthfully I wasn't watching you, I was...
- Q. No, but even if you were, at this point did you have enough time to phone so that she could answer...
- A. That day?
- Q. No, no, no. In general. Okay, let me explain maybe my question.
- A. Yes, okay, I understand. Yes, I would have enough time to call, yes.
- Q. Well, one of the witnesses testified...

THE COURT :

Never mind what one of the witnesses said. Put your questions to this witness and she'll give you her answers.

VALERY FABRIKANT :

All right.

- Q. Okay, let me put it differently. From the time you saw me coming here, if you try to phone, the time you will spend on phoning I will be already in Mrs. Horwood's office?

Me JEAN LECOURE :

This is arguing, My Lord.

VALERY FABRIKANT :

- Q. Okay...
- A. Actually there was a number we were given, I remember now.
- Q. Ah, all right. So we are somewhere...
- A. There was a number we were given to call towards the end. Maybe not... I had forgotten about that. I just remembered that now.
- Q. Number you were given to call in what case?
- A. Should anything be wrong, in an emergency.
- Q. No, this is not what I'm talking about. What I'm talking about, on a regular day, no emergency nothing, regular normal day, I'm going from my office to Mrs. Horwood's office, on a regular day, were you supposed to advise here that I'm coming?
- A. It's possible but I can't say with certainty. I don't know why but I can't remember. You know, if I could remember I would tell you but I can't.
- Q. Okay. All right. Was it... Okay. Would you have enough time, taking into consideration the distance which need to be travelled from kitchen to Mrs. Horwood's office, would this time be enough for you to make a call to Mrs. Horwood to respond and to get back where you were?

Me JEAN LECOURE :

She already answered yes, My Lord.

VALERY FABRIKANT :

She didn't understand the question, it couldn't possibly be yes.

THE COURT :

Are you now answering the question or what?

VALERY FABRIKANT :

No, because I didn't finish my question then. Well, I would like to get an answer.

Q. So... But make sure you understand what I'm asking you.

A. We're not talking about the day in question, the twenty-fourth (24th)?

Q. We are talking about ordinary day, and I am at the kitchen moving towards Mrs. Horwood's office...

A. Would I have the time to call her...

Q. And you start phoning. At what time approximately would I already be in Mrs. Horwood's office, would she at least have been able to respond?

Me JEAN LECOURS :

He's arguing, My Lord.

THE WITNESS :

A. I... You know, the line could be busy, her line could be busy, if it weren't busy I don't know if that would be quick enough if you were on your way to her office.

VALERY FABRIKANT :

Q. Did you have any panic button connecting you and Mrs. Horwood?

A. No.

Q. No. All right. Okay, I appreciate you coming. You behaved in heroic way.

THE COURT :

Just a second, just a second, Mrs. Altimas.

CROSS-EXAMINATION BY Me JEAN LECOURS

ATTORNEY FOR THE CROWN :

Q. Is that correct, Mrs. Altimas, that you could not and did not go back to work after August the twenty-fourth (24th), nineteen ninety-two (1992)?

A. No, I was back at work.

Q. For how long?

A. I have record of it at home, I was back... I left at the end of October.

Q. You left?

A. Work at the end of October.

Q. Okay. Have you been working since then?

A. No. I also took some time off, maybe a week or two, I could give you the exact date. Before then basically I was at work.

THE COURT :

Thank you.

AND FURTHER DEPONENT SAITH NOT.

THE COURT :

Mr. Major.

NORMAND MAJOR

SOUS LE MEME SERMENT

INTERROG PAR VALERY FABRIKANT :

Q. Okay, did you listen to the tape?

-Q. Avez-vous ,cout, la cassette?

R. Oui.

-R. Yes.

R. J'ai fait ce que le Juge et vous-m[^]me m'avez demand,...

-R. I did what His Lordship and yourself asked me to do...

R. ...et je vais vous donner par cassette...

-R. ...I will list per tape...

R. ...comme il est bien ,crit sur la reproduction, le total est de quinze heures douze (15 h 12) ... seize heures dix (16 h 10)...

-R. ...as written on the transcript, the total minutes and the

total time is from fifteen twelve (15:12) to sixteen ten (16:10)...

R. ...ce qui donne environ... exactement cinquante-huit (58) minutes...

-R. ...which gives exactly fifty-eight (58) minutes...

R. ...et le total de mes minutes est de cinquante-sept (57) minutes et dix secondes...

-R. ...and the total of my minutes amounts to fifty-seven (57) minutes and ten seconds...

R. ...et r,parties ainsi...

-R. ...and spread out as such...

R. ...sur la cassette 2A il y a un total de neuf minutes et huit secondes...

-R. ...on tape 2A there's a total of nine minutes and eight seconds...

R. ...sur la cassette 2B il y a un total de trente minutes (30) et trente-cinq secondes (35).

-R. ...on tape 2B a total of thirty minutes (30) and thirty-five (35) seconds.

R. Et sur la cassette 2B c"t,... face B, je m'excuse...

-R. And on tape 2B side B...

R. ...il y a un total de treize (13) minutes et deux secondes...

-R. ...a total of thirteen (13) minutes and two seconds...

R. ...et sur la cassette 2C...

-R. ...and on tape 2C...

R. ...il y a un total de quatre minutes et vingt-cinq seconds (25) pour un grand total de cinquante-sept minutes (57) et dix secondes.

-R. ...we have a total of four minutes and twenty-five seconds (25) for a grand total of fifty-seven (57) minutes and ten seconds.

Q. Well, how did you hear it, could you tell me because...

-Q. Comment avez-vous proc,d,, pouvez-vous m'expliquer...

Q. ...there's something definitely wrong in difference.

-Q. ...parce qu'il y a quelque chose qui cloche, il y a quand m^me un ,cart.

R. Comme j'avais dit au Juge tout ... l'heure et ... vous-m^me...

-R. As I stated to the Judge earlier and yourself...

R. ...apr's avoir ,cout, la conversation ... plusieurs reprises...

-R. ...after listening to the conversation on several occasions...

R. ...pour moi elle est int,grale et ma xi'sme v,rification, j'en arrive ... cinquante-sept minutes (57) et dix secondes sur ma montre.

-R. ...and in my opinion it is complete and integral and I arrive at fifty-seven minutes (57) and ten seconds according to my watch.

Q. Well, I would like then this somehow to be done in my presence because it does not correspond to what I have received.

THE COURT :

It's been done, you've got your answer. The witness went off and did it and he's given his answer.

VALERY FABRIKANT :

Well, I did it twice and I didn't arrive to the same, both cases I got...

THE COURT :

So what? So what? It changes nothing. The witness went off and did it and he came back and told you what he told you.

VALERY FABRIKANT :

Well six minutes of difference is a big difference. I still would...

THE COURT :

The witness is not going to perform the exercise in your presence. The witness has performed the exercise, he has come back and he has stated his findings.

VALERY FABRIKANT :

Well, if you were kind enough to allow me to be present at ballistic expertise, why cannot I be present at this exercise?

THE COURT :

Because I lead with my left one day it doesn't mean I'll lead with my left foot another day. I had my reasons for allowing you to be present at the ballistics thing, I think it was probably important that you should be. On this question, the witness has gone back, he's listened to the tapes, there we are.

VALERY FABRIKANT :

It doesn't change...

THE COURT :

We are not having experiments every fifteen (15) minutes, this is not your laboratory.

VALERY FABRIKANT :

Q. Now, could you give me just very short explanation, "heure sur Dictaphone" it means beginning and end of conversation?

A. Uh, huh.

Q. Okay. "Initi," what this time means?

A. It's when the gentleman started to type out this call. When it's in the computer.

Q. Okay. Where your...

A. When the call comes in and he starts writing down automatically, it's...

Q. Your person start typing, okay. "Inscrit" what is this?

A. Inscrit?

Q. Yes.

A. He's doing all his tape, and it's all over and he just transmitted from the other side. Transmit it to the Police Department.

Q. Well, okay. So this is timing, okay. Now position means what?

A. Well, the position that the call taker was working on.

Q. Okay. "Pr, pos,"?

A. The number of the call taker.

Q. "Code de la nature"?

A. Well, that's the call had came in, it was a (inaudible) numbers, I think the first one is 801?

Q. Yes, what is it...

A. That designates that the call was transferred to Urgences Sant, .

Q. Okay. 006?

A. 006 is "tentative de meurtre, homicide.

Q. Okay. "Code" 09?

A. You have them all written down on the... on your sheet. Everything is down so... On the other sheets.

Q. On the other...

A. Every single call is put in to you with all the explanation that you see.

Q. Well I... The point is that I did not read it.

A. Well, you told me when I leave that you were going to look at it.

Q. Yes, that's what I did and I found that there is... many things seem to be missing. One of those things is, for example, it says here that call has been transferred from 1603 to 1611 to your office?

A. 1603 to 1611? Well, naturally. Once a call is transferred to

me, there's a call sent over but you have to read it all completely on the other sheet. And it's only part of the reproduction.

Q. This is not the end of it.

A. No, it's not the end of it, we talked for thirty some minutes.

Q. Well, according to this it is not really but is at least from sixteen zero three (16:03) to sixteen eleven fifty (16:11:50).

A. Well, you'll have to show it to me.

Q. Sure.

A. Because I don't remember everything by heart.

Q. And after that from sixteen thirteen (16:13) to sixteen eighteen (16:18) it is conversation with Mr. Grignon.

A. Sergeant Detective Grignon.

Q. Yes, so it looks like we have been in conversation not until sixteen ten (16:10) but until sixteen eighteen (16:18) at least.

A. Your conversation with Mr. Grignon finishes at sixteen ten (16:10), it's all I can tell you.

Q. Well...

A. Give me the paper. See, you have to understand one thing on this sheet. You have the procedure of the 911, where my call taker inserts remarks. You also have at the end seventeen thirty (17:30) or seventeen thirty-one (17:31) or sixteen two (16:02), sixteen three (16:03), sixteen eight (16:08). It's incoming information from the police car that was there. That's by the "PRAO", the people that are dispatching the call. So you have everything on one sheet over here, everything including the times that some of the information were written down by the call taker, and you also have the information of the Police Department. And I cannot answer for the Police Department. They do close the call at seventeen thirty (17:30). So you have it all there, us we go up to... Okay, you have it at sixteen-o-three (16:03), they cut the line by the Sergeant Detective Grignon because he's going to call you back. That's the information you wrote down. And when your call was finished, my call taker wasn't there anymore. The other informations are from the Police Department.

Q. This is not my question. Turn the page please.

A. Yes, sir.

Q. And you will see that there was conversation between you and me on another line from sixteen three (16:03) to sixteen eleven (16:11), and there was yet another conversation from sixteen thirteen (16:13) to sixteen eighteen (16:18). May I add to this that according to all the timing, I surrender at sixteen twenty (16:20). So...

A. I'm trying to follow you but I don't see those hours over here.

Q. So again, the timing of the tape not only doesn't match the playing time but it also doesn't match the time of my surrender. It's not just the six minutes of tape which are missing. We have also at least eight minutes additional missing from alleged sixteen ten (16:10) to sixteen eighteen (16:18) which is indicated here. I surrender at sixteen twenty (16:20).

Me JEAN LECOURE :

It was not the surrender, My Lord.

THE WITNESS :

A. There's one thing that we have to agree on, okay? There is two parts on that tape, there's the 911 part...

VALERY FABRIKANT :

I exited the room myself with gun in my pocket. If this is not surrender to you then you may call it any way you want.

THE COURT :

Mr. Fabrikant, I would prefer that you didn't...

VALERY FABRIKANT :

Well, I would prefer he would not intervene. We all have our preferences. But in the meantime, I would like...

THE COURT :

In the meantime you're putting questions to Mr. Major, let's see if we can...

VALERY FABRIKANT :

Q. Yes, I would like to get... Yes, I would like to get an account of all this time which seems to be unaccounted for.

A. Well as I did before, I went back to the office, listened to the tape, there's fifty-seven (57) minutes and ten seconds, that's a fact for me. You say that there's an eight minutes missing, there's no eight minutes missing.

Q. No, this is additional stuff. I remember...

A. The additional stuff is from the police, I already told you.

Q. No, it's not from the police.

A. Well, you're not going to tell me how to work at my place. Now there's two parts over here, there's one part with the 911 and when the entire call is closed, it closed at seventeen thirty (17:30), now that's written down, and that's from the Police Department.

Q. You are...

A. No matter how much you argue with me, I'm still going to come back that it lasted fifty-seven (57) minutes and ten seconds, it's senseless to argue back and forth.

Q. Okay. Explain this writing there.

A. What writing, the one over here?

Q. Yes.

A. 280-2664, that's from Mr. Sergeant... I think it's Sergeant Detective Grignon that took that. Then after "le code 00...

Q. Detective Grignon from sixteen...

A. ... let me finish, give me a break. Okay, till sixteen eleven (16:11) that's on cassette 2C, it's an added information that was put there. And afterwards... Because Mr. Grignon went from the supervisor desk and he went into my office to call you back. Do you recall that? He told you from sixteen thirteen point forty-six (16:13:46) to sixteen eighteen sixteen (16:18:16).

Q. Yes, so it is sixteen eighteen (16:18) the conversation is supposed to be finished, right?

A. That's the way it sounds over there.

Q. All right.

A. But the amount...

Q. So where are those eight minutes?

A. But the amount of time still remains fifty-eight (58), or my counting fifty-seven (57) minutes ten seconds.

Q. You seem to not to listen what I'm asking you. Would you agree that our conversation ended, according to this record, not at sixteen ten (16:10) but at sixteen eighteen (16:18)?

A. Our conversation?

Q. Not our, between me...

A. That's what you said.

Q. Between me and the last one which was I believe Grignon.

A. Sergeant Detective Grignon.

Q. So it was sixteen eighteen (16:18)?

A. That's what it says there.

Q. Exactly. And this is how it was, that's correct?

A. But there I got no bearing on that, there's nothing I can tell you about that.

Q. No. Where is the tape corresponding...

A. You have it right there.

Q. Where is the tape corresponding to this time? Sixteen eighteen (16:18) is the end of conversation not sixteen ten (16:10).

A. What do you mean where is the tape, the tape is right there, it's put on that tape.

Q. Okay.

THE COURT :

Q. He means take a look at P-87.

A. P-87.

VALERY FABRIKANT :

Q. According to your own record, my conversation with Mr. Grignon ended at sixteen eighteen (16:18), right?

THE COURT :

Q. Now turn to the last of page of P-87 and you will see the very last line:
"Fabrikant: Hang up I need to make a phone call.
Grignon : Eh?"

And there's a time out at sixteen ten (16:10), and what he's asking you is how you reconcile that figure of sixteen ten (16:10) on the transcription...

A. Unfortunately...

Q. ...with the sixteen eighteen (16:18) on the sheet that you have in front of you.

A. Unfortunately, Your Honor, I won't be able to give you the explanation because I didn't work on that, and that was done by the Police Department. But I don't know what he's looking for.

Q. Well, never mind what he's looking for, that's not...

A. Okay, sorry.

Q. That's not your problem.

A. I have no answer for you, even if you smile at me I'll smile back.

VALERY FABRIKANT :

Q. Well, let's get to the bottom of it, something is missing. Not only missing is the timing of conversation, missing are also eight minutes from sixteen ten (16:10) which is indicated on the transcript, and sixteen eleven (16:11) which is marked on the paper which you gave me.

A. You will have to get one of the police officers to come over and explain it to you because I can't explain it to you.

Q. Well, they refer to some tape 2C or something, maybe this is the answer, maybe we can take this tape 2C, whatever you call it, and play it and see what is in there.

A. You mean a master?

Q. I don't know what 2C means because I'm not working in your office. This should be clear to you what 2C means. Okay.

A. ...

Q. Would you please just read again to the jury what is written there? It's black on white, it's very clear what is written. At sixteen zero two (16:02) I finished talking to one of your employees. From sixteen zero... Okay, from sixteen zero three (16:03) I was transferred to another number and I talked to you again, until sixteen eleven (16:11), correct?

A. No.

Q. No? At least this is what is written there.

A. No, what is written there says "voir l'appel de Normand Major au bureau du chef d',quipe", it means that I started the call

at whatever time we started and then at the end of our conversation Mr. Grignon took over on 2664. That's the phone number we were on. At what time did he come in exactly, I don't know.

Q. Who would know this?

A. It's around...

Q. Whose handwriting is this?

A. That handwriting?

Q. Yes.

A. It's not mine because I can't read myself.

Q. Okay who? Who?

A. I wouldn't know.

Q. All right, anyway you have to state either this handwriting is not true or if this handwriting is true, then you have to reconcile the timing. Because timing now is not just six minutes irreconcilable, it is now fourteen (14) minutes.

A. Anything regarding the incident of the 911, all tapes belong to the Police Department, we don't have them, they have them. And if there is any checking that needs to be doing, you'll have to go to them.

Q. Okay, maybe we'll ask then Mr. H,bert to clarify the whole thing, because the way it's done now something just doesn't add up. So...

Me JEAN LECOURE :

Mr. Sauvageau on 911...

THE COURT :

Pardon?

Me JEAN LECOURE :

Mr. Sauvageau that was the coordinator.

VALERY FABRIKANT :

Q. Anyway. So besides... So we cannot clarify this at this time, right? So let me ask you then other questions. May I have this file back, please. Thank you. When it says here "cassette C:2C96", what it means?

A. I wouldn't know what reference it belonged to. I wasn't there when they did the printing. So the only thing I'm here for is to recognize my voice, did what you asked me to, but all the notes that are there I didn't work on them.

Q. Okay. So this doesn't tell you anything what is written here?

A. No. No, (Inaudible). Why did they write down "cassette C:2C96..." Ah, no, it's not 2C296, that's the amount of footing that you have on the tape, it says cassette 2C, there's a part of ninety-six (96)... I don't know how you put ninety-six (96) inches, I don't know how you explain that there, that part of conversation is on. Okay? It's not 2C, it's from 2, started at the number 2, you now know when you put your cassette on you have numbers, it's from number 2 to number 96, that part of conversation is there. And then it says here cassette C, it's from 98 to 153, 153.

Q. Well, let us find it and we will know what happened at sixteen eighteen (16:18).

A. Well, I guess it must be on there cassette 2C.

Q. Well if it is on there, then the figure sixteen ten (16:10) is incorrect? Then let us go there...

A. I told you I don't know, I didn't do the parts of times that are put there so I can tell you that's only footing.

Q. I have nothing against you personally...

A. Me neither.

Q. ...I just want you, you know, when you have that minute of conversation that it be there, that's all, it's not too much to ask for, is it?

A. I'm going to re-answer to you. The production of the tape was made by Police Department, they stop at sixteen ten (16:10). You can come back on the question as much as you wish...

Q. No...

A. ...there's no answer I can tell you.

Q. Well, if there is no answer then maybe Mr. H,bert will answer something, I don't know. Someone has to answer because clearly something is missing here. And not only on the length of the tape which was presented, I repeat once again, maybe Mr. Martin now is convinced that something is missing or you're still not convinced?

THE COURT :

You heard the Crown Prosecutor a moment ago. If you want to hear Mr. Sauvageau who is the one who worked on the tapes call Mr. Sauvageau.

VALERY FABRIKANT :

Well, I don't know if would be able to answer. pt this time...

THE COURT :

I'm not certainly able to answer, I've never been there.

VALERY FABRIKANT :

No, you're not.

Q. Okay. So let me just clear one thing. What is written there, sixteen eighteen (16:18), it means that end of conversation was at sixteen eighteen (16:18), is my understanding correct?

A. I cannot say, sir. The only reason is that if I say yes, it goes against the production over here.

Q. You are damn right it goes against.

A. And if I read what I read over here, it goes to what you say.

Q. Yes.

A. Well, it depends where it was taken from and how they did it. That I can't tell you.

Q. With all the due respect, sir, if you look at the police report, you will also see timing of my surrender at sixteen twenty (16:20). So all is in total harmony except that your tape is out of harmony.

A. Well, just let's say that if I look at the report of police unfortunately I don't look at reports, so I don't know what you're talking about.

Q. Anyway, I did, surrender time at several police report...
Me JEAN LECOURS :
Surrender?

VALERY FABRIKANT :

Q. ...is indicated at sixteen twenty (16:20). So...

A. (Inaudible) can stand on the argument...

THE COURT :

Yes, well I think it's gone on long enough. It's gone on long enough. If you wish to call Mr. Sauvageau, if you want to clarify that, you go right ahead.

VALERY FABRIKANT :

You are not interested in that, Mr. Belleau. This absolutely not for you.

THE COURT :

Now do you propose to produce any of that or?

VALERY FABRIKANT :

Well, I would like to produce it after the whole thing is clarified because at this time, we have here...

THE COURT :

I know what you have in your hand. Are you... as far as the documents emanating from 911 are concerned, is there anything you're producing? It's very simple, you're either producing

something or you're not producing something, it is yes or it is no, as you like to say.

VALERY FABRIKANT :

Well, I would like to see this gentleman who he named and then. But before that I have several calls here which are not indicated from which number they were made. First one has the number, second one there is no phone number from which it was made...

A. The person passed by the zero, actually there's no phone number. Or she dialled 411 instead of 911 transferred the call to us (inaudible). And if it comes from Urgences Sant,, well automatically there's no number. Because there are calls that came in from Urgences Sant,. Because people called directly to Urgences Sant, and they called (inaudible)...

Q. People call 911, right? There is no... There is direct Urgences Sant, number?

A. There is a direct number with Urgences Sant, but there was also...

Q. Which is what?

A. But there was also... by (inaudible), but there was also people that were there from Urgences Sant, and they placed calls directly to their dispatching department, and their dispatching department put the call back to us.

Q. So how can I get the original as to where the call comes from from the point of view of the phone number?

A. The only way I can do that is by... being by your side and showing you calls by calls how it happens and explain it to you.

Q. Okay. This one... this one doesn't have any, right? This one is the number. This one has a number... Does this call have anything to do with the incident, could you please take a look?

A. Somebody that called directly to us and the call was transferred directly to Urgences Sant,.

Q. But it is somewhere from C"te St-Luc?

A. Yes. Somebody called for some information, I guess, or somebody called to give us some information. And it was in regard with most likely somebody hurt. I know there's a person that was talking to her husband and other people were talking and they... they knew somebody was hurt inside so they asked to talk to Urgences Sant,, maybe where the person was taken or just give information.

Q. How do you know that this call is related, is there any indication there that the call is related?

A. Well, I need to have the conversation and listen to the conversation. But if it's there it has a relation with the incident. All the calls that you have there have a relation with the incident at Concordia.

Q. Well, this is exactly what I asked you for, I asked you for location of the call.

A. You asked me to bring you the calls, you didn't ask me to bring the tapes.

Q. No, no. I asked you...

A. And that's what I did, I got you the card, there's nothing much more I can bring you.

Q. Well, I asked you to give time and location of the caller.

A. Time is at exactly fifteen fifteen (15:15), location it's at 6719 C"te St-Luc, and it was transferred to Urgences Sant, because it was an Urgences Sant, call. So somebody that called and knew somebody was hurt and they just were transferred to Urgences Sant,.

Q. Okay. This one...

A. Monsieur Belleau.

Q. ...from what number has it been made?

A. It came from the campus of Sir Georges William, 1555 West Maisonneuve, and the phone number is 250-9634.

Q. I didn't see the phone number there, where...

A. Where it says "Atome".

Q. At Home?

A. "Atome". Not at home, "Atome".

Q. Okay. "Atome" is not the phone number.

A. 250... it's a phone number.

Q. Why in one case you have telephone number just written tel? Look at here, for example, "atome" is 150-4503...

A. Give me the two sheets, give me the two sheets.

Q. Well here, look, "Atome" is one thing, "Atome" is not the telephone number, "Atome" is something else.

A. I must be getting tired. Okay.

Q. Yes. All...

A. Okay. At all times... now you can look at it for yourself, at all times "initi," if you note it's fifteen fifteen (15:15), that's when the call comes in. "Inscrit" it's when the call taker starts typing. "Compl,t," it's when it's finished this call. Then afterwards you got the code and the type of priority is priority, then you got the group repartition, that's where the police goes. Then you have "l'endroit de l'appel", okay, 6719 then after you have the name, the address and the telephone number.

Q. Okay.

A. Okay? The "Atome" is a code for the police department.

Q. So "Atome" is not the phone number?

A. I made a mistake, I am very sorry, sir.

Q. Well, I accept your...

A. I thank you very much, sir.

Q. Okay. And then I will return to this sheet and ask you for the phone number.

A. On this one there's no indication of the phone number.

Q. Yes. So...

A. So.

Q. How can we get it?

A. How can you get it, 1455 ouest de Maisonneuve, isn't that a part of the Concordia... No?

Q. No, this is not the purpose of my inquiry. I need the phone number, I need to pinpoint the place of where the call was made.

A. Okay.

Q. Not just the whole building.

A. Your Honor, there is something I don't know about Concordia, if the lines inside the building, if it's a switchboard, okay? If they went through a certain way, the phone number might not appear. Normally it's the building address that appears on the print over here. Now why isn't it there? (Inaudible) me... You'll have... We'll have to go through the bank of the Police Department, because the informations are all there, it's only Bell Canada that can answer. When the phone number is not there it's because it's not available. There's nothing I can do about it, if it's not available, it's not available. If you look at all the other ones, you'll see the phone number is there. If it's not there, it's not available.

Q. But isn't principle 911 is that whenever a call comes, operator has on the screen the number...

A. The billing address.

Q. ...the number and address?

A. The billing address. It's very important for you to remember it's the billing address. Okay? If for example there is a call coming in from Concordia, and if they have only one billing address, that's the address that will occur, that's why I asked you often what was the address to make sure that we were sending the proper "intervention" at the proper place. We always have to confirm the address because it's a billing address.

Q. Well, all right, so...

A. And if the phone number is not written there, there could be many reasons. One of them the guy that put in the information in the computer didn't put it. Another one, Bell Canada could answer you why they didn't put it. Me, I can only explain you what's written on the sheet.

Q. Okay. Is it possible then to somehow get the number and get maybe... Would it be too much to ask to get one tape on which all those... because all these calls is one minute, two minutes, very short calls. Just to prepare one tape with real calls all of them on one tape.

A. Well, you'll have to go to the 911 to obtain that. Because I'm on sick leave right now and I'm not going to do it.

Q. Well, I'm not talking about you personally, I understand you are here just...

A. That's it, I'm telling you, you'll have to go to 911.

Q. You are just representative of 911 here, you are not necessarily, Mr. Major...

A. Well, I am Mr. Major, that's for sure.

Q. I understand but you are representing 911 here.

A. Well, just on our conversation, to produce... la reproduction, the production, the transcript and all the other matters, you have to go to 911 to have somebody to do whatever you want them to do. And I can give Mr. Belleau the name of a person that can get people to work on it.

Q. All right. Okay, so give Mr. Belleau the... Now you also said that explanation of each call is here in terms of the numbers like...

A. If you see 4006SU...

Q. Yes.

A. ...it means that there's an homicide and the suspect is on the scene of the crime. If you see it with SB, there's a possible suspect on the scene of the crime. As you can see, everything is written down for you really.

Q. Well, but it is in abbreviations here and when it is all in abbreviation it's difficult to...

A. If I look at 4006SU homicide is spelled homicide completely. There's no abbreviation under description of the call.

THE COURT :

Well, I think on that point we'll stop for ten minutes.

SUSPENSION

REPRISE

VALERY FABRIKANT :

Q. Okay, could you tell me what is it "demande inter-service"?

-Q. Pouvez-vous me dire ce que signifie "demande inter-service"?

R. S'il veut me montrer la feuille...

-R. If he wants to show me the sheet.

Q. You are doing great job.

R. I beg your pardon?

Q. No, I... Mr. Belleau is doing great job.

THE COURT :

Ignore it, Mr. Major, just wait for the questions and never

mind the exchanges with Mr. Fabrikant.

THE WITNESS :

A. Okay, where was that?

VALERY FABRIKANT :

I have a lawyer.

THE WITNESS :

A. Qu'est-ce qu'il veut savoir?

-A. What does he want to know?

VALERY FABRIKANT :

Q. What it means.

-Q. Ce que ça signifie.

Q. Demande inter-service, what it is?

R. Well, if you give me the other... S'il me donne les autres feuilles je vais pouvoir lui dire exactement.

-R. If he gives me the other sheets I will be able to tell exactly.

Q. Well, I thought that the whole term is clear, it's not?

R. Inter-service ça veut dire que l'appel a ,t, demand, par le poste 25 ... partir de l'auto 25-3...

-R. It means that this call inter-service or inter-department call would have been placed from station 25 to a cruiser, police cruiser 25-3.

Q. Why would they need to communicate through 911?

-Q. Pourquoi auraient-ils besoin de communiquer par l'entremise du 911?

R. Bien c'est tout simplement parce qu'ils demandaient la coopération d'avoir Urgences Sant, pour aller les rencontrer.

-R. Very simply to have Urgences Sant,'s cooperation to meet them.

Q. Okay. And the next one there, no identification for the call, what is it, nil...

-Q. Et pour ce qui est de l'autre sans identification pour l'appel, c'est inscrit nil...

Q. ...what is this?

-Q. ...qu'est-ce que ça signifie?

R. Comme disons ce que je pr,sume...

-R. What I suppose is that...

R. ...lors de l',coute...

-R. ...during the listening...

R. ...des informations ,tant reli,es ... l'incident Concordia...

-R. ...the information being related to the Concordia incident...

R. ...n'ont pas ,t, inscrites dans l'ordinateur...

-R. ...the data was not put into the computer...

R. ...et le pr,pos, a s-rement ,t, vu ... cet effet-l..., par tout appel qui rentre au 911 ont est suppos, de faire un appel avec.

-R. ...and that must have been the case for the call taker because any data coming into 911 we usually deal through the computer and we write it down.

Q. Well, could you explain why this call was not written in any way?

-Q. Pouvez-vous expliquer la raison pour laquelle l'appel n'a pas ,t, inscrit l...?

Q. How could it possibly happen?

R. Je crois vous avoir bien r,pondu...

-R. I think I answered properly...

R. ...tout fort probable qu'il y a un individu qui a appel,, un homme ou une femme...

-R. ...it's very likely that an individual, a man or a woman would have called...

R. ...pour nous informer d'un incident majeur ... Concordia.

-R. ...and informed us of a major incident taking place at

Concordia.

- R. Et le pr, pos, au traitement des appels n'a pas fait, comme l'exige la proc, dure, son pr, -format de carte d'appel.
- R. And the call taker did not do, as he was supposed to according to procedure, fill out all the information concerning the call in question through his calling card...
- R. D- au fait que d, j... plusieurs appels avaient entr, et que j', tais en contact avec vous.
- R. Due to the fact that several calls had come in and I was already in contact with you.
- Q. Is there any card there with respect to this call or this call doesn't have any?
- Q. Y a-t-il une carte d'appel relatif a cet appel ou s'il n'y avait pas de...
- R. Bien, je crois qu'aprřs plusieurs explications, initi, et inscrit, il n'y a rien d'inscrit, donc le pr, pos, n'a pas fait de carte d'appel.
- R. After several explanations I provided, we have here call received and call recorded, nothing appears here so I believe the call taker did not write down the necessary information.
- Q. All right. Now, who should I contact if I need, say telephone numbers and content of the conversation?
- Q. Qui dois-je contacter pour ce qui est des num, ros de t, l, phone et le contenu des conversations?
- R. L'administrateur adjoint ou le directeur du Centre d'urgence 911.
- R. The assistant administrator or director of Centre d'urgence 911.
- R. Et je crois avoir donn, le nom ... maĒtre Belleau derniřrement, s'il n, cessite encore son nom je puis lui redonner avec le num, ro de t, l, phone.
- R. I believe I provided maĒtre Belleau with the name of that person lately and if he... if I should repeat it once again I will provide him with the phone number and his name.
- Q. Okay. MaĒtre Belleau you have it all do you? No? Okay then could you give...
- R. Marie-Claude Audet ou le directeur qui est assistant.
- R. Marie-Claude Audet or the director...
- R. ...qui est assistant administrateur adjoint.
- R. ...assistant administrator.
- R. ...280-2672.
- R. ...280-2672.
- R. Vous voulez parlez au directeur oui, non, oui, non? Non? Du tout.
- R. Do you wish to talk to the director?
- Q. Okay. And the last, I just want to ask you several abbreviations there if you could...
- Q. J'aimerais vous demander au sujet de plusieurs abr, viations, si vous pouviez nous expliquer.
- Q. From like if I just name you would you be able to say what it means?
- R. Well some... Certaines des abr, viations c'est des abr, viations du personnel, il va falloir que je regarde la feuille.
- R. Certain abbreviations relate to personnel abbreviations, I would have to take a look at the sheet.
- Q. Okay. Okay. The word "coop" means what?
- R. Coop, rer.
- R. Cooperate.
- Q. Means cooperate with who?
- Q. Coop, rer avec qui?

R. Passe la feuille.
-R. You have to hand me the sheet.
Q. Well, it looks like there are policemen numbers there, numbers of policemen, no?
R. Show me the sheet. This is a police matter so either Mr. Sergeant Detective H, bert gives me the okay to tell you or otherwise you get somebody to tell you, because "coop" is coop, rer.
Q. What it is...
R. In this sentence it would mean that car 25-6 the two constables that are described over there were cooperating on the original call.
Q. Okay. Now "*sieux".
R. Sur les lieux.
-R. On the scene.
Q. What?
R. On the scene.
Q. Okay. This means that certain car is on the scene. Okay, "*enrte"?
R. En route.
-R. En route.
Q. Okay. So certain car is on the route. Okay. "*coer"? "coer, c-o-e-r".
R. Well you have to show me. Non, celui-l... je peux pas l'informer, je le sais pas.
-R. I cannot inform you on that, I do not know.
R. (Inaudible) le d,partement de la police.
-R. It relates to the Police Department.
Q. Okay.
R. Je veux vous juste vous dire, l..., que tout #a, l.....
THE COURT :
Mr. Major just wait for the question, sir.
VALERY FABRIKANT :
Q. Contact means just contact somebody, that's correct?
R. Well... What I'm trying to tell, if Your Honor permits, I cannot answer on those things because I know most of the informations that are there, but I don't want to give a false information. They're all codes relating to the Police Department, not to the 911. Okay? That's what I want to say...
Q. But what...
THE COURT :
Q. Then if you don't know the answer is: "I'm sorry, I don't know."
R. Is no. Good enough, sir.
Q. Very simple.
R. I don't know.
VALERY FABRIKANT :
Q. Very good answer.
R. Thank you.
Q. You would be perfect student.
R. What did he say?
Q. Disregard it please. Those remarks are being entered by workers of 911?
R. The Police Department, sir.
Q. Police Department has access to your computer?
R. Unfortunately not, sir, the contrary. The system of the 911 belongs to the Police Department, we're part of it. Our "ordinator" our RAO belongs to the Police Department. And whenever a call is open, we put in the information and then afterwards all the remarks en route, sur les lieux, suppl,ment

or what else that you have there are from the Police Department.

Q. So it is not the operator of 911 who does it?

A. No, sir.

Q. All right, so why I'm torturing you then?

A. You're not torturing me, sir, if you would...

Q. Well, that's all right then. Okay thanks.

A. That's it?

Q. Yes.

Me JEAN LECOURE :

No questions.

AND FURTHER DEONENT SAITH NOT.

VALERY FABRIKANT :

Okay, Mr. Proppe.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), on this twenty-fifth (25th) day of May personally came and appeared :

HAROLD PROPPE, Associate Vice-Rector, Institutional Relations and Finance, born on the twenty-ninth (29th) day of May, nineteen hundred and forty-three (1943).

WHOM, after having been duly sworn, doth depose and say as follows :

EXAMINATION BY VALERY FABRIKANT :

Q. Could you describe to the Court very shortly what your duties are at the university?

A. I'm responsible for managing collective agreements including the faculty collective agreement and certain other human resources operations, and also I have responsibility for the university's operating budget.

Q. Okay. Have you in summer of ninety-two ('92) been in contact with doctor Hogben on subject of offering me three years salary as a shut up money in exchange for getting out of the university?

A. Doctor Hogben did approach me in the summer of nineteen ninety-two (1992), he indicated that you were interested in a settlement and asked if I would be prepared to speak to him about that, and I said yes.

Q. He told you that I?

A. That's correct.

Q. All right. And please go in more detail. How many times have you met with him?

A. I believe we met only two times, the first time I spoke with him I said that we might be able to offer you two years worth of salary, since your age was approaching that of early retirement, we have a two year early retirement provision in our collective agreement. He came back to me about a week later and said that he felt that if we increase the office lightly, he could definitely get you to shift from your position, which at the time was ten years salary. So I said to him that this is not an offer, it is very unusual for the university to do this but we might consider counting the current year, it was in July of nineteen ninety-two (1992), counting the current year. In others words, you in fact take a sabbatical, you continue to have a salary, and plus two years on top of that. Doctor Hogben called me later that afternoon and said yes indeed, that you had moved, you had now gone from a request of ten years to thirteen (13) years. And that was the end of our negotiations.

Q. Okay. What did university want in exchange for that?

A. We hadn't gone to that point yet because when this happened we

simply suspended any discussion, what we probably wanted was simply that you leave the university.

Q. Did you formulate doctor Hogben the requirements of the university, one of them yes, it was to leave the university, then what else?

A. Well at some point we would have had to discuss with our lawyers that you would drop any actions pending or future against the university, but he had not gone into that point yet.

Q. But that was one of the conditions under which you would be prepared to pay this three years salary, correct?

A. As I said, we weren't... I had not decided that it would be up to three years but in our thinking we were... that was as far as we were prepared to go.

Q. Could you explain why at all would you be interested in paying three years salary in exchange for me dropping all lawsuits?

A. Because I think the... it's fair to say that the level of disruption in the university, the amount of time that you were costing of various offices throughout the university, and the general nuisance that you were making of yourself had gotten to a stage where it was felt that it would be better to try to come up with a settlement and have you out of the university.

Q. Was Rector aware of this?

A. The Rector was aware of that, and I was mandated by the Rector's office to speak to doctor Hogben.

Q. Well, can you deny it over her. So when was it that you approached Rector on this?

A. Well, actually it was the executive assistant of the Rector who approached me in, I think it was early July of nineteen... I can't be exactly sure of the date, early July of nineteen ninety-two (1992).

Q. She approached you in the name of the Rector?

A. Correct.

THE COURT :

Q. Excuse me, who was that who approached you?

A. The executive assistant to the Rector.

Q. In, you said in July?

A. In July.

VALERY FABRIKANT :

Q. Now, collective agreement provides early retirement, is that what you were offering me early retirement?

A. No, we were not offering you early retirement because you hadn't reached the age yet, but in order to explain because such a settlement would have to be explained to the university community, and also to our board of governors eventually, that was one of the reasons because you were approaching that age, it would be more justifiable to make that kind of a settlement with you.

Q. Why would it be justifiable in any way to offer someone effectively shut up money and get out of the university? Why would you consider this morally acceptable?

A. The fact is, as I said at the beginning, we did not initiate this overture, it was doctor Hogben who came to me and stated that you had expressed an interest in some kind of settlement like this.

Q. Why would he come to you?

THE COURT :

How can the witness possibly tell you why doctor Hogben would do anything?

VALERY FABRIKANT :

Well, I'm asking is he the person to make all this undercover

operation, this is what I'm asking.

THE WITNESS :

A. I think doctor Hogben as president of the union was trying to solve what to him was a very serious problem, and he felt that this was one way to do it.

VALERY FABRIKANT :

Q. I understand, you didn't answer my question. Why he didn't go to the Rector, why he went to you, who you are that he went to you? What is in your duties such that Hogben would go to you other than to the Rector?

A. Well, in my capacity of dealing with the union, it is quite natural for the president, on many occasions the president has come to me to discuss problems, to talk about future negotiations and a number of related matters. So it's quite natural for him to come to me on something like this.

Q. All right. Now if my lawsuits were unfounded and wrong, why would you be prepared to pay that I drop those lawsuits instead of fighting me normally in Court?

A. Well, the question is quite hypothetical because we didn't actually follow through with that, so in the end we didn't do any of that. But it's simply a conversation I had with doctor Hogben.

Q. No, this is not my question. Why did you find it appropriate, that's my question.

A. The whole point of such a settlement is to finish off all of the difficulties and problems that the university had had to put up with you, and therefore we thought it was appropriate.

Q. You didn't answer again the question. Why was it appropriate if I was all wrong and you were all right, then why would you pay me three years salary for shut up money? If you are right and I am wrong, I'm just, you know, bad mouthing the university?

THE COURT :

You again factor into your question expressions, that's the third time you've done it, shut up money, I never heard the witness refer to that.

VALERY FABRIKANT :

Well...

THE COURT :

You say that and you put that as if it is a given in your question and it's extremely nettlesome because...

VALERY FABRIKANT :

Okay, let me ask you that.

THE COURT :

Why don't you establish that first?

VALERY FABRIKANT :

All right.

Q. So would it be correct to put conditions as withdrawing all lawsuits and refraining from any claims to the university, would it be appropriate to say this came as shut up money?

A. No, it would not.

Q. It would not. Then clarify why it would not.

A. Well, let me repeat again. The way the matter was presented to me, you had shown an interest in making a settlement with the university. And I was simply exploring with the president of the union the modalities of doing that. That's all.

Q. But the modalities were that I had to get out of the university and desist from all the lawsuits and any claims, correct? That was condition for payment?

A. Which you rejected and therefore the whole thing fell through.

Q. This is irrelevant that I rejected that. What is relevant the

payment was for getting out from the university, withdraw existing lawsuits and refrain from initiating any new lawsuits, correct?

A. The payment was for putting an end to the haranguing, badgering and harassment that had been going on in many different parts of the university which paralysed some of the operations and it caused a lot of consternation among the staff, that was the objective.

Q. So, little, little Fabrikant has paralysed several offices of the university, that's what you're saying?

A. I'm saying it came to a point where considerable amount of time was spent by a number of people in dealing with your incessant complaints and demands for information.

Q. So, like would it be appropriate to give an example of time spent by your people like we discover today, in November first (1st) there were six people very busy, November seventh (7th) there were even more people very, very busy, November eighth (8th) there were many people very, very busy, November fourteenth (14th) there were a number of people very busy. Are you aware of those meetings?

A. No, I'm not.

Q. You're not. So anyway, if I refer you to number of meetings where it was discussed how to tell Fabrikant that we want to fire him in such a way that he wouldn't get a gun and shoot somebody, is this the proper way of spending time of your employees?

Me JEAN LECOURS :

That's unfair, My Lord, that did not come from the evidence.

VALERY FABRIKANT :

Well, it did come from the evidence.

THE COURT :

No, I don't think it came, I don't think so, I think you'll have to rephrase your question.

VALERY FABRIKANT :

Okay. I will withdraw the words "get a gun and shoot someone", the rest stays.

THE WITNESS :

A. Could you repeat the question please?

VALERY FABRIKANT :

Q. Fine. Do you find it appropriate to tie up, let me count for you, Mr. Relton, Mrs. Torbit, doctor McKenzie, Swamy, Osman, Sankar, Hoa, Lee, nine people tied up several days discussing how to break to Fabrikant the news that they want to terminate his contract, so that... well, how to say it politely, ah, okay, that there would be no violence, let's put it this way, do you find this way being busy and appropriate way for your people to be busy with?

A. Look, I'm not aware of those meetings that you're referring to, therefore I can't really answer your question. I don't know what went on at those meetings or how many people were involved, so I can't answer that.

Q. Well one second, you mentioned that so many offices were paralysed, I guess that this is one of paralysing effect of Fabrikant, is it?

A. I suppose if since what you say no doubt must of happened in a way similar to what you described, but I don't have any first hand information of it.

Q. Okay. Then tell to the Court which office I did paralyse then.

A. Well, one of the offices was the Secretary General.

Q. How paralysed was it?

A. Well, I know that there were many requests for information and applications to the Commission for Access to Information, one or two days spent at the Commission making argumentation. There were also a lot of grievances that were being filed which took up the time of the grievance process, the time in the Vice- Rector Academics office, etc.

Q. Okay. Let us analyze one of them.

THE COURT :

Look, you brought the witness, the witness is answering your questions.

VALERY FABRIKANT :

Yes.

THE COURT :

He told you paralysis of offices was only one of the factors that he took into account, now you're not going to stand there and cross-examine him on each of these...

VALERY FABRIKANT :

I'm not cross-exa... I'm just going into more details. I'm not contradicting him, maybe he's right, I'm just going into more details. You cannot forbid me doing that, can you?

THE COURT :

No, no. No.

VALERY FABRIKANT :

That's what I'm doing, I'm not contradicting him. Maybe I did paralyse them, who knows.

Q. All right. So how many requests did I make to Secretary General office that it got paralysed?

A. I cannot give you a precise number, I know that there were enough that it caused consternation, shall we say, with the Secretary General and her staff.

Q. Well consternation is what she's being paid for, isn't it? This is the only job of hers?

A. Well, there are actually eight hundred (800) other faculty members in the university besides yourself and if that amount of time had been spent on each one, she would have had to multiply her staff by a factor of a hundred to deal with them all.

Q. Oh yes, but luckily there was only one Fabrikant, therefore...

A. Luckily.

Q. ...therefore let us talk about consternation of the Secretary General. Now how many requests did I make?

A. I just told you, I don't know how many you made.

Q. Well, if you don't know, how can you say then that they were totally paralysed.

A. I did not use the word totally, I don't think, in my testimony.

Q. Well, you said paralysed, my Gosh, they are doing nothing but processing my demands.

A. For a time they were doing that apparently, from what I was told.

Q. Well from what? From November to August they did nothing but processing my demands, is that what you're trying to say?

A. Not quite but close to it.

Q. Close to it. Okay. How do you know that it was close to it?

A. I was being sarcastic.

Q. Well, I'm being close to that to, so it is not really close to paralysed, all right? This is one of the things which they are supposed to do and my request for information, you know very well, were to point out crooked practices at the university, wasn't it?

A. I have no idea why you kept hounding the office with request

for information.

Q. Well, because only by using information you couldn't point out the crooks, have you ever thought about it that this is the way to point out crooks? By appropriate information, you never thought about it did you?

A. I presume that's a rhetorical question?

Q. No, it is not.

A. What is the question, have I thought about why you did it?

Q. Well, that information is for normal people being used to point out that someone is a crook?

Me JEAN LECOURE :

These are all leading questions, My Lord.

VALERY FABRIKANT :

Well, it's not that leading.

THE COURT :

We'll let that question go.

THE WITNESS :

A. If the question is...

THE COURT :

It's hardly a situation where the witness is either being...

Me JEAN LECOURE :

You should ask him what did you think, not didn't you think this, this and this.

THE COURT :

I think the witness is able to answer the question.

Q. Go ahead.

A. The question as I understood it was: Does one need information to point out the existence of crooks? And I suppose if crooks exist then information should be sought out. I suppose that's just a logical restatement of what you're saying.

VALERY FABRIKANT :

Q. So maybe this is exactly what I did. And maybe this is the reason for consternation, not only Secretary General but all around her including yourself. Could that be the case?

A. ...

Q. That reason for consternation was not amount of work but amount of "crookedry" which would be revealed by this information, could this be the reason?

A. I assure you that that was not the case. You seem to underestimate the actual amount of work it takes to satisfy the kinds of demands that you are making.

Q. Okay. Let us find out about one of those demands. I asked for how much money you spent by Seshadri Sankar on his strategic grants, who was paid and how much. And all what was required is to get copy of about twenty (20) pages of information. Now, do this considered paralysing for the whole office of the Secretary General to get twenty (20) pages of information?

A. Is that the end of your question?

Q. Yes, this is the question, yes...

A. All right.

Q. ...could it be called paralysing...

A. The kind of information...

Q. ...twenty (20) pages of information.

A. The kind of information you're describing cannot be given just so casually, it takes more than simply to photocopy twenty (20) pages. It has to be checked whether or not this is the kind of nominative information that may or may be released to somebody like yourself, and in some cases it has to be

referred to the Commission. All that takes work.

Q. Well, it takes work maximum for a specialist of one to two minutes. Because what I was asking...

THE COURT :

Are you testifying now or are you asking a question?

VALERY FABRIKANT :

Okay.

THE COURT :

I know you're in and out of the witness box, even from over there but, you know, would you try to limit yourself to questions?

VALERY FABRIKANT :

Yes.

Q. So does it require much time for a specialist to understand that spending of public funds is not nominative information?

A. I'm not a specialist in that particular area and therefore my opinion about that is not particularly useful. It depends on the nature of the request I would imagine and they're, like everything else, in law there are grey areas that need to be considered.

Q. Well, why then you just preferably refrain then to comment as to how much time really required to process my request? Would that be acceptable compromise?

A. How much time is required?

Q. I said maybe would it be preferable for you to refrain from commenting on how much time is required to process my request if you are not specialist in the field?

A. Well, it seems to me that you initiated this particular avenue of inquiry.

Q. This is not the point.

THE COURT :

Yes, it is the point. You did initiate it and...

VALERY FABRIKANT :

I did initiate but (inaudible)...

THE COURT :

...and it's not for you now to stand there...

VALERY FABRIKANT :

...(inaudible)...

THE COURT :

...it's not for you to stand there and negotiate with the witness how he's going to answer your questions. He's answered your questions and that's that. If you don't like it that's unfortunate.

VALERY FABRIKANT :

Well, that's all right but still if he admits that he is not specialist, he does not understand, how can he say that it requires a lot of time?

Q. You have to testify here of what you know.

THE COURT :

He is testifying generally and he testified generally that you caused a certain degree of paralysis in a certain office, that's where we are.

VALERY FABRIKANT :

No.

THE COURT :

And he gave you an explanation...

VALERY FABRIKANT :

(Inaudible).

THE COURT :

He gave you an explanation to one of your questions regarding the money spent by Sankar and he said it's not just as simple

as rattling out twenty (20) pages of information. There are a number of things that have to be checked. That's what he said to you.

VALERY FABRIKANT :

Yes, but after that you didn't hear what followed. And what followed was that I asked him that spending of public funds is obviously not a nominative information and therefore there is no time need to spend for that. All what was required really is to make copy of those twenty (20) pages.

THE COURT :

And he answered your question.

VALERY FABRIKANT :

And this part you seem to have missed.

THE COURT :

He answered your question.

VALERY FABRIKANT :

Well, he answered my question that he is no specialist. And here is logically to say to him that if you say that too much time was spent, you should know what you're talking about. If you don't know then don't say that too much time was sent.

THE COURT :

Well, you're the one that's making the statement in law that if it's spending of public funds then there's no question of any check upon it in any sense of the word, he didn't say that.

VALERY FABRIKANT :

No, this was not the point.

THE COURT :

That's not what he said?

VALERY FABRIKANT :

The point is that it doesn't (inaudible)...

THE COURT :

I mean if you want so stand there and distort what he said go right ahead but... And furthermore, let's see if we can relate this to why we're all here.

VALERY FABRIKANT :

Oh yes, we can relate this to why we're all here.

THE COURT :

Well, it's seems to be that we're a long way away.

VALERY FABRIKANT :

Would you like me to relate it to...

THE COURT :

It would be most helpful if you'd relate it, most helpful.

VALERY FABRIKANT :

All right. So we are here to find out that this particular gentleman has authorized, I believe so, Hogben to give me an ultimatum either to get out of the university or to go to jail.

THE COURT :

Now, if that is what you want to ask him, why don't you ask him the questions, it would be...

VALERY FABRIKANT :

Well, we will come it, don't you worry. We will come...

THE COURT :

It would be so much simpler if you...

VALERY FABRIKANT :

We will come to it. Because he started talking that I was paralysing and I wanted to explore this subject a little bit.

THE COURT :

Well try to get there before July.

VALERY FABRIKANT :

Well, don't forget please that I asked for my defense three months. And three months, I started my defense only three days ago. So this means at least June, July and August.

THE COURT :

Perhaps it does, perhaps it doesn't.

VALERY FABRIKANT :

So I'm still within my time limits, am I?

THE COURT :

Your time limit doesn't dictate what's pertinent. And if you're not going to get to what's pertinent, you're going to find that you're going to be closed off.

VALERY FABRIKANT :

Well, I leave it to you, you are the Judge.

THE COURT :

Good. So put your...

VALERY FABRIKANT :

You may close me off right away...

THE COURT :

Put your question.

VALERY FABRIKANT :

All right.

Q. In the newspapers there were reports that you had a meeting on August twentieth (20th) and August twenty-fourth (24th) on the subject how to deal with Fabrikant. Were those reports true?

A. No, they were not.

Q. You didn't have any meetings during August in the administration on the subject what to do with Fabrikant?

A. The only... no, not in August. The only meeting I had, as I mentioned earlier, was when I spoke to the executive assistant to the Rector concerning a settlement whereby you would leave the university. That was it, that was early July.

Q. And there was absolutely nothing, I mean not maybe you personally, maybe you were not invited but on any level of administration in August?

A. Not that I'm aware of.

Q. All right. What do you know about my threats against anyone or anybody or any time? Are you aware of me making any threats to anybody?

A. I know essentially what I've read in the public media.

Q. You collect your information about university from the newspapers?

A. I haven't discussed these threats with anybody in the university.

Q. Well, did anybody in the university discuss it with you?

A. Well, as a matter of fact, you may not recall this, but you came to my office in nineteen ninety (1990) and I actually spoke with you and advised you to stop badgering and annoying people, do you remember that?

Q. But this... does this mean that I did threaten someone?

A. I'm not saying that you threatened but your behavior was such that it was intimidating, some of the secretarial staff in the university and in general annoying a lot of people.

Q. Well, you again using general words without giving examples. Did I annoy you?

A. Well at that meeting, I don't think that you, let's say that we didn't resolve anything at the meeting.

Q. Did I threaten you at that meeting?

A. No, you didn't.

Q. Okay. Did you see me threatening anyone?

A. I did not.

Q. No. So what is the ground for anybody's concern for safety or

for anything at all? Does it look like you are saying, saying, saying without being able to present any facts? Does it look like this?

A. I'm not sure what you're claiming me to state without presenting facts.

Q. All right. You said that secretaries were very afraid of me, right?

A. Some. Some.

Q. Some. All right so which secretaries you are talking about?

A. Your repeated calls for example to the office of the Vice-Rector, Academic, sometimes speaking directly to the person who picked up the phone and making certain demands for immediate reaction to whatever it was, I don't remember the specifics. Those kinds of belligerent phone calls were causing some consternation.

Q. How do you know those calls were belligerent, did you hear them?

A. I didn't hear them, no.

Q. So how do you know they were belligerent?

THE COURT :

Look...

VALERY FABRIKANT :

Well, answer please.

THE COURT :

Look... Look, look...

VALERY FABRIKANT :

Q. How do you know they were belligerent?

THE COURT :

No, no, this won't, this isn't going on and this isn't fair.

VALERY FABRIKANT :

This is not fair?

THE COURT :

This is not fair, no.

VALERY FABRIKANT :

I'm not fair?

THE COURT :

You start off by asking the witness about threats, and the witness says, "Listen, I don't know anything about threats, I only know what I read in the newspaper, I haven't discussed the question of threats in the university." You press him, he tells you that there was questions of annoying and badgering people, I didn't hear him say threats. He said you didn't threaten him and he didn't see you threatening anyone. And then you go off and you try to have him qualify various statements that clearly are situations which he has said were reported to him. And then you feign surprise when he says, "No, I didn't hear these conversations." I mean, you're asking the questions treating your general situation, you make evidence of that and then you do the same thing as you always do, you proceed to try to cross-examine him on generalities that are by and large hearsay that the witness had heard and which you brought out which were factors that generally he considered in determining what course of conduct did he take, that's not fair cross-examination, it's unfair cross-examination.

VALERY FABRIKANT :

I fail to understand what is wrong. He has the right to tell the jury that I made belligerent phone calls, which I never did. Now, and I'm unfair when I'm asking him...

THE COURT :

But you're the one that brings this out.

VALERY FABRIKANT :

Well, I'm not bringing it out...

THE COURT :

You're the one...

VALERY FABRIKANT :

...I'm not pulling his tongue out.

THE COURT :

Of course you are. You're the one that's saying well, you know, I was disruptive was I, eh, eh, and who was I disruptive with...

VALERY FABRIKANT :

Yes, so what's wrong with that?

THE COURT :

...in such and such office. And he tells you...

VALERY FABRIKANT :

Well...

THE COURT :

...and then you proceed to cross-examine him on what he said.

VALERY FABRIKANT :

Well truthful person would say you didn't badger anyone, you were abused at the university. That's what a truthful person would have say.

THE COURT :

Well, perhaps the witness doesn't see it quite that way.

THE WITNESS :

A. I really did not see it that way.

VALERY FABRIKANT :

Well, if witness doesn't see it that way I see nothing unfair in pointing out what witness (inaudible).

THE COURT :

Well, your last line of questioning is not on. So change it.

VALERY FABRIKANT :

No, but you still...

THE COURT :

I'm sorry, there you are.

VALERY FABRIKANT :

You didn't point out anything what I did wrong. Because the way the witness answered it's his business, I understand it and I accept it, but since he is not answering what is really true, there is nothing wrong if I point it out to the jury.

THE COURT :

Your last line...

VALERY FABRIKANT :

This is not unfair.

THE COURT :

Your last line of questioning is unfair. The witness said none of that, this what you drew out from the witness and then you proceeded to cross-examine him on it. Well you can't do that.

VALERY FABRIKANT :

I just forced you to say, you say that I was belligerent, that's what it was?

THE COURT :

You can't do it and move on. Move on to the next question.

VALERY FABRIKANT :

Well, when you feel that you are wrong, you just stop conversing and say...

THE COURT :

Not at all.

VALERY FABRIKANT :

...move on.

THE COURT :

Not at all.

VALERY FABRIKANT :

So...

THE COURT :

No.

VALERY FABRIKANT :

No.

THE COURT :

Next subject.

VALERY FABRIKANT :

Next subject, all right.

Q. Were you aware in nineteen ninety (1990) that Vice-Rector wanted to have me fired?

A. I was not.

Q. Well, why then we need to have a meeting in the first place? What was our meeting all about then in nineteen ninety (1990)? You mentioned that we had a meeting, why the hell did we have the meeting then?

A. Because you came up to the office, to our office, Vice-Rector Institutional Relations and Finance looking for doctor Cohen who wasn't there, so I met with you instead.

Q. Wasn't our meeting pre-arranged?

A. No, it was not. You simply appeared in the office.

Q. You seem to have very bad memory. Why on earth would I go to your office in the first place? You are financial something which has nothing to do with my problem in nineteen ninety (1990), why would I go to your office in the first place?

THE COURT :

The witness told you a moment ago that you appeared looking for doctor Cohen and doctor Cohen wasn't there and the witness saw you instead, am I correct...

VALERY FABRIKANT :

Q. Why would I need to see doctor Cohen?

A. I have given up trying to explain in my own mind why you do the things you do.

Q. Well, why would I need to see doctor Cohen?

A. I have no clue.

Q. What did we talk about then?

A. We simply talked... I actually took the initiative, I could have simply said, he's not here, goodbye, I took the initiative of bringing you to a conference room and telling you in the spirit of friendly advice that you should modify your behavior because in fact your position at the university seemed to be secure, you were about to be integrated into the regular tenure track stream, you would no doubt eventually get your promotion, your tenure, just take it easy, that was the essence of what I said to you at the time.

Q. Why would you need to say me all this if you had no idea what was going on with me?

A. I didn't say I had no idea what was going on with you.

Q. So you did know.

A. I knew partially.

Q. You did know all those details, promotion, integration. How on earth did you know all this?

A. Because part of my job is to deal with issues of the collective agreement and even though I don't personally get involved in any of the decision making, about promotion, etc., I have to be aware of problems that exist or grievances that might exist.

Q. Well, was there any grievance at that time?

A. At the time I don't recall.

Q. So why on earth did you know anything at all about my promotion?

A. Well, because at the negotiations, at the time we were negotiating a new collective agreement and the whole question of integration of research faculty members under the Actions Structurantes program was one that came up and we actually dealt with it by writing a new article in the collective agreement. And it came up in the context of some of the difficulties that people like yourself were having. So in that sense I found out.

THE COURT :

Okay. So we'll stop there until tomorrow morning nine thirty (9:30).

MEMBERS OF THE JURY LEAVE THE COURTROOM

WITHOUT JURY

THE COURT :

Yes, Mr. Belleau.

Me BELLEAU :

Please, My Lord, could I have an order to the witnesses who are still in attendance that they are to come back tomorrow morning at whatever time...

THE COURT :

Certainly. Would you like these witnesses brought in?

Me BELLEAU :

Please.

THE COURT :

Would you... If you have their names that's fine.

Me BELLEAU :

And there's one witness I don't know his name, from the Agence de S,curit, Canadienne.

THE COURT :

Mr. Proppe, you can sit down if you like, leave or... As long as you come back tomorrow.

Mr. PROPPE :

I can leave? I do have to come back tomorrow?

THE COURT :

Yes, surely.

VALERY FABRIKANT :

Well, there is one thing here...

THE COURT :

A second.

Me BELLEAU :

Mr. "Chakouri", monsieur Desjardins, monsieur Robitaille and "Jacobson", (inaudible).

THE COURT :

That's it?

Me BELLEAU :

Yes.

THE COURT :

Now, how long do you propose to be with the witness who is on the stand now? It strikes me that you are there for a little while.

VALERY FABRIKANT :

No, I don't think so.

THE COURT :

You don't think so?

VALERY FABRIKANT :

No, not for long, no. And we can settle for example with this particular witness very quickly because my understanding is that she didn't bring what I need her to bring and...

THE COURT :

Look, I'm not getting involved in that debate just now, I'm asked to make an order requiring the witnesses to return tomorrow that's what I'm asked to do, to continue a subpoena. Donc... The witnesses in the case of Valery Fabrikant, that is the four of you, are required to return tomorrow morning at ten thirty (10:30). I'm assuming that we'll be at least an hour with the witness who's present?

VALERY FABRIKANT :

No, no, no, we won't be an hour, no.

THE COURT :

You will not be an hour?

VALERY FABRIKANT :

No.

THE COURT :

Ten ten o'clock (10:00). Would you like that repeated in French or is it perfectly clear? Okay.

Me BELLEAU :

Thank you, My Lord.

THE COURT :

Thanks, Mr. Belleau.

Je soussign,, MICHEL DAIGNEAULT, st,nographe officiel bilingue, certifie que les feuilles qui pr,cđdent sont et contiennent la transcription de bandes d'enregistrement m,canique, hors de mon contr"le; et est au meilleur de la qualit, dudit enregistrement. Le tout conform,ment ... la loi.

J'ai sign,,

MICHEL DAIGNEAULT, S.O.</pre></body></html>

TABLE DES MATIERES

	PAGE
PROCES (continu,)	
Pr,liminaires (d,bats)	3
PREUVE DE LA DEFENSE (suite)	
TEMOINS	
HAROLD PROPPE	
Interrog, par M. Val,ry Fabrikant	36
MARIE-ANDREE ROBITAILLE	
Interrog,e par M. Val,ry Fabrikant	63
TERRYLE FANCOTT	
Interrog, par M. Val,ry Fabrikant	89
RAFIC CHAHOURI	
Interrog, par M. Val,ry Fabrikant	93
GILLES DESJARDINS	
Interrog, par M. Val,ry Fabrikant	118
Contre-interrog, par Me Jean Lecours	144
R,-interrog, par M. Val,ry Fabrikant	145
RICHARD McMANUS	
Interrog, par M. Valery Fabrikant	165
LISTE DE PIECES	
PIECE D-3: Sommaire des dates de services rendus, Agence S,curit, Canadienne	150
PIECE I-1: M,mo, Concordia University	163

PROCES (continu,)

Mr. FABRIKANT:

May I?

THE COURT:

Yes.

Mr. FABRIKANT:

I have problem with some transcripts here, I remember I made an order transcript of Sheinin, Swamy, Osmen and so on, to be transcribed urgently and my understanding is that there are still not ready. I have one (1) transcriber who is prepared to do everything very fast, but this is private transcriber and she says that there is a need for a Court order if she gets involve, because Legal Aid doesn't want to pay for it. And we need effectively, not just this, we need many more transcripts because before pleading, I would like to have major ... the transcripts available. There is nothing funny about it.

THE COURT:

Well, there is something funny every morning, Mr. Fabrikant.

Mr. FABRIKANT:

Well, you see, you're contradicting yourself. I will ask to declare you adverse

...

THE COURT:

Hum, hum.

Mr. FABRIKANT:

... because, just couple of days ago, you said that you found absolutely nothing funny in the whole thing. Now, you say that you have something funny every morning.

THE COURT:

No, these constant ... these constant petitions to the Court for this and that, frankly, have to stop. Mr. Belleau, are you able to enlighten me on these status of the transcripts, I remember anticipating that the evidence which was

heard during this special issue might be required. And, at your request and following your suggestion, I ordered eight (8) instant transcriptions at an accelerated rate, so that it wouldn't hold us up.

Me BELLEAU:

I ... it's been brought up three (3) minutes ago with me by Mr. Fabrikant, I'll investigate it and maybe I can report to the Court a little later, but right now I just don't know. It's been a couple of weeks, I guess, since you ordered it, I think that we had thought that it would take at least two (2) weeks to get it done anyway, so ... I'll ...

THE COURT:

You'll ... you'll ...

Me BELLEAU:

... I'll look into it ...

THE COURT:

... inform yourself in the course of the morning where we are. So, whether we have a problem or not is another question.

Mr. FABRIKANT:

Well, accelerated, is more than ... acceterated, two (2) weeks doesn't sound like very accelerated.

Me BELLEAU:

Compare to the normal sixty (60) days, it's ... it's very much accelerated.

Mr. FABRIKANT:

Well, there is ...

THE COURT:

You seem to think that you are the only issue in this world. You seem to think that your trial is the only thing in this world.

Mr. FABRIKANT:

You seem to think that you are reading my thoughts. I never thought that I'm the only only one.

THE COURT:

And you're not.

Mr. FABRIKANT:

And, I never thought that, so ...

THE COURT:

So, would you please, stop raising non-issues for the time being, and let us get on with what we have to do.

Mr. FABRIKANT:

Well, this is not a non-issue. Is this a non-issue what I said?

THE COURT:

This is a non-issue at the moment, when I'm not even sure it's a problem.

Mr. FABRIKANT:

Well, it is an issue.

THE COURT:

It may well ... it may well not be a problem at all. We'll see later on this morning.

Mr. FABRIKANT:

Okay. What about the tapes? What did you decide about admissibility of tapes? I asked from Mr. Belleau jurisprudence concerning tapes, he brought something irrelevant, which says nothing about tapes. Is my recollection correct, that yesterday Crown said that tapes are not prior statement, is my recollection correct?

THE COURT:

First of all, I think you handed the transcription of the tapes to the Crown prosecutor in order that he take cognizance of them.

Me LECOURS:

Just a moment, I'll find them out.

THE COURT:

Yes, okay.

Mr. FABRIKANT:

Well ...

Me LECOURS:

Yes, I got them. Well, first, My Lord, I think as all this evidence from the beginning of the Defense, I maintain my position. All that is irrelevant stuff, this is not a defense known in Law, first (1st). Second (2nd) ...

THE COURT:

Well look a second, how do you know it's not a defense known in Law? You can't tell any better than I can, whether there's a defense known in Law ...

Me LECOURS:

No, he said it's provocation ...

THE COURT:

... that will emerge from this.

Me LECOURS:

... and provocation has to be sudden.

THE COURT:

There's a ... there's a hell of a lot more to provocation than just having to be sudden. I cited to you two (2) cases ...

Me LECOURS:

You cited two (2) ...

THE COURT:

... yes, sudden provocation, I cited to you two (2) cases from the Ontario Court of Appeal, last week, which sets-out that, in essence, it has to be sudden and what the sudden element is ... but, it might not in itself provoke the ordinary man, may provoke him when taken along the side, a raft of ...

Me LECOURS:

But I'm ...

THE COURT:

... second, a raft of other evidence that occurred over a number of years. Now, listen, I don't know whether that adds up to provocation or not, if it adds up in the end, to what could be provocation, if it has an air(?) of reality in the end, then, the question of whether it goes to jury becomes a real question. If doesn't have an air of reality, i.e. if it isn't sudden, if it is no more than simply dickering over a termination agreement or whatever, then it strikes me that jurisprudence is pretty clear, it doesn't have an air of reality and it doesn't go to the jury, but how do you expect me to know without hearing it.

Me LECOURS:

But this defense looks like a never ending story, My Lord.

THE COURT:

Well, some defenses do ...

Me LECOURS:

(inaudible).

THE COURT:

... look like a never ending story. And ... and that's sometimes just too bad.

Me LECOURS:

As far as I'm concerned, all this stuff is irrelevant. And, I main... I don't want to raise every ... for every witness, but up to now I didn't see any relevant witness in this defense. And, I could see the progression and the exponent showed projection of this defense, it's not three (3) months, it could be never ending, it's exponential. Every time we learn a name, it's potential witness.

If anybody could bring all the civil litigations in a criminal case ... everybody disagree in life with everybody most of the time.

THE COURT:

Oh, sure.

Me LECOURS:

So, we have to put (inaudible) ...

THE COURT:

We are not ...

Me LECOURS:

... a line somewhere.

THE COURT:

... we are not going to decide the civil litigation in the criminal case, I said

that. Whether elements of the civil litigation and particularly the development of the civil litigation at a time proximate to the incidents of the twenty-fourth (24th), were a factor that played on his mind, is something that he may be entitled to put before the jury.

Me LECOURS:

You just said it yourself, the only thing he's doing right now is establishing motives. He's completing the Crown's case.

THE COURT:

It may be he's completing the Crown's case, I ... I ...

Me LECOURS:

I think I have enough evidence, I don't need that.

THE COURT:

That's fine.

Me LECOURS:

I don't need to complete my case for three (3) years.

THE COURT:

That's fine, but ... but I'm not ... I'm not going to take the view that evidence which could bear upon provocation, which is one (1) mechanism which cancels out intent, if I can put it that way. Or, evidence bearing on general intent itself, both of which reduce murder to manslaughter. I'm not going to take the view that I'm not letting any of that evidence into the record, because that evidence couldn't possibly be relevant. We'll see at the end whether it's relevant. Listen, I sympathize with your position, I sympathize with my own position, because I see that we may well have to sit here for a certain amount of time, and listen to a lot of drivel ...

Me LECOURS:

Did you see ...

THE COURT:

... and then have to ... have to say to the jury, ladies and gentlemen, what you've heard for the past three (3) months, ignore it, it's not relevant.

Me LECOURS:

But when Mr. Fabrikant yesterday said, I might be finished within three (3) months, if you could have seen the faces of the members of the jury when he said that.

THE COURT:

Well ...

Me LECOURS:

And you were not looking ...

THE COURT:

I ... I was not looking at the faces of the members of the jury. If three (3) months is what it takes, three (3) months is what it takes. It may well not take three (3) months.

Me LECOURS:

Well, anyway you have my ...

THE COURT:

We'll see ...

Me LECOURS:

... basic position on Fabrikant's defense.

THE COURT:

No, I asked ... no, I asked you ...

Me LECOURS:

And now I'm giving you ...

THE COURT:

Good.

Me LECOURS:

(inaudible).

THE COURT:

Now, I want you basic position on the tapes.

Me LECOURS:

Okay. Besides the fact that it's irrelevant, it is a private conversation, taped by the accused, with ... when speaking with somebody else.

THE COURT:

Yes.

Me LECOURS:

I don't see in anyway how could this played ... could this be played and brought into evidence. As far as the accused is concerned, it's self-serving evidence. No accused put in evidence his prior statements, that's not the rule in our system. And as far as the witness or the interlocutor is concerned, it's the same thing. Mr. Fabrikant has a lot of prior statements from all the witnesses, but we don't file the statements. The witness comes in the box and says what he or she has to say. So, there's no way we can just play the tape and file the transcript. The best evidence or the way to do this evidence, if there is a conversation with Mr. Sankar or Mr. Hoa, Mr. Hoa comes in the box and he will be Mr. Fabrikant's witness, and he will tell what he is suppose to tell, besides the fact that it is irrelevant. And moreover, there are lot of rules that has to be followed concerning electronic surveillance.

THE COURT:

And that's why you were looking at them. He maintai... well, we may as well simply deal with the tapes we have at the moment which involve Sankar, Hoa and Sankar again.

Me LECOURS:

We don't know the exact date, the exact time, the exact location, whether it's a faithful transcript or not, and the ...

Mr. FABRIKANT:

Well, the tape is there, you can check it against the tape if it is faithful.

Me LECOURS:

... and I expect ... identification of voices, I expect he is able to identify all the voices. But ...

Mr. FABRIKANT:

Yes.

THE COURT:

As far as these tapes are concerned, it's obvious that the starting point is an examination of these people. But, I would suggest you read R versus Cassebo.

Me LECOURS:

Okay. It might be used in cross-examination ...

THE COURT:

Yes.

Me LECOURS:

... if ever it's considered as a ... I don't mind ...

THE COURT:

Not just in cross-examination, it might be used on either a 9192 combination.

Me LECOURS:

Okay.

THE COURT:

And if you would read R versus Cassebo, which is reported at 70-CCC, 2nd, 498, the rules are set-out there ...

Me LECOURS:

Okay. I ...

THE COURT:

... in extenso, and you aware of that.

Me LECOURS:

... I did think about that, yes.

THE COURT:

Okay.

Me LECOURS:

Let's assume it might be used to cross-examined, if somebody is not telling the truth or something like that. But, I don't see it just put in evidence.

THE COURT:

No, I don't see it just put in evidence either. And, I didn't ever suggest that it be put in evidence simply like that, but what I anticipated was, that if the tapes are going to be used, there are certain preliminaries that have to be gone through. You, for example, have to be satisfied that what you have in your

hand is a faithful transcription of them.

Me LECOURS:

Okay. But ...

THE COURT:

In addition ...

Me LECOURS:

Yes.

THE COURT:

You go ahead, if you want to talk.

THE COURT:

No, you, I'm sorry, please go on.

THE COURT:

I would suppose that you also have to be satisfied from a technical point of view, that the tape ... of the integrity of the tape has not been interfered with. Now, I don't know whether you can do that or whether you have to have Sauvageau do that, or whether you have to have one (1) of Sauvageau's partners do that, or what. But certainly it seems to me that you have to be satisfied that the recording is ... that the recording hasn't been fiddled with.

Me LECOURS:

What about the Court being satisfied with ...

THE COURT:

That's the next step. But, quite frankly, if you're ... if you're satisfied, then I ... I doubt very much if I would be dissatisfied.

Me LECOURS:

Because I notice your remarks yesterday, but if we look carefully at Pearson, the faithfulness of the tape and the chain of possession, the authenticity, it's not a question of admissibility, it's a question of probative value.

THE COURT:

Yes.

Me LECOURS:

When we do a voir-dire, we check the authorization usually and the identification of voices authenticity and everything, it's left for the jury.

THE COURT:

Hum, hum.

Me LECOURS:

So, usually it's not ... it's not a case for voir-dire, the authenticity of the tape.

THE COURT:

As long as you're satisfied that the tape ... the tape has to meet certain criteria before it gets pass first (1st) base.

Me LECOURS:

Yes, but for instance, when I introduce tape, I ... I fix without jury the admissibility.

THE COURT:

That's right.

Me LECOURS:

But once the admissibility was determined, the chain of possession and the identification ...

THE COURT:

Yes.

Me LECOURS:

... of voices I did in front of jury.

THE COURT:

Yes, fine.

Me LECOURS:

And I did not ask Mr. Fabrikant's permission for that.

THE COURT:

No, you didn't. But then again, that was governed in large extent by the nature of the tape you were dealing with. You were dealing with a semi-official tape that came from ... came from 9-1-1. A tape from his briefcase is something else.

Me LECOURS:

I understand that very well.

THE COURT:

But on the principle that he is allowed to tape a conversation, between him and the ... and the Pope, there's no ... there's not much question about that.

Me LECOURS:

Yes, but formally he should consent in accordance with section 91...

THE COURT:

He does nothing formally, so, the rules have to be ... have to be followed one by one.

Me LECOURS:

Because we don't do a lot things formally in this ... especially for the Defense, as you know ...

THE COURT:

I know.

Me LECOURS:

... ninety per cent (90%) of the questions are illegal.

THE COURT:

I know.

Me LECOURS:

But we don't raise every time when we (inaudible).

THE COURT:

I realize that.

Me LECOURS:

And, we don't have the ... all the time have the originals, we don't have all the time notice in accordance with Canada evidence Act.

THE COURT:

Absolutely, I know.

Me LECOURS:

Everybody is bending backward for the Defense.

THE COURT:

That's right. That's right.

Me LECOURS:

So ... and when we start ...

THE COURT:

That's right.

Me LECOURS:

... playing the rule, it doesn't work ... he still put into evidence what he wants. So, about ...

THE COURT:

Now, if you're making a general objection as ... as to the way the trial is being run ...

Me LECOURS:

Because ...

THE COURT:

... I understand.

Me LECOURS:

... I have to tell you, My Lord ...

THE COURT:

And ... and unfortunate, but ..

Me LECOURS:

... I don't want to raise every questions, it's not always well perceived to raise and make objection, the jury interpretes that as if you have something to hide. I don't want the jury to have this impression.

THE COURT:

I realize that.

Me LECOURS:

If I make objections, it's only because I don't want to sit until nineteen ninety-five (1995). Because no answer, nothing is damageable to this case, which is an eye witness case. I just make objections just to avoid that the jury, yourself and everybody is waisting his time.

THE COURT:

Well look, yes and no. It's an eye witness case with regard to every single element, save and except, the element of intent. Yes, from the observations of eye witnesses, certain conclusions may be drawn by a jury, but regard to intent. Depending upon what transpired between Hogben and the accused, of which I have absolutely no knowledge, which triggered, an unfortunate word, but which ... which set-off the chain of ... of shootings. That might be a factor, that relates to intent. And, it might theoretically be a factor that relates to provocation. What you're asking me to do, is say that there is no defense in this case.

Me LECOIRS:

I don't see any, My Lord.

THE COURT:

Alright, good, if you don't see any, that's fine. But, do you not at least see the distinction, between an individual in the dock, being allowed to present what he believes to be his defense or not.

Me LECOIRS:

I see that as well. But, what I want to clearly establish is, the way we're going now, it looks like a never ending story. It's an exponential progression, he discovers new witnesses every day.

THE COURT:

Well, I ... I'm enclined to think, that I'm going to let it progress for a little bit yet. You can't point to me ... you know, this is wonderful, this is really great, hey. I hear ... I hear the big talk around town, boy, the time has arrive for judges to lay down the rules and ...

Me LECOIRS:

It's not easy for you.

THE COURT:

... and set the limits, and by gosh, the limit should be set. You point to me one (1) limit setter, that ... that found that his setting of limits was maintained straight up the line. Now, I'm not worried about straight up the line, believe me, if I get to the point in this case where I find I have to set limits, it's immaterial to me, whether I happen to be the first (1st) one to set them. But, I tell you, I would've ... I would've been much more comforted by what you were saying to me this morning, if there was an established chain of jurisprudence, where ... where those who advocate setting limits had put their money where their mouths are.

Me LECOIRS:

It's not easy for you, I understand. It's very easy to criticize and say the judge should be there and ... up to now, I think ... everybody's doing his best ...

THE COURT:

Sure.

Me LECOIRS:

... for sure.

THE COURT:

Trying to do what ...

Me LECOIRS:

But, the limit we're talking about is relevance.

Mr. FABRIKANT:

May I relieve the trouble of Mr. Lecours, if I ...

THE COURT:

No, you do not relieve the trouble of Mr. Lecours for the minute ...

Mr. FABRIKANT:

No, no, one (1) second ...

THE COURT:

... I'll come to you in a moment, okay. You'll get your ... you'll get your opportunity. Listen, what concerns you, concerns me every day of the week ...

Me LECOIRS:

I know.

THE COURT:

... and particularly every night of the week, and early every morning of every day.

Me LECOURS:

No, I understand, I've been in this case for nine (9) months and you've been in this case for five (5) months, and ...

THE COURT:

And I ...

Me LECOURS:

... I hope justice will be rendered.

THE COURT:

I ... I go through this again and again, as to what ... as to what is within the bounds of relevance and what isn't and where it's leading. And, Mr. Fabrikant said something to me yesterday which is true enough, if you think about it. It wasn't so much the observation that he said three (3) months, but it was the observation that: I been in my defense for three (3) days. It's true.

Me LECOURS:

Yes.

THE COURT:

It's true. And, if ever the day comes, and it might, and it might, when one has to take ... take a position, and ... you know, I've taken a position within at the inside of particular issues in this case, I have said: no, that is enough on that question.

Me LECOURS:

Sure.

THE COURT:

Move ahead to the next.

Me LECOURS:

Yes, I ...

THE COURT:

That's another one that's disputed.

Me LECOURS:

Yes. I don't reproach you anything.

THE COURT:

No, no ... look, I mean, the jury is not here, and this is what these exchanges are for. I would rather ... I would rather ride along with it for the minute, and what we started to debate was the question of whether he can tape ... whether he can tape, I mean ... there are those in this world, that walk around with tape recorders in briefcase.

Me LECOURS:

The Supreme Court said you have to choose your friends. You have to choose friends that don't tape you when you speak with them. So ...

THE COURT:

So, what we're saying is, that if the tape meets the ... if the tape meets the rules, the tape may be usable.

Me LECOURS:

Okay, so what I ...

THE COURT:

I'm saying usable, because I'm not faced for the minute with the problem of a taping of Hogben. Who, as we all know is not here to speak.

Me LECOURS:

Maybe a previous step ...

THE COURT:

But ... but ...

Me LECOURS:

... if we still consider relevance, we might take cognizance without jury of the content.

THE COURT:

I think I will have to at one point, because ... because we'll come straight into a 9192 situation, if there is any effort made to contradict the witness or whatever, with these ... or even refresh his memory with these tapes. And,

at that point I will have to send then jury out, and go into fully the question of the circumstances of the making of the tapes, till I'm satisfied.

Me LECOURS:

Yes. And I ... the solution to that, Mr. Fabrikant should take the box and under oath, explain when, where and how ...

THE COURT:

He ... he may ...

Me LECOURS:

... the tape was done, and how the transcript was made.

THE COURT:

He may well have to. He may well have to and that will done out of the presence of the jury, until ... on a structured voir-dire.

Mr. FABRIKANT:

Well, I can do it right away.

THE COURT:

No, you can't do it right away. We're going to do things in order, for the minute. You ... you're the one that stood there and said: I won't be long with Mr. Proppe, have the other witnesses come at ten o'clock (10:00) tomorrow morning. And we're fooling about until ten zero two (10:02), with these interminable interventions that ... that keep coming up. You're the one that raised the question on the tapes this morning, and you're the ... you're the one that raised the question on the transcripts.

Mr. FABRIKANT:

But I'm not the one who is taking so long to settle evident questions. As far as Mr. Lecours is concerned, I would appreciate if he stops referring to the year ninety-five (95), I swear that if three (3) months passes, and I'm not finished yet, I will say, I'm finished. Are you satisfied with that, Mr. Lecours?

Me LECOURS:

Of course, I don't ask for that, My Lord.

Mr. FABRIKANT:

Are you satisfied now? So ...

Me LECOURS:

I have no comments (inaudible).

Mr. FABRIKANT:

... so far, you ...

THE COURT:

We'll ... we'll try and get there long before three (3) months.

Mr. FABRIKANT:

... so far you have taken March, April and May, almost three (3) months for your prosecution, plus something which was totally unnecessary and irrelevant. And, I didn't say a word for that.

THE COURT:

I am not reproaching you.

Mr. FABRIKANT:

So, we're finished with that.

THE COURT:

Okay.

Mr. FABRIKANT:

If I said three (3) months, I mean maximum three (3) months. It may be less that. But, when I said three (3) months and if after three (3) months I am not finished, I will say I finish.

THE COURT:

Well, listen, the best way to get at it is ...

Mr. FABRIKANT:

You agree to that?

THE COURT:

... to get on with it. So, perhaps you bring the jury in and we'll ... we'll get going and we'll see if can get through Mr. Proppe.

Mr. FABRIKANT:

But, we didn't finish with tapes. When are we going to discuss tapes?

THE COURT:

We get going to discuss the tapes if ever the problem comes up. When you're examining whoever they may be, Sankar or ...

Mr. FABRIKANT:

No, I want to ... I want to play them separately and I will ...

THE COURT:

No, we're not playing them separately at this point in the trial.

Mr. FABRIKANT:

Well, then I would like ...

THE COURT:

You call the witness ...

Mr. FABRIKANT:

... to discuss that. Why not?

THE COURT:

Because, not.

Mr. FABRIKANT:

What do you mean, because not?

THE COURT:

The tapes are not evidence as such, if the witness is alive and able to testify, he comes and testifies.

Mr. FABRIKANT:

Okay. Then ...

THE COURT:

How do I know Sankar won't come and say exactly what you anticipate that

...

Mr. FABRIKANT:

This is ... this is ...

THE COURT:

... that was covered by the tape. It might well be.

Mr. FABRIKANT:

... this is not the point for me to play the tape, because it is not just tape as such, it is the same as their reason for playing 9-1-1.

THE COURT:

No, no, no, no.

Mr. FABRIKANT:

They wanted to recreate the atmosphere.

THE COURT:

They didn't want to recreate the atmosphere, they wanted ...

Mr. FABRIKANT:

Well, why they did not then just call each one and asked them to testify as to what happened. They preferred to play the tape. And you ... and you allowed them, I think I'm as good as them. If they were allowed to play tape, I'm allowed to play tape.

THE COURT:

Their tape was played ... their tape was played as an integral part of the Crown's proof.

Mr. FABRIKANT:

My play ... my tape is also integral part of my defense.

THE COURT:

No.

Mr. FABRIKANT:

No.

THE COURT:

No. No.

Mr. FABRIKANT:

Why, no?

THE COURT:

Because I don't think your tapes are contemporary, at least not the one you've talked about before.

Mr. FABRIKANT:

Well, they are ... they don't have to be contemporary to the crime, they are

contemporary in terms of my defense. They are very, very contemporary.

THE COURT:

These tapes are copies of conversations that you ostensibly had with Sankar ...

Me LECOURS:

There are two (2) Sankar and Hoa.

THE COURT:

Yes, I have it, there's the two (2) Sankars and Hoa, yes.

Mr. FABRIKANT:

Well, important thing in those tapes, is not just the text, it is the atmosphere of conversation. This is what I want the jury to feel. What and how this conversation was done. The tone of people involved, how they talk, this is extremely important to my case. This is why I want to play them.

Me LECOURS:

There are different rules, My Lord, for the Crown and for the accused.

Mr. FABRIKANT:

It's extremely important. It's not just the tape which is there.

Me LECOURS:

The Crown is entitled to play ...

Mr. FABRIKANT:

Because they ... they are accusing me of being arrogant, belligerent, and so on and so forth. And, you will see on those tape how conciliatory I am. It's extremely important the tone of the tape, the way the conversation goes, how it goes, not exactly the words which are said. This is why I insist on the tapes being played.

Me LECOURS:

Like for instance, the Crown could play a tape of the words of the accused, but I cannot play a tape of any witness.

Mr. FABRIKANT:

No ...

Me LECOURS:

The witness comes in the box and testifies.

Mr. FABRIKANT:

It ... it's ...

Me LECOURS:

Unless it's res geste(?), but certainly it's not res geste(?).

THE COURT:

Surely not, that's what I said, it's certainly not contemporary. The ...

Me LECOURS:

And as far as the accused goes ...

THE COURT:

The 9-1-1 tape, was a part of res geste(?), without any question at all. Recorded as it was at the very end of the incident, it contained evidence of the ... of the actus of the sequestration, clearly.

Me LECOURS:

Clearly.

THE COURT:

Clearly.

Mr. FABRIKANT:

Well, in that case ... by the way, I did not deny anything I was prepared to confirm everything, still you found necessary to play tape. In this case, I repeat, it is important for me to show that all this story is that I have always been a threat, that I have always been badgering people, that I've always been this or that, I want to show that I was quite opposite. I was extremely peaceful, I was prepared to cooperate, to do whatever necessary just to start some kind of compromise, and from even the tone of conversation, it would be clear that I never been aggressive in anyway. It is important to forward it to the jury, that my aggressiveness started somewhere in February of ninety-two (92). Before that, I was very, very conciliatory, and from the tone of conversation, there is no way to reproduce it now. Because now, I'm different, and the witnesses are different and the main point to show, that this is not how it was at the time I was abused. It is important to show to the jury

that it was not the case like Proppe tries to present here, that I have always been pain in the neck for the university for twelve (12) years, and they finally decided to get rid of me. This is total absurd. And only tape of conversation of that time, could show to the jury what kind of person I was at that time.

Me LECOURS:

Moreover, he could play any game, he knew he was taping the other person and himself.

THE COURT:

The tapes on that basis will not be played.

Mr. FABRIKANT:

Well ...

THE COURT:

Whether ... whether the tapes are played on any other basis or whether the tapes are played or used on any other basis, remains to be seen. And I'm talking in the context of the Canada evidence Act.

Me LECOURS:

Okay.

Mr. FABRIKANT:

No.

Me LECOURS:

I do understand though that you consider the tape as a ... as a statement, in accordance with 9 ... 92.

THE COURT:

I think the tape can be considered a statement in accordance with 92, surely. It ... it's not ... certainly in accordance with 91.

Me LECOURS:

But, he could cross-examine his own witness.

THE COURT:

He may ...

Me LECOURS:

With an oral statement.

THE COURT:

Depending.

Mr. FABRIKANT:

Well, it's oral reduced to writing.

THE COURT:

Depending on the situation. I draw that from Cassebo.

Me LECOURS:

Okay.

Mr. FABRIKANT:

Well, it's oral reduced to writing, so it is the same as written. It is reduced to writing, isn't it?

THE COURT:

If you had them reproduced, they're reduced to writing, but then I was ... I was ...

Mr. FABRIKANT:

They're reduced to writing.

THE COURT:

... I was thinking of another ... of another principle.

Mr. FABRIKANT:

Well, still I would like to discuss the playing of the tape (inaudible).

THE COURT:

In anyway, we'll bring the jury in now.

Mr. FABRIKANT:

Alright.

THE COURT:

And we'll get on with the case, and we will try to put aside these useless interventions, because they get us nowhere.

Mr. FABRIKANT:

Well, they're not useless.

THE COURT:

Jury.

PREUVE DE LA DEFENSE (suite)
IN THE YEAR NINETEEN HUNDRED NINETY-THREE (1993)
this twenty-sixth (26th) day in the month of May,

PERSONALLY CAME AND APPEARED:

HAROLD PROPPE

born on the 29th of May 1943, associate vice-rector,

WHO, after being duly sworn, doth, depose and says as follows,

EXAMINE BY Mr VALERY FABRIKANT

Representing himself:

- Q. Okay. Let us go back in nineteen ninety (1990), and try to recall your negotiations with the union at the time. Do you remember, they were two (2) articles in the new agreement, which raised concern of myself?
- A. No, I don't. You'll have to be more specific.
- Q. Okay. One (1) of the articles, said that research appointments cannot last for more than five (5) years, you recall that?
- A. Hum, hum.
- Q. And the other article said that the research appointee has to apply to for (inaudible) as anybody else.
- A. I believe that the ... in the former, the word normally was there. In other words, the appointments will normally not last for more than five (5) years.
- Q. Yes.
- A. And the five (5) year time frame is in accordance with most of the granting agencies, such as Action Structurante and (inaudible) and others.
- Q. Yes. And the second (2nd) was that research appointees have to apply on general conditions with everybody else for the position.
- A. Well, research appointees are not automatically integrated into the new position, although I think the intention was, given that they would normally have gone through one (1) evaluation after the third (3rd) year usually, so that normally having succeeded for five (5) years, there would be an expectation that they themselves would be integrated, but it would not be automatic.
- Q. Okay. Now, would you kindly describe to the jury, the nature of Action Structurante and what was the contract given to the research employees under this program?
- A. I can't be too specific about the nature, it was a research program supported by the government of Qu,bec whereby for, I believe it's five (5) years, the government pays the salary and benefits of ... of the researcher. The researcher is treated as though they were regular faculty members from the point of view of remuneration and benefits. There is a review after a three (3) year period, the position then becomes integrated although not necessarily the incumbent, although they said that usually it's the case, but not necessarily. And then, over the subsequent five (5) or so years, the university gradually takes over the cost of that new faculty member. In other words, the payments from the government diminishes, and after, I'm not sure whether if it's eight (8) or ten (10) years, the university then pays the entire salary.
- Q. Well, was I one (1) of those employees under this program?
- A. Yes, you were.
- Q. Okay. The initial contract, was it in agreement with what you said or contract given to individual employees was different from what you said?
- A. If you mean by the initial ... I'm not sure of what you mean by initial.
- Q. Well, contract which was given to employees in eighty-five (85) and eighty-eight (88) was different from the conditions which you state right now, was it?
- A. This I don't know. I believe it was the same as what I have just stated, but I don't know that. I've just outlined my understanding of the general rules of the Action Structurante program and how I believe most researchers, in fact

all researchers at Concordia under that program were handled.

Q. So, you're absolutely unaware that if the contract it was written in black and white, that if performance is positive, you will be integrated, each person who receives such contract, you're totally unaware of that, are you?

A. I'm ... well, I don't believe it could have said that, unless it referred to the performance at the end of the five (5) year period. As I said, there was a review, my understanding anyway, was that there was a review after three (3) years.

Q. Yes.

A. If the candidates were successful, and then, there would another review upon the completion of the five (5) years, then I suppose, that's equivalent to say that the individual would be integrated.

Q. Yes. This is what it was in the contract. Now, when you negotiated collective agreement, you laid down, with complicity of the union, rules which might invalidate our contract. Do you recall that?

A. To the contrary, what we were trying to do, and in part because we were aware of the kinds of difficulties that you were raising around university, was to legitimate that process into the collective agreement. Prior to that, the Action Structurante researchers were not in the bargaining unit, they were not covered by the collective agreement. We were trying to provide the protection.

Q. You're not answering my question. This is not the question I'm asking to you. Under contract, a person was guaranteed integration, under new collective agreement that person was supposed to apply for his position on equal footing with everybody from the outside. This is what you introduced in collective agreement. Correct?

A. No, I don't think the emphasis should be on the equal footing, nor do I believe that the original terms guaranteed the integration. It's as I said, if the incumbent successfully completed the second (2nd) evaluation, then there would be an understanding but not necessarily a guarantee, this is to my knowledge, that the ...

Q. Would you like to refresh ...

A. ... incumbent would get the position.

Q. Would you like to refresh your memory, how it was said?

THE COURT:

What has all of this got to do with your state of mind on the twenty-fourth (24th) of August?

Mr. FABRIKANT:

What it has to do? It has to do with their attempts to have me fired in nineteen ninety (1990), how they made the legal base for that. They, with complicity of unions, changed collective agreement in such a way that my contract would become invalid. This is what they did quietly, together, and I was put (inaudible).

THE COURT:

Go ahead. Go ahead.

Mr. FABRIKANT:

This is those beautiful people.

THE COURT:

Go ahead.

Mr. FABRIKANT:

Q. Now ...

A. But, the fact is, you were integrated.

Q. It's irrelevant, the fact was you got me into heart attack. And I was integrated ... fine. Now, I'm reading to you: provided that -- this is from the contract which I had -- provided that the research and teaching performance during the next two (2) years, of the five (5) year grant period, had been considered satisfactory, and upon the expiration of grant period and subsequent successful evaluation of the program by the government, as well as the availability of funds, you will be appointed to the full time faculty of the university at the rank of associate professor and your previous service at the university will be applicable to any ten...(?) or for promotional consideration. Is the wording

clear, that if my evaluation is positive, if government's evaluation is positive, then I am the one who takes the ten...(?) rank position. Is that clear to you?

A. That's clear and that's actually what happened.

Q. Now, let us read what you tried to do. The fact that you were unsuccessful in nineteen ninety (1990), doesn't change what you tried to do. Now, this is what they tried to do in the new collective agreement: persons holding research appointment, who apply for a ten...(?) rank position, will be considered in the usual way, following the procedure of article 12.02, which means ... article 12.02 is general, so person has to apply and everybody else can apply and whoever is chosen, whoever is chosen. This is what you introduced, new. Correct?

A. Yes, it was.

Q. Yes, it was. And if you will try to say that it was introduced not intentionally, to just invalidate my contract, it was not for the purpose of invalidating my contract, then.

A. If by contract you mean a letter from the former vice-rector ...

Q. Yes.

A. ... academic ...

Q. Yes.

A. ... it's certainly was not introduced to do that. As I said ...

Q. But ... but, okay ... inadvertently, it did.

A. I don't believe it did, because the fact is you got the appointment. So, we're talking about something totally theoretical.

Q. Well, we are talking about your unsuccessful attempt to have me fired in nineteen ninety (1990), yes.

A. Let me repeat again. The objective of introducing that clause of the collective agreement, is to regularized the position of research appointees, even before they were integrated into the bargaining unit, and to make the members and ... of CUFFA(?), with the protection of CUFFA(?), and then to allow for their integration following the successful evaluations. Part of that also meant going through the regular process of applying, because after all, if you want to be integrated into position, you have to indicate through an application that you're interested in that.

Q. Yes. You probably know that protection of CUFFA ended up into shooting, don't you?

A. I beg your pardon?

THE COURT:

That question is argumentative, is it not?

Mr. FABRIKANT:

Q. Protection of CUFFA, you mentioned. You did it with complicity of CUFFA, not protection. You have the union which is at your disposal, who does whatever you want them to do.

THE COURT:

You're making a statement or you're asking a question?

Mr. FABRIKANT:

I (inaudible) I'm sorry, I went out of line. I'm sorry.

Q. And the second (2nd) thing, just again, what looks pretty harmless, praise(?) in collective agreement: the total duration of such appointment will normally ... will not normally exceed five (5) years. Is this again point ... blank check for the administration to interpret normally any way they want, if they want to fire someone after five (5) years, they are free to do so. If they don't want to fire, they say well, this is normal and we make exception for this person. Is this very, very smart wording, who they don't like they can fire, who they like they can keep, and nobody can tell them they are discriminating. Is it correct the interpretation of this article?

A. The word normally ... the word normally must appear in that collective agreement at least a hundred (100) ... in a hundred (100) different places. And, in those places, there are certain policies or principles that are being established, but it is recognized that from time to time there may be exceptions. For example, perhaps somebody would have been on one (1) of these formal programs for six (6) years or seven (7) years, in which case we don't

want to disqualify that individual from being integrated. So, in fact, again it ... the reason for the word normally, is to protect the individual, not to protect the (inaudible).

Q. To protect or to be able to fire him at will. This is second (2nd) aim which could be achieved, isn't it? You didn't answer my question. My question is, can you use this article ...

A. It says, it shall normally not exceed five (5) years ...

Q. Yes.

A. ... it doesn't say, it shall ... that ... it was less than five (5) years, that would not be covered by that particular phraseology, so I don't understand how you're drawing these conclusions.

Q. Well, just answer simple question. Can this article be used to fire someone who has been on the research appointment more than five (5) years? Just yes or no.

A. I suppose it could be used ... it depends on the nature of the appointment, but I suppose it could be used.

Q. It can be used.

A. But the person could still apply for...

Q. And now, try your memory from yesterday, when you said that I came to see Cohen and by incident came to you, maybe your memory now will tell you that because I was worried about these two (2) articles, I came to see you, having prior appointment with you. Do you recall now that?

A. No, I do not.

Q. You do not. Did we not discuss those two (2) articles about which I was worried?

A. We may have discussed those articles among other things. It's quite possible.

Q. You are responsible for collective agreement, not Cohen. Correct?

A. Well, doctor Cohen is in fact the vice-rector and he drives his power from the board of governors ...

Q. But still ...

A. ... and it's delegated to me.

Q. ... so, this is why I came to you and not to Cohen. You still don't remember that?

A. You actually came to see doctor Cohen, and the secretary came to my office and said: doctor Fabrikant is here, he wants to see doctor Cohen, what shall I do? So, I said: I will speak to him. And I took you to a conference room.

Q. But at least now you recall that I didn't come ... yesterday you said that you couldn't never understand why I came in the first place. Like a crazy guy, wondering around, knocking this door, knocking this door, doesn't know what he is doing. That's what you tried to present me yesterday.

A. Well, you did show up totally unannounced.

Q. Well, that is your word against mine. I know that you are lying, we had a previous appointment and I came for appointment with you.

THE COURT:

Look, you advance nothing by announcing to witnesses that they are lying, when you don't happen to agree with what they say.

Mr. FABRIKANT:

Yes. Anyway ... at least you confirm ...

THE COURT:

There you depart from the role of asking question to the role of testifying, stop it, it doesn't help us.

Mr. FABRIKANT:

Alright, alright, I agree.

Q. But at least, you agree that those were two (2) articles which we discuss, not my harassment of somebody ...

A. I ... I ... no, I am not certain, I believe we might've but I don't recollect the event that clearly. I do remember discussing the way ... your behavior.

Q. Okay. So, behavior you do remember, more important things for some reason, you don't remember. You have very selective memory, don't you. Isn't this concerning collective agreement, more important, whether I was or wasn't insistant ... (inaudible)

THE COURT:

The question is what he recalls discussing, period (inaudible), it's not a question of what was more important or what wasn't.

Mr. FABRIKANT:

Q. Now, what was wrong with my behavior in nineteen ninety (1990)?

A. I believe I said that yesterday, it was in badgering people, and phoning them and coming to their offices, making demands of various kinds, and ...

Q. Be specific please, which office, what demand?

A. I ... I ... don't remember the specifics, quite frankly, and my objective was simply to try to calm you down and say: look, notwithstanding your theory about a plot to try to fire you, to say, to the contrary we're trying to get you integrated into a proper position, you will have ... you will be in a ten...(?) rank position, you will eventually be promoted, you'll get your ten...(?), and that's what you want, you'll get it. So, don't worry about it.

Q. That's what you're telling me. And ... and attempt to have me fired, it was just my theory. Attempt ...

A. To have you fired when?

Q. ... to have me fired by vice-rector, it was just my theory.

A. To have you fired by the vice-rector at what time?

Q. In nineteen ninety (1990). It was just my theory.

A. I know nothing about that. But I knew that you had been in ... when we had the meeting ... when we had that meeting, you had already been, to the best of my recollection, appointed to the ten...(?) rank position.

Q. What date was it at the meeting?

A. I don't remember.

Q. Well, was it November, October ...

A. It was sometime in the summer, I believe.

Q. And I was already appointed?

A. As far as I recollect.

Q. Yes. What if I tell that I was appointed in December.

A. December nineteen ninety (1990)?

Q. Yes.

A. Well, then ... then I'm wrong.

Q. Well, if I was appointed, why would you then assure me that everything is fine, and I will be appointed? You just said that you assured me that everything will be fine, I will be integrated, now you saying I already was integrated. How to reconcile those two (2)?

A. Well, I ... my state of mind at the time was simply that I saw no difficulty with your integration into the position, but I did see some difficulty with your behavior, which was not to your advantage, and the purpose of ... of discussing that with you, was simply to get you to behave properly and not jeopardize your chances for future career advancement at the university.

Q. Well, still, would you kindly reconcile two (2), either you told me that I will be integrated or if I was integrated, you couldn't have told me that, reconcile those two (2) please?

A. I just told you to the best of my recollection.

Q. So, was is then the best of ... what is the last of your recollection?

THE COURT:

He's told you to the best of his recollection. Move on to the next question.

Mr. FABRIKANT:

Q. Okay. But ... but you, you didn't know anything about attempts of vice-rector to have me fired in nineteen ninety (1990), did you?

A. No.

Q. No. So, why would you then ... you knew that I was badgering some secretaries, which is such a minor thing, you knew that I was entering some offices, which was not yours, and still, you knew those minor details, and you didn't know such important things that I allegedly threaten to kidnap rector, that I allegedly said that ... something about what to do things in North America (?), you didn't know any of those, never heard?

A. At that time, I don't think I'd heard any of that, no.

Q. Do you think anyone in this room would believe you?

A. Yes, I do.

Q. You do.

THE COURT:

That question is out of order.

Mr. FABRIKANT:

Alright.

Q. But you said ... you said that you knew about my problems yesterday. You said that you knew about my problems in terms of reintegration and promotion, and all this stuff, because ... when I asked you how come did you know that? You said because you are in charge and you have to know about potential grievances, and so on and so forth, so do you recall this statement?

A. Yes, I do.

Q. Okay. So, if you knew that, then definitely, it should not be secret from you, either those threats wherever they were made or not, or attempt of vice-rector to have me fired. You were kept in dark of all that. Only thing which you were told is that I was badgering some secretaries, but you never been told that on this ground vice-rector wanted to have me fired. That was the situation?

A. The issue ... my involvement with the collective agreement is at the level of policy, and one (1) of the difficulties that we had identified is that people like yourself had, up until that time, not been part of the bargaining unit.

Q. You're not answering my question.

A. And, I was aware of some of the difficulties but certainly not all the details that you describe. It's not my business, I have other things to do in life besides worry about the specifics of things like that.

Q. Well, if you bother to take time to learn which office I entered, who did I barger, I think this is more important thing and you should have used your time which was paid to ...

THE COURT:

Listen, your criticism ...

Mr. FABRIKANT:

... (inaudible).

THE COURT:

... your criticism of what the witness did or didn't do, don't add up to questions. So that's disallowed.

Mr. FABRIKANT:

Well, I asked him ...

THE COURT:

You didn't ask him anything, you made a comment.

Mr. FABRIKANT:

Q. Okay. Let me ... let me then reformulate it. How to reconcile your knowledgeability of those minor things, which office I entered, and very vague knowledge of very important thing, whether excellent teacher and excellent researcher might loose his job. How to reconcile it.

A. There are lot of people, lot of faculty members in ... at Concordia University, who are appointed, who ... some of them are new, some of them are not, I ... I don't know who they are, it's not my business to know that. That's handled by the academic sector.

My business is to deal with having a collective agreement, which meets all the needs and addresses the problems that come up. One of the problems that came up was, your kind ... a generic problem to do with you, but not specifically you, the person, and that's what we were trying to correct in writing article 12.05 of the new collective agreement.

Q. Yes. Is this answer to my question? Would you believe that this is answer to the question, how come he knew all this rumor which office I entered, and who I was badgering, and he didn't know details of most specific things that vice-rector wanted to fire me. Is this the answer to the question?

THE COURT:

He told you before that he was not involved in the specifics with regard to each and every person.

Mr. FABRIKANT:

Nn, no, no, he said now something else.

THE COURT:

That's what he said.

Mr. FABRIKANT:

Alright. He answered. According to you he answered the question.

THE COURT:

Not the last, not in the last answer, no. But (inaudible)

Mr. FABRIKANT:

So you agree the last question was not answered?

THE COURT:

The last question you put was not answered, no.

Mr. FABRIKANT:

Q. Okay. Maybe you'll answer that question?

A. Could you repeat it, please.

THE COURT:

See, your questions are rather convoluted most of the time.

Mr. FABRIKANT:

My questions are not convoluted at all.

THE COURT:

Your questions are extremely convoluted.

Mr. FABRIKANT:

When one tries to elude them, then they are convoluted. I would like to respectfully submit, that this is not just ... you know, ordinary administrator, he has I believe Ph.D in mathematics, correct?

THE WITNESS:

Correct.

Mr. FABRIKANT:

So, he might have had, you know, a little bit better than being unable to deal with maybe a little bit convoluted questions.

THE COURT:

Oh, forgive us for not being on your intellectual play, Mr. Fabrikant.

Mr. FABRIKANT:

Not on mine, I'm talking about his intellectual play. He's definitely capable to understand it, and you understood that he didn't answer, so you may be proud, you are on my play. So ...

THE COURT:

Put your question.

Mr. FABRIKANT:

Q. Yes. Question was, how to reconcile that you were able and having enough time to learn information on who I bothered, which office I entered, and at the same time you didn't have time to learn more important things, that the vice-rector wanted to fire me at that time.

A. Look, it's ... it's ... I guess the only analogy I can make, it's like the (inaudible) mail you were sending out in nineteen ninety-two (1992), that I didn't really have the time nor the interest, nor the inclination to go through all of them, but I certainly knew they existed, and in talking to other people, I got the gist of some of the things that were being said. Similarly, I deal with a lot of people in my work, and some information comes out, I don't remember who told me what, after all, we're talking about nineteen ninety (1990), it's three (3) years ago. It's not my job nor my interest to pursue some of these things.

Q. But it's your job to collect rumors who I was badgering, this is your job, hey?

A. Look, you happened to in the office, and I thought that since I heard these things, I would give you some friendly advice, that's what I said yesterday, you could take it or leave it. But I took the opportunity to sit you down and talk to you.

Q. That was not my question. My question was, why did have time to collect all those rumors, not ...

A. I did not collect ... I did not go out of the way to collect rumors.

Q. Well, it looks like this, you know ...

THE COURT:

The witness is in no requirement to justify to you why he knew anything at any given time. And furthermore, your question as usual, is not ... is not ... is not fair, because it starts with a supposition, that the vice-rector wanted to fire you, which I suppose is something that you ...

Mr. FABRIKANT:

Well, it has been established in Court.

THE COURT:

... (inaudible) to you, because as I remember Mr. Proppe's testimony yesterday, he never said that he was aware that the vice-rector wanted to fire you.

Mr. FABRIKANT:

Exactly. But, it has been ...

THE COURT:

So ... so ...

Mr. FABRIKANT:

... established in Court previous witness, previous witnesses have established that pretty clearly. So ...

THE COURT:

You may have your interpretation. Mr. Proppe, you may ask him the question of whether the vice-rector wanted to fire you or not. If he says: yes, the vice-rector wanted to fire you to my knowledge. That's one (1) thing. If he says, as he said yesterday: I have ...

Mr. FABRIKANT:

No, he said that he was not aware.

THE COURT:

I'm sorry ... I'm sorry, let me finish. If he says like he said yesterday, that: I had no knowledge of the fact that the vice-rector wanted to fire you. Then, then that's his answer. So, you of course, try to upset Mr. Proppe's testimony by facturing into your questions something that Mr. Proppe has never agreed to.

Mr. FABRIKANT:

I don't factur...

THE COURT:

And ask him why he didn't take note of this particular piece of information, that he's already said, he didn't even acknowledge as being a fact.

Mr. FABRIKANT:

No, I'm ... I'm ...

THE COURT:

That's ... that's jerking about. That's what that's doing.

Mr. FABRIKANT:

No, I just made a comparison that he knew all those juicy rumors ...

THE COURT:

Yes, well, your question ... your question as it's phrased ...

Mr. FABRIKANT:

... and he didn't know more important fact.

THE COURT:

... your question as it's phrased is disallowed.

Mr. FABRIKANT:

Q. Alright, fine. Were you aware of anything similar in the fall on ninety-one (91)?

A. I ... well, the only incident that I became aware of, again, I don't know who brought it to my attention, was that incident at the senate meeting, I believe that it's fall of ninety-one (91), but I'm not sure, where after the senate meeting, you were ... you were (inaudible) searched, that's all.

Q. Not just searched, arrested. You didn't know that.

A. I didn't know you were arrested, no.

Q. Fantastic. You're probably the only person in Montr,al that doesn't know that. You didn't know ... did ... are you in speaking term with doctor Mackenzie?

A. I speak to her occasionally, I haven't spoken to her for quite a while.

Q. Well, were you at that time in the same office.

A. No.

THE COURT:
Look, the witness has said, he didn't know. Now that is the answer. Would you stop cross-examining him, upon his answer.

Mr. FABRIKANT:
Maybe I'm not cross-examining, maybe I just want to confirm that, yes, he's telling the truth.

THE COURT:
No, you're not gonna confirm that, you'll move on to the next question, he's given his answer and that's that.

Mr. FABRIKANT:
Well, I moved to the next question, I asked him if on speaking terms with Miss Mackenzie.

THE COURT:
Sorry, next subject. You are still talking in terms of knowledge of you being arrested, he said: I didn't know.

Mr. FABRIKANT:
How do you know? I asked him if he knows doctor Mackenzie. Are you clairvoyant?

THE COURT:
Oh, I know where you're going and I know what you're doing, surely. Clairvoyant, no, but I know where you're going.

Mr. FABRIKANT:
So, what? It is forbidden direction? It is irrelevant.

THE COURT:
Well, we'll see where you go from there, leave your questions as it is, you've quickly side step since I intervened, so ... fine.

Mr. FABRIKANT:
Well, maybe this will teach you not to intervene when it is not necessary.

THE COURT:
I have no lessons to learn from you Mr. Fabrikant, believe me.

Mr. FABRIKANT:
Oh, yes.

THE WITNESS:
Did I know doctor Mackenzie, yes. Were we in the same ... we were not even in the same building. So, our paths crossed relatively rarely.

Mr. FABRIKANT:
Q. Well, wasn't she in the office of vice-rector services?
A. Correct.
Q. It is ... what ... what is the distance between your ...
A. Well, it's in the Guy metro building, the corner of de Maisonneuve and Guy street, and I'm in Bishop Court.
Q. Yes. So the distance is what two hundred metres (200m)?
A. Yes, approximately.
Q. Alright. And she never told you anything extraordinary concerning security measures, Fabrikant ...
A. Never, never discussed it with me at all.
Q. And you never heard any rumors on this subject (inaudible)?
A. Well, I just told you what I heard about you being searched after the senate meeting. My understanding was that it was our own security guards, I didn't realize the police had been brought in, but ...
Q. So, when did you realize that the police ...
A. Just ... just when you said you were arrested, just now.
Q. Oh, just ... just today ...

THE COURT:
Now, I stop you now ... I stop you now, you're clearly, you're clearly contrevailing what I said to you. I said to you, the witness had given his answer, he did not know that you were arrested, the subject was closed. You came back to it, as you were told not to do ...

Mr. FABRIKANT:
Well ...

THE COURT:

... you really ... you know, I really ...

Mr. FABRIKANT:

No, I think he brought it up.

THE COURT:

No, you brought it up. Sorry, you brought it up.

Mr. FABRIKANT:

Anyway, I think it's beautiful ending. He knew about my arrest ... he learned about my arrest today. Fantastic, thank you.

Me LECOURS:

No questions.

THE COURT:

No questions, Mr. Lecours. You're free to go Mr. Proppe.

END OF TESTIMONY BY THIS WITNESS.

THE COURT:

Your next witness.

Mr. FABRIKANT:

Well, let's talk to Miss Robitaille.

THE COURT:

Is Mrs Trainer present? She isn't. Okay.

LA GREFFIERE:

(inaudible).

Miss ROBITAILLE:

I'll do it in English, but I would like the interpreter.

THE COURT:

You ... you may testify in French if you wish.

Miss ROBITAILLE:

No, it's alright, I can do it in English, it's just that ... in case ...

THE COURT:

Okay, up to you, it's your choice.

IN THE YEAR NINETEEN HUNDRED NINETY-THREE (1993)

this twenty-sixth (26th) day in the month of May,

PERSONALLY CAME AND APPEAR:

MARIE-ANDREE ROBITAILLE

born on the 2nd of June 1952, executive assistant to the secretary general,
Concordia University,

WHO, after being duly sworn, doth, depose and says as follow,

EXAMINED BY Mr. VALERY FABRIKANT

Representing himself:

THE COURT:

Q. You are the executive assistant to the secretary
general ...

A. Hum, hum.

Q. ... of Concordia ...

A. ... of Concordia University.

Q. If you'd like to sit down for the moment, go ahead.

A. Shall we go?

Me LECOURS:

She would like to start without the interpreter.

THE COURT:

Okay. If you feel you can, go ahead, start without the interpreter and if ...
the slightest difficulties that you get into, just ...

Mr. FABRIKANT:

Q. Okay. Have you brought the documents which I asked you to?

A. On the (inaudible) that you wanted to have documents relative to allocation
of funds granted by Seshadri Sankar from (inaudible), by (inaudible) nineteen

ninety (1990).

Me LECOURS:

This is not relevant, My Lord.

Mr. FABRIKANT:

Not exactly allocation, but ...

Me LECOURS:

What about the grant to Seshadri Sankar (inaudible).

Mr. FABRIKANT:

... who was paid and how much was paid?

THE COURT:

Well, just a second. Let's settle what documents, the documents issue is first (1st) of all.

Q. You have what on the subpoena, what were you required to bring on the subpoena?

A. I have brought what is required by the ...

Q. Just ... just read what ... what's on the subpoena for me.

A. All documents relative to allocation of funds granted to Seshadri Sankar by Ans...(?) from nineteen ninety (1990).

Mr. FABRIKANT:

Q. From nineteen ninety (1990)?

A. That's what it says on ...

THE COURT:

Q. All documents relative to allocation ...

A. Of funds.

Q. ... of funds ...

A. Granted to S. Sankar by Ans...(?) from nineteen ninety (1990).

Mr. FABRIKANT:

Q. May I take cognizance of this subpoena, please.

THE COURT:

Q. When you say by Ansar(?) ... A - N ...

A. Ans...(?).

Me LECOURS:

(inaudible).

THE WITNESS:

(inaudible).

Mr. FABRIKANT:

Mr. Belleau couldn't do even that right. What can I do about it. Now, subpoena is wrong.

Q. Okay. What did you bring?

A. I brought what you asked for.

Q. Okay. May I ... may I take cognizance of what you brought.

Me LECOURS:

Well, My Lord ...

THE COURT:

Just a second. Yes?

Me LECOURS:

What does it have to do with our case? The grants to everybody, you know, grants to Seshadri Sankar, what's the link with our case?

THE COURT:

None that I can see.

Me LECOURS:

When we're concerned with the shooting ...

THE COURT:

None that I can see.

Me LECOURS:

... that occurred during the day of the twenty-fourth (24th) of August.

THE COURT:

I'll ask you ladies and gentlemen to withdraw, it's about that time in any event, and I'll try and sort this out.

HORS JURY.

Me BELLEAU:

For the record, My Lord, I just like to state that the subpoena was sent requesting exactly what professor Fabrikant told me to request.

Mr. FABRIKANT:

Well ...

THE COURT:

Thank you, Mr. Belleau.

Mr. FABRIKANT:

This is not what I told him.

THE COURT:

Now ...

Mr. FABRIKANT:

Next time I'll have to check what he is writing.

THE COURT:

What ... in what remote manner could documents relative to the allocation of funds either granted to or allocation of funds made by S. Sankar be pertinent to this case.

Mr. FABRIKANT:

Very simple.

THE COURT:

I'm sure it is, but perhaps you'll explain it.

Mr. FABRIKANT:

Yes. I need to show to the Court that I was dealing with criminals, who used governmental funds to bribe governmental officials, and then from that official get contracts for their private companies in huge amounts. Receiving this contract from government for their private companies, they used graduate students paid by the university and university equipment to do the work and pocketed the money. Now, this is one (1) missing link, which university tries to cover up. In order to get those contracts, first (1st), university professors get grants from government, from granting agencies. This is not such big money, but those money, he cannot put into his pocket. He can pay everybody else, but he cannot pay to himself. And this money was used to pay everybody else. I have received information from Ans...(?), indicating that on one (1) grant, for example, about two hundred and thirty thousand dollars (\$230 000) out of two hundred and fifty (250), more than ninety per cent (90%) of grant were paid outside the university. On another grant, again about one hundred and fifty thousand (150 000), I believe, more than seventy-five (75%) were paid outside the university. If you take a look at typical grants, even those people who are not that great in honesty, I made comparison with grants received by Swamy, Osmen, people who ... even they, did not have that kind of proportion, their proportion was, outside the university, maximum about thirty per cent (30%). Because, main...(?), grants go to fund expenses inside, for equipment, for graduate students, for obligations, for computing expenses, but not to someone outside the university. In case of Sankar, a demand total to about a million dollars (\$1 000 000 000) paid to some mysterious people outside the university. Now, I asked while being in the university, paralyzing questions, questions which paralyzes, okay, so, secretary general, I asked who was paid and how much. And they got so paralyzed that they refused to give me this information. So, I went to Commission d'AccŠs ... l'Information, and the hearing was supposed to be in the fall of ninety-two (92). And the university just wrote a small memo, saying that: we are unable to attend, would you please postpone it. And, of course, Commission did postpone it. And then, they postponed to March fifth (5th), and this is why I scheduled my trial on March eighth (8th) hoping that on March fifth (5th), I will be able to attend and get the information. Well, think again, they again wrote small memo with the same text, no explanation needed, why they are unable to attend, they were just unable to attend. And again, Commission d'AccŠs ... l'Information responded: alright, we postpone it. And this time, they postponed it in such a way that no next day as been set, even now since March, I still haven't received anything from Commission d'AccŠs ... l'Information, as to when they are going to hear me. So, it is extremely important to me, in order for the jury to show that indeed, because

as you know, what I finally will try to show to the jury, that those bandits effectively put me an ultimatum, either they put me in jail or get three (3) year salary, shut-up and get out of the university. And this is bandit tactics. And for the jury to be convince that I was dealing with bandits, I need this information to show that indeed, those people (inaudible) are criminals. This is relevant, because this will reinforce in the mind of the jury when I show evidence, at least one (1) of them being criminal, and university administration covering up. Then they would believe into the kind of provocation I was victim of, because the provocation is incredible. And unless I establish foundation for such provocation, that people who were criminals and were sure that sooner or later I'll get them, they took their desperate measure. And if this link is missing, then my defense is jeopardy.

Me LECOURS:

Well, My Lord, if we twist the rules of relevance, we might find some ... some material, let's say in the DPC report concerning Mr. Fabrikant, but we're miles away with the Royal Commission of Inquiry into university grants.

Mr. FABRIKANT:

I'm not asking for any Royal Commission, all I'm asking is information which I'm entitled under Access to Information Act, anyway, as a citizen of Canada. And, the only thing I ask this Court to do, is to speed it up because Commission d'Accès just clearly boycotted the whole thing. That's all.

THE COURT:

Can I go back to some of your introductory words.

Mr. FABRIKANT:

Yes.

THE COURT:

After this ... chit-chat about the subpoena. You mentioned the word, criminals. What did you say, you were dealing with criminals, was that what you said?

Mr. FABRIKANT:

Yes.

THE COURT:

Who would use government funds, and then you referred to private companies. What ... would you elucidate?

Mr. FABRIKANT:

Oh, yes. Every professor in Canadian university has grant from Natural Sciences and Engineering Research Council of Canada, abbreviation N.S.E.R.C.C., this grant is usually not very big, say thirty thousand (30 000) per year, fifty thousand (50 000), if it is strategic it might go to hundred thousand dollars (\$100 000). This money, professor cannot pay to himself a single penny ...

THE COURT:

No, you ... you ... I've got that. So, you said that these moneys were used to pay staff.

Mr. FABRIKANT:

This money were used to pay somebody outside university in case of Seshadri Sankar. Outside university.

Me LECOURS:

But again, My Lord, we should see the ... I guess there's a contract for a grant or there are some rules or modalities ...

THE COURT:

Anyway, before we ...

Mr. FABRIKANT:

There are no rules for (inaudible) ...

THE COURT:

Then you referred to private companies.

Mr. FABRIKANT:

Well ...

THE COURT:

You referred to use of government funds and you referred to private

companies, I'm just trying to understand what you said.

Mr. FABRIKANT:

Okay. So, the logic is like this, professor cannot pay to himself. So, he pays to some governmental official who is in charge of his bursing governmental contract or to some intermediary between those two (2). And, this payment usually made for mysterial(?) consulting, you can always write he did consulting and nobody asks you whether he did or didn't do any consulting.

THE COURT:

Hum, hum.

Mr. FABRIKANT:

So, after this money from the grant are paid to these people, then professor in question goes to Place Victoria, pays ten dollars (\$10 00) and founds his own one (1) person company. Now, he's the president of that company. For example, Seshadri Sankar is president of three (3) companies. One (1) person companies, no employees. Then he goes to this government official, say Department of Supplies and Services, or Transport Canada, where he got his contract from, and applies for a contract, and of course, he gets the contract, like four hundred thousand dollars (\$400 000). Now, it is contract for his private company, so he can pay himself as much as he chooses. And, he uses graduate students or professors who are under his supervision like Sankar did, because he was ... he's director of Concave Research Center, and they do the job. They are paid by the university, they're using university equipment and everything, and they just pocket the money. And this is a very nice way of doing business. You don't have to hire building, you don't have to hire equipment, you don't have to hire employees, university does it for you. All you have to do is to found a one (1) person company, be president of that company and you get all the money. And I have proof of all this stuff with one (1) chain is missing only.

And this is the chain I'm asking for. Because, what I have right now, I have two (2) contracts which were awarded to Seshadri Sankar's private company, one (1) on liquid tankers stability, it costs tax payers two hundred and eighty thousand dollars (\$280 000), of which according to my ... to the documents which I obtained, Seshadri Sankar got to himself about one hundred and twelve thousand dollars (\$112 000). The second (2nd) contract he got from the same Transport Canada, in the amount of four hundred and forty-four thousand dollars (\$444 000), this is for his other private company, and there are lot of questions there, because this is in progress right now. As soon as he learned that I'm investigating the case, he at least started paying some people more or less, kind of salary. Before, he didn't. As far as the first (1st) contract is concerned, the whole work was done by graduate student, named Radgan Nathan(?), I have subpoenaed his dissertation, he did Ph.D. degree. He never received one (1) penny of that money. The report which was written to Transport Canada, justifying the expense of two hundred and eighty thousand dollars (\$280 000), is a small brochure, I have to, and I will be prepared to present it to Court. And, one doesn't have to be a specialist to understand that this report is just an abbreviated version of the dissertation, because if you look just what is in there, you can find one to one correspondance what is in dissertation. Dissertation is just thicker, so not everything of what is in dissertation in the report, but whatever is in the report, is in the dissertation and I identified each part. So, one doesn't have to a specialist, if you know how to read English and how to understand the ... you know, to compare one picture with another picture, to say, yes this picture is exactly this picture, that much qualification is required to understand that this report is just an abbreviated version of the dissertation. And this is something for which Seshadri Sankar got over a hundred thousand dollars (\$100 000). And I have recorded conversation with that student to, where he confirms that effectively he did all the work. But what is missing link is, how he got this contract in the first place, he's not a specialist, he never published a single paper of his own. So ...

THE COURT:

You're talking about Sankar, now.

Mr. FABRIKANT:

Seshadri Sankar, yes.

THE COURT:

Yes.

Mr. FABRIKANT:

Previous spending of those grants will provide this missing link and explanation. How come such a person who has absolutely no scientific credentials, got tremendous contracts from the government, that would be the explanation. And this is what I ask the university to provide and this is what the university, together with complicity of Commission de l'Accès ... l'Information, refuses to do. And the relevance again, it's quite obvious, those people were desperate, to shut me up, and they used bandit methods to do that. And unless I'm able to present it to the jury, it would be very difficult for them to understand what happened on August twenty-fourth (24th).

THE COURT:

Have you anything to say?

Me LECOURS:

No, My Lord. I made my point. The only thing is, he ... through his explanation he just confirmed to me that it's irrelevant, it's much too wide for this case. And, I understand also that there is or will be a Royal Commission of Inquiry into university grants and university ethic and things like that, in the next months.

Mr. FABRIKANT:

Well, I must respectfully submit, that I couldn't care less if there will or will be no Royal Commission, what I am concerned with is my defense. I'm facing first (1st) degree murder, and I believe I'm entitled to full defense, Royal or no Royal ... Royal Commission has absolutely nothing to do with my case.

THE COURT:

Even if everything you said was true, what can this possibly have to do with the events of the twenty-fourth (24th) of August?

Mr. FABRIKANT:

Simple. It is all one gang. It is not Sankar himself, Osmen himself, Hoa himself, they assaulted me four (4) of them. This is indication of people being ganged. Swamy is one (1) of them, and the whole thing is ... was done in total collaboration and cooperation, it was not that Swamy and Sankar decided to put this contempt of Court motion, irrelevant to what Seshadri Sankar did or had, it is one (inaudible). They needed to get rid of me, and each had their own reasons. Swamy, because he was co-author of several papers which he didn't contribute anything, (inaudible) Sankar got about thirty-five (35) of those. Seshadri Sankar, I will show that he tried to extort papers from me in exchange for promotion or any other favors, but each time, my contract was renewal, it was Seshadri Sankar who was my immediate boss, who tried to do the extortion. So Seshadri Sankar is not out of picture. He's in, very well in. And the tape which I presented, on this tape, it is clear that he's telling me eighty-eight (88), that he intend to give me one (1) more year, after which I'm fired. With no explanation, with no reasons, and I had to understand myself the reasons. I stopped including those people into my articles. So, it is all interolved(?) like this, it's not that Seshadri Sankar is outside, they're all inside, each with their particular crime.

THE COURT:

I don't see how this could possibly relates to your defense to four (4) murder charges which occurred in nineteen ninety-two (1992). This ... this may all be very interesting, this may all be the subject of some long ranging inquiry, this may be the subject of civil proceedings, this may be the subject of a number of inquiries, but I cannot remotely see how any of this is pertinent to your defense in a murder trial.

Mr. FABRIKANT:

I just explained to you how it is pertinent, I ...

THE COURT:

I know, you ... it may be pertinent to you, but ...

Mr. FABRIKANT:

I need to explain to the jury ...

THE COURT:

... it's not pertinent to me.

Mr. FABRIKANT:

... that I was dealing with criminals. Is this important? That I was dealing with criminals and when you are dealing with criminals, you have no choice but to take justice in your own hands. Is this true?

THE COURT:

But that's not a defense in this country.

Mr. FABRIKANT:

What?

THE COURT:

That is not a defense in this country.

Mr. FABRIKANT:

What do you mean ...

THE COURT:

If you felt you were dealing with criminals, I presume that there were avenues opened to you, you could have made reports to ...

Mr. FABRIKANT:

I made the reports.

THE COURT:

... whatever ...

Mr. FABRIKANT:

I made the reports. This is what I want to present to the jury, the total picture.

THE COURT:

But ... but nowhere does it become a defense in Law, to diminish your responsibility by saying that, I was entitled in the circumstances to take matters into my own hands. That's nonsense.

Mr. FABRIKANT:

No, no, no, you didn't understand what I said. I said that I didn't plan to kill anyone, what I'm saying, to take justice in my own hands, the only intent of mine was to threaten Hogben sufficiently that he will convey to all other bandits that they would let me alone. That's all. And, I want to show to the jury that there was no other way of doing this.

THE COURT:

I am not going to permit you to embark on any of this.

Mr. FABRIKANT:

Well, you want to protect Concordia, what can I do.

THE COURT:

I have no desire to protect anybody. If what you say is true ...

Mr. FABRIKANT:

I think that my explanation is so clear and logical.

THE COURT:

... if what you say is true, I would suppose that this will come out at some inquiry somewhere or other. But the inquiry that is not gonna come out at, is your murder trial. So, if ... if the question is, are we going to see a whole line of evidence pinched off, yes we are. We are not going into the ... to the allegations that you ... that you made over last half («) hour concerning the obtaining, misuse and siphoning off of government funds, whether through the research center or anything else, it is simply not pertinent to these proceedings.

Mr. FABRIKANT:

Well, how then I will show to the jury these bandits plot against me.

THE COURT:

I don't know how you'll show that to the jury, I don't even know if there was a bandit plot against you.

Mr. FABRIKANT:

Well, if ...

THE COURT:

But you're not going... however you do it, you're not going to do it through an auditing of the financial transactions of Sankar's companies or anything else. We'll adjourn for fifteen (15) minutes.

SUSPENSION

REPRISE

ASSERMENTATION DE L'INTERPRETE

Madame Sandra Trainor, interpręte officielle, jure sur les Saints Evangiles de traduire fidęlement et au meilleur de sa connaissance de l'anglais au franęais et du franęais ... l'anglais les propos tenus devant la Cour.

Note: Pour les besoins de la cause, les interventions de l'interpręte seront identifi,es par un tiret (-).

Me LECOURS:

Well, My Lord, on what is she going to testify.

THE COURT:

I have no idea, but as far as the documents that are covered by the subpoena, are concerned, I have already ruled that these are not pertinent to these proceedings.

Mr. FABRIKANT:

Well, if we have crooks protected by the university and at the same time protected by the judge, then part of my defense is ...

THE COURT:

If we have what ... if we have what, did you say?

Mr. FABRIKANT:

Crooks protected partly by the judge, you may write it, it's 1144, then how can I present my full defense, because part of my defense is to show that I was dealing with criminals. You do not allow this evidence to be presented to the jury, how the jury would be able to understand the atmosphere I was in ...

THE COURT:

I've already ruled that the question ... what you raised, the grants to Sankar, Sankar's companies, the question of the information you wanted relating to Sankar's companies, are not pertinent to the proceedings before us.

Mr. FABRIKANT:

Well, how then I'll be able ...

THE COURT:

I'm not here to counsel you Mr. Fabrikant, and I'm not going to counsel you.

Mr. FABRIKANT:

I have not a question of counselling, I'm just telling you that jury would not be able then to appreciate the situation that I was dealing with bandits, rather than with normal people.

THE COURT:

Mr. Fabrikant ...

Mr. FABRIKANT:

And ...

THE COURT:

... what your ... what your state of mind was at any given time is something else. What I am saying to you is that the whole question of the ... of the grants in general to professors, of Sankar and other's conduct, as far as grants from the government is concerned, and the use of their companies or whatever may well be the food for some far reaching investigation, I ... I don't doubt that. And I take exception to your unwarranted comment that I'm in the business of protecting crooks. I'm not in the business of protecting crooks in any sense of the word.

Mr. FABRIKANT:

Wel ...

THE COURT:

But ... but I have to decide what is pertinent to a murder trial. And none of that, is pertinent to the events of the twenty-fourth (24th) of August nineteen ninety-two (1992) in a direct sense.

Mr. FABRIKANT:

If a person claims that he was surrounded by bandits, who not just physically

assaulted him, but also threaten to put him in jail, do I have to present to the jury that they had good reasons to do all this, that their bandits behavior was well founded and well documented.

THE COURT:

I have no idea what you would choose to present to the jury, what I'm ...

Mr. FABRIKANT:

No, but you do not allow me to present it to the jury.

THE COURT:

... what I'm saying is, I'm not ... if you wish to go through this ... this act, because I brought the jury back in, that's fine. I'm ... I have absolutely no problem with this jury, I'm able to tell this jury what ... what to disregard and what not to disregard.

Mr. FABRIKANT:

Alright.

THE COURT:

I have told you that we are not getting into a financial auditing of the operations of the companies of Mr. Sankar.

Mr. FABRIKANT:

This is not financial auditing. This is showing that they had good reasons to mistreat me.

THE COURT:

Do you understand what "no" means?

Mr. FABRIKANT:

I do understand what, no, means.

THE COURT:

Alright, it says, no. We're getting into this information, in relation to Sankar's companies.

Mr. FABRIKANT:

Well, I will need to call him to testify. I will need to confront him with certain documents ...

THE COURT:

You may ...

Mr. FABRIKANT:

...and you are refusing those documents to me.

THE COURT:

I am going no further than the question of the documents at the moment. You may have other questions you wish to put to Sankar, that might be perfectly admissible.

Mr. FABRIKANT:

Well, this ... also I need ...

THE COURT:

Which bear on your state of mind. But, what we are not doing is we are not going through the question of grants to Sankar's companies, and how they were spent.

Mr. FABRIKANT:

Well, I will question him, did you or didn't you ...

THE COURT:

Let's ... let's ... have any other questions for this witness? That's where we are now.

Mr. FABRIKANT:

Q. Okay. What documents did you bring with you? May I take a look at what you brought with you?

A. I have information which you requested access to, on May first (1st), concerning Malenfant. And, I have the information on Sankar.

Q. Okay. May I take cognizance with what you have.

A. The accused has already received all these documents, they were sent to him on May twenty-second (22nd).

THE COURT:

Q. Pursuant to the Access of Information Act.

A. Yes.

Q. I see.

Mr. FABRIKANT:

Well, let me take cognizance of what is in there now.

THE COURT:

But, if I've ruled that the documents are not relevant to these proceedings, what are we waisting our time for?

Mr. FABRIKANT:

Well, this is something else, this is different. What she brought is not what I asked for.

THE COURT:

If you have the documents, there is absolutely no reason, why she should pass you her file and have you go through the documents. If the documents have been furnished to you, they've been furnished to you. So, you look in your box and get them out.

Mr. FABRIKANT:

Well, I don't have any box with me.

THE COURT:

Well, then, that's not my problem.

Mr. FABRIKANT:

If you want to continue your biassed way of doing this trial, continue. What can I do, there is not much I can do. You just don't allow me to conduct my defense.

THE COURT:

I have decided that the question of Sankar's companies and government grants to Sankar's companies, is not pertinent to your defense.

Mr. FABRIKANT:

It is not question of those funds ...

THE COURT:

Okay.

Mr. FABRIKANT:

... it is question that this grant was spent outside university to bribe officials and then ...

THE COURT:

That is not pertinent to the subject ...

Mr. FABRIKANT:

It is pertinent. How then ...

THE COURT:

Listen, I'm not going to argue with you all day. If you have no further questions to put to the witness will release the witness.

Mr. FABRIKANT:

You don't allow me to do anything. What is the point.

THE COURT:

Thank you very much, madame Robitaille, you're free to go.

Me LECOURS:

No questions, My Lord.

END OF TESTIMONY BY THIS WITNESS.

Mr. FABRIKANT:

I just hope one day for your activity, you will be here. And, some honest person will be sitting there.

THE COURT:

Next witness.

Mr. FABRIKANT:

Fancott.

THE COURT:

Would you mark in the procšs-verbal, please, eleven fifty (11:50) this morning, madame Desrosiers, and obtain the exact words of Mr. Fabrikant.

Mr. FABRIKANT:

Yes. On day you will be sitting here, and some honest person will be sitting there. Those were exact words.

IN THE YEAR NINETEEN HUNDRED NINETY-THREE (1993)
this twenty-sixth (26th) day in the month of May,

PERSONALLY CAME AND APPEARED:

TERRYLE FANCOTT

born on the 24th of October 1939, associate dean of the faculty of engineering
& computer sciences, Concordia University,

WHO, after being duly sworn, doth, depose and says as follows,

EXAMINED BY Mr. VALERY FABRIKANT

Representing himself:

Q. Could you please describe August twenty-fourth (24th), the coffee party which
you had with Swamy and ... who else, this ... this ... describe please this ...

A. Your Honor, there was no coffee party as such.

Q. Okay.

THE COURT:

Q. Mr. Fancott, you are talking to the jury, okay.

Mr. FABRIKANT:

Q. You were taking ... okay, you were taking coffee. Who was present there?

</pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">A.

Doctor Matthew Douglas, and myself and doctor Swamy.

Q. Okay. Now, after that what happened immediately, during this taking coffee, somebody else appeared?

A. You will have read my testimony which I wrote down before the police, and in that testimony I stated that Susan passed briefly and Swamy left with Susan.

THE COURT:

Q. Okay. Now, just a second. He may have read whatever you're referring to, but that is for the minute, foreign to these proceedings. So basing yourself on your memory, testify

and answer to his questions.

A. Yes, Your Honor.

Q. Okay.

Mr. FABRIKANT:

Q. Could you ... could you explain what does it mean, Susan passed briefly? Describe this

scene in more details?

A. Susan appeared at the door, mentioned something to doctor Swamy, and the two (2) left.

Q. Could you indicate on this scene where were you, where Miss Altimas was and ... after that I will have another question. So, is it possible to get a map to the witness.

THE COURT:

Vous voulez dire avec ... just ... just a second.

Mr. FABRIKANT:

Or maybe more detailed 907, would be better, detailed 907, I think. (inaudible).

THE WITNESS:

Room 907-11, the door gives on to 907-10. We were inside 907-11, and Susan passed outside the door. She did not enter the room.

Mr. FABRIKANT:

Q. So, what did she say to Swamy?

A. I have no idea, Your Honor. I did not hear anything.

Q. She just passed to the door and said: come here, or something?

THE COURT:

He said: I don't know what she said.

THE WITNESS:

I have no idea, Your Honor. I did not hear what she said.

Mr. FABRIKANT:

Q. But, how did you realize that she was calling Swamy and not you?

A. Because Swamy left with her, Your Honor.

Q. But you didn't hear a single word ...

A. I did not hear a single word, Your Honor.

Q. And Swamy never reappeared from this ...

A. Swamy left, Your Honor, and I did not see him until after the event. So, I did not see

him again on August the twenty-fourth (24th).

Q. So, Miss Altimas didn't tell you that there was shooting in 929?

A. I heard nothing from Miss Altimas, Your Honor.

Q. And Swamy didn't bother to return and tell you that either?

R. Swamy left the area, Your Honor, with Miss Altimas. I cannot speculate where Swamy went, right now (inaudible).

Q. No, I asked she did not return to tell ...

A. I have stated that I did not see Swamy after he left with Miss Altimas.

THE COURT:

His words were, Swamy left and I did not see him again on August twenty-fourth (24th).

Mr. FABRIKANT:

Alright. Thank you.

Me LECOURS:

No question, My Lord.

THE COURT:

Thank you very much, dean Fancott.

END OF TESTIMONY BY THIS WITNESS.

Mr. FABRIKANT:

Okay. Who else do we have today. Chacouri, is he in today?

IN THE YEAR NINETEEN HUNDRED NINETY-THREE (1993)
this twenty-sixth (26th) day in the month of May,

PERSONALLY CAME AND APPEARED:

RAFIC CHAHOURI

born on the 25th of June 1959, electrical engineer,

WHO, after being duly sworn, doth, depose and says as follows,

EXAMINED BY Mr. VALERY FABRIKANT

Representing himself:

Q. Mr. Chahouri, you are employed at Concordia university?

A. No.

Q. Did you make at any time any statement to the police?

A. Yes. Right after they brought me down from the ninth (9th) floor, I did.

Q. Yes. And you made statement right at the university?

A. Yes, right there. But, a short one, about like ten (10) to fifteen (15) minutes and I left.

Q. Hum, hum. Okay. Do you remember what was the policeman who took the ...

A. No, not really.

Q. ... but it was a policeman who took your statement?

A. The first (1st) one, when I was brought down from ninth (9th) floor, yes, it was a policeman.

Q. Who took your statement.

A. The first (1st) one ...

Q. Okay. And, you said that there was yet another statement to the police, to?

A. No, not really, I wasn't called for another statement.

Q. Ah, okay. So, but one (1) statement was made.

A. Yes. And, I recall a police woman, female police not a man ...

Q. Took the statement.

A. Yes.

Q. I hope, you remember Mr. Martin that Crown insisted they didn't have any statement for Mr. Chahouri.

Me LECOURS:

I don't.

Mr. FABRIKANT:

Well, someone is here who is not telling the truth, is it.

THE COURT:

Have any further questions to put ...

Mr. FABRIKANT:

Oh yes, I do.

THE COURT:

Good, good.

Mr. FABRIKANT:

Q. Okay. Could you explain if you are not employed at Concordia University, how did it happen that you were on August twenty-fourth (24th) at Concordia?

A. I ... that was my first (1st) day to come to collect information, how I will apply as an independant student to go for my master degree. That was my first (1st) day. I was

collecting information, I did have mailed them before application, and I talked to them

on the telephone regarding the application, but that was my first (1st) day to come forward to finalize the application, to apply for independent student.

Q. Okay. And, just describe in maybe more details, where were you in the afternoon on August twenty-fourth (24th), where you saw me, in as more details as possible?

A. I walked at the dean, the dean's office, I believe that's what it's called, where the desk

secretary ... I believe it's in the dean's office, I was talking to one (1) secretary, and I

was waiting because they wanted to bring my file, which I mailed to them. And, about ten (10) minutes later, two (2) men came running, and they were telling: call the police,

call 9-1-1, call security. And one (1) particular professor he came forward to one (1)

secretary, he told her (inaudible) blood. And, they were talking like they know the area,

and they know each other, I mean, I'm outside, I just came watching. So, I came forward to him and I told him ... I thought it's just a fight, a hand fight, I told him: can

I help? So, he said: no, everybody leave the room. So, I ... everybody by that time, like, I was away from the door, so they left before me, there was two (2) guys also, I think students or something. So, as I was leaving the room, following the

instructions

the gentleman said, and I left the room, I'm not familiar with the university very well,

so there was the corridor in my left, and there's the corridor in my front, and there's a

door going right hand. So, I took left side. I didn't know that, that corridor doesn't

lead to exit, it only leads to another door. And, that's when I saw you, coming with a

gun in your hand, you didn't have a tie by that time, you had a dark ... dark suit, light

shirt, it was opened, your hair was a little bit up in a way, you didn't have the glasses.

I ... I didn't notice the gun at the first (1st) second, when I came close to you, about two

(2), three (3) metres, as I said I'm just trying to leave the building, that's what they told

me. So, I notice that you had the gun in your hand, and it was a small gun, then. I didn't know what the situation was, I didn't know what the whole thing was about, but I knew at that moment, that you had the gun in your hand, somebody was running in the office (inaudible) blood, and then call 9-1... I noticed that there is something abnormal.

So, I wanted to find a place to go in, because I ... I looked, I turned my back ... I turned actually my back to you, because you were coming towards that direction, towards that office where I just came out. So, I turned my back to you, like that, well,

I have to find a place to hide anyway. And there was a door which is the one in front of me, the one in the right hand, and there was a lady ... there was a lady trying to get

out of that door to see what's happening outside, I believe she is (inaudible). So I was

in front of her. In a way I was ... I told her: go in, there's a man with a gun, just go

in. So I kind of pushed her in a way, and we went both together in the room, we closed

the door, and after that I heard the shot. I heard the shot which came from the left side,

which is exactly the same room where I was, which is the dean's room. When I heard

the shots, I knew that it was something, you know ...

Q. Is it possible for you on the map, here, to indicate the corridor in which you were ...

A. If you show me that ... that floor only, like, I'm not familiar with the whole area.

Q. Yes, this is the floor. Now, 907 at the bottom of the picture.

A. Okay. So this is the dean's room. Yes, this is the corridor here, this is the second (2nd)

corridor, this is the door, yes. I was coming out from here, I came this direction, you

were coming this direction, this way here. That's where we met, and I turned my back right here, I was about like two (2), three (3) metres from you. You were walking

very slowly, very calm, very slowly, like, very slowly. And, I turned my back to you here and I came right in this door. And this door here, where the lady was coming out, she

was just opening the door to see what's happening outside. We came in, I closed the door, and I hear the shots coming from this corner, could I want when I closed the door,

I figured out, the shots could go through the door, it's a wood door. And, so I went in

this concrete wall, in behind this concrete wall, and that where the shots I hear very close to me. Very close to my ear, in this corner.

Q. You see, I found you from the newspaper report, and there you were quoted, that I was walking like robot.

A. No, oh no, I ... I have it in newspaper with me, I said you were walking very calmly. I have the newspaper with me, you were walking very calmly.

Q. Yes, but did you use the word like a robot?

A. No, not at all. I said very calmly. Very slowly and very calmly, that's what I said. I

never said that any robot, or anything else.

Q. Okay. Those words that I was very scary ...

A. I did mention that. I did look at your eyes, you had very scary eyes, I ... I was scared

myself. I mean ... I mean, when you see ... you know, a man with a gun, you are in a hallway of university, you're not in that mood, and I looked at your eyes, you were very, very tired and scary, like ... the first (1st) thing that came ... the first (1st) thing

that came to my mind was just the Polytechnique issue. I mean, I just heard it in the news, I'm in Montreal by that time, and I said: well here again. You know, this gentleman is gonna shoot everyone, and ... well, you didn't, you didn't, you had a chance to kill me and you didn't do it. And, I want to thank you for it, I never got

a chance to say that.

Q. Well, I had no intention to kill neither you nor anyone.

THE COURT:

Q. This thank you ... this thank you and no thank you routine has nothing to do with the question, you're here to answer.

A. No, I know. But ... but this is something that's been bothering me for the ... for the

last, from the last time, and I just wanted to say it. I don't know if I have the right to

...
Q. I think you just answer the questions that are put to you, and that'll do us very well,

thank you very much.

Mr. FABRIKANT:

Well, I understand his feelings.

Q. Did ... did at any time, our eyes met or something?

A. Yes. I ...

Q. They did.

A. ... I don't know if you remember me, I don't know if you are in that situation. But my eyes went very straight to your eyes.

Q. Well, was your impression that I do see you or I just look through you? How was that?

A. The impression was ... is you're not seeing no one in front of you. The impression was, like you're walking for a particular target or somewhere ... I mean, the impression I got is your eyes were like so closed that you're not seeing anything else except what you're (inaudible).

Q. So ...

A. So, I got away from your way, I want like ... like nobody stands in my way anyway.

Q. So, I didn't really see you though I was looking at you, I didn't ...

Me LECOURS:
He could ...

THE COURT:
How could he tell? That question ... that question is disallowed.

THE WITNESS:
But this is my feeling.

THE COURT:
Second. We're not interested in your feelings. That last question is leading, and the last question is disallowed.

Mr. FABRIKANT:
Well, he effectively said that, I just repeated what he said.

THE COURT:
You don't repeat what he says, put your question.

Me LECOURS:
And the answer as well is struck from the record.

THE COURT:
And the answer is struck from the record.

Me LECOURS:
He could not definitely know whether fabrikant saw him or not.

Mr. FABRIKANT:
I don't understand, you want to say it again.

THE COURT:
There is no way he can see inside your mind and know whether you can see him or not.

Mr. FABRIKANT:
Well, this is not ... was not my question.

THE COURT:
Then you better reformulate your question, and don't answer the question until the question is asked.

Mr. FABRIKANT:
My gosh, you are so scared that he will give some useful information.

THE COURT:
Mr. Fabrikant, I am trying to make sure that you follow the rules. That's all.

Mr. FABRIKANT:
Well, in this particular case you could (inaudible) ...

THE COURT:
And you're not following the rule, Mr. Fabrikant.

Mr. FABRIKANT:
... very concerned with the answer. Well, what was wrong with my question when I asked him ...

THE COURT:
Put your question.

Mr. FABRIKANT:
... that, when two (2) people meet, and they exchange eye contact, it is easy to see whether ...

THE COURT:
Don't make me a speech, put your question to the witness.

Mr. FABRIKANT:

Q. So, from the eye contact which we made, what was your conclusion? Or could you make any conclusion whether I have really noticed you or I did not.

A. I cannot anymore, I mean, I just answer the question, because I did a moment for a very short quick second, and I just (inaudible) read your mind, but this is the ... what I end up ... it's very quick, you have to understand, it's very quick short period of time, you cannot make a big conclusion out of it. I was ... I saw the gun, I saw you, I had to get out, I mean, I just ... this is what came in my mind, I have to get out from there.

Q. Hum, hum. Okay. But when you said that I saw not seeing anything, except for what I was aiming at ...

A. This is my own ... this is my own personal opinion or judgement at that particular moment. When I looked at your eyes, this is my own judgement, I say again, my own judgement ...

Q. Well this is what you are here for, so ...

A. ... yes, this is ... but ...

Q. ... so, your judgement was what, say it again?

A. My judgement ... is that what you'd like to hear, Your Honor, or ...

THE COURT:

Q. You answer the question, there's no objection so far.

A. My judgement was in you are not running to kill everyone as a whole, no, your eyes was telling in a way that you have particular person, particular target, you were trying to

reach, but no one stands in my way, this is what my judgement. That's when I looked at your eyes, it was very, very, very, very wide open, very scary, they were shiny (inaudible). I know when I see eyes, I've been in the war myself. I know that story. But that particular moment, I knew I had to get out of your way, and that's what I

did.

When you didn't shoot me in the back when I turned towards the office, when you had the chance, I knew that moment, you were not aiming at me. You could shot me, but you didn't do it.

Mr. FABRIKANT:

Okay.

Me LECOURS:

No, questions, My Lord.

THE COURT:

Okay.

END OF TESTIMONY BY THIS WITNESS.

Mr. FABRIKANT:

Who else is in today?

Me BELLEAU:

Smith, Morris.

Mr. FABRIKANT:

So, we don't have witnesses today.

Me BELLEAU:

Smith, Morris, there here ... if there here.

Mr. FABRIKANT:

But they don't documents. And we don't have anymore witnesses.

THE COURT:

Smith and Morris were subpoenaed this morning, do you want to hear them? Or don't you want to hear them?

Mr. FABRIKANT:

I want to hear them.

THE COURT:

You want to hear them.

Mr. FABRIKANT:

Yes. Call Morris.

Me FREEDMAN:

My Lord, may I address the Court, my name is Brian Freedman, legal counsel for Concordia University. I had a discussion with Mr. Fabrikant this morning, about Mr. Morris. I informed him that the documents that were subpoenaed for Mr. Morris were not under his control, Mr. Morris being a secretary, the documents being subpoenaed being documents belonging to the chairman, doctor Osmen. Doctor Fabrikant then said: that's fine, I'll subpoena Osmen. I then said: so, I can send Mr. Morris home because he has no documents. He said: yes. Mr. Morris is not here.

THE COURT:

Okay. Thank you.

Mr. FABRIKANT:

Okay. So, who do we have else?

Me BELLEAU:

Smith was subpoenaed for today.

Me FREEDMAN:

I once again spoke to Mr. Fabrikant, about Mr. Smith ...

THE COURT:

Better ... better get your gown out of ...

Me FREEDMAN:

I ... I'm sorry, My Lord, I apologize. I don't usually litigate. And again documents

in exchange for Mr. Smith not testifying, documents that were subpoenaed were provided directly to Mr. Fabrikant this morning.

Mr. FABRIKANT:

Looks like we don't have any witnesses.

THE COURT:

Well, I would suggest that I'll adjourn now, and that you ... that you decide pretty quickly which route you propose to take this afternoon. If you propose to ...

Mr. FABRIKANT:

Well, you have good opportunity to close my defense.

THE COURT:

Pardon?

Mr. FABRIKANT:

You have good opportunity to close my defense.

THE COURT:

I would suggest that you decide over lunch hour, who you propose to call this

afternoon, I suggest you tell ... you tell Mr. Belleau now, so that arrangements can be made, if you wish anyone from Concordia University ...

Mr. FABRIKANT:

Well, I think we can make it quickly, instead of Morris ...

THE COURT:

Excuse me ... excuse me, ladies and gentlemen, I'll excuse you until two fifteen

(14:15).
HORS JURY.

Mr. FABRIKANT:

Well, we can ... I believe, instead of Mr. Morris, to call the appropriate secretary

who has access to the documents and be here after the break.

Me FREEDMAN:

I'm not all certain, My Lord, whether secretaries have access to these documents. The documents are merits, all the merits ... documents for nineteen ninety (1990), not

ninety-

one (91) ...

Mr. FABRIKANT:

Nineteen ninety-nine (1999)(sic).

Me FREEDMAN:

... I don't have the subpoena in front of me, but it's a rather lengthy list of

documents, and I honestly do not know whether secretaries have access to that. I know for a fact that one (1) document subpoenaed is in doctor Osmen personal possession. I don't even

believe it's in the office.

Mr. FABRIKANT:

Well, I have no objection that Osmen brings those documents, on the condition that I will be allowed to call him when I need him as a witness. Because at this time, I need just the documents. If you allow me to call him later on as a witness, I couldn't care less who brings the documents. My problem was, because I was afraid, that if I call Osmen here, with documents, you will force me to question him whatever I have, which is not the time yet.

THE COURT:

If ... if you ... if Osmen is simply coming here to bring documents of which he has ... of which he has custody, that's one thing, that does not preclude you from calling Osmen again later, if you wish to do so.

Me LECOURS:

Well, you can call witnesses like that.

THE COURT:

I don't know, I'm flying blind, I have no idea what the documents are, I have no idea what the pertinence of the documents is ...

Me LECOURS:

Well, just the point ...

THE COURT:

... I have no idea at all.

Me LECOURS:

... just the point of calling witnesses twice, I don't agree with that at all. You should call witnesses once, period.

THE COURT:

Listen, if we are going to be in a position to avoid a long debate, as to who has custody

over what documents and who has authority to bring them, if it solves the problem, let Osmen bring the documents and be here simply for that purpose alone.

Me LECOURS:

Okay. But, these documents I understand, they are evaluations of other professors, merits of other professors, I believe it's going to be irrelevant.

THE COURT:

There may ... that's another question. Let's get the documents before the Court first,

through who ever the appropriate person is and then we will see whether they are pertinent or not. But I'm not going to start making rulings on pertinence simply on that

sort of say so. So, I really don't care who produces them, I'm not endorsing the principle and he should well understand it, that each witness can be trotted back here three (3), four (4) and five (5) times, in order to be heard. No.

Me LECOURS:

I strongly object to that, My Lord. That's not the way to it.

THE COURT:

I agree that's not the way to do it. If Osmen has custody of these documents, then at this point, if it's a question of discussing the relevance of the documents, then if Osmen

is the agent who produces them, or who brings them here that's fine with me. Without precluding his right to ...

Me LECOURS:

If we knew where the accused is going, if he could provide us with a daily list or an outline of his defense, and the number of his witnesses, we might be more able to accomodate him.

THE COURT:

It would be ...

Me LECOURS:

But now, we don't know anything.

THE COURT:

It would be an excellent idea if he would do that. I'm sure he has no intention
whatever
of doing it.

Me LECOURS:

He refuses to do that. But I'm asking again, maybe ... maybe we can manage better,
and he would be less anxious about missing a witness and having to testify sooner than
he thinks, and things like that, you know.

THE COURT:

Well, of course, if we're gonna run into constant delays with witnesses not being
here,
then he's going to have to give a list, so that ... or give counsel for Concordia a
list so
that he can make the appropriate arrangements

Me FREEDMAN:

It has been very difficult, My Lord, witness list changes from morning to afternoon

...

THE COURT:

I don't doubt ...

Me FREEDMAN:

... subpoenas come at five P.M. (17:00), and I've had several witnesses, Mr. Fancott
for example, who's now on his third (3rd) day here, who was finally called today.

Me LECOURS:

So, he should not expect any collaboration from us, but if we know in advance and he
need an adjournment for ... to get some witnesses we might be very accomodating.

That's a give and take game, you know.

THE COURT:

This is not a trial that has proceeded with any sense of cooperation between anybody,
though.

Me LECOURS:

I understand that.

THE COURT:

(inaudible) you're aware.

Me LECOURS:

But, let ... I'm just saying, My Lord, that if Mr. Fabrikant ...

Mr. FABRIKANT:

Well, you are wrong there is definite cooperation between you and the Crown ...

Me LECOURS:

If Mr. Fabrikant provides me ...

Mr. FABRIKANT:

... and Mr. Belleau.

THE COURT:

Twelve twenty-five (12:25).

Mr. FABRIKANT:

I said, there is (inaudible) cooperation between you, Crown and Mr. Belleau.

Me LECOURS:

Because, My Lord, it happens in every trial, specially when there's not extensive
cross-

examination, that one (1) party might run out of witnesses. And I don't want to force
Mr. Fabrikant to testify to fill the gap or ... you know, at the fitness hearing, at

the time
he testified and everybody agreed that he was fit, Mr. Morissette did not testify, and
he

was more or less push to testify, but I don't raise that. But the basic key factor to
avoid

that, is a minimal cooperation, you know. If I get his list and I understand that he
might

run out of witnesses, I will surely be accomodating and some adjournment of an (1)

hour

or two (2), in a four (4) murder trial is ...

THE COURT:

No, no, I realize that, and I know that you're ...

Me LECOURS:

I don't want to push it ...

THE COURT:

... you're prepared to cooperate in that regard. But, what I would be more ... I

would

be more pleased to see, would be some cooperation with ... with counsel for the university who's got the problem of coordinating these people and explaining to them when they have to come and why.

Mr. FABRIKANT:

No, I have full cooperation with him, I was even so forthcoming that I released his witnesses who were either submitting their documents voluntarily or didn't have any document.

THE COURT:

Well, then I would ...

Mr. FABRIKANT:

What else could I do ...

THE COURT:

... I would ...

Mr. FABRIKANT:

I did my best.

THE COURT:

I would suggest that when I adjourn, you discuss with him for a minute or so, who you wish this afternoon, so that we can have that wit... these witnesses here this

afternoon,

so that we can be prepared to proceed.

Me BELLEAU:

Yet, My Lord, I have two (2) witnesses that are not from Concordia, that were on call and that I've arranged to have this afternoon, Mr. McManus and Mr. Desjardins, whether ... how long this is going to take is anybody's guess. After that, that's all

the

witnesses we have for this afternoon.

THE COURT:

Well, listen, you can't expect me to know how long ...

Me BELLEAU:

Neither can you expect me to know how long it's going to last.

Me LECOURS:

I understand Mr. Belleau doesn't get much more information than we do.

Mr. FABRIKANT:

Well ...

THE COURT:

Would you expect to be all afternoon with McManus and Desjardins?

Mr. FABRIKANT:

McManus probably ... well not all afternoon, but for some time, yes. As far as Mr. Desjardins goes, it depends on his cooperation, if he will say I don't know, I don't

...

I don't have, I have no idea, then here we go, what can you do.

THE COURT:

Alright, apart from these two (2), who is your next witness from Concordia?

Mr. FABRIKANT:

Well, I also mentioned (inaudible) which I would like to hear from.

Me FREEDMAN:

We've received no subpoena as far as I know, for (inaudible).

Mr. FABRIKANT:

Well, could you maybe still bring her without subpoena?

Me FREEDMAN:

University cooperates with all subpoenas, and we always have, and that's the way I'd like to operate.

Mr. FABRIKANT:

Alright. Then, I have taken a look at the (inaudible) and I could talk to Mr. Smith to.

Me FREEDMAN:

My understanding was that he was released, you're now saying that you would like him to testify?

Mr. FABRIKANT:

Okay. Alright. Well, alright. Alright, then ...

THE COURT:

Alright, what?

Mr. FABRIKANT:

Then today, Mr. Haines is suppose to be to ...

Me BELLEAU:

No. I'm sorry, he ...

Mr. FABRIKANT:

This is what you gave me.

THE COURT:

I'm sorry. Listen, just a second, now. You said to me for this afternoon, there's McManus and Desjardins.

Me BELLEAU:

That's right.

THE COURT:

Fine. Might we have one (1) other witness from the university who can be present this afternoon, who would fill in the portrait in the event that McManus and Desjardins are completed.

Me BELLEAU:

Well, there are probably (inaudible).

Me FREEDMAN:

I can attempt ... it's now lunch time, I can see if anybody is around, that's the best

I can do.

Me BELLEAU:

Who will get a subpoena?

Me LECOURS:

Well, we would need an order of the Court.

Me FREEDMAN:

If you're ordering me to ...

THE COURT:

I'm not ordering you to do anything at this point.

Me LECOURS:

Well, then ...

THE COURT:

I'm not ordering you to do anything at this point.

Me FREEDMAN:

As far as I know there are no other subpoenas issued for (inaudible) for today.

THE COURT:

At this point today, okay. So, we will ...

Me FREEDMAN:

At this point today. I believe there are some for tomorrow.

THE COURT:

... we will proceed with McManus and Desjardins, and that's that.

Me LECOURS:

I understand, if we lack some time will you ... will Mr. Fabrikant testify, to fill the gap

...

THE COURT:

I have no idea. I'm not going to ask him to testify, I will note what the time is and adjourn until tomorrow morning and I'll underline again that Mr. Fabrikant should at least cooperate with ... with counsel for the university, in order to make sure the university people are here.

Mr. FABRIKANT:

But, well, I do cooperate.

Me LECOURS:

You should cooperate with the Crown as well, because I'm in the position to object to all type of adjournment, you know. If I get some information, I might be ... understanding. That's the point.

THE COURT:

Okay. So, we'll adjourn until two fifteen (14:15).

SUSPENSION

REPRISE

Me BELLEAU:

I'll get the witness.

THE COURT:

Thank you, Mr. Belleau. Yes, you can swear in madame Stubichard

ASSERMENTATION DE L'INTERPRETE

Madame Vlasta Stubichard, interprète officielle, jure sur les Saints Evangiles de traduire

fidèlement et au meilleur de sa connaissance du français ... l'anglais et de l'anglais

au

français, les témoignages rendus devant la Cour.

Note: pour les besoins de la cause les interventions de l'interprète sont identifiées par un

tiret (-).

IN THE YEAR NINETEEN HUNDRED NINETY-THREE (1993)

this twenty-sixth (26th) day in the month of May,

PERSONALLY CAME AND APPEARED:

GILLES DESJARDINS

born on the 29th of August 1960, investigator, agence canadienne,

WHO, after being duly sworn, doth, depose and says as follows,

EXAMINED BY Mr. VALERY FABRIKANT

Representing himself:

Q. I've asked you to bring all the bodyguards who are hired by Concordia University ...

- Je vous avais demandé, d'amener tous les gardes du corps qui ont été engagés par l'Université, Concordia ...

... from your agency.

- ... engagés par votre agence.

What you brought to me is something related to year ninety (91).

- Ce que vous m'avez apporté, c'est quelque chose qui par rapport ... l'année quatre-vingt-

onze (91).

What about year nineteen ninety (1990)?

- Et quand ... l'année quatre-vingt-dix (90)? Mil neuf cent quatre-vingt-dix (1990)?

Do we have any hiring of bodyguards by Concordia University in nineteen ninety (1990)?

- Est-ce que l'Université, de Concordia a engagé, les services de gardes du corps en en dix-

neuf cent quatre-vingt-dix (1990)?

A. Non pas ... ma connaissance.

- No, not as far as I know.

Q. What you brought to me, this the only hiring of bodyguards by Concordia University?

- Ce que vous m'avez apporté, cela représente le seul engagement de gardes du corps par l'Université, de Concordia?

A. C'est exact.

- That is correct.

Q. Could you describe how this hiring was done?

- Pourriez-vous décrire comment ces engagements ont été effectués?

A. Bon. Alors, c'est suite ... une rencontre que j'ai eue avec les repr,esentants de la s,curit,
de l'universit,.
- It's following a meeting I had with the representatives of the university security.
Q. Was it a personal meeting?
- Est-ce que ce f-t une rencontre personnelle?
A. En personne, oui.
- In person, yes.
Q. Who exactly did you encounter?
- Qui exactement avez-vous rencontr,?
A. J'ai rencontr, monsieur Victor Francesco ...
- I met Mr. Victor Francesco ...
... ainsi que monsieur Bujold.
- ... as well as Mr. Bujold, I believe.
Q. Okay. They invited you to come to the university?
- Ils vous ont invit, ... vous pr,senter ... l'universit,?
A. Exact.
- That is correct.
Q. Okay. What place at the university have met?
- I'm sorry?
Where exactly at the university have you met?
- O- exactement a eu lieu la rencontre ... les rencontres ... l'universit,?
A. C',tait sur ... je crois que c'est le 1455 de Maisonneuve, au bureau de la s,curit,,
le
bureau de monsieur Victor Francesco.
- It was at 1455 de Maisonneuve, west, I believe the security office at the university,
the
... Mr. Victor Francesco's office.
Q. Do you remember the date?
- Est-ce que vous vous rappelez la date?
A. Oui, c',tait le quatre (4) novembre quatre-vingt-onze (91).
- Yes, it was the fourth (4th) of November nineteen ninety-one (1991).
Q. How do you remember this?
- Comment ta se fait que vous vous en souveniez?
A. J'ai des notes au dossiers.
- I have notes in the file.
Q. Okay. Do you have this file with you?
- Avez-vous ce dossier-l... avec vous?
A. Oui.
- Yes.
Q. Can I take cognizance of this ...
- Can I ... sorry?
Can I cognizance of this note?
- Vous me permettez de prendre connaissance de ces notes?
This creates the impression that you had two (2) meetings with them, is this correct?
- Cela nous donne l'impression que vous avez eu deux (2) rencontres avec eux, n'est-ce pas?
A. Non, c'est faux.
- That is wrong.
Q. Well, you write November fourth (4th) ...
- Vous avez ,crit le quatre (4) novembre ...
... one thing, and November fifth (5th) something else?
- Donc, il y a eu une entr,e pour le quatre (4) novembre et une autre entr,e pour le cinq
cinq
(5) novembre.
A. Alors, oui, le quatre (4) novembre c'est lorsque je me suis pr,sent, rencontrer monsieur Francesco,
- The fourth (4th) of November is when I showed up to meet with Mr. Francesco,
et ... ce moment-l..., j'ai indiqu, la date du lendemain, le cinq (5) novembre ...
- at that point I noted the date of the following day, that is to say the fifth (5th) of November ...

... qui correspond au d, but des services de s,curit,.

- ... corresponding to the beginning of the security services.

Q. So, fifth (5th) November, is not your meeting, it is beginning of the service itself.

- Donc, le cinq (5) novembre, cela n'est pas la date correspondant la date de la rencontre, la date du d, but des services de s,curit,.

A. C'est exact.

- That is correct.

Q. Were you given specific assignment for those guards?

- Est-ce qu'on vous a confi, des devoirs sp,cifiques pour ces gardiens-l...?

A. Oui, c',tait de voir ... en fait, on voulait accro@tre la s,curit, ...

- Yes, well one ... as far as the duty goes, one wanted to increase security ...

... au 1455 de Maisonneuve ...

- ... at 1455 de Maisonneuve ...

... .. cet endroit, ... ma connaissance, c'est au neuviŠme (9e) ,tage qu'on avait requis la

pr,sence de l'agent ...

- ... at this place, I believe it was on the ninth (9th) floor that the services of the security

agent were required ...

... ainsi que pour le 7141 Sherbrooke ouest ...

- ... as well as at 7141 Sherbrooke west ...

... o- on avait requis la pr,sence d'un agent de s,curit,.

- ... there as well the services of a security guard were required.

Q. Well, required for what?

- Et, requis pourquoi? Dans quel but?

A. Dans le but de s,curiser certains membres du personnel qu'on m'avait expliqu, ...

- Well, it was in the view of rendering secure ... there were certain members of the personnel, as it was explained to me ...

... qui manifestaient le besoin d'avoir d'avoir de la s,curit, prŠs d'eux.

- ... who manifested the desire to have security around them.

Parce qu'elles craignaient ... parce que ces gens-l... craignaient ... elles avaient peur tout

simplement de la part du comportement, l..., d'un professeur.

- These people were afraid ... they feared as a result of the behavior of a certain professor.

Q. Could you name all of them, please?

- Sauriez-vous les nommer, s'il vous pla@t, les nommer tous?

A. Non, c'est malheureux, non je ne pourrais pas le nommer.

- No, I could not name them.

Q. Well, I would like Court order for him to name ...

A. On n...

THE COURT:

Un instant ... un instant.

Mr. FABRIKANT:

Witness refuses to testify.

THE COURT:

Don't be stupid. Listen. The witness went to a meeting at Concordia, you might ask him, first of all, if the secretaries who were afraid were named to him.

Mr. FABRIKANT:

Well, it was ...

THE COURT:

Now, if they weren't named to him, how in God's little earth, do you presume that is going to be able to tell you who they were.

Mr. FABRIKANT:

Well, he said certain, it means that the names were given to him. Alright.

Q. Were you given the names of persons to protect?

- Est-ce qu'on vous a donn, les noms des personnes ... ^tre prot,g,es?

A. Non.

- No.

Q. Were you given the name of a person against who to protect?

- Est-ce qu'on vous a donn, les noms ... ou le nom des personnes ou de la personne

contre

qui la protection ,tait requise?

A. J'ai eu comme information, c'est un professeur, qui ... ma connaissance serait en g,nie m,canique.

- The information that I had, was to the effect that it was a professor and if my recollection is good, it would have been mechanical engineering, professor of mechanical engineering.

Et, j'aimerais rajouter que les d,tails de la situation, ont ,t, donn,s aux agents concern,s

le lendemain matin.

- And I would like to add, that the information ... the necessary information ... the pertinent information was given to the officers or security guards concerned on the following day in the morning.

Q. Well, what was this pertinent information?

- Quels ,taient ces renseignements-l... .. ces renseignements pertinents l...?

A. Je ne les ai pas.

- I don't have them. I don't have this information.

Q. Well, may I consult your file that you have with you.

- Permettez-moi de consulter le dossier que vous avez vous.

THE COURT:

Would you ask him who gave that pertinent information to the guards in the morning, and perhaps that answer will solve your problem.

Mr. FABRIKANT:

Well, I think he was the one ...

THE COURT:

I don't know, you ... (inaudible) establish it first of all.

Mr. FABRIKANT:

Well, he was doing all the negotiation ...

THE COURT:

He said simply, the pertinent information was given to the guards in the A.M. Now, you

better establish that he gave it to the guards in the A.M., and then you might be in a position to find out where he got it from. You may find that there's another answer. I don't know.

Mr. FABRIKANT:

Q. Were you the one who gave pertinent information to the bodyguards?

- Etiez-vous la personne qui a donn, les renseignements pertinents aux gardes du corps?

A. Non.

- No.

Q. Who was it, then?

- Qui ,tait-ce, donc?

A. A ma connaissance le cinq (5) au matin, les agents de s,curit, devaient rencontrer monsieur Victor Francesco ... son bureau.

- As far as I know, on the fifth (5th) of November, in the morning, the security guards were to meet with the person in charge of security, that is Mr. Victor Francesco.

Q. So, you see I'm not ...(inaudible)... alright, and I apologize. Who was the ... that guard

who was given the information?

- Qui ,tait le gardien ... qui on a donn, les renseignements?

A. Il y avait monsieur Eric Malenfant ...

- There was Mr. Eric Malenfant ...

... ainsi que monsieur Claude Cantin junior.

- ... as well as Mr. Claude Cantin Jr.

Q. They both visited Mr. Francesco ...

- Les deux (2) ont rendus visite ... monsieur Francesco ...

... on November fifth (5th) ...

- ... le cinq (5) novembre.

A. A ma connaissance, oui.

- As far as I know, yes.

Q. Approximately at what time?

- Approximativement ... quelle heure?

A. Huit heures trente (8:30) le matin.
- At eight thirty (8:30) in the morning.

Q. You were not present during that meeting?
- Vous n',tiez pas pr,sent lors de cette rencontre?

A. Non.
- No.

Q. You were never informed who these bodyguards are to guard or against who?
- On ne vous a jamais inform, qui ces gardes du corps avaient ... garder ou contre qui ils avaient ... garder?

A. J'ai su par la suite par un de mes agents ...
- I learned later by one of my guards ...
... que c',tait ... je n'ai jamais eu les noms des personnes ... prot,ger ...
- ... I never had ... I never got the names of the people to be protected ...
... cependant on m'avait indiqu, que le nom de la personne, du professeur dont lequel les gens craignaient le comportement.
- ... however, I found out that the name of the professor whom the people to be protected
feared.
Il s'appelait Valery Fabrikant.
- He was called Valery Fabrikant.

Q. Well, who told you that?
- Et, qui vous a dit cela?

A. Un de mes agents,
- One of my guards.

Q. Do you remember who?
- Vous vous rappelez qui?

A. Je crois que c'est monsieur Claude Cantin junior.
- I believe it was Mr. Claude Cantin Jr.

Q. You asked him, or he just told you?
- Vous lui avez pos, la question, o- il vous l'a simplement dit?

A. Je crois que je lui ai pos, la question.
- I believe that I asked him the question.

Q. And, you never asked questions against ... you never asked questions who was suppose to be protected?
- Et vous n'avez jamais pos, la question ... savoir qui ,tait ... ^tre prot,g,?

A. Non.
- No.

Q. Can you explain why such a difference?
- Such ...?
Can you explain this?
- Sauriez-vous expliquer cela?

A. Bien, en fait je n'ai jamais demand, les noms des personnes ... prot,ger ...
- I never asked the names of the people to be protected ...
... je savais cependant que les agents ,taient requis pour prot,ger au neuvišme (9e)
,tage,
au 1455 ...
- ... however, I knew ... I knew that guards were required to protect people on the ninth
(9th) floor at 1455 de Maisonneuve ...
... ainsi qu'au 7141 Sherbrooke.
- ... as well as at 7141 Sherbrooke.
Je n'ai jamais demand,, l..., le nom des personnes ... prot,ger.
- But I never asked for the names of the people to be protected.

Q. Well, this is what, some kind of code of ethic, that you do not ask names of people to be protected?
- Est-ce que c'est un code de d,ontologie qui vous ... qui fait en sorte que vous ne demandez pas les noms de personnes ... prot,ger?

A. Non.
- No.

Q. So, what was the reason that you didn't ask who is to be protected?
- Donc, quelle est la raison pour laquelle vous n'avez pas ... vous n'avez pas demand, ...

savoir qui ,tait ... ^tre prot,g,?

A. Parce que selon les explications du client que j'ai rencontr,, monsieur Francesco ...
- Because on the basis of the explanations that I got from the client, with whom I met,
Mr.

Francesco ...

... il ne m'a pas indiqu, des personnes en particulier qu'on devait prot,ger, mais
plut"t

des gens qui travaillaient ... ces endroits.

- ... he didn't point out to me the people in particular to be protected, but he pointed
out

the places where there were people to be protected.

Q. And, later on ... are you aware later on specific names were named as to who exactly
is to be protected?

- Et plus tard, est-ce que des noms pr,cis ont ,t, nomm,s quant ... savoir qui devait ^tre
prot,g,?

A. Non.

Q. Neither to you nor to your guards, or you're just unaware if your guards knew that?

- Ni ... vous, ni ... vos agents ou est-ce que c'est simplement parce que vous n'^tes pas au
courant ... vous n'^tes pas au courant si vos gardiens ou vos agents ,taient au
courant.

A. Personnellement je ne suis pas au courant.

- Personally I'm not aware.

En ce qui concerne les agents, je ne pourrais r,pondre ... la question.

- As far as the guards go, I could not reply for them to that question.

Q. Okay. Are your bodyguards armed?

- Est-ce que vos gardes du corps sont arm,s?

A. Non.

- No.

Q. Were you informed what kind of behavior they are to accept?

- Est-ce qu'on vous a inform, du genre de comportement auquel ils pouvaient s'attendre?

A. Non.

- No.

Q. Was there any mentioning during your conversation with Mr. Francesco, that they might
encounter someone with firearms?

- Lors de votre entretien avec monsieur Francesco, est-ce qu'il y a eu mention de la
possibilit, qu'ils allaient avoir ... rencontrer une personne arm,e ... portant des
armes ...

feu?

A. Non.

- No.

Q. Did you ever ask questions as to what kind of behavior your guards might encounter?

- Est-ce que vous avez pos, des questions ... savoir quel genre de comportement vos agents
pouvaient rencontrer?

A. Oui.

- Yes.

Q. And what was the answer?

- Et quelle ,tait la r,ponse?

A. C'a ,t, plut"t qu'ils pouvaient s'attendre ... un comportement ... une violence plut"t
verbale.

- The type of behavior that they could expect, (inaudible) was more verbal ... more
verbal

type of violence.

Q. Verbal violence?

- La violence verbale?

No, I'm not criticizing your translation, I'm though wondering about the meaning of
verbal violence.

- Je me demande quant au sens de la violence verbale.

Could you ... could you be more specific what you understand by verbal violence?

- Sauriez-vous pr,ciser davantage qu'est-ce que vous entendez par violence verbale?
Abusive language?

- Les injures ... langage abusif?

A. Un comportement, une attitude ... un comportement g,n,ral de violence peut ^tre ...
- General violent behavior can consist of ...
... .. diff,rents niveaux, dont la violence physique en est une et la violence verbale
en est
une autre.
- ... can consist of various levels, physical violence is one level, and verbal violence
in
another.
Alors, on nous a pr,venu ...
- We were warned ...
... que les agents pourraient avoir ... faire face ... un comportement de violence plut"t
verbale.
- ... we were informed that he guards could expect to encounter a form of violence that
is more verbal.
Les agents ,taient aussi en possession d'un systŠme de communication.
- The guards were also in possession of a communication system.
Ils ,taient l..., ... priori ... titre de pr,vention.
- At priori, they were there for prevention purposes.
Dans le cas o- un incident se serait produit ...
- In case an accident would ... in case an accident should occur ...
... ils auraient ,t, contact,s par radio ...
- ... they would have been ... in case of such an accident, they would have been
contacted

...
THE COURT:
Excuse me an accident or an incident?
THE INTERPRETER:
Incident ... I was just asking myself ... in case of such an incident they would have
been
contacted by radio.

THE WITNESS:
Alors, ils se seraient pr,sent,s ... l'endroit d,sign, ...
- So then they would have gone to the designate ... designated place ...
... pour voir au maintien de l'ordre et de la paix.
- ... in order to maintain peace an order.

Mr. FABRIKANT:
Q. Could you explain me, please, why on earth one needs bodyguard against just verbal
violence?

- Sauriez-vous m'expliquer pourquoi, bon Dieu, on aurait besoin de gardes du corps pour
un cas de violence verbale?

A. En quelque sorte, des services ont ,t, requis par l'Universit, Concordia ...
- Well, the services were required by the University of Concordia, je n'ai pas ... juger
de
la qualit, ou des raisons ou du fondement de la demande ...

- ... it is not to me to judge the qualities, or the reasons, or the foundation of the
request

...
... .. ma connaissance selon la demande du client, je trouvais les services ... la
demande
tout ... fait fond,e ...

- ... on the basis of the information that I got from the client, I found that the
request was
founded ...

... et on lui a offert des services de s,curit, qu'ils ont demand,s.
- ... and the ... the client was provided with security services as asked for.

Q. Well, you didn't answer my question.

- Vous n'avez pas r,pondu ... ma question.

What is the difference in term of services,
- Quelle est la diff,rence en terme de service,
as your bodyguard would provide against verbal violence.

- en terme de service et tel que fourni par vos agents contre la violence verbale.

Help which could be provided by regular university security.

- Versus l'aide qui pourrait être fourni par le service de sécurité, normal de l'université,

A. J'ignore pourquoi l'université, a fait appel ... un service extérieur de celui qui existe ...

l'intérieur de l'université,

- I don't know why the university called upon a service outside of the university other than

that which is in existence at university.

En matière de services offerts ...

- As far as the services provided go ...

... lorsque les agents font face ... une situation de violence verbale ...

- ... when ... with respect to guards who have to deal with verbal violence ...

... leur travail consiste ... maintenir l'ordre et la paix en discutant, en dialoguant avec les

personnes concernées.

- ... their role consist in maintaining peace and order, in maintaining the dialogue or discussion with people concerned

Q. You're not answering my question.

- Vous ne répondez pas ... ma question.

Please, I repeat my question again.

- Je vais répéter ma question.

What is the difference ...

- Quelle est la différence ...

... between the services which are provided by your bodyguards ...

- ... entre les services tels que fournis par vos gardes du corps ...

... compared to the services provided by regular university security ...

- ... comparé, aux services fournis par les services de sécurité, normaux de l'université, ...

... in the case of verbal violence.

- ... dans un cas de violence verbale.

A. Je l'ignore.

- I don't know.

Q. Could this answer be interpreted that there is no difference at all?

- Est-ce qu'on pourrait interpréter cette réponse en disant qu'il n'y a pas de différence du

tout?

A. Oui, je dirais que oui.

- Yes, I would say so.

Q. Did anyone ever mention to you possibility of physical violence?

- Est-ce quiconque vous a mentionné, la possibilité, de violence physique?

A. Non, pas ... ce point-là...

- No, not to that extent.

</pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">Q. And it never crossed your mind why on earth one would need bodyguard against verbal violence?

- Ca ne vous a jamais effleuré, l'esprit, savoir pourquoi, bon Dieu, on avait besoin de gardes du corps pour un cas de violence verbale?

A. Est-ce qu'on pourrait reformuler la question, s'il vous plaît.

- (inaudible) repeat the question?

Q. Did it look to you strange request ...

- Est-ce que la demande vous semblait étrange ...

... strange request for a bodyguard against verbal violence?

- Est-ce que cette demande de gardes du corps pour un cas de violence verbale vous semblait étrange?

A. Non, absolument pas.

- No, not at all.

Q. You were just happy to make some money. Right.

- Vous étiez content de faire de l'argent.

Is that leading question or it is not?

Me LECOURS:
It is.

THE COURT:
Oh, it is, but that one ...

Mr. FABRIKANT:

Q. Have you ever thought that they might be deceiving you and they are putting your bodyguards in a mortal danger?

- Est-ce que vous avez dit... pens, que peut-être on vous ... on vous trompait et que vous mettiez se faisant vos agents ou les vies de vos agents ... risque?

A. Non.

- No.

Q. Well, after that incident, when you are called again to provide bodyguard against verbal violence ...

- Après cet incident ...

... would you be more careful or you will still provide those bodyguards?

- Après cet incident ... est-ce que ... après cet incident, où les gardes du corps ont dit, demandés pour des ... pour un cas de violence verbale, est-ce que réflexion faite, vous feriez la même chose, vous feriez encore appel ... aux mêmes genres de services?

A. Oui.

- Yes.

Q. Even knowing what happened at Concordia, you would still provide your bodyguards which might encounter mortal danger?

- Tout en sachant ce qui s'est passé, ... Concordia, vous fourniriez quand même des services de gardes du corps, sachant que ça pourrait mettre en danger leurs vies? Les vies des agents.

A. Les services seraient offerts quand même, oui.

- The services would be provided nonetheless, yes.

Q. So, your desire to make money is so strong that you don't even care about safety of your bodyguards?

- Donc, le désir faire de l'argent ...

Me LECOURS:
I think the witness doesn't have to answer a question like that.

THE COURT:
I don't think ... there is no need for the witness to answer that question. It is not what the witness said. First of all, you were questioning the witness in the context of November of nineteen ninety-one (1991).

Mr. FABRIKANT:
Would you like me to explain to him ...

THE COURT:

I'm saying ...

Mr. FABRIKANT:

... or do you to know why I'm asking this question.

THE COURT:

No.

Mr. FABRIKANT:

No.

THE COURT:

I'm saying your last ...

Mr. FABRIKANT:

I'm allowed this question.

THE COURT:

... I'm saying your last question is out of order.

Mr. FABRIKANT:

It is not out of order.

THE COURT:

It is out of order.

Mr. FABRIKANT:

Well, then let me explain it to you.

Would you like me to explain it to you?

Me LECOURS:

No.

THE COURT:

You are ...

Mr. FABRIKANT:

I'm allowed to explain ...

THE COURT:

... you are in November ... you are in November of nineteen ninety-one (1991), at one point.

Mr. FABRIKANT:

Yes. And what? You knew that by that time ...

THE COURT:

Now, I don't know ... I don't know whether you wish ...

Mr. FABRIKANT:

... (inaudible) shoot someone.

THE COURT:

... I don't know whether you wish to move from November nineteen ninety-one (1991) ahead.

Mr. FABRIKANT:

No.

THE COURT:

In November nineteen ninety-one (1991), as far as I understand it, there was no incident,

his bodyguards were there and did what they had to do.

Mr. FABRIKANT:

Well, stil ...

THE COURT:

Now, then you're changing ... then you're changing the whole thing.

Mr. FABRIKANT:

No. My question is normal, and I would like to explain the reason for the question. My question ... what I'm trying to get to the jury, that the people at Concordia, deliberately deceived the agency, either they deliberately deceived them in terms of what the guards is to encounter, or if they did not deliberately deceived them, then they were playing false game of being scared.

THE COURT:

Well, if that is ...

Mr. FABRIKANT:

One of those (inaudible)

THE COURT:

Okay ...

Mr. FABRIKANT:

You understand.

THE COURT:

If that is where you are going.

Mr. FABRIKANT:

Yes.

THE COURT:

Your last question is still disallowed. So you'll have to find another way to get there.

Mr. FABRIKANT:

I don't why the last question is disallowed. I think the ... where I'm going is the right

goal, right?

THE COURT:

The last question is purely argumentative.

Mr. FABRIKANT:

It's not argumentative.

THE COURT:

So the last question is disallowed.

Mr. FABRIKANT:

Disallowed. Alright.

THE COURT:

If you want to go there another way, go there another way.

Mr. FABRIKANT:

Yes.

Q. Did you ask any details about this particular professor ...

- Est-ce que vous avez demand, des d,tails quelconques par rapport ... ce professeur-l...

...

... for the reason as to why bodyguard is required ...

- savoir les motifs pour lesquels les services de gardes du corps ont ,t, requis.

Did you ask for a history of this professor's behavior?

- Est-ce que vous avez demand, l'historique du comportement de ce professeur?

A. Non.

- No.

Q. You do not consider this a reckless behavior on your part?

- Vous ne consid,rez pas #a comme un comportement n,gligent de votre part?

A. Non, monsieur Francesco m'a expliqu, les raisons pour lesquelles il a requis les services.

Il m'a expliqu, que certains ...

- No, Mr. Francesco explained to me the reasons for which he was hiring the services of

... hiring our services ...

... certains employ,s ou professeurs craignaient ...

- ... certain employees or professors feared ...

... le comportement de monsieur Fabrikant.

- ... Mr. Fabrikant's behavior.

Q. They were afraid just verbal abuse and they needed bodyguards.

- Ils craignaient des abus verbaux et ils avaient besoin de gardes du corps.

A. C'est exact.

- That is correct.

Q. I think that even a five (5) year old child would be better understanding that something

doesn't add up here. Anyway I prefer ...

THE COURT:

Could you leave the comments out of it.

Mr. FABRIKANT:

Yes. I take my comment back.

THE COURT:

Oh, after you've made them, that's very nice. Have you any ... fine.

CROSS-EXAMINED BY Me JEAN LECOIRS

Attorney for the Crown:

Q. So the accused is constantly referring to the term bodyguard, but I understand in fact these people were security agents?

- L'accusé, se réfère constamment au terme gardes du corps, mais je dois comprendre qu'en fait ce sont des agents de sécurité,?

A. C'est exact.

- That is correct.

Q. Okay. I understand as well that your service were required to prevent harassment and disruptive behavior?

- Je dois comprendre également que vos services ont été requis pour prévenir le harcèlement ainsi que les comportements ... qui troublaient la paix?

A. C'est exact.

- That is correct.

Q. Thank you.

Mr. FABRIKANT:

Q. Then I will have to ask something else. Because I have the document from Concordia University, bill directed to you, where it is written black on white, bodyguard.

- J'ai un document de l'Université, de Concordia, un reçu où il est écrit noir sur blanc que ... les services requis étaient ceux de gardes du corps.

Bodyguards, yes.

- Gardes du corps, oui.

A. Hum, hum. C'est exact.

- Yes, that is correct.

Q. So it was bodyguards?

- Donc, c'était en fait des gardes du corps?

A. Un agent de sécurité, comme garde du corps, comme un enquêteur, comme un directeur d'opération sont ... priori tous des agents de sécurité.

- Security guard, bodyguard, operation guard, are all of the security guard type.

Q. So, let us not deceive the jury, security guard is general term.

- Bon. Pour ne pas tromper le jury, l'agent de sécurité, est un terme général?

A. C'est exact.

- That is correct.

Q. And particular people which were provided were bodyguards.

- Et les gens particuliers dont les services ont été fournis c'était des gardes du corps.

A. Oui.

- Yes.

Q. Okay. And the last question. Could you give us indications as to Dany Ferland is he still employed by your company?

- Bon, la dernière question. Est-ce que vous sauriez nous indiquer si la personne de Dany Ferland, si cette personne-là est encore employée chez vous?

A. Il n'est plus ... l'emploi.

- He is no longer working for us.

Q. Yes. Do you know his where about?

- Savez-vous où il se trouve?

A. Je l'ignore.

- I don't know.

Q. Eric Malenfant?

- Eric Malenfant?

A. Ne travaille plus pour nous.

- No longer works for us.

Q. What is his correct name, because Francesco gave me Malefant?

- Quel est son nom exact, parce que Francesco m'a donné, Malefant? Without N. And here it is Malenfant.

- Sans le N. Et ici il est écrit Malenfant.

A. C'est plutôt Malenfant.

- Malenfant, with a N.

Avec un N, c'est exact.

- With an N, that is correct.

Q. Are you sure, because at several I asked Francesco, is it Malenfant or Melefant, and he told me Malefant.

- Etes-vous certain, parce qu'... plusieurs reprises j'ai demand, ... Francesco si c',tait Malenfant ou Malefant, il m'a dit que c',tait Malefant.

A. Alors, je vous affirme que son nom est monsieur Eric Malenfant.

- Well, I'll confirm for you that his name is Eric Malenfant.

Q. Okay. CLaude Cantin Jr.?

- Claude Cantin junior?

A. Il est toujours ... l'emploi.

- He's still working.

Q. Okay. And Ronnie Gilligan?

- Ronnie Gilligan?

A. Il n'est plus a l'emploi.

- He's no longer working.

Q. I have only one. Do you know any of those where they are?

- Savez-vous o- ils se trouvent ... savez-vous o- ils se trouvent ... les tros (3) ...

A. Il y a monsieur Claude Cantin junior qui est toujours ... l'emploi, qu'on peut contacter ...

- There's Mr. Claude Cantin Jr., he's still working who may be contacted ...

Q. Okay. But, I personally encountered Mr. Malenfant ...

- Mais moi, personnellement j'ai rencontr, monsieur Malenfant ...

... and I would like to invite him to testify here.

- ... et j'aimerais l'inviter ... t,moigner ici.

A. Alors, il est policier maintenant pour la Ville de St-Jean ...

- He's a police officer now, for the City of St-Jean ...

... ainsi que la municipalit, de Marieville.

- ... as well as for the municipalit, of Marieville.

Q. And, do you have on file his address which Me. Belleau could take?

- Avez-vous dans votre dossier son adresse, laquelle ma€tre Belleau pourrait prendre en note?

A. Pas aujourd'hui, je ne l'ai pas avec moi.

- Not today, I don't have it with me.

Q. Well, but in principle you would not refuse to provide Mr. Belleau with all the information you have?

- En principe, vous ne refuseriez pas de fournir ces renseignements-l... ... Me Belleau?

A. Pas du tout.

- Not at all.

Q. Okay. Do you know of any other security company which served for Concordia University?

- Connaissez-vous un autre service de s,curit, ayant fourni des services pour l'Universit, de Concordia?

A. non.

- No.

Q. Thank you.

- Merci.

Mr. FABRIKANT:
I would like to file this document ...

THE COURT:
Just a second, monsieur Desjardins.

Me LECOURS:
Can I see it.

THE COURT:
Non, non, vous allez passer ... you'll pass the document to the clerk

Me LECOURS:
Maybe the FAX cover... (inaudible)

Me BELLEAU:
(inaudible) la dernišre page. Maybe the witness could identify the document.

THE COURT:
Yes, well, he'll have to. What ... what number are we at?

LA GREFFIERE:

D-3.

THE COURT:

D-3. Would you ask the witness what the document is?

PIECE D-3: Sommaire des dates de services rendus, Agence de Securite, Canadienne.

Mr. FABRIKANT:

Yes ...

Me LECOURS:

But the way I see it, Mr. Fabrikant had this document. It's not coming from this file.

Mr. FABRIKANT:

No, it's from his file.

Me LECOURS:

No, but ...

THE COURT:

It may have been in Mr. Fabrikant's possession.

Me LECOURS:

Yes, okay.

THE WITNESS:

Ca va ^tre un document de la maison, chez nous.

- This is our ... our document.

Mr. FABRIKANT:

Q. Yes. Could you name me what is in this document?

- Sauriez-vous nommer ce qui se trouve dans ce document?

A. Oui, en fait c'est la synthŠse ou le sommaire des dates o- les services ont ,t, rendus.

- Yes, it is the synthesis or the summary of the dates on which services were rendered. En indiquant les adresses ...

- It's indicating the addresses ...

... et le nom des agents qui y ont travaill,.

- ... and the names of the guards who worked there.

Q. How much they were paid?

- Quelles sont les honoraires que vous leur payez?

A. C'est je crois, c',tait onze dollars l'heure (11.00\$/h).

- I believe it eleven dollars an hour (\$11.00/hr).

Q. And your agency got from the university ... the guards were paid eleven dollars per hour

(\$11.00/hr), your agency got from the university how much?

- Vos agents ont ,t, pay,s onze dollars de l'heure (11.00\$/h), et votre agence a retu combien de l'Universit, Concordia?

A. Je crois que les services sont offerts au taux de vingt-deux dollars et cinquante (22.50\$).

- I believe that the services rendered were at a rate of twenty-two dollars and fifty cents

an hour (\$22.50/hr).

C'est exact.

- That is correct.

Q. Is it possible to take a look at the file which you have with you?

- Vous me permettriez de jeter un coup d'oeil sur le dossier que vous avez avec vous?

THE COURT:

You're on fishing expedition, you realize that.

Mr. FABRIKANT:

I see nothing wrong with that.

THE COURT:

I see plenty wrong with it, there's a manner of proceeding. And there's a proper manner

of proceeding and we're way beyond it.

Mr. FABRIKANT:

Well, in one (1) case ...

THE COURT:

Never mind arguing, look at the file.

Mr. FABRIKANT:

I find it kind of strange, I fighting four (4) first (1st) degree murders and to look through

certain files on ... let us call it fishing, seems to be inadmissible. I fail to understand

the logic. I think if a person needs something for his defense, Charter of Right provides

this exactly. Now ...

THE COURT:

Have you looked through the file?

Mr. FABRIKANT:

Yes.

THE COURT:

Would you hand it back?

Mr. FABRIKANT:

Well I have some questions concerning one (1) of the papers here.

Me LECOURS:

We've got the fish, My Lord.

Mr. FABRIKANT:

I got a fish here ... do you protest?

Me LECOURS:

Go ahead.

Mr. FABRIKANT:

Because fish is interesting.

Q. Could you comment on this paper, which says ...

- Sauriez-vous commenter ce document, il est ,crit ...

... Concave, 6277 St-Jacques ...

- ... Concave, 6277 St-Jacques ...

... suspect Valente Fabrikant, fifty-one (51) years.

- ... un suspect, Valen ... Valen?

Well, Valente, but still, I believe it is me.

- ... Valente Fabrikant, cinquante et un ... fg, de cinquante et un (51) ans.

This is note made to who and for what purpose?

- C'est une note qui est adress,e ... qui et dans quel but?

I would like this piece also to be filed.

Me LECOURS:

Well, it has to be written by this person, My Lord.

THE WITNESS:

Alors, ce n'est pas une note qui est ,crite de moi.

- This is not a note written by myself.

J'ai aperçu la note au dossier, lorsque j'ai consult, le dossier r,emment.

- I notice the note in the file when I recently looked at the file.

Et j'ignore qui l'a ,crite.

- And I don't know who wrote it.

Mr. FABRIKANT:

Q. But still, could you interpret what is written there?

- Mais au moins, pourriez-vous interpr,ter ce qui est ,crit?

THE COURT:

How do you expect the witness to interpret something that he didn't write, unless ... unless you established that he had knowledge of that note before. He said ... I thought

he said that he found it recently in the file.

Mr. FABRIKANT:

Well, still, it is written there with some abbreviations which are quite typical for them,

and I think he would be able to explain them.

Q. First of all the address, 6277 St-Jacques is the address of Concave research center, correct?

- Premièrement l'adresse 6277 St-Jacques, c'est l'adresse du centre de recherche Concave

...

A. Je l'ignorais.

- I didn't no that.

Q. Okay. I see on that this is given, then the word ...

Me LECOURS:
Hypothetical question, My Lord.

Mr. FABRIKANT:
So hypothetically, it is correct address.

THE COURT:
Well, the witness says he doesn't know, okay.

Mr. FABRIKANT:
It's alright.

THE COURT:
That's where we are.

Mr. FABRIKANT:
Then, what is written there, "base" ...

Me LECOURS:
He's still continuing his question, My Lord.

Mr. FABRIKANT:
Well, I cannot ask him about this paper whatever he knows, if he doesn't know, he doesn't know.

THE COURT:
If you have another ...

Me LECOURS:
He doesn't know anything, My Lord, about this paper.

THE COURT:
If you have another question to ask him, which ... as I understand it, he said: I don't know who wrote it, I found it in the file. I don't know whether he can provide you with any further information on it.

Mr. FABRIKANT:
Well, let us see.

THE COURT:
Then go ahead.

Mr. FABRIKANT:
Just don't protest.

Q. So, what does the word "base" mean?

- Que veut dire le mot "base"?

Just read the note, and whatever you can explain, explain.

- Bon. Lisez la note, et expliquez ce que vous êtes en mesure d'expliquer.

A. Alors, en sécurité, le mot base, peut vouloir dire tout simplement ... par un système de communication, ici, il est indiqué: base Loyola, il y a un tiret, 610.

- In security ... in the field of security, the word base, can simply mean ... can be a term from the ... referring to the system of communication, here it is written: base Loyola 610 ...

... alors, dans mon esprit, pour rejoindre la base de Loyola, on devait composer ou dire le mot 610 sur les ondes, tout simplement.

- ... so, for me, this means in order to get in touch with the base at Loyola, one had to simply dial number 610.

Alors, que la base centre-ville, pour les mêmes raisons, est indiquée M-1, c'est un code tout simplement.

- And, while the ... the base for downtown, was M-1, once again for the same reasons. It's just a code.

Q. Yes. And, suspect means, person to watch for. Correct?

- Et, suspect, ça veut dire une personne qu'il faut ... une personne recherchée. Non, to watch for ...

- Une personne ... qui on avait ... I'm sorry, My Lord, I thought ... une personne recherch,e would be the appropriate translation, but Mr. Fabrikant doesn't seem to agree.

No ...

THE COURT:

You translate it as you wish.

THE INTERPRETER:

Thank you, My Lord.

Mr. FABRIKANT:

Q. But to watch for, is not personne recherch,e. To watch for means, to be aware of ...

- I'm sorry ...

... to ...

THE COURT:

To look out for.

Mr. FABRIKANT:

... to look out for ...

THE COURT:

To look out for.

Mr. FABRIKANT:

... to be careful, you know ...

- To look out for

THE COURT:

Keep an eye open for.

THE INTERPRETER:

Okay. Une personne sur qui on avait ... on avait ... une personne ... qui on avait ...

...

surveiller.

THE WITNESS:

Le terme suspect, ,videmment peut d,signer en g,n,ral, une personne ... laquelle il faut porter une attention particuliŠre.

- The term suspect, is ... designates generally a person ... a person ... whom one should

accord certain ... a person to whom one should pay a certain attention.

Mr. FABRIKANT:

Q. Well, in general, suspect means person suspected of certain crime.

- En g,n,ral le terme suspect, veut dire quelqu'un qui est ... quelqu'un qu'on soupçonne d'avoir commis certains crimes.

A. Pas n,cessairement d'avoir commis.

- Not necessarily having committed a crime.

Q. But ... or might commit a crime, let's put it this way.

- Mais quelqu'un qui est susceptible de commettre un crime, si on peut ...

THE COURT:

You're asking the witness to speculate on something somebody ...

Mr. FABRIKANT:

No, I'm just ...

THE COURT:

... the witness didn't write that memo.

Mr. FABRIKANT:

I'm asking in their language, because the person who wrote it ...

THE COURT:

Well, in whose language?

Mr. FABRIKANT:

... is one ...

THE COURT:

In the witness' language, or ... or in the language of wherever that originated from? Wherever that is.

Mr. FABRIKANT:

Well, I think that is language of security guards. And, they have certain meaning to the word suspect. So, there is nothing wrong with that question. And I would appreciate that

this particular document be filed, because it is extremely important ... it's a clear indication that there was security guards at Concave research center. Was there?

Me LECOURS:

It's not a proof of that, My Lord.

Mr. FABRIKANT:

Well, let me ask.

Q. Was there a security guard, to the best of your knowledge, at Concave research center?

- Au meilleur de votre connaissance, est-ce qu'il y avait un agent de s,curit, au centre de

recherche Concave?

A. Non.

- No.

Q. Not from your company?

- Pas de la part de votre service?

A. Pas de la part de notre service.

- Not from our company.

Q. Would it be possible for you to find out who wrote the memo, this particular memo?

- Serait-il possible pour vous de trouver l'auteur ou la personne qui a ,crit le m,mo?

A. Je peux me renseigner.

- I may ... I can try to find out.

Q. Alright, in the meantime, I would like this to be filed.

THE COURT:

May I see that please.

Mr. FABRIKANT:

Isn't it obvious that they were playing Russian roulette.

Me LECOURS:

Is it written Russian roulette in it?

THE COURT:

Pardon?

Mr. FABRIKANT:

It is not written, but it is obvious.

Me LECOURS:

Can I see it?

Mr. FABRIKANT:

No, I would like this to be filed.

THE COURT:

It'll be filed subject to the memo being properly identified by whoever wrote it. It wil

be filed simply because it was in the file ... in Mr. Desjardins' file. It's filed and on ice,

if you like, until you ... you properly introduce it by it's author, it looks to be a document emanating from Concordia University, I don't know from who.

Mr. FABRIKANT:

Well ...

THE COURT:

If the witness is able to find out how it got into his file and where it came from, that's

one thing.

Mr. FABRIKANT:

We can make a copy and give it to the witness, if he needs a copy of that document to identify who wrote it, when and why. And, if he'd be kind enough to communicate with ma&tre Belleau on this subject, it will be greatly appreciated.

THE COURT:

Well, I noted the witness generosity as did you, so ...

Mr. FABRIKANT:

Well ...

THE COURT:

... no objection to that. The witness wishes to be generous enough to make whatever inquiry he proposes to make.

Me LECOURS:

It's his job.

Mr. FABRIKANT:

Well, not exactly, but it is generous.

THE COURT:

Voulez-vous ... would you make a copy of that please.

Have you any further questions ...

THE WITNESS:

(inaudible) surprise, it's any of my business at all.

THE COURT:

You know, it's been a long day. Have you any further questions for Mr. Desjardins.

Mr. FABRIKANT:

Well, if he would show me yet another file ... I think there is a lot of interesting things

in this company. They just do not show it all. That is regretful. But, as much as they

did show, I have no ...

THE COURT:

Okay, Mr. Desjardins, I gather there are no further questions, I presume you have nothing on ... perhaps you would wait until the copy comes back. Your next witness.

END OF TESTIMONY BY THIS WITNESS.

Me BELLEAU:

May I suggest we take a break here, because my next witness will be (inaudible).

THE COURT:

Yes, we might as well. We'll take a break, yes, okay.

SUSPENSION

REPRISE

THE COURT:

The note I think was D-4, is that right?

Me LECOURS:

Well, I suggest I-4, until it's formally introduced. It might not be introduced.

THE COURT:

Yes. You're right, good idea.

Me LECOURS:

Or I-1.

LA GREFFIERE:

I-1.

THE COURT:

I-1. Till it's introduced.

PIECE I-1: M,mo, Concordia University.

IN THE YEAR NINETEEN HUNDRED NINETY-THREE (1993)
this twenty-sixth (26th) day in the month of May,

PERSONALLY CAME AND APPEARED:

RICHARD McMANUS

born on the 30th of November 1951, lawyer,

WHO, after being duly sworn, doth, depose and says as follows,

EXAMINED BY Mr VALERY FABRIKANT

Representing himself:

Me LEHRER:

(inaudible) the Court, my name is Harold Lehrer, I'm representing the Concordia union faculty association. At all relevant times, the witness was attorney for CUFFA, and

I'm

here to invoke and protect the privileged communications between its former solicitor and itself, and we will be here simply to invoke the privilege, it is not our intention to renounce in any way to any privileged communications which might have taken place between the witness and CUFFA. I don't want to anticipate Mr. Fabrikant's questions, but I want to make it clear so I don't interrupt his questioning each time another question is asked. But, that is our intention. I would also like to make very clear to the Court, that the association does not want to leave the impression that it has any facts whatsoever to conceal and if Mr. Fabrikant would like to subpoena one of its officers, he'd be more than pleased to attend and answer any of the questions that he might want to pose to their former attorney. We have already supplied Mr. Fabrikant with a number of documents that he did request of the association.

Mr. FABRIKANT:

Well, since you are here ...

THE COURT:

Okay. Mr. Lehrer, I've noted your intervention and I've noted your interest. For the minute, the witness has been called and the witness has been sworn, all I can say is that if the witness finds that he is any difficulty with regard to any of the questions, then either you will intervene on his behalf, or he'll raise his hand and ... and if Mr. Fabrikant has taken note of your suggestions, I'm sure this isn't the first (1st) time it's been made, so ...

Mr. FABRIKANT:

While you are here, some of the documents seem to be incomplete, would it be possible to communicate with you about it or what? How would you like to proceed?

Me LEHRER:

I think you (inaudible) the Court may be suggest that these discussions be held in private

...

THE COURT:

Absolutely.

Me LEHRER:

... and I'm prepared to continue on that same basis.

Mr. FABRIKANT:

Is there anywhere a telephone number where I can reach you?

Me LEHRER:

I could do that at the next break (inaudible).

THE COURT:

Fine.

Mr. FABRIKANT:

Alright.

Q. Okay. Mr. McManus, would you please tell the Court when we met first, at what circumstances, where and in what circumstances?

- If you would allow me, My Lord, the witness has told me during the break, that he would prefer to have the translation only of his replies.

THE COURT:

Okay. Fine.

THE WITNESS:

La première fois que je vous ai rencontré, monsieur Fabrikant, c'était selon mon souvenir, le seize (16) avril quatre-vingt-douze (92).

- The first (1st) time that I met with you, Mr. Fabrikant, as far as I can recall, was the

sixteenth (16th) of April nineteen ninety-two (1992).

A cette occasion, nous avons, vous, monsieur Antonio Constanzo, ... l'poque pr,sident de Concordia faculty association, et moi-m^me rencontr, la vice-rectrice ...

l'enseignement

et ... la recherche, madame ...

- Okay, one moment. At that point, you, Mr. Antonio Constanzo, the secretary of the Concordia University faculty association, myself, met with the lady vice-rector ...
... enseignement et recherche ...

- ... for research and ... study ... research and study ...

Mr. FABRIKANT:

Q. Vice-rector academic.

A. Academic.

- Academic advisor.

THE COURT:

No, no, vice-rector academic.

THE INTERPRETER:

I'm sorry. Vice-rector academic ...

THE WITNESS:

... ma^tre Freedman, avocat de l'universit,, et une autre personne dont je ne me rappelle

pas le nom.

- ... Mr. Freedman, attorney for the university, and another person whose name I don't recall.

Mr. FABRIKANT:

Q. What was the purpose of that meeting?

- Quel ,... oh, I'm sorry ...

Q. Well, he speaks beautiful English, Mr. McManus ...

THE COURT:

No, no, no, no ... no. If Mr. McManus ... and I surely understand, prefers to give his

answers in French, then ... that is absolute choice, and I don't blame him one bit.

Mr. FABRIKANT:

Q. So, what was the purpose of the meeting?

A. Le but de la rencontre ,tait, pour la vice-rectrice nous a-t-elle dit, ... ce moment-l...
...

- The purpose of the meeting, as the lady vice-rector then told us at that point ...

... ,tait pour elle de compl,ter une enqu^te ...

- ... for her it was to complete an investigation ...

... concernant certains problšmes ...

- ... concerning certain problems ...

... qu'elle avait ...qu'elle vous avait notifi,s par lettre, le trente (30) mars mil neuf cent

quatre-vingt-douze (1992).

- ... of which she notified you by letter, dated the thirtieth (30th) of March nineteen ninety-two (1992).

Q. And, what was this letter about?

A. En termes techniques, c',tait un avis disciplinaire ...

- In a technical ... to use technical terms, it was a disciplinary notice ...
... qui se rapportait ...

Q. Letter of warning.

- Disciplinary notice.

Q. Letter of warning is translation.

THE COURT:

I think it would be right, yes. It sounds fine.

Mr. FABRIKANT:

Q. Letter of warning.

A. What was the question again?

Q. What was this letter about? You said it was a letter of warning.

A. Cet avis disciplinaire, mentionnait que l'universit, vous reprochait l'utilisation que vous

aviez faite du courrier ,lectronique ...

- So, this letter of warning mentioned the fact that the university was blaming you for the use that you made of the electronic mail ...

... des fins personnelles, pour exposer ...

- ... for your personal use in order to expose ..

... tant ... l'int,rieur de l'universit, qu'... l'ext,rieur de l'universit, ..

- ... as much as within the university as outside the university.

Certaines pr,tentions que vous aviez ...

- Certain pretentions that you had ...

... concernant le fonctionnement de la recherche ... votre d,partement.

- ... concerning the conduct of research in your department.

Q. Not only this, but also some broaden financial irregularities. Not only this.

A. Votre Seigneurie, j'ai avec moi cette lettre.

- My Lord, I have this letter with me.

Q. Well, technical stuff, I would like all those documents to be deposited in Court. At what stage usually this is done, at ... when the witness names those documents, at the end of his testimony ...

THE COURT:

Normally, if that letter would be deposited when ... by its author, the author of that letter was doctor Sheinen, if my understanding is correct.

Mr. FABRIKANT:

But if this letter is in special grievance file, and what I want to deposit is a grievance in its totality, and Mr. McManus was the one who studied the file, then ...

THE COURT:

Look, for the minute you're talking about the letter, now you jump to a grievance file.

Mr. FABRIKANT:

Yes.

THE COURT:

Now, where on one hand the letter may be admissible, I'm not at all certain that a grievance file as such, will be admissible. So the only thing to do is take these things one by one.

Mr. FABRIKANT:

Alright.

THE COURT:

Now you ... you had Mr. McManus, suggested that you were reproached for your use of E mail, both inside and outside the university. In so far as it related to certain of your claims concerning the conduct of research. You asked him whether the ... whether the letter touched on another subject. Was that your other ... your question ...

Mr. FABRIKANT:

Yes.

THE COURT:

Fine. Ask him if it touches on another subject and see what he says.

Mr. FABRIKANT:

Q. Well, was it just the use of electronic mail or mainly it was something else?

A. Il est trřs difficile de r,pondre ... la question sans avoir la lettre devant moi.

- It's very difficult to reply to the question without having the letter in front of me.

Q. Why is ...

A. Mais ce que je me rappelle, c'est que ... l..., je vois le paragraphe ...

- Although what I recall, and then I can see the paragraph ...

... la vice-rectrice mentionnait que les accusations que vous portiez contre vos collřgues et le d,partement, ,taient de nature trřs grave et ...

- ... the vice-rector mentioned that the accusations that you were ... that you were filing

against your colleagues and the university were very serious ...

... et qu'en consequence elle devait vous discipliner.

- ... and as a result, you had to be disciplined or given a warning.

Q. And at this meeting, did I present any explanations or did I make any presentations to the vice-rector with respect to all this information?

A. A ce stade-ci, j'aimerais savoir si les communications auxquelles fait r,f,rence le t,moin

sont sujettes ... mon secret professionnel.

- A this stage, I would like to know if the letters to which the accused is referring are not

subject to my professional secrecy.

Q. Well, I asked him just as a witness, he was there, what he observed.

THE COURT:

Just a second ... a second ... a second. Thus far, we've talked only about one (1) letter.

Is that right?

Mr. FABRIKANT:

Yes.

THE COURT:

And that was a letter that was addressed to you by doctor Sheinen.

Mr. FABRIKANT:

Yes.

THE COURT:

You then, put another question which didn't bear on the letter, but rather bore on representations which you made to doctor Sheinen at the time.

Mr. FABRIKANT:

Well, he was witness, he ...

THE COURT:

No, I know, but he ...

Mr. FABRIKANT:

... he just observed certain behaviors, I want to report it.

THE COURT:

He has asked a question, which I suppose you can solve very easily. I simply relieving

Mr. McManus of any obligation which he may have in his capacity as a lawyer toward you.

Mr. FABRIKANT:

Oh, he refers towards me or towards CUFFA. What (inaudible) ...

THE COURT:

Well, first of all ... first of all, there's the question of towards you.

Mr. FABRIKANT:

Towards me I'm relieving him.

THE COURT:

Now, then there may come the question toward CUFFA.

Me LEHRER:

If it's pleased the Court ...

THE COURT:

But I don't think a letter addressed by doctor Sheinen to Mr. Fabrikant falls within ...

within his privileges as the attorney at the time of CUFFA.

Me LEHRER:

We got no problem with that particular letter, Your Lordship, but I would like to point

out of the Court, that in matters ... in grievance matters, the attorney is the attorney of

the of the association and not the attorney of the individual grievor. So, the privilege

would be ... the privileged communications in our opinion would be between the witness and the association, and the association did not waive that privilege. But we have no problem with the letter just (inaudible) not at all.

THE COURT:

With this letter. Fine.

Me LECOURS:

But was he representing the interest of Mr. Fabrikant? Maybe we should clear that up,

because he was grieving for the syndicat, for the union, and the union was I guess

taking

the part of Mr. Fabrikant at that meeting.

Me BELLEAU:

Well, he waived his privileges hence ...

THE COURT:

He's ... he's waiving his ... he's waived his privilege.

Me LECOURS:

I think it solves the whole matter.

THE COURT:

So ... but, it doesn't solve the whole matter, but it solves this part of the matter.

Are

you satisfied with that, Mr. Lehrer?

Me LEHRER:

I have no problem with the communication between Mr. Fabrikant (inaudible).

THE COURT:

And you have no problem with Mr. Fabrikant waiving any privilege that may en...(?) between him and Mr. McManus.

Me LEHRER:

Well, I don't think the privilege exist between him and Mr. McManus, Your Lordship, and I don't think he can waive a communication between the association and Mr. McManus.

THE COURT:

No, no, I didn't ... I'm not suggesting that for a minute.

Me LEHRER:

But as long as it doesn't liberate him to discuss matters, that privilege, I don't

mind if

Mr. Fabrikant waives whatever.

THE COURT:

Okay.

Mr. FABRIKANT:

Well, the whole issue kind of look to me strange. He ... Mr. McManus was representing me ... well, yes, he told me he's my lawyer, at least this is what he told me,

and

since he told me, he is my lawyer, then my understanding and I think it is not a wrong understanding, is that it is relationship between me and him in representing this

particular

file. As far as CUFFA is concerned, it is something else, some kind of communications which are outside of my file. And I prepared to accept it. But, as far as my

particular

file is concerned, I think it is irrelevant that Mr. McManus works for CUFFA, for FQPPU. It was client/sollicitor relationship and (inaudible) has nothing to do with

it,

as far as my file is concerned.

THE COURT:

Well, in any event, we'll go ahead and see ... see if we run into any trouble, I'm not sure it's quite as simple as you ... as you put it. But ...

Mr. FABRIKANT:

Okay. So ...

THE COURT:

In so far as Mr. McManus was acting on your behalf with ... was acting on your behalf during the meeting with doctor Sheinen, I see no difficulty, so ...

Mr. FABRIKANT:

Q. Okay. So, did I make any representation there, if yes, what were they and what was the reaction of the vice-rector?

A. Lors de la rencontre, vous avez effectivement fait des repr,entations ...

- During the meeting, indeed you did make some representations ...
... en terme g,n,ral, ces repr,sentations portaient sur des pratiques que nous pouvons qualifier de blfmables ...

- ... in general, your representations dealt with practices that one could qualify of being blameworthy.
... ou frauduleuses ...

- ... or fraudulent ...
... en matiŠre de recherche scientifique.

- ... in matter of scientific research.
Quelle ,tait l'autre partie de la question?

- What was the other part of the question?

Q. Well, and what was the reaction of vice-rector? How she has taken my presentation?

A. J'ai not,, lors de cette rencontre que, elle ne faisait pas preuve d'aucune attitude d',coute
... votre ,gard.

- I noticed during this meeting, that she showed no signs in her attitude of listening to you.

Q. Well, she didn't want to listen. We are loosing in translation so terribly, that I still would like Mr. McManus to address it in English.

THE COURT:
No.

Mr. FABRIKANT:
We are just loosing in meaning of what happened.

THE COURT:
Q. Would you repeat you answer again, and would you stop along the way, so that Mrs. Stubichard gets a chance to translate what you're saying.

A. En bon qu,b,quois, pour ^tre clair, j'ai eu l'impression lors de cette rencontre qu'elle ne voulait rien savoir.

- In qu,b,quois jargon, I had the inpression during this meeting that she was not at all interested.

Mr. FABRIKANT:
Q. She didn't want to hear what I was saying.
Well ...

- It's a remark ...

THE COURT:
It's alright, everybody understand it. She was not interested in listening to you.

Mr. FABRIKANT:
Q. Yes, okay. How was it physically demonstrated, was it even demonstrated physically, was it?

A. Ce dont je me souviens, vous avez offert ... un certain moment, de lui faire entendre des enregistrements de conversations t,l,phoniques ...

- That which I recalled, you had her listen to ... at some point, you had her listen to ...

THE COURT:
No, he offered to have listen to ...

- ... I'm sorry. You offered to have her listen to recordings of certain telephone conversations ...

THE WITNESS:
Et de pouvoir jeter un coup d'oeil sur certains documents que vous aviez apport,s avec vous.

- And, to ba able to glance at certain documents that you brought with you.
Ce qu'elle a refus,.

- But she refused.

Mr. FABRIKANT:
Q. Okay. How was it that she refused, could you be more specific? What exactly did she do when I tried to play her the tape, what did she do?

A. Physiquement parlant, je n'ai pas de souvenir d'un geste particulier qu'elle aurait

pos,

...

- In physical terms, I don't have a recollection of some gesture that she may have made

...

... mais, comme j'ai dit tantôt, c'est plus une impression d'attitude générale que je conserve de cette rencontre-l...

- ... as I said earlier, it's more a general ... a general impression of her attitude that I have of that meeting.

Et c'est l'attitude d'une personne qui ne veut absolument rien savoir de ce qu'on est en train de lui expliquer.

- And this is the attitude of a person who has no interest in that which one is explaining to her.

Q. Well, you don't remember she did just like that?

A. Non.

- No.

Q. And you don't remember that she just didn't want to watch like this, when I was showing

her, she turned her head? Not too much.

A. Comme je vous l'ai dit, monsieur Fabrikant ...

- As I told you, Mr. Fabrikant ...

Q. You don't remember.

A. ... les souvenirs que j'ai de cette rencontre-l... sont plus d'ordre général en terme d'attitude d'une personne ...

- ... the recollection that I have of this meeting is more of a general nature in terms of the attitude of the person ...

... plutôt que sur des gestes particuliers qu'elle aurait pu ou ne pas poser ... ce moment-l...

- ... rather than the gesture that she may have or not (inaudible) at that point.

Q. So, was there any questions or comments from her after I finished my presentation?

A. De ce que je me souviens, elle a indiqué, non seulement ... vous, mais aussi au président du syndicat, qui était présent avec nous ...

- As far as I recall, she indicated not only to you but as well to the president of the union, who was there present ...

... que malgré, qu'elle avait déjà envoyé, l'avis du trente (30) mars quatre-vingt-douze (92) ...

- ... that in spite of the fact that she'd already sent the warning dated the thirtieth (30th) of March nineteen ninety-two (1992) ...

... sa décision finale n'était toujours pas prise concernant les sanctions qu'elle prétendait pouvoir ou devoir vous imposer dans les circonstances.

- ... she had still not taken the final decision with regard to the sanctions that she thought were necessary ... she could have ... (inaudible) ...

THE COURT:

Intended to impose.

- ... necessary to impose. Thank you, My Lord.

Mr. FABRIKANT:

Q. Did ... did she say anything else?

A. À défaut d'être plus précis, je ne me souviens pas de quelque chose de particulier.

- Not being able to be more precise, I don't recall anything really ... I don't recall anything in particular.

Q. How long did my presentation last approximately?

A. Half an hour («hr»).

Q. An (1) hour, you remember they gave me an (1) hour.

A. Non, j'ai dit une demi-heure («h»), ... peu près.

- No, I said a half hour («hr) approximately.

Q. She gave me an (1) hour and I used it.

THE COURT:
Now you're arguing with the witness.

Mr. FABRIKANT:
Yes, I'm arguing with

THE COURT:
Listen the witness recalls half an hour («hr) approximately.

Mr. FABRIKANT:
Alright.

Q. Okay. So, after you and union president saw that vice-rector just doesn't want to hear the facts, what was the decision of the union, what transpired next?

Me LEHRER:
I have an objection to raise, Your Lordship, this relates to discussions between the witness and the president of the union at the time, outside of the presence of Mr. Fabrikant, I invoke the privilege. If Mr. Fabrikant was present, then I wouldn't have a problem, because it would probably constitute (inaudible).

Mr. FABRIKANT:
I'm asking about what happened next, when I was present.

THE COURT:
Well, now you run into a privilege problem.
When you were present?

Mr. FABRIKANT:
Yes.

THE COURT:
Okay.

Mr. FABRIKANT:
I'm not asking of anything what happened when I was not present.

THE WITNESS:
Je me souviens qu'on est sorti de la salle de r,union.

- I recall that we came out of the meeting room.
Et que ... ce moment-l..., en pr,sence de monsieur Constanzo, et de vous-m^me ...

- And at that point, in the presence of Mr. Constanzo and yourself ...
... je me rappelle avoir dit que: si ce que vous disiez ...

- ... I recall having said: that if what you were saying ...
... ,tait vrai ...

- ... what you were saying were true ...
... il y avait de s,rieux problġmes ...

- ... there were serious problems ...
... concernant le ... la conduite de la recherche scientifique ... votre d,partement.

- ... concerning the conduct of scientific researching in your department.

Mr. FABRIKANT:
Q. And what would happen several days later?

A. Monsieur le pr,sident j'ai fait une chronologie des faits, est-ce que je pourrais m'y r,f,rer?

- My Lord, I've prepared a chronological notice of the facts, may I refer to it?

THE COURT:
You have no objection to that?

Mr. FABRIKANT:
No, I think it would be even better if he takes his file in front of him, because I would like him to have it and comment on that. So, quite opposite, I would like him to have it.

THE COURT:
I'm not sure that he spoke of his file. He spoke of a chronology that he had prepared.

Mr. FABRIKANT:
Well, whatever ...

THE COURT:
And there is a difference between his file which is privileged, and the chronology

which he prepared. First (1st) thing. Secondly, the further we go, if we're talking in the context of a meeting with the vice-rector, in the spring of nineteen ninety-two (1992), and the question of sanctions, I'm prepared to grant you a certain latitude. If inexorably, we're heading down the road of what you have to say and what to allege about scientific work being conducted in the department, then we're getting very, very far from the mark.

Mr. FABRIKANT:
Well, I am not asking him to comment scientific work in the department.

THE COURT:
No, I'm just anticipating ... I'm just anticipating, that we've walked down the hall three (3) steps and taken another side door back into an area which I said was not pertinent this morning.

Mr. FABRIKANT:
You are so afraid that again image of Concordia University we'll be tarnished.

THE COURT:
I'm not at all afraid of the image of Concordia University being tarnished. What I am very, very much afraid of, is that we forget what we're for. If we get into what you propose to get into this morning. And I don't propose to forget that. So, would you take your synopsis, Mr. McManus, please, your synopsis.

Mr. FABRIKANT:
So, what? My grievances are irrelevant, that's what you are saying.

THE COURT:
I'm not at all sure your grievances are relevant, Mr. Fabrikant.

Mr. FABRIKANT:
Well, if I was abused at the university, and he admit it himself that the fact of abuse is relevant, grievance is a reflexion of that abuse. So, it is relevant.

THE COURT:
I said, I'm not at all sure, your grievance is relevant. We will see.

Mr. FABRIKANT:
I know your criteria, if it doesn't tarnish very much Concordia University, then it will be relevant.

THE COURT:
Mr. Fabrikant, you're becoming tiresome, you've said that twice in the last two (2) minutes.

Mr. FABRIKANT:
Well, don't you worry. It won't last that long, couple of months, that's all. Whole life is in front of you still.

Me LEHRER:
Your Lordship, if it pleases the Court, I would like to see the synopsis, because I think an aide-memoire once consulted by a witness, can be admissible in evidence, if the witness refers to it. I want to make sure there is nothing regarding the privilege in the synopsis as a summary of the file. I understood it to be a summary of the file and not a summary of his notes of the meeting in question. If I'm correct in that, I would like to see if I have no objection of him using it.

THE COURT:
Okay. Listen, I'm going to adjourn until tomorrow morning. Would you take a look at that and see whether you have any problem, so that we can try to at least develop

some sort of smooth rhythm tomorrow morning as we get going. Would you also see whether or not your offer of making someone from the association available to testify, so as to relieve Mr. McManus of this particular problem is acceptable.

Me LEHRER:

I've advised Mr. Belleau of that, Your Lordship, before we started. I'll renew that

...

Mr. FABRIKANT:

Well, bring Mr. Contanzo here tomorrow morning, and we could ...

THE COURT:

Mr. Fabrikant, I'm not speaking to you just now.

Mr. FABRIKANT:

I'm not speaking to you either.

THE COURT:

Let us simply ... right. And you be quiet, since I happen to be directing operations for the minute.

So, ladies and gentlemen, we'll adjourn until tomorrow morning. Okay. I'll leave to you

to see ...

Mr. FABRIKANT:

Well, I have ... I have several procedural questions ...

THE COURT:

Do you? Well they can wait till tomorrow morning.

Mr. FABRIKANT:

You're being paid for sitting here.

FIN DE L'AUDIENCE.

CAUSE CONTINUEE LE 27 MAI 1993, A 9H30.

Je soussign,e, JOCELYNE DEMONTIGNY, st,nographe officielle, certifie sous mon serment d'office, que les pages qui pr,cšdent sont et contiennent la transcription

exacte

et fidšle des paroles recueillies ay moyen de l'enregistrement m,canique, au meilleur

de

l'enregistrement, le tout conform,ment ... la loi.

Et j'ai sign,,

JOCELYNE DEMONTIGNY, S.O.

</pre></body></html>

TABLE DES MATIERES

27MAI 1993

PAGE

PROCES

PREUVE DE LA DEFENSE (suite)

Repr, sentation - Me Marc Bantey 3

Repr, sentations - Mr. Fabrikant 6

TEMOINS

RICHARD McMANUS

Interrog, par M. Valery Fabrikant 35

TEZETA TAYE

Interrog, e par M. Valery Fabrikant 87

Contre-interrog, e par Me Jean Lecours 95

R, interrog, e par M. Valery Fabrikant 95

MARIE-CLAUDE AUDET

Interrog, e par M. Valery Fabrikant 127

MICHEL BUJOLD

Interrog, par M. Valery Fabrikant 135

LISTE DE PIECES

PIECE C-10: Lettre du docteur Ann Rothman et
copie du subpoena, Carolyn Adolph 14

PIECE D-4: Lettre dat, e 12 juin 1992 186

PIECE D-5: Lettre dat, e 27 ao-t 1992 et
croquis, en liasse 187

PROCES

PREUVE DE LA DEFENSE (suite)

THE COURT:

I was asked to come in without the jury, is there any particular reason why?

Me BANTEY:

With the Court's permission, My Lord, my name is Marc Bantey I represent the Gazette. The newspaper received a subpoena yesterday addressed to one (1) of it's reporters Carolyn Adolph. Miss Adolph is on sickness leave right now, she's undergoing a very difficult pregnancy. And her doctor ... she's under doctor's orders not to undergo any stress whatsoever. Secondly, the subpoena addressed to her, requests, and I have a copy of it here: all documents and materials given to you by Valery Fabrikant. It concerns an article that Carolyn Adolph wrote in April ninety-two (92) ... I'm sorry, in February ninety-two (92), well before the incident, and all the documents that Mr. Fabrikant gave to her, she disposed of one (1) month later. Now, I have here the doctor's letter, which I've showed to my confrŠres ... which I'll show to my confrŠres.

THE COURT:

Who's Catherine Wallace?

Me BANTEY:

Catherine Wallace is an editor at the Gazette.

THE COURT:

I see.

Mr. FABRIKANT:

Mr. Belleau just gave it to me, you're not interested.

Me BELLEAU:

I'm sorry.

Mr. FABRIKANT:

You forgot your main function, you are not being paid for reading, you are being paid for poverty.

THE COURT:

Have you quite finished?

Mr. FABRIKANT:

Sir?

THE COURT:

Have you quite finished?

Mr. FABRIKANT:

With what? With reading?

THE COURT:

No, with talking.

Mr. FABRIKANT:

Well, you could have noticed, that yes.

Me BANTEY:

The journalist is expecting towards the end of the month ... the end of June.

THE COURT:

Toward the end of June.

Me BANTEY:

Yes. The documents in question, I'm informed, are ...

THE COURT:

You say one, they've been destroyed, Mr. Bantey, is that right?

Me BANTEY:

That's ... that's true. They were disposed of one (1) month after the publication of the article. If the Court ... if the Court would like to see the article, I have it here. The documents in questions, My Lord, were a federal government contract with two (2) Concordia professors, the Sankor brothers, their rapport to the government and the student (inaudible). So, I would think that these documents could be obtained by other means.

THE COURT:

When you handed something to Mr. Belleau, was it a copy of this ... was it a copy of this letter, that you handed to Mr. Belleau for transmission to the accused?

Me BANTEY:

Yes.

THE COURT:

Have you anything to say Mr. Fabrikant?

Mr. FABRIKANT:

Well, when is the baby due?

Me BANTEY:

Towards the end of June.

Mr. FABRIKANT:

Is there any way she could answer some questions without coming here, is there any way to arrange some kind of interview?

Me BANTEY:

I heard ... I'm informed that her doctor is adamant that she not testify and endanger her pregnancy.

Mr. FABRIKANT:

Well, I believe she did nothing wrong. She ...

THE COURT:

Are you arguing Mr. Bantey, he's telling you what he's informed of.

Mr. FABRIKANT:

Yes. Why would she think that just answering some questions would endanger anything, she did beautiful honest job as a journalist, she has nothing to reproach to her.

So why is, doctor or anybody else's opinion that
(inaudible) some questions concerning meeting with me.

THE COURT:

Mr. Bantey isn't a witness and he's not here to answer your questions.

Mr. FABRIKANT:

Well, then maybe we call doctor and ask her.

THE COURT:

If that's really necessary, that can be done. If that's really necessary, but ...

Mr. FABRIKANT:

Well, we can wait maybe ...

THE COURT:

... I had thought that I ruled yesterday, that the question of government contracts to the Sankors and what grew out of them was not admissible.

Mr. FABRIKANT:

And this is not the issue I am calling her for. How about that?

THE COURT:

What ... well, good, you tell me what the issue is that you're calling her for.

Mr. FABRIKANT:

Well, the issue is again, state of my mind. Because, I called for the help of the press and instead I got libel article, which did not come from any evidence whatsoever, which was in total contradiction to what I gave her. So, this is question of my state of mind, whether I can get any help from the press.

THE COURT:

I'm sorry, you'll have to run that by me again. Because, I understood you to say just about a (1) minute ago, that from your point of view she wrote a very well balanced article, which you were perfectly satisfied with.

Mr. FABRIKANT:

No, I just suggested maybe this is the case, maybe this is not. If this is not the case, then she must be very ... might be concerned, but we don't know this yet. Maybe I'm right, maybe I'm wrong. Who knows?

THE COURT:

No, but I'm still not ...

Mr. FABRIKANT:

We cannot ... we cannot say until we hear the testimony, right.

THE COURT:

I'm still not following you. What do you propose to establish by this witness?

Mr. FABRIKANT:

Well, I'm proposing to establish with this witness, as to the information which I provided to her in general, about state of things at Concordia, and asked her for help, and she seemed to be very comprehensive and supportive. Anyway, do you want me to repeat what she's supposed to testify?

THE COURT:

Yes. Generally, the general lines of what you ... you propose to have her say, in order that I might make some sort of assessment as to ... as to the pertinence of it.

Mr. FABRIKANT:

Alright. So, I was crying for help and she was one of the person who I addressed to, and she came and at the

beginning she seemed to be very supportive. And, I gave her all the documents, including those about Sankor, but not limited to. I gave her my electronic mail, which contained many other things. Among them, how I was exploited at Concordia University, and how they tried to have me fired, and about body guards who got hired for the sole reason just to ruin my reputation, not because they had any reason to fear me, and she said she was going to investigate. And sometimes later, (inaudible) end of March somewhere, or second (2nd) half («) of March, I got from her a phone call, not really a phone call, but message on my machine, that none of my allegations have been confirmed, everything is totally unfounded, don't call me, if you dare to call me, I will ... something, cut your line off, that kind of ... even threat of I ... I never gave her reason to do so. Then I tried to contact the editor and asked him, okay, if my information was not confirmed and unfounded, why is she afraid to explain to me what exactly is unfounded. He told me: well, we're just not interested in your subject. Then I said, alright, if you are not interested in my subject, that's fine, but don't tell me that my allegations are unfounded, because if you say they're unfounded, then explain what is unfounded. But, if you are not interested, of course, you are not obliged to do anything. And, several days later, when there was election at the university, and I was running for president of the union.

THE COURT:

Go ahead.

Mr. FABRIKANT:

You look at me so surprise ...

THE COURT:

No, it's alright.

Mr. FABRIKANT:

... when I (inaudible) i was running for president of the union. Yes, I wanted to replace those crooks.

THE COURT:

Go ahead.

Mr. FABRIKANT:

I wanted to introduce some honesty in the union. All of a sudden, I get a call that she's going to write an article about me, and she needs urgent interview, and that call was made, again, in my absence. When I came back, and I had a lecture at that time, I called her and I told her I have a lecture right now, if you need an interview, I will be happy to do it. Now, she told it is urgent, because article has to appear tomorrow. And tomorrow, it appeared, without any interview with me. And, there was absolutely nothing in this article of the information which I gave her, except that she repeated with the words of vice-rector Sheenan, that I'm such and such, and such. And, definitely appearance of this article was quite shocking to me. Besides, definitely, that same day article appeared, some well-wisher on computer network, was running a letter to everybody in the university. Hey, guys, there is an article about Fabrikant in today's Gazette. And, this message was repeated twice. And, this is one (1) of the reasons, I'm asking you to get access to my computer, because it is still there, and I want to present it to Court, how cooperative reporter was with the university and how timing was adjusted exactly at the time of voting and

to inform the university community how bad I was. There were so afraid, God forbid, I will win those elections. Beside that, I have testimony that when shooting came, she got into contact with somebody else and told that person, I'm probably one who should be blame for the shooting, to. And, allegedly she was crying, I'm not sure whether this cry was sincere because a person with her integrity cannot possibly cry sincerely. What she really wanted to know from that person, was whether my wife is going to shoot somebody to. That was the main purpose of her visit to that other person. She can make quite a spectacle. Is this enough or you want more?

Me BANTEY:

My Lord, I said before the article was published in February, it was published on April one (1) ninety-two (92), I'm sorry.

THE COURT:

What did the subpoena say, Mr. Bantey, please?

Me BANTEY:

And bring with you all documents and material given to you by Valery Fabrikant.

THE COURT:

If the documents and materials to which the subpoena refers includes your electronic mail, I understand ... if I understand properly, your electronic mail was remitted to you. And there is surely another way beyond Carolyn Adolph ...

Mr. FABRIKANT:

It was not remitted ...

THE COURT:

... to produce your electronic mail. She is surely not the only ... the only source of your electronic mail.

Mr. FABRIKANT:

I am not asking her as source of electronic mail, what I wanted to demonstrate, that she was well aware of all the facts and that her article was completely and totally in disagreement with what she had. And her own admission, whether false or not, maybe she wanted just to get into trust of the people she spoke to, because she was probably ... she got assignment maybe from the police to find out whether my wife was going to come to university and shoot everybody else to. But this was effectively the question she was asking that person.

THE COURT:

And that was something that occurred after the incidents.

Mr. FABRIKANT:

Yes. We have beautiful press, cooperates with police nicely. Now, would it be a bold guess to guess that you will say that her testimony is irrelevant, is it?

THE COURT:

That's what I'm looking at, at the moment.

Mr. FABRIKANT:

Yes, I bet that's what you are going to say.

Me LECOURS:

It certainly is, My Lord. We're going nowhere with this testimony. It doesn't help us.

Mr. FABRIKANT:

It doesn't help you, no, it helps me.

Me LECOURS:

Are you sure?

Mr. FABRIKANT:

But it doesn't help you, no. Not at all. Neither you or the Judge.

Me LECOURS:

It's all the supposed stuff of university crooks and ...

THE COURT:

I know, I know ...

Me LECOURS:

And you already ruled on that, My Lord.

THE COURT:

First of all, the question of your relationship with Mrs Adolph as far as the information which you furnished to her and anything which she undertook to report on as a reporter, is not and cannot be pertinent to the proceedings which are before me here. Furthermore, as to the potential effect of an article on your state of mind, really, and I say this in the absence of the jury, the only person who can testify to that, is you.

Mr. FABRIKANT:

Well ...

THE COURT:

I ... I don't wish to hear from you just now ...

Mr. FABRIKANT:

... sure, jury is not that stupid ...

THE COURT:

Sit down.

Mr. FABRIKANT:

... as you pretend to be.

THE COURT:

Would you ... would you ...

Mr. FABRIKANT:

Jury will understand very well.

THE COURT:

Would you ... would you sit down, I'm rendering a decision. Thank you. The effect of the article, if any, on your state of mind, is something that only you can address, certainly not Miss Adolph. From what you've said to me, I cannot see even remotely, how her testimony could be of any assistance, maybe of some interest, could be of any assistance or could be pertinent. And, in view of the representation, I am of the view that the subpoena be annuled, and the subpoena is accordingly annuled and set aside. And, I admit into the Court record, the letter of doctor Rothman which Mr. Bantey has furnished to me. Thank you very much.

PIECE C-10: Lettre du docteur Ann Rothman et copie du subpoena de Carolyn Adolph, en liasse.

Me BANTEY:

Thank you, My Lord.

Mr. FABRIKANT:

Well, you'll have to rule on some other irrelevant things then. I asked Mr. Belleau to get telephone logs of Gold, Kenneth, Swamy, Mackinnon, I gave him all the names. You know what I am trying to prove, that all anger and conspiracy together with Hogben, in terms of this ultimatum that either I accept going to jail, and God knows what happens in jail, or to get this (inaudible) salary and get out of the university. Now, and of course those phone logs are irrelevant.

THE COURT:

I don't know whether these phone logs are irrelevant or not, I don't even know if these phone logs exist.

Mr. FABRIKANT:

Well, they do exist.

THE COURT:

Mr. Fabrikant, you'll forgive me perhaps for not ... for not necessarily taking your words on the subject. However, if these phone logs exist, I would presume that the individuals you've named, namely Gold, Kenneth and whoever else, would surely have knowledge of their existence and would have them in their possession. There's absolutely nothing preventing you subpoenaing these people and asking them to ...

Mr. FABRIKANT:

Mr. Belleau refuses to do it.

Me BELLEAU:

No, that's incorrect, My Lord.

THE COURT:

Pardon?

Me BELLEAU:

That is incorrect, My Lord.

THE COURT:

There is nobody ...

Me BELLEAU:

I refused to subpoena Bell Canada with the records, because I can't do that. I would need a search warrant for that. I'm not gonna apply for one either, because I don't even know what phone numbers are ...

Mr. FABRIKANT:

Well, this is what you are there for, to ...

Me BELLEAU:

No, that is not ...

Mr. FABRIKANT:

... find out what those numbers are.

THE COURT:

If you ... if you think, if you think that the rector Patrick Kenneth, or the chancellor at the time, Alan Gold, or whoever else, vice-rector Mackenzie or whoever have logs, you better establish first if they do have these logs and we'll see whether ... whether these logs will be pertinent at all. But you can certainly bring these people, and ask them to bring the logs with them.

Mr. FABRIKANT:

Well ...

THE COURT:

I have no way of knowing at the moment, what the pertinence of these logs would be beyond what you say, that there was some sort of conspiracy to ... to either have you ... what was it? Convicted of contempt of Court or drummed out of the university, was that the way you put it?

Mr. FABRIKANT:

Don't pretend, I have repeated it at least ten (10) times, I know that you by now know it by heart. You're just trying to protect all these crooks, that's all.

THE COURT:

Listen, listen there's a way to do things. Either ... first ... first of all, something exists or it doesn't. So, the first (1st) thing you're going to have to do is establish that the thing exists.

Mr. FABRIKANT:

Well, there ...

THE COURT:

Having establish that it exists, then you're going to have

to establish that it has some pertinence. So, I suggest you start at the beginning and that's the route will take.

Mr. FABRIKANT:

Well, first of all, they will come and they'll say: it was last year, I have thrown it out, I don't have it anymore.

THE COURT:

I have no idea what they'll say.

Mr. FABRIKANT:

Well, this ... this will give the response, then what?

THE COURT:

I don't know.

Mr. FABRIKANT:

We need to go to Bell Canada and get it from there.

THE COURT:

I'm ... I'm not a detective.

Mr. FABRIKANT:

You're not a detective.

THE COURT:

No, I'm not a detective.

Mr. FABRIKANT:

Anyway. If you continue to do it like this, not to allow me evidence, why the hell we continue all this comedy.

THE COURT:

You are the one who's presenting your defense. You're perfectly ...

Mr. FABRIKANT:

Well, you don't allow me to present my defense.

THE COURT:

(inaudible)

Mr. FABRIKANT:

I'm entitled to full defense.

THE COURT:

I don't think you know what that word means.

Mr. FABRIKANT:

Gosh.

THE COURT:

I really don't think you appreciate what that word means.

Because ...

Mr. FABRIKANT:

Do I know ...

THE COURT:

... full defense or whatever, that has to be presented within the context that the Law sanctions. That's not what you're in the process of doing. You ...

Mr. FABRIKANT:

Yes. And if for example, I want the jury to know the facts, because it is not necessary for me to testify what state of mind of mine was, because it is so obvious for every normal person, if you can talk to reporter and you give him fact, and this fact ...

THE COURT:

We finish with ... we've finished with the question of Mrs Adolph.

Mr. FABRIKANT:

You're finished, I didn't finish.

THE COURT:

Well, I'm sorry but the subpoena has been annuled and that's that.

Mr. FABRIKANT:

Well, this is not the first (1st) time you are lawless like this, so I'm not surprised at all. Now, I need somehow

also to have just a little bit cooperation from Mr. Belleau. He's not doing anything at all, when I ask him for jurisprudence he doesn't do it. He sometimes deliberately even misleads me in terms of what jurisprudence means. It has to be stopped, can you appoint somebody else?

THE COURT:

Mr. Belleau is, as far as I'm concerned, is doing what I ... I expected him to do. And, if you tell me ...

Mr. FABRIKANT:

Well, definitely ...

THE COURT:

... that Mr. Belleau has not ... hasn't furnished you with jurisprudence, I wish you'd be more specific.

Mr. FABRIKANT:

Definitely, he is doing what you want him to do, that's correct, you're dead right.

THE COURT:

Would you ... would you care to be more specific about what ...

Mr. FABRIKANT:

I am caring to be more specific.

THE COURT:

Fine, be more specific.

Mr. FABRIKANT:

Just the latest, I asked him what the taped conversations can be considered a written statement, give me jurisprudence on that. He said, it just doesn't exist. Well, I'm not in any position to check on him, I'm in jail. And, he uses it, every time he can. It just doesn't exist. I asked him for jurisprudence to recuse a dishonorable judge, and again I didn't get any specific jurisprudence on that, all I got is something ...

THE COURT:

Oh, let's not dredge up all this again, I told you the trial was going on and I'm gonna finish the trial.

Mr. FABRIKANT:

You're gonna finish, you're gonna finish, it's your own business, I couldn't care less about all this. What I'm interested in is jurisprudence about your recusation and I want to present it. It is your business not to hear it, but ...

THE COURT:

I told you ...

Mr. FABRIKANT:

... I want to present it anyway.

THE COURT:

... I told you, as far as the rec... we have now a mention of recusation again today. The last time I dealt with recusation was something in the vicinity of six (6) weeks ago, I gave you my answer at the time.

Mr. FABRIKANT:

I'm not talking about this, I'm talking about jurisprudence. I need the jurisprudence so that I could prepare it in such a way that, even judge with moral quality of yours would not be able to refuse to hear it. This is my purpose and he doesn't help me.

THE COURT:

The trial is going to continue, okay. Is that thoroughly clear? Now, if you're talking about jurisprudence in relation to a statement reduced to writing, I don't know,

but I suspect ... I suspect one reason it doesn't exist, is that the problem would concern the interpretation of that particular section of the Canada evidence Act. Do I understand that you ... you searched for that, Mr. Belleau?

Me BELLEAU:

Section 9, yes, of course. I have the case of Cassebo that I could have submitted to him long before you mentioned it in Court the other day.

THE COURT:

Okay, fine. There you are ...

Me BELLEAU:

And I provided ... since he disagrees with me on that issue, I provided him with a copy of Macwilliam's Canadian criminal evidence and he's free to go through it and find the cases that I say do not exist.

Mr. FABRIKANT:

Look what he's provided me with. Now, do I have the time to look this book?

THE COURT:

Well, you were the one that was making a great ...

Mr. FABRIKANT:

What the hell is this, how long are you going to play this comedy.

THE COURT:

... you were the one that was making a great song and dance once, as I recall, that you wanted access to libraries, you wanted police guards to escort you to law libraries so that you could do research.

Mr. FABRIKANT:

Yes, I wanted ...

THE COURT:

Now, it appears that ...

Mr. FABRIKANT:

... before trial, right now I have absolutely no time. I'm waked up at six A.M. (6:00), and I'm back at seven thirty P.M. (19:30).

THE COURT:

Ah, it's a hard life, isn't it.

Mr. FABRIKANT:

Try it one day.

THE COURT:

It's a hard life. It's a hard life.

Mr. FABRIKANT:

I think one day you will be there. So you will know by yourself what it is.

THE COURT:

Could ...

Mr. FABRIKANT:

I haven't finished yet.

THE COURT:

What else have you to raise Mr. Fabrikant?

Mr. FABRIKANT:

I need continuation of Court order for professor Antippa, doctor ...

THE COURT:

When would you ... when do you wish to see professor Antippa and Mr. Mar(?)?

Mr. FABRIKANT:

It's doctor Max.

THE COURT:

Whatever. When do you need to see him?

Mr. FABRIKANT:

And I need two (2) more names to be added to that.

THE COURT:

Who are the names you need to be added to that?

Mr. FABRIKANT:

Professor Chapados and professor Tancrede. And I would like this order to be made not just so specific days, I think there will be nothing terrible if you make it say, starting tomorrow for next ten (10) days. Because, there is no point for me each day to ask, one day they are available, one day they are not available.

THE COURT:

You let me know when they're available and you'll get your order so that you can consult them.

Mr. FABRIKANT:

Well, I need to consult them several times. So, just make the order from tomorrow for the next ten (10) days. It's not too much ...

THE COURT:

No, I won't make the order from tomorrow for the next ten (10) days, because the trial is gonna continue next week.

Mr. FABRIKANT:

Yes. So what?

THE COURT:

You let me know ...

Mr. FABRIKANT:

I'm not interrupting the trial.

THE COURT:

You let me know when you wish to see these people and when these people are agreeable to see you, and we'll make ...

Mr. FABRIKANT:

Well, that's what I'm asking you ...

THE COURT:

... we'll make the appropriate ...

Mr. FABRIKANT:

... for the next ten (10) days. What seems to be wrong with that?

THE COURT:

Because you're not being specific enough, and I'd like you to be a little specific as to when ... as to when you're going ... when you propose to sit down with these people, and then, you'll get the order. Now, if it's over the weekend, I'm perfectly prepared to make the order for Saturday and/or Sunday.

Me LECOURS:

And what's the purpose to order this.

Mr. FABRIKANT:

What date is today?

THE COURT:

I couldn't care less what the purpose is, I'll take him on his word that these people are professors who he wishes to consult, with the regard to the value of his work. I am not addressing for the moment the ... the relevance of that. I am ... I am simply bearing in mind that ... that these are people that he wishes to see, and may encounter difficulty in seeing them at Parthenais. That's all.

Mr. FABRIKANT:

So, May twenty-seventh (27th), twenty-eighth (28th), twenty-ninth (29th), thirtieth (30th), thirty one (31), is that specific enough?

THE COURT:

No, you don't hear me. You ... I'm prepared ... I'm prepared to put the weekend in there, I'm not prepared to put ten (10) days in and I'm not prepared to negotiate five (5) with you.

Mr. FABRIKANT:

Well, why ...

THE COURT:

If you have some other ... if you have some other time that you've arranged to meet them, let me know what it is, and you'll have your order.

Mr. FABRIKANT:

Well, I don't know in advance. I'm giving you the numbers right now which are ...

THE COURT:

Then you your ... then your order ... then your order will cover from seventeen hundred hours (17:00) on Friday, which is the twenty-eighth (28th), which is tomorrow, until I guess twenty-two hundred hours (22:00) on Friday. And Saturday and Sunday, from nine hundred hours (9:00) to eighteen hundred hours (18:00).

Mr. FABRIKANT:

No, eighteen hundred (18:00) is not enough. Because, they might come at one o'clock (13:00) and then we will need more than that.

THE COURT:

Well, to twenty hundred hours (20:00), then, will that suits you.

Mr. FABRIKANT:

Hum. I don't know why we should bargain that, it looks like it costs you money.

THE COURT:

It doesn't cost me money at all, but ...

Mr. FABRIKANT:

Well, just write till twenty-two (22) then.

THE COURT:

But ... but there are ...

Mr. FABRIKANT:

If they will ...

THE COURT:

... but I am aware of the fact that there are ... there are problems as there are staffing problems in Parthenais on the weekend.

Mr. FABRIKANT:

Well, we are always cooperative with Parthenais. Last time they were there, and Parthenais told us to get out at seven thirty (19:30) ...

THE COURT:

Twenty ... twenty hundred hours (20:00).

Mr. FABRIKANT:

... we got out at seven thirty (19:30).

THE COURT:

Twenty hundred hours (20:00) on the order, that should solve your problem.

Mr. FABRIKANT:

And Sunday?

THE COURT:

Yes, on Sunday.

THE COURT:

And Monday?

THE COURT:

Not on Monday, we'll see, we'll be back here on Monday

morning.

Mr. FABRIKANT:

So, all four (4), four (4) names.

THE COURT:

Chapados ...

Mr. FABRIKANT:

And (inaudible) those names correct.

THE COURT:

Chapados, Tancrede ...

Mr. FABRIKANT:

Tancrede, T-A-N-C-R-E-D, Chapados, C-H-A-P-A-D-O-S.

THE COURT:

Chapados is a professor, I presume.

Mr. FABRIKANT:

Yes, all of them professor. Max is M-A-X, and Antippa, A-N-T-I-P-P-A. Because last time their names were wrong.

Now, I still have questions of my computer account.

THE COURT:

I answered your problems of your ... your questions on your computer account yesterday.

Mr. FABRIKANT:

Well, you feel you answered it, well ... that's too bad.

I need also some other tapes to be introduced, like my conversation with R...(?).

THE COURT:

Never heard of that.

Mr. FABRIKANT:

Well, I know that you never heard, this is why I'm raising this question.

THE COURT:

Well, tapes don't get introduce simply by themselves.

Mr. FABRIKANT:

Tapes, now about tapes, I asked Mr. Belleau to get me jurisprudence which would justify why the 9-1-1 tape was playable, though all people are alived and could just come and testify as to what was said, who said it, and everything else. And, I was prepared to, to repeat whatever was there, I was prepared to confirm every word there. Nevertheless, the tape was played. Here, we have exactly the same situation, I have a tape and I believe it is important for the jury to hear, not just the words, but how those words were said, the atoshpere, the tone of conversation. It's extremely important.

THE COURT:

You're talking about tapes in nineteen eighty-eight (1988).

Mr. FABRIKANT:

Yes. I'm talking about mental torture during years and I want ...

THE COURT:

What we're talking about is ... and the tape that was admitted was one that was part of the actual incident, which is the subject of these proceedings, it occurred on the twenty-fourth (24th) of September nineteen ninety-two (1992) ... August nineteen ninety-two (1992).

Mr. FABRIKANT:

Where is it written that if it is that date, then it is admissible, when it is another date, then it is not admissible?

THE COURT:

You got a big book there, look up under the ...

Mr. FABRIKANT:

I got a big book there ...

THE COURT:

... res gestae and see what you see. You'll find ...
you'll find ...

Mr. FABRIKANT:

Well, I would like someone to point me the place where it
is written.

THE COURT:

... you'll find the chapter on the res gestae in there, and
read it. It's most interesting. There's even
jurisprudence referred to.

Mr. FABRIKANT:

Well, still, could you explain me why one day was better
than another? Just because of the date?

THE COURT:

I am not explaining anything to you.

Mr. FABRIKANT:

You know that my defense is based on years and years of
abuse. And this tape, just if you hear the tone of voices,
it is clear what is going on, just tone of the voices. It
has to be heard by the jury. It's important. I told you
about it. Not just the words ...

Me LECOURS:

The principles were discussed yesterday, My Lord, I don't
see why we're talking about that today.

THE COURT:

They were discussed yesterday, and I'm not going to re-open
the subject. I've said what I have to say on the subject,
so that's that. Jury, please, Mr. S...(?).

Mr. FABRIKANT:

Now, I have also ...

THE COURT:

No, we've ... I've had ...

Mr. FABRIKANT:

... several witnesses ...

THE COURT:

We're going to get on ... we're going to get on with the
trial, we're in the middle of Mr. McManus' testimony and
that's the next order of business.

Me BELLEAU:

Could I just inform the Court of who the witnesses are for
today, I'll read out their names and raise a few problems
with them.

THE COURT:

Fine.

Mr. FABRIKANT:

Well, you don't have any problems, sit down, please.

Me BELLEAU:

I'm sorry, I'm talking to the Court, Mr. Fabrikant.

THE COURT:

If you're in ... if you're ...

Mr. FABRIKANT:

I haven't authorized you to talk about my witnesses.

Me BELLEAU:

This is public matter, they've been subpoenaed, served and
the judicial (inaudible) authorized.

Mr. FABRIKANT:

I have not authorized you to talk about witnesses.

THE COURT:

You anticipate ...

Me BELLEAU:

One (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8) witnesses ... nine (9) witnesses have been subpoenaed, among which Mr. Sangolo from the Montreal MUC police department, coroner Michaud and Mr. Francois Julien who's a biologist from the forensic lab. Mr. Julien has advised me that he will answer Mr. Fabrikant's questions if he is asked to take the witness stand and under oath. He will not meet with him. I want to make this perfectly clear.

THE COURT:

Okay.

Me BELLEAU:

As for, Mr. Sangolo, he has other business of course to tend to, and wanted to signal the fact to the Court.

THE COURT:

Well, we'll continue with Mr. McManus for the minute and ... I can't ... I can't force Mr. Fabrikant to hear witnesses in any particular order.

Me LEHRER:

Your Lordship, at the adjournment yesterday, you asked to go over a document Mr. McManus was about to refer to, we done this ...

THE COURT:

I adjourned because there was a document that's somebody raised a potential problem over.

Me LEHRER:

We previewed that with Mr. McManus and his personal counsel, we have no problem with the r, sum, he's gonna be using this morning.

THE COURT:

Fine.

Me LEHRER:

Also at the Court suggestion, I've mentioned to Mr. Belleau and Mr. Fabrikant, we're prepared and without subpoena have the president of the association with us today, who's prepared to answer his questions on matters related to his grievance files, if he wishes to avoid the problem of confidentiality with Mr. McManus. We've made that offer to him and she is present.

THE COURT:

Fine, okay. As far as the status of notes is concerned, which Mr. McManus might use, this notes are subject to inspection by Mr. Fabrikant, they are not susceptible of production, per say.

Me BELLEAU:

Before we begin, My Lord, I think that there is some witnesses in the courtroom and maybe we could repeat the order of exclusion.

THE COURT:

Thank you.

CLERK OF THE COURT:

All the witnesses in the case of Mr. Fabrikant, are (inaudible) to go outside of the Court and wait to be called.

SWORNING OF THE INTERPRETER.

Mrs. Sandra Traynor, official interpreter, swears on the Bible to translate faithfully and to the best of her knowledge, from French to English and from English to French, the testimonies rendered before the Court.

Note: For the purpose of the transcription, the interventions of the interpreter are represented by a

dash (-).

IN THE YEAR NINETEEN HUNDRED NINETY-THREE (1993)
this twenty-seventh (27th) day in the month of May,

PERSONALLY CAME AND APPEARED:

RICHARD McMANUS

born on the 30th of November 1951, lawyer,

WHO, after being duly sworn, doth, deposes and says as follows:

EXAMINED BY Mr. VALERY FABRIKANT

Representing himself:

Q. I guess so, we ended at what happened next after the meeting with Sheenan, could you describe what transpired after that?

A. Je ne comprends pas la question.

- I don't understand the question.

Q. Well, have we met after that?

A. Oui.

- Yes.

THE COURT:

Q. There was a question of a discussion in Mr. Fabrikant's presence, following the meeting with Mrs Sheenan.

A. J'ai d,j..., il me semble, r,pondu ... une question l...-dessus hier.

- I believe I already answered a question on that fact yesterday.

Q. That's correct.

Mr. FABRIKANT:

Q. If anyone thinks that I want to look like you, this is not the case, there was no razor, this is prison. So, I ... this is a coincidence. Okay. So, we met next time where and when?

A. La rencontre qui suit c'est ... a eu lieu le vingt-sept (27) avril quatre-vingt-douze (92).

- The next meeting that took place was on April twenty-seventh (27th) ninety-two (92).

A cette occasion, cette rencontre a eu lieu d'abord au bureau de la f,d,ration ...

- Firstly that meeting took place at the offices of the federation ...

... et ,taient pr,sents monsieur Constanzo, qui ,tait pr,sident du syndicat ... l',poque ...

- ... and present was ... present there was Mr. Constanzo who was the president at the time ...

... vous-m^me et moi.

- ... yourself and myself.

Q. And after that you were asked to give your opinion, legal opinion on all my grievances at that time, is that correct?

A. C'est exact.

- That's correct.

Q. Could you go one by one, those grievances, describe to the jury what they were about and what was your legal opinion on each of them?

Me LEHRER:

Your Lordship, I have an intervention at this time. I understand that some of the legal opinions given by Mr.

McManus were forwarded to Mr. Fabrikant, we don't have a problem with those. But if they were opinions given the association and not forwarded to Mr. Fabrikant, the association invokes its privilege. I would like to make ... perhaps he can take them one at the time and we can see which ones Mr. Fabrikant received and which were given directly to the association, when he was not present.

THE COURT:

Mr. McManus, I presume isn't in a position to inform us of that. Fine, then.

Mr. FABRIKANT:

Q. Well, first of all, maybe we can establish, did you give anything at that time to CUFA which was not copied to me?

A. A cette ,poque, selon mon souvenir, non.

- According to my recollection, at that time, no.

Q. So, there is no problem then. Okay. So, start with tenure consideration, please describe what my grievance was about, what was the decision of the joint grievance committee and what was your opinion on the validity of the decision?

A. A ce moment-ci, monsieur le Juge, j'aimerais me r,f,rer ... mon opinion ,crite, il y plus ... il y a presque deux (2) ans que je l'ai rendue.

- I would like to refer to my written opinion, because I've rendered it almost two (2) years ago, at this point, My Lord.

THE COURT:

Certainly.

THE WITNESS:

Quelle ,tait la question?

- What was the question?

Mr. FABRIKANT:

Q. Well, what was the nature of grievance, what was the reasoning of the joint grievance committee and what was your legal opinion on the validity of this decision?

A. A l',poque, il y avait quatre (4) griefs.

- At the time there were four (4) grievances.

Que l'association avait log,s en votre nom.

- That the association had filed against you ... or in your name, on your behalf, that is.

Le premier (1er),

- The first (1st) being, avait trait ... l'avis disciplinaire dont nous avons parl, hier.

- concerning the disciplinary notice that we mentioned yesterday.

Ce que je disais ... l'association ... l',poque,

- And what I told the association at the time, et je vais me citer:

- and I will quote what I wrote:

THE COURT:

Now, so that I'm perfectly clear in view of Mr. Lehrer intervention, Mr. Fabrikant received a copy of that.

THE WITNESS:

O.K. The documentation in my possession and in possession of professor Fabrikant, and the fact both (inaudible) to CUFA and vice-rector Sheenan at the April sixteenth (16th) nineteen ninety-two (1992) meeting, should convince anyone of the prima facie, bien fond,, of professor Fabrikant's pretention. Also -- concerning that letter of warning -- also, I suggested at that time to CUFA, to file another grievance against another letter that was sent by vice-

rector Sheenan, at the time: in fact it is my opinion that this letter had been illegally issued because contrary to article 29 of the collective agreement.

Mr. FABRIKANT:

Q. So, explain in detail why it was illegal, because jury doesn't article 29. So explain in more details why the letter itself is illegal.

THE COURT:

I don't think it's necessary for Mr. McManus to go into the legal reasoning. What ... the only reason this is ... any of this is admissible, the only reason any of this is admissible, is the effect that it may have produced in your mind. Okay. What the legal reasoning is, and what the legal gymnastics are, we couldn't care less. I think that what is pertinent to know, if anything, is that at that time you were informed that the position you were taking, in the opinion of counsel, was well founded. But why it was well founded or whatever, is gonna carry us way beyond where we have to go.

Mr. FABRIKANT:

Well, I don't think it will take us well beyond, because the outrageousness of the action should be clear to the jury. It was not something on which, one could have this opinion or that opinion. The point in there, that action was outrageously lawlessness, and this detail is important. Because, it did have definite effect on my state of mind, one. And second, it should be conveyed to the jury that it is not just one lawyer's opinion, but this is something which ordinary person (inaudible).

THE COURT:

Now you're testifying. Now you're testifying.

Mr. FABRIKANT:

I'm not testifying, I'm explaining to you why details are important, because the way it was handled, it was total outrageous lawlessness.

THE COURT:

The lawyer is not required to go into the legal reasoning, which was behind the opinion which he gave.

Mr. FABRIKANT:

Well I repeat once again, it is important ...

THE COURT:

I've told you what my decision is. Okay. Continue.

Mr. FABRIKANT:

Well, what is the point to continue if the main purpose of him being here, is to give qualified opinion to the jury

...

THE COURT:

He's not giving a qualified opinion to the jury on the collective agreement. The jury doesn't need to form an opinion on the collective agreement.

Mr. FABRIKANT:

Jury needs to know ...

THE COURT:

What the jury needs to know ... what the jury needs to know is ... is you maintain that you're making this proof, because this proof, his decision affected you. That's what you say. Now ...

Mr. FABRIKANT:

Well, to what extent (inaudible).

THE COURT:

Well, I don't know. I really ... I'm really not going to

discuss that at this particular jointure the question of to what extent.

Mr. FABRIKANT:

I'm not discussing, but the jury should know that the decision was (inaudible) wrong ...

THE COURT:

You can put ... you can put your question ...

Mr. FABRIKANT:

... obviously wrong.

THE COURT:

... you can put your question another way. But you are not going to have Mr. McManus go into the legal reasoning with a phrase by phrase, and clause by clause consideration of the collective agreement.

Me LECOURS:

And he's not testifying as an expert, he's testifying as a fact.

Mr. FABRIKANT:

Well, we can qualify him as an expert.

Me LECOURS:

We don't need experts in law in this case.

THE COURT:

Would you continue, you have my ruling.

Mr. FABRIKANT:

Alright.

Q. Could you explain to the jury, what was specific of article 29 of collective agreement, how the letter of warning should be issued in general?

A. L'article 29 de la convention collective qui liait ... l'époque, je pense encore aujourd'hui, l'Université, Concordia et l'association des professeurs de l'Université, Concordia ...

- Section 29 of the collective agreement at the time, which was binding between Concordia and ... entre Concordia et? L'association des professeurs de l'Université, Concordia.

- ... and the association for the Professors of Concordia University ...

Q. Concordia University Faculty Association. Concordia University Faculty Association. CUFA.

A. ... est un article qu'on retrouve sous le chapitre des sanctions disciplinaires.

- ... is a chapter found under disciplinary sanctions.

L'article 29 permet ... la vice-rectrice ... l'enseignement et ... la recherche ...

- ... and section 29 enables the vice-rector academic ...

... sur plainte de la part d'un directeur de département ou d'un doyen de faculté, ...

- ... upon grievance by the dean of a department or dean of a faculty ...

... et après enquête ...

- ... and after investigation ...

... nous dit-on dans la convention collective, même si je me rappelle bien, selon les règles de justice naturelle ou quelque chose comme ça ...

- ... if it is stated in the collective agreement, according to the natural law of justice.

THE COURT:

Rules of natural justice.

- Rules of natural justice. Thank you.

THE WITNESS:

... ,mettre ... l'entrevue d'un professeur ...

- ... to issue for a professor ...
- ... l'un des ... un avis disciplinaire ...
- ... a disciplinary notice or letter of warning ...
- ... qui, s'il est suivi d'un second avis disciplinaire ...
- ... if it is ensued by a second letter of warning ...
- ... portant sur les ... des faits similaires ...
- ... bearing on similar facts ...
- ... peut mener au cong,diement d'un professeur.
- ... can lead to the dismissal of a professor.

Mr. FABRIKANT:

Q. Okay. And, what was illegally done by vice-rector in this particular case?

A. Vous vous rappelez hier que j'ai dit que la vice-rectrice ... l'enseignement et ... la recherche, avait ,mis une lettre en date du trente (30) mars quatre-vingt-douze (92).

- You will recall that I stated yesterday that the vice-rector academic had issued a letter dated March thirtieth (30th) nineteen ninety-two (1992).

Vous vous rappelez aussi que nous avons parl, d'une rencontre qui a eu lieu le seize (16) avril mil neuf cent quatre-vingt-douze (1992).

- You will also recall that we also mentioned a meeting that was held on April sixteenth (16th) ninety-two (92).

Dans un premier temps, il est ,vident que la rencontre aurait d- pr,c,der l'avis et non pas le suivre.

- And firstly, it is logical for the meeting to have been held prior to the issuance of the letter rather than following it.

Dans un second ...

- Secondly ...

... le doyen Swamy ...

- ... dean Swamy ...

... a exp,di, effectivement une plainte ... la vice-rectrice ...

- ... in fact expedite a grievance to the vice-rector ...

... mais sa lettre ,tait dat,e du neuf (9) avril mil neuf cent quatre-vingt-douze (1992).

- ... but his letter was dated April ninth (9th) ninety-two (92).

Donc, neuf (9) jours aprŠs l'avis disciplinaire.

- Therefore, nine (9) days after the letter of warning.

Et, troisiŠmement ...

- Thirdly ...

... la vice-rectrice a, si je me rappelle bien, l..., je vais me r,f,er, c'est #a, le vingt et un (21) avril ...

- ... if I recall correctly, the vice-rector, I will refer to my notes, the twenty-first (21st) of April ...

... envoy, une deuxiŠme (2e) lettre ...

- ... sent a second (2nd) letter ...

... confirmant le contenu de sa premiŠre (1e).

- ... confirming the content of the first (1st) one.

Mon opinion ,tait que tout cela ,tait totalement ill,gal quant ... la forme.

- In my opinion, everything was totally illegal as to the form.

Q. Now, would you please state to the jury the content of the next grievance of mine, what was ...

A. Comme j'ai dit, il y avait quatre (4) griefs. Le second (2nd) que j'ai ,tudi,, ,tait un grief relatif ... une demande de cong, sabbatique.

- As I said earlier, there were four (4) grievances. And the

second (2nd) one dealt with a sabbatical leave.

Sans rentrer dans les d,tails ...

- Without going into details ...

... les documents que j'avais en ma possession ... l',poque ...

- ... the documents in my possession at the time ...

... lus en correlation avec les articles pertinents de la convention collective ...

- ... in correlation with the sections ... relevant sections of the collective agreement ...

... m'ont convaincu que ce cong, sabbatique aurait d- ^tre attribu,.

- ... convinced me that, that sabbatical leave should have been granted.

En cons,quence je recommandais au syndicat ...

- Consequently, I did recommend to the union ...

... de loger le grief ... l'arbitrage ...

- ... to file the grievance with arbitration ...

... et ,tant donn, les discussions que nous avons eues vous et moi ... ce sujet ...

- ... and concerning ... and due to the conversations held between yourself and my self on that topic ...

... surtout le fait que vous insistiez pour que ce grief procđe le plus rapidement possible ...

- ... especially on the fact that you insisted that that grievance be filed as soon as possible ...

... et que la convention collective permettait une proc,dure de grief acc,l,r,e ...

- ... and that the collective agreement did allow an accelerated complaint or grievance complaint ...

... je recommandais aussi au syndicat ...

- ... I also recommended to the union ...

... que ce grief soit introduit par la proc,dure de grief acc,l,r,e.

- ... that this grievance be filed through the procedure of accelerated grievances.

Q. Do you recall what article I based on my request and what was ...

THE COURT:

Same thing. You don't need to get into that.

Mr. FABRIKANT:

Well, it is again the same outrageous lawlessness (inaudible).

THE COURT:

Well, that's your view, but his ... he has stated succinctly what the nature of the grievance was, and what the nature of his opinion was, and what the nature of his recommendation was. Now ...

Mr. FABRIKANT:

Well, why are you so afraid that he ...

THE COURT:

I'm not afraid of anything, we just don't need to be dragged through article upon article of the collective agreement.

Mr. FABRIKANT:

It's not article upon article.

THE COURT:

The jury are not being asked to come to any conclusion upon whether this was good, bad or indifferent. All the jury may be asked to do eventually, is decide whether this has an efect.

Mr. FABRIKANT:

Yes.

THE COURT:

Generally speaking.

Mr. FABRIKANT:

Yes. But, it might have an effect in one case, when article specifically states just that people with ten (10) or more years of experience are eligible for sabbatical, and I'm exactly in this category and I'm being refused with reference to absolutely irrelevant article.

THE COURT:

The witness ...

Mr. FABRIKANT:

This is one (1) thing.

THE COURT:

... the witness has said ...

Mr. FABRIKANT:

Or, (inaudible).

THE COURT:

... the witness has said that in his opinion it was well founded.

Mr. FABRIKANT:

This is not the point, I'm trying to make. What is the point, is that the response ... the question was so obviously clear that having nothing to respond, dean and vice-rector responded referring to totally different article which had nothing to do with the matter. Is this an important part, is this something outrageous which might really affect my ... because one (1) person might be refused sabbatical because of some, you know, fine points somewhere, and this should not upset him that much. But when a person is refused something, which is black and white written in collective agreement and refused in such an outrageous manner, that just they referred to something else, as if they didn't hear my argument. This is a different story. And you do not allow this to be conveyed to the jury, and this is unfair. So, I insist that these details be conveyed to the jury, that the way it was treated was so obviously and so outrageous, that one doesn't have to be a lawyer to understand it. This is the point.

THE COURT:

Okay. Go ahead. Go ahead.

Mr. FABRIKANT:

Good. At least in one (1) case.

Q. So, just ... please, what I said right now, explain it to the jury what was my contention on which I based my request, what was response of both dean and vice-rector, and whether this response was relevant in anyway and after that, your opinion? So, what did I based on, my request?

A. La demande de cong, sabbatique ,tait fond,e sur l'article 26.16 de la convention collective.

- The request for the sabbatical leave was based on section 26.16 of the collective agreement.

Cet article se lit comme suit:

- And it reads as follows:

a member who is not tenured and who has ten (10) or more years of continuous service, shall be eligible for sabbatical leave under the provision on this article.

Q. This was on what I based my request, and indeed was I not ten (1) year at that time?

A. Les documents, comme je l'ai indiqu , ...
- As I indicated, the documents ...
... que j'avais en ma possession, d,montraient ... cette
,poque ...
- ... in my possession did tell me at the time ...
... qu'effectivement, vous n',tiez pas permanent.
- ... that in fact, you were not in a ten (10) year position.
Et que, dans un second temps ...
- And secondly ...
... vous aviez ,t, embauch, pour la premi re (1e) fois ...
l'Universit, Concordia ...
- ... you had been hired for the first (1st) time at
Concordia University ...
... le vingt (20) d,cembre mil neuf cent soixante-dix-neuf
(1979) ...
- ... the twentieth (20th) of December seventy-nine (79) ...
... jusqu'au trente (30) avril quatre-vingt (80) ...
- ... till the thirtieth (30th) of April eighty (80) ...
... au titre de research grant employee ...
- ... as research grant employee ...
... et le poste que vous d,teniez ... l',poque ,tait research
assistant ...
- ... and the position you held at the time was research
assistant ...
... et que d'une mani re continue ...
- ... and that in a continuous fashion ...
... depuis mil neuf cent soixante-dix-neuf (1979) ...
- ... since seventy-nine (79) ...
... vous aviez eu ann,e apr s ann,e des contrats qui
s',taient vus reconduits avec ou sans promotion jusqu'au
moment o- le grief a ,t, log,.
- ... you had year after year renewal of contracts until the
time the grievance was filed.

Q. I had continuous service of how long, by that time?
A. D,cembre soixante-dix-neuf (79) ... mil neuf cent quatre-
vingt-douze (1992) ...
- December seventy-nine (79) till nineteen ninety-two (1992)
...
... soixante-dix-neuf (79), quatre-vingt-neuf (89), dix
(10) ans ...
- ... ten (10) years ...
... quatre-vingt-neuf (89), quatre-vingt-douze (92), trois
(3) ans.
- ... ten (10) years plus three (3) years.

Q. So, that was enough ... was it enough to claim sabbatical?
A. L'article 26.16, selon moi, vous permettait de r,clamer ce
cong,.
- Article 26.16, in my opinion, did allow you to request that
leave.

Q. And what did dean and vice-rector responded?
A. Je n'en sais absolument rien.
- I have absolutely no idea.

Q. You don't have the documents with you?
A. Tout ce que j'avais en ma possession ... l',poque ...
- All the documents I had in my possession at the time ...
... ,taient le grief ...
- ... were the grievance ...
... la r,ponse du comit, conjoint des griefs ...
- ... the reply from the joint grievance committee ...
... et la documentation pertinente ... votre lien d'emploi ...
Concordia depuis mil neuf cent soixante-dix-neuf (1979).

- ... and the relevant documentation concerning your employment at Concordia since nineteen seventy-nine (1979).

Q. Okay. Then would you like to consult ...

THE COURT:

You may ask him if he is aware of the position the University took.

Mr. FABRIKANT:

Q. Well, are you aware of ... well, here's the answer, would like to take cognizance of this particular document?

Me LECOURS:

What's the point?

Mr. FABRIKANT:

Mr. Belleau, this is your job. You are doing it beautifully.

THE COURT:

What are you showing to the witness, Mr. Fabrikant?

Mr. FABRIKANT:

That he should be replaced, and this comedy should be stopped.

THE COURT:

What are you showing to the witness?

Mr. FABRIKANT:

Ah, what I'm showing to the witness ...

THE COURT:

What are you showing to the witness?

Mr. FABRIKANT:

I'm showing to the witness response of the dean. I thought you asked him what I'm showing ... (inaudible).

THE COURT:

Did the witness ... if the witness never had cognizance of that document, what is the point of showing that document to the witness? The witness is not here to decide whether the ... who is well founded in this thing.

Mr. FABRIKANT:

The witness just take cognizance ...

THE COURT:

It's becoming more and more obvious that my first (1st) ... my first (1st) inclination was perfectly correct.

Me LECOURS:

I agree with you, My Lord. We're side tracking now.

THE COURT:

We're side tracking.

Mr. FABRIKANT:

You just, five (5) minutes ago allowed me to show the outrageousness of their answer. Now, this is their answer, and I would like the witness to take cognizance of the answer.

THE COURT:

Would you ... would you look at the ... look at the document.

Mr. FABRIKANT:

Because one doesn't have to be big specialist to understand how outrageous the answer is.

THE COURT:

You're showing to the witness, what, a letter from the dean?

Mr. FABRIKANT:

Yes.

THE WITNESS:

I've never seen that document.

Mr. FABRIKANT:

Q. Well, is this response clear to you, what it says?

A. Even though I've never seen that document, that document states that, and it's addressed to Brian Barbery, CUFA grievance officer, from dean Swamy of the engineering computer science: in my opinion, since doctor Fabrikant probationary appointment started only on first (1st) of June nineteen ninety (1990), he's not eligible to be considered for tenure, further since he is not tenure ... a tenured faculty member, he is not eligible to be considered for sabbatical leave. And it's stated at the bottom of the letter, that the copie comforme is send to you.

Q. And read ... if you turn several pages, there is a response from the vice-rector ... no, in opposite direction.

Me LECOURS:
He is not a competent witness, My Lord.

THE COURT:
Certainly not. What are you attempting to do through this witness? He has given you his opinion on the grievance, he has stated that the grievance was filed, he has referred to the ... the article of the collective agreement ...

Mr. FABRIKANT:

Q. You don't see the answer of vice-rector there?

THE COURT:
And this witness if he had no knowledge of the vice-rector's position, is not the competent witness to address what the vice-rector said. So your last question is right out of order.

Mr. FABRIKANT:
No, this is not the point I am trying to make. The vice-rector said excatly the same thing and he is a lawyer.

THE COURT:
He is not here to testify as to his evaluation, he is here to testify as to what happened. The only part of his evaluation that is admissible is the opinion that he gave to you.

Mr. FABRIKANT:
Well, this opinion is ...

THE COURT:
I'm not gonna argue with you, you're side tracked, you're away off the off course.

Mr. FABRIKANT:

Q. Anyway. You ... you've read that dean has referred that only tenured members are eligible for sabbatical. Isn't this ...

A. That's what I read.

Q. Yes. Isn't this blatant and in total contradiction to article 26.16?

A. I think anyone who has ... and I'll read again that article ...

- Je crois ... oh, I'm sorry, go ahead.
... a member who is not tenured, and who has ten (10) or more years of continuous service shall be eligible for sabbatical leave under the provision of this article.

Q. So effectively, would it be correct to say that dean just ignored my argument?

THE COURT:
It is not up to the witness to come to any conclusion as to what the dean did or didn't do. The witness is given his ... my opinion was based upon the fact that you've been there since nineteen seventy-nine (1979), twentieth (20th)

of December, it adds up to more than ten (10) years, and in my opinion you fall within the framework of the article. Period.

Mr. FABRIKANT:

Well, you're missing the point. I'm not trying here to establish before the jury that I'm eligible for sabbatical.

THE COURT:

Well, you're not going to establish that ...

Mr. FABRIKANT:

What I'm trying to establish, that administration blatantly disregarded everything.

THE COURT:

Well, Mr. McManus is not here to give his opinion on what the administration did or didn't do. Nor is he in any position to say whether they blatantly disregarded or anything else.

Mr. FABRIKANT:

Well, quite opposite ...

THE COURT:

He's not here to give his opinion on that.

Mr. FABRIKANT:

Quite opposite. He started the matter ...

THE COURT:

I'm telling you, he may give his opinion on that.

Mr. FABRIKANT:

Look, how ... how more bias could you be, then, I need convey to the jury that I was abused, that administration ignored all the rules and regulations written by themselves.

THE COURT:

The witness has said, in my opinion your grievance was well founded and I recommended that we grieve. That's what occurred, isn't it.

Mr. FABRIKANT:

No, this is ... this is exactly not ...

THE COURT:

Q. Mr. McManus?

A. I recommended that the grievance was ... j'ai recommandé, excusez-moi, que le grief soit soumis ... l'arbitrage.

- I recommended that the grievance be submitted to arbitration.

Mr. FABRIKANT:

This is not the issue, here.

THE COURT:

Well, you are not going to ask the witness to come to some judgement upon the degree to which the dean or any other member of the administration fell down, he's not here for that.

Mr. FABRIKANT:

Well, you're just afraid that he will say, yes, this was the case. Because, he's here ...

THE COURT:

I'm not afraid of anything, but he's not going to say that, that's illegal.

Mr. FABRIKANT:

... not to argue sabbatical for me, because jury is here not to decide whether I was or wasn't eligible for sabbatical. Jury is here to decide whether I was blatantly and lawlessly abused.

THE COURT:

Well, then ... then ...

Mr. FABRIKANT:

This is what ...

THE COURT:

... then if you maintain that, if you maintain that position then the witness' testimony along with all the other factors are something that may have to be considered, I don't know, we'll see.

Mr. FABRIKANT:

Well, not the way you present it. Because ...

THE COURT:

You are not going to have this witness come to some judgement in qualifying the conduct of the University administration as blatant, that's not what he's here for.

Mr. FABRIKANT:

Well, this is not what you want him to say, but this is what was happening there.

THE COURT:

Your question is out of order.

Mr. FABRIKANT:

Well, I think you are out of order, but you are the judge, this is the worst part of it. Okay.

Q. So, you are not allowed to comment on how blatant this response was. Alright. So, let's go to the next grievance.

A. Troisi me (3e) grief ...

- Third grievance ...

... ,ligibilit, pour une promotion.

- ... eligibility for a promotion.

Pour ce grief ...

- For this grievance ...

... je n'ai pas fait une ,tude du dossier aussi pouss,e que je l'avais fait dans le cas des deux (2) autres dont nous venons de parler.

- ... I didn't conduct an exhaustive analysis of the grievance as I did for the two (2) previous cases that I've just mentioned.

Et de l'autre dont nous parlerons apr s.

- And the following that will come up afterwards.

La raison en ,tant que ce grief ...

- The reason being that this grievance ...

... ... l',tape du comit, conjoint des griefs ...

- ... at the phase of the joint grievance committee ...

... avait re u l'approbation du comit, conjoint des griefs.

- ... had received the approval of the joint grievance committee.

La proc,ure de grief en vigueur ... Concordia ... l',poque ...

- And the grievance procedure in force at Concordia at the time ...

... demandait que cette recommandation ...

- ... required that this recommendation ...

... soit soumise au recteur ...

- ... be submitted to the rector ...

... pour d,cision.

- ... for decision.

J'ai pr,sum, qu',tant donn, que le comit, conjoint des griefs avait donn, son approbation ... cette demande ...

- And I presumed since the joint grievance committee had given its approval to that request ...

... il ,tait plus que probable que le recteur suivrait la recommandation de son comit, conjoint de griefs.

- ... it would be more than likely that the rector would

follow that recommendation following our ... concerning that grievance.

Q. Okay. And the next one, please.

A. Le quatrième (4e) et le dernier grief sur lequel j'ai eu ... donn, une opinion au syndicat et dont vous avez reçu copie ...

- The fourth (4th) grievance and the last one that I had to provide an opinion on, and a copy of which you have received ...

... porte sur votre ,ligibilit, pour la permanence.

- ... bears on the eligibility for a tenure consideration.

Q. What was my argumentation there and what was the response?

A. Ce grief est un petit peu plus compliqu, que les autres.

- That grievance is slightly more complicated than the others.

Il avait fait l'objet lorsqu'on m'a soumis ... lorsqu'on me l'a soumis pour ,tude ...

- When it was submitted to me for study ...

... il avait fait l'objet d'une d,cision si on peut dire ...

- ... it had been the object of a decision, if you will ...

... par le comit, conjoint des griefs dont j'ai parl, tant"t.

- ... by the joint grievance committee that I mentioned earlier.

J'indique dans mon opinion que le treize (13) avril quatre-vingt-douze (92) ...

- I mention in my opinion that April thirteenth (13th) ninety-two (92) ...

... que le comit, de grief ...

- ... that the joint grievance committee ...

... indiquait que vos pr,tentions ...

- ... indicated that your contentions ...

... ,taient les suivantes:

- ... were the following:

Professor Fabrikant contends that he should have been given consideration for tenure this year under the terms of article 12.05G of the current collective agreement.

Furthermore, he referred to the appointment letter issued by vice-rector White, dated August twenty-ninth (29th) nineteen eighty-five (1985), in which the officer of the University had stated that at the conclusion of the action structurante program -- et je cite la lettre du vice-rector White -- ...

- And I quote the letter of vice-rector White.

... you will be appointed to full time faculty at the University, at the rank of associate professor and the previous service at the University will be applicable to any tenure promotion consideration.

Donc, de ce que j'ai compris ...

- Therefore, from what I understood ...

... que des faits qui avaient amen, le comit, conjoint des griefs ... prendre la position qu'il avait prise ...

- ... the facts that had led the joint grievance committee to take the stand that it had taken ...

... vous aviez soumis deux (2) arguments.

- ... you had submitted two (2) arguments.

Un (1) argument sp,cifiquement bas, sur la convention collective qui ,tait alors en vigueur ...

- One (1) based specifically on the collective agreement in force at the time ...

... et un (1) autre qu'on pourrait dire essentiellement fond, sur l'historique du lien d'emploi que vous aviez eu avec l'Université,.

- ... and another, we can say, based on the historical relationship and link with the University at the time, since the beginning of your employment.

Je commence par ,tudier encore une fois, toute la documentation que j'ai en ma possession, votre historique de lien d'emploi avec l'Université, ...

- Then again I studied all the documentation in my possession, and that is everything pertaining to your employment with the University ...

... je constate qu'effectivement en quatre-vingt-cinq (85), vous ^tes embauch, sur un programme d'action structurante.

- ... and in nineteen eighty-five (85), I saw that you were hired as part of a action structurante program.

Ces programmes qui sont financ,s par le MinistŠre de l'enseignement sup,rieur et de la science ...

- And these programs which are subsidized by the Ministry of ... enseignement sup,rieur de la science ...

Q. Okay. Maybe we could save sometime here, because I understand that the reasoning is long. Maybe, yes, you just state your conclusion.

A. Je constate de toute fa#on, et c'est important ...

- In any case, this is important, I did ...
... pour mon opinion.

- ... to formulate ... for my opinion.

Q. Okay. What was your conclusion on this case?

A. Que le dix-huit (18) mai mil neuf cent quatre-vingt-huit (1988) au renouvellement de la subvention d'action structurante ...

- And the eighteenth (18th) of May nineteen eighty-eight (1988), at the renewal of the action structurante program ...

... le m^me vice-recteur White ...

- ... the same vice-rector Mr. White ...

... dans une lettre qu'il vous ,crivait ...

- ... in a letter to your attention ...

... r,p,tait, mais cette fois-l... en indiquant, et je cite la lettre:

- ... repeated, and this time indicating, and I'm quoting the letter:

que ... the previous service at the University will applicable to any tenure, and that time, or promotion consideration. Bon.

En mil neuf cent quatre-vingt-dix (1990) ...

- In nineteen ninety (1990) ...

... il est indiqu, dans ce rapport ... dans ce rapport, il est indiqu, qu'en mil neuf cent quatre-vingt-dix (1990), plut"t ...

- ... it is indicated in that report that in nineteen ninety (1990) ...

... vous auriez sign, et j'avais la copie de ce document ...

- ... you would have signed and I had the copy of that document ...

... une lettre ou accept, le contenu d'une lettre que vous adressait la vice-rectrice ... l'enseignement et ... la recherche Sheenan ...

- ... a letter or the content of a letter that you addressed to vice-rector academic Mrs. Sheenan ...

... qui vous indiquait ... ce moment-là, ... l'occasion d'un renouvellement de contrat ...

... which pointed out at the time that, for the renewal of the contract ...

... et je cite la lettre de la vice-rectrice ... l'époque:

... and I'm quoting the letter of the vice-rector at the time:

The tenure consideration will be made in the third (3rd) year of probationary appointment.

A cette époque, vous aviez en apparence accepté, un renouvellement d'emploi ...

At the time ...

... de contrat plutôt.

... you had accepted a renewal of a contract ...

... qui était de la nature d'un contrat de probation ...

... which was a probationary contract ...

... et que la vice-rectrice vous indiquait que on considérerait votre éligibilité, ... la permanence ...

... and that your eligibility to tenure consideration would be taken ...

... serait étudiée ... l'expiration de ce contrat de trois (3) ans.

... and would be studied at the expiration of that three (3) year contract.

Donc, en mil neuf cent quatre-vingt-treize (1993).

That is in nineteen ninety-three (1993).

Le comité, conjoint des griefs ...

And the joint grievance committee ...

... face tant aux écrits émanant du vice-recteur ...

... in view of the written documents ...

... du vice-recteur White ...

... of vice-recteur White ...

... et du document émanant de la vice-rectrice Sheenan ...

... and documents issued by vice-rector Sheenan ...

... indique dans son rapport ...

... indicates in his report ...

... que le fait d'avoir signé, ou accepté, si vous aimez mieux, l'offre de la vice-rectrice Sheenan de décembre quatre-vingt-dix (90) ...

... the fact of having signed or accepted the offer made by vice-rector Sheenan in December nineteen ninety (1990) ...

... sans manifester de votre part, quelque réserve que ce soit quant à son contenu ...

... without displaying any reservations whatsoever concerning its content by yourself ...

... le terme utilisé, dans la lettre est "caveat"...

... the term used in the letter is "caveat"...

... faisait en sorte que ce nouveau contrat ...

... made it such that this new contract ...

... et je cite l'avis du comité, conjoint des griefs:

... and I quote the notice issued by the joint grievance committee:

The new contracts superseded the previous and turned into with doctor White. C'était l'argument du comité, des griefs.

And that was the argument by the joint grievance committee.

Qui n'avait pas, selon moi, étudié, l'impact réel ...

Which had not, in my opinion, studied the real impact ...

... de l'article 12.05G ...

... of article 12.05G ...

... qui était de droit nouveau dans le contexte de rapports

collectifs de travail ... l'Universit, Concordia.

... which was new law in employment collective agreement
employment ... je m'excuse, est-ce que vous pouvez r,p,ter?

Qui ,tait de droit nouveau dans le contexte des relations
de travail ... l'Universit, ...

In the context of working relations at the University.

C',tait un article qui se lisait comme suit:

And this article read as follows:

If a person obtains a tenure track(?) position, and if the
person has taught at least ten (10) courses on research
appointment, the accumulated service shall count for
mandatory tenure consideration. For persons who have
taught between five (5) and nine (9) courses, the
accumulated service shall also count for mandatory tenure
consideration. But, article 12.10, notwithstanding, such
person are not eligible for mandatory tenure consideration
until they have completed at least one (1) year of
probationary appointment.

Qu'est-ce que tout cela voulait dire?

What did that all mean?

J'ai dit que c',tait un article de droit nouveau ...

I said it was an article of new law ...

... il y a un principe bien ,tabli en droit du travail que
...

... there's a well established principle in relation law
... or work ...

THE COURT:

Labor law.

THE INTERPRETER:

Labor law. Thank you.

THE WITNESS:

Que, un avantage cr,, par une convention collective ...

That an advantage created by a collective agreement ...

... s'applique ... s'applique imm,diatement ... toutes les
personnes qui peuvent en b,n,ficier.

... immediately applies to all the persons who can benefit
from this.

Dans un second temps ...

Secondly ...

... on ne peut imposer ... un salari, vis, par une convention
collective ...

... one cannot impose on a salaried employee ...

THE COURT:

Covered by a coll...

THE INTERPRETER:

... contemplated ...

THE COURT:

Covered by a collective agreement.

THE INTERPRETER:

... covered by the collective agreement ...

THE WITNESS:

... des conditions inf,rieures ... celles qui y sont pr,vues.

... conditions inferior to those provided for.

Dans ce contexte ...

In that context ...

... bien que vous ayez sign, la lettre fatidique selon le
comit, conjoint des grief, en d,cembre quatre-vingt-douze
(92) ...

... although you would have signed this famous letter as
referred to by the joint grievance committee, in december

nineteen ninety-two (1992) ...

... et toujours en revisant l'historique de vos contrats
que j'avais en ma possession ...

- ... and always studying the history of your contacts that
I had in my possession ...

... j'ai constat, que vous aviez enseigné, ...

- ... I observed that you had taught ...

... depuis mil neuf cent soixante-dix-neuf (1979) ...

- ... since nineteen seventy-nine (1979) ...

... treize (13) cours.

- ... thirteen (13) courses.

A divers titres.

- In divers titles.

Qui vous qualifiaient au sens de l'article 12.05G.

- Which qualified you pursuant to article 12.05G.

</pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">

Dans le contexte, ce que j'explique au syndicat ...

- In this context, what I explained to the union ...
... c'est que n'ayant pas de preuves sur ce qui s'est
r,ellement pass, lors de vos transactions ou tractations, avec
la vice-rectrice Sheenan en quatre-vingt-dix (90) ...
- ... not having any evidence on what transpired or what took
place with vice-rector Sheenan in nineteen ninety (90) ...
... de tout fa#on ...
- ... in any case ...
... la convention collective de la mani#re dont je concevais
qu'elle devait s'appliquer ...
- ... the collective agreement that I viewed should be applied
in such a way ...
... faisait en sorte que vous vous qualifiez, puisque depuis
quatre-vingt-dix (90) vous aviez ce qu'on appelle un tenure
track(?) position ...
- ... made it possible for you since you did qualify as someone
who could have been eligible for a tenure track(?) position
since according as of nineteen ninety (1990) ...
... avec le nombre de cours que vous aviez enseign,s ... ce
moment-l... ...
- ... and with the numbewr of courses you had taught at the time
...
... faisait en sorte que je recommandais au syndicat de,
encore une fois porter votre grief ... l'arbitrage, puisque ...
- ... made it such that I recemmeded to the union to there
again file your grievance and submit it to arbitration because
...
... l'addition des deux (2) conditions, tenure track(?)
position plus le nombre de cours enseign,s me ...
- ... both conditions tenure track(?) position and the number of
courses taught ...
... me permettait de leur sugg,rer de le faire et que nous
aurions ...
- ... allowed me to recommend to them to do so and that we would
have ...
... probablement toutes les chances de le gagner.
- ... possibly and likely all the chances on our side to win the
case.

Mr. FABRIKANT:

Q. Okay. You also suggested that there might be evidence that I
conceded to this delay of tenure under duress. Would you
please comment on this subject?

A. Dans mon opinion ...

- In my opinion ...
... je dis au syndicat que ne sachant pas ce qui s'est pass,
au moment o- je la rends ...
- ... I stated to the union that since I did not know what took
place at the time where I did submit it ...
... donc, ne pouvant ,valuer la valeur du consentement ...
- ... therefore, not being able to assess the value of the
consent ..
... au sens civil du terme ...
- ... in the civil meaning of the term ...
... que vous auriez pu donner ... cette mani#re de fonctionner
que vous expose la vice-rectrice Sheenan en quatre-vingt-dix
(90) ...
- ... that unabled you to proceed according to what was exposed
by vice-rector Sheenan at the time ...

... j'indique que je ne peux pas me prononcer ... ce moment-là, l...-dessus.

- ... I indicated that I couldn't pronounce myself on that topic at the time.

Mais que si mon enquête ...

- But that if my investigation ...

... devait d,montrer qu'il y avait des signes de violence au sens civil du terme ...

- ... was to show that there were any violent acts by the civil

...

THE COURT:

No, no, no, no ...

THE INTERPRETER:

Excuse me. He's saying violent signs ... signs of violence

...

THE COURT:

No, no.

THE WITNESS:

984 et suivant du Code civil.

THE COURT:

Oui, over pressure in the civil sense.

Mr. FABRIKANT:

Under duress. Making something ... putting someone under duress.

THE COURT:

Well, he said duress, he's ...

THE INTERPRETER:

Duress, c'est contrainte.

Mr. FABRIKANT:

Q. Putting a person under duress, violating his right.

A. Si mon enquête d,montrait qu'il y avait eu des contraintes ...

- Therefore, if my investigation did revealed to have some conditions of duress or putting person under duress ...

... au sens civil du terme ...

- ... according to a civil meaning of the term ...

... suffisantes pour pr,tendre ... la nullit, ...

- ... sufficient to contend to the nullity or (inaudible) ...

... de cet engagement ...

- ... of that undertaking ...

... mon opinion changerait sur l'application de la suite des lettres dans votre contrat ... dans votre dossier.

- ... my opinion would change on the subsequent letters in your file.

Q. Do you think that a person on his own will, can forfeit three (3) years of ...

THE COURT:

No, that question won't work.

Mr. FABRIKANT:

Well ...

THE COURT:

You may not ask that question.

Mr. FABRIKANT:

Isn't it obvious that there was ...

THE COURT:

You may not ask that question.

Mr. FABRIKANT:

I may not ask that question. Alright. I think that everyone understands without asking question.

THE COURT:

And please spare us the editorial.

Mr. FABRIKANT:

Yes.

Q. Alright. You also mentioned in your opinion, certain things about harassment by the University. Would you please comment on that?

A. Ce ... quoi vous faites r,f,rence, se retrouve dans les conclusions.

- What you're referring to is found in the conclusion section. Il faut se rappeler qu'on est ... ce moment-l..., le vingt-cinq (25) may mil neuf cent quatre-vingt-douze (1992).

- One will recall that we are now at the twenty-fifth (25th) of May nineteen ninety-two (1992).

Que j'ai eu l'occasion d'assister, et c'est trřs important ...

- That I had the opportunity to attend, and this is very important, I would like to underline this ...

... .. une rencontre entre la vice-rectrice ... l'enseignement et ... la recherche, monsieur Fabrikant, monsieur Constanzo ...

- ... a meeting with the vice-rector academic, Mrs Sheenan, Mr. Fabrikant, Mr. Constanzo ...

... qui est pr,sident du syndicat ... l',poque ...

- ... president of the union at the time ...

... maÊtre Freedman qui s'est pr,sent, comme un avocat ... l'emploi de l'Universit, ...

- ... Mr. Freedman presented himself as being a University counsel ...

... et une autre personne dont je ne me rappelle pas le nom.

- ... and another person whose name I do not recall.

Lors de cette rencontre-l... ...

- And during that meeting ...

... vous avez soumis ... la vice-rectrice ...

- ... you submitted to the vice-rector ...

... des faits.

- ... facts.

Qui, je l'ai dit hier, s'ils s'av,raient vrais ...

- Which, as I stated yesterday, if they were to be true ...

... ,taient de nature ... poser de s,rieuses questions sur la maniŠre dont ,tait dirig, ou dont se passait ...

- ... would lead us to seriously contemplate on the procedure or what was taking place ...

... concernant la recherche scientifique au d,partement o- vous ,tiez attach, ... auquel vous ,tiez attach,.

- ... concerning the scientific research procedure for the department with which you were employed.

Je dis dans mes conclusions ...

- And I state in my conclusions ...

... the denunciation of the situation amounting or to scientific fraud, or at least, to blamable practice in his department and the way he did it, as exposed him to the

employer's and colleagues' vindication. As professeur Lariv,e says in his document, Les fraudes scientifiques, rapport

pr,liminaire ...

- Preliminary report, Scientific fraud ...

... et je cite:

- ... and I quote:

Les d,nonciateurs sont vites perçus comme des trouble-f^tes ...

- ... the ... here I don't know if it's informant ... the wistle blowers are quickly perceived as trouble makers ...

... qui mettent en p,ril la r,putation et l'autonomie de l'activit, scientifique.

- ... which put at stake the reputation and the autonomy of the scientific activity.

Ce rejet ...

- This rejection ...

... et le restant du paragraphe est souligné, ...

- ... and the rest of the paragraph is underlined ...

... avec les représailles qui l'accompagne ...

- ... with the reprisals that accompany it ...

... est encore plus accentué, ...

- ... is even more emphasized ...

... lorsque les dénonciateurs rendent public les cas de fraudes détectés.

- ... when the whistle blowers render public the cases of fraud noted or detected.

Alors, si c'est ça ... quoi vous réferez, c'est ce que j'ai écrit dans mon opinion.

- And if that's what you're referring to, that's what I wrote in my opinion.

Q. Okay. Now, could you please, make up to date on several occasions. I have seen here one (1) letter from you, addressed to president of the union and asking him, whether he would be prepared to pay expenses for transcribing on certain tapes. Do you recall such a letter?

A. Oui.

- Yes.

Q. Okay. Do you remember approximately the day when you sent it?

A. C'est ... si vous me disiez ... quel président je l'ai écrit, je pourrais vous préciser la date.

- If you told me to which president I wrote it, I would be able to specify the date.

Q. I think it was to Hogben.

A. Donc, ça serait postérieur au premier (1er) juin.

- Therefore, it would be after June first (1st).

Q. Did you ever get any answer to that letter?

Me LEHRER:

I object, Your Lordship, again we're talking about a communication between the client and solicitor. If Mr. Fabrikant says he has a copy of that letter, if he does then I will withdraw my objection, clearly the privilege might have been waived. But if he's trying to illicit other communications that he's not aware of, I would have to object, at that point.

THE COURT:

If you can put your hand on that letter, then we'll ... we'll go on.

Mr. FABRIKANT:

Well, if I say that I have it, then I do have it. I couldn't otherwise know about it.

THE COURT:

Well, I'll give you ... you can look for it during the pause, we'll stop for fifteen (15) minutes.

SUSPENSION

REPRISE

Me PAYETTE:

Your Lordship, with the Court's permission, I'm Francine Payette, I'm representing coroner Michaud who had a received a subpoena, with duces tecum, I showed it to maître Belleau who showed it Mr. Fabrikant, the document, and it was understood that Mr. Michaud was free to go, that he was ... so the subpoena ... monsieur est libéré.

THE COURT:

Fine. If you're in agreement Mr. Fabrikant, that the coroner be ... be freed, then it's fine.

Me PAYETTE:

Thank you.

THE COURT:

Thank you.

Mr. FABRIKANT:

Well, this is the letter. That's (inaudible).

Me LECOURS:

May I see it, please.

THE COURT:

Would you take cognizance of that letter, if a copy was addressed to Mr. Fabrikant, obviously there's no ...

Me LEHRER:

I have no problem with that.

THE COURT:

You have no problem with that.

Mr. FABRIKANT:

I just wonder why would have been any problem if I didn't have a copy of that letter. Why should be any secret from one (1) of your members. (inaudible).

THE COURT:

And, your question is?

Mr. FABRIKANT:

Q. Well, the question was did he ever get any answer?

- Est-ce que vous avez jamais re#u r,ponse?

A. Non.

- No.

Q. Did you try to follow up this letter in (inaudible)?

- Avez-vous tent, de faire un suivi sur cette lettre par la (inaudible)?

A. On est le trois (3) juin.

- This was dated June third (3rd).

Il y a un autre sujet que je trouve beaucoup plus important que celui-l...

- There's another topic that I find to be much more important than this one.

C'est d'obtenir un ... quant ... moi, dans le cadre de mon enqu^te.

- In the context of my investigation.

D'obtenir des preuves solides de vos pr,tentions quant

- Was to obtain solid evidence concerning your contentions ...

... relatives aux pratiques blamables ...

- ... concerning the blamable practices ...

... que vous d,noncez.

- ... that you denounced.

Cette lettre n'est qu'un accessoire, puisque vous avez pr,tendu lors de la rencontre avec madame Sheenan ...

- This letter is accessory, since you contended that, during a meeting with Mrs. Sheenan ...

... vous aviez en votre possession ...

- ... that you had in your possession ...

... des enregistrements de conversations t,l,phoniques avec diff,rentes personnes.

- ... recordings of telephone conversations with different people.

Il est ,vident pour moi que ce que je demande au pr,sident ... ce moment-l..., devra ,ventuellement ^tre fait.

- And in my mind, it was obvious to me that, what was requested from the president would have to have been made at one point in time.

Mais, ce n',tait pas dans mes priorit,s ... ce moment-l....

- But, it was not part of my priorities at the time.

Q. Alright. Could you give me your legal assessment as to was it appropriate to proceed with injunction in case of sabbatical leave.

THE COURT:

No. That question is not permitted.

Mr. FABRIKANT:

Alright.

Q. What is the contemporary situation with all those grievances, if you are aware of? Are you still in file of any of them?

A. Non.

- No.

Q. What was the end of it?

A. J'ai ,crit en septembre dernier ...

- Last september I wrote ...

... .. madame June Chinckelson(?) ...

- ... to Mrs. June Chinckelson(?) ...

... lui demandant ...

Me LEHRER:

Again, I will have to object to that, being communication between solicitor and client, significantly after ... in any event, after the events which are the subject of this trial, but there between the attorney and the current president of the association.

THE COURT:

And, Mr. Fabrikant wasn't copied in on these ...

Me LEHRER:

I'm not aware that he's been copied. That's why I'm raising my objection so there would not be any tacit renunciation to that. If he's aware of it, then perhaps he can let us know and I'm objection will be withdrawn, but I'm not aware that he's been made privy to these latter communications.

Mr. FABRIKANT:

Well, shouldn't I be copied in any case with these letters?

Let me ask you different to that. Shouldn't I be sent a copy even if I wasn't?

Me LEHRER:

Your Lordship, again the president can be available and there wouldn't be no problem with her answering most of these questions. But, because of the very important nature of solicitor/client privilege, the client is invoking it with respect to Mr. McManus.

Mr. FABRIKANT:

Alright. Then, you give me ...

THE COURT:

Yes (inaudible).

Mr. FABRIKANT:

... no choice but to show you that letter.

THE COURT:

Well, if you have the letter, Mr. Lehrer indicated that the objection will be withdrawn.

Mr. FABRIKANT:

Well, I do have that letter. I just need time to find it. If you ... if you like, again, me searching for old files, I can definitely do that. But if you maybe decide to trust me, and withdraw your objection, it would save us a lot of time.

THE COURT:

How could the status of these grievances be relevant to what the jury has to decide, which bears upon the twenty-fourth (24th) of August, when your question bears on after that date?

Mr. FABRIKANT:

Well, I think it would indicate whether union changed or didn't change since then. And, you in your Solomon wisdom, can always say that it is irrelevant, so why don't you say that it is irrelevant and the matter is closed. Or, you only say irrelevant when it damages Concordia, when there is no damage you ...

THE COURT:

Not at all, I'm ... I'm asking you, I'm asking you what the relevance of it is.

Mr. FABRIKANT:

I told you. So, you can rule it irrelevant and we'll go from there.

THE COURT:

Well, I thank you for your invitation to rule it irrelevant, I will do so.

Mr. FABRIKANT:

Alright. So, you see how simple it is. Thank you, Mr. McManus.

Me LECOURS:

I have no questions.

THE COURT:

Thank you, Mr. McManus.

END OF TESTIMONY BY THIS WITNESS.

THE COURT:

And, I suppose it's too soon to thank you, Mr. Lehrer, although I don't know. Your next witness.

Mr. FABRIKANT:

Tezeta Taye.

THE COURT:

Pardon?

Mr. FABRIKANT:

Tezeta Taye. By the way, I forgot. I would like to file the report of Mr. McManus, is it ... is it too late?

THE COURT:

What report of Mr. McManus? His opinion?

Mr. FABRIKANT:

Yes.

THE COURT:

No, you're not filing his opinion.

Mr. FABRIKANT:

Why not?

THE COURT:

Because you're not. He's testified on the subject and that's that.

PERSONALLY CAME AND APPEARED:

TEZETA TAYE

born on the 28th of March 1963, secretary,

WHO, after being duly sworn, doth, deposes and says as follows:

EXAMINED BY MR. VALERY FABRIKANT

Representing himself:

THE COURT:

Could you speak loudly, please?

THE WITNESS:

(inaudible)

THE COURT:

Okay.

Mr. FABRIKANT:

Q. How long have you been working at Concordia University?

A. Since August the nineteenth (19th) eighty-seven (87).

Q. How many times did you see security guards?

A. How many times? Once (1).

Q. One (1) time. Do you recall when was that?

A. I don't remember the date, I'm sorry.

Q. Okay. Not the date, year?

A. That would be in August of last year.

Q. August of nineteen ...

A. Ninety-two (92).

Q. ... ninety-two (92). So, it was very shortly before the shooting, right?

A. Yes.

Q. Would you be able to recognize this guard?

A. I don't think so.

Q. For how long did you see him? How many days approximately?

A. Approximately one (1) week.

Q. One (1) week. Was it the week prior to shooting?

A. I don't remember.

Q. Do you know where he was sitting?

A. He was sitting in front of dean Swamy's office.

Q. Inside, in front of entrance to his office, personal office, is that what you say?

A. That's correct.

Q. Not outside 907.

A. No.

Q. Was it every day the same person, or it was different?

A. I don't think it was the same person.

Q. So, could you indicate as to how many different people go there?

A. I don't remember.

Q. Well, in ... say two (2), three (3) people?

A. (inaudible).

Q. No, no way.

A. Probably two (2).

Q. Were they there already when you came to work and when they left, they were still there?

A. Could you say that again, please?

Q. Okay. When you come to work, the body guard was already there, usually?

A. I sit in the front desk, so I don't see the security guard coming in or going out.

Q. Hum, hum. But, since you didn't see him, then it means that when you came to work, he already was there. Would that be correct presumption?

A. I don't know. I can't answer that.

Q. How did you know that it was in fact, security guard?

A. I was told.

Q. Okay. Do you remember who told you that?

A. I was told by the secretary?

Q. Secretary.

A. One (1) of the secretaries.

Q. Could you state the name?

A. Jane Benettachi(?).

Q. Okay. She told you that. Alright. Did she explain to you why was there a body guard?

A. No, she didn't.

Q. Did ask her about it?

A. No, I didn't.

Q. You didn't ... why, because you knew the reason or some other reasons why you didn't ask?

A. I really didn't want to know, that's why I didn't ask.

Q. How did it happen if you recall, just that Miss Benettachi approached you and said: hey, you know, there's a body guard, there. Something like that?

A. I don't remember, it's been so long.

Q. Did ... was there any doubt in your mind that the guard was to guard against me?

A. If there was ever a doubt?

Q. Yes.

A. No.

Q. So, you were sure that this guard is to guard Swamy against me, correct?

A. It's not correct, that's not what I said.

Q. Ah, okay. So ...

A. I didn't know why he was there. I knew there was a security guard, that's all I knew.

Q. Hum, hum. Have you ever heard that I allegedly threatened Swamy?

A. Rumors ... rumors.

Q. Rumors. Did you hear of anybody else threatening Swamy but me?

A. No.

Q. No. So, would it be logically assumed, since the rumor was that I threatened him, that guard is against me?

A. I don't know that, Sir.

THE COURT:
That calls for a conclusion on the part of the witness, and the witness has told you that she did not know why the guard was there. So, that last question is disallowed.

Mr. FABRIKANT:
Q. Okay. Did I come to the office of 907 more often than anybody else?

A. I think so.

Q. Okay. Were you personally afraid of me?

A. No.

Q. Even when the guard was there?

A. I had no reason to.

Q. Do you recall making statement to the police?

A. Yes.

Q. Were you ... okay, let me ask you differently. When I come to the office several times, you made some kind of conclusion as to why I was coming.

A. I don't think so, Sir.

Q. No, okay. Would you like to refresh your memory?

A. Okay, but it doesn't say I was suspicious.

Q. No, no, no, I ... I ...

THE COURT:

Q. Just refresh your memory with the statement ...

A. Okay, okay, that's fine.

Q. ... and then wait for the question.

Mr. FABRIKANT:

Q. It's just to refresh your memory.

A. Okay.

Q. So, you ... okay, you expressed certain opinion as to why I might have come to the office several times.

A. I wouldn't know. I can't answer that.

Q. Well, okay, then ... here's the question: to your knowledge, did doctor Fabrikant come in the office two (2) or three (3) times consecutive before that day? Answer: yes, he did it when he got suspicious that there was a guard in front of dean Swamy's office. This is kind of guess which you made, this guess was made ... do you recall making this ...

A. Yes, yes.

Q. Yes. So, here there is some kind of explanation as to why I might have come several times, just to check if there is a guard. You noticed presence of guard, who I knew was there to guard me, upset me in the sense that it ruins my reputation, was it your understanding that, that is why I reacted on the guard, kind of negatively? What, it's a bad question?

A. I'm not sure I understand the question.

Q. Okay. Anyway, I don't have to go deep into that. So, effectively your impression was that when I was coming several times, it was that I was checking if there was a body guard there?

A. That's correct.

Q. You can ... alright. Okay, thanks. One (1) more ... one (1) more question, though. One (1) second, do you recall nineteen ninety (1990), when there was some kind of repairs made in the dean's office?

A. No, I don't. Nineteen ninety (1990)?

Q. Yes.

A. I'm sorry.

Q. Well, late fall nineteen ninety (1990), there was allegedly smell in the dean office ... in 907 office, and part of it was completely closed.

A. I don't remember.

Q. And, half («) of the employees were just located somewhere else.

A. I don't recall.

Q. Well, this is kind of major disturbance which ...

A. Probably I wasn't around, I don't recall.

Q. But you were working in the dean's office in nineteen ninety (1990).

A. In nineteen ninety (1990)? Yes.

Q. And you do not recall at all, that half («) of the office was closed and ...

A. No, I don't.

Q. ... some repairs and many people were just located to other places.

A. I don't ... well, I was probably on maternity leave. I don't remember.

Q. You were at that time, in nineteen ninety (1990) fall, you were at that time on maternity leave? That was the time of

your leave?

A. I believe so, yes.

Q. So, that might be the reason why you don't remember that. Alright. Could you indicate the source of rumors that I threatened dean Swamy?

A. I don't remember, Sir.

Q. On how many occasions did you hear that I threatened Swamy?

A. Just once (1).

Q. Do you remember when approximately?

A. No, I can't say any specific names, I don't remember.

Q. Well, at least in terms of the year, when ... year, what year?

A. The rumors, when did I heard it?

Q. What year? Yes.

A. The rumors?

Q. Yes.

A. In nineteen ninety-two (1992).

Q. In nineteen ninety-two (1992). At the same time when the guard was there?

A. Yes, just about the same time.

Q. Okay. Did anyone explained to you the reason why I might have threatened him?

A. No.

Q. Did you ... say, on August twenty-fourth (24th) to ... what was her name, to Denavente(?), when she stopped me, did you tell her: you know, this is the professor we're having problems with?

A. No, I didn't say that. I said that was doctor Fabrikant.

Q. That's all, you never said this is the professor we're having problems with?

A. No.

Q. Thank you.

CROSS-EXAMINED BY Me JEAN LECOURS

Attorney for the Crown:

Q. Did you encounter Mr. Fabrikant previous to the August twenty-fourth (24th) nineteen ninety-two (1992)?

A. If I met him personally or ...

Q. Yes.

A. Yes.

Q. What was the purpose of the meeting?

A. It wasn't a meeting, I went over to his office to have some documents signed.

Q. Did he say anything to you at that time?

A. Yes, he asked me if I heard any rumors about him going around shooting everybody's head off. If he was going to go around and shoot everybody's head off. And I had to answer, no.

Q. No further questions.

RE-EXAMINED BY Mr. FABRIKANT

Q. What was ... what was the circumstances of that ...

A. I came to the office, and I had a paper for you to sign. I don't recall what the document was.

Q. Papers to sign. You recall that it was papers to sign?

A. I don't remember exactly what the document was. I believe it's either a student ... a grade change request, I believe that's what it was.

Q. Could it be that it was something else?

A. It has something to do with a student.

Q. Well, try to recall better what it was.

A. I can't say anymore than that.

Q. Could it be that it was exam papers?

A. It's possible.
Q. And I didn't need to sign anything.
A. I don't remember. But I was in your office.
Q. Yes. And what was exactly the question I asked you? Was that the wording I asked you?
A. Yes. From what I recall you asked me if I heard any rumors about you, and if I knew about the security guard, and also if I heard that you were gonna go ... if you were gonna go around and shoot everybody's head off. That's what I remember.
Q. When was that?
A. I can't say the date. Approximately a (1) month before August twenty-fourth (24th).
Q. And, what did I ask about security guard?
A. If I knew why the security guard was there.
Q. Just like that.
A. From what I recall, yes.
Q. Well, try to remember better. I asked you just like that: was there any security guard?
A. No, not like that, you asked me if I knew why the security guard was there.
Q. Could it be that the wording, which I used, I asked you do you know who is spreading that kind of rumors about me?
A. No. I don't remember you asking that.
Q. You have kind of superior selective memory.
THE COURT:
Never mind the comments, Mr. Fabrikant.
Mr. FABRIKANT:
Q. Do you also remember that I asked you, whether dean Swamy is spreading these rumors?
A. I don't remember.
Q. This you don't remember. Do you remember also that I asked you, that security guard is being posted there just to ruin my reputation?
A. I don't remember.
Q. You don't rem... you don't remember that either.
A. No.
Q. So, you remember only very, very selective stuff, there. Do you remember also that I told you, that I find it very reprehensible to spread that kind of rumors, to put body guards there just for one (1) purpose, to ruin someone's reputation.
A. No, I don't.
Q. You don't remember.
A. No.
Q. Do you also remember I asked you if you were personally afraid of me?
A. I don't remember that.
Q. You don't remember correctly, that you didn't come even to sign any document, because you didn't come to sign any documents, you just brought me ...
Me LECOURS:
It's his witness, My Lord, he should not cross-examine her.
THE COURT:
Yes it his, he should not cross-examine his own witness.
Mr. FABRIKANT:
But I am cross-examining on his.
THE COURT:
No ... I'm sorry, it doesn't change.
Mr. FABRIKANT:
What do you mean it doesn't change?
Me LECOURS:

You're still in chief.

Mr. FABRIKANT:

It was his witness.

THE COURT:

You called the witness, you're in re-examination, the same rule applies. Furthermore, furthermore ...

Mr. FABRIKANT:

It is counter ... counter-examination ...

THE COURT:

... no, no, no, furthermore you're testifying. At least in your last question you were testifying.

Mr. FABRIKANT:

I'm just asking the witness ...

THE COURT:

Well, you may not cross-examine your own witness and you may not testify when you're putting questions to the witness.

Me LECOURS:

He got his answer, My Lord.

Mr. FABRIKANT:

Well, that was ... I'm now counter ... counter-examining, correct?

THE COURT:

No.

Mr. FABRIKANT:

Why no? Because this is related ...

THE COURT:

You're re-examining ... you're re-examining ...

Mr. FABRIKANT:

... to questions (inaudible) by Crown.

THE COURT:

... you're re-examining your witness, that does not give you the right to cross-examine your witness.

Mr. FABRIKANT:

I brought this witness ...

THE COURT:

That's right.

Mr. FABRIKANT:

... intentionally so that Crown would ask this question, because it is in her statement here.

THE COURT:

Well ...

Mr. FABRIKANT:

Hoping that I would be able to cross ...

THE COURT:

Well, you can't ...

Mr. FABRIKANT:

... examine her on that.

THE COURT:

You can't cross-examine the witness.

Me LECOURS:

Too bad.

Mr. FABRIKANT:

This is on his questions, not on mine.

THE COURT:

Doesn't matter ... doesn't matter, it changes nothing.

Mr. FABRIKANT:

Okay, I'll find a way, then. Well, witness clearly do not ... in contradiction to her statement, here, she says here that: I had some documents to sign by doctor Fabrikant. And we came to clear understanding that it was not a document for me to sign, it was just student examinations which I had to take

with me ...

Me LECOURS:

That's false, My Lord.

THE COURT:

That's not ...

Mr. FABRIKANT:

Well, this is what she said, wasn't false.

THE COURT:

Put your question again.

Mr. FABRIKANT:

Alright.

Q. So, would you please state to the Court exactly what did you bring to me?

A. I don't remember exactly what it was. I said, I remember bringing a document for you to be signed, I could be wrong that you didn't have to sign it, but I was in your office with a document. I don't remember ...

Q. Well, what is your job?

A. I'm an undergraduate secretary.

Q. Okay. So, what kind on earth a document could you possibly bring me, except student's exam papers?

A. Well, there are student's requests or there are grade change requests.

Q. Well, grade change requests doesn't come to you. Grade change request ...

A. Yes, it does.

Q. ... I feel and I bring to you, not vice et versa. Is it?

A. No, it goes ... from the department it goes to the chairman and then it comes to the dean's office.

Q. It starts with me, it comes to the chairman ...

A. I understand.

Me LECOURS:

He's testifying, My Lord.

THE COURT:

Yes.

Mr. FABRIKANT:

... it goes ...

THE COURT:

We're ... we're getting bound up in nothing, would you stop arguing with the witness.

Mr. FABRIKANT:

Well, anyway ... the witness clearly ...

THE COURT:

the witness says: she brought a document to your office.

Mr. FABRIKANT:

Well, student's exam is not a document really, it's what student written exam.

Me LECOURS:

A document is a document, My Lord.

Mr. FABRIKANT:

And she brought it to me. So, and this contradicts to what she says here, that it's a document to sign.

THE COURT:

No.

Mr. FABRIKANT:

No. It does not contradict.

THE COURT:

No.

Mr. FABRIKANT:

Well, in your head nothing contradicts anything.

THE COURT:

That's not true.

Mr. FABRIKANT:

Yes. Okay.

Q. Now, put it ... put it differently. If this is what I told you, as what you say, not what is my recollection, then how come you just didn't pay any attention to what was said, because what ... what you present sounds kind of alarming, does it?

A. I'm sorry, can you ask me that again?

Q. Yes, I can say it again. The way you present it, sound kind of alarming, doesn't it?

A. I don't think so.

Q. No? Okay. Repeat it once again, what did I say?

A. The way I presented it sounds alarming.

Q. Well, at least to me. So, could you ... could you say it again? I just asked you to sit down and said: did you hear that I want to get ... what? Say it again.

A. You asked me if I heard that, if you were gonna go around and shoot everybody's head off.

Q. Just without any ... anything before that, just like that?

A. Yes, that's correct.

Q. And you said, that, no you didn't hear that.

A. Yes.

Q. And after that I asked you what? Say it again.

A. If I knew anything about the security guard.

Q. How ... how was it related one to another?

A. I don't know.

Q. So, all together doesn't it sound ... Venetachi(?) when she saw me just entering office ...

Me LECOURS:

He's testifying, My Lord.

Mr. FABRIKANT:

I'm not testifying ...

Me LECOURS:

You cannot refer to other witnesses.

Mr. FABRIKANT:

I cannot refer to other witnesses.

Me LECOURS:

No.

Mr. FABRIKANT:

Okay.

Q. Do you recall the order of the dean, not to let me in ...

Me LECOURS:

Leading, My Lord.

THE COURT:

We'll let that question go, if it gets us to where we're going.

Mr. FABRIKANT:

Q. Well, did you hear the order of the dean to Venetachi(?), not to let me in the office?

A. No, I didn't.

Q. You didn't. You seem ... you like the ...

Me LECOURS:

This is a comment, My Lord.

THE COURT:

Yes, you're not here to comment. You're here to ask questions.

Mr. FABRIKANT:

Alright.

THE COURT:

But then again, you know, you follow no rules anyway, so ...

Me LECOURS:

Well, he should, My Lord.

THE COURT:

Oh no, I realize he should. I'm not ... I'm not permitting it, I'm just saying ...

Me LECOURS:

You're there to make sure the rules are followed.

Mr. FABRIKANT:

Q. Okay. Didn't you feel to obligated, if you really heard that ...

Me LECOURS:

It's leading, My Lord.

Mr. FABRIKANT:

This is not leading.

Me LECOURS:

It suggests the answer.

THE COURT:

Change your question.

Mr. FABRIKANT:

Q. Did you feel that you needed to react somehow to kind of statement? If this was the statement.

A. No, I didn't think at that time.

Q. You never heard any rumors that I threatened vice-rector ... no, rector, that I ...

A. No, I didn't.

Q. ... threatened somebody's child ...

A. No, I didn't.

Q. Were you at the University or were you somewhere else?

A. I was at the University.

Me LECOURS:

That's sarcastic, My Lord.

Mr. FABRIKANT:

Yes, that's sarcastic, I guess, yes. Because every secretary testified that they knew ...

THE COURT:

Never mind the comment, she's here to testify as to what she knows and what she heard.

Mr. FABRIKANT:

Now, if ... if her statement contradicts a statement of another witness, because Venetachi(?) testified ...

THE COURT:

Look, never mind what Ventachi(?) testified. The witness is testifying as to her knowledge, period.

Mr. FABRIKANT:

And if it is in total contradiction, then what?

THE COURT:

Well, it's not for you to sort out, it's just for you to argue on the basis of that. That's all.

Mr. FABRIKANT:

Alright.

THE COURT:

There are contradictions every day of the week.

Me LECOURS:

In every case.

Mr. FABRIKANT:

Q. Okay. You told me that there was no security guard, correct?

A. I'm sorry.

Q. When I asked you if ... what ... what did I ask you, if there is any security guard there?

A. If I knew.

Q. If you know about security guard. Yes?

A. That's correct.

Q. Hum, hum. And, just later on another question, you said ... there is a question: was there in fact a security guard? And here you answer: yes, there was a security guard. So what, you lied to me? Or what?

A. No, I didn't know about the security guard, I know there was a security guard but I didn't know why he was there.

Q. He, he, he, one second. It is not question, why. Here is the question: do you know about the security guard? My answer was: No, I didn't. Right, this is part of your statement.

A. Yes, that's correct.

Q. And if you go just below, there is a question: was there in fact security guard as doctor Fabrikant mentioned? Answer: yes, a security guard.

A. I know there was ...

Q. So, you lied to me.

A. ... I knew ... I knew there was a security guard, but I didn't know why he was there. That's how I ...

Q. This is not the point.

A. ... understood your question.

Q. Nobody ... nobody's asking why? The question is, was or wasn't.

A. That's how I understood your question, if I knew anything about the security guard, why he was there.

Q. Maybe I read once again, if it could be understood this way. Do you know about security guard, period. There is not a word, why. And after that my answer was: no. and right after that, was there in fact a security guard, as doctor Fabrikant mentioned? Answer: yes, a security guard. So, is this a contradiction for you can I cross-examine on that?

THE COURT:
Yes, you can cross-examine.

Me LECOURS:
There is no contradiction, My Lord.

THE COURT:
You can cross-examine on that. You can cross-examine on that.

Mr. FABRIKANT:
Yes. Now, then maybe we can get to truth of it.

Q. So, effectively, if you didn't tell the truth in one case ...

THE COURT:
That's not the way you put the question.

Me LECOURS:
For him, everybody is a liar, My Lord.

THE COURT:
Oh, I know that.

Me LECOURS:
That's not the case.

THE COURT:
That's not how you put the question.

Mr. FABRIKANT:
What is ... what is wrong now with my putting question.

THE COURT:
Because ... because your question is argumentative first of all, you don't go around accusing people of telling lies or ...

Mr. FABRIKANT:
I didn't say she was ...

THE COURT:
Well, that's what you did, you're asking about which truth ... that's an old trick, that's ... that hasn't work for centuries.

Mr. FABRIKANT:

Well, why should we play kind of children, when a person says on one (1) line, yes, and on another line ...

THE COURT:

You want to put ... you want to put ... and you got permission to put a leading question on what's in the statement as opposed to what she said here, go ahead.

Me LECOURS:

She said the same thing here, My Lord. That's the point.

Mr. FABRIKANT:

No, it's not the same thing.

Me LECOURS:

She might have said two (2) different things in the statement, but she ... she maintains here what she said in the statement.

THE COURT:

Go ahead.

Mr. FABRIKANT:

Yes but, statement itself ...

THE COURT:

Go ahead.

Mr. FABRIKANT:

Alright.

Q. So, do you ... do you remember that the conversation started with me asking you: are you aware of how unfairly I've been treated here?

Me LECOURS:

She already answered these questions, My Lord.

Mr. FABRIKANT:

This question I didn't ask yet.

Q. That was the beginning of our conversation.

THE COURT:

You're asking a question ...

Me LECOURS:

Mr. Fabrikant testifies.

THE COURT:

Yes, you ... you have to see whether she agrees with you or not.

Mr. FABRIKANT:

Q. Yes, that's what ...

A. I don't recall.

Q. You don't recall it. Okay. Now, do you remember then, after that, I said that, since I'm a good teacher and a good researcher, everything is being done to ruin my reputation by presenting me a violent person.

A. I don't recall.

Q. You don't recall or I didn't say it?

A. I don't recall.

Q. Okay. So, I might have said it.

A. I don't know. I don't remember it.

Q. Well, that's at least nice. Alright. And, after that, I asked you: have you heard any rumors which are being spread about me, that I might be violent, that I might go and shoot everybody, that I threatened this and this, and this person. And I mentioned to you not only ...

THE COURT:

Well, listen, are you putting a question or are you making a statement? But you can't make statements.

Mr. FABRIKANT:

Well, I ... I'm just trying to refresh her memory, because she

...

THE COURT:

Well, don't refresh her memory by making statements, put it in the form of a question.

Mr. FABRIKANT:

Alright.

Me LECOURS:

My Lord, you allowed questions on security guards.

Mr. FABRIKANT:

It is ...

Me LECOURS:

What is this ...

Mr. FABRIKANT:

... because that's the whole conversation of it. Because you cannot take ...

Me LECOURS:

She testified on the conversation.

THE COURT:

I allowed questions on the ... on the statement, and therefore on the meeting, go ahead.

Mr. FABRIKANT:

Yes.

Me LECOURS:

Well, it was not that clear.

Mr. FABRIKANT:

Q. And after that, maybe that question sounds not that out of place, because when you just put it that I seated down ask you: do you know ...

THE COURT:

No, look, you're arguing with the witness.

Mr. FABRIKANT:

Alright, alright ...

THE COURT:

Now, would you put a question.

Mr. FABRIKANT:

Yes ...

THE COURT:

I mean, if you're not gonna put a question, sit down.

Mr. FABRIKANT:

Alright, alright, I will be putting question. I will be putting question.

THE COURT:

Good, put them.

Mr. FABRIKANT:

Q. And after that, I asked you: do you realize how unfair it is to put a body guard and not tell everyone that it is against me and this ruins my reputation.

A. I don't recall. I've already answered (inaudible).

Q. You don't recall. But I might have said it.

A. I don't recall.

Q. Now, if I didn't say it, then if I did not express to you my reprehension and ... which word to use, English is not my language ...

Me LECOURS:

This looks like a hypothetical question, My Lord.

Mr. FABRIKANT:

It is not hypothetical.

THE COURT:

He's starting over.

Mr. FABRIKANT:

Q. Now, I'm going to your conclusion here: yes, he did it when he got suspicious that there was a body guard in front of Swamy's office. If I didn't tell you that body guards is viewed by me

as a way to ruin my reputation, would you have any other reason than that to make that statement at the end?

A. Can you say that again, please.

Q. I can say it again, definitely. At the end, you made your guess, there was a question here: to your knowledge, did doctor Fabrikant come to the office two (2) or three (3) times, consecutively, before that day? Answer: yes, he did it when he got suspicious that there was a guard in front of dean Swamy's office.

Me LECOURS:

Could you finish it, please?

Mr. FABRIKANT:

Q. Yes. That is after he asked me if I knew if he's going to shoot everybody, yes. Exactly. So, that was your conclusion which you made due to our conversation, then. Correct?

A. Well, I said that because you had asked me if I knew about the security guard.

Q. Anyway. That conclusion was made as a result of our conversation, correct?

A. I'm sorry ...

Q. And I thank you that you asked me to read it till the end, because it's even more obvious now.

Me LECOURS:

You're welcome.

Mr. FABRIKANT:

Yes.

Q. Here you say: he did it when he got suspicious that there was a guard in front of dean Swamy's office, that is after he asked if I knew he was going to shoot everybody. So, the guess which you made here is linked to our conversation which we had in my office, correct?

A. That's correct.

Q. Now, if the conversation was limited only to two (2) phrases which you mentioned here, that: did you hear that I was going to shoot everybody's head off, and do you know about security guard. That would not or would it allow you to make a conclusion from just those two (2) phrases, that when I come to the office, it is because I'm upset there might be security guard there?

A. Is it a question?

Q. Yes.

A. From what I put in the statement from what I remember, and those are the only two (2) questions that I remember.

Q. Well, why are you having such a selective memory?

THE COURT:

Now, you're arguing with the witness. She's told you, that's what she remembers and there we are.

Mr. FABRIKANT:

Yes, okay.

THE COURT:

Go on.

Mr. FABRIKANT:

Anyway, the jury will decide what is more logical in term of conversation, whether it was just those two (2) phrases or ...

THE COURT:

The jury is not going to be deciding what is logical from a question you put, when the witness says no to it.

Mr. FABRIKANT:

Well, witness ...

THE COURT:

That'll depend, the jury will listen to all of the evidence

and will weigh the evidence at the end. That's what the jury will do.

Mr. FABRIKANT:

Well, sure. She just doesn't remember, you see what ...

THE COURT:

Have you any other questions or are we ...

Mr. FABRIKANT:

Yes.

Q. Okay. So, you don't remember that I said that spreading those rumors and putting body guards, and announcing everyone that body guard is against me, ruins my reputation. You don't remember that?

A. I don't remember that. That's correct.

Q. Yes. Now, and after that you claim that I asked you if you know ... if you know about security guard.

Me LECOURS:

That's about ten (10) times, My Lord.

Mr. FABRIKANT:

Q. And, your answer was, no. So, effectively you knew about security guard, but you answered to me, no. Why didn't you tell the truth?

A. Like I said before, the way I understood your question was, if you had asked me if I knew why the security guard was there, that's how I understood.

THE COURT:

Okay. So, we'll stop at this point, until two thirty (14:30).

SUSPENSION

REPRISE

Mr. FABRIKANT:

May I continue?

THE COURT:

Certainly.

WITNESS TEZETA TAYE UNDER THE SAME OATH

Mr. FABRIKANT:

Q. Whenever I came to 907, was I ever disruptive, disrespectful

...

Me LECOURS:

Well, My Lord, it has to come from my questions. And I asked only two (2) questions.

THE COURT:

Technically, you're perfectly correct. Objection maintained.

Mr. FABRIKANT:

Q. Would it be correct to assume that your next question and answer would be easier understood, if my version of the conversation were correct and I quote the next one: did you tell someone about that later? Answer: no, I went back to work, it didn't arise any suspicion in my mind.

So, my question is, is it because the conversation was not just those two (2) phrases which you put here, but the way I presented it before the break that it did not create any suspicion in your mind, because it looked like natural conversation rather than something threatful?

A. Well, it did not bother me. That was it.

Q. Well, but would it ... would it be clear ... okay, would it be correct statement that it didn't bother you because conversation was much more than just those two (2) statements?

Me LECOURS:

This is leading, My Lord.

Mr. FABRIKANT:

It is what? It is what?

Me LECOURS:

Leading.

Mr. FABRIKANT:

Of course it is leading, I'm cross-examining.

Me LECOURS:

It's your witness.

Mr. FABRIKANT:

No, I'm cross-examining.

THE COURT:

He had permission ... he had permission to ...

Mr. FABRIKANT:

You forgot.

Me LECOURS:

Not, on this part the ...

THE COURT:

... to put leading questions with regard to the statement and meeting in your office.

Me LECOURS:

At large?

THE COURT:

Not at large, but the meeting up in your office, and that's what the question relates to. There's nothing wrong with the question in that context.

Mr. FABRIKANT:

It's about the meeting, wake up. Sorry, I was sarcastic.

Q. And you forgot the question, hein?

A. No, I didn't.

Q. No, okay, So, could you answer?

A. Well, like I said before, I don't think it was because of the conversation we had, it just didn't bother me.

Q. Alright. I have found one (1) more inconsistency and I would like to bring this to the Court's attention, and I would like to cross-examine on that to. Do you recall earlier this day, I asked you whether you ... first of all, I asked you, how did you know that there was guard? You said that another secretary told you. Then, I asked you, did you inquire why the guard was there? You said, no. Correct?

A. Correct.

Q. Did I ... then I asked you, did you know that the guard was ... or whether you wondered that the guard was against me? And you said, no. You remember that?

A. That's correct.

Q. Okay. Now, would you like to consult your previous statement or I ... I'll just read it to you?

A. You can just read it.

Me LECOURS:

You can have my copy.

Mr. FABRIKANT:

Q. Okay. So, look please at line 22, and the question here says: do you know why there was a security guard? And answer: it was rumor that he, doctor Fabrikant threatened dean Swamy. So, according to this statement you did know why was there a guard.

A. I said before I heard rumors.

Q. No, no, no, I asked you specifically whether you linked those rumors with presence of the guard. And you said, no. In your statement, it is clearly linked.

A. I can (inaudible) I would say it was rumors. I didn't know, but I heard rumors.

Q. No, this is not ...

A. Nobody came to me and told me why the security guard was

there, actually I heard rumors.

Q. That was not my question. My question was whether you linked those rumors with presence of the guard, and you said, no. In your statement, you do link it. So, would you explain this discrepancy?

A. Well, that what's written in the statement, I have nothing more to say.

Q. This is a discrepancy. Is it?

THE COURT:

Well, I'm looking for your question where you asked about the linkage, but I know what the witness said this morning. Did not know why the guards were there, and had heard rumors about threats against Swamy.

Mr. FABRIKANT:

Yes, and I asked ...

THE COURT:

I have nothing ... I could be wrong, but I have nothing about linkage.

Mr. FABRIKANT:

Well, I asked about it, if she linked those. You remember, I even asked if it ... the question was, in your mind did you link those two (2).

Q. Anyway, do you remember that I asked you and the way you answered? Do you remember?

A. I don't know if that's the way you put it, but I remember you asked me a question of that sort.

Q. Yes, and you answered that you did not link it.

A. I said I did not know.

Q. Yes. And, in the statement you do link those two (2). So, can you reconcile?

A. Again, my answer is, I heard rumors. That was it.

Q. This not an answer. Alright. Whose handwriting is on the statement here, is it your handwriting or is it somebody else who has written ...

A. It's not my handwriting.

Q. Sorry?

A. It's not my handwriting.

Q. It's not yours.

A. But I read it, yes, and I agreed to it.

Q. Alright. Could you ... could you explain me why your statement was given in February of ninety-three (93), why not immediately after the event?

A. I was never asked.

Q. Could you give a little bit more details, how ...

A. And I was away in September and October, and I came back early November.

Q. Well, but in August you were there.

A. Yes.

Q. And, you were never asked.

A. No.

Q. If you have such an information, if one trust what you've written here, without any details, it seems to be relevant and important information, why didn't you come up with this information?

A. Well, it didn't bother me until that specific date. It never clicked.

Q. Alright, that's what I'm asking, why didn't you come with your statement in August? Why the statement appeared in February?

A. Because I only thought of it on that particular date.

Q. Okay. But who contacted who?

A. I'm sorry?

Q. Did police asked you or you contacted police? How was that?

A. I didn't contact the police, the police contacted me.

Q. Oh, police contacted you. How did they know that suddenly you remembered something important?

THE COURT:
How would she be able to answer how the police knew anything?

Mr. FABRIKANT:
No, that ...

Q. Did you ... did you inform anyone that now you have something substantial to say, or what?

A. I said it to my colleagues. I'd mentioned it to my colleagues.

Q. Hum, hum. And, and they informed the police?

A. I don't know how, they got around that. I don't know. The police contacted me, that's all I know.

Q. So, this contradiction, you cannot possibly alleviate about the security guard and the reason for being there.

A. I'm sorry.

Q. You cannot explain this contradiction about the security guard and for the reason of security guard being there.

A. No, like I say, I heard the rumors. That's all I can say for that.

Q. Alright, okay. Did you see security guard there in ninety-one (91), November?

THE COURT:
Now, you're away, way, way, way, from the cross-examination.

Mr. FABRIKANT:
No, I'm not away, because now I'm cross-examining on this linkage between ...

THE COURT:
No, you're not. You're still cross-examining or you're cross-examining on the basis of a contradiction in the statement between the testimony, all of which relates to what came out in the cross-examination.

Mr. FABRIKANT:
Yes, that's alright, but now I am talking about another contradiction.

THE COURT:
We're not going back to nineteen ninety-one (1991), it's your witness, we've already been through all of this.

Mr. FABRIKANT:
No, one second. I'm talking now about second (2nd) contradiction, and I'm allowed to cross-examine on this second (2nd) to.

THE COURT:
The second (2nd) contradiction did not grow out of what ... of the cross-examination of the witness.

Mr. FABRIKANT:
The second (2nd) contradiction is basis for a new cross-examination, I'm asking you for permission to cross-examine on second (2nd) contradiction.

THE COURT:
No, you're not going to cross-examine on the second (2nd) contradiction at all.

Mr. FABRIKANT:
Why not?

THE COURT:
Because you're not.

Mr. FABRIKANT:
Well, you don't see contradiction?

THE COURT:

Move on to something else, if (inaudible) relates to what comes out of the cross-examination, that's where you've been so far, that's what you're being limited to.

Mr. FABRIKANT:

Well, first was about ...

THE COURT:

But you're not gonna cross-examine at large on the statement. You were permitted to cross-examine on the statement in so far as the contradiction related to what came out of the witness' testimony, when the Crown prosecutor cross-examined her.

Mr. FABRIKANT:

Well, alright, but ...

THE COURT:

I mean, this has to end somewhere.

Mr. FABRIKANT:

There is one (1) more cross...

THE COURT:

We ... we're wasting our time.

Mr. FABRIKANT:

There is ... it's not a waste, there is one (1) more contradiction which I just noticed, I didn't notice it before ...

THE COURT:

Well, that's very unfortunate if you didn't notice it before.

Mr. FABRIKANT:

Well, this is a fair judge. Alright. So, you don't allow me to ... to ...

THE COURT:

No, I don't allow you to.

Mr. FABRIKANT:

But you have the right to allow, don't you. You just choose not to allow.

THE COURT:

I don't allow you to.

Mr. FABRIKANT:

Yes, well, here we are. We have a best judge.

THE COURT:

Thank you very much, Mrs Taye.

END OF TESTIMONY BY THIS WITNESS.

Mr. FABRIKANT:

I think that we can have, what is it Claude ... Claude Audet ... Audet.

Me BELLEAU:

It's Marie-Claude Audet.

Mr. FABRIKANT:

Hum, hum. From 9-1-1, I think we can make it very quick with her, because either she knows or she doesn't know.

THE COURT:

Assoyez-vous pour l'instant, madame.

L'AN MIL NEUF CENT QUATRE-VINGT-TREIZE (1993)
ce vingt-septième (27e) jour du mois de mai.

A COMPARU:

MARIE-CLAUDE AUDET

n,e le 4 octobre 1993, administrateur/op,rations 9-1-1,

LAQUELLE, ayant ,t, d-ment asserment, sur les Saints
Evangiles, d,pose et dit:

INTERROGEE PAR M. VALERY FABRIKANT

Se d, fendant seul:

Q. We had some problem explaining timing on certain conversations, and second I asked also to bring a tape of all conversations to 9-1-1, their content, is the tape available?

R. Je ne les ai pas avec moi.

- I don't have them with me.

Q. But, were they indicated in the subpoena?

R. Non, il n'y avait rien d'inscrit sur le subpoena.

- No, nothing was indicated on the subpoena.

Q. You need to change friend of Court. Every secretary would do much better job for much less than one sixty dollars (160\$) per hour. How about appointing just a secretary.

THE COURT:

Would you please spare me your sarcasm. If the witness doesn't have the tape, then perhaps we should try to determine what it is you ask for.

Mr. FABRIKANT:

Well, sarcasm is the only thing which left for me, being in jail. Did you notice that?

THE COURT:

No, not at all.

Mr. FABRIKANT:

Not at all.

THE COURT:

Not at all.

Mr. FABRIKANT:

Well, this is my only possession.

THE COURT:

Mr. Belleau, are you able to enlighten me or what?

Me BELLEAU:

Well, I don't think it would be appropriate to discuss private conversations I have with the accused. I could, but

...

THE COURT:

Fine. No, no. In the circumstances you're probably perfectly right.

Mr. FABRIKANT:

This is best way, to hide behind privacy. So, what are we going to do, he will hide behind privacy, he will tell that ... he was here, in his presence, in presence of everybody ...

THE COURT:

We are ...

Mr. FABRIKANT:

... Mr. Major was here ...

THE COURT:

We're wasting time. I don't think you're about to close your defense tomorrow. You can jot down on a piece of paper, precisely what you want madame Audet to bring and if there is some misunderstanding, then the misunderstanding will then be cleared up, and madame Audet can come back with whatever it is you require her to bring. There's no point having a big production over this, this afternoon.

Mr. FABRIKANT:

No, no, and I agree with you this is minor stuff, but this is illustration of just how he works. I have several witnesses which I have no idea what they propose to say, and he can not arrange for me to talk to those witnesses, either.

THE COURT:

I gather you have no further questions to put to madame Audet

this afternoon.

Mr. FABRIKANT:

I do have, I do ... again, if she's the right person to answer those questions.

Q. Would kindly take a look at this ... at this document. And maybe you could explain the time discrepancy as to timing on this document, and timing on transcript of 9-1-1 tape.

R. Un appel reçu le vingt-quatre (24) août quatre-vingt-douze (92) au centre d'urgence 9-1-1 ...

- The incoming call received at centre d'urgence 9-1-1 on August twenty-fourth (24th) ninety-two (92) ...
... a ,t, reçu ... quinze heures quatorze et neuf secondes (15:14:09).

- ... was received at fifteen fourteen and nine seconds (15:14:09).

Q. Fifteen fourteen (15:14), no, it is fifteen twelve (15:12). Is it?

R. Oui, il y a une inscription de quinze heures douze et vingt-cinq (15:12:25), ici, fait ... la main.

- Yes there is an entry here for fifteen twelve and twenty-five seconds (15:12:25), written in hand ... written by hand.

Q. Yes, so this is the real beginning of the conversation. And?

R. C'est-...-dire que l'appel qui est entré, ... la ligne d'urgence 9-1-1 s'inscrit ... ce moment-ci dans notre système d'ordinateur ... quinze heures quatorze et neuf secondes (15:14:09).

- That is the incoming call to 9-1-1, the start of the entry on computer was done as of fifteen fourteen and nine seconds (15:14:09).

Q. Yes, continue. The ... probably my question was not good. I repeat my question. The handwritten notes there, indicate the end of conversation at sixteen hours and eighteen minutes (16:18), while we have transcript of conversation ending at sixteen ten (16:10). The discrepancy of eight (8) minutes ...

R. Je ne peux pas vous dire exactement, je n'ai pas la copie du transcript, je ne peux pas vous dire ... quelle heure cet appel-ci a termin, exactement.

- I cannot tell you exactly what time this call ended at, because I do not have a copy of the transcript.

Q. Well, would you like to see this document. It's appel 2827, does this help?

R. Oui, ça m'aide.

- Yes, it does.

Q. Right.

R. O.K. L'appel est rentré, ... O.K., ce que vous avez ici, c'est l'heure sur le dictaphone 5000.

- Okay. What you have here, is the time on the dictaphone 5000. Et, cette heure-là, correspond ... un système d'enregistrement de bobines magnétiques.

- And that system corresponds to the recording on a master reel. Et, il est possible qu'il y ait une variante entre l'heure du dictaphone et l'heure réelle de l'initiation de l'appel.

- And there could be a discrepancy between the time recorded on the dictaphone and the real time or the real start of the call itself.

L'heure du dictaphone est sensée ou normalement la même que l'heure d'inscription ou d'initiation de l'appel.

- The time on the dictaphone is supposed to be the same as that or somewhat the same as the in... of the time of the incoming call and the start of the call.

Il y a une synchronisation des heures sur les bobines

maîtresses ainsi que sur le système 9-1-1.

- And the times on the master reel and on the 9-1-1 equipment is supposed to be synchronous or is to be synchronous.

Mais il est possible, galemment qu'il y ait une différence dans le ... dans les systèmes d'horloge au niveau des bobines maîtresses.

- But there could be a discrepancy in the clock equipment where the master reel are concerned.

Et l'heure réelle d'initialisation.

- And the real time for the start of the call.

C'est ce qui explique la différence entre le quinze heures douze (15:12) de l'appel 2827 et le quinze heures quatorze (15:14), quinze heures douze vingt-cinq (15:12:25) et quinze heures quatorze neuf (15:14:09).

- That explains the discrepancy between call number 2827, started at fifteen twelve twenty-three (sic) (15:12:23) and the other call at fifteen fourteen nine seconds (15:14:09).

Et dans les faits, l'heure réelle de l'appel, tel qu'enregistré, au 9-1-1 ... quinze heures ...

- And in fact, the real time of the call as recorded by 9-1-1 is ...

... quinze heures quatorze et neuf secondes (15:14:09), tel qu'il apparaît ... la carte d'appel.

- ... is fifteen fourteen and nine seconds (15:14:09) as it appears for the calling card.

L'autre heure est une heure de répression qui généralement est la même, comme je vous disais ...

- And the other time is a tracking time which is the same as I stated earlier ...

... mais il peut y avoir certaines différences de secondes ou d'une (1) minute parfois.

- ... but there could be a discrepancy of seconds, sometimes minutes.

Q. May I respectfully correct you, that what you mention as fifteen twelve (15:12) and fifteen fourteen (15:14) something, one is time one (1) call appeared, at least this is what Mr. Major explained to us. Time of inscription is the time when operator starts punching something on the computer, it has nothing to do with discrepancy in timing. Now, to assume that there is discrepancy in timing of eight (8) minutes somewhere, it is mind boggling(?), there is no way one can accept that kind of explanation. So, I suggest the following, probably you need to think about answer to this question, I don't think we'll get it today and it can wait until tomorrow, the day after tomorrow, whatever is more convenient, since there is no tapes still. So, would it be appropriate if I respectfully ask you to do two (2) things. One (1), to prepare tape of all those calls, the content of the calls, you understand English, don't you?

R. Hum, hum.

Q. Ah okay. So, the content of the calls, which means from the moment: allo, operator ... till the moment hang up. Each of those calls. Plus, to make ... so, this is one (1) thing. Second (2nd) thing, to make a clarification as to why the length of transcription ends at sixteen hours ten minutes (16:10), while here there is indication that conversation ended at sixteen hours and eighteen minutes (16:18). And, in addition to this, I still raise the third (3rd) question, which I do not believe was answered adequately. I tried twice to listen to the tape, which supposedly should be fifty-eight (58) minutes and again, it didn't come to fifty-eight (58)

minutes either. So, those are three (3) questions I would like you to think about, to discuss with your staff and whenever and whatever is more appropriate to come and to answer, tomorrow, the day after tomorrow, I would appreciate it very much.

R. O.K Je voudrais juste m'assurer que ... il veut la ... il veut les bandes sonores complètes de chacun des appels qui ont rentré, au 9-1-1.

- I just want to make sure that he wants integral ... integral conversations of all the calls that came in to 9-1-1 ...

Q. Yes, plus explanation of the time discrepancy, because definitely there is one.

THE COURT:

Merci, madame.

Mr. FABRIKANT:

So, may I have this back, thank you. Thank you for coming.

INTERROGATOIRE SUSPENDU.

Mr. FABRIKANT:

Mr. Bujold.

IN THE YEAR NINETEEN HUNDRED NINETY-THREE (1993)
this twenty-seventh (27th) day in the month of May,

PERSONALLY CAME AND APPEARED:

MICHEL BUJOLD

born on the 10th of May 1962, director/security,

WHO, after being duly sworn, doth, deposes and says as follows:

EXAMINED BY Mr. VALERY FABRIKANT

Representing himself:

Q. I have asked you to bring all the contracts or any other papers ... first of all, all the contracts related to hiring of body guards by Concordia University, have you brought those?

A. Yes, I have, and I was also ... this information was also given to you under the access of information, on August tenth (10th) nineteen ninety-two (1992).

Q. Why I asked you to do it, it is because I believe the information which was given to me was incomplete.

A. I brought the invoices, there was no formal contract, but there were invoices, which ...

Q. Okay. May I take a look if it confirms with what I have in my possession.

THE COURT:

Show the invoices to Mr. Fabrikant.

Mr. FABRIKANT:

Q. Do you have continuation of those notes?

A. No, I'm sorry, I do not. I'm sorry, that wasn't from the invoices, they must have come attached with it by mistake.

Q. You see, it's always useful to fish.

THE COURT:

Sometimes so it seems, hein.

Mr. FABRIKANT:

Q. But I cannot understand, a person is accused four (4) first (1st) degree murders, and what is wrong to allow this person to have access to information which might exonerate him, or at least make his charge less. Isn't it what justice is all

about.

THE COURT:

Listen, look ... look, look, never mind the speech, if you find you haven't got everything ...

Mr. FABRIKANT:

Of course I haven't got everything.

THE COURT:

As far as these invoices are concerned, that's all we're talking about.

Mr. FABRIKANT:

Well, invoices, yes. But there is very interesting piece of information on which I would like to examine the witness.

THE COURT:

Mr. Belleau, there's some sheets coming back.

Mr. FABRIKANT:

Thank you. And I would like maybe witness go back to his office and find all what he really has, because the information is extremely interesting. Extremely interesting.

THE COURT:

I have no idea what the information is. I mean, the suspense is ...

Mr. FABRIKANT:

Well, let me read it to you then.

Me LECOURS:

May I see it, first?

Mr. FABRIKANT:

Well, cannot I just read it ...

THE COURT:

Yes, you can ... you can read it, go ahead.

Mr. FABRIKANT:

I can read it.

Me LECOURS:

I don't know, I might object, you know.

Mr. FABRIKANT:

I will read it to you.

THE COURT:

Take ... go on, take a look at it.

Me LECOURS:

Well ...

THE COURT:

I mean, listen, the witness says first of all that things were sent to him under the access to information Act, now he says no, they weren't sent, I mean, damn it all, it's one thing or another.

Me LECOURS:

Can I see it, what's the problem?

THE COURT:

Would you pass that over, please. I get sick and tired of this checking around that goes on over documents.

Mr. FABRIKANT:

Well, I can give you a good recipe how to get rid of it, just ...

THE COURT:

I'm ... I've no doubt you can.

Mr. FABRIKANT:

Oh yes, let us just start demanding the documents, you will see, such a terrifying (inaudible) that you could never imagine.

THE COURT:

Now, this is a document I gather, you didn't get, is that right?

Mr. FABRIKANT:

Of course not. And, I believe there is at least that many documents in their office, have I had a lawyer, a good lawyer ...

THE COURT:

Listen, let's not go through that, that not my fault.

Mr. FABRIKANT:

He would got a warrant, went to their office, arrested their documents and sift it through and found such ...

THE COURT:

Would you just address yourself to that document now.

Mr. FABRIKANT:

Yes.

Q. Now, suspect, so in ... it looks like in nineteen ninety-one (1991) I was already suspect, was I? You treated me like a criminal before any crime was committed. Is that correct?

A. That's a term that we use when we open a case file, if we have a special coverage to ... to put into place.

Q. I understand, but do you realize that you treated me like criminal before any crime.

A. No, Sir, we did not.

Q. You did not. Do you realize that if a person is treated like a criminal, he might become one? And you agree with that.

THE COURT:

The question calls for the witness to speculate. Now, he's not here to speculate, if you have questions to put to him on facts, put them.

Mr. FABRIKANT:

Yes. Alright.

Q. Would it be appropriate for you, since there is definitely many documents that are missing, that you ... we interrupt this interrogation and you go back to your office and do a good search, and to find really all what is there, could you?

A. I brought the documents that I had in my file, Your Honor.

THE COURT:

Q. You have your complete file there.

A. Yes, Sir.

Q. And that is what was required on the subpoena, is that right?

A. The subpoena specified the invoices for additional guard coverage.

Q. Please show me the subpoena. Contracts and bills relating to body guards engaged by Concordia through private companies since nineteen eighty-eight (1988). And that is what you have in your file.

A. Yes, Sir.

Q. Okay.

Mr. FABRIKANT:

Well, it's not okay. Just look at this page and you will see that it is just first (1st) page of something very, very long. Would you like to take a look?

THE COURT:

It may well be, but what I'm dealing with is what you required by way of your subpoena. I can't explain to you how this piece of paper found its way in there, and there's no point asking me to. Perhaps the witness can, I don't know. But, since you detached that piece of paper from ... from a file, you have every right to ask him questions about it, yes.

Mr. FABRIKANT:

Well, but this is clearly incomplete. It is just first (1st) page of something.

THE COURT:

Well, then show the piece of paper to the witness and start at the beginning and ask him what it is, ask him if he knows what it is. Ask him if he knows who prepared it, ask him if he knows what it forms part of. But that certainly ... that piece of paper certainly isn't what you ask for by way of subpoena, so that came into your hand, however that came into your hand.

THE COURT:

Your wrong. It is not what Mr. Belleau asked, I asked for every piece of document related to me. Including the (inaudible) of course.

THE COURT:

Whatever is on the subpoena is what's on the subpoena. Now, you can ...

Mr. FABRIKANT:

Well, I ask you once again to ...

THE COURT:

</pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">

... you can tell me an...

Mr. FABRIKANT:

... to change friend of Court.

THE COURT:

I'm not about to.

Mr. FABRIKANT:

You're not about to.

THE COURT:

No, I'm not about to.

Mr. FABRIKANT:

You still don't see that he doesn't do his job.

THE COURT:

Now, would you put the questions you want to put to this witness, in relation to that handwritten piece of paper that apparently came out of the file.

Mr. FABRIKANT:

Yes, alright.

Q. Could you tell me who initiated hiring of body guards in ninety-one (91)?

A. I was instructed by my supervisor at the time, doctor Catherine Mackenzie, to put surveillance ... body guard isn't an appropriate term, surveillance on room 907 and Concave building, to reassure the occupants of the office areas, as to doctor Fabrikant's dealing with these individuals on a one to one basis.

Q. Okay. How did she explained this to you, what was the need for that?

A. She explained that there were some concerns, that grievances have been filed against the University and there were some individuals in the offices that had some concerns in term of security, and she asked us to put some additional security on them.

Q. Grievances was filed in November, that's what she told you?

A. I believe so.

Q. Well, do you have anything in writing from her?

A. No, I don't.

Q. Well, I believe you have some documents there, may I take a look at them? I believe since they are there, they're related to me, may I take cognizance, please. Could you just hand me

...

THE COURT:

Q. Just a second. Would you look through your file and see whether or not you have instructions from doctor Mackenzie?

Mr. FABRIKANT:

Why don't you allow me to look into the file.

THE COURT:

Just a moment, you're not going through the file for the moment. Let's see if the witness answers your question.

Mr. FABRIKANT:

Are you scared that I will nail Concordia?

THE COURT:

If I was afraid you would nail Concordia, Mr. Fabrikant, I wouldn't be here.

Mr. FABRIKANT:

You are here because you're afraid, this is the reason why you are here. You wouldn't here, quite opposite. They appointed you to safeguard Concordia.

THE COURT:

Mr. Fabrikant, you are way, way off base.

Mr. FABRIKANT:

Of course I'm way off. Why do you think they choose judge ...

THE COURT:

Look, would you ...

Mr. FABRIKANT:

... whose daughter is a student ...

THE COURT:

... would you put your question ...

Mr. FABRIKANT:

... at Concordia.

THE COURT:

Pardon?

Mr. FABRIKANT:

Why did they choose a judge whose daughter is a student of Concordia ...

THE COURT:

Put ... put your question.

Mr. FABRIKANT:

... (inaudible) have choosen another judge. So, I would like to take a look at the file, what is wrong with that?

THE COURT:

For the minute we're dealing your question of instructions from doctor Mackenzie. The witness has now looked through his file, I don't know whther he's found any.

THE WITNESS:

My Lord, I didn't have any written request from doctor Mackenzie. It was verbal request.

THE COURT:

You did not have any written instructions from doctor Mackenzie.

Mr. FABRIKANT:

Q. Okay. What kind of written documents do you have? Could you take document by document and explain to the jury what you have there?

A. I have a brief, some notes that I ... rough copy that I had sent off to doctor Mackenzie with a summary of the following incidents. The incident where the police were called at the Drummond Science, room 200, during a senate chamber's meeting, and a copy of the police report related to that. A complaint filed on the thirtieth (30th) of October ninety-one (91), for a complaint that someone was observing the personnel committee deliberations in room H-929 of the Hall building. I also have a statement from agent Malenfant, from the contracted security company.

Q. What the statement is about?

A. The statement is about an altercation that he had with you on the nineteenth (19th) of November nineteen ninety-one (1991).

Q. Hum, hum.

A. And I also have my notes related to the incident of August twenty-fourth (24th).

Q. Okay. And, after that, you didn't finish and ...

A. These are reports from August twenty-fourth (24th).

Q. Okay. So, what is wrong if I take a look at all those documents.

A. My Lord, I also have a curriculum vitae from doctor Fabrikant.

THE COURT:

Show doctor the file.

Q. Now, did I understand you to say, that everything that's in that folder was furnished to Mr. Fabrikant under the access to information Act, everything, is that what I understood you to say?

A. We were requested for the invoices and the security reports,
yes. At some point.

Q. That is all that he got.

Mr. FABRIKANT:

No, I got only invoices

THE WITNESS:

I'm not sure.

THE COURT:

Q. You're not sure.

A. I'm not sure. But I remember being requested for security
reports and the invoices.

Mr. FABRIKANT:

Well, none of those has been received, nor this note.

THE COURT:

Are you going to be in a position shortly to carry out your
examination.

Mr. FABRIKANT:

Yes, well, there is a lot of documents here which I never
seen. I just want them to be copied and given to me, and yes,
I think to spare everybody's time, I will start questioning.
In the meantime, I would like to make sure that I will get ...
so, everything except this bills and those reports,
everything else I never seen. Well, this is my letter ...
that's relevant, yes, this ... is it possible to ask someone
to make a copy now. Well, I'm questioning you?

THE COURT:

Well, what are you asking for copies of?

Mr. FABRIKANT:

Okay.

THE COURT:

I mean, you're ... you're not entitled to have copies made of
every document that belongs to the University.

Mr. FABRIKANT:

Well, let me tell you what it is then.

THE COURT:

That's for sure.

Mr. FABRIKANT:

One (1) is assessment of June twelfth (12th) nineteen ninety-
two (1992), Fabrikant security file. I believe it is
relevant. Now, second (2nd) is circumstances of the police
arrest, November first (1st), it's relevant. Third (3rd) is
encounter with Mr. Malenfant, it's relevant. And, the rest is
more than relevant, it's after August twenty-fourth (24th),
it's all what University did or didn't do. It couldn't be
more relevant than that.

THE COURT:

Yes ...

Mr. FABRIKANT:

That's written in here, August twenty-fourth (24th).

THE COURT:

Relevant in what? What is it relevant to? What ... and you
... the witness has come down here with a security file, and
you say: I want a copy of this security file. Now, on what
basis do you want a copy of a security file? You've seen the
file, you're now in position, I would think, to put questions
to the witness.

Mr. FABRIKANT:

Why are you so afraid that I get ...

THE COURT:

I am not afraid of anything.

Mr. FABRIKANT:

Don't raise your voice.

THE COURT:

I'm not afraid of anything, I'm saying ...

Mr. FABRIKANT:

I'm not afraid of ...

THE COURT:

... I'm not going to turn around and order copies of every file that belongs to the University given to you, to add to that collection that you have over there. Now, you hand the file back to the witness and put your questions to the witness. We're not making copies of anything for the minute. If any of this turns out to be relevant and you want it filed, that's something else.

Mr. FABRIKANT:

Then let me read it first. Let us make an adjournment, let me read it first.

THE COURT:

Then if you need an adjournment in order to read it, we'll adjourn rather than sit here.

Mr. FABRIKANT:

Alright.

THE COURT:

So, we'll adjourn for fifteen (15) minutes. Well, I'm told that the accused has been furnished with documents, I expect to be able to rely on that.

SUSPENSION

REPRISE

THE WITNESS MICHEL BUJOLD UNDER THE SAME OATH

THE COURT:

Wait for the question.

Mr. FABRIKANT:

Well, it was good that I looked at it, because I need copy on the ... very small number ...

THE COURT:

Never mind the speech. Just put the questions.

Mr. FABRIKANT:

Well, in the meantime maybe someone could make a copy.

THE COURT:

No, I'm not making you a copy of the file, would you please put the questions you have to put.

Mr. FABRIKANT:

But if I need some ...

THE COURT:

It's not my function to make you a copy of the file. Now, put your questions or sit down. One or the other.

Mr. FABRIKANT:

Well, if you are not in a good mood ...

THE COURT:

It's not a question of a good mood, would you kindly put your questions or sit down. It's that simple.

Mr. FABRIKANT:

I will put my questions.

THE COURT:

Good. Put your questions.

Mr. FABRIKANT:

But you ... but you are releasing your mood at the wrong address.

THE COURT:

Listen, I am not going to order you a copy of that file made, or any other file made. You have sent your subpoena, you have

received the documents, there you are. Now, put your questions.

Mr. FABRIKANT:

Before you did that, what ... what happened today, why today is different? Before you did make a copy ...

THE COURT:

I am not gonna discourse with you, have you any ... if you've questions to put, put them.

Mr. FABRIKANT:

Yes, yes ... okay. Where do we start ... okay, from here.

Q. I refer to this handwritten page, do you recall when was it made, who wrote it, part of what document it is?

A. It was made the first (1st) day that the contracted security company was hired, by my operation officer in my presence.

Q. Who wrote this, whose handwriting is it?

A. Mr. Victor Francesco, the security operation officer.

Q. Mr. Francesco, okay. How does it happen, just doctor Mackenzie called you on the phone and said: hire body guards to guard against Fabrikant, something like that?

A. I believe it was during a regular meeting that we had, it was a face to face meeting, where she requested that we put additional security in the 907 area and in Concave building, to comfort people that might have difficulty dealing on one to one basis with you.

Q. Did she explain to you why now, why there?

A. I don't recall exactly. The 907 area because of, I believe, it was dean Swamy's area. And the Concave building for Mr. Sankor's area, because his staff members in those areas have expressed concern and we put additional security.

Q. Staff area has expressed concern? That's what she said?

A. I don't recall the wexact words, but that was my understanding.

Q. Well, what, I appeared there, I misbehaved there, what exactly happened? Did she go in any details? Why in that area? What did I do in that area?

A. Specifically, that additional security was required to make the people in the area feel more comfortable about working with ...

Q. You're not answering my question. Did you ask her what exactly I did in this area, that people got concerned?

A. The additional security wasn't specifically for you, but for the people in the area, to make them feel more comfortable in the event that there was disruption, possibly related to your discussion with the dean or other faculty members.

Q. Well, I'm not saying it was for me, I would rather say it was against me, right? The security was against me.

A. I would not say that, My Lord.

Q. Alright. Anyway, the security was directed at me, that would be correct statement?

A. No. I'd say the security was directed to the staff members in the area.

Q. Well, to protect them from who?

A. As I explained, to make them feel more comfortable on dealing on one to one basis with you.

Q. So, to protect them from me. Why are you eluding questions? Security was requested to safeguard people against me, correct?

A. Not specifically, no.

Q. Well, witness is eluding question. You see that or you don't, Mr. Martin?

THE COURT:

The witness is in one ... on one hand relates it to you, and on the other hand says not specifically you. The answer doesn't concord. I agree with you.

Mr. FABRIKANT:

So, maybe for a change declare him adverse.

THE COURT:

Yes. I'm prepared to declare the witness adverse.

Mr. FABRIKANT:

Aren't we moving in the right direction, maybe at the end we'll have a fair trial, who knows.

THE COURT:

Never mind the editorial.

Mr. FABRIKANT:

Sorry.

THE COURT:

You have your ... you have what you're looking for.

Mr. FABRIKANT:

Yes, alright.

Q. So, she told you to add security at these two(2) particular places. Now, could you explain me why bill indicates address of Sherbrooke rather than Saint-Jacques?

A. Because we use this civic address for Concordia University and as you know, the civic address for the downtown campus is 1455 de Maisonneuve, and for the Loyola campus is 7141 Sherbrooke street west.

Q. Okay. So, effectively 7141 means it is Concave research center.

A. Loyola campus, specifically Concave research center.

Q. Concave research center. So, you didn't bother to ask or even not explained any specific event which led to hiring of additional security. Okay ...

A. I'd have to verify my notes.

Q. Yes. I ... I think I mix two (2) questions in one (1).

First, were you informed of any specific events which required additional security?

A. I believe it was due to grievances that had been filed.

Q. This what doctor Mackenzie told you or asked her, how was it?

A. I believe it was doctor Mackenzie telling me, that there were certain grievances that had been placed

Q. So, grievances of University against me or me against University, what grievances?

A. I do not recall exactly.

Q. Did you know by that time that I was arrested by police?

A. If I was informed?

Q. Yes. Did you ... you did.

A. Yes.

Q. It was of course not related to that incident, was it?

A. Which incident, Sir?

Q. Hiring of body guards, was it anyway related to arrest ... my arrest by police?

A. I don't recall if your arrest from the police occurred before the additional security was placed or after.

Q. Anyway, in your mind, it was unrelated.

A. I don't recall.

Q. Do you know what was the date that you met doctor Mackenzie?

A. No, Sir.

Q. Okay. How long after you met her, did you hire body guards? How much time did pass?

A. Approximately two (2) or three (3) days.

Q. Two (2), three (3) days. Well, if you start counting, then this is exactly from the day of arrest. Is it?

A. I don't have my notes, Sir, I can't tell you exactly.

Q. But, it was not mentioned during conversation between you and doctor Mackenzie, the arrest was not mentioned?

A. Not on that occasion, I don't believe so.

Q. Okay. Was it any mention made that department personnel committee is willing to terminate my contract, was this ever mentioned to you?

A. I do not believe so.

Q. So, the only thing which was mentioned to you is that, Fabrikant filed grievances against University, right?

A. Yes. Or the other way around, or the University filed grievances against doctor Fabrikant. I don't ...

Q. Well ...

A. ... I don't recall.

Q. ... this is important difference, isn't it? So, who against who was that? Could you recall that small detail?

A. I believe it's doctor Fabrikant had filed complaints against the University.

Q. Okay. So, if someone files complaints against University, you hire body guards against him?

A. Not necessarily.

Q. Isn't it nice ... nice practice, is it? But ...

THE COURT:
Eliciting the witness' comment on the practice won't advance us at all.

Mr. FABRIKANT:
Alright.

THE COURT:
You're supposed to be eliciting facts.

Mr. FABRIKANT:
Yes, alright.

Q. How often in your practice was it that if someone complains against University, you hire body guard against him?

A. Usually, special security coverage is ... is placed for ... depending on the reason what for ... in situation of disruptive behaviour or possibly problematic situations, security officers are usually placed.

Q. But in this case, were you informed of any disruptive behaviour on my part, were you?

A. Well, the two (2) reports that we had received from the senate chambers, incident on the departmental committee, personnel committee, were the two (2) complaints officially filed with security.

Q. But you just now mentioned that those two (2) were not mentioned by Mackenzie, just ... just a minute ago you said, that those two (2) events were not mentioned by Mackenzie.

A. That were not mentioned in that specific meeting with doctor Mackenzie, yet I was aware of them, because I screen the security reports.

Q. I understand that, but the reason which was given to you was not those two (2) incidents, but rather me filing complaints against the University, this is how it was explained to you, right?

A. That's my recollection, yes.

Q. You didn't find such ... such an explanation strange?

THE COURT:
Whether he found it strange or not, isn't the question. He said to you, that's the explanation I believe he was given to.

Mr. FABRIKANT:
Alright.

Q. And then, then you did what? You contacted the ... certain

agencies?

A. Then we ... we, meaning myself and Mr. Francesco, determined that we were not unable to provide the extra security coverage with our own staff, at the time. Then we contacted the Canadian Security Agency to supply us with two (2) agents, for this special coverage.

Q. Well, two (2) special agents were body guards, rather than regular security agents, correct?

A. That's ... that's a term that they use, the Canadian Security Agency uses, for their investigation side of their firm.

Q. Well, they have regular security guards to. That's what we were informed here just recently.

A. Yes.

Q. So, that was the category of body guards. It was not regular security guards, correct?

A. We were not hiring regular security guards, we were asking for security officers with investigation experience.

Q. Well, it is ... why are you avoiding calling it body guards, this is what is on your invoice, correct? So, let's call a spade a spade, you hired body guards, correct?

A. I assume so, yes.

Q. Okay. Now, what were their instructions?

A. They were instructed to deal with the immediate members, in an attempt to make people feel more comfortable, and were explained that they should in no way intervene unless it was absolutely necessary with ... and by this, I mean by a physical confrontation or verbal argument, which was beyond, I guess, the regular realm of a conversation.

Q. I'm sorry, I didn't ... you explained to the security guards or you said that the security guards were supposed to explain to the people protected, that they shouldn't fear and so on and so forth.

A. We explained to the security guards, the purpose or the mandate of why we were hiring them.

Q. Okay. So, please say it again, because it was not clear to me.

A. We explained to them that the purpose that they were being hired, was to recomfort the people in the areas that they were gonna be placed. And, we ... we didn't foresee any intervention at all, but if there was realm of intervention, would be if there was a physical assault or an argument which was more heated than a regular conversation or a regular argument.

Q. Then they will have to intervene.

A. They were asked to intervene.

Q. Okay. Were they armed?

A. No, they weren't.

Q. Okay. Did they inform the people protected who they are and what they are there for?

A. They ... we, when we placed them there initially, myself and Mr. Francesco, introduced to a couple of members of the faculty that these people would be, for example, at the Concave building, that the person would be at the front door.

Q. Okay. And, who ... who was explained the function of that person at the front door? Did you tell every member of Concave that, here's the guard, don't worry, you are protected

...
A. I don't recall exactly, but I believe it was the receptionist that was informed.

Q. Okay. So, you ... you informed the receptionist?

A. I believe so, yes.

Q. Okay. You informed the receptionist that there is a security guard, so she could feel herself comfortable.

A. Yes.

Q. Did she ask why there was a security guard, did she tell you that she was uncomfortable before that? Okay. Let me put it different question. Did this receptionist tell you that before security guard, she felt herself uncomfortable?

A. I don't recall personal conversation with the receptionist in that much detail.

Q. Did she ask you why there is a need for security guard?

A. Did she ask me?

Q. Yes.

A. I don't recall.

Q. Did you explain to her that the security guard is to protect them from Fabrikant?

A. No, we did not make such a statement.

Q. How then did you explain it to them, there was never a security guard there, all of a sudden, there is one, how did you explain it to them?

A. I don't recall who, but I know there were some people that had concerns about their personal security in that building, and when placed the security guard, it was done in a manner ... just one (1) or two (2) people were informed.

Q. Okay. Let me ... let me refresh your memory, then. Here, it states black on white, who was informed. (inaudible) Bujold ... what is it ... depar... (?) one (1) agent to Concave and introduced same to doctor S. Sankor.

A. That's possible.

Q. But you don't remember that it was S. Sankor.

A. If I recall, possibly that I had introduced him to the receptionist and it's possible that doctor Sankor was present.

Q. But did you introduce to receptionist or it was S. Sankor who was scared? Who was eally scared there? The receptionist?

A. I believe the receptionist had some fear, yes.

Q. Now, who told you that receptionist had some fears? Was it Sankor, was it Mackenzie?

A. I don't recall exactly who, it's possible that it's doctor Mackenzie.

Q. So, Mackenzie told you that receptionist at Concave center, where I have not been in years, expressed fear of me. That was your recollection?

A. It was specific reference to you, but just in general safety.

Q. Oh, oh, we are back again. So, security guard was not to protect against me, it was just general protection. Is this what you're employing now?

A. It was to comfort ... comfort the people, make them more comfortable in their environment where they work.

Q. Well, do you know that at least one (1) witness testified that she felt scared when the security guard was there.

THE COURT:
No, no, no ... no, never mind what one (1) witness testified.

Mr. FABRIKANT:
Alright.

THE COURT:
Put your question to this witness.

Mr. FABRIKANT:
Okay. I'll put it differently.

Q. Could you ever imagine that a person might felt quite oppositely threatened when security guard was there, than otherwise.

A. I'm sorry, could you repeat?

- Q. Yes, it's complicated. Do you know that a person felt threatened because security guard is there, rather than when security guard is not there. Do you need explanation why?
- A. No. I assume that having an extra security person, people would feel more comfortable, entering their work environment.
- Q. But you cannot imagine that people quite oppositely, when there was no security that everything is safe.

THE COURT:

He's not here to imagine and he's not here to speculate.

Mr. FABRIKANT:

Right. Still ...

THE COURT:

No still. He's not here to imagine and he's not here to speculate.

Mr. FABRIKANT:

- Q. Well, what made you sure that presence of security guard makes people more comfortable, rather than less comfortable? This is a good question, isn't it.

THE COURT:

It's a question that leads nowhere. Who cares? Quite frankly. Who cares? He did what he was told to do, he was asked to provide extra security and that's what he did.

Mr. FABRIKANT:

Well, you don't care, I care, because they did it to damage my reputation. This is why I care.

THE COURT:

It's no point asking him. If he knows why they did it, then fine. If he doesn't know why they did it ... but he hasn't said he was privy to doctor Mackenzie's decision. He simply executed doctor Mackenzie's decision, what do you want from him?

Mr. FABRIKANT:

I ... I want to know from him ... I want to explain to the jury how University administra... let me finish ...

THE COURT:

You explaining to the jury, is one thing, asking him questions and having him answer them is another. But you're not gonna put your explanation to the jury through his mouth, because it doesn't work that way.

Mr. FABRIKANT:

Well, I'm doing what I can. If I'm doing something wrong, you stop me.

THE COURT:

I've told you, you are. I've stopped you.

Mr. FABRIKANT:

Alright.

- Q. So, you introduced one (1) security guard at 907 and you presented him to who, in 907?
- A. Mr. Francesco made the introduction in 907, and I believe he introduced this security officer to dean Swamy.
- Q. Was the people there explained why security guard is there?
- A. I have no knowledge of that.
- Q. Okay. I suppose I have to ask Mr. Francesco about it. Would it be possible to have from you the continuation of this particular document, because ...
- A. That is the complete document.
- Q. Well, this is definitely not a complete document.

THE COURT:

Listen, don't argue with the witness. You've got the piece of paper, the witness says that is the complete document, that's the witness' answer.

Mr. FABRIKANT:

Well, alright.

THE COURT:

We won't advance any further by you saying, no it's not. We get in the two (2) little boys into the looking glass, no it's not, yes it is. The witness says, no it's not. That's your answer.

Mr. FABRIKANT:

Q. Okay. Then explain to me why it ends at November seventh (7th)?

A. That document was prepared in the first few days that the extra security coverage was placed. That document was prepared by Mr. Francesco, and he ... I believe, stopped writing down his notes when we started receiving the invoices from the Canadian Security company.

Q. Well, did he receive invoice on November seventh (7th)?

A. I can't recall, I don't know.

Q. Okay. Let us get to invoices and see when they were received. If you say that he stopped when he received the invoice, here's the date, November twenty-sixth (26th), so this document should be continued until November twenty-sixth (26th).

THE COURT:

Show the document to the witness and let him look at them.

THE WITNESS:

My Lord, I can't explain why this document ... these notes were terminated on November seventh (7th).

Mr. FABRIKANT:

Q. Well, maybe they were not terminated in the first place. Maybe this is just the first (1st) page of something which continues.

A. To my recollection this is the only page of notes that was taken for the security coverage.

Q. These notes were taken in order to compare them with the bills which you received, correct, so, until you receive bills you are supposed to continue those notes, right?

A. I assume that since the coverage was on a five (5) day basis, that's why this document was ... that he stopped writing notes, because he knew that the coverage was from Monday to Friday, between certain hours.

Q. Well, still, you need to continue, don't you? Until you receive the bills, maybe someday there was no coverage.

THE COURT:

You're questioning the witness on a document that he didn't prepare ...

Mr. FABRIKANT:

Alright.

THE COURT:

What's the point?

Mr. FABRIKANT:

Alright, good.

Q. Now, this is ... what exactly those security guards were instructed to do when they saw me?

A. They were just briefed on a very surface level, that you possibly might come to the building and you were to allowed access because you were faculty member and that you should not be treated differently than another faculty member.

Q. Okay. Was my photo shown to those agents?

A. No, I did not have a photograph.

Q. So, how would they know that it was me then?

A. Through a physical description, I gather.

- Q. I (inaudible) you can physically describe someone to somebody else, so that he can recognize this someone among at least thousand (1000) other people?
- A. That's my only explanation, because I do not recall having any photograph of you to show them, anything about you specifically that they were instructed for the security of the area in general.
- Q. How would they on earth guard anyone, if they didn't know how I look.
- A. The ... the people that we had contacted or introduced the agents to in the department, that introduction was made to facilitate any type of intervention which might be necessary.
- Q. You're not answering my question. How would they guard against me if they don't know how I look?
- A. Possibly these people that we introduced them to, if they had concerns specifically about you, would point you out to the guard.
- Q. Ah okay. So, who was supposed to point me out to the guard then, and maybe it will be too late when they point out? Could that be?
- A. I'm assuming that the two (2) people that we introduced the security officers to, would be the people that would communicate that information to them.
- Q. Okay. So, it was supposed to Swamy and Sankor who were supposed to show to the guards how I looked, right?
- A. That's possible.
- Q. Okay. Now ... but your guard was not supposed to follow me where ever I go, correct?
- A. The guard was stationed in the area, in the faculty offices and he was instructed that you were allowed in, that he should not intervene with that.
- Q. Well then, how do you explain that Mr. Malenfant, when I entered 907, followed me where ever I went like my tail, why did he do that?
- A. I cannot explain the action of this gentleman, My Lord.
- Q. Okay. What you are saying is that he was not following the instructions ot quite opposite, he was following the instructions exactly, what did he do?
- A. Possibly he was following instructions that I had given him, but it's possible that your behaviour on that day was suspicious, and he wanted to remain close to you to see what your business was in 907.
- Q. Okay. Could you please read his report, if there's anything here saying that I behave suspiciously.

THE COURT:

Listen, there is no point asking the witness beyond the question you've put to him, as to the instructions he gave to Malenfant, why Malenfant did anything. The witness as far as I know, wasn't there when Malenfant did what he did, you'll have to put that question to Malenfant.

Mr. FABRIKANT:

Well, we cannot find Malenfant.

THE COURT:

Well, that's too bad. If you cannot find Malenfant, then you're not gonna have this witness speculate upon why Malenfant scratched his head at three forty-two (3:42) or followed you at three forty-five (3:45). There's no point.

Mr. FABRIKANT:

Well, there is one way, it's to change the friend of Court, and he will find Malenfant.

THE COURT:

I ignore that particular ...

Mr. FABRIKANT:

Of course you ignore that, you prefer ...

THE COURT:

So, your last ... your last question bearing ... your last question bearing on that, on Malenfant's actions is pointless.

Mr. FABRIKANT:

Alright, I will change it.

Q. Would you kindly read to the Court the document that is in front of you?

THE COURT:

The witness is not the author of the document, and the witness is not going to read into the Court record Malenfant's notes.

Mr. FABRIKANT:

Well (inaudible) ...

THE COURT:

Well, nothing. He's not gonna do it.

Mr. FABRIKANT:

Okay. Let me put it differently then.

Q. Are you aware of the incident describe in this document?

A. Yes, I was.

Q. Okay. Who informed you about it?

A. Mr. Victor Francesco.

Q. Okay. Did he investigate the incident in anyway?

A. I believe he spoke to agent Malenfant.

Q. And, was I behaving suspiciously that day as far as your recollection goes?

A. I do not recall.

Q. Alright. Now, I refer to your note of June twelfth (12th), addressed to doctor Mackenzie, and I would like you to inform the Court as to what doctor Mackenzie asked you to do, when and why?

A. You're referring to which document, a note?

Q. Yes.

A. I believe that was ...

THE COURT:

Q. Do you wish to ... do you need to see that piece of paper?

A. I'd like ...

Q. Fine. Take cognizance of it and then you may answer the question.

A. Doctor Mackenzie had requested security reports on doctor Fabrikant. The first (1st) line reads, as requested, and then a brief summary of the ... four (4) incidents, and I assume the reports were attached to this document.

Mr. FABRIKANT:

Q. Okay. Where is the request, I do not see the request?

A. It was a verbal request.

Q. Yes. She doesn't seem to write to you at all, does she? Does she ever writes to you?

A. She is my direct supervisor, and we have weekly meetings and requests, it's frequent that requests such as this or others are in verbal contacts.

Q. How did she explained to you that she needed security reports on me?

A. I believe that this was ... I related it to the complaints that you had filed against the University, for your arrest on November first (1st), through the code of conduct of the University.

Q. So, I file complaint, she asks you to get security report, when one files a complaint, he's a suspect, is it?

A. She ... I'm sorry?

Q. Well, you write here me as suspect, so, and you explain it because I filed a complaint, so whoever files a complaint is automatically suspect, in your ...

A. No, as I explained earlier, we use the term suspect for any case that we currently working on or that security coverage is being requested for, it's a terminology we use when we file documents (inaudible).

Q. Well, if one ... you explain, if one files a complaint, why ... this means that security coverage is required. Let us shoot all complainants, why do you need to cover security. Put them against the wall and shoot them.

THE COURT:
Mr. Fabrikant.

Mr. FABRIKANT:
Nobody would complain.

THE COURT:
Mr. Fabrikant, it's a ridiculous question, you know ...

Mr. FABRIKANT:
It's not ridiculous, this is what there doing. Don't you hear his explanation, I filed a complaint, so they call me suspect.

THE WITNESS:
May I clarify, My Lord?

THE COURT:
Certainly.

Q. This document was prepared because doctor Mackenzie was going to represent the security department at the hearing of the code administrator, I believe a few weeks after this.

Mr. FABRIKANT:
A few weeks after that. What if I tell you that the hearing was June first (1st), and your memo is dated June twelfth (12th). Then, how does your explanation fits?

A. I don't recall the exact ... the exact details of that hearing, because in my notes I notice that it has been postponed on several occasions.

Q. Well ...

A. Doctor Mackenzie's motive was probably as I stated, to use this for the code of conduct complaint.

Q. This is the ... would you like to take cognizance of this document?

A. Yes, please.

Q. What is the date of the hearing?

A. June second (2nd).

Q. June second (2nd). What is the date of your memo?

A. June twelfth (12th).

Q. June twelfth (12th). So, it couldn't be possibly for the hearing, could it?

A. Unless this hearing was postponed another time.

Q. It was not. So ...

A. Therefore my interpretation may be incorrect.

Q. So, why then she asked you for security reports?

A. I cannot speculate on why she needed this ... this copy of the security report. It might have been for another purpose which I'm not aware of.

Q. Probably it was for another purpose. Now, in what cases are you ... what is the general case when you as director security are required to provide security report for a certain suspect?

A. We ... we often provide copies of security reports to my supervising unit, vice-rector services, upon request, for a variety of needs, not necessarily for specific individuals but for incidents.

Q. So, mainly it is when someone files a complaint, right?

A. No.

Q. No.

A. It could be anything from copies for bomb threats, it could be anything for copies for an arrest that was made or theft which occurred, it varies depending on ... on what is required, what is asked of us.

Q. Okay. And, in this particular case there is no way you can pin point the reason for that?

A. Well, as I said, I assumed that it would had something to do with the code of conduct complaint.

Q. It doesn't look like it.

A. But, I'm not sure at this point, since you produced this document.

Q. Right. Suppose it was for the hearing of my complaint, why on earth do you need a security report if I am complaining against somebody, not somebody complaining on me. I understand when someone complaining on me, you might need the security report. I'm complaining on somebody else.

THE COURT:
Look, you're asking the witness to speculate on doctor Mackenzie's motives ...

Mr. FABRIKANT:
No, it's not motives, I'm trying to elicit from him response, I think that he knows the answer but just is not giving it. How about that? He damn well knows the answer. He's just not responding. And you know the answer. He's just not responding. He's not telling the truth. And this is paranoia(?) part of me.

THE COURT:
That's your interpretation.

Mr. FABRIKANT:
Oh, yes.

Q. So, would like to tell the Court the truth, the real reason for this request?

A. My interpretation is what I just stated, that I believed that this was gonna be used by doctor Mackenzie to represent the security department in the code of conduct hearing.

Q. Okay. Just give then the Court an idea of this security ... how this security report could help to represent? How on earth could it be?

A. If she had to explain any actions of the security officers under my supervision, she needed to have documentation or information related to the incident, to adequately represent the security department.

Q. Are you aware that she was representing herself there, because she was the one who did the whole thing. Are you aware of that? She was the one who caused me have arrested.

THE COURT:
Listen, there's no point you stating a fact to the witness, if you want to ask the witness ...

Mr. FABRIKANT:
I'm asking if he aware of that.

A. I'm aware that she had made the official complaint to security on the day ... November first (1st) nineteen ninety-one (1991).

Q. So, effectively she had to represent herself and justify herself, not the action of security officers, right?

A. Possibly, my interpretation was that it was to explain the actions of the security department.

Q. Alright.

A. On my understanding of that fact.

Q. Okay. I may take a look once again at this document, because there is something else there, which I like to ask you ... may I have it, please?

A. Which one, Sir?

Q. The last one which I gave you, not the hearing but ... yes, this, security report. Well, you write here, in the security report, that Mr. Yael(?) responded with police assistance, and searched for concealed weapon in doctor Fabrikant's bag. Was it Mr. Yael(?) who searched my bag?

A. No, it was a police officer.

Q. But what you've written doesn't sound like this.

A. Well, Mr. ...

Q. It sounds like Mr. Yael(?) responded with police assistance, and searched ... it means that Mr. Yael(?) searched.

A. Mr. Yael(?) doesn't have the authority to search.

Q. That's what I'm saying. So, your description doesn't seem to be very truthful of what happened there, right?

A. But, you have to understand that the security report of Mr. Yael(?) was attached to that document, also for clarification.

Q. Well, still it is ...

A. It is incorrect.

Q. It is incorrect. Now, what you write here, again, I quote: on November fifth (5th) nineteen ninety-one (1991), it was decided that special security coverage would commence for room 907 and Concave building, the two (2) special agents were briefed on the current situation and instructed on how to intervene if necessity would arise. So, in this report you state it quite clearly that those agents were hired against me, first. Second, you clearly link hiring security agents to having arrested by police, correct. So, to add insult to injury, you first arrest someone, then you put security agents against him.

A. The document you have in your possession was requested afterward as a summary to incidents related to ...

Q. I understand this is summary, but isn't it summary of bro...(?) behaviour?

A. What do you define as bro...(?) behaviour?

THE COURT:
You're not here to argue with him.

THE WITNESS:
No, I'm just clarifying, because I don't know the definition.

Mr. FABRIKANT:
Well, maybe he would answer, that would be nice. Well, a person is falsely arrested by police, which is greatest insult ...

THE COURT:
Look, you asking him to characterize ...

Mr. FABRIKANT:
... then (inaudible) ...

THE COURT:
... you're asking him to characterize a method of conduct, he's not here to do that. He's here to tell you what happened, okay. He's not here to put his particular spin on any series of events or facts, that's what you're asking him to do.

Mr. FABRIKANT:
Alright. Can I ask him ...

THE COURT:
You can ask him.

Mr. FABRIKANT:
... as a human being, how he felt ...

THE COURT:

No, you can't ask him as a human being how he felt.

Mr. FABRIKANT:

He's not a human being.

THE COURT:

He's a human being, but his personal opinion ...

Mr. FABRIKANT:

So, why he cannot be asked that?

THE COURT:

His personal opinion counts for nothing in this.

Mr. FABRIKANT:

Well, it does count I think ...

THE COURT:

No, it doesn't.

Mr. FABRIKANT:

It doesn't.

THE COURT:

He's not here to put his personal interpretation on the facts.

Mr. FABRIKANT:

Hum, hum. Alright.

Q. Now, what is general attitude of your department, when someone is arrested with no reasons whatsoever, are you supposed to apologize or you are supposed to do something opposite? What is the policy of your department? Is this a good question or what?

THE COURT:

What are you ... what is the question? If he makes a mistake ...

Mr. FABRIKANT:

Q. I'm asking for the policy of his department, this time. So, this question will fly.

THE COURT:

Q. You understand the question?

A. Yes, Sir. The policy of our department when a mistake is made, would be to apologize. In this case, a mistake was made but we still performed our duties in responding to a complaint and following up that complaint.

Mr. FABRIKANT:

Q. So, why didn't you apologize if you admit that it was a mistake?

A. Because we were following up a complaint.

Q. Complaint was unfounded, what was the reason for complaint?

A. The complaint was because you were in possession of an artis(?) attach, case ...

Q. Ah yes ...

A. ... which looked suspicious and the complaint was that there was possibly concealed weapon in that briefcase.

Q. So, who carries a big briefcase should be arrested and searched. Is that your position or is it when Fabrikant carries it?

A. No, in general if somebody is suspected of carrying a firearm, or illegal material, they'll be asked to open their bags or show that there no firearms.

Q. Well, why ... why wasn't I just asked to show, why was the need to call the police?

A. It was my understanding that you were asked to show the content your attach, case, and when you refused the were intervening.

Q. Okay. Show me, this is the report, show me where it is written that I was asked and refused. This is the report of your agent, isn't it?

A. Can I have the other copy with the agent's report attached in the back. The identical copy of this document.

Q. Yes, yes ... well, I don't think it makes any difference, is that it ...

A. No, he did not ask you to open your briefcase, because you were exiting the senate chambers, the police arrived.

Q. Okay. So, does this mean that the purpose of the whole thing was, not really to verify whether I carry a bag, the purpose was to make the most possible disgrace for me in front of the whole community, to have me arrested. Would that be correct presumption?

A. No.

Q. No.

A. The correct answer would be, because a complaint was received that the officer had as his duty to respond to the complaint.

Q. So, why didn't he just ask me to show what I have, rather than calling police and having me publicly arrested?

THE COURT:
How can ... expect the witness to comment on the officer's decision.

Mr. FABRIKANT:
Very simple, because I'm asking about policy of his department.

THE COURT:
Well, then ask him about the policy of his department in such a case.

Mr. FABRIKANT:
This is my question.

THE COURT:
That's not what your question was. Your question was why did the agent do this or that. That's got nothing to do with the policy of the department.

Mr. FABRIKANT:
Well ...

THE COURT:
As such.

Mr. FABRIKANT:
It is the same thing.

THE COURT:
It's not the same thing.

Mr. FABRIKANT:
Alright. I will rephrase the question.

Q. Did the officer act according to the policies of your department or he abused the policies of your department?

A. He was acting according the policies of the department until the police arrive and intervene. Because he had called the police officers to the Loyola campus and they arrived he had inform him ... he informed the police officers of why he had requested their presence. and they intervened.

Q. Why didn't he ... I'm repeating once again, why didn't he ... is it the policy of your department where ever someone is with a big bag to call the police, rather than just simply ask the person to show what's in the bag, if you have any suspicion of that?

A. No, but the complaint had specified, when she called security, that she wanted security officers and the police be called.

Q. Ah alright. So, let us identify who the complainant was.

A. Doctor Catherine Mackenzie.

Q. Okay. And he's not just an ordinary complainant, let us make the jury know who she is, effectively. She is not an ordinary complainant, he is a person ... what, what's her position?

A. At the time she was the associate vice-rector services.
Q. In charge of?
A. Security and other departments of the University.
Q. So, effectively she was your boss, right?
A. That's right.
Q. So, she was the one who was supposed to follow the right procedure. Correct? She was the one who was supposed to follow the right procedure.
A. I don't if she had any knowledge of the procedure, she had some concerns, a specific concern, and called security and requested that the police be called. I can't speculate, if she ... you know ...
Q. Okay.
A. ... knew procedure or knew what the appropriate procedure was or how we would respond.
Q. Alright. Is it possible that the document be filed or at least read to the jury, because it's important what they did to me there. I want it to be filed.
THE COURT:
Q. The document is written by whom?
A. The document, this document is written by the security officer and retyped, because of the messy handwriting, by the departmental secretary.
Q. The security officer is whom?
A. Mr. John Yael(?).
Q. And he's the author of the document.
A. Yes, Sir.
Q. Then, the only person who can testify to that is Mr. Yael(?).
Mr. FABRIKANT:
So, we have to call him. If I want to deposit this document, I have to call him, correct?
THE COURT:
It's not a question of depositing the document. It's a question of having him relate what transpired.
Mr. FABRIKANT:
Can we just read the document?
THE COURT:
I don't know whether the Crown consents to the document ...
Me LECOURS:
No, My Lord.
THE COURT:
Crown does not consent. Then there you are, there's your answer.
Mr. FABRIKANT:
Then after that Crown will complain that I'm multiplying witnesses. It does not leave me the choice, now I have to call Yael(?).
THE COURT:
Then, if you have to call Yael(?), if you feel that that helps you, then you call Yael(?).
Mr. FABRIKANT:
Well, and after that he will complain that I am calling to many witnesses.
THE COURT:
I have no idea.
Mr. FABRIKANT:
Alright.
THE COURT:
Have you any further questions to this witness?
Mr. FABRIKANT:
I would like to file this document, because this here we have

the author of the document. And, I think it also interesting document. Would you please tell the jury what this ...

THE COURT:

Pass the document ... who is the author of that document? The witness.

Mr. FABRIKANT:

Mr. Bujold.

THE COURT:

Pass the document to the Crown prosecutor first of all.

Mr. FABRIKANT:

And of course, monsieur Lecours objects, no?

Me LECOURS:

Why?

Mr. FABRIKANT:

Well, just for the purpose of objecting.

Me LECOURS:

No, My Lord.

THE COURT:

Are you producing this document, where are at D ...

CLERK OF THE COURT:

Four (4).

THE COURT:

... four (4).

PIECE D-4: Lettre dat,e 12 juin 1992.

Mr. FABRIKANT:

Well, can it be read to the jury.

THE COURT:

The document is there. The jury will be able to read it when they examine the exhibits at the end of the trial.

Mr. FABRIKANT:

Well, I think it would be ... can I later comment when I will

...

THE COURT:

Absolutely.

Mr. FABRIKANT:

Okay. And, I would like also to file this document to. Mr. Bujold is also the author of this document.

THE WITNESS:

This was an (inaudible).

THE COURT:

Just a second. D-4, madame Desrosiers is what date?

Me LECOURS:

June twelfth (12th) nineteen ninety-two (1992).

Mr. FABRIKANT:

I think this document goes with the map, yes. I'm sorry, it goes with the map.

THE COURT:

And D-5 is ... you're producing that as D-5?

Mr. FABRIKANT:

Yes.

THE COURT:

Together with ... it's report together with a map. Is that right? Four (4) pages. The date is ... I don't need to see it ...

PIECE D-5: Lettre dat,e 27 ao-t 1992 et croquis, en liasse.

Mr. FABRIKANT:

August twenty-seventh (27th). There is one part in this document which I would like to ask the witness a question.

Me LECOURS:

I will just make a point, My Lord. This is all hearsay. I don't see the purpose why it should be ...

THE COURT:

Well, I didn't hear any objection when he proposed to file the document. And I would think ...

Me LECOURS:

Well, I have nothing against it. It's a confession, it's incriminating for him.

THE COURT:

Well, he's ... he's the author of the decision to produce it.

Me LECOURS:

I know, but I'm just warning, that most of the documents proposed to be filed are hearsay. So, I would expect that in your charge to ...

Mr. FABRIKANT:

How on earth ...

Me LECOURS:

... excuse me, in your charge to the jury, you will expect what is hearsay and which weight should be given to hearsay.

Mr. FABRIKANT:

Well, how on earth it is incriminating?

THE COURT:

Don't ... let's not discuss that for the minute.

Mr. FABRIKANT:

Okay. May I have it for a second, I want to ask ... concerning this document, thank you.

Q. Could you tell to the jury about September twenty-second (22nd) nineteen ninety-two (1992), what happened on that day?

A. I would have to refer to my notes.

Q. Okay. Take a look.

A. On September twenty-second (22nd), sergeant d,etective H,bert was granted access to doctor Fabrikant's office, to search for additional information related to the case.

Q. And, did he find anything additional?

A. Removed from the office, there were some case related documentation as well as Fabrikant's briefcase containing three (3) boxes of ammuniton.

THE COURT:

Q. September, what date ?

A. Twenty-second (22nd).

Q. September twenty-second (22nd).

Mr. FABRIKANT:

You remember Mr. H,bert testify that he did it on August twenty-fourth (24th). So, it happened on September twenty-second (22nd).

Q. And what exactly, except the briefcase, was taken? Do you know what Mr. H,bert took, except the briefcase? You mention some documents.

A. Some case related documentation, but I don't recall what they were.

Q. Were you present at the time, when those documents were removed?

A. Only part of the time.

Q. You were not shown what documents were removed?

A. I don't ... I don't think so, I don't recall.

Q. Who and when noticed that there is a briefcase and there is ammuniton in the briefcase?

A. I believe Mr. H,bert when he searched the premises.

Q. No, Mr. H,bert, if he knew it he would have taken August twenty-fourth (24th), he wouldn't wait until September twenty-second (22nd), would it? He testified here that he took it on ... whole night, he was counting them. And it looks like he did (inaudible).

THE COURT:

Please, don't bother relating what he testified. Ask the questions you have to ask to the witness.

Mr. FABRIKANT:

I understand why you don't allow me to look into the documents.

THE COURT:

I'm not preventing you to look into anything. I'm simply saying that you are not going to go through every single file that is in Concordia University.

Mr. FABRIKANT:

I'm not going every single, I just look into and I choose in those which were relevant and important. Now, is it relevant or it isn't, when we see ...

THE COURT:

As the ...

Mr. FABRIKANT:

... that Mr. H,bert under oath testified ...

THE COURT:

Listen, would you stop arguing the case at this point. That's not what we're here for.

Mr. FABRIKANT:

I'm not arguing. I'm disgusted.

THE COURT:

Fine. You're supposed to be putting questions.

Are you finished putting questions?

Me LECOURS:

It's almost five o'clock (5:00), My Lord.

THE COURT:

Yes, I know.

Mr. FABRIKANT:

So, by the way ...

THE COURT:

Are you finished with questions or have you more.

Mr. FABRIKANT:

No.

THE COURT:

Fine.

Mr. FABRIKANT:

You want to adjourn?

THE COURT:

I want to know whether we're finished with this witness or whether he has to come back tomorrow, first of all.

Mr. FABRIKANT:

We haven't.

THE COURT:

Pardon?

Mr. FABRIKANT:

No, we haven't yet.

THE COURT:

Alright. You haven't finished.

Mr. FABRIKANT:

Q. Okay. Could you describe when and who has found ammunition?
Who and when has found ammunition?

A. I allowed Mr. H,bert into your office and no one else was present, so I assume he found the ammunition.

Q. Not on September twenty-second (22nd). I believe he was invited there, because somebody found ammunition, would that be correct assumption?

A. No, that's incorrect because I had your ...

Q. No.

A. ... office door put off system, and nobody had access to that, except upon request from police officers. And, Mr. H, bert was in charge of the investigation, so nobody else would have been in.

Q. So, Mr. H, bert felt in his sixth (6th) feeling that there is ammunition there, and he came on September twenty-second (22nd).

A. I cannot answer for Mr. H, bert.

Q. Okay. Then, I will ask something else then. You said nobody had access, right

A. That's my recollection.

Q. This is your recollection. I've seen something here. My recollection is that even in the middle of September, someone informed me that there is no problem with my office there, that they're looking through my files to have them released. Okay. So, how did it happen according to you?

A. How did what happen according to me?

Q. The office was closed, all of a sudden September twenty-second (22nd), Mr. H, bert came to you and said: I want to get into Fabrikant's office. That's how it happened?

A. On several ... there were other occasions where the office was opened for Mr. H, bert, I believe.

Q. Okay. Do you have any record of how many times the office was opened, and who did it and what has been done there? Because there is a lot of documents I still haven't received, maybe this is the clue where they are. You see how useful it is. And I still have not received the report of Chaccouri, maybe you'll ask police to find the report of Chaccouri, because he yesterday testified ...

THE COURT:

Listen, would you stop discoursing with me on things other than the questions you're putting to ...

Mr. FABRIKANT:

Because I know when everything will finish, you will run away and you will refuse to discuss it with me. It's not the first (1st) time you're doing this.

THE COURT:

I'm not going to discuss anything with you tonight, I'll tell you right now.

Mr. FABRIKANT:

So, this is why I'm discussing it now, because ...

THE COURT:

Please don't.

Mr. FABRIKANT:

You avoid doing your job for that.

Q. So, how many times and who was allowed access to my office and for what purposes?

A. It's not on this report, I'd have to verify on the duty officer's log sheets for it, between August twenty-fourth (24th) ...

Q. Okay. So, maybe we adjourn here and ask him to come tomorrow with all this information, if possible. If possible again, I don't know those documents which I filed, I would like to have a copy of those. What ... am I entitled to ...

THE COURT:

Yes, the documents you filed you're entitled to get a copy of.

Me LECOURS:

I would like as well, My Lord.

Mr. FABRIKANT:

Allright. And, I would like the Crown to produce the report of Chaccouri, still.

Me LECOURS:

I don't have it, I said it.

THE COURT:

Now, we're going to discuss that at this point, okay.

Now, Mr. Belleau would return to Mr. Bujold his file.

Mr. FABRIKANT:

Check if everything is there, that I didn't take anything.

Me BELLEAU:

Before we leave, My Lord, I will have a request to make to the Court.

THE COURT:

Okay.

Mr. FABRIKANT:

I hope it is request for resignation.

Me BELLEAU:

I'm afraid I'll have to disappoint you.

Mr. FABRIKANT:

I know, you are paid too well to resigne.

THE COURT:

Would you, Mr. Fabrikant ... would you look at your logs tonight and be in a position to answer the question that was put to you concerning access to Mr. Fabrikant's office.

THE WITNESS:

Yes, My Lord.

Mr. FABRIKANT:

And also take a look whether you have something else, I believe if you take a deep look, you'll have continuation of this document and maybe some other documents to. For example, I have seen you in the senate meeting with body guards. Also ... no, I just ... instruct him what documents I will ...

THE COURT:

Don't ... you know, you sent him a subpoena, he came with the documents plus some others that were not included in your duces tecum, and there were are. Now ...

Mr. FABRIKANT:

Still ...

THE COURT:

... what do you want the witness to do?

Mr. FABRIKANT:

Well, I want witness to start telling the truth. I've seen him in the senate with one (1) person who I know he's body guard. Just today, Tezeta Taye testified that in August there was body guards ...

THE COURT:

Listen I don't need to hear testimony from you about what you saw. You have asked him to go and look for certain records, he said he will go and look for certain records concerning the duty officer's log vis-...-vis access to your office. Now, what else?

Mr. FABRIKANT:

Well, they clearly didn't present all the body guard hiring. Those which I personally know and those that witnesses testify, that there was nineteen ninety (1990) summer body guards, and he didn't present any documentation of that. It's clear that he's ...

THE WITNESS:

I'll verify tonight all my records, My Lord.

THE COURT:

Would you verify all your records, please.

Mr. FABRIKANT:

And senate meetings also, I've seen each senate meeting a body

guard there.

THE WITNESS:

That senate meeting, I was alone, My Lord.

Mr. FABRIKANT:

Well, that fat, fat gentleman, I know him personally, he's a body guard. Gentleman that size at one of the meetings was sitting ...

THE COURT:

Mr. Fabrikant ...

Mr. FABRIKANT:

... with you, I know him personally, he's a body guard. He lived in my house. I know him.

THE COURT:

Would you check your records, Mr. Bujold.

THE WITNESS:

Yes, My Lord.

THE COURT:

When ... what date are you talking about ...

Mr. FABRIKANT:

At least I remember ...

THE COURT:

You know ... except that this isn't a joke, none of this is a joke.

Mr. FABRIKANT:

Well ...

THE COURT:

I don't find it funny at all, frankly.

Mr. FABRIKANT:

It is funny, you're doing it in a lawless manner, when you start respecting the law ...

THE COURT:

Would you kindly be quiet, or you'll be sat down. Would you mark again, Miss ... madame Desrosiers, 1657.

Mr. FABRIKANT:

Yes. I said, it's about time to start doing this in a lawful manner.

THE COURT:

I know what you said.

Mr. FABRIKANT:

Something like that.

THE COURT:

Okay. For a number of reasons, one (1) of them something that's very, very important to one (1) of your number, we will I think not be sitting on Monday. Unless there some change between now and tomorrow night, in which case we won't be sitting tomorrow. But, as I anticipate things, I gather that somebody's wife is expecting, and that this should probably keep him occupied on Monday at least. So, that's the situation as I understand it at the moment. I presume that if there's an update I will be ... I will be informed, but I think you can take it that we will not be sitting on Monday, unless something different occurs tomorrow. I mention that now, because if you have any subpoenas to send for Monday, Mr. Belleau, you might want to take that into account.

Me BELLEAU:

I will.

THE COURT:

Okay. Or any witnesses to inform. So, we resume tomorrow morning at nine thirty (9:30). I'm sorry to have kept you, I hoped to get finish with this witness, because I'm trying to move along as quickly as we possibly can. Okay, thank you

very much. Did you want to raise something, Mr. Belleau?

Me BELLEAU:

(inaudible), My Lord, there are some witnesses that have been waiting all day outside and (inaudible) ...

THE COURT:

I know, I'm aware that there are witnesses that have been waiting all day and ...

Me BELLEAU:

Monsieur Sangolo, monsieur Julien ...

THE COURT:

I'm aware they have better things to do.

Me BELLEAU:

Mr. Haines.

Mr. FABRIKANT:

Well, I'm sorry of the inconvenience.

THE COURT:

Yes, you certainly have, you know, because you've gone on far, far too long and this thing is being dragged along at ... at an inexorably slow pace, and there's no excuse for it.

There's no reason for it.

Mr. FABRIKANT:

What do you mean slow pace, I did not put any repeated questions or something ... irrelevant questions ...

THE COURT:

So what do you ... what are you suggesting I do, that I ...

Me BELLEAU:

I would ask for an order that they come back tomorrow, My Lord.

Me LECOURS:

My Lord, I was told by Mr. Sangolo that he's on vacation next week, it was planned for one (1) year. Could he be the first (1st) witness tomorrow, tomorrow morning or tomorrow afternoon or come back the week after.

THE COURT:

I don't think ...

Mr. FABRIKANT:

Sure, sure, I will try to accomodate him.

THE COURT:

I don't think that's an unreasonable request at all.

Mr. FABRIKANT:

I will surely try to accomodate him tomorrow, yes.

Me LECOURS:

Okay.

THE COURT:

So, you will hear Mr. Sangolo, you'll call Mr. Sangolo as soon as Mr. Bujold is finished.

Mr. FABRIKANT:

Yes.

THE COURT:

Apart from that, there's Mr. Julien who's here.

Me BELLEAU:

Yes.

Me LECOURS:

I understand monsieur Julien could be here a half an hour («hr) notice. So ...

THE COURT:

So why don't you stay in your laboratory Mr. Julien, and do what you have to do.

Mr. FABRIKANT:

Well, we could with him, if you could give me five (5) minutes of talk, maybe his testimony is not needed, like I did with

...

THE COURT:

I gather he doesn't wish to talk to you, and he's not obliged to talk to you.

Mr. FABRIKANT:

Well, that's his choice, but I'm trying to make it as convenient for him ...

THE COURT:

If you ... if you would be available on request, Mr Julien ...

Mr. JULIEN:

I would.

THE COURT:

And I really don't see given the speed we're going at, that there's any reason why the other two (2) witnesses couldn't be put on the same basis, if you're able to tell me ...

CONCORDIA LAWYER(?):

Absolutely.

THE COURT:

You've been monitoring this from the beginning.

CONCORDIA LAWYER(?):

Absolutely. In addition, I understand there are three (3) more witnesses you have subpoenaed for tomorrow, is that correct Mr. Belleau.

Me BELLEAU:

That's right.

THE COURT:

Because this business of having people cooling their heels(?) out there, day and day on end, is ridiculous.

CONCORDIA LAWYER(?):

I can undertake to have any Concordia witness within half an hour («hr) My Lord.

THE COURT:

Fine. And you propose to monitor this yourself, and ...

CONCORDIA LAWYER(?):

Absolutely.

THE COURT:

... and be here. Then I think that that would be a far more sensible basis on which to put it.

Me LECOURS:

We just have to know one (1) or two (2) witnesses in advance and that's it.

THE COURT:

And if ...

Me LECOURS:

If Mr. Fabrikant ...

THE COURT:

... if ... I don't think it's too much to ask that you inform us several witnesses in advance, so that ... so that arrangements can be made.

Me BELLEAU:

There's another point that I'd like to make, My Lord. It's that, I'm willing to take all the abuse that I've been taking for the past three (3) months ...

THE COURT:

Well, you're not alone.

Me BELLEAU:

... of course not, but from now on I will not send any subpoena unless I get a written request from Mr. Fabrikant with the specifics.

THE COURT:

With the specifics on it. Well, that's not unreasonable under

the circumstances.

Mr. FABRIKANT:

Well, then you will have to come and visit me, because you didn't do it, so ...

THE COURT:

So if you wish the subpoena ...

Me BELLEAU:

(inaudible) every day ...

THE COURT:

... so if you wish a subpoena issued, and if you wish a duces tecum drafted ...

Mr. FABRIKANT:

Alright, so Mr. Belleau, I wait you downstairs.

THE COURT:

... you will please put on, in writing what you ... what you require Mr. Belleau to do.

Mr. FABRIKANT:

I would like Mr. Belleau to go downstairs and meet me today.

Me BELLEAU:

Certainly.

Mr. FABRIKANT:

Because, he never did it so far, maybe it's even for the better.

Me BELLEAU:

That was never requested.

THE COURT:

Well, Mr. Belleau, perhaps ... perhaps you would ... perhaps you would meet ...

Mr. FABRIKANT:

It was not requested ... that's nice.

THE COURT:

You seem to be the only one, Mr. Fabrikant, that finds this amusing. And that's ...

Mr. FABRIKANT:

No, jury was laughing to.

THE COURT:

Tomorrow morning, nine thirty (9:30)

END OF THE SESSION.

CAUSE TO BE CONTINUED ON MAY 28TH 1993, 9:30 AM.

Je soussign,e, JOCELYNE DEMONTIGNY, st,nographe officielle, certifie sous mon serment d'office, que les pages qui pr,cšdent sont et contiennent la transcription exacte et fidšle des paroles recueillies au moyen de l'enregistrement m,canique, au meilleur de l'enregistrement, le tout conform,ment ... la loi.

Et j'ai sign,,

JOCELYNE DEMONTIGNY, S.O.

```
</pre></body></html>
```

PROVINCE OF QUEBEC

DISTRICT: MONTREAL CITY: MONTREAL

CASE NO: 500-017372-928

TRIAL

PRESENT: HONOURABLE MR. JUSTICE FRASER MARTIN, J.C.S.
(AND AN ENGLISH JURY)

THE QUEEN

vs

VALERY FABRIKANT

APPEARANCES: Me JEAN LECOIRS
ATTORNEY FOR THE CROWN

THE ACCUSED
REPRESENTING HIMSELF

DATE: May 28th, 1993
(9:43 to 12:06)

GS: 1354 FILE: 2428

I N D E X

	Page
HORS JURY	3

CONTINUATION JUNE 2ND, 1993

(THE JUDGE TAKES THE BENCH)
(THE CROWN, Me BELLEAU AND ACCUSED ARE PRESENT)
OUT OF THE PRESENCE OF THE JURY
BY THE COURT:
I came in without the jury this morning to let you
know... I say this with the deepest regret and sympathy,
that Juror #12's daughter died during the night.
You will recall that yesterday I had said that we
wouldn't sit on Monday because of another anticipated,

this time, arrival in the world. I think the best decision I can make would be to suspend the trial until next Wednesday. I have absolutely no idea of what arrangements have been made. I'm sure nobody knows yet. But I think I would probably be safe in suspending the trial until next Wednesday and any problems we have to address, we'll address next Wednesday from that point of view. I'm sure you all join me in expressing sympathy to her in this trying time.

That leaves us with one or two questions to clear up. Madame Desrosiers, I wonder if you wouldn't be kind enough, please, to extend that ordinance concerning Professor "Antepa", Dr. "Mex", and the other two individuals to cover Monday and Tuesday.

BY THE GREFFIER:

The same hours?

BY THE COURT:

The same hours. The Monday and Tuesday hours would be... yes, the same hours. That's fine.

BY THE ACCUSED:

The same hours means what, from nine (9:00) till?

BY THE GREFFIER:

(Inaudible).

BY THE ACCUSED:

Till eight (8:00). Okay.

BY THE COURT:

Now, you're going to have to make some arrangement with... I gather Mr. Sangollo is leaving on...

BY THE CROWN:

On Monday.

BY THE COURT:

... on Monday. And he will be gone for how long?

BY THE CROWN:

For one week.

BY THE COURT:

For one week. So you're going to have to reschedule Mr. Sangollo because I'm not going to... in view of the situation, I'm obviously not going to require that he remain at our disposition for next Wednesday. So you can have Mr. Sangollo heard when he returns from his trip.

BY THE ACCUSED:

Well, I have no objection one week is...

BY THE COURT:

That's fine.

BY THE ACCUSED:

... is not...

BY THE COURT:

Is there anything else, Mr. Belleau, that you... from an administrative point of view that comes to mind?

BY Me BELLEAU:

Administrative, no.

BY THE COURT:

Mr. Fabrikant?

BY THE ACCUSED:

Well, there are a number of things, if you would like to address them...

BY THE COURT:

Well, I don't want to... I'm looking for the minute, from the point of view if whether there's anything I need to do vis-a-vis this adjournment till next Wednesday. If

you've certain other things you wish to raise, you can raise them shortly.

BY THE ACCUSED:

No, it's not... it is kind of urgent, because I was given...

BY THE COURT:

Well, don't... no. Okay. I'll come back to you.

BY THE ACCUSED:

You don't want to listen.

BY THE COURT:

I'll come back to you with that later.

BY THE ACCUSED:

All right. Why are you shouting?

BY THE COURT:

Don't tempt me this morning.

From an administrative point of view, Mr. Lecours, is there any problem you can see?

BY THE CROWN:

No, My Lord. I totally agree with your decisions.

BY THE COURT:

Okay. Wednesday... you think till Wednesday is realistic in the circumstances?

BY THE CROWN:

It looks like it is.

BY THE COURT:

Okay. I'm not going to bring ten jury members in here to announce this. I'm simply going to send the message to them.

BY THE CROWN:

Sure.

BY THE COURT:

They are all aware of what's happened. And the message I'm going to send to them is that they're free until next Wednesday morning, and we'll see where we stand then. I'll go off the bench to arrange that through one of the guards for a moment, and then I'll be back to deal with whatever problems we have this morning.

(THE JUDGE LEAVES THE BENCH)

(THE JUDGE TAKES THE BENCH)

(THE CROWN AND ACCUSED ARE PRESENT)

BY THE COURT:

Yes.

BY THE ACCUSED:

There are several minor things, but they are important sometimes. This... one of the documents which was deposited yesterday before, it refers to report of Mr. Malenfant, and is attached. So I think since it was attached to this particular document, it should continue to be attached here.

BY THE COURT:

Do I understand the document as filed did not have that report? No, it shouldn't continue to be attached. You can't do indirectly what you...

BY THE ACCUSED:

Well, I... the document in it's entirety contained this statement.

BY THE COURT:

It may have contained...

BY THE ACCUSED:

The fact that it was filed yesterday...

BY THE COURT:

It may have contained...

BY THE ACCUSED:

... without it, it was a mistake.

BY THE COURT:

No, it wasn't a mistake. The document was filed as it was as such, without the attachment, because the attachment comprises Mr. Malenfant's testimony, if you like, and you can't put Mr. Malenfant's testimony in front of the jury that way. So there was no error made.

BY THE ACCUSED:

Well, if something was...

BY THE COURT:

I'm not going to argue with you. I'm finished with that subject. Move on.

BY THE ACCUSED:

Correct. Now, do you think time until Wednesday is enough? Did you discuss it with juror in question?

BY THE COURT:

I certainly didn't discuss anything with the juror in question. I don't speak to the jurors outside this room.

BY THE ACCUSED:

Well, then somebody else might be able to do it and to find out a more appropriate...

BY THE COURT:

I would prefer not to have any coaching from you as to what I should do in these circumstances. Okay?

On Wednesday we will reconvene and we will address the situation, on Wednesday when we reconvene. You worry about Valery Fabrikant's defense. Let me worry about the organization of the trial. That's my job. You have yours, and I have mine. You in your small corner, and I in mine. Okay?

BY THE ACCUSED:

Well, those two are related. You probably didn't notice it, but they are. They're related those two things.

BY THE COURT:

Don't worry about Wednesday morning. We will see what happens on Wednesday morning.

BY THE ACCUSED:

Okay. Now this heap of documents which Mr. Belleau has provided for me. The way it has been provided is totally unusable from just an inter-practical point of view. Each document... I hate to think that Mr. Belleau did it intentionally. But whether it was or wasn't, this heap of documents is unusable. It is separate transcripts.

BY THE ACCUSED:

I haven't the foggiest idea of what you're talking about.

BY THE ACCUSED:

Well, this is transcript... no, this... I thought it was Mr. Belleau who provide this... no, that is... that's not that. Anyway, I don't know who, but all things keeping this together...

BY THE COURT:

Well, somebody gave them to you. I don't know where you got them from. But I presume they didn't arrive as manna from heaven, did they?

BY THE ACCUSED:

Yes, but still, all this stuff has been detached. There is nothing to keep this document...

BY THE COURT:

Oh, dear, that's...

BY THE ACCUSED:

Well, that's minor thing. But I need to use it. I need to be able to use it to turn pages.

BY THE COURT:

Do you really? Well, you sort that out.

BY THE ACCUSED:

Well, you sort it out. As you might notice, in jail it is not that simple. There was here something keeping it together. It is removed for security reason. Now, would you be kind enough to order that it be restored, that I could use it. It's not too much to ask.

BY THE COURT:

The pages are there. You can turn the pages. I am not ordering that you receive a paper clip, or whatever, whatever else was retaining that, which was removed for security purposes. Have you anything more serious to bring up this morning?

BY THE ACCUSED:

It is serious. You just don't treat it seriously. But it is serious. Why cannot you...

BY THE COURT:

I treat it...

BY THE ACCUSED:

... display...

BY THE ACCUSED:

I treat it, and I have treated it with the importance that it merits. Next problem.

BY THE ACCUSED:

The next problem is I'm not getting legal assistance from Mr. Belleau, because his attitude is when I ask him question, he dumps on my table that book and tells me: "Read it". That's absurd. I do not have time for that. If I were allowed during those six months before trial to be able to go somewhere and to make some reading, that might be appropriate. Right now it is physically impossible. I need someone who can help me in such a way that if I have question of law, he can point out appropriate text and appropriate place...

BY THE COURT:

I understand that that's precisely what he did the other day.

BY THE ACCUSED:

No.

BY THE COURT:

You asked the question, and he advised me that he pointed to you the appropriate chapter.

BY THE ACCUSED:

It is not...

BY THE COURT:

Am I correct or...

BY Me BELLEAU:

No, no, I didn't do that. Professor Fabrikant asked me my advice on a certain question...

BY THE COURT:

Without telling me what...

BY Me BELLEAU:

...I gave it to him. He disagrees with the rule of law. I provided him with the law books. I'm not going to discuss with him and enter into a seminar on the

justification of the rule of law every time a legal issue arises. I'll give him what my view of the state of the law is. If he disagrees it's up to him to find whatever...

BY THE COURT:

I see. So this was a two-tiered thing. You were asked a question. You answered the question. And...

BY Me BELLEAU:

Then I have to justify my answer.

BY THE COURT:

... his not being satisfied with the answer, you said, well, all right. There's the book. That's perfectly satisfactory to me.

BY THE ACCUSED:

So he is not supposed to show me where in the book the whole thing is. I asked him, and the question was not trivial. Let me tell you what the question was.

BY THE COURT:

I don't need to know what the question was.

BY THE ACCUSED:

No, you do need to know. You just want to avoid the problem. You want to pretend that he is doing his job. Now, let me tell you what the problem was. I asked him what is the reason how to justify that you admitted 9-1-1 tape, where all the people there, they're alive and could testify to what they said, and I personally agreed also to confirm whatever was on that tape. Now, he said it is because accused's confession was on the tape and therefore it was admissible. I repeat it once again, accused agreed to repeat it. So what was the need then? Accused does not deny, accused accepted, accused admitted. I didn't get an answer. He just told me: "You don't trust me to that, that's the law".

After that I asked him, in my case when I want to present tape the same logic should be applied, because here we have admission of somebody else who exploited me, one thing. And second thing, what is most important, is the atmosphere, the tone, the whole conversation, the character of people involved which I wanted the jury to hear. And I asked him why shouldn't the same standard be applied there, either to invite the other person to admit, or if he doesn't, then to play the tape to the jury. And again, the answer was: "It might be perfectly logic, professor, but this is the law". Am I right quoting you, Mr. Belleau?

BY Me BELLEAU:

Some parts are missing, but...

BY THE ACCUSED:

Okay. Okay. Fill up...

BY Me BELLEAU:

But what you've just said is correct.

BY THE ACCUSED:

Okay. So fill up the part which is missing, and we'll have the whole picture.

BY Me BELLEAU:

Well, the part that is missing... if you want to undergo this kind of discussion...

BY THE COURT:

Well, I don't really wish to undergo this kind of a discussion, quite frankly.

BY THE ACCUSED:

Well, fill in... fill in the part which is missing.

BY Me BELLEAU:

Well, the part that's missing is the whole question of what this recording is, and how it should be treated as a previous verbal statement in the application of Section 9(1) and (2), and 10 and 11, for that matter, if you want to understand 9(1) and 9(2). And he's been provided with the case of "Casibo", like I expressed to the Court the other day. I've searched through the case law. I haven't spent five hours on it, but at least one, and I found nothing that would satisfy his request.

BY THE ACCUSED:

Well, this is different story.

BY THE COURT:

Well, I think... yes. Casibo, which isn't the most recent thing in the world, is certainly regarded as the state of the law at the moment and...

BY Me BELLEAU:

Well, that's how I feel about it.

BY THE ACCUSED:

Don't you realize that he's mixing up two questions.

BY THE COURT:

Not at all. Not at all.

BY THE ACCUSED:

Okay. Let me explain it then...

BY THE COURT:

Not at all.

BY THE ACCUSED:

... what he is mixing up.

BY THE COURT:

Listen what you propose to do, or what you tried to do, quite apart...

BY THE ACCUSED:

Let me finish first the difference...

BY THE COURT:

... quite apart...

BY THE ACCUSED:

Let me finish first the difference of those two questions, those two separate questions. The question which I raised right now is admissibility of my tape. What he raises is if I question a witness, whether this tape could be used as previous written, or oral statement. Those are two separate questions. They have nothing to do with one another. So let us finish with one. Admissibility of tape, I didn't get anything from him.

BY Me BELLEAU:

Oh, yes. Okay. I'm sorry. The answer to that was that it was hearsay if it concerns the other party, and self-serving evidence if it concerns the Fabrikant statement. So that settles the point.

BY THE ACCUSED:

Well...

BY Me BELLEAU:

And you don't need to quote chapter and verse for...

BY THE COURT:

No. No, you don't.

BY THE ACCUSED:

Why is it hearsay if it is my conversation, or somebody else.

BY THE COURT:

Look, look, I'm not going to explain all this to you.

BY THE ACCUSED:

Okay. Then I asked him to show it to me in the book. Is it too much to ask for? That's all.

BY THE COURT:

There's a chapter in the book that discusses hearsay evidence.

BY THE ACCUSED:

That's not the whole chapter I needed. I just...

BY THE COURT:

I think you would have to go through the chapter in order to find it.

BY THE ACCUSED:

I asked him specific question.

BY THE COURT:

But listen, you know...

BY THE ACCUSED:

A specific question should be given a specific answer.

BY THE COURT:

You know, you continue to demonstrate to me... you continue to demonstrate to me how this whole thing is a gigantic... you know, is a gigantic waste of time in many ways. You complain on one hand that you haven't been able to get the cooperation of a lawyer. For heaven's sake, having observed you and the way you behave with lawyers and everybody else, I don't find it surprising that no self-respecting lawyer would accept a mandate from you, because you're not capable of taking from them any advice at all.

I did the next best thing... you don't have the power to fire Mr. Belleau. Mr. Belleau has been at your disposal to look up questions of law. He hasn't been at your disposal to question witnesses. No. He hasn't been at your disposal to make arguments on your behalf. But he has been at your disposal to provide you with what you might need with regard to a number of the questions of law that arise in this case, and they haven't been the most complicated on the face of the earth.

And you never, you know, you find every reason, particularly when the jury is present, particularly when the jury is present, to complain about that. You know, watching you, Mr. Fabrikant, it makes me sometimes very, very annoyed because the system we have here simply takes a tremendous assault when it's required to deal with somebody like you.

BY THE ACCUSED:

Well, you didn't answer. You engaged in a long general tirade without addressing real question I asked.

BY THE COURT:

That is not a tirade.

BY THE ACCUSED:

I want him to show me particular place in the book. Is it too much to ask for? That's it. As far as the jury goes...

BY THE COURT:

If he...

BY THE ACCUSED:

... the jury should know what kind of monkey trial we're having here. There is nothing wrong with that.

BY THE COURT:

You are not having a monkey trial at all, and I take exception to that.

BY THE ACCUSED:

Well, this is my opinion. I'm sorry.

BY THE COURT:

Well, you are entitled to your opinion, and I'm not surprised at your opinion. But I don't propose to be judged by your opinion.

BY THE ACCUSED:

Well, I'm just expressing my opinion. Period. And I'm explaining to you why I am pointing this out to the jury that we are having a monkey trial.

BY THE COURT:

I don't need to know what advice you received. I said to Mr. Belleau in the very beginning, and he's been scrupulous about it, certain things I can't know.

BY THE ACCUSED:

Okay. Let us...

BY THE COURT:

And that's why he's here.

BY THE ACCUSED:

Okay. Let us...

BY THE COURT:

Because I can't give you advice, and I don't propose to give you advice.

BY THE ACCUSED:

Okay. Let me remind you some of those transcripts which we had here, you said yourself on numerous occasions that whatever question I have, Mr. Belleau is supposed to answer those questions of law. And if I have some kind of argument, which I believe was not that stupid at all, he has to provide me either with jurisprudence, which proves or disproves what I am saying, or to point it out to me in the book. He doesn't do it. He just demonstrated... dropped this book on my table and said: "Look it there". And I said: "I don't know where to look it".

BY THE COURT:

I've told you...

BY THE ACCUSED:

And it is not my business.

BY THE COURT:

I've told you before, you seem to regard this thing called, in quotation marks, "jurisprudence", as some almighty God that somehow or other decides everything. It doesn't. It decides the particular point that it decides.

BY THE ACCUSED:

Well, any particular point...

BY THE COURT:

Whether it applies to the particular problem that you raise is very, very frequently a nuanced question.

BY THE ACCUSED:

Well...

BY THE COURT:

Now, I realize that you don't see nuances, because you come from the world of computers, and you seem to apply to everything your particular brand of logic, and your particular brand of scientific method that doesn't see these sort of distinctions.

BY THE ACCUSED:

You know why I am laughing?

BY THE COURT:

I don't...

BY THE ACCUSED:

The computer has several thousand nuances. As far as, for example, drawing is concerning, much more than any teacher could ever imagine.

BY THE COURT:

Is that so? In any event...

BY THE ACCUSED:

Your understanding of computer is so primitive.

BY THE COURT:

Oh, I tell you. But in any event, these questions are nuanced. There is not necessarily a paragraph in the book. There is not necessarily a line in a judgment that settles definitively the question that's raised. Mind you,...

BY THE ACCUSED:

Anyway...

BY THE COURT:

... the question that was raised this morning is pretty clear in my mind...

BY THE ACCUSED:

Well, would it be too difficult for him...

BY THE COURT:

... and it seems to me that you received perfectly adequate advice on the subject. You may not be in agreement with that advice. Well, that's unfortunate. But there you are.

BY THE ACCUSED:

Well, I did not receive any advice on that subject. And I would like him to spend some time, to bring the book, sit with me, with me, and show it to me, because I am not a lawyer. When I am reading something, there are some things which I just don't understand what I am reading.

BY THE COURT:

I told you if...

BY THE ACCUSED:

So it is not too much to ask him to sit with me and to discuss what...

BY THE COURT:

I am not going to ask him to sit down and babysit you for the weekend, and go through the book with you. If you have a legal question to put to Mr. Belleau, put your legal questions to Mr. Belleau, and he'll answer them to the best of his ability.

BY THE ACCUSED:

Well, he didn't answer the question. What is the best of ability?

BY THE COURT:

What am I supposed to do? I'm not going to decide... I'm not going to sit here and play Solomon with your complaints about Mr. Belleau. I'm satisfied that Mr. Belleau is doing what he's been asked to do. You had another option.

BY THE ACCUSED:

Well, I just asked a specific question of admissibility of my tape, and I gave my arguments to him.

BY THE COURT:

Well, he told...

BY THE ACCUSED:

And he admitted that they are logical. And he did not present to me anything, either jurisprudence or authority in the book which would say something opposite or, at least, which would give some general direction as to what he is...

BY THE COURT:

Mr. Fabrikant, if you had been listening this morning, it seems to me that the reason he gave you was one very, very good one. I'll add another. I'll add another. The 9-1-1 tape comprised not only a confession, but it also comprised certain words on your part that go to the actus reus, or the act of confinement, it was contemporary with the events. It occurred on August the twenty-fourth (24th), nineteen ninety-two (1992).

If we're talking about tapes of conversations, quite independently of the question of self-serving evidence and hearsay, if we're talking about the question of tapes going back to nineteen eighty-eight (1988), all I can tell you in the context of August the twenty-fourth (24th), nineteen ninety-two (1992) is in the mortal words of T. E. Lawrence, "we're far from Damascus".

BY THE ACCUSED:

Well, then explain to me why 9-1-1 is not hearsay, and my tape is hearsay?

BY THE COURT:

The 9-1-1 tape is a contemporary record of events.

BY THE ACCUSED:

Mine is also a contemporary record of another event, which is part of my defense and extremely important in time...

BY THE COURT:

In time, it is in nineteen eighty-eight (1988).

BY THE ACCUSED:

... for my defense.

BY THE COURT:

Quite apart from the question of whether it's self-serving, it's far too remote.

BY THE ACCUSED:

Well, it's not far too remote. You admitted yourself that events from previous years accumulate...

BY THE COURT:

We are talking about...

BY THE ACCUSED:

... and accumulate.

BY THE COURT:

I know. I know...

BY THE ACCUSED:

And I want to show how they accumulate.

BY THE COURT:

I'm here to deal with one thing, your state of mind in nineteen ninety-two (1992). That appears to be the only issue in this trial.

BY THE ACCUSED:

Well, then...

BY THE COURT:

It appears to be the only issue. Whether it's an issue in this trial is another question. But it appears to be the only issue in this trial.

BY THE ACCUSED:

So was...

BY THE COURT:

This is not a very complicated trial.

BY THE ACCUSED:

Was it influenced by this event which took place in nineteen eighty-eight (1988), and if yes, how? And the best way for the jury to judge, to listen as if they were present during that meeting. This is what was important. So...

BY THE COURT:

I am not going back on my ruling...

BY THE ACCUSED:

I'm not asking you to go back. I am asking either you or Mr. Belleau to explain the legality of these two decisions, because I see no difference. 9-1-1 for the Prosecution was not more important than my tape for my defense. You allowed them to proceed. You didn't allow me to proceed. And I see no grounds. And I ask Mr. Belleau once again to sit with me and to show me that your decision was based on solid legal ground. I have nothing to say... if he shows me anything at all, I will publicly come here and apologize.

BY THE COURT:

You're not required to apologize.

BY THE ACCUSED:

No, no, no, I'm just trying to explain...

BY THE COURT:

You're not even required to agree. But there's the decision.

BY THE ACCUSED:

But this is not the point. I'm trying to explain to you that I'm a perfectly normal logically thinking person. If someone proves to me something, I say yes, you're right. Ask people how I behaved during this shooting experiment. When I saw how randomly those shells were falling, I immediately said: "You're right. There is nothing to discuss here". And that was the end of it. I'm never stubborn when I see the facts are contrary to what I am asserting.

BY THE COURT:

The question is decided.

BY THE ACCUSED:

What decided? Is he going to help me or not? What is decided? I need judicial help. I have now three days...

BY THE COURT:

He has given you his opinion on the subject. Okay?

BY THE ACCUSED:

Well, let me give you example. Mr. Lecours gave his opinion on the subject. You remember how he described provocation? It is either you see your wife in bed with somebody, or somebody is sodomizing your son. It's such an absurd, and I don't think that Mr. Lecours didn't know better than that. But he definitely bended the truth. Now, if one lawyer can bend the truth, and he did, you cannot disagree with that, because I believe that his professional knowledge is much better than what he tried to do here. The same thing is applicable to the so-called friend of Court, because he is friend of Court. And my desire to verify whether the advice he is giving me is right one or wrong one, there is nothing wrong in it. I just want to make sure, yes, I'm getting the right advice. Period. Because my logic in my head tells me

that something here is not very right. Maybe it is. I'm prepared to accept it, but I would like to be given appropriate authority or jurisprudence that I could verify it myself.

BY THE COURT:

Look..

BY THE ACCUSED:

That's not much to ask for.

BY THE COURT:

He has given you his opinion. He's referred you to what he can refer you to.

BY THE ACCUSED:

He didn't. He dumped on me this thick book. That's absurd. I want him to come over to bring this book, to sit with me, to show appropriate place, and if I don't understand something in this appropriate place, to explain it to me.

BY THE COURT:

I'm satisfied that the distinction between the 9-1-1 tape and the nineteen eighty-eight (1988) conversations, five years ago, or four years before the incident, has been properly explained to you.

BY THE ACCUSED:

Well, you didn't explain it here. What is the proper explanation?

BY THE COURT:

You've been given it.

BY THE ACCUSED:

So you refuse even to provide me that little assistance that he sits with me and explains to me.

BY THE COURT:

He's given you... he has given you his opinion on the subject. If you've other questions to put to him, put them to him.

BY THE ACCUSED:

Well, I didn't understand the first what he given to me. Why this is hearsay what is on my tape, and why it is not hearsay on your tape? It's absurd. Hearsay is hearsay, or it is not hearsay.

BY THE COURT:

I'm not disagreeing with what he said to you. I'm adding...

BY THE ACCUSED:

No, no, no, this what he told me...

BY THE COURT:

... that what occurred in nineteen eighty-eight (1988) is very, very far...

BY THE ACCUSED:

Okay. Now, explain to me.

BY THE COURT:

... from the subject matter we're dealing with.

BY THE ACCUSED:

Explain to me, if my tape is hearsay, then why 9-1-1 tape is not hearsay?

BY THE COURT:

I'll only add what I said before. The 9-1-1 tape is a contemporary record that was produced in order to make proof of a confession, in order to make proof of commission of acts which constitute what the Crown has to prove, and was very, very contemporary with the events of

August the twenty-fourth (24th).

Trying to produce an atmosphere with a tape before the jury of a conversation that occurred in nineteen eighty-eight (1988) between you and Sankar is so remote, so remote, as to be of no assistance whatever. Whether that conversation has any bearing in my mind is extremely doubtful to say the least.

My guiding principle in this case has been when in doubt, give you the benefit of it and let you put the evidence in, and I will, I'm sure, have to decide later whether I instruct the jury to ignore a whole series of the proof that we're presently hearing. A whole raft of it, because...

BY THE ACCUSED:

Why don't you give me this benefit of doubt and let me play the tape to the jury. This is what...

BY THE COURT:

No. That's not what I'm saying. You see, you're a manipulator, Mr. Fabrikant.

BY THE ACCUSED:

Oh, yes.

BY THE COURT:

You take every little word and as soon as it's said, as soon as the slightest word can be twisted out of context and turned to your advantage, that's what you do. You're a manipulator.

BY THE ACCUSED:

Oh, yes, I am.

BY THE COURT:

Yes, you are, an extreme one.

BY THE ACCUSED:

Maddening clever, as one editor said.

BY THE COURT:

So, anyway, we have disposed of this problem.

BY THE ACCUSED:

But you didn't... but you didn't address the question of hearsay. Is it a hearsay, or isn't it hearsay, my tape and 9-1-1?

BY THE COURT:

One is, one isn't.

BY THE ACCUSED:

Sorry? One is, and one isn't. Then explain.

BY THE COURT:

I am not here to give you explanations.

BY THE ACCUSED:

Because you have nothing to explain.

BY THE COURT:

Oh, I certainly do.

BY THE ACCUSED:

You know there is...

BY THE COURT:

I'm not here to give you explanations.

BY THE ACCUSED:

But you started. Why don't you give this to me.

BY THE COURT:

Now, what's your next problem.

BY THE ACCUSED:

Next problem is, if you remember, one witness here testified that he gave to the police statement.

BY THE COURT :

Uh, huh.

BY THE ACCUSED :

Now, I want this statement.

BY THE COURT:

I understand the Crown Prosecutor doesn't have the statement. Does Sergeant H,bert have the statement?

BY THE CROWN:

No. We looked again, and again, and we don't have the statement.

BY THE COURT:

You do not find the statement.

BY THE CROWN:

And I'm not sure, but the way I understood the witness, it seemed, it sounded like a verbal statement. He said he spoke to the policewoman. Anyway, if this statement exists, I don't have it, and we've been looking for it, and we could not locate it.

BY THE ACCUSED:

Well, when police is caught red-handed that they didn't provide something, they just... how to say it politely... deny it. I don't mean you at this time. But...

BY THE COURT:

What do you find so funny?

BY THE ACCUSED:

Look...

BY THE COURT:

Do you have to giggle and laugh through this whole thing?

BY THE ACCUSED:

Okay.

BY THE COURT:

I mean, really, do you? Is something wrong with you today, or what? Are we...

BY THE ACCUSED:

No, nothing is wrong with me today. But I think many people laughed yesterday, too. So...

BY THE COURT:

Oh, you're talking about your description of a security guard, in whatever form you described him?

BY THE ACCUSED:

No. I'm now talking about finding out yesterday that Mr. H,bert came here and discussed in detail in front of jury how he spent half of the night counting my bullets on August twenty-fourth (24th), just to find out that on August twenty-fourth (24th), he did nothing of those.

BY THE COURT:

Perhaps he did.

BY THE ACCUSED:

On the twenty-second (22nd) September, he has no idea about bullets. Now, if he could, under oath, mislead the Court like this, can we assume that he is also misleading now when he's saying that this statement is just not there. And you don't allow me to go into their files and take a look myself.

BY THE COURT:

Your mind doesn't seem to accommodate the possibility that witnesses, whoever they are...

BY THE ACCUSED:

Yeah.

BY THE COURT:

... in perfect good faith...

BY THE ACCUSED:

Uh, huh.

BY THE COURT:

... may simply be wrong, may not necessarily be lying. Now, I've never seen a case yet where the evidence of every witness dovetailed like a jigsaw puzzle. If it did, we would solve these things on one of your damned computers, you see, and we wouldn't need any of this. But unfortunately, life doesn't seem to me to work that way. So you have either a Judge or a jury who sorts out in their mind what of the evidence they believe, what they accept, and what they don't accept. Whether the witness is lying, or whether the witness is wrong is certainly something they consider, but that's what they consider. You seem to want to demonstrate this thing with the precision of a jigsaw puzzle, and it doesn't work that way.

BY THE ACCUSED:

Well, what kind of precision is needed to clarify whether Mr. H,bert took those bullets on August twenty-fourth (24th), or on September twenty-second (22nd)?

BY THE COURT:

Well, Mr. H,bert says he took them on August twenty-fourth (24th).

BY THE ACCUSED:

Exactly.

BY THE COURT:

Mr. H,bert says he counted them on August twenty-fourth (24th).

BY THE ACCUSED:

Exactly.

BY THE COURT:

And I don't...

BY THE ACCUSED:

He is lying that Mr. Bujold just wrote it, pure and simple, not true. That's what you imply?

BY THE COURT:

I'm not implying a thing. I'm not implying anything.

BY THE ACCUSED:

Well...

BY THE COURT:

I'm saying that Mr. Bujold wrote what he wrote.

BY THE ACCUSED:

Yes.

BY THE COURT:

I don't know... the examination of Mr. Bujold is not finished.

BY THE ACCUSED:

He testified that he personally let Mr. H,bert...

BY THE COURT:

Why are we having this argument for? I mean the jury will assess this.

BY THE ACCUSED:

No, I'm talking about it to convey to you very simple thought, that if Mr. H,bert could bend the truth when he was testifying under oath... now he's not under oath, so he can definitely bend the truth again. Because maybe in statement of Chakouri there is something very useful to read.

BY THE COURT:

Chakouri has testified.

BY THE ACCUSED:

Chakouri has testified, but...

BY THE COURT:

Chakouri is your witness.

BY THE ACCUSED:

But it is very, very often what witness testified and what he has written on his written statement is sometimes different.

BY THE COURT:

Chakouri came here, and Chakouri said what he had to say. I'm looking for my...

BY THE ACCUSED:

Still you noticed how many times the witness was saying something which was very different from what was in their statements.

BY THE COURT:

So what?

BY THE ACCUSED:

Almost every one of them got cross-examined on their statements. Do you remember that? So it is important for me to have his statement, and I still insist the statement be found and given to me.

BY THE COURT:

Well, what do you want? The Crown Prosecutor has said that Mr. H,bert looked for the statement and could not find the statement.

BY THE ACCUSED:

Well, I want, again, then, my personal access to their files. I do not need to go into something what they might deem being secret. Fine with me. But what is not secret I want to get access. And we have several days right now and I would like to use at least some of that time looking into their files.

BY THE COURT:

You're not going to look into their files at large.

BY THE ACCUSED:

Well, unbiased Judge would allow that.

BY THE COURT:

I don't care what your opinion is of what anybody else would do. You are not looking into their files at large. The Crown Prosecutor tells me that he does not have a copy of Chakouri's statement, that he has not been able to put his hand on a copy of Chakouri's statement, and there we are. I'm afraid I can't tell you from my notes whether it was a verbal statement or not.

BY THE CROWN:

Because, I especially remember he said he spoke with the policewoman on the third floor.

BY THE ACCUSED:

You know very well that this is absurd...

BY THE CROWN:

It looked like it was a verbal statement.

BY THE ACCUSED:

...that no police person takes any statement orally.

It's absurd. Let us be grown-up people.

BY THE COURT:

It appears to be a statement to the police after he went down from the ninth floor.

BY THE ACCUSED:

Yes...

BY THE COURT:

Policewoman took statement, not called for another statement, and it was stressed that it was a policewoman that he spoke to.

BY THE CROWN:

But we looked for it, but we don't have it.

BY THE COURT:

You don't have it.

BY THE CROWN:

If ever it exists and we've been looking many times for that and...

BY THE COURT:

Well, there you are. So you have to be satisfied with that.

BY THE ACCUSED:

Well, I'm not satisfied with that.

BY THE COURT:

I couldn't care less then, Mr. Fabrikant. If you're not satisfied with that, that's too bad. But you are not entitled under the rule of Stinchcomb to do an audit at large of the files of the CUM Police.

BY THE ACCUSED:

Well, if I caught them red-handed that they are...

BY THE COURT:

Well, these are your words. These are wonderful words, you know.

BY THE ACCUSED:

This is not my words. We had a witness who testified that he did give a statement to the police, and I have no reason to believe that he might be so confused as to know he did not really do.

BY THE COURT:

Listen, Chakouri was a witness you called. He came here and he gave testimony, an eyewitness account of events on the twenty-second (22nd). You had knowledge of that witness. The name of that witness, I believe, came from the Crown.

BY THE CROWN:

I think it came from the newspaper.

BY THE COURT:

Or it came from the newspaper. Was that where it came from? In any event, the witness was called, he testified as to his recollection of the facts. A witness testifies on his recollection of the facts.

BY THE ACCUSED:

A witness might forget many things. We are now in May.

BY THE COURT:

Listen, the Crown Prosecutor says they have looked for the statement. They don't have the statements.

BY THE ACCUSED:

They do have. They are hiding it. They do have the statement.

BY THE CROWN:

This is false. This is totally false, My Lord.

BY THE ACCUSED:

If... look, if I did not show to you that police is lying, look press conference of Sangollo, on August twenty-fifth (25th), and you will see that he describes... Did you read the newspaper that time? He described that shooting started in office of Ziogas.

BY THE COURT:

As far as I know... as far as I have heard so far, Sangollo was not on the ninth floor at Concordia University on the twenty-fourth (24th).

BY THE ACCUSED:

Yes, but he informed the public intentionally wrong, because...

BY THE COURT:

Well, that's your view.

BY THE ACCUSED:

No.

BY THE COURT:

I'm far more interested in what witnesses say in front of the jury here than what Sangollo says at a press conference the day after the event.

BY THE ACCUSED:

At least you know that he misinformed the public willingly or unwilling. He did misinform public. If you read that interview, the press conference, he misinformed the public. Now, this is one case. Now, we have Mr. H,bert. On the one hand he said here that he informed Sangollo about true sequence of events. Sangollo choose to ignore that. You remember that testimony at least. Now, we again have Mr. H,bert saying that he took those bullets on August twenty-fourth (24th), and we have now written and visual proof because a witness testified that he personally let Mr. H,bert into my office to take the briefcase and some documents. So now we come to the second part, documents. I would like Mr. H,bert to tell what documents he took, where they are, and whether he is prepared to return them to me.

BY THE COURT:

Listen, that's an entirely different question.

BY THE ACCUSED:

Of course it is different.

BY THE COURT:

I have told you... I've told you that I am satisfied. The Crown Prosecutor has asked that that statement be searched for. I'm prepared to take his word that they have been unable to find that statement. I'm not going to give you access at large to Mr. H,bert's files.

BY THE ACCUSED:

Well, what about...

BY THE COURT:

That is that.

BY THE ACCUSED:

What about the documents which they've taken?

BY THE CROWN:

The documents, they were given not once, twice, to Mr. Fabrikant in this Court.

BY THE ACCUSED:

No, no, no, one second. Documents were given from the briefcase. What other documents were taken from the office?

BY THE COURT:

I really don't think that I need to preside over this sort of chitchat back and forth. So we'll adjourn until Wednesday morning at nine-thirty (9:30).

BY Me BELLEAU:

My Lord, I have something I would like to ask.

BY THE COURT:

Sure.

BY Me BELLEAU:

I'm sorry to interrupt. There is an issue that's been raised by Mr. Fabrikant concerning the testimony of Mr. Osman. I thought we had solved that issue, because he wants to call Dr. Osman to file some documents, and then to call him as a witness on the facts.

BY THE COURT:

I recall that, yes.

BY Me BELLEAU:

And my understanding was that you would permit him to call him just for the purpose of bringing certain documents. And then if he had to testify again, he would be allowed to call him again. If I misunderstood I would like to be corrected.

BY THE CROWN:

I objected to that, My Lord.

BY Me BELLEAU:

I know the Crown objected, but...

BY THE COURT:

You objected to that. The Crown objected. What I was... I said, listen, if Osman is the custodian of certain documents that are relevant, then in the hypothesis that he doesn't have these documents, I can't see any difficulty in Osman producing these documents at this point, subject to being recalled to testify at large later on other issues. That was my ruling at the time, and it was done with a view to trying to expedite this thing.

BY Me BELLEAU:

That's what I thought I had understood as what you...

BY THE COURT:

That's what you understood.

BY Me BELLEAU:

Fine. And there's... another question is that Mr. Fabrikant has provided me with a list of witnesses he wants subpoenaed. And I only raise this because it was brought up at the...

BY THE ACCUSED:

I don't think that this list of witnesses should be made in any way public. The list of those witnesses was given to you to be served. Period.

BY Me BELLEAU:

Then...

BY THE ACCUSED :

I did not authorize you to do anything...

BY Me BELLEAU:

Fine. Well, I disagree with what he's saying. But I'm not going to discuss it publicly then. But I'd like only this to be said that there are three witnesses on this list and he knows who they are that I will not subpoena.

BY THE ACCUSED:

Well...

BY THE COURT:

That you will not subpoena.

BY Me BELLEAU:

That I will not subpoena.

BY THE COURT:

Are you able to...

BY Me BELLEAU:

If he wants to them subpoenaed, then he will apply to the

Court for an order.

BY THE COURT:

Okay.

BY THE ACCUSED:

Well, I do not understand why.

BY THE CROWN:

Well, you mentioned Ministers and Judges...

BY THE COURT:

I don't know who they are. I mean, I have absolutely no idea who they are.

BY THE CROWN:

I said to Mr. Belleau, if Mr. Fabrikant wants to subpoena Ministers and Judges he should apply.

BY THE ACCUSED:

Well, there are no Ministers there. There are no Judges in this list.

BY Me BELLEAU :

Do you want to take a look at it again?

BY THE ACCUSED:

Well, I said Ministers...

BY Me BELLEAU :

Do you want to look at it again?

BY THE ACCUSED:

... or a person assigned by him. So I do not insist on Minister.

BY THE COURT:

Mr. Belleau, if you feel...

BY THE ACCUSED:

Someone from the Ministry.

BY THE COURT:

If you feel that you cannot ask that a certain subpoena be issued, then you will so inform Mr. Fabrikant, and if Mr. Fabrikant wishes to make an application to me to have that person subpoenaed, he's free to do so.

BY THE ACCUSED:

No, no, one second.

BY Me BELLEAU:

That's just what I told him.

BY THE ACCUSED:

One second. There is no Minister. I've written like this: Minister or person designated by him. Do I need your permission for that?

BY THE COURT:

Well, you'd better make up your mind who you want, first of all.

BY THE CROWN:

There is also Section 698, My Lord. It has to be material evidence. You have the control of that.

BY THE COURT:

Yes.

BY THE ACCUSED:

Well, then, you see, we have a problem that when I do not...

BY THE COURT:

Well, you always have a problem, Mr. Fabrikant. Always. I've never seen so many...

BY THE ACCUSED:

Well, I would wish...

BY THE COURT:

...in ten years of sitting here, I've never seen so many.

BY THE ACCUSED:

I would wish you had a little bit better sense of humour than that. You know damn well I am in jail, and I'm...

BY THE COURT:

Yes, I do.

BY THE ACCUSED:

... and I'm doing my best what I can in my condition. But in this situation I do not know who conducted the inquiry at the Ministry. I asked Mr. Belleau...

BY THE COURT:

What inquiry?

BY THE ACCUSED:

This is not the issue right now.

BY THE COURT:

Well...

BY THE ACCUSED:

I ask anyway... I ask...

BY THE COURT:

If you want to subpoena somebody... if you want to subpoena the Minister, it certainly is the issue.

BY THE ACCUSED:

Okay. I said I do not insist on Minister at all. I just asked him to find the person responsible and subpoena that person. He told me I'm not private investigator. I'm not going to do that.

BY THE COURT:

That is perfectly correct. You will tell him who you wish to subpoena, and if he feels...

BY THE ACCUSED:

I just don't know the name. What do...

BY THE COURT:

If he feels he can subpoena the person that you ask him to subpoena, he will. If he doesn't, there are two options. Either you will permit him to tell me what the problem is, or you'll tell me what it is yourself.

BY THE ACCUSED:

Well, what do you have to do with that? He's a lawyer. I asked him to make a phone call to ask who did the job and subpoena that person. He just refuses to do his job. It's as simple as that. I need, for example, Eric Malenfant. There are four Eric's in the telephone book. I ask him: "Would you kindly call them and ask who is the right one". He said: "I'm not going to do that". Four telephone calls he doesn't want to make, just to find...

BY THE COURT:

You have done your...

BY THE ACCUSED:

... which Eric Malenfant.

BY THE COURT:

You have done your investigation thus far with the benediction of Aide juridique. I wouldn't know why you wouldn't continue to.

BY THE ACCUSED:

Well, the only thing what...

BY THE COURT:

It's certainly not for him to put on a Sherlock Holmes cap and get out his...

BY THE ACCUSED:

You can see that his Sherlock Holmes cap to find out
which Eric Malenfant I need...

BY THE COURT:

Well, you pick up the phone. You're able to phone.

You've got a phone.

BY THE ACCUSED:

I got a phone at the time when nobody is in. Everybody
is at work. And when...

BY THE ACCUSED:

You solve your problems with your witnesses.

Wednesday morning, nine-thirty (9:30).

(THE JUDGE LEAVES THE BENCH)

ADJOURNMENT

I, the undersigned, MICHEL DAIGNEAULT, Official Court
Reporter, hereby certify the foregoing is a true and
faithful transcript of the evidence in the above-
mentioned case as taken by mechanical recording, to the
best of the quality of said recording.

And I have signed.

MICHEL DAIGNEAULT,
Official Court Reporter</pre></body></html>