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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 12 MARS 1993

FICHER: 2469

TABLE DES MATIERES

PAGE

REPRESENTATIONS 3

WITNESS: DAVID MILLS (JUROR #6)

Examined by the Court 8

WITH JURY 13

TMOIN EXPERT: ROBERT DESJARDINS

Interrog, par Me Lecours (VOIR-DIRE) 15

Interrog, par Me Lecours 17

REPRESENTATIONS 26

Interrog, par Me Lecours 38

Contre-interrog, par M. Fabrikant 72

WITHOUT JURY 85

WITH JURY 86

WITHOUT JURY 86

TMOIN: BERNARD MARCIL

Interrog, par la Cour 92

Contre-interrog, par M. Fabrikant 108

REPRESENTATIONS

THE COURT :

I came onto the bench alone because I have received a letter from a juror, plus another letter, ostensibly from one of the jurors' clients, which I will first of all invite you to take cognizance of, Mr. Lecours and then Mr. Fabrikant, Mr. Belleau.

VALERY FABRIKANT :

Well, this letter proves only one point, that there was really tampering with the jury...

THE COURT :

Would you hand the letter to Mr. Belleau, you've taken cognizance of the letter, sit down, I'll speak to you when I wish to hear from you. I'm dictating the rules, not you. Sit down or you'll be sat down.

Okay. In sum and substance, it's a letter accompanied by another letter from one of his clients, from a juror who did not move, at least before me, for an exemption, claiming substantially economic grounds. There are however two parts of the letter which are troubling, one is the fourth paragraph on the first page, which uses the words:

"I have already developed a firm conviction of Fabrikant's guilt."

And the last paragraph, or an ultimate paragraph before the underlined:

"Justice Martin, if I succumb to my jury duty my family will be out in the street before Fabrikant gets the punishment he deserves."

First of all, Mr. Lecours, what is your position on this question? It's I who have to decide, I know what route I'm going to follow, but I would appreciate your input.

Me JEAN LECOURE :

Well, I was going to say you have discretion, I think you still have the power to exclude this person. From my experience, we discovered sometimes some criminal records and the Judge excused the person, it slipped through the process. But if we don't have the possibility to test, because it's easy for someone to come in the box and say, I... for me everybody is guilty...

THE COURT :

Well, that's the question, I... yes, I'm not about to exercise that discretion before there is a test.

Me JEAN LECOURE :

It's too late to verify whether it's just a reason to avoid duties. In this case I think the person might be excused because there is some bias in this letter.

THE COURT :

You perhaps go further than me, I was of a mind to see whether or not the juror was... how serious the juror was on that question. Mr. Fabrikant, what have you to say?

VALERY FABRIKANT :

Well, I request mistrial and new empanelling of jury because it looks like obvious that jury was tampered with in several ways. If anyone observed yesterday's choosing of the jury, then it was quite clear that Crown, having its enormous power of collecting information, already had information about jurors...

THE COURT :

Mr. Fabrikant, we are not hearing... I'm not going to countenance a motion for a mistrial. If you're making a motion for a mistrial, that's not what I asked you at the moment, I asked you in relation to...

VALERY FABRIKANT :

Well, if you didn't ask me to make a motion, I want to make a motion for mistrial, why do you forbid me to do so?

THE COURT :

Because you're out of order at the moment, I'm asking you what your position is with regard to the letter received from juror number 6. It's wonderful to debate about all sorts of things throughout the morning, but my problem at the moment is the question of juror number 6.

Now, would you please address yourself to that, if you're not prepared to address yourself to that, sit down and I'll manage by myself.

VALERY FABRIKANT :

So when will I be able to make this motion of mistrial? If now it is not the time...

THE COURT :

Let me give you the short answer, now is not the time.

VALERY FABRIKANT :

Okay. When is the time then?

THE COURT :

I'm not prepared to tell you when the time is, at the moment I'm dealing with this letter, okay, so let us deal with this letter, I'm not going any further than that. Now have you anything to say with regard to this problem?

VALERY FABRIKANT :

Okay. I have to say, this letter indicates only that there is not just one person, just one person who came forward, but everybody else in the jury definitely was tampered with. Therefore, I think that elementary judicial dignity in this situation requires to declare a mistrial and start the jury selection again.

THE COURT :

Your motion for mistrial is dismissed.

VALERY FABRIKANT :

Well, I didn't make the motion.

THE COURT :

I read it as a motion, you announced it as a motion...

VALERY FABRIKANT :

Well, if it is a motion then let me continue my argumentation.

THE COURT :

If you have other argument to submit... No, I'm sorry, I wish...

VALERY FABRIKANT :

You cannot dismiss a motion as if it was presented, because I have more to say about it.

THE COURT :

Fine. Then save what you have to say for the minute and I'll reconsider what you have to say on your motion for a mistrial later on. Now would you address yourself to this question?

VALERY FABRIKANT :

Well, this is what I feel because if one juror came forward, there is guarantee there are others who didn't have the conscience to come forward, that's all.

THE COURT :

That's what you have to say?

VALERY FABRIKANT :

Yes.

THE COURT :

Mr. Belleau, have you any comments to make at all?

Me BELLEAU :

I agree with Mr. Lecours, My Lord, I think that the appearance of justice would demand that this candidate be... well, not a candidate, juror now, be excused.

THE COURT :

Fine. Well, I think I'll proceed with a short inquiry

and we will see. Would you have juror number 6 brought in and taken to the witness box please, just have him step in the witness box.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twelfth (12th) day of the month of March, personally came and appeared:

DAVID MILLS, born on October seventh (7th), nineteen hundred and forty (1940), freelance writer, confidential address;

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

EXAMINED BY THE COURT :

- Q. You were here on Monday, Mr. Mills, is that right?
- A. Yes.
- Q. And you heard what I had to say when I addressed the jury panel on Monday?
- A. Yes, I did.
- Q. And you received a sheet of paper, you heard my explanation with regard to exemptions?
- A. Yes, I did, Your Honor.
- Q. Now, you correct me if I'm wrong, but if my sheet is correct, you didn't appear in order to make an exemption on Tuesday morning, is that right?
- A. That's correct, Your Honor, it's all explained in the letter. Did you have a chance to read it?
- Q. Well I had a chance to read it. But I am correct that nevertheless you didn't appear?
- A. I had made a... I had applied for an exemption right at the beginning.
- Q. Which was turned down?
- A. Which was turned down, I'm not even sure you saw it.
- Q. Well of course, I'm hardly clairvoyant.
- A. It was sent in by registered letter and I have received a registered letter in return denying it.
- Q. And the sheriff declined to grant you an exemption?
- A. At that time, that's correct.
- Q. Have you any idea the difficulty this causes at this stage?
- A. Your Honor, I believe that the process that we were briefed on on Monday was in fact the strategy of recruitment of jurors was changed obviously between then and Thursday because suddenly, instead of being drawn from a lot of... some four hundred and fifty (450) people minus exemptions, suddenly less than... fewer than a half of the first group were recruited and placed into the jury box instantly.
- Q. I said to you on Monday that if you had exemptions to ask for, ask for them on Tuesday, and you would have to be back on Thursday for jury selection, that's what you were there for yesterday, jury selection.
- A. I grant it. Following yesterday's session the reality of the situation... frankly I did not expect to be... I expected to be interviewed on the situation and been excluded because of bias.
- Q. That might have been a presumption you chose to make, but why in heaven's name did you not come here on

Tuesday morning and tell me what your difficulty was?

A. Because frankly, Judge, I didn't think I would... Your Honor, I didn't feel I would be selected.

Q. So you chose to work instead of come down and make your application, is that what it turns out to be?

A. Well, every hour that I'm not working, I'm not being paid.

Q. I see.

A. As you can see in that letter, my financial situation is not very good.

Q. You realize that coming at this stage to request for an exemption based on economic grounds simply can't be granted, do you realize that?

A. Well, that leaves me with no alternative but to resist participation, however I'm able to do that, because I do not have a choice. I do not... under the economic circumstances, I don't have a choice. I cannot remain.

Q. Do you not think that you owed it to me and that you owed it to everybody here to put your economic situation on the line when you were given an opportunity to do so on Tuesday? I mean, I have never seen a better example of irresponsibility of somebody who suddenly puts up his hand along the way and says: "I can't serve, I've got economic problems" when the whole screening process which was explained to you and which was set out has for its purpose to give you an opportunity to express that.

A. I should have been there on Tuesday, I regret that I wasn't, in retrospect I regret that I didn't severely, dramatically make my case, but the consequences were only borne out to me yesterday when I discovered that I was on the jury, and then... I even rationalized that perhaps I can work beyond the... on another schedule, nights and weekends, but my clients have informed me in no uncertain terms that that is unacceptable to them.

Q. Are you serious when you write in the letter:

"I have already developed a firm conviction of Fabrikant's guilt."

A. Of course.

Q. Did you listen to me yesterday afternoon when I spoke, when I asked you to put aside what you had heard outside this room?

A. I listened to that, but it doesn't mean that I'm capable of doing that.

Q. Are you capable of doing that?

A. I'm not capable of doing that, and I regret that I swore on the Bible that I could. But we were ushered in here, and no one even said a word to us, we just stood there and were looked at. And then without objection, no one objected to our appearance, so that we were requested to swear on the Bible, and in good Canadian who never makes waves, I did it, and I regret that I did.

Q. Well, Mr. Mills, I'm going to release you, but I don't want you to walk out of here thinking that you received an honorable discharge, quite frankly. What you are receiving is a dishonorable discharge and you're receiving a dishonorable discharge because of the bias you express in your letter. And for a citizen of your age and experience, I have to underline that I consider that your conduct to this whole thing leaves a considerable amount to be desired.

A. Your Honor, I regret I didn't act sooner, but at this

point I have no choice.

AND FURTHER DEPONENT SAITH NOT

THE COURT :

Would you bring one of the jury guardians here please?

VALERY FABRIKANT :

May I ask some questions to Mr...

THE COURT :

No, you may not ask any questions.

VALERY FABRIKANT :

No. Too bad. Too bad. You can guess what kind of questions I would like to ask, don't you?

THE COURT :

Are you going to persist? I told you to be quiet, when I wish to hear from you I'll ask to hear from you. I don't require to hear from you at the moment, this is a decision I have to make.

VALERY FABRIKANT :

All right.

THE COURT :

Would you please accompany Mr. Mills outside, I'm going to bring the rest of the jury in, I want no contact between Mr. Mills and the other eleven (11) people on the jury. And when the eleven (11) people in the jury have come in, you will assist Mr. Mills in getting his coat, make sure that the materials that were furnished to him are left, and he may go. C-3.

Me JEAN LECOURE :

With your permission, My Lord, yesterday Mr. Fabrikant requested a clearer copy of one of the police reports, indeed one was not clear, this is a darker copy, I'm giving to him.

THE COURT :

Jury please.

VALERY FABRIKANT :

I have some other minor questions to address.

THE COURT :

They can wait.

VALERY FABRIKANT :

Well, they cannot wait.

THE COURT :

They can wait.

MEMBERS OF THE JURY ARE PRESENT

THE COURT :

Ladies and gentlemen, good morning. You'll notice that you're now sitting as eleven (11). In your absence I proceeded to an inquiry in relation to one of your number. And as a result of that inquiry I exercised my discretion to discharge that juror, the trial will proceed with eleven (11) jurors as is permitted under the provisions of the Criminal Code. Mr. Lecours.

Me JEAN LECOURE :

Mr. Robert Desjardins please.

SANDRA TRAYNER - INTERPRETER - FRENCH-ENGLISH

DULY SWORN

EN L'AN DE NOTRE-SEIGNEUR mil neuf cent quatre-vingt-treize (1993), ce douzième (12e) jour du mois de mars, a comparu :

ROBERT DESJARDINS, n, le vingt (20) octobre mil neuf cent cinquante et un (1951), policier ... la Communaut,

Urbaine de Montr,al;

LEQUEL, apršs avoir pr^t, serment sur les Saints vangiles, d,pose et dit comme suit :

Me JEAN LECOURE :

My Lord, I would like to open a voir-dire in order to establish that Constable Desjardins is an expert as a technician in scene of crime.

THE COURT :

Please proceed.

EXAMINED BY Me LECOURE

ATTORNEY FOR THE CROWN (voir-dire) :

Q. Mr. Desjardins, how long have you been working for the C.U.M. police?

-Q. Monsieur Desjardins, vous travaillez pour la police, ou le service policier de la C.U.M. depuis combien de temps?

R. Je suis policier ... l'emploi de la C.U.M. depuis vingt (20) ans d,j..., et je suis technicien en service d'identit, depuis treize (13) ans.

-R. I have been with the police for twenty (20) years and at the forensic identification department for thirteen (13) years.

Q. Could you relate your training and your experience in this field?

-Q. Est-ce que vous pouvez relater votre exp,rience et votre formation dans ce domaine?

R. Oui. Alors, ... mon arriv,e ... la section identification...

-R. When I joined the identification department...

R. ...j'ai suivi un cours d'entraÆnement donn, par le CollŠge Canadien de la Gendarmerie Royale du Canada...

-R. ...I underwent a training program with the RCMP...

R. ...un cours intensif de neuf semaines...

-R. ...an intensive nine week course...

R. ...et par la suite j'ai oeuvr, durant treize (13) ans en tant que technicien...

-R. ...and afterwards I worked for thirteen (13) years as a technician...

R. ...et pendant ces treize (13) ann,es-l... j'ai couvert des centaines de scŠnes de crime...

-R. ...and in the course of those thirteen (13) years I covered hundreds of crime scenes...

R. ...et on pourrait mettre un chiffre d'au moins une centaine de crimes majeurs...

-R. ...and we could state at least a hundred or so major crimes...

R. ...et j'ai ,t, reconnu t,moin expert devant la cour ... maintes reprises.

-R. ...and I was recognized as an expert witness before the Court several times.

THE COURT :

Maintes reprises. Many occasions.

-R. Many occasions.

Me JEAN LECOURE :

Your witness on voir-dire.

THE COURT :

Have you any questions, Mr. Fabrikant, to put to the witness on voir-dire concerning his qualifications?

VALERY FABRIKANT :

I repeat once again, I need assistance of a lawyer.

THE COURT :

Thank you very much, you may sit down. The Court recognizes Mr. Desjardins as technical expert in relation to crime scenes.

EXAMINED BY Me LECOURS

ATTORNEY FOR THE CROWN :

- Q. Mr. Desjardins, on August twenty-fourth (24th), nineteen ninety-two (1992) were you performing your duties?
- Q. Le vingt-quatre (24) août mil neuf cent quatre-vingt-douze (1992), monsieur Desjardins, est-ce que vous étiez dans l'exercice de vos fonctions?
- R. Oui, j'étais en devoir le vingt-quatre (24) août mil neuf cent quatre-vingt-douze (1992).
- R. Yes, I was on duty August twenty-fourth (24th), ninety-two ('92).
- Q. Did you get the occasion to cover a specific or a special scene of crime?
- Q. Est-ce que vous avez eu l'occasion de couvrir une scène de crime précise?
- R. Oui. Vers les dix-sept heures (17 h) ce même jour, j'ai été appelé, ... me rendre au 1455, si ma mémoire est exacte...
- R. Yes. Around seventeen hundred hours (17:00) I was called upon to go to 1455, if my memory serves me right...
- R. ...c'est bien ça...
- R. ...that is correct...
- R. ...qui est l'Université, Concordia, pour y effectuer mon travail d'expertise.
- Q. On which floor?
- R. ...which is Concordia University, in order to carry out my expert analysis.
- Q. Sur quel plancher?
- R. Sur le neuvième étage.
- R. The ninth floor.
- Q. Did you prepare a sketch of the area of the ninth floor you covered?
- Q. Avez-vous préparé, par, un croquis du neuvième étage que vous avez couvert?
- R. Oui, j'ai le croquis en ma possession.
- R. Yes, I do have the sketch in my possession.
- Q. I'd like to file the sketch as...
- Okay. Okay. Using P-7, could you summarily describe what it represents?
- Q. Alors si on utilise le P-7, pourriez-vous brièvement de quoi il s'agit?
- R. Oui. Alors, si on regarde le plan ici...
- R. Yes. If we take the floor plan here...
- R. ...c'est un agrandissement d'une partie du neuvième étage.
- R. ...it is an enlargement of a section of the ninth floor.
- R. Par rapport aux coins cardinaux...
- R. In relation to the compass points...
- R. ...nous sommes...
- R. ...we are...
- R. ...c'est le nord qui est en haut du plan.
- R. ...North would be at the top of the plan.
- Q. So it should be the north-west section then of the floor?
- Q. Donc ce serait l'intersection nord-ouest du plancher?

R. C'est exact.  
-R. That's correct.  
R. C'est la section nord-ouest du neuvième étage.  
-R. It is the north-west section of the ninth floor.  
Q. In this area, the ninth floor was divided in many scenes of crime...  
-Q. Dans ce secteur le neuvième étage a été parti en différentes scènes de crime...  
Q. ...this area comprises which scenes of crime?  
-Q. ...alors ce secteur comprend quelles scènes de crime en particulier?  
R. Alors ce secteur couvre les scènes 1, 2, 3 et 6.  
Q. Could you...  
-R. This would cover scenes 1, 2, 3 and 6.  
-Q. Est-ce que vous seriez en mesure de...  
R. Oui.  
-R. Yes.  
R. Alors la scène 1 se situe dans la chambre 929-24.  
-R. So scene number 1 would be 921-24.  
Q. Is it written?  
-Q. Est-ce que c'est indiqué,  
R. Oui, c'est indiqué, scène 1 dans le carré.  
-R. Yes, it is indicated scene number 1 in the square.  
R. La scène 2 est immédiatement au-dessus de la scène 1...  
-R. Scene 2 appears immediately above scene number 1...  
R. ...dans le local 929-19.  
-R. ...in office number 929-19.  
R. La scène 3 se trouve ... être le corridor qui porte le numéro 929-90.  
-R. And scene number 4 is a hallway, appears to be a hallway with number 929-90.  
R. Et la scène 6 se trouve ... être la chambre 929-9.  
-R. And the scene number 6 would be office number 929-9.  
Q. Okay. On your sketch we also see some red numbers, R-1, R-2 until R-13, what does that represent?  
-Q. Et sur votre copie nous voyons également des chiffres en rouge ... partir de R-1, R-2 jusqu'... R-13, qu'est-ce que ça représente au juste?  
R. Ces chiffres représentent les exhibits que j'ai récupérés sur la scène de crime.  
-R. They represent the exhibits that I recovered, retrieved from the crime scene.  
Q. Okay. On the left margin, is it what you wrote?  
-Q. D'accord. Alors ... la marge gauche est-ce que c'est ce que vous avez indiqué,  
R. Oui, c'est la description des exhibits qui sont identifiés par les lettres R-1 jusqu'... R-13.  
-R. Yes, that is the description of the exhibits identified with numbers R-1 through R-13.

Me JEAN LECOURE :

At this point, My Lord, I would ask Mrs. Trayner to give a translation of the various French terms that we see there.

THE INTERPRETER :

R-1, projectile, caliber .38, or 38 caliber.

R-2, casing, caliber 7.65.

R-3, casing, caliber 7.65.

R-4, projectile, caliber 7.65.

R-5, casing, caliber 7.65.

R-6, casing, caliber 7.65.

R-7, casing, caliber 7.65.

R-8, projectile, caliber 7.65.

R-9, projectile, caliber 7.65.

R-10, projectile, caliber 7.65.

R-11, casing, 25 caliber.

R-12, projectile, caliber 25.

R-13, pistol, MEB, caliber 6.35.

Me JEAN LECOIRS :

Under that there is a small mention.

THE INTERPRETER :

Under that, in parentheses, firing from caliber 25.

Me JEAN LECOIRS :

Du, not from in this case, it's firing...

THE INTERPRETER :

Je ne connais pas le contexte... I'm sorry, I don't know...

THE COURT :

Would you have the witness, please, explain what is below, explain the context of that.

-Q. Voulez-vous s'il vous plat expliquer ce qui se trouve entre parenthses pour connatre le contexte.

R. C'est que le pistolet MEB de calibre 6.35 peut ,galemment tirer des cartouches de calibre 25.

-R. The MEB pistol of caliber 6.35 can also fire cartridges of caliber 25 or 25 caliber cartridges.

Me JEAN LECOIRS :

O.K. Merci madame Trayner.

Q. And also, Mr. Desjardins, you put parentheses a number, at the end of the parentheses, as well as another number under R-13, could you explain what does it mean?

-Q. Pourriez-vous expliquer ce que repr,sente le chiffre qui se trouve sous R-13, ... gauche de l'expression entre parenthses?

R. Oui. Alors le chiffre en noir qui se trouve sous R-13 qui correspond au chiffre C-64073...

-R. Yes. The number in bold, which is C-64073 under R-13...

R. ...correspond ... l',tiquette du laboratoire m,dico-l,gal qui a trait, cet exhibit.

-R. ...corresponds to the tag number used by the forensic lab, which corresponds to the exhibit.

R. Ainsi que l',tiquette C-64062...

-R. As well as for the number C-64062...

R. ...ce num,ro comprend tous les exhibits ,num,r,s entre R-1 et R-12.

-R. ...this number includes all the exhibits from R-1 to R-12.

Q. Did you get the occasion to take various photographs of the scenes?

-Q. Est-ce que vous avez eu l'occasion de prendre diverses photographies des scnes?

R. Oui, j'ai pris plusieurs photos de la scne.

-R. Yes, I took several photographs of the scene.

Q. You have with you booklet?

-Q. Vous avez votre livret avec vous?

R. Oui, j'ai l'original.

-R. Yes, I have the original.

Q. Okay.

Me JEAN LECOIRS :

I would like to file...

THE COURT :

Before you file these, may I have a look at that booklet please? Thank you. Am I correct in understanding that

copy of all of these photographs have already been handed to Mr. Fabrikant?

Me JEAN LECOURE :

Yes, My Lord.

THE COURT :

It has. Would you show that series of pictures to Mr. Fabrikant please? Do you wish to make any representations with regard to these photographs which the Crown proposes to file?

VALERY FABRIKANT :

Well, I think that the bloody pictures are made intentionally to inflame...

THE COURT :

Would you prefer the jury withdraw while you make your argument on that point? I think it might be preferable.

VALERY FABRIKANT :

Well, I don't think the jury should hear that... the bloody pictures are made to inflame...

THE COURT :

Just a second, before... A second. Before you make your representations, would you like me to ask the jury to withdraw?

VALERY FABRIKANT :

No.

THE COURT :

You would not. Because you're perfectly entitled to have the jury withdraw while you make your arguments concerning that.

VALERY FABRIKANT :

Well, why should the jury be excluded from this?

THE COURT :

Well, suppose you turn out to be right, the photograph that you're talking about will not form part of the set, that would be the only reason.

VALERY FABRIKANT :

Well then the jury should know that police intentionally did the picture in such a way to make it look gory and to create impression of something so outrageous that just to inflame the passion, rather than to look at the argument and the facts.

THE COURT :

You are, I suppose...

VALERY FABRIKANT :

And this is wrong way to proceed.

THE COURT :

You're referring to one photograph, is that right?

VALERY FABRIKANT :

Well not one, there are several of them, the fact itself that the person was murdered is sufficient, without showing where the blood was, how it was, I don't think it gives any insight to the crime itself.

THE COURT :

That's what you have to say?

VALERY FABRIKANT :

Yes.

THE COURT :

Mr. Lecours?

Me JEAN LECOURE :

Well, My Lord, I expect a discussion in law on this subject, so when there is a discussion in law it's

always without the presence of the jury.

THE COURT :

I agree, but Mr. Fabrikant preferred to go ahead with the jury present, and I just wondered whether there is...

Me JEAN LECOURES :

No, but if ever you exclude the evidence...

THE COURT :

Of course.

Me JEAN LECOURES :

...the jury will hear that this evidence exists, it's better to exclude the jury at this time, My Lord, to preserve Mr. Fabrikant's rights.

THE COURT :

I wonder, ladies and gentlemen, if you wouldn't withdraw for a few minutes while we settle...

THE JURY LEAVES THE COURTROOM

WITHOUT JURY

THE COURT :

Go ahead.

Me JEAN LECOURES :

Okay. To quote one of your colleagues, Mrs. Justice Joncas, in a murder case one should not expect the Crown to file "wholly" pictures. Given the fact that it's a murder case, first they are very decent pictures, it's minimal, it's one or two out of a set of sixty (60), they are needed for purposes of identification, some of the victims are outsiders from mechanical engineering, some people might be eyewitnesses but they don't know the name, or they don't know the victims. And I would like also to give you what is the state of the jurisprudence on that. I have a copy for Mr. Fabrikant. And also for the friends of the Court. I first refer you to Regina vs. Davis, number 2, at page 483. In this case the Judge brings back the old principle dating from nineteen thirty-six (1936) quoted in R. vs. O'Donnell in which Masten J.A. said:

"With respect to the admissibility of the photographs on the ground that they tended to inflame the minds of the jury, I think that the ground put forward is (inaudible). The only question to be considered is were they admissible under the rules of evidence? If they are, the effects which they may have on the jury cannot interfere with their admission. There can be no question but that under the rules of evidence they may properly admit it. And in that case the photographs were used by witnesses in describing the actual scene of killing and the injuries inflicted upon the deceased. The Judge (inaudible) cognizance of the photographs accurately depicted the premises through which the appellant walked or ran."

And he said:

"It may well be argued that the ferocity of the attack in which

approximately twenty (20) stab wounds were inflicted upon the deceased is an indication of the intent of the appellant."

VALERY FABRIKANT :

Where are you reading now?

Me JEAN LECOURE :

483, that's what I said. And in Regina vs. Green, there's a lot of jurisprudence on the subject but I file some of them which already include a lot of citations. In Regina vs. Green, again it's a murder case, coloured photograph. At page 297 and 298, now the Judge says, talking about the Judge in the first instance:

"He suggested that the only test was whether or not the photographs would support and explain the oral evidence and would serve a useful purpose in corroborating such oral evidence."

And in that case they were used also to identify the victims and comment on the wounds suffered by the victims. I submit to you that there's nothing inflammatory and if there is a slight inflammatory character it's outweighed by the probative value. And I would say, for a murder case, these are very very decent photographs, and everything has been reduced to the minimum.

VALERY FABRIKANT :

May I respond?

THE COURT :

Yes.

VALERY FABRIKANT :

Well first of all this is yet another clear indication of how unequal forces are, because I do not have any lawyer, and in every case of jurisprudence there is always counter-jurisprudence. And even in the same jurisprudence which was just read to us today, I believe if we read it complete we will find something totally opposite to what Mr. Lecours said. So if you want me to respond in a fair way, first of all I believe I should be allowed to read the jurisprudence thoroughly, second I should be allowed to look for jurisprudence to the contrary, and then it would be a fair trial. In a situation like this where I am in jail, and have no access to jurisprudence or anything, and Crown has enormous potential to do whatever they want, they can always find jurisprudence which allegedly supports this. But in any case... So my first question, wouldn't it be fair to let me read it completely and then respond? And in addition to that, to give me the ability to find counter-jurisprudence, because there always is counter-jurisprudence, and if I'm not allowed to do so, this is what is called unfair trial. So how about this question, first?

THE COURT :

Generally the approach is that the decision in a situation like this is dictated by what the Crown proposes to do. The jurisprudence won't answer that, the jurisprudence will answer the general principle. But if the Crown is attempting to put in evidence photographs that are of their nature inflammatory, for the sole purpose of inflaming the jury rather than for

demonstrating to the jury what transpired where, and permitting the jury to understand what happened, then the Court will exclude them. Jurisprudence is not some great God that dictates necessarily every step which a Judge has to take. The Judge decides as a function, as I've tried to tell you for two months, of what the particular facts are, which he's facing. And the facts I'm facing just now are that the Crown proposes to put in evidence a series of pictures which, first of all, on their face, don't look particularly inflammatory to me. Photograph number 10 shows an inert body lying on the floor, photograph number 11 shows a part of a body, and 10, I grant you, there is some blood, in certain other photographs there is some blood. If I understand the position of the Crown, the Crown proposes to use these photographs to develop the narrative of what transpired on the ninth floor on the day in question. So not all the jurisprudence in the world...

VALERY FABRIKANT :

Okay.

THE COURT :

...which would - I'm not finished - which.... would do no more than simply affirm the principle that I've alluded to would be of any consequence in the kind of decision I have to make here. Primarily I make my decision on the basis of what the Crown proposes to do and what...

VALERY FABRIKANT :

Okay.

THE COURT :

...and what the Crown proposes to file.

VALERY FABRIKANT :

Let me then continue in the way in which you indicated. So let us assume that the Crown needs this picture to prove certain points which otherwise cannot be proven, there is nothing absolutely there to prove except that Dr. Hogben was killed in my office. This is the fact which I do not intend to deny. Second, identity, nobody ever challenged, so I...

Me JEAN LECOURES :

With your permission...

VALERY FABRIKANT :

I haven't finished yet. So I would like the Crown to stipulate more or less clearly as to which exactly argument they want to prove by those bloody pictures which cannot be proved otherwise. Because there is no doubt that blood and bloody pictures do inflame every normal person, this is just the way normal people are. And inflammation is not what is required in Court, but rather cool head and the consideration of facts. So, so far the Crown didn't demonstrate a single solitary thing which Crown needs to prove, and which either is provable otherwise or can be just taken as my admission.

THE COURT :

I come back to what I said before, you asked me a question, you asked me whether or not you could take cognizance of the Crown's jurisprudence, I'm prepared to grant you fifteen (15), twenty (20) minutes to take cognizance of the jurisprudence that was filed. If you feel that that will put you in a better position to argue... I'm not prepared to let you go on a tour of the

law libraries of the courthouse in order to do any research at this particular point, we're in the middle of a trial.

VALERY FABRIKANT :

Well, I was not allowed this before trial either.

THE COURT :

Well, I'm simply answering your question. You asked the question, not I.

VALERY FABRIKANT :

Okay. But what I have said, ins't it enough to show that there is no need for those pictures?

THE COURT :

No. No.

VALERY FABRIKANT :

It's not enough?

THE COURT :

No. No.

VALERY FABRIKANT :

So let the Crown say...

THE COURT :

I would prefer that the Crown place in evidence the proof that the Crown has to place in evidence in this case, and that there be no doubt about it. So that we are not having an argument as to what was proved, or what was admitted, or what was perhaps admitted, and that we don't have to go, hour after hour, over the tapes, to see who said what, at what point in the day. I made it perfectly clear right from the very beginning that... and indeed you indicated that you had no admissions to make, so... I'll give you the time that you asked for in this instance to look at these cases, and I would underline that in doing so I am not engaging myself in any undertaking to adjourn every hour or every half hour or every fifteen (15) minutes in order to permit you to consult jurisprudence which might be filed in relation to one or other of the objections that you might choose to make. So we'll adjourn for fifteen (15), twenty (20) minutes.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

VALERY FABRIKANT :

Well, as I said before, this is exactly the case when jurisprudence is being presented in part, is read, usually impression is false. And this is the case here as well, because the part which was read effectively states unambiguously that the only criteria is if the picture is admissible according to evidence act, and it doesn't matter what effects it has on the jury or anybody else. That is what is written here. Besides, this is taken... well it doesn't say... yes, it does say that whatever it inflames the minds of the jury it doesn't matter because if they are admissible, that's it, that's the only thing what comes. But on the other hand, if you read the second jurisprudence, you have an opinion quite opposite. Here, on page 228, we read that:

"There should be a test made whether or not photographs would support and explain the oral evidence, and would serve a useful purpose in corroborating such oral evidence.

The only restriction placed on the admissibility was where a photograph was a trivial probative value and quite likely to prejudice substantially some party to a case. In such a situation he certainly might be entitled to exercise the discretion to reject it on the ground, and otherwise there could be a fair and an impartial trial."

So, it's quite opposite opinions, and if you take the second opinion, then we have to make the test as to how those pictures will corroborate any of the oral evidence. Nobody saw the first victim to be shot, no oral evidence of any kind could be presented there, so I believe that Crown should first make its case as to what exactly points it will try to prove by using these particular pictures, and so far this case has not been made yet. So I invite the Crown to make the case as to what exactly they intend to prove with those pictures.

Me JEAN LECOURE :

I already made my argument, My Lord.

VALERY FABRIKANT :

Well, what was it?

THE COURT :

You were here, you heard it.

VALERY FABRIKANT :

Well, he said that he needs this for identification of victim. Well I don't deny, so the value is... what else did he say, I don't think anything else. Am I correct, for identification purposes? Or should we play it again, because I don't remember.

Me JEAN LECOURE :

(Inaudible).

VALERY FABRIKANT :

I need to make a rebuttal, therefore I need to know what he said.

THE COURT :

Would you elucidate your argument again?

VALERY FABRIKANT :

Yes, please.

THE COURT :

Please, just on that point.

Me JEAN LECOURE :

As I said, it's to corroborate oral evidence, they are needed actually to identify the victims. Mr. Fabrikant clearly said at the pre-trial conference that he did not make any admissions, unless there was absolutely no witness produced by the Crown. And as I said, it's part also of the whole scene. We have to understand what went on. Maybe Mr. Fabrikant understands very well but the jury has to understand, they need plans, they need photographs, they need... Everything was reduced to the strict minimum, My Lord.

VALERY FABRIKANT :

Well, what the dead body would...

THE COURT :

Thank you, Mr. Lecours.

VALERY FABRIKANT :

...give them, and regardless what I said there, on pre-

trial conference, I repeat once again. If the oral evidence, what they want to corroborate, I'm prepared to admit it, this particular oral evidence, therefore the probative value of pictures is zero.

THE COURT :

You're finished?

VALERY FABRIKANT :

Yes.

THE COURT :

Sit down. Thank you. As far as I'm concerned, and looking through the pictures, first of all there is nothing particularly reprehensible about any of the pictures comparatively speaking, having regard for the fact that we're dealing here with a murder case. I'm certainly not, upon looking at the pictures, of the opinion that the Crown is attempting to show pictures 10 and 11 for the purpose of inflaming the jury, rather they are, in my view, essential to the development of the narrative of what transpired on the ninth floor. I'll take the Crown prosecutor's affirmation on its face value, the purpose of the photographs is several fold, 1 to 8 in the question of identification, but also to corroborate the testimony of other witnesses. And I cannot see how, relatively speaking, the pictures will serve to prejudice the accused, therefore the pictures are declared to be admissible integrally, the pictures numbers 1 to 56 in the exhibit which the Crown now proposes to produce, I presume, as P-8. Jury please.

MEMBERS OF THE JURY ARE PRESENT

WITNESS: ROBERT DESJARDINS -- UNDER THE SAME OATH

CONTINUATION OF EXAMINATION BY Me JEAN LECOURS

ATTORNEY FOR THE CROWN :

- Q. So Mr. Desjardins, you brought with you a booklet of photographs, on which day did you take these photographs?
- Q. Alors monsieur Desjardins, vous avez apport, avec vous un album de photos, quelle est la date de la prise de ces photos?
- R. Elles ont ,t, prises le vingt-quatre (24) ao-t mil neuf cent quatre-vingt-douze (1992).
- R. August twenty-fourth (24th), nineteen ninety-two (1992).
- Q. Okay. And do they indeed represent all the scenes you were talking about?
- Q. Est-ce qu'en fait elles repr,sentent toutes les scšnes que vous avez mentionn,es plus t"t?
- R. Oui, elles couvrent les scšnes 1, 2, 3 et 6 tel que repr,sent,es sur mon plan.
- R. Yes, they cover scenes 1, 2, 3 and 6 as represented on my sketch.
- Q. I would like you to file this booklet as P-8.
- Q. J'aimerais que vous le produisiez sous P-8.
- Me JEAN LECOURS :
- One set for two jurors.

THE COURT :

Yes, you just share between the two of you, one set of pictures. Okay. Before Mr. Lecours goes ahead and asks questions on each of the pictures, take just a minute or so to flip through the booklet and take a general look at the pictures so that you'll know what's there. Now I invited the jury first of all to look through the

pictures so that the pictures are not being looked at while you're asking your questions but rather they'll come back to the first picture as you...

Me JEAN LECOURES :

That's precisely why we give one set to two jurors.

THE COURT :

I'm aware, but I would prefer that they look through them first.

Okay Mr. Lecours, go ahead.

Me JEAN LECOURES :

Q. Okay. Constable Desjardins, could you give a summary description of each of these photographs...

-Q. Constable Desjardins, pourriez-vous donner une description sommaire de chacune des photographies...

Q. ...in the numerical order, starting with picture number 1.

-Q. ...en ordre num,rique, d,utant avec la photo num,ro 1.

R. D'accord. Alors la photo num,ro 1...

-R. Very well. Photo number 1 represents...

R. ...repr,sente l'Universit, Concordia.

-R. ...Concordia University.

Q. Well, could you be a little bit more descriptive, which address, and where is it?

-Q. Est-ce que vous pourriez pr,ciser? C'est-...-dire quelle est l'adresse et ... quel endroit ta se situe?

R. Alors c'est sp,cialement ici pour localiser l'universit,, o- on voit l'adresse, le 1455, de Maisonneuve Ouest.

-R. So to locate the university and the location, it would be the 1455 de Maisonneuve Boulevard West.

Q. Okay. Please go on.

-Q. Veuillez poursuivre.

R. La photo num,ro 2 nous situe dans le corridor du neuviŠme ,tage...

-R. Photo number 2, the corridor on the ninth floor...

R. ...qui est identifi, sur le plan par le chiffre 929-91.

-R. ...on the plan it is identified to a number 929-91.

R. La photo suivante...

-R. Next photograph...

Q. Number 3?

R. Oui, la photo num,ro 3.

-R. Yes, photograph number 3.

R. C'est toujours le m^me corridor, cette fois-ci c'est un plan rapproch,...

-R. Still the same hallway but an enlarged view...

R. ...qui nous montre une arme par terre dans le corridor.

-R. ...which shows a weapon on the floor, in the hallway.

R. Photo num,ro 4...

-R. Photo number 4...

R. ...c'est un gros plan de l'arme en question.

-R. ...enlargement of the weapon in question.

R. Photo num,ro 5...

-R. Photo number 5...

R. ...toujours la m^me arme, cette fois-ci avec le chargeur retir,...

-R. ...still the same weapon with the magazine removed from the weapon...

R. ...et montrant aussi qu'il y restait un projectile.

-R. ...showing that there was a remaining projectile.

R. Une cartouche.

-R. Or casing, or cartridge rather.

R. Photo num,ro 6...

-R. Photo number 6...

R. ...c'est un gros plan des inscriptions ainsi que du num,ro de s,rie de l'arme.

-R. ....enlargement of the markings as well as the serial number of the weapon.

Q. Could you read them please?

-Q. Est-ce que vous pourriez les lire?

R. Oui. Alors il s'agit d'un pistolet de marque MEB...

-R. Yes. It is a MEB pistol...

R. ...de calibre 6.35...

-R. ...of 6.35 caliber...

R. ...portant le num,ro de s,rie 162823.

-R. ...bearing serial number 162823.

R. Maintenant la photo num,ro 7...

-R. Now photo number 7...

R. ...nous place devant le local 929-24.

-R. ...locates us in front of office number 929-24.

R. Et sur la photo nous pouvons voir l'inscription de monsieur V. Fabrikant sur cette porte.

-R. On the photograph we can see the mention V. Fabrikant on the door.

Q. Which you described as scene 1 on your sketch, right?

-Q. Et que vous avez d,crite ,tant la m^me sur votre croquis, exact?

R. Oui, #a correspond ... la scšne 1 sur le plan.

-R. Yes, it corresponds to scene number 1 on the plan.

R. Photo num,ro 8, c'est la m^me porte mais avec une vue plongeante...

-R. Photo number 8, the same door but with an inside view...

R. ...pour montrer ce qu'on voyait ... partir du corridor.

-R. ...to show what we could see from the hallway.

Q. And indeed what did you see?

-Q. Et en fait qu'avez-vous vu?

R. Alors la porte ,tait entrouverte de cette fa#on, nous pouvions apercevoir le corps d'une personne qui gisait sur le plancher.

-R. And the door being ajar in this matter, we could see the body of a person lying on the floor.

R. Photo num,ro 9...

-R. Photo number 9...

R. ...c'est la m^me pišce, cette fois-ci j'ai entrouvert la porte et j'ai pris une photo, une vue g,n,rale pour montrer le bureau.

-R. ...I opened the door to this office and I wanted to take a general view, a general photograph of the inside of the office.

R. La photo num,ro 10...

-R. Photo number 10...

R. ...c'est une vue g,n,rale du corps de la personne...

-R. ...general view of the body of the person...

R. ...qui fut identifi,e par la suite comme ,tant monsieur Hogben.

-R. ...who was identified afterwards as being Mr. Hogben.

R. Photo num,ro 11...

-R. Photo number 11...

R. ...c'est toujours dans le m^me bureau de monsieur Fabrikant...

-R. ...still in Mr. Fabrikant's office...

R. ...derrišre la porte o- on peut apercevoir un trou dans le mur...

-R. ...behind the door there's a hole in the wall...  
R. ...et avec une inscription portant le num,ro 1.  
-R. ...bearing the inscription number 1.  
Q. Do the photographs number 10 and 11 as well as all the others represent faithfully what you saw yourself personally?  
-Q. Est-ce que les photos 10, 11 et suivantes repr,esentent fidĚlement ce que vous avez aperĉu, ce que vous avez vu?  
R. Oui, exactement, il n'y a eu aucune modification, aucun...  
-R. Yes, as is, there were no changes or modifications.  
Q. Okay.  
R. La photo num,ro 12 est un gros plan de ce trou.  
-R. Photo number 12 is an enlargement of that hole.  
R. En passant, qui s'est av,r, ětre un trou de projectile.  
-R. In passing, it was a bullet hole.  
R. Photo num,ro 13.  
-R. Photo number 13.  
R. Cette fois-ci, pour vous situer sur le plan, nous sommes dans le local 929-1.  
-R. In order to situate you on the plan, we are now in office number 929-1.  
R. Qui est le secr,tariat.  
-R. Which is the secretaries' area.  
R. Alors cette vue g,n,rale nous montre un coin de la piĚce...  
-R. This general view shows us a corner of the office...  
R. ...et par la suite sur les autres photos nous allons nous rapprocher graduellement de ce coin...  
-R. ...and afterwards, on the following, upcoming photographs, we will have enlargements of this area.  
Q. Okay. 14.  
-Q. D'accord. Num,ro 14.  
R. Alors num,ro 14, nous sommes plus rapproch,s du coin...  
-R. We are closer in that area...  
R. ...et vous pouvez remarquer ... la prise ,lectrique il y a ,galemment mon inscription portant le num,ro 1.  
-R. ...and you can see near the plug, at the bottom, there's also another one of my inscriptions bearing number 1.  
Q. Why do you use the same number, number 1?  
-Q. Pourquoi utilisez-vous le m^me num,ro, num,ro 1?  
R. Finalement c'est la trajectoire, c'est le point de sortie du projectile qui ,tait identifi, comme le num,ro 1...  
-R. Finally it was the exit hole of the projectile identified as number 1 in the trajectory...  
R. ...dans la chambre pr,c,dente.  
-R. ...in the previous office.  
R. Photo num,ro 15...  
-R. Photo number 15...  
R. ...c'est un gros plan maintenant du point de sortie de ce projectile.  
-R. ...an enlargement of the exit hole of that projectile.  
R. Alors vous constatez que la prise a ,t, endommag,e car le projectile est sorti sous cette prise.  
-R. You will notice that the plug was damaged since the projectile exited under that plug.  
R. Photo num,ro 16.  
-R. Photo number 16.  
R. Nous sommes toujours dans le secr,tariat, qui est le local 929-1...

-R. Still in the secretarial area, bearing number 929-1...  
R. ...et sur la photo, en bas ... droite...  
-R. ...at the bottom of the photograph, on the right-hand side...  
R. ...vous apercevez ,galement mon num,ro 1 qui va identifier le projectile...  
-R. ...you will also see my number 1, identifying the projectile...  
R. .... l'endroit o- nous l'avons trouv,..  
-R. ...where we found it.  
Q. Okay. Does it show on your sketch as well?  
-Q. Est-ce que #a apparaEt sur le croquis ,galement?  
R. Oui. Si vous regardez le plan...  
-R. Yes. If you take the plan...  
R. ...vous avez l'inscription R-1 en rouge...  
-R. ...you have the inscription R-1 in red...  
R. ...avec une ligne pointill,e qui indique la trajectoire approximative du projectile.  
-R. ...with a dotted line which indicates an approximate trajectory of the projectile.  
Q. Okay. Please go on.  
-Q. D'accord. Poursuivez.  
R. Photo num,ro 17...  
-R. Photo 17...  
R. ...c'est un plan un peu plus rapproch, du projectile pour le situer.  
-R. ...a close-up of the projectile to locate it.  
R. Photo num,ro 18 c'est maintenant un plus gros plan du projectile.  
-R. And photo number 18 now enlargement of that projectile.  
R. Maintenant nous passons ... la photo 19...  
-R. We are now at photo number 19...  
R. ...qui nous amŠne ... la scŠne 2 sur le plan...  
-R. ...which brings us to scene number 2 on the plan...  
R. ...qui est la chambre 929-19.  
-R. ...which is office number 929-19.  
R. Et sur la porte nous pouvons y voir l'inscription "monsieur Saber".  
-R. And on the door we can see the inscription "Mr. Saber".  
R. Photo num,ro 20...  
-R. Photo number 20...  
R. ...c'est une premiŠre vue de ce que nous apercevons ... l'int,rieur de ce (inaudible).  
-R. ...a first view or glance at what you can see inside that office.  
R. Photo num,ro 21...  
-R. Photo number 21...  
R. ...c'est un autre plan de l'autre partie de la chambre qu'on ne pouvait pas voir sur la photo pr,c,dente.  
-R. ...another view of another part of the room that we cannot see on the previous photograph.  
R. Photo num,ro 22...  
-R. Photo number 22...  
R. ...nous montre un projectile... correction, une douille vide qui a ,t, r,cup,r,e dans le coin du bureau.  
-R. ...showing us an empty casing recovered from the corner of the office.  
Q. Is it represented in your sketch as well?  
-Q. Est-ce que c'est ,galement repr,sent, sur votre plan?  
R. Oui, sur le plan c'est identifi, comme ,tant R-2.  
-R. Yes, on the plan it is referred to as R-2.

R. Photo num,ro 23, c'est un gros plan de cette douille vide.

-R. And photo number 23 is an enlargement of that empty casing.

R. Maintenant photo num,ro 24...

-R. Now photo number 24...

R. ...nous sommes toujours dans la scēne 2, dans le local 929-19...

-R. ...still on scene number 2, office number 929-19...

R. ...et ici nous avons une autre douille vide, repr,sent,e ici par le num,ro 3.

-R. ...here we have another empty casing represented by number 3.

Q. Is it located on your plan as well?

-Q. Est-ce que c'est ,galement repr,sent, sur votre plan?

R. Oui, toujours.

-R. Yes, always.

R. Chaque exhibit identifi, sur mes photos par un num,ro est repr,sent, sur le plan par le m^me num,ro correspondant.

-R. Each exhibit in the photographs referred to with a number appears on the plan also bearing the same number.

R. Et photo num,ro 25 c'est un gros plan de cette douille.

-R. And photo number 25 is an enlargement of that casing.

R. Photo num,ro 26...

-R. Photo number 26...

R. ...toujours dans la m^me pišce...

-R. ...still in the same room...

R. ...nous apercevons un appareil genre fax...

-R. ...there's a fax machine that can be seen here...

R. ...et avec mon inscription num,ro 4...

-R. ...with my mention number 4...

R. ...qui va nous amener ... un projectile qui a ,t, r,cup,r, derrišre ce fax.

-R. ...which will lead us to a projectile which was found behind that fax machine.

R. Photo num,ro 27, nous apercevons maintenant le projectile qui s'est retrouv, derrišre le fax...

-R. Photo number 27, we can now see the projectile which was found behind the fax machine...

R. ...et qui est ,galement repr,sent, sur le plan par la mention R-4.

-R. ...which also appears on the plan as R-4.

R. Photo num,ro 28.

-R. Photo number 28.

R. Pour vous situer...

-R. To locate you...

R. ...nous allons revenir ... la photo num,ro 21...

-R. ...we'll get back to photo number 21...

R. ...sur cette photo vous apercevez sur le mur un grand papier brun.

-R. ...on this photo on the wall you will see a large brown paper.

R. Maintenant la photo 28 est un plan rapproch, de ce papier...

-R. Now photo 28 is an enlarged view of that paper...

R. ...sur lequel, sur la partie gauche du papier on peut apercevoir deux trous.

-R. ...on which on the left-hand side of that paper we can see two holes.

R. Photo num,ro 29...

-R. Photo number 29...  
THE COURT :  
Q. Excusez-moi juste un instant. When you say, or when you translate an enlarged view, is it indeed an enlarged view or is it a close-up?  
-Q. Est-ce que c'est un agrandissement ou une vue rapproch,e?  
R. C'est un plan rapproch,..  
-R. It's a close-up, My Lord.  
R. Alors, la photo num,ro 29 est un plan rapproch, de ces deux trous...  
-R. So photo number 29 is a close-up of those two holes...  
R. ...et ici on remarque que le trou de droite est perc, vers l'int,rieur du papier...  
-R. ...and we can see that the hole on the right-hand side is pierced, perforated going inside the paper...  
R. ...et que le trou de gauche est perfor, vers l'ext,rieur.  
-R. ...and the hole on the left-hand side is perforated as though it was an exit hole.  
R. Photo num,ro 30...  
-R. Photo number 30...  
R. ...aprŠs avoir soulev, le papier on a pu remarquer une marque de... un petit trou dans le mur.  
-R. ...after lifting the paper off the wall we could see a small hole in the wall.  
R. Suite ... mes conclusions sur ces trous...  
-R. Following my conclusions on these holes...  
R. ...j'en suis venu ... d,terminer qu'il pourrait s'agir du projectile num,ro 4 qui a ricoch, sur le mur.  
-R. ...I determined that it could have been projectile number 4 which would have ricocheted off the wall.  
R. Maintenant nous arrivons ... la photo num,ro 31.  
-R. Now photo 31.  
R. Cette s,rie de photos que nous allons voir nous amŠne sur la scŠne 3.  
-R. This series of photos leads us to scene number 3.  
R. Qui est le corridor portant le num,ro 929-90.  
-R. Which is hallway 929-90.  
R. Alors la photo 31 nous situe dans le secr,tariat, avec une vue vers ce corridor.  
-R. Therefore photo number 31 is taken from the secretarial area with a view onto the hallway.  
R. La photo num,ro 32 nous situe maintenant dans ce corridor.  
-R. Photo number 32 situates us now inside the hallway.  
R. Au d,but du corridor.  
-R. At the beginning of the hallway.  
R. Et sur cette photo nous pouvons apercevoir ... l'avant-plan trois douilles vides portant les num,ros, les inscriptions 5, 6 et 7.  
-R. And in foreground of that photograph we can see empty casings bearing numbers 5, 6 and 7.  
Me JEAN LECOURE :  
Q. Okay. You're looking towards the west direction, right?  
-Q. Et vous regardez en direction ouest, c'est exact?  
R. C'est exact.  
-R. That's correct.  
R. Photo num,ro 33 est un plan rapproch, de ces trois douilles.  
-R. The photo number 33 is a close-up of those three

casings.

R. La photo num,ro 34...

-R. Photo number 34...

R. ...ici je vous r,fšre ... la photo num,ro 32...

-R. ...and I refer you to photograph 32...

R. ...vous pouvez voir que vers le centre du corridor, sur le tapis...

-R. ...you can see that in the center of the hallway, on the carpet...

R. ...il y a un bout de papier qui a ,t, plac, l.....

-R. ...a piece of paper was placed there...

R. ...c',tait pour identifier la photo num,ro 34 qui nous montre un genre de d,chirure dans le tapis.

-R. ...et was to identify and refer us to photo number 34, which represents a sort of tear in the carpet.

R. Photo num,ro 35...

-R. Photo number 35...

R. ...nous apercevons ici l'entr,e du local 929-4.

-R. ...we see the entrance to office 929-4.

R. Et sur cette photo ,galement, dans le cadrage, on aperçoit un trou de projectile.

-R. And in the frame we can also see a bullet hole.

R. Photo num,ro 36, c'est un plan rapproch, de ce trou.

-R. Photo number 36 is a close-up of this hole.

R. Photo num,ro 37 c'est une autre prise de vue, mais cette fois-ci avec l'identification num,ro 8.

-R. Photo number 37 is another view with number 8.

R. Photo num,ro 38...

-R. Photo number 38...

R. ...nous sommes toujours devant la m^me porte...

-R. ...still in front of the same door...

R. ...et cette fois-ci on aperçoit au bas un trou qui a ,t,... un instant, je cherche le terme, l..., qui a ,t, ex,cut, par moi pour pouvoir r,cup,er le projectile.

-R. ...and on this photograph we can see a hole at the bottom that was made by myself in order to retrieve the projectile.

Q. So it means the projectile was inside the wall or fell down on the floor, behind the wall or...?

-Q. Alors donc ça veut dire que le projectile se trouvait ... l'int,rieur du mur ou est tomb, au bas du mur?

R. C'est exact.

-R. That's correct.

R. Avant de faire ce trou j'ai premiřrement p,n,tr, ... l'int,rieur du local...

-R. Prior to making that hole I firstly went inside the office...

R. ...pour voir si le projectile n'avait pas travers, le cadrage et se retrouver ... l'int,rieur du local.

-R. ...to see if the projectile hadn't gone through the frame and then ended up inside the office.

R. Mais vu que ce n',tait pas le cas, alors on a pr,sum, qu'il ,tait rest, ... l'int,rieur du mur.

-R. But since we concluded that wasn't the case, or it wasn't the case, then we supposed that it could have been lodged inside that wall.

R. Alors la photo num,ro 39 c'est un gros plan du projectile qui a ,t, r,cup,r, dans le bas du mur.

-R. So photo 39 is an enlargement of the projectile retrieved from the wall.

R. Photo num,ro 40, c'est toujours une prise de vue du m^me

projectile mais avec un ,clairage diff,rent pour pouvoir mieux vous montrer le projectile.

-R. Photo number 40 is the same picture of the same projectile except with a different lighting so that you may see the projectile a little better, more clearly.

R. Photo num,ro 41...

-R. Photo number 41...

R. ...nous amšne devant la porte 929-7...

-R. ...(inaudible) door, or the office door 929-7...

R. ...qui est le local complštement au fond du corridor.

-R. ...which is the office located at the end of the corridor, the hallway.

R. Photo num,ro 42 nous montre un trou de projectile imm,diatement au-dessus de la poign,e de porte de cette porte.

-R. Photo number 42 shows us a bullet hole directly over the door knob of that door.

R. Ici je dois mentionner que le trou de projectile... le projectile ici a travers, la porte.

-R. I must mention here that the projectile did indeed go through the door.

R. Photo num,ro 43...

-R. Photo number 43...

R. ...est un autre trou de projectile, dans la m^me porte.

-R. ...is another bullet hole in the same door.

R. Cette fois-ci le projectile a ,t, recup,r, ... l'endroit o- il est.

-R. This time the projectile was retrieved at the location that is shown where it was.

R. Photo num,ro 44...

-R. Photo number 44...

R. ...c'est toujours la m^me porte, cette fois-ci identifiant mes deux trous de projectile comme ,tant le num,ro 9 et le num,ro 10.

-R. ...still the same door, this time identifying bullet holes by number 9 and number 10.

R. Photo num,ro 45...

-R. Photo number 45...

R. ...c'est la m^me porte mais cette fois-ci ouverte...

-R. ...same door, this time opened...

R. ...pour localiser le projectile num,ro 10 qui avait

</pre></body></html>

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

...to locate projectile number 10 which had gone through the door.

R. Et sur l',cran de l'ordinateur on aperçoit mon num,ro 10 pour indiquer la trajectoire de ce projectile.

-R. On the computer screen you can see number 10 that I apposed there to show the trajectory of the projectile.

R. Photo num,ro 46 c'est un plan rapproch, d'une marque au bas de l'ordinateur qui a ,t, caus,e par ce projectile.

-R. Photo number 46 shows a dent or a mark at the bottom of the computer screen that was made by the projectile along its trajectory.

R. Et maintenant photo num,ro 47 nous montre le projectile qui a ,t, retrouv, derrišre cet ordinateur.

-R. And now photo number 47 shows a projectile that was found behind the computer.

Q. And it is shown in your sketch as well, right?

-Q. Et il est ,galement mentionn, sur votre plan, exact?

R. C'est exact, oui.

-R. That's correct.

R. Comme ,tant le num,ro R-10.

-R. As being number R-10.

R. Ceci complšte la s,rie pour la scšne 3.

-R. This is the series for scene number 3, and now...

R. Et maintenant nous allons passer ... la photo num,ro 48.

-R. ...we will move on to photo 48.

R. Qui est, sur votre plan, si vous r,f,rez au plan, la chambre 929-8.

-R. If you refer to your plan, on the plan it is referred to as office number 929-8.

R. Sur le plan vous remarquerez qu'entre la chambre 929-8 et 929-9 il y a une porte communicante entre les deux.

-R. You will notice on your plan that between offices 929-8 and 929-9 there is an office linking or connecting both offices, a door.

R. C'est #a. Et sur cette photo 48 nous apercevons cette porte qui est ouverte.

-R. And on photo 48 we can see that the door is opened.

R. Maintenant photo num,ro 49.

-R. Now photograph 49.

R. Je suis situ, dans l'entr,e de cette porte...

-R. I'm positioned in the entrance, in the doorway...

R. ...et nous voyons une vue g,n,rاله du local 929-9...

-R. ...and we can see a general view of office number 929-9...

R. ...ainsi qu'une douille vide par terre portant l'inscription num,ro 11.

-R. ...as well as an empty casing on the floor bearing number 11.

R. Photo num,ro 50 c'est un plan rapproch, de cette douille.

-R. Photo number 50 is a close-up of that casing.

R. Photo num,ro 51...

-R. Photo number 51...

R. ...une autre vue g,n,rاله du m^me local.

-R. ...another general view of the same office.

R. Photo num,ro 52...

-R. Photo number 52...

R. ...nous amšne derrišre le bureau...

-R. ...leads us behind the desk...

R. ...o- nous apercevons le fil de t,l,phone qui est tendu ... travers l'espace r,serv,.

-R. ...where we can see the telephone cord running across the

reserved area, or restricted area.

R. Photo num,ro 53 c'est une vue du m<sup>^</sup>me local mais prise en sens inverse.

-R. Photo number 53 is a view of the same office but taken from another view, or the opposite view.

Q. You mean looking towards the door of 929-8?

-Q. Vous voulez dire en regardant vers la porte du bureau 929-8?

R. C'est exact, oui.

-R. That's correct, yes.

R. La porte que nous voyons sur la photo c'est la porte qui lie les deux bureaux 8 et 9.

-R. The door that appears on the photo is the door connecting both offices -8 and -9.

R. Photo num,ro 54...

-R. Photo number 54...

R. ...c'est toujours dans la chambre 929-9...

-R. ...still in office number 929-9...

R. ...et c'est derriřre la deuxiřme porte de sortie qui est au haut de cette piřce...

-R. ...and behind the second exit door, which is at the top of that room...

R. ...nous apercevons un trou de projectile dans le coin de ce mur identifi, comme ,tant num,ro 12.

-R. ...we see a bullet hole in the corner of that wall identified as number 12.

R. Photo num,ro 55 c'est un plan rapproch, du trou.

-R. Photo number 55 is a close-up of the bullet hole.

R. Et finalement photo num,ro 56 c'est le projectile qui a ,t, r,cup,r, ... l'int,rieur de ce mur.

-R. And finally number 56 is a...

R. Un plan rapproch,.

-R. ...is a close-up view of that projectile that was retrieved from the wall.

Q. Okay. You told the members of the jury that you seized these various items you were relating to?

-Q. Vous avez mentionn, aux membres du jury que vous avez saisi ces piřces auxquelles vous vous r,f,rez?

R. Oui, elles ont toutes ,t, saisies, et num,rot,es, et identifi,es par moi.

-R. Yes, they were all seized, numbered and identified by myself.

Q. Okay. I show you an envelope bearing the number C-64062...

-Q. Je vous montre une enveloppe portant le num,ro C-64062...

Q. ...which itself contains various items...

-Q. ...qui comprend plusieurs items...

Q. ...numbered 1 to 13, or 1 to 12, could you please file them and describe them summarily?

-Q. ...num,ros 1 ... 12, pourriez-vous les d,crire briřvement et les produire?

Me JEAN LECOURS :

Mrs. Desrosiers, I would like to file in bulk as P-9.

- Produites en liasse sous P-9.

Q. And could you detail the various items inside this envelope?

-Q. Pourriez-vous d,crire les divers objets se trouvant ... l'int,rieur des enveloppes?

Q. And if the envelope is empty, if ever the case may be, just describe the label.

-Q. Et si le sac est vide, si tel est le cas, d,crire simplement l',tiquette.

Q. And an explanation might be given later for that.

-Q. Peut-<sup>^</sup>tre qu'on pourrait trouver une explication plus tard ... ce sujet.

R. D'accord. Alors ici dans l'enveloppe num,ro 1 nous avons un projectile.

-R. All right. In bag number 1 we have a projectile.

Q. Okay. Could you please indicate for the benefit of the Jury where it was located and...

R. D'accord.

-Q. Pourriez-vous indiquer pour les membres du jury ... quel endroit il se trouvait?

R. Oui. Alors le projectile dans cette enveloppe correspond ... la cote R-1 qui appara t dans le secr,tariat portant le num,ro 929-1.

-R. The projectile in this bag refers to on the plan R-1 in the secretarial area 929-1.

R. L'enveloppe...

THE COURT :

Juste un instant. You're producing these en liasse as P-9, I presume P-9.1, P-9.2, P-9.3?

Me JEAN LECOURES :

Yes.

THE COURT :

So that one there will become P-9.1. Okay. Excuse me, Mr. Desjardins.

- Pardon monsieur Desjardins, poursuivez.

R. Alors ma deuxi me enveloppe porte l'inscription num,ro 2...

-R. My second bag bears inscription number 2...

R. ...qui correspond ... la douille vide que j'ai r,cup,r,e dans la chambre 929-19.

-R. ...which corresponds to the casing that I retrieved from office number 929-19.

R. Qui est repr,sent,e par l'inscription R-2.

-R. Which is represented or referred to by R-2.

R. Mon enveloppe num,ro 3 ici c'est la douille vide qui a ,t, r,cup,r,e toujours dans le m^me local.

-R. The third bag is the third casing also retrieved in the same office.

Me JEAN LECOURES :

Q. Yes. P-9.3.

R. Ici j'ai mon projectile qui est identifi, par R-4.

-R. Here I have my projectile referred to as R-4.

Me JEAN LECOURES :

So we'll file as P-9.4.

R. Mon item num,ro 5 est une douille vide qui correspond, sur le plan, ... l'inscription R-5 dans le corridor 929-90.

-R. My item number 5 refers to R-5 on the plan found in corridor 929-90.

Me JEAN LECOURES :

Filed as P-9.5.

THE COURT :

Excuse me, can I back up just a second? Envelope number 4, P-9.4...

Me JEAN LECOURES :

Yes.

THE COURT :

...is that an empty envelope or... no, there's something in it, is there not?

Me JEAN LECOURES :

Yes, My Lord.

THE COURT :

Okay. I didn't think the witness spoke about it, I thought he mentioned it and then moved on to 5.

Me JEAN LECOURES :

Okay. There is something.

THE COURT :

Yes. Okay.

Me JEAN LECOURES :

Q. Please go on.

-Q. Poursuivez, je vous prie.

R. O.K. Mon enveloppe num,ro 6 c'est une douille vide qui a ,t, r,cup,r,e toujours dans le corridor comme ,tant le num,ro R-6.

-R. Bag number 6, an empty casing still found in that corridor referred to as R-6.

Me JEAN LECOURES :

Filed as P-9.6.

R. Mon enveloppe num,ro 7...

-R. Bag number 7...

R. ...est ,gatement une douille vide qui porte l'inscription R-7, toujours dans le m^me corridor.

-R. ...also an empty casing referred to as R-7, found in the same corridor.

Me JEAN LECOURES :

Filed as P-9.7.

R. Mon enveloppe num,ro 8...

-R. Bag number 8...

R. ...correspond au projectile R-8 qui avait ,t, r,cup,r, dans le cadrage de porte...

-R. ...corresponds to projectile R-8 found in the door frame...

R. ...du local 929-4.

-R. ...of office 929-4.

Me JEAN LECOURES :

Filed as P-9.8.

R. Mon enveloppe num,ro 9...

-R. Bag number 9...

R. ...contient le projectile identifi, comme R-9...

-R. ...contains the projectile referred to as R-9...

R. ...qui avait ,t, r,cup,r, dans la porte du local 929-7.

-R. ...retrieved from the door of office number 929-7.

Me JEAN LECOURES :

Filed as P-9.9.

R. Mon enveloppe num,ro 10...

-R. Bag number 10...

R. ...contient le projectile identifi, comme ,tant R-10 dans le local 929-7.

-R. ...contains the projectile referred to as R-10 retrieved from office number 929-7.

Me JEAN LECOURES :

Filed as P-9.10.

R. Mon enveloppe num,ro 11...

-R. Bag number 11...

R. ...est la douille vide qui avait ,t, r,cup,r,e entre, ou ... l'int,rieur, imm,diatement en rentrant du local 929-9.

-R. ...was a casing referred to as R-11, retrieved from the entrance, immediately upon entering 929-9.

Me JEAN LECOURES :

Filed as P-9.11.

R. Ici dans l'enveloppe num,ro 12 j'ai le projectile identifi, comme ,tant R-12...

-R. Bag number 12 I have here the projectile referred to as R-12...

R. ...qui correspond au projectile que vous avez vu tant"t sur la photo.

-R. ...which corresponds to the projectile that you saw earlier on the photograph.

Me JEAN LECOURES :

Filed as P-9.12.

R. Et maintenant mon enveloppe num,ro 13...

-R. Now bag number 13...

R. ...qui contient quatre cartouches vides de calibre 38.

-R. ...containing four empty 38 caliber cartridges.

Me JEAN LECOURES :

Filed as P-9.13.

Q. Now I'm showing you another envelope...

-Q. Je vous montre maintenant un autre sac...

Q. ...labelled C-64073...

-Q. ...identifi, C-64073...

Q. ...could you describe its content?

-Q. ...pourriez-vous d,crire son contenu?

R. Oui. Alors c'est bien l'arme que j'avais r,cup,r,e dans le corridor 929-91...

-R. Yes. That was the weapon that I retrieved from corridor 929-91...

R. ...et c'est bien les m^mes inscriptions que sur mes photos, alors c'est un modšle MEB...

-R. ...and it bears the same markings as those on the photographs, it is a MEB model...

R. ...de calibre 6.35...

-R. ...6.35 caliber...

R. ...et portant le m^me num,ro de s,rie, 162823...

-R. ...bearing the same serial number 162823...

R. ...ainsi que son chargeur...

-R. ...as well as its magazine...

R. ...qui paraissait sur la m^me photo, et qui est identifi, comme ,tant R-13 dans le corridor 924-91.

-R. ...which appeared on the same photograph that was referred to as R-13 in that corridor number 929-91.

Me JEAN LECOURES :

Okay. We would like to file that as P-10. And maybe we can divide the gun as P-10.1 and the cartridge as P-10.2.

Q. Is there anything inside the cartridge? Could you have a look please?

-Q. Y a-t-il quelque chose ... l'int,rieur de la cartouche?

Pourriez-vous regarder, s'il vous plaQt?

Q. Is there a different number on this?

-Q. Y a-t-il un num,ro diff,rent l...-dessus?

R. Non, le chargeur est complštement vide.

-R. No, the magazine is completely empty.

THE COURT :

So the gun is filed as P-10.1 and the magazine is P-10.2, is that right?

Me JEAN LECOURES :

Yes, My Lord.

THE COURT :

Okay.

Me JEAN LECOURES :

Q. I'm showing you another envelope, could you please describe its content for the members of the jury?

-Q. Je vous montre un autre sac, pourriez-vous, s'il vous plaQt, en d,crire le contenu pour les membres du jury?

R. Oui. C'est un chargeur...

-R. Yes. It is a magazine...

R. ...et avec pr,sentement cinq cartouches non utilis,es ... l'int,rieur.

-R. ...with currently five unused cartridges inside the bag.

R. C'est... ce chargeur m'a ,t, remis par le sergent d,tective

Henri sur les lieux-mêmes...

-R. This magazine was handed over to me by Detective Sergeant Henri on the premises as such...

R. ...dans le but d'en faire une expertise.

-R. ...in order to conduct an expert analysis.

Q. At the time you received it from Mr. Henri, and I want to say that the number, the label is C-64067...

-Q. Au moment où vous l'avez reçu de monsieur Henri, et j'aimerais préciser le numéro d'étiquette C-64067...

Q. ...how many bullets, cartridges were with the cartridge holder?

-Q. ...combien de cartouches y avait-il avec le chargeur?

R. Je me souviens que le chargeur était plein et qu'il contenait huit cartouches.

-R. I recall that the magazine was full and it contained eight cartridges.

Q. Okay. There is the inscription... is it your handwriting on that?

-Q. Est-ce que c'est votre écriture qui apparaît sur l'étiquette?

R. Oui, c'est bien mon écriture.

-R. Yes, that is my handwriting.

Q. We can see here "chargeur with neuf balles"...

-Q. We can see here "magazine with nine bullets"...

Q. ...how could you explain that?

-Q. ...comment pouvez-vous expliquer cela?

R. C'est tout simplement une erreur probablement due ... la fatigue, parce que sur mon rapport c'est bien huit cartouches que ce chargeur contenait.

-R. It's a mistake obviously, possibly due to fatigue, because in my report it was mentioned that eight bullets were contained.

R. Mais lors de l'inscription j'ai dû, par erreur, inscrire neuf au lieu de huit.

-R. But possibly by mistake I would have written nine instead of eight when I wrote up the label.

Q. Okay.

Me JEAN LECOURE :

So I would like to file this exhibit, the cartridge holder...

Q. ...and at this point, five of them, but you say previously there were more than that, there were eight, right?

-Q. Mais vous dites qu'il y en avait huit auparavant? Il y en avait plus?

R. Oui, il y en avait huit lorsque j'en ai pris possession.

-R. Yes, when I took possession of it there were eight.

Me JEAN LECOURE :

P-11.

Q. I'm showing you another exhibit bearing the label C-64072.

-Q. Je vous montre... portant un numéro d'étiquette C-64072.

R. Oui, je reconnais l'arme.

-R. Yes, I recognize the weapon.

R. C'est bien un revolver de calibre 38...

-R. It is a 38 caliber revolver...

R. ...et qui porte le numéro de série 327361...

-R. ...bearing serial number 327361...

R. ...et qui correspond bien ... l'arme que j'avais récupérée ce soir-là...

-R. ...which corresponds to the weapon that I had recovered that night.

Q. By whom was it given to you?

-Q. Qui vous l'a soumise?

R. C'est le sergent détective Henri qui me l'a remis...

-R. Detective Sergeant Henri gave it to me...  
R. .... dix-huit heures (18 h) exactement...  
-R. ...specifically and exactly at six o'clock (6:00), or eighteen hundred hours (18:00)...  
R. ...après l'avoir s,curis, avant mon arriv,e.  
-R. ...after securing it prior to my arrival.  
Q. Was there any shell or bullets accompanying this revolver?  
-Q. Y avait-il des douilles ou des projectiles accompagnant cette arme, ce revolver?  
R. Oui. Au moment o- je l'ai r,cup,r, le barillet contenait quatre douilles vides et une cartouche non utilis,e.  
-R. Yes. When I recovered it the barrel contained four empty...  
THE COURT :  
No, the drum.  
-R. ...the drum contained four empty casings and one cartridge.  
Me JEAN LECOURE :  
Q. Okay. Previously, when we quoted C-...  
Me JEAN LECOURE :  
Yes, we would like to file that as P-12.  
Q. Previously you referred to C-64062 and it was the R-13, could you have a look at that again please?  
-Q. Pr,c, demment vous avez r,f,r, ... R-13, qui portait le num,ro...  
Q. That's the last envelope.  
-Q. ...64062...  
Q. The last one. Could you give a further description of this please, in relation with your last comments about the revolver?  
-Q. Pourriez-vous d,crire davantage en relation avec le revolver que vous avez indiqu,?  
R. Oui. Ce sont les quatre douilles vides que j'avais r,cup,r,es dans le revolver.  
-R. Yes. Those are the four empty shells or casings that I had retrieved from the revolver.  
Q. Okay. At the beginning of your testimony you described the body of a human being, who was later identified as Dr. Hogben...  
-Q. Au d,but de votre t,moignage vous avez mentionn, un corps, le corps d'une personne identifi,e plus tard comme ,tant monsieur Michael Hogben...  
Q. ...did you seize anything nearby or in relation with this body at this occasion?  
-Q. ...est-ce que vous avez saisi quoi que ce soit prs de ce corps ... cette occasion-l...?  
R. Oui.  
-R. Yes.  
R. Je reconnais ce document...  
-R. I recognize this document...  
R. ...et il ,tait dans les mains de la victime au moment o- je l'ai d,couvert.  
-R. ...it was in the hands of the victim when I discovered it.  
Q. So it was removed by you?  
-Q. Alors donc il a ,t, retir, par vous-m^me?  
R. Oui, c'est moi-m^me qui en a pris possession et qui l'a prot,g, imm,diatement.  
-R. Yes, I took possession of it and protected it immediately.  
Me JEAN LECOURE :  
So, I would like to file this document as P-13.  
VALERY FABRIKANT :  
(Inaudible).  
Me JEAN LECOURE :  
You will have a copy.

THE COURT :

Un instant, un instant.

Me JEAN LECOURES :

You already had a copy.

BY THE COURT :

Just a second. You are telling me, Mr. Lecours, or at least I understood you to say that a copy of this has been given to...

Me JEAN LECOURES :

Yes, My Lord.

THE COURT :

...Mr. Fabrikant?

Me JEAN LECOURES :

But I have an extra copy maybe for him if he doesn't have it.

THE COURT :

Okay. Go ahead. P-13.

Me JEAN LECOURES :

I have no further questions.

THE COURT :

Have you any questions to put to the witness?

VALERY FABRIKANT :

Yes.

CROSS-EXAMINED BY VALERY FABRIKANT :

Q. Do I recall correctly that you testified at preliminary inquiry too, did you?

-Q. Est-ce que je me rappelle bien que vous auriez t,moign, ,galement ... l'enqu^te pr,liminaire?

R. Oui, j'ai t,moign, ... l'enqu^te pr,liminaire.

-R. Yes, I did.

Q. Did you mention this letter in your testimony at preliminary inquiry?

-Q. Avez-vous mentionn, cette lettre au cours de votre t,moignage ... l'enqu^te pr,liminaire?

R. Non, il n'en avait pas ,t, mention ... l'enqu^te pr,liminaire.

-R. No, it was not mentioned at the preliminary inquiry.

Q. Why not?

-Q. Pourquoi pas?

R. Tout simplement parce qu'on m'en a pas demand, d'explication.

-R. Very simply because no explanation was asked of me.

Q. Well today also no explanation was asked of you, you volunteered this information yourself.

-Q. Aujourd'hui non plus on ne vous a pas demand, d'explication, vous avez donn, cette explication vous-m^me.

Q. Why today this letter appeared, it was not at preliminary inquiry?

R. Je corrige, monsieur Fabrikant, on vient de me remettre...

THE INTERPRETER :

I'm sorry, My Lord, I didn't grasp, I didn't seize the last part of Mr. Fabrikant's question.

THE COURT :

Would you repeat your last question, if a question it was. I don't want you arguing with the witness, put a question.

VALERY FABRIKANT :

Well, I don't...

Q. Who asked you this time about the document?

-Q. Qui vous a demand, cette fois-ci au sujet... pos, la question sur ledit document?

R. C'est ma^tre Lecours qui vient de me remettre le document et qui m'a demand, si je pouvais l'identifier.

-R. It's Mr. Lecours who submitted this document now and asked me if I could identify it.

Q. Do you recall this was original of the document or it was a copy?

-Q. Vous rappelez-vous si c',tait un original du document ou c',tait une photocopie?

R. Le document que maÊtre Lecours m'a remis c'est l'original que j'ai saisi moi-mÊme ce soir-l...

-R. The document that Me Lecours just handed over to me is the original that I seized that evening.

VALERY FABRIKANT :

Okay. Can I see it?

- Est-ce que je peux le voir?

THE COURT :

Certainly.

VALERY FABRIKANT :

Q. And he had this document in his hands?

-Q. Il avait ce document entre les mains?

R. Oui, c'est exact. MÊme on le voit trĒs bien sur une de mes photos.

-R. Yes, that's correct, and you can see it very well on one of my photographs.

Q. What time did you make your photographs?

-Q. A quelle heure avez-vous pris vos photographies?

R. Environ vers dix-sept heures trente (17 h 30).

-R. Around seventeen thirty (17:30).

Q. And you found the body exactly in the position it was on your picture?

-Q. Et vous avez d,couvert le corps exactement ... la mÊme position qu'il apparaÊt sur la photo?

R. Exactement, il n'a pas ,t, d,rang, du tout.

-R. Exactly, it was not moved at all.

Q. So the person somehow managed to keep the letter in his hands...

-Q. Alors la personne a r,ussi ... garder le document entre les mains...

Q. ...regardless of being shot three times, and he still kept it in his hands?

-Q. ...malgr, le fait qu'il a tir, trois fois, et il l'avait toujours conserv, entre les mains?

R. Je ne peux fournir d'explication, simplement que...

-R. I cannot provide an explanation, simply that...

R. .... mon arriv,e le corps tenait cette lettre dans ses mains, un peu froiss,e.

-R. ...upon my arrival the body, or the victim was holding the letter in his hands, and it was a little crinkled.

Q. Are you expert in any way in terms of what happens to a human being when he's being shot and suppose, if even he holds something...

-Q. Etes-vous un expert en ce sens que...

Q. ...he still can keep...

-Q. ...lorsqu'une personne d,cĒde, ou d,tient quelque chose qui se produit...

Q. ...he still can keep a piece of paper in his hand...

-Q. ...et qu'il peut toujours d,ttenir un bout de papier entre les mains...

Q. ...in such a peaceful position like this on the picture?

-Q. ...dans une position aussi calme et repos,e de cette faon sur la photo, qui apparaÊt sur la photo?

R. On ne peut expliquer ce ph,nomĒne, c'est tout simplement arriv,.

-R. One cannot explain that phenomenon, it simply happened as it happened.

Q. Okay. Could it be that just someone came later and put this letter into his hands?

-Q. Est-ce qu'il serait possible que quelqu'un soit pass, par la suite pour placer ce document entre ses mains?

R. A mon avis je ne crois pas...

-R. In my opinion I do not believe so...

R. ...ceci est uniquement mon opinion personnelle...

-R. ...this is only my personal assessment...

R. ...car lorsque j'ai r,cup,r, le document...

-R. ...because when I retrieved the document...

R. ...je me souviens bien que les doigts ,taient bien referm,s...

-R. ...I recall very well that the fingers were closed onto...

R. ...et que ce document ,tait un peu difficile ... extraire de sa main.

-R. ...the paper, and the document was slightly or somewhat difficult to remove from his hand.

VALERY FABRIKANT :

Uh, huh. May I see the original again?

- Puis-je revoir l'original?

Q. Well, it's not wrinkled at all.

-Q. Ce n'est pas du tout froiss,.

R. Je crois que oui.

Q. It doesn't look like...

THE COURT :

Excuse me, would you show the witness the document, then ask him where he sees the wrinkles, if he says it's wrinkled.

VALERY FABRIKANT :

Q. Well, could you indicate, if a person, especially dead person...

-Q. Pourriez-vous indiquer si une personne, surtout une personne d,c,d,e...

Q. ...holds something like this, there should be some kind of wrinkles there?

-Q. ...d,tient le document de cette faon, il devait y avoir... comment pouvait-il y avoir...

THE COURT :

Excuse me, let's go back to where we were. I suggested to you that you give the document to the witness, he said it was wrinkled, and ask him to...

VALERY FABRIKANT :

Indicate where...

THE COURT :

...indicate where the wrinkles.

VALERY FABRIKANT :

...he sees the wrinkles.

-Q. Veuillez indiquer o- se trouvent les plis ou le froissement.

R. On voit tršs bien que la partie inf,rieure de ce document...

-R. We see very well that the bottom part of the document...

R. ...est tršs froiss,...

-R. ...is very wrinkled...

R. ...avec des plis dedans qu'on voit tršs bien ici, l.....

-R. ...with creases that are very well visible here...

R. ...et l'hypothšse ou la... c'est que ce document, en ayant ,t, gard, aussi longtemps dans une filišre, parmi d'autres documents...

-R. ...and the assumption that this document would have been kept on file with other documents for a long period of time...

R. ...c'est normal que les plis, ou le froissement ait un peu disparu.

-R. ...it would be normal for the wrinkles to have disappeared somewhat.

Q. Well, can I see it once again?  
-Q. Puis-je le revoir?  
Q. So held it in his hand like this?  
-Q. Alors il le tenait dans ses mains comme ça?  
Q. Like this?  
-Q. De cette façon?  
Q. This is how it was?  
-Q. Est-ce que c'est de cette...  
Q. Could you demonstrate in your hand?  
R. Vous n'avez qu'... regarder la photo num,ro 8...  
-R. All you have to do is take photo number 8...  
R. ...et on a...  
Q. Okay.  
R. ...un merveilleux plan.  
-R. ...and we have an astounding view.  
Q. Could you show me where the number is, I don't have it here.  
THE COURT :  
You should have photo number 8.  
VALERY FABRIKANT :  
I know I should but I don't.  
THE COURT :  
Mr. Belleau, would you show Mr. Fabrikant photo number 8?  
R. Et on le voit ,galement sur la photo num,ro 10.  
-R. We can also see it on photo number 10.  
  
VALERY FABRIKANT :  
Q. Did you by chance see his briefcase?  
-Q. Avez-vous par hasard vu sa mallette?  
R. La mallette personnelle de monsieur Hogben?  
-R. Mr. Hogben's personal briefcase?  
Q. Yes.  
-Q. Oui.  
R. Non.  
-R. No.  
Q. Not in the room?  
-Q. Pas dans la piŕce?  
R. Il y avait une mallette dans la piŕce mais ce n',tait pas la mallette de monsieur Hogben.  
-R. There was a briefcase in the room but it was not Mr. Hogben's.  
Q. It was mine?  
-Q. C',tait la mienne?  
A. Oui.  
-A. Yes.  
Q. So the briefcase of Mr. Hogben just wasn't there in the room?  
-Q. Alors la mallette de monsieur Hogben n',tait pas dans la piŕce?  
R. Pas ... ma connaissance, mais je n'ai pas effectu, une fouille dans ce sens-l...  
-R. Not to my knowledge, but I did not carry out a search in that respect.  
Q. Well, one doesn't have to have it searched, because he entered the room with briefcase.  
-Q. On n'a pas besoin d'effectuer une fouille puisqu'il est entr, dans la piŕce avec une mallette.  
Q. Not with a letter, and...  
-Q. Et non pas avec une lettre...  
THE COURT :  
Mr. Fabrikant, put a question, now you're testifying.  
VALERY FABRIKANT :  
I'm not testifying, I am just clarifying...  
THE COURT :

Mr. Fabrikant, I said you are testifying, put a question.

VALERY FABRIKANT :

Question cannot contain two sentences?

THE COURT :

Question can certainly contain two sentences, but it can't contain affirmations on your part.

VALERY FABRIKANT :

All right, I am satisfied.

Q. So briefcase was not there but only letter which somehow he mysteriously managed through all falls...

-Q. Alors la mallette n',tait pas l..., simplement la lettre qui aurait par hasard (inaudible)...

Q. ...still keep in his hands?

-Q. .... se retrouver, ou il avait quand m^me r,ussi ... la conserver dans ses mains?

R. C'est comme j'ai dit, c'est exactement comme c',tait ... mon arriv,e.

-R. As I stated, it's exactly as it was upon my arrival.

Q. Another question. You mentioned one shot which was fired through the wall...

-Q. Une autre question. Vous avez mentionn, un tir qui ,tait tir, dans le mur...

Q. ...I believe it is number R-1...

-Q. ...je crois que c',tait le R-1...

Q. ...now could you please state about this shot, from the point of view of attempting to kill someone...

-Q. ...maintenant pourriez-vous d,crire, ou pr,ciser au sujet de ce tir si on tentait de tuer quelqu'un...

Q. ...would this shot make any sense?

-Q. ...est-ce que ce tir serait logique?

R. C'est impossible d'expliquer cette trajectoire de projectile...

-R. It's impossible to explain that projectile trajectory...

R. ...parce qu'au moment du crime je n',tais pas sur les lieux.

-R. ...because at the time of the crime I was not on the scene.

R. Alors ce qui a pu se produire ... ce moment-l..., c'est impossible de d,terminer.

-R. So what could have happened at the time is impossible to determine.

Q. Okay. Could you give any explanation to the fact that no witness has testified at preliminary inquiry hearing...

-Q. Pourriez-vous fournir une explication sur le fait qu'aucun t,moin n'avait t,moign, ... l'enqu^te pr,liminaire...

Q. ...hearing four shots fired...

-Q. ...avois entendu quatre tirs...

Q. ...and at the same time there were found four bullets from a revolver?

-Q. ...et en m^me temps on avait retrouv, quatre balles ou projectiles avec le revolver?

Q. Well, how to explain this? Could it be that four shots was fired after the crime...

-Q. Comment expliquer ceci? Est-ce que quatre balles auraient pu ^tre tir,es aprs le crime...

Q. ...by somebody else?

-Q. ...par quelqu'un d'autre?

R. Bon. Premiřrement je n'ai pas pris connaissance des autres t,moignages...

-R. Firstly I did not take cognizance of the other testimonies...

R. ...et deuxiřmement, comment expliquer que quelqu'un d'autre aurait pu tirer?

-R. ...and secondly, how can one explain how somebody else could have fired?

- R. C'est ce que je veux dire par ici c'est que je constate des faits...
- R. That's what I mean in saying that I'm observing facts...
- R. ...et que je ne peux pas hypoth,ser sur ce qui a pu arriver dans cette pišce.
- R. ...and that I cannot assume what could have happened within that room.
- R. Les faits sont que je retrouve un calibre 38...
- R. The facts reveal that I found a 38 caliber...
- R. ...qui contenait quatre douilles vides et une pleine.
- R. ...weapon containing four empty casings and one cartridge.
- R. Maintenant la mention R-1, le projectile num,rot, R-1...
- R. Now projectile referred to as R-1...
- R. ...que j'ai r,cup,r,, c'est le projectile qui avait travers, le mur du bureau de Fabrikant jusque dans le secr,tariat...
- R. ...which was the bullet that had crossed from Fabrikant's office up to the secretarial area...
- R. ...ce projectile, je l'ai envoy, pour expertise en balistique...
- R. ...I sent that projectile for expert analysis at the ballistic department...
- R. ...et j'imagine que les sp,cialistes de la balistique vont d,terminer son calibre...
- R. ...and I expect that the ballistic specialists to determine its caliber...
- R. ...et ce ne sont que les faits que je peux recueillir.
- R. ...and those are the facts that I retrieved.
- Q. All right. Thank you.
- Q. D'accord.

THE COURT :

We'll adjourn for lunch at this point, we'll resume at two fifteen (2:15).

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITHOUT JURY

VALERY FABRIKANT :

Excuse me, before we start with the jury, I would like to bring to your attention, your order yesterday concerning telephone is being ignored.

THE COURT :

Well, before you start discussing that, please let me discuss what I came in here to discuss with you and the Crown prosecutor alone. Would you sit down? I'm advised that one juror is not particularly well, and has prescriptions which are in the process of being filled and doesn't feel able to continue this afternoon. Now if that's the case, and I gather it is, steps have been taken to fill the prescription that she has, or to at least to procure her prescription for her. In the circumstances, rather than court any further problems, it might be as well to adjourn the jury hearing for this afternoon and permit her to recover as well as she possibly can so that she can go on on Monday. I think that that is the only sensible thing to do in the circumstances. So that being the case I will bring in the jury, discharge the jury for the weekend, and I'll then spend part of the afternoon dealing with... there was a motion announced this morning, and if there's another problem, then there's another problem.

Me JEAN LECOURS :

Fine.

THE COURT :

Fine. Jury please.

MEMBERS OF THE JURY ARE PRESENT

THE COURT :

Ladies and gentlemen, I gather one of your members is feeling rather awful and suffering from an awfully bad cold. And I think what... I called you in simply because I wanted to say to you that it is probably best in the circumstances that we not sit this afternoon with the jury, there are one or two legal questions that I can address in any event. So what I'll do is let you go early, and hopefully the extra time will speed recovery, and we'll start again as far as the evidence is concerned on Monday morning. I could have sent this message to you via the guards, the only reason I called you in particularly was to stress that the weekend is coming up and maybe in the weekend people will speak to you and that's when you should forever be sensitive about what I said yesterday, which obviously I don't have to repeat. So, can I wish you all a very good weekend and I'll see you all Monday morning, nine thirty (9:30).

THE JURY LEAVES THE COURTROOM

WITHOUT JURY

THE COURT :

Now, starting at the beginning, Mr. Fabrikant. You announced this morning that you had motions to present, would you please present whatever motions you have to present?

VALERY FABRIKANT :

Well, I'll start with the short one, as I already mentioned, that your order about telephone is just being ignored by the guards. Yesterday, and I believe that conversation is being overheard too because yesterday I made kind of a test while talking to somebody else, I said something which... just to test if the line is being overheard, and right after I said that the guards arrived and put the phone on the floor and told me that no longer I will be able to dial myself. So this is proof of two things, that the line is not confidential, that definitely they did hear what I was saying, so test was positive. And second, from now on, they do not allow me to dial myself, therefore both things are breached. There is definitely no confidentiality because they couldn't have possibly come just by accident after I said what I said on the telephone, and told me that from now on they are going to dial it. It couldn't be a coincidence. So, we are back to square one, and this square one is called no confidentiality, first, and not even appearance of confidentiality, because whatever they say that they did overhear my conversation or didn't, right now the situation is that I have to tell them what number to dial. And besides that, as far as telephone is concerned, the guards who are present here have very strange logic, if they put me in the cell with the telephone, then they want my pencil given back. I couldn't get the logic, but logic... at least their logic is like this. If I'm in the cell without telephone, then I can have the pen, if I'm in the cell with telephone, then I cannot have the pen, and of course I couldn't get from them any explanation as I always cannot get an explanation from you.

THE COURT :

I'm not running the detention center, that's... that's not for me to give you explanations.

VALERY FABRIKANT :

No, no, the parallel is only in the sense that I don't get an

explanation from you, I don't get an explanation from them, but otherwise there is no parallel of course. What I'm trying to say, that suppose I'm making telephone call in the cell, and someone tells me: "Okay, so this is the wrong number, dial another number", or "I give you several numbers", I do not have a pen to write those numbers, but in the cell, when I do have a pen, I do not have a telephone.

THE COURT :

I have only one correction to bring to what you said, I didn't make any order yesterday, what I said yesterday was what I was told was the situation pertaining in the detention block, and that was what I recited when I delivered the decision that I delivered yesterday.

VALERY FABRIKANT :

So anyway, are they obliged to provide me the telephone or they are not obliged?

THE COURT :

Well, we will first see what the situation is.

VALERY FABRIKANT :

Well this is the situation with the telephone as I described it.

THE COURT :

You're not going... you've made your representations as to what you say the situation is, I'll go on now and determine precisely what the situation is, and we'll see where we go from there as far as your calls are concerned.

VALERY FABRIKANT :

All right.

THE COURT :

I'm going to adjourn for a short period. Would you, Mr. Lecours, be kind enough to ask a representative of the S,curit, publique from... I would presume it's either Mr. Marcil or whoever who's in charge of the detention block to be present. I don't know whether they wish to have counsel present or not, it may well be. And we'll see if we can get to the bottom of this question this afternoon.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

THE COURT :

Is the director of the detention unit here? Madame Trayner, s'il vous plaEt. Mrs. Trayner, please.

Me JEAN LECOURE :

I told her, My Lord, that she was specifically requested. While we are waiting, can we liberate Mr. Desjardins?

THE COURT :

Mr. Desjardins?

Me JEAN LECOURE :

Mr. Desjardins.

THE COURT :

Certainly. Certainly.

VALERY FABRIKANT :

Well, if he speaks slowly I will understand what he says.

THE COURT :

I prefer that we follow the rule we've been following from the beginning.

VALERY FABRIKANT :

I wish we really followed the rules which are important rather than minor rules.

THE COURT :

That's funny, I rather thought she was here, she was here earlier this afternoon.

Me JEAN LECOURE :

Yes, she was here when we adjourned.

THE COURT :

Well, I'm going to adjourn again, and when we're ready we'll resume.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

SANDRA TRAYNER, INTERPRETER, UNDER THE SAME OATH

THE COURT :

I wonder if you could swear in Mr. Marcil, please.

EN L'AN DE NOTRE-SEIGNEUR mil neuf cent quatre-vingt-treize (1993), ce douzième (12e) jour du mois de mars, a comparu :

BERNARD MARCIL, n, le vingt-quatre (24) juillet mil neuf cent trente-sept (1937), directeur adjoint des opérations pour la détention du Palais de justice;

LEQUEL, après avoir prêté, serment sur les Saints vangiles, d,pose et dit comme suit :

EXAMINED BY THE COURT :

Q. Are you as assistant director of operations, Mr. Marcil, aware generally of the policy which applies in the detention center to detainees with reference in particular to the use of the telephone?

-Q. A titre de directeur adjoint ici au centre de détention, est-ce que vous êtes au courant des particularités et des règles s'appliquant aux détenus concernant l'usage du téléphone ici au centre?

R. Oui, monsieur le juge.

-R. Yes, My Lord.

Q. I understand that, as a general rule...

-Q. Comme règle générale je comprends donc que...

Q. ...that detainees are normally grouped in groups of approximately twenty (20)...

-Q. ...les détenus sont habituellement rassemblés en groupes de vingt (20)...

Q. ...and placed in holding cells...

-Q. ...et placés dans des cellules de détention...

Q. ...where there are telephones to which the detainees have free access?

-Q. ...où il y a des téléphones de disponibles pour les détenus présents ... cet endroit?

R. C'est--dire, il y a un téléphone pour vingt (20) personnes.

-R. There is one phone for twenty (20) people.

R. C'est un "d,bitel" qu'on appelle l.....

-R. It is a "debitel" that we...

R. ...où les personnes qui sont des appels signalent zéro, leur numéro, ils peuvent appeler ... n'importe quel endroit.

-R. ...where the people using the "debitel" system will dial zero and then dial their own number to call any location desired.

Q. When you say dial their own number, there is no control over the use of that telephone by the detainees, say whether it's being used by someone else?

-Q. Alors lorsque vous dites qu'ils sont libres de composer leur propre numéro, il n'y a aucun contrôle sur le numéro composé, soit par le détenu ou autre personne?

R. Il n'y a aucun enregistrement et aucune ,coute sur ces appels-

l..., on n'a pas de contr"le.

-R. We have no control over those phone calls, there's no recording and there's not taking account of the phone calls made.

Q. Are the phone calls which are made, first of all, on a local basis...

-Q. Les appels locaux d'abord...

Q. ...made in any sense on a reverse charges basis?

-Q. ...sont-ils faits ... frais vir,s par exemple?

R. Les appels... lorsqu'on parle toujours des cellules ... vingt (20) personnes, l.....

-R. When we talk about the people...

R. ...et concernant les "d,bitel"...

-R. ...the cells where we hold twenty (20) people, and concerning the use of the "debitel" system...

R. ...la personne qui appelle, ... partir du moment qu'elle signale, il faut qu'elle signale le 0, et puis leur num,ro de t,l,phone. A partir du moment qu'ils signalent le z,ro, #a co-te quatre-vingt sous (,80 \$), il faut que la personne au bout de la ligne, m^me si c'est local, il faut qu'elle accepte de payer les frais.

-R. ...the person who dials 0 and then their own number, even if it's a local call, there is a cost, a fee of eighty cents (\$0.80), and the person receiving the call will have to collect those eighty cents (\$0.80).

R. Cependant, monsieur le juge, pour ne pas m^ler, l..., vous m^ler, l..., c'est que concernant l'endroit o- monsieur Fabrikant, si on en vient ... #a, fait ses t,l,phones, c'est diff,rent.

-R. However, to avoid confusion, if we want to specify the destination of Mr. Fabrikant's calls, it will be different.

Q. The destination or the place from where he makes them?

-Q. La destination ou l'endroit ... partir duquel il place son appel?

R. Bon. Monsieur Fabrikant est plac, dans une cellule individuelle...

-R. Mr. Fabrikant is placed in an individual cell...

R. ...et le t,l,phone c'est un t,l,phone portatif qu'on branche un peu partout sur les murs ... l'unit, o- on peut le brancher...

-R. ...the phone is a portable phone where we can plug it in in any wall jack, in a room...

R. ...au besoin pour chaque cellule. #a fait que, c'est---dire si la cellule... on va prendre un num,ro fictif, num,ro 12 par exemple, on a un endroit pour le brancher vis---vis la cellule num,ro 12 et on donne l'appareil ... la personne, il fait son appel, mais ... ce moment-l... il n'y a pas de...

-R. ...it will be used as required, and then the phone is a portable phone that can move around from one cell to the other. For example, if we take cell number 12, there will be a jack in front of cell number 12 and the telephone will be plugged in there for the person in that cell who has to use the phone.

R. La personne n'a pas ... signaler 0, elle signale juste une fois 9, qui est pour sortir de notre r,seau, et le num,ro, et #a ne co-te rien.

-R. The person does not have to dial 0 in this case, the person simply has to dial 9 and dial their phone number, and there are no fees or no costs attached to this phone call at this point.

R. Il n'y a aucun frais sur ces appels-l...

-R. There are no costs for these types of phone calls.

Q. Now, prior to my rendering the ruling that I rendered yesterday...

-Q. Maintenant, avant de rendre l'ordonnance, ou la d,cision que j'ai rendue hier...

Q. ...I think that was substantially the information you gave me, that Mr. Fabrikant, lodged in an individual cell, could make calls without having to have anyone accept the charges.

-Q. ...je crois que c',tait le cas o- monsieur Fabrikant, qui ,tait une cellule pouvait effectuer un appel t,l,phonique sans qu'il ait ... demander que les frais soit vir,s ou qu'il n'y ait pas de frais finalement pour placer son appel.

R. C'est encore exact.

-R. That's still correct.

R. Il n'y a aucun problŠme l...-dessus.

-R. There's no problem in that respect.

Q. What about the question of long distance calls?

-Q. Qu'en est-il des interrurbains?

R. Les interrurbains, l..., sur ce t,l,phone-l..., on a constat, que... je pense qu'il ne se fait pas d'interrurbain. On n'a pas fait l'essai mais on a... c'est pour tous les incarc,r,s, une personne ne peut pas faire d'interrurbains.

-R. I believe that on that phone no long distance calls can be made, and it's not just for that phone or for that person in particular, we realize that no long distance calls can be made.

R. Si la personne veut faire un interrurbain, il faudra qu'elle aille dans les cellules en groupe, sur "d,bitel", c'est le seul endroit.

-R. If the person wishes to make a long distance phone call he will have to go in the cell where there is a group of detainees and use the "debitel" system.

Q. So that, for example, even if you were to authorize a long distance call...

-Q. Alors donc par exemple, m^me si vous deviez autoriser un interrurbain...

Q. ...on the individual phone...

-Q. ...sur l'appareil individuel...

Q. ...the equipment physically would not be able to make such a long distance call, is that correct?

-Q. ...l',quipement, physiquement, ne pourrait ^tre utilis, pour placer cet appel interrurbain, est-ce exact?

R. Oui, c'est exact.

-R. Yes, that's correct.

Q. You said to me that Mr. Fabrikant is in an individual cell?

-Q. Vous m'avez dit que monsieur Fabrikant est dans une cellule individuelle?

R. Individuelle, c'est toujours ... sa demande.

-R. Individual, but to his request.

R. S'il veut aller dans une cellule avec les autres, on l'envoie avec les autres.

-R. If he wishes to go in a cell with the others, we can send him with the others.

R. Pour ses besoins ou ... sa demande, on le place dans cette cellule-l....

-R. For his needs, or at his request we place him in that kind of a cell.

Q. You're talking about the individual cell?

-Q. Vous parlez de la cellule individuelle?

R. La cellule individuelle.

-R. The individual cell.

R. Mais aussi, il y a une autre raison aussi qu'on va exiger

qu'il soit dans cette cellule-l... c'est lorsqu'on lui donne un crayon, la politique...

-R. There's also another need to place him in an individual cell, that's when he asks for the use of a pen or pencil...

R. ...pour des raisons de s,curit, pour monsieur Fabrikant lui-même et les autres incarc,r,s, on donne rien qui peut piquer, par exemple, entre eux autres, pour s'agresser entre eux autres.

-R. ...for reasons of security, for himself as for the others, we don't like to give items or objects that will be used for stabbing others or himself, therefore that's why we work according to these situations.

Q. And when you use the word "others", you include the guards?

-Q. Et lorsque vous utilisez le terme "autres", vous impliquez aussi les gardiens?

R. Les autres incarc,r,s, parce qu'ils sont vingt (20) dans ces cellules-l...

-R. The other detainees, because they are twenty (20) in these cells.

Q. Now, if he's in an individual cell, is there any problem with a pencil or a pen?

-Q. Maintenant s'il est plac, dans une cellule individuelle, y a-t-il une probl,matique ... l'usage d'un stylo ou d'un crayon?

R. Automatiquement on lui donne... on lui donne le stylo, j'en ai même donn,s aux agents qui l'escorte. On lui donne c'est automatique.

-R. We automatically give him the pencil, we even handed some to the guards that escort him, and it's automatic.

Q. So if I properly understand the situation...

-Q. Alors si je comprends bien la situation...

Q. ...a person in an individual cell...

-Q. ...une personne dans une cellule individuelle...

Q. ...with a telephone plugged into the jack...

-Q. ...avec un t,l,phone qui est branch, dans la prise...

Q. ...can make whatever local calls he wishes...

-Q. ...peut placer n'importe quel appel, selon son d,sir...

Q. ...can make whatever notes he wishes...

-Q. ...peut prendre n'importe quelle sorte de notes, tel son d,sir...

Q. ...and that these calls are not monitored in any way.

-Q. ...et ces appels ne sont contr"l,s d'aucune faon?

R. D'aucune faon, monsieur le juge, c'est ... leur gr,.

-R. In no way, My Lord, it's up to them.

Q. When I rendered my ordinance yesterday that substantially represents what I believed to be the situation.

-Q. Lorsque j'ai rendu mon ordonnance hier, #a refl#te substantiellement ce que je croyais ^tre la situation.

Q. I should perhaps not use the word ordinance, because it was not an ordinance, it was a ruling, it was simply a judgment.

-Q. Peut-^tre que je ne devrais pas utiliser le terme ordonnance parce que c',tait une d,cision.

Q. Now, Mr. Fabrikant advises me this afternoon that...

-Q. Monsieur Fabrikant m'avise cet apr#s-midi que...

Q. ...a) he is unable to make calls...

-Q. ...a) il ne peut placer d'appels...

Q. ...is that correct?

-Q. ...est-ce exact?

Q. Unable to make calls. Just tell me if I'm correct.

VALERY FABRIKANT :

Yes, for the both part of this break I was unable to make any calls when I was placed here because they told me either it is

a pen or it is a telephone, though there are no other detainees there, but still they...

THE COURT :

I'll ask another question and we'll straighten that out.

Q. Is there a difference, Mr. Marcil, between this floor here and downstairs?

-Q. Monsieur Marcil, y a-t-il une diff,rence entre ce plancher-ci et le plancher qui se trouve en bas?

R. Beaucoup de diff,rence.

-R. Big difference.

Q. I wonder if you could tell me what it is.

-Q. Pourriez-vous en distinguer la diff,rence?

R. La diff,rence c'est qu'au sous-sol 2, o- on garde des individus vous avez...

-R. The difference is in the second basement, where we keep the individuals...

R. ...les gens sont gard,s, la majeure partie des gens sont gard,s dans des cellules en groupes.

-R. ...the majority of the people are kept in collective cells.

R. C'est un endroit o- on peut garder cent trente (130) incarc,r,s...

-R. In this area we can hold a hundred and thirty (130) detainees...

R. ...dont une douzaine dans des cellules individuelles pour diverses raisons.

-R. ...among which twelve (12) or so in individual cells for various reasons.

R. Tandis qu'ici, sur les ,tages...

-R. Whereas here, on the floors...

R. ...dans les satellites, ce qu'on appelle des satellites adjacents ... la cour...

-R. ...what we call satellite cells, adjacent to the courtroom...

R. ...vous avez quatre cellules, le 3.01 et le 3.05 l'autre c"t, sont munies de t,l,phones mais "d,bitel" seulement, on ne peut pas brancher le t,l,phone, des appareils portatifs dans ces cellules-l..., c'est "d,bitel" seulement.

-R. ...you have four cells, for example 3.01 and 3.05 have access to the "debitel" system telephone, and we cannot plug them into jacks, you have to use them where they re located.

R. Aussi, pour la garde des individus, c'est qu'on est adjacent ... la cour 3.05 et...

-R. Also, for the detention of the individuals, since we are adjoining courtroom 3.05...

R. ...au 3.05 il est possible qu'il y aurait un r"le avec des fois une quinzaine, une vingtaine d'individus qui vont passer l..., donc...

-R. ...sometimes it's possible for 3.05 where they'll be a docket containing fifteen (15) or twenty (20) detainees...

R. ...il se peut qu'on n'ait pas de cellule individuelle pour monsieur Fabrikant, qu'on puisse lui donner son crayon par exemple...

-R. ...in that case it would be possible that there not be an individual cell for Mr. Fabrikant, therefore whereby handing over the pen...

R. ...mais c'est temporaire parce qu'... partir du moment que la cour ici ajourne pour l'heure de dCner par exemple, on va l'emmener en bas o- on peut lui donner ce qu'il a besoin.

-R. ...would be difficult, whereas here for example, since there are suspensions ever so often, then we could take Mr. Fabrikant downstairs and the situation would be slightly different, we could hand him over whatever he needs.

Q. Mr. Fabrikant says to me, we leave aside now the third floor...

-Q. On va mettre de c"t, le troisišme ,tage pour l'instant...

THE COURT :

Mr. Fabrikant, you'll correct me if I'm wrong please.

Q. Mr. Fabrikant says to me that... I believe he was talking about downstairs, but he will correct me if I'm wrong, that he was not able to make a call...

-Q. Monsieur Fabrikant m'indique, et il peut me corriger si j'ai tort, qu'au sous-sol, en bas, il ne pouvait placer d'appel...

Q. ...unless a guard dialled the number...

-Q. .... moins qu'un gardien compose le num,ro pour lui...

Q. ...I thought he then added, you'll correct me if I'm wrong, that what was the use of making a call if he didn't have a pen and he objected to the presence of the guard.

-Q. ...et je crois qu'il avait ajout,, quelle ,tait l'utilit, de placer cet appel s'il n'avait pas de stylo pour prendre des notes et...

VALERY FABRIKANT :

First I think I should correct, yes, I'm sorry.

THE COURT :

Well you correct me. You correct me now.

VALERY FABRIKANT :

Because you mixed up two things.

THE COURT :

Okay.

VALERY FABRIKANT :

One thing, when downstairs I am given a pen, but the number, as I said, at the beginning yesterday they gave me the phone for me to dial, I dialled and I spoke and I intentionally spoke something just to check if they are listening. And indeed, they did listen, because as soon as I said what I said, twenty (20) seconds later a guard appeared and he told me that I can no longer dial the numbers myself. So it was clear to me that they were listening.

THE COURT :

This was from an individual cell?

VALERY FABRIKANT :

Yes. So they put the telephone on the floor, outside the cell, so it is out of reach of mine, I have only receiver. And from there on, if I want to make a call, I have to call a guard who, first of all, doesn't want to come. Today, for example, the guard, I knocked the door, I knocked the door, and they were enjoying it enormously, they each time were telling me: "One minute", they have very remarkable sense of humor. So and this "one minute" continued until one thirty-five (1:35) about. Then this "one minute" ended and they finally came over and said: "You want to place a phone call?", I said: "Yes". So they gave me the receiver but the phone outside. Now they told me: "You give me the phone number, we'll dial it for you". And in this situation the only number I could give them is the number for my wife, which I did.

THE COURT :

Thank you.

Q. You said to me that physically, if Mr. Fabrikant is in an individual cell...

-Q. Vous avez indiqu, que physiquement, si monsieur Fabrikant se trouve dans une cellule individuelle...

Q. ...downstairs...

-Q. ...en bas...

R. Il se trouvait ce midi, j'ai contr"l, par moi-m"me.

-R. This noon he was, I controled it myself.

Q. What he says varies somewhat from what you've said in that I was under the impression, from what you said, that if he was in an individual cell...

-Q. J',tais sous l'impression que ce que vous avez dit, que s'il ,tait plac, dans une cellule individuelle, ce qui diffŠre de ce que monsieur affirme...

Q. ...on SS-2...

-Q. ...au SS-2...

Q. ...he could, 1) dial his own local calls...

-Q. ...qu'il pouvait d'abord composer son propre num,ro local...

Q. ...and make whatever notes he wished to make...

-Q. ...et prendre des notes selon son d,sir...

Q. ...without the intervention of any guard, have I misunderstood what his situation is?

-Q. ...sans l'intervention de tout gardien, est-ce que j'ai mal compris ce que vous venez de d,clarer?

R. Non, vous n'avez pas mal compris, monsieur le juge, mais cependant il y a une chose...

-R. No, you did not misunderstand, My Lord, but there is one thing that one has to understand...

R. ...c'est qu'en v,rit, nous avons des ,quipes, plusieurs ,quipes, lorsqu'on s'est parl, hier, c',tait hier avant-midi, je crois, ou hier au midi concernant les t,l,phones...

-R. ...there are several teams assigned, and I believe we spoke together yesterday, or yesterday morning, concerning the telephone calls...

R. ...les personnes qui oeuvrent dans cet endroit, #a change, il y a des changements d'horaires, et puis...

-R. ...the people working in that location...

R. ...c'est une personne aujourd'hui nouvelle qui ,tait... j'ai constat, moi-m"me ce midi, et j'ai corrig, la situation imm,diatement.

-R. ...there are different shifts, and when there's a different shift coming in and there's a take over of shifts, of course people change, and today there was a different person, and the minute I acknowledged this and I saw this I changed the person and put somebody else there.

R. Cependant, je peux vous assurer que l'appel n'a pas ,t, ,cout,.

-R. But, however, I can reassure you that nobody listened in on the conversation.

R. La personne a signal, le num,ro, je lui ai dit qu'... l'avenir de lui laisser signaler son num,ro.

-R. The person had dialled the number, and I told that person that from now on, to let him dial his own number.

R. Vous savez, dans l'endroit o- on travaille on a une centaine d'employ,s, et il y a une rotation, #a fait que disons que d'ici lundi, l..., il ne devrait pas avoir ces problŠmes-l..., les gens... tout le monde va ^tre avis,.

-R. Where we work there are a hundred (100) or so employees and there's a lot of coming and going, and there is a period of adaptation, and from now until Monday everything should fall into place and everything should be fine by Monday.

R. Une autre chose qu'il faudrait faire la mise au point, c'est que...

-R. One other thing I'd like to specify...

R. ...c'est que l'accus, ne pourra pas ^tre seul dans cette section-l..., dans la cellule c'est correct, mais chaque c"t, de lui il peut y avoir des individus de chaque c"t,, #a on n'y

peut rien, on fait comparaître environ deux cents (200), deux cent vingt-cinq (225) incarc,r,s par jour, #a nous prend tous nos locaux.

-R. ...the accused will not be alone in that area, he will be alone in his cell, but there will be people on either side because we have over two hundred (200) cases to deal with and there will be a lot of people around him, surrounding him.

R. Mais il va être seul dans son local.

-R. But he will be alone in his cell.

Q. With his phone, with his pen and his pencil?

-Q. Avec son t,l,phone, son stylo et son crayon?

R. Pas de problŠme.

-R. No problem.

THE COURT :

Have you any questions to put to Mr. Marcil, Mr. Fabrikant?

VALERY FABRIKANT :

Oh, yes.

THE COURT :

Go ahead.

CROSS-EXAMINED BY VALERY FABRIKANT :

Q. First of all this started not today, this started yesterday. Yesterday, the same people who, at the very beginning, allowed me to dial my... this didn't start today, this started yesterday.

-Q. Ceci n'a pas d,but, aujourd'hui, #a a d,but, hier. D'abord les gens qui m'ont...

Q. First of all people did allow me to dial my own numbers...

-Q. ...m'ont permis de composer mes propres num,ros au d,part...

Q. ...and after I decided to check if they were listening...

-Q. ..et suite ... ce que je d,cide de v,rifier s'ils contr"laient mes appels...

Q. ...and I said something on the telephone...

-Q. ...et que j'ai parl, au t,l,phone...

Q. ...twenty (20) seconds later...

-Q. ...vingt (20) secondes plus tard...

Q. ...agent came and told me that I no longer can dial myself.

-Q. ...un gardien est entr, et m'a indiqu, que je ne peux plus composer mes propres num,ros.

Q. So it was yesterday, it was the same people who allowed me, all of a sudden disallowed me.

-Q. Alors c',tait hier, alors que c',tait ces m^mes gens qui m'avaient d'abord permis de composer mes num,ros, et par la suite ne m'ont plus permis de les composer moi-m^me.

Q. So how come the same people made different decisions?

-Q. Alors pourquoi est-ce que ces m^mes gens ont pris des d,cisions diff,rentes?

R. Monsieur le juge, je viens de vous l'expliquer il y a un instant, l..., il y a des rotations qui se font de personnel...

-R. Your Honor, I've just explained to you a few moments ago that there is staff rotation...

</pre></body></html>

est arriv,.

-R. ...I understand, I know what happened.

R. On va corriger la situation.

-R. The situation will be rectified.

THE COURT :

Well here you are, you have your answer.

VALERY FABRIKANT :

Well it's not an answer, no staff changes are at one o'clock (1:00).

THE COURT :

What I am doing is finding out what the situation is and putting in place, or making sure I understand what's in place, and I'm satisfied now that what has been put in place is what you have said you would like to have as far as preparing for your defense is concerned. Now I'm not holding a royal commission as to what happened last week or the week before last, or the day before yesterday, or whatever. Mr. Lecours, have you any questions to put to...

Me JEAN LECOIRS :

No, My Lord.

THE COURT :

Fine.

Thank you very much, Mr. Marcil.

AND FURTHER DEPONENT SAITH NOT

VALERY FABRIKANT :

Well I have more questions to put.

THE COURT :

This phase of the matter is closed now, I'm satisfied that what I said yesterday was accurate, and you have heard that whatever difficulty there was as a result of rotating personnel has now been corrected, and the situation, as far as I'm concerned, is closed.

VALERY FABRIKANT :

Well there was no rotating personnel.

THE COURT :

Now, you mentioned this morning the question of other motions have you other motions to make?

VALERY FABRIKANT :

No, this is not all, because, okay, I need the phone there, and with a pen. I need also a telephone book.

THE COURT :

Have you other motions to make?

VALERY FABRIKANT :

Well this is important, isn't it? I have a phone, I have a pen, I need who to dial, I need the telephone book, I need the yellow pages. If it is question of investigator, I need the yellow pages, they are not there, and even at 411 I cannot get the number because they asked me, give us exact name of the company you are looking for. So the matter is not closed.

THE COURT :

I am sure you can have yourself access to a telephone book, whether it be at the end of the day, or whether it be in the course of the day, and that you can find whatever investigators you're looking for to find the... and find out their rates or whatever, so that you can put that to Legal Aid.

VALERY FABRIKANT :

Well how on earth can I do that?

THE COURT :

I'm not going to spend the afternoon arguing with you. Your next motion... the motions you announced this morning are what?

VALERY FABRIKANT :

Well, you didn't also finish with when I'm here on this floor, they give me either the telephone or the pen...

THE COURT :

You simply have to live with what there is on this floor.

VALERY FABRIKANT :

What do you mean, what there is on this floor? There is nobody here. He said that there are other detainees. The floor is empty.

THE COURT :

You will have to live with what's on this floor, you're very very seldom in a cell on this floor, you're usually downstairs.

VALERY FABRIKANT :

I'm not seldom at all. I am quite enough time here.

THE COURT :

So I'm not about to get overly excited about telephones out here on this floor, nor furnish you a cellular. So let us move on to the motions you spoke about this morning, if there are any.

VALERY FABRIKANT :

Well this is not all, again, because you should be aware of one simple thing, that I am getting up at six a.m. (6:00) and I am going through strip search, through "smoky" genuine bullpens, through bus, it takes bus about an hour to get from Parthenais until here, even more. After that, about eight o'clock (8:00) I am here at Parthenais, everything starts at nine thirty (9:30) and I cannot do anything during that time, during that time they don't give me pen, they don't give me anything. So while you and everybody else start your day, supposedly at nine thirty (9:30), I started at six a.m. (6:00) and I arrived back at Parthenais somewhere between seven (7:00) and eight p.m. (8:00). If you count, which it makes between thirteen (13) and fourteen (14) hours. And these fourteen (14) are pretty gruelling, and for a person to make some preparations for next day for defense, it makes it very very difficult. I understand that this is your purpose, to make my defense as difficult as possible so that you could get your conviction, but I wish to remind you once again that this is not conditions of fair trial. Bill Germa, in similar situation, got bail and he was transported to and from Parthenais by S-ret, Qu, bec, so he didn't have to spend... So it comes to about three and a half hours before Court, for nothing, and it comes to between three hours after the Court, which I use to spend in all those bullpens. So you're depriving me every day about six and a half hours which could be spent on something useful. At the same time, you deny me assistance of a lawyer, and this creates situation of totally unfair trial. This satisfies you very well, and I believe that leadership of Concordia will be very very very very appreciative and will give your daughter the best possible at this university. But from the point of view of fundamental justice, I believe you don't look too good, do you?

THE COURT :

Are you finished?

VALERY FABRIKANT :

Yes, with this one. Yes.

THE COURT :

Good. You announced some motions this morning, have you any motions to make?

VALERY FABRIKANT :

Well, this was a motion to change the conditions.

THE COURT :

To change the conditions of your detention?

VALERY FABRIKANT :

Yes.

THE COURT :

I told you, I've ruled on that again and again, I suppose you can keep making it and I suppose I can keep ruling.

VALERY FABRIKANT :

Well, keep ruling, that's all right with me.

THE COURT :

Ruling is the same, you're not Bill Germa and I'm not Mr. Justice Boilard.

VALERY FABRIKANT :

Okay. What is the difference?

THE COURT :

So the motion for a change is dismissed.

VALERY FABRIKANT :

What is the difference?

THE COURT :

I'm not going to discourse with you on it.

VALERY FABRIKANT :

Well, the only difference is that Bill Germa was accused of murder of first degree, but he was not connected to Concordia Universtity, and Boilard didn't have any connection there either, but you do have...

THE COURT :

I've dismissed your motion.

VALERY FABRIKANT :

All right, and here we're down to the next.

THE COURT :

If you don't have another motion to make...

VALERY FABRIKANT :

Oh yes, I do.

THE COURT :

If you don't have another motion to make I'm going to send you back to your cell.

VALERY FABRIKANT :

Well, I do.

THE COURT :

Right. Then make it.

VALERY FABRIKANT :

So the next motion is, since you're biased Judge, then there are two things which I want to do, and I'm still not allowed to do it. The first one is to file criminal charges against you, because you falsified Court documents. And I asked our friend of Court to give my letter to Judge Bonin, that I be brought in front of a Justice so that I could lay information. He claims that he gave this letter to Judge Bonin. I called his office and his secretary didn't confirm receiving that letter. What the letter was, it wasn't received. I'm still not there, and I think it's again obvious bias on your part. If for example you feel you didn't do any criminal offense, why are you so afraid to put me in front of a Justice? Why do you forbid our friend of the Court to assist me in this? If your conscience is clear...

THE COURT :

Are you in a position to answer that? I gather from what I just heard that Mr. Fabrikant asked you to give a letter to Judge Bonin.

Me BELLEAU :

As a matter of fact he did, and I may have gone beyond the call of duty on that chapter, My Lord, I'm trying to establish a working relationship with the accused, and I figured that it would not cause much harm if I did deliver the letter, so I...

THE COURT :

Absolutely not.

Me BELLEAU :

...I actually delivered the letter on... I believe it was Friday, I don't have my notebook with me, I have the precise time, and the date of delivery, I met personally with Judge Lagac,, it was the associate justice, I believe, Chambre criminelle at the Cour du Qu,bec, and the letter was given to him in hand by myself.

VALERY FABRIKANT :

Well... so how come I'm still not brought in front of a Judge?

THE COURT :

Well don't really ask me, I can't possibly answer that question.

VALERY FABRIKANT :

Well maybe...

THE COURT :

There you are.

VALERY FABRIKANT :

...our friend of Court, who called me in public accused when we are two of us he called me professor. Quite a difference, isn't it? So, maybe friend of Court will respond how come I'm still not brought in front of a Judge. Would you kindly ask him to respond?

THE COURT :

I'll ask him to respond if you like but I would imagine that he's in much the same position as me, am I correct, Mr. Belleau?

Me BELLEAU :

I haven't the faintest idea.

THE COURT :

The faintest idea.

VALERY FABRIKANT :

Well, if you did this, he should follow it up shouldn't he? Would you kindly ask him if he should follow it up?

THE COURT :

In any event, what I recall being detailed one time was that the procedure, if anyone who is detained wishes to file criminal charges, is to directly oneself through the director of Parthenais to the S-ret, du Qu,bec, you make your complaint and the matter will be looked after.

VALERY FABRIKANT :

No, I've written a letter to the director of Parthenais...

THE COURT :

I don't know, I throw that out as an alternative, which is one of the things that I heard.

VALERY FABRIKANT :

Well I've written letter to director of Parthenais and he told me: "Consult your own lawyer", that's the response I got from director of Parthenais.

THE COURT :

I find it ludicrous that you should expect me to take you by the hand and to take you somewhere or other where you wish to

deposit criminal charges against me. I mean, I don't really...

VALERY FABRIKANT :

Well, why did you...

THE COURT :

...see what relevance it has in the context of this case, I mean it's getting ridiculous.

VALERY FABRIKANT :

No. What I wanted to file criminal charges against you (inaudible), you did exactly that. You took me by hand and followed to the Judge Gu,rin. So when the accusation was not against you, you said: "I'm Canadian citizen and I'm entitled to that", and you (inaudible) I did appear in front of Judge, but when it is criminal accusation of yourself, I'm no longer Canadian citizen and you no longer is responsible for that.

THE COURT :

The matter, I gather, has been put in front of the... the matter, I gather, has been put in front of the Chief Justice of the Court of Quebec, what more can you want? I don't know.

VALERY FABRIKANT :

Well either he ignores it, it can be done the same way you did it last time when it was question of Journal de Montr,al, couldn't you? Last time you did it, you proudly announced that I'm Canadian citizen and I'm entitled to my rights. Now I'm no longer Canadian citizen and I'm not entitled to my rights?

THE COURT :

The matter has been put before Judge Bonin, this subject, as far as I'm concerned, is closed, I don't propose to discuss it any further.

VALERY FABRIKANT :

Okay, let's come to the next one.

THE COURT :

So have you another one?

VALERY FABRIKANT :

Oh, yes. I do.

THE COURT :

So you will indicate, for the purposes of the "procšs-verbal" that the request to be taken before a Justice is denied.

VALERY FABRIKANT :

Okay. Okay. Now about your accusation, in order to "recuse" you I need the tapes to show that you are lying on those tapes, that you're falsifying documents, that you are totally biased in your decisions, and all this has to be documented first, I still haven't received any document from, again, I also called friend of Court who, of course, is friend of Court, therefore he's not providing me with any. Now, when do I find and get the needed transcripts and tapes to file my recusation motion?

THE COURT :

Second lying on tapes, falsifying documents and biased in my judgments?

VALERY FABRIKANT :

Yes. Isn't that enough to recuse a Judge?

THE COURT :

Yes, I suppose if you can substantiate any of these...

VALERY FABRIKANT :

Oh, yes.

THE COURT :

...I'll be very happy to look at it.

VALERY FABRIKANT :

Don't you worry, I can, just give me the tapes.

THE COURT :

Now, as far as the tapes are concerned, I could be wrong, but Mr. Belleau, you'll correct me if I'm wrong, was there not a request for the operative tapes that was filed?

Me BELLEAU :

There was, My Lord, and I filed the request, and I went back to the "centre de transcription" for the tapes. And my understanding is that any of the requested tapes I made, and I've been asked by the "centre de transcription" to provide them with a copy of Mr. Fabrikant's Legal Aid mandate. Since Mr. Fabrikant has refused to provide me with that document, or a copy of it, I have had to make arrangements to get it from another source, which is the Legal Aid Corporation, and they are investigating to know whether they are entitled or allowed to deliver that to me, and as soon as they decide I'll get it I suppose. But it would be much simpler if we went through the person who is the holder.

THE COURT :

So if Mr. Fabrikant were to give you his Legal Aid mandate, you would be able to procure for him these tapes?

Me BELLEAU :

Absolutely.

VALERY FABRIKANT :

So it is my fault, Legal Aid investigating whether they can give him a copy.

THE COURT :

Well there you are, there is the story of your tapes.

VALERY FABRIKANT :

That's absurd, they don't need any...

THE COURT :

Oh, I agree it's absurd, we agree on that, but not for the same reasons.

VALERY FABRIKANT :

Yes. The number is there. Okay. And about transcripts, what did they say?

Me BELLEAU :

Same applies, My Lord.

VALERY FABRIKANT :

Transcripts are ready.

Me BELLEAU :

I don't know.

THE COURT :

Just a second, you're changing subjects. Let's...

VALERY FABRIKANT :

Well I need transcripts, too.

Me BELLEAU :

Well transcripts, there is a delay of sixty (60) days, My Lord, and most people who are familiar with the courthouse know that.

THE COURT :

We're talking about what transcripts?

Me BELLEAU :

I don't know, he wants transcripts of every single word that was pronounced in the courtroom.

THE COURT :

Oh, in addition to the tapes?

Me BELLEAU :

Well the tapes and the transcripts. The tapes, most of them are ready, and the transcripts, well, I suppose that

administrative delays apply.

THE COURT :

Okay.

VALERY FABRIKANT :

I also consulted our friend of Court concerning my rights to have the electoral list and the minutes of the sheriff's drawing. And he told me that I do have such rights, so why have you denied it to me when I requested one, I told you I needed to challenge the jury panel because I believe there was tampering there.

THE COURT :

I told you, when came the time to challenge the jury panel you did not challenge the jury panel as contemplated by the Criminal Code and the jury was empanelled, so as far as I'm concerned you're not challenging the jury panel now. That is closed. If I'm wrong, take that to the Court of Appeal.

VALERY FABRIKANT :

I am asking why you refused by the time, when it was not too late.

THE COURT :

Because they are not my documents to hand out, I don't have them, and you seem to think that I can solve all of your problems.

VALERY FABRIKANT :

Well, (inaudible) either, and you know that I have no access, that somebody else has to provide them for me.

THE COURT :

Well, then you take steps to obtain them, I'm not in the business of providing you the tools for your defense, I've told you that before.

VALERY FABRIKANT :

Now, what kind of steps a detained person can do?

THE COURT :

I'm not here to answer your questions either.

VALERY FABRIKANT :

Well then you're denying me (inaudible).

THE COURT :

I'm denying you nothing, there are means of getting these things, detained or not.

VALERY FABRIKANT :

Well, give an example. What are the means?

THE COURT :

This is not school, and you're not presiding over a seminar which I'm attending.

VALERY FABRIKANT :

This is not school, but you are just not telling the truth, because on the one hand you do not give me the information to file my motion, and after that you asked me: "Why didn't you file your motion?"

THE COURT :

Well, it's up to you to obtain...

VALERY FABRIKANT :

This is dishonorable.

THE COURT :

It's up to you to obtain the information you need.

VALERY FABRIKANT :

I'm in jail, how can I do that?

THE COURT :

Well, one way would be to ask Mr. Belleau to assist you, but I seem to recall, I seem to recall that... or asked me to have

Mr. Belleau assist you in obtaining these things, I seem to recall the last time I heard that you were dissatisfied with Mr. Belleau, your word was that he was fired, although he happily, it was not for you to fire him, and that you refused to accept any jurisprudence that he chose to give you. So, you know, once you say one thing and the next time you say something else.

VALERY FABRIKANT :

Jurisprudence has nothing to do with it, if you want to have an expensive Court runner as Mr. Belleau, I have nothing against it, it's too expensive for taxpayer to pay a hundred and fifty dollars (\$150.00) per hour for the person to go to Court and pick something and bring it to me, but if you feel that it is money good spent, that is fine with me.

THE COURT :

In any event, the jury is empanelled, if there is a flaw, if you have been denied a right, I'm sure someone will be very happy to correct that.

VALERY FABRIKANT :

Well... So first of all I still would like to see those documents.

THE COURT :

Well, I'm not providing you with these documents because I don't have them.

VALERY FABRIKANT :

Okay. Then make order to Mr. Belleau to provide those and also, I asked you to explain how numbers were arrived at.

THE COURT :

I'm not here to explain anything to you.

VALERY FABRIKANT :

Okay. Then Mr. Belleau is supposed to explain it to me, isn't he? Someone is supposed to explain this to me, or nobody is supposed to?

THE COURT :

Would you like to have it explained to you how these numbers were drawn?

VALERY FABRIKANT :

Oh yes, not only explain how they were drawn, but also I would like to get the electorate list and to check that indeed the numbers which were drawn correspond to the names on the electorate list, yes.

THE COURT :

It is, at this point, an exercise in futility as far as the present trial is concerned.

VALERY FABRIKANT :

Well let me get this exercise. Why don't you give me such a pleasure?

THE COURT :

I'm not going to do that. I'm not going to do that.

VALERY FABRIKANT :

Why not?

THE COURT :

So move on to your next motion... because the jury...

VALERY FABRIKANT :

You said that Mr. Belleau can do that?

THE COURT :

Mr. Belleau could certainly do that, but the Jury is empanelled and the question is academic. So move on to the next question.

VALERY FABRIKANT :

Well if there was fraud involved, I don't think it is

academic.

THE COURT :

Well, if there was fraud involved, you raise it before the Court of Appeal.

VALERY FABRIKANT :

Well... but I need to know if there was a fraud.

THE COURT :

You'll have plenty of time, Mr. Fabrikant. Plenty of time.

VALERY FABRIKANT :

Well plenty of time is not enough, I need to know now if there was a fraud involved.

THE COURT :

Now, would you move on to the next motion?

VALERY FABRIKANT :

So you refuse to provide me with this information?

THE COURT :

I'm telling you, providing you with these lists, or having Mr. Belleau spend his time looking up these lists at this point is pointless.

VALERY FABRIKANT :

Not looking up, bringing it to me, it is not pointless because there will be, as you said, ground for appeal.

THE COURT :

Well then you can look after it, if that eventuality arises...

VALERY FABRIKANT :

Well after that I will still be detained.

THE COURT :

...in due time. But as far as I'm concerned I did not have a motion before me in proper form, and the jury was empanelled. Okay?

VALERY FABRIKANT :

Well, you couldn't have it in proper form, because I wasn't given the information.

THE COURT :

That's not my problem.

VALERY FABRIKANT :

That's not your problem?

THE COURT :

No. Next motion. Next motion.

VALERY FABRIKANT :

Now today, it was the best illustration of the juror who was clearly biased, and the only reason this juror stepped forward for being biased...

THE COURT :

Is this a motion or a commentary that you're making?

VALERY FABRIKANT :

It is a motion, yes.

THE COURT :

Well, let's get to the substance of the motion.

VALERY FABRIKANT :

Don't you worry, we'll get there, I'm not long talker, I'm very lucid in my explanation. So I repeat once again, that today we got a message from one of the jurors which said that he was totally biased when he came here, but since he was not asked any question, and the reason he was not asked any question was simple, because Prosecution already knew him, and already knew his views, and this is why Prosecution just said: "All right". And more than that, not a single juror was asked any question by Prosecution, it was either peremptory or all right.

THE COURT :

And that's perfectly according to the rules.

VALERY FABRIKANT :

And it's perfectly according to the rules, and this is perfectly proving that...

THE COURT :

The reason no juror was asked any question was you decided yesterday not to participate.

VALERY FABRIKANT :

Let me finish please. Let me finish please. I refused to participate because it was clear to me that (inaudible) was tampered with. That was the only reason I refused to participate. Because at that time, if you recall, I made a motion to challenge the whole panel and I said that I need information for that, and you refused to provide it for me. You never suggested at that time that Mr. Belleau can provide...

THE COURT :

Would you come to the point and make whatever motion you're making now?

VALERY FABRIKANT :

I am making.

THE COURT :

What motion are you making? What are you asking for? What is the motion?

VALERY FABRIKANT :

Just be patient and I will tell you what I am asking for. So, this juror who claimed that he came here biased, and since he was not asked any question, he took the oath, and all of a sudden he realized that he was biased. And of course, if you look his second letter, then it is quite clear that it is not his conscience which started talking but money, because in this country this is the only thing which talks, conscience never talks in this country, it's money which talks. And his second letter indicated quite clearly that he doesn't want to be juror because he's losing money. Then he decided that his conscience does not allow him to be a juror. But have no doubt that the real reason is that he decided that he will be losing money, otherwise he would be seated here. And I just wonder how many other jurors are of the same kind we have here, the only difference that they still not realize, or maybe they are just not losing any money, so they are still here. And for this reason I think that elementary dignity requires to announce mistrial to draw an honest array of jurors, and start all over again, because this is what should be done. And in support of this motion I request officially once again to be provided with electorate lists, with the minutes of the sheriff's drawing, and also the explanation how the numbers were arrived at.

THE COURT :

Are you finished?

VALERY FABRIKANT :

Yes, and I didn't take much time, and I think it is very clear what I am asking for, is it?

THE COURT :

If the jurors were not examined as to partiality, or impartiality, as they were called, that was because you elected not to participate, for whatever reason. The jurors were empanelled, as far as I'm concerned, according to the rules, and in particular in accordance with the rules set out in the Supreme Court decision in Hubbard which, in this

country, presumes that a juror is impartial. If you wish to put in question the partiality of a juror, it's up to you to do so by way of a challenge for cause. I sat here, I was not asked once to entertain a challenge for cause. In view of the extensive publicity that this case had received, I had previously indicated that I was prepared to be perfectly liberal on challenges for cause but you rather chose to sulk through the day. So there is no basis, from what you've said, in ordering anything. There is no basis for going back over a question of electoral lists or sheriff's minutes at this point in time, and your motion for a mistrial is dismissed.

VALERY FABRIKANT :

Well still, if it was done honestly, why not to show the electorate lists and minutes of the sheriff?

THE COURT :

Because if something is done honestly, one doesn't need to make a demonstration of it.

VALERY FABRIKANT :

Oh no, why should not be afraid to demonstrate it (inaudible), because the case of recusation of juror indicates quite clearly that we do not have an impartial jury here.

THE COURT :

The question of the lists are documents that you could have obtained access to before this trial even started, before Monday, before Tuesday, before Wednesday. So as I say, I think that brings to an end the motions you have, unless you have anymore.

VALERY FABRIKANT :

I have more.

THE COURT :

You have more? Fine. Number 7, what is that?

VALERY FABRIKANT :

I would like to get, I believe I am entitled to some information about jurors which were chosen, am I?

THE COURT :

Pardon?

VALERY FABRIKANT :

I am entitled to some information about jurors which were chosen, who they are for example, what their profession is, and so on and so forth.

THE COURT :

Yes, that's a fact. That's a fact.

VALERY FABRIKANT :

Okay. Why don't you provide me that information?

THE COURT :

There are sheets of information on those jurors.

Me JEAN LECOURE :

He was provided.

THE COURT :

Were they in front of him?

Me JEAN LECOURE :

Yes.

THE COURT :

They were in front of them?

Me JEAN LECOURE :

Yes.

THE COURT :

You had them there. Okay.

VALERY FABRIKANT :

No.

Me JEAN LECOURE :

He was making problems at the time.

VALERY FABRIKANT :

No, they were taken from me those sheets.

THE COURT :

Well they're always returned once the jury is empanelled. You know...

VALERY FABRIKANT :

Well, can I have...

THE COURT :

No. Are you telling me you didn't have these sheets in front of you?

VALERY FABRIKANT :

Well I had them but I don't remember, there were that many sheets, and empanelled are eleven (11) people, so can I have them back?

THE COURT :

Yes, surely, you can consult these, just the... the eleven (11) that are left, eventually, if you can't do it today, you can have them on Monday morning, surely. You can consult them so that you can make whatever notes you wish to make.

Me JEAN LECOURE :

Well, there is the phone number there, and I think Mr. Fabrikant had a chance.

THE COURT :

Pardon?

Me JEAN LECOURE :

Mr. Fabrikant had the chance to consult, he was making problems and he was...

THE COURT :

I'm not going to withdraw from him the chance to look at these sheets again, he had them once, he can have them again on Monday.

VALERY FABRIKANT :

No, I mean I need them in my possession.

Me JEAN LECOURE :

Excuse me. During the empanelling he could not phone them, right now, if he's like to make notes and take the phone number, or everything, I don't see the point, My Lord.

VALERY FABRIKANT :

So can I have it or not have?

THE COURT :

Have you any reason to suspect they would be phoned?

Me JEAN LECOURE :

And if he phones...

THE COURT :

Have you any reason to suspect they would be phoned?

Me JEAN LECOURE :

It's a possibility.

THE COURT :

Then it may be well to provide that information without the street address and without the phone number.

Me JEAN LECOURE :

That's what I propose, My Lord.

THE COURT :

Yes. Surely. I don't think you're talking in a vacuum, are you?

Me JEAN LECOURE :

Pardon?

THE COURT :

You're not talking in a vacuum are you about this? You are concerned about this?

Me JEAN LECOURES :

I'm very concerned, definitely.

THE COURT :

But the pertinent details as far as names, occupation or whatever... I wonder if I may have, madame Desrosiers, on Monday, the eleven (11) sheets, and I'll delete from those sheets information which would be of no assistance whatever, and namely the telephone numbers and the civic addresses. In the interest of ensuring that this continues.

VALERY FABRIKANT :

Now, I need access to jurisprudence concerning, for example, recusation of judges.

THE COURT :

This is circular, this has been dealt with before, and I'm not...

VALERY FABRIKANT :

Well you refused.

THE COURT :

I'm not going to repeat what I said, I told you.

VALERY FABRIKANT :

I need access to information, this is my right according to Charter of Rights.

THE COURT :

You seem to think that jurisprudence, this great God called jurisprudence solves all.

VALERY FABRIKANT :

Well, jurisprudence is very important.

THE COURT :

I couldn't agree with you more, but what is really more important is what the facts are. So I've told you time and time again, if you wish to present a motion for recusation, first of all, since the trial has started, whether you like it or not, necessarily it comes in front of me and necessarily I deal with it. So you don't then have to make it in writing, but you have to set out the facts on which you base yourself to have me recuse myself, and the day you do that, we'll see what... First of all, you might presume that I have some knowledge of the jurisprudence relating to it, if you are able to articulate on what basis you wish to recuse me, I'll be perfectly prepared with these precisions to say to Mr. Belleau, can you find some law, can you find some jurisprudence on that...

VALERY FABRIKANT :

Okay. You got yourself a deal.

THE COURT :

Pardon? Oh no, it's not a deal, I'm simply saying what I always said.

VALERY FABRIKANT :

Okay, I can tell you in advance, and you ask Mr. Belleau to provide me with such jurisprudence. Because what is funny, there is no problem to provide me with jurisprudence in murder, there is no problem to provide me with jurisprudence of change of venue, that's fine, you can provide it in advance, no problem, but the recusation of Judge...

THE COURT :

Well, would you...

VALERY FABRIKANT :

...(inaudible) and then you will provide if you find it.

THE COURT :

Just tell me...

VALERY FABRIKANT :

Just a second. Why is it such a special subject?

THE COURT :

Because it's a waste of time to go into the whole thing unless I know what...

VALERY FABRIKANT :

Well (inaudible).

THE COURT :

...or unless Mr. Belleau knows what you propose to argue.

VALERY FABRIKANT :

Yes, I can tell you exactly that I need jurisprudence related to the following things. First, daughter of a Judge is student at the university who is scene of the crime, who is, whether they want it or not, the third party to the crime. And leadership of this university is involved in the crime. And daughter of the Judge started at this university and definitely depends on leaders of this university. So, this is one thing which I'm going to invoke, and I need jurisprudence concerning this, namely when relative, close relative of a Judge is involved in the third party, who definitely he is a party to a crime, whether you want it or not, though they are not named, but definitely all the witnesses will be from Concordia. And whether you want it or not, the leadership will be called to testify, so... All the witnesses effectively will be from Concordia, so how can you say that this is not a party to the trial? It is a party to trial, and your daughter is a student there, and it is freshman there, so it's for many years to go, you need to get in good relationship with leadership of this university, and definitely you will try to do your best to oblige. So I need jurisprudence on that subject. So close relative is involved.

THE COURT :

Well there's just one problem. There's just one problem, that was the first motion you made back in January, I don't know what it was, January the fifteenth (15th) or the fourteenth (14th) or something, that was the first motion you made, because you implored me to go outside and to reflect on whether I had an honorary degree from Concordia or something, and I said no, I haven't got an honorary degree from Concordia, I've just got a little old B.A. that goes back to nineteen sixty (1960). And I said to you at the time that, however, my daughter started in the Arts faculty at Concordia last September, and you said at the time I should recuse myself, and I said: "I don't agree with you, I should not recuse myself".

VALERY FABRIKANT :

Well I need jurisprudence on that.

THE COURT :

Well it's closed, I've decided...

VALERY FABRIKANT :

You decided, it's your business, I need jurisprudence.

THE COURT :

Rightly or wrongly, I've decided it, so I'm not going to re-decide it.

VALERY FABRIKANT :

Nobody asked you to re-decide, just give me jurisprudence that I see that Judge X and Judge Y and Judge Z were finally recused for that reason, then I would be able to argue that

the fact that you did not resign just reflects a lack of integrity on your part.

THE COURT :

You can argue that to your heart's content.

VALERY FABRIKANT :

But you argue that I need the jurisprudence.

THE COURT :

You can argue that to your heart's content before the Court of Appeal one fine day. So no, I'm not going to have Mr. Belleau drag out jurisprudence on the possibility of a Judge's daughter.

VALERY FABRIKANT :

Well, if you are right and this is not a valid reason...

THE COURT :

Furthermore, if you were listening to me yesterday, you would have heard me say to the jurors that I'm not the one who's going to Judge you on the facts, the jurors are.

VALERY FABRIKANT :

Well this is irrelevant because you are in major part here, first of all in question of calling witnesses, admissibility of evidence...

THE COURT :

That's true.

VALERY FABRIKANT :

...you play a major part, and if you are biased...

THE COURT :

That's true.

VALERY FABRIKANT :

...this is too bad.

THE COURT :

That's true enough.

VALERY FABRIKANT :

So it is important, jury or no jury, dishonest Judge can change the whole...

THE COURT :

That's true.

VALERY FABRIKANT :

...trial.

THE COURT :

Surely can.

VALERY FABRIKANT :

Even absolutely honest jury just by disallowing certain evidence.

THE COURT :

But I've ruled on the subject, I'm not going to...

VALERY FABRIKANT :

You ruled on the subject, it's fine, but I want the jurisprudence to see whether your ruling is correct or not.

THE COURT :

Well you don't need it for this particular trial, you need it...

VALERY FABRIKANT :

I do need it.

THE COURT :

You may need it later, you may not.

VALERY FABRIKANT :

Well look, I have a Legal Aid mandate which entitles me to certain expenses for my defense, and this is my defense, and I am to decide what jurisprudence I need and what I don't

need, it's not you. I have the mandate of Legal Aid, you have no right to interfere as to what jurisprudence I request.

THE COURT :

We've covered the first point, recusation of the Judge on the ground of my daughter being a student at Concordia has already been dealt with. Next point.

VALERY FABRIKANT :

Well I need jurisprudence on the subject.

THE COURT :

Next point.

VALERY FABRIKANT :

Next point. Okay. I don't think you look too good. All right. Next, what I wish to invoke is that you falsified the documents. Now, again I need the jurisprudence on the subject, whether falsification of a document, Court document, should be Judge recused.

THE COURT :

Mr. Belleau, I wonder if you can... I don't know whether you'll be able to find a case on the point, but I would suppose that a Judge who falsified Court documents would stand to be recused and...

Me BELLEAU :

I would expect so, My Lord.

Me JEAN LECOURE :

I would take it for granted.

THE COURT :

I would take it for granted too. I...

Me JEAN LECOURE :

I don't think we need jurisprudence.

THE COURT :

If you can, on a very quick look, put your hand on something...

VALERY FABRIKANT :

Okay. So for this I will get jurisprudence?

THE COURT :

You know, oh, you jump to such conclusions.

VALERY FABRIKANT :

Yes.

THE COURT :

I don't know if there's a case which is on such an obvious point.

VALERY FABRIKANT :

Well, at least here you are prepared to authorize Mr. Belleau to make a search?

THE COURT :

I am prepared to ask Mr. Belleau to take a look.

VALERY FABRIKANT :

Okay. So why your daughter is such a sacred matter, if he is going to take a look, ask him to take a look about daughter too, at the same time, it wouldn't take much more time.

THE COURT :

You see, you're not terribly quick today. I told you that point has already been decided.

VALERY FABRIKANT :

Oh, I am not quick, of course. I'm sleepy, you see, I'm sleeping three hours a night, therefore of course I am not quick, how can I be quick?

THE COURT :

That has been decided.

VALERY FABRIKANT :

Yes. And you hope that by depriving me from sleep you would

get a defenseless person. Not a chance. You just don't know me. Now, the next.

THE COURT :

Documents. What else?

VALERY FABRIKANT :

Lying. Promising to do something and not doing it, and then denying that you ever promised that. And this is on tape, unless...

THE COURT :

Well you find it on the tape then.

VALERY FABRIKANT :

I'll find it, but I need again jurisprudence on the subject.

THE COURT :

Jurisprudence on the fact of Judge is lying on the tape?

VALERY FABRIKANT :

Yes. Promising something, then saying: "I never promised you that", and both things are on tape. How about that?

Me JEAN LECOURE :

With respect, My Lord, I think this question of recusation is over, you already ruled on that many times, I don't see why you...

VALERY FABRIKANT :

I think that Crown should not interfere, this is no concern of Crown.

Me JEAN LECOURE :

...keep on listening to Mr. Fabrikant on this subject. If he's not happy he should go to another (inaudible). I really think we're wasting our time on that, My Lord.

THE COURT :

We're certainly wasting our time on anything that has transpired up until now. I would suppose that a motion for recusation can lie, not the same motion for recusation but on an on-going basis, depending on what unfolds. For example if a Judge makes... I don't think it's a question of mistrial, but...

VALERY FABRIKANT :

Well I don't think it should be any of Crown's business, is it?

THE COURT :

In any event, if you are prepared to demonstrate that I lied to you or whatever, go right ahead and demonstrate it.

VALERY FABRIKANT :

Well, I need jurisprudence on the subject.

THE COURT :

I don't think jurisprudence will help you very much on that.

VALERY FABRIKANT :

What do you mean it doesn't help very much?

THE COURT :

I don't think you need any.

VALERY FABRIKANT :

(Inaudible) that subject it will help.

THE COURT :

It's rather obvious.

VALERY FABRIKANT :

What is obvious? That if the Judge promises something, then on tape says that: "I never promised that", then Judge should recuse himself?

THE COURT :

I have no idea what you're talking about. I have no idea what you're talking about.

VALERY FABRIKANT :

Well, let me give you just one example then. You promised to get friend of Court, if you remember, on January twenty-ninth (29th), in the first days of February. Well, you know, in the first days of February nothing happened.

THE COURT :

Well if that's the lie you're talking about, I...

VALERY FABRIKANT :

Not only that. You lied.

THE COURT :

...I think we won't worry about that, if that's... if you suggest that was a lie.

VALERY FABRIKANT :

Well...

Me JEAN LECOURE :

My Lord, you're not in the business of promising anything, you're the Judge, (inaudible) everything, and you never... as far as I'm concerned you never promised anything in this case to anybody.

VALERY FABRIKANT :

You have a good Crown.

THE COURT :

Now, next point.

VALERY FABRIKANT :

He's prepared to lie for your sake, you know, whatever it is. Next point. Next point is that you lied, if you remember, saying at first that I'm Canadian, I have the right to be in front of a Judge. Next day you called these people from Parthenais and all of a sudden you recommended that I just file a complaint with them. I tried to remember to you that... to recall that: "This is not what you promised yesterday, you promised me that I will be in front of a Judge at nine thirty (9:30)" and you said: "I never promised that". I hope they will not change the tape. So, is this lying or what? And then, you probably remember that, yes, you did promise indeed, and you said: "Okay, bring him in front of the Judge". So you changed several times what you said. Now, is this good reason or what? And I need jurisprudence on that, because one thing I'll say, that: "Yes, this Judge is lying", then it would be much better for me to say: "Well, Judge X also was lying and he was recused".

THE COURT :

Have you any other points?

VALERY FABRIKANT :

Yes, I have other points too. In your decision in a case against Legal Aid you just purely falsified the evidence, and your decision was based... first of all you changed the interpretation of evidence, and then on falsified evidence you rendered your judgment, and this is totally biased behavior.

THE COURT :

Good. You make your argument in the proper form in due time.

VALERY FABRIKANT :

Well again I need jurisprudence on that, too. So here are the subjects for jurisprudence.

THE COURT :

You can look all that up in due time.

VALERY FABRIKANT :

Well, I need to look it up before I present motion, not after.

THE COURT :

Well you won't be presenting it during this trial.

VALERY FABRIKANT :

What do you mean I won't be presenting it during this trial?

THE COURT :

Because you won't be presenting it during this trial.

VALERY FABRIKANT :

Why? You refuse to hear such motion?

THE COURT :

Absolutely, it's ridiculous. Totally ridiculous. Totally ridiculous.

VALERY FABRIKANT :

Here is another example, you said that you are prepared to hear this motion, now you are saying that you refuse to hear such motion.

THE COURT :

You're talking about an objection you have to something I wrote in a judgment, that's not the stuff of a motion for recusation, that's the stuff of an appeal.

VALERY FABRIKANT :

Well, if this is not yet another lie, what is it then?

THE COURT :

Okay. Next?

VALERY FABRIKANT :

Just today you said that you are prepared to hear the motion, now you say that you refuse to hear the motion.

THE COURT :

You talked about falsifying documents...

VALERY FABRIKANT :

Yes.

THE COURT :

...if you wish to try to demonstrate to me that I falsified documents, you go right ahead.

VALERY FABRIKANT :

Uh, huh.

THE COURT :

I'm not prepared to hear a motion relating to a written judgment that I rendered in January, that's for sure.

VALERY FABRIKANT :

Well, why cannot I raise the question...

THE COURT :

Well you can raise the motion if you like but, you know, raise...

VALERY FABRIKANT :

Well, (inaudible) biased.

THE COURT :

...whatever you like, but I'm not going to ask Mr. Belleau to waste his time looking for jurisprudence on that point, and I'm not going to ask him to waste his time looking for jurisprudence on the question of lying. Present what motions you wish.

VALERY FABRIKANT :

So effectively you, again, going back, I will not be provided with any jurisprudence on recusation?

THE COURT :

I asked Mr. Belleau to look at the question of falsifying documents.

VALERY FABRIKANT :

Okay. Why...

THE COURT :

That was one of the things...

VALERY FABRIKANT :

...is this particular question is separate? Why this

particular question I'm allowed to have jurisprudence and the others not?

THE COURT :

Because there's probably... I don't know what jurisprudence there is on Judges falsifying documents.

VALERY FABRIKANT :

So just ask Mr. Belleau to take a look at that.

THE COURT :

I've asked him if he'd take a look at that, a quick look, and see if he can find anything.

VALERY FABRIKANT :

Well, on all subjects.

THE COURT :

No, on that subject.

VALERY FABRIKANT :

On one subject. Why is this subject any better than any other subject? Why...

THE COURT :

Because the question of lying to you is sheer nonsense. The question of the availability of the amicus curiae later in February rather than at the beginning is sheer nonsense. The question of being taken in front of a Judge is sheer nonsense.

VALERY FABRIKANT :

(Inaudible).

THE COURT :

I am not going to waste my time any longer with this stupidity. So, if in addition to the recusation you have any other motions, you make them, otherwise we'll close this session.

VALERY FABRIKANT :

Okay. So now I understand that I will not be provided with any jurisprudence or I will be provided with jurisprudence on this subject?

THE COURT :

You have my answer, go on to the next subject.

VALERY FABRIKANT :

Okay. Here we go, next subject. Now, we are coming to the position where I will need to summon witnesses to file the subpoenas and so on and so forth. As you know bailiffs are in the same conspiracy as the lawyers.

THE COURT :

That subject was dealt with the other day. Move to the next one.

VALERY FABRIKANT :

Well, how was it dealt with?

THE COURT :

I dealt with it yesterday, if your memory is that short, that's not my problem. Move to the next subject.

VALERY FABRIKANT :

Well, you said that I have to give it to Mr. Belleau, and Mr. Belleau is not (inaudible) to me. I don't know Mr. Belleau, you are paying him, it's your business.

THE COURT :

That's fine.

VALERY FABRIKANT :

I know you and I demand certain people to be summoned.

THE COURT :

You have been told what the arrangements are as far as summoning of witnesses is concerned.

VALERY FABRIKANT :

Well, I don't know Mr. Belleau, I know you.

THE COURT :

Well, then that's your problem.

VALERY FABRIKANT :

Okay. Too bad. Now, about telephone logs, I spoke once...

THE COURT :

I've answered the question of telephone logs, I have nothing more to say on that subject. Next question.

VALERY FABRIKANT :

What (inaudible) sir. I need a Court order.

THE COURT :

Next question.

VALERY FABRIKANT :

What do you mean next question, you didn't answer it.

THE COURT :

I answered the... if my memory serves me well, I answered the question of telephone logs yesterday.

VALERY FABRIKANT :

What did you say?

THE COURT :

Next question. If you didn't listen, that's your problem.

VALERY FABRIKANT :

I did listen. You have remarkable ability to claim that you did solve some problems and you didn't.

THE COURT :

I told you what I had to say about telephone logs and I have no more to say about you summoning telephone logs.

VALERY FABRIKANT :

Well, you said that the... okay, let me repeat what I remember...

THE COURT :

Oh no, we're not going to discourse what I said. What I said, I said. Now next subject.

VALERY FABRIKANT :

Well I don't remember... You didn't say either or, it is necessary to have a Court order for that.

THE COURT :

Next subject.

VALERY FABRIKANT :

Well this subject, are you going to provide a Court order for that?

THE COURT :

Next subject. Or if there are no other subjects, we'll close.

VALERY FABRIKANT :

Not that quick, it's not yet five o'clock (5:00). So you refuse to answer this question?

THE COURT :

I told you yesterday what I had to say about telephone logs, I have nothing to add.

VALERY FABRIKANT :

Well, I repeat once again that I spoke to investigator, investigator told me that he cannot get any phone logs unless it is authorized by a Judge, so it is Judge who has to authorize.

THE COURT :

I haven't the foggiest idea what telephone logs you're talking about.

VALERY FABRIKANT :

Okay. So I have to repeat again what phone logs I'm talking about then. I'm talking about phone logs of people like Gold,

Kenniff, Swamy...

THE COURT :

I dealt with that yesterday, and I have nothing more to say about it. So, have you anything else you wish to say?

VALERY FABRIKANT :

Well what do you mean you dealt, you are not going to issue the Court order or you are going to issue the Court?

THE COURT :

I told you yesterday what my position was on telephone logs.

VALERY FABRIKANT :

You didn't say either way, you didn't say that you are going to issue Court order, you didn't say that you...

THE COURT :

Have you another point you wish to raise? You know, you might as well raise them now because come Monday morning we are going on with this trial and these motions of yours are going to be cut as short as you could imagine.

VALERY FABRIKANT :

Well, you didn't allow me to make any pre-trial motion, you can go as lawlessly as you want, this is your prerogative, you are the Judge. Now the question of investigator is still there because I could not contact anyone...

THE COURT :

I'm not interested in your problems with regard to an investigator, we've gone through that on numerous occasions.

VALERY FABRIKANT :

I have no way to contact witnesses. I'm in jail, and I told you that I need additional information...

THE COURT :

You have been told what steps you have to follow if you wish the Legal Aid Corporation to underwrite in investigator's fees, you know what the steps are, we've talked about that this afternoon, that subject...

VALERY FABRIKANT :

Well I have written to them...

THE COURT :

I have said my last word on that subject.

VALERY FABRIKANT :

I have written to them a letter, they don't respond.

THE COURT :

Have you another subject you wish to raise?

VALERY FABRIKANT :

Yes. Yesterday I got message from Delongchamps to call her before seven p.m. (7:00) but I was at Parthenais at about seven (7:00), so I couldn't call.

THE COURT :

I'm not your guardian angel, there's nothing I can do about that.

VALERY FABRIKANT :

Well you can do, you can do at least what has been done for Bill Germa. He had private delivery from Parthenais to Palais de justice and back, and he got bail also.

THE COURT :

Have you anything else?

VALERY FABRIKANT :

Oh, yes.

THE COURT :

We've covered the question of conditions of your detention, I'm not going into that again.

VALERY FABRIKANT :

All right. So effectively you're leaving me without

witnesses, without jurisprudence, and you call this a fair trial.

THE COURT :

Have you another point you wish to make?

VALERY FABRIKANT :

Well I don't know if it makes any sense to make any other point because right now, whatever point I am raising, you just refuse to discuss them.

THE COURT :

They've all been dealt with, Mr. Fabrikant.

VALERY FABRIKANT :

They were not dealt with...

THE COURT :

They've all been dealt with one by one.

VALERY FABRIKANT :

Well, how about long distance calls? Where do we stand now?

THE COURT :

I am not the person that decides on whether you can or can't make long distance calls.

VALERY FABRIKANT :

Well, why were you involved in local calls then? Why did you spend about an hour today to do something which could be done in two minutes? Just to (inaudible).

THE COURT :

Because your complained that the conditions...

VALERY FABRIKANT :

Well, I am complaining about long distance calls. Why don't you listen to this complaint?

THE COURT :

You were told that if you wish to make a long distance call...

VALERY FABRIKANT :

Yes.

THE COURT :

...you would have to have your long distance call authorized and make it from the other telephone system. That was what I said to you yesterday because that was what I understood the situation to be.

VALERY FABRIKANT :

Okay. But what is the other system? There is not other system available. There is no other system available for long distance calls. So let us deal with it.

THE COURT :

I am not going to deal with it any further, I told you before, I'm not going to be constricted into putting together your defense in any sense of the word.

VALERY FABRIKANT :

Well why were you so involved in local calls? Now I'm talking long distance calls.

THE COURT :

Because I had a complaint from you about what the problem was within the detention center.

VALERY FABRIKANT :

All right, now I'm giving you another complaint that I have no way to make any long distance calls, because I get up at six a.m. (6:00) everyday, and I'm here until seven p.m. (7:00).

THE COURT :

And you want the conditions of your detention changed, and we've been through that...

VALERY FABRIKANT :

Well, do whatever you want, but how can I make long distance

calls?

THE COURT :

I haven't the foggiest idea, Mr. Fabrikant.

VALERY FABRIKANT :

Well then what do we do about long distance calls?

THE COURT :

I haven't the foggiest idea, Mr. Fabrikant.

VALERY FABRIKANT :

Well think about it, maybe you'll figure out something.

THE COURT :

I don't propose to think about it for ten seconds, Mr. Fabrikant.

VALERY FABRIKANT :

So why did you think about local...

THE COURT :

Have you anything else you wish to raise?

VALERY FABRIKANT :

Well, let us save each other time, I have some other things to say but if each question which is important, and I raise it, and you brush it off, then say it right away that you will brush it off and I won't waste your time.

THE COURT :

They have all been dealt with before, ma&tre Delongchamps was here, she testified as to the policy with regard to your long distance calls, I dealt with the policy with regard to your long distance calls in my judgment.

VALERY FABRIKANT :

Well...

THE COURT :

What more do you want?

VALERY FABRIKANT :

What more do I want? Because sabotage is there and I'm still not able to make any phone calls. I repeat once again, everyday from six a.m. (6:00) until seven p.m. (7:00) I'm away from Parthenais. Here there is no way to make those calls, and back at Parthenais I'm at seven p.m. (7:00) and no phone calls at that time are allowed.

THE COURT :

Fine. We've discussed the phone calls as far as we're going to discuss them. Have you anything else? Or will you now sit down?

VALERY FABRIKANT :

But you didn't settle anything, isn't it clear that situation is absurd and I'm not allowed any phone calls? It is not clear.

THE COURT :

Have you anything else?

VALERY FABRIKANT :

(Laughter).

THE COURT :

Fine. Sit down.

VALERY FABRIKANT :

I can only thank you for your extreme attention, you're so supportive.

THE COURT :

Has the Crown given any thought to the question of a special issue in this case?

Me JEAN LECOURES :

Yes, My Lord, but I think if it ever comes, it won't come from me. I know you have all the powers to order it...

THE COURT :

Uh, huh. Uh, huh. Okay. I'm not prepared to do so just yet, but...

VALERY FABRIKANT :

Well maybe you try it, it would be interesting.

THE COURT :

But it's certainly something that I am duly bound to give consideration to as this unfolds.

VALERY FABRIKANT :

Oh, yes. This is the easiest way out, to declare me insane. That would be nice.

THE COURT :

That's not for me to do.

VALERY FABRIKANT :

Uh, huh. Just try it.

THE COURT :

In any event we'll... Yes?

Me JEAN LECOURES :

(Inaudible) last question.

LA COUR :

Sure.

Me JEAN LECOURES :

Would you or would you not make an order for the daily tapes for Mr. Fabrikant.

THE COURT :

Well I think before I make...

Me JEAN LECOURES :

What I would suggest is unless Mr. Fabrikant request it, we don't need that order.

THE COURT :

You indicated to me that the suggestion I've made about the daily tapes posed a problem, and...

Me JEAN LECOURES :

Yes, but Mr. Fabrikant said anyway, he doesn't want to wait.

THE COURT :

And Mr. Fabrikant said he doesn't want to wait. I'll see about that on Monday morning.

VALERY FABRIKANT :

Well wait or no wait, I need those tapes.

THE COURT :

I'll see about what I'm going to do about that on Monday morning, I gather that you had indicated that those responsible for transcribing these tapes have some technical problem about producing them by the end of the afternoon.

Me JEAN LECOURES :

But I also propose that we should wait for a formal request by Mr. Fabrikant without moving any further.

VALERY FABRIKANT :

Well, what kind of formal request: "I hereby formally request the tapes", is it formal enough?

Me JEAN LECOURES :

Don't speak to me, sir.

VALERY FABRIKANT :

I'm not speaking to you, I am speaking to the Court.

THE COURT :

I'll deal with the question of the tapes on Monday morning. If you wish to have anybody heard from the transcription center, you'll make the arrangements you feel you have to make.

Me JEAN LECOURES :

At nine thirty (9:30) Monday morning?

THE COURT :

No, I think we'll probably continue with a witness at nine thirty (9:30) Monday morning but we'll do it in the course of the day.

Me JEAN LECOURE :

Okay.

THE COURT :

Okay? So we'll adjourn until Monday morning. Thank you.

-----

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

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PROVINCE OF QUEEBC

DISTRICT OF MONTREAL

STAGE: TRIAL

CASE NO. 01-017372-928

PRESIDING: THE HONORABLE JUDGE FRASER MARTIN, J.S.C.

NAMES OF PARTIES:           HER MAJESTY THE QUEEN  
                                  Complainant

-vs-

VALERY FABRIKANT  
Accused

NAMES OF ATTORNEYS:       MAITRE JEAN LECOURS  
                                  ATTORNEY FOR THE CROWN

MR. VALERY FABRIKANT, ACCUSED  
REPRESENTING HIMSELF

MAITRE LOUIS BELLEAU  
AMICUS CURIAE

DATE OF THE HEARING:       MARCH 15th 1993

OFFICIAL COURT REPORTER: MS. MAUREEN ROWE

CLERK OF THE COURT:       MS. ROXANNE DESROSIERS

FICHER NO.:                 2432

THE COURT TAKES THE BENCH

BY THE HONORABLE JUDGE FRASER MARTIN, J.S.C.:

On Friday, you'll recall that we adjourned because of the sickness of a juror. That juror is still ill and as far as I have been able to determine, the situation is not necessarily something that will solve itself between now and tomorrow morning.

I propose to have the question monitored and find out precisely what the ... what the difficulty is and how long it might be, but I can profer you no other suggestion than to adjourn the trial until Wednesday morning, rather than bring everyone in tomorrow morning and in the face of a situation that I'm not necessarily certain will be much better tomorrow morning that it is now.

BY MAITRE JEAN LECOURES  
ATTORNEY FOR THE CROWN:

Will you ...

BY THE COURT:

Have you any ... pardon?

BY THE CROWN:

... be in a position to know exactly the illness and should we send this ... a doctor or make any arrangement for ...

BY THE COURT:

This is ... this is the question I'm ... this is the question that I'm dealing with at the moment.

BY THE CROWN:

OK.

BY THE COURT:

But the arrangement that is normally made is that when one is ill in these circumstances, one has recourse to Urgences Sant,, am I correct?

BY THE CROWN:

Yes My Lord.

BY THE COURT:

Now before sending the doctor, I want to be satisfied as to ... because the juror in question is under treatment from her own doctor. I want to be satisfied that she really requires to have a doctor sent to the house or it may be that she's able to get either to a hospital or to her doctor's office.

BY THE CROWN:

Or we can get in touch with her doctor. It looked like a cold in the morning.

BY THE COURT:

It ... it sounds as if it's a bit more serious than that from what I hear. So taking things one at a time, I'll adjourn the trial until ... until Wednesday morning but I'd like you to remain at my disposal in case any orders have to be made in the course of the trial. I don't need to make these in court. I can ... I can make these on an administrative basis in any event but I might need ... I might need your input at some ... at some point and until I'm in a position to know what the ...

what the length and the breadth of the ... the illness is and how long it might take, I'm really not in a position to make any other suggestion. So ...

BY MR. VALERY FABRIKANT - ACCUSED

REPRESENTING HIMSELF

May I say something?

BY THE COURT:

Yes, Mr. Fabrikant, what would you like to say?

BY THE ACCUSED:

Well since I'm now here, here are some arrangements I made with respect to the telephone, at least local telephone. At Parthenais, my understanding is that no arrangement ...

BY THE COURT:

I'm not dealing with motions this morning. Would you kindly sit down. I ... if you have some input to make on the problem I'm facing at the moment, I'll hear. Otherwise I don't really wish to hear a word.

BY THE ACCUSED:

Well on this point, I already made an input because I believe that it is mistrial and we should just impanel another jury.

BY THE COURT:

I'm not impaneling another jury and I'm not declaring a mistrial.

BY THE ACCUSED:

So that's as far as I can go.

BY THE COURT:

That is as far as you can go. You will understand that I'm very very loath to go ahead with ... with ten (10) people unless I absolutely have to and I would far rather wait if necessary a week before ...

BY THE CROWN:

I agree with you, My Lord.

BY THE COURT:

... before I make any sort of decision of that sort so we'll ... we'll adjourn the trial itself until Wednesday. I think we'll adjourn this sitting until let's say eleven thirty and I'll see if I can get a closer view between now and eleven thirty of ... of what the situation actually is. OK, so eleven thirty. I will instruct ...

BY THE CROWN:

So My Lord, I can excuse all my witnesses this morning?

BY THE COURT:

Yes, certainly. For today and for tomorrow.

BY THE CROWN:

OK.

BY THE COURT:

We won't be hearing any witnesses until Wednesday and I will have the ... have those responsible for the jury explain to the other members of the jury that they are required to come back on Wednesday unless they hear otherwise.

BY THE ACCUSED:

May I request on Wednesday to be invited the previous person who testified, Mr. Desjardins?

BY THE COURT:

You have finished with Mr. Desjardins. We're moving on to the next witness.

BY THE ACCUSED:

Well ...

BY THE COURT:

And I'm going to follow a certain ... a certain course

and that's that. You're not going to review your ... your cross-examination as we go along and call witnesses back as you wish.

#### SUSPENSION OF THE HEARING

#### THE HEARING IS RESUMED

BY THE COURT:

Since we recessed, steps have been taken to have the juror in question transported to hospital which is where the juror is now and examinations are currently being carried out. I have no idea what these will reveal. So as matters stand, I'm simply going to adjourn until Wednesday morning and the other jurors have been so advised to return on Wednesday morning and we will hope that we'll be able to resume by then but I have really nothing more definitive that I can ... I can draw to your attention at the moment.

BY THE CROWN:

But of course, I'll will be ready to proceed Wednesday morning?

BY THE COURT:

You should be ready to proceed on Wednesday unless ...

BY THE CROWN:

OK.

BY THE COURT:

... unless circumstances dictate that it's going to take longer and I can even speculate on that at the moment.

BY THE CROWN:

But if we ... if you get to know for sure that we won't proceed on Wednesday, by some way or another, I can ... I can be informed of that?

BY THE COURT:

Absolutely.

BY THE CROWN:

OK.

BY THE COURT:

Absolutely.

BY THE ACCUSED:

Mr. Martin, would you please not forget to cancel the order of my delivery because if you don't, I will be delivered tomorrow anyway to the court.

BY THE COURT:

You will be delivered tomorrow ... you won't be delivered tomorrow, you'll be delivered on Wednesday.

BY THE ACCUSED:

Well unless you cancel the order.

BY THE COURT:

Yes.

BY THE ACCUSED:

Because you remember, you did forget once.

BY THE COURT:

If there is any question, but I ... I rather think that your presence will be necessary here on Wednesday in any event.

BY THE ACCUSED:

Well on Wednesday, if there is hearing, then again yes. If no, then what is the ...

BY THE COURT:

Well there may be an administrative hearing, that's all, to determine how long the matter should be put off if the juror isn't ... isn't recovered.

BY THE ACCUSED:

Well why don't we then proceed with ten (10).

BY THE COURT:

Pardon?

BY THE ACCUSED:

Why don't we then proceed with ten?

BY THE COURT:

I don't think you really need to worry about my problems and you worry about yours.

BY THE ACCUSED:

I don't have any.

BY THE COURT:

That's fine then. So we'll adjourn until Wednesday morning.

ADJOURNMENT

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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 22 MARS 1993

FICHER: 2888

## TABLE DES MATIERES

## PAGE

WITNESS: ROBERT DESJARDINS

Cross-examined by Mr. Fabrikant 4

WITHOUT JURY 120

WITH JURY 120

WITNESS: GUY GRAVEL

VOIR-DIRE - EXPERT

Examined by Me Lecours 131

WITNESS DECLARED EXPERT

Examined by Me Lecours 134

Cross-examined by Mr. Fabrikant 160

WITNESS: SERGE PROULX

VOIR-DIRE - EXPERT

Examined by Me Lecours 166

Cross-examined by Mr. Fabrikant 168

WITNESS DECLARED EXPERT

Examined by Me Lecours 173

WITHOUT JURY 176

Examined by Me Lecours (cont'd) 177

Cross-examined by Mr. Fabrikant 192

MEMBERS OF THE JURY ARE PRESENT

THE COURT :

Mr. Fabrikant had indicated that he wished to recall Mr. Desjardins. And in view of the fact that we had not passed to the next witness I granted that request, so that's where we are.

SANDRA TRAYNOR - INTERPRETER

DULY SWORN

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twenty-second (22nd) day of the month of March, personally came and appeared:

ROBERT DESJARDINS, born on October twentieth (20th), nineteen hundred and fifty-one (1951), police officer for the Montreal Urban Community;

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

CROSS-EXAMINED BY VALERY FABRIKANT :

Q. Well, I requested your second appearance because I want to prove that a forgery has been committed.

-Q. Je veux prouver un acte de fraude parce que... c'est la raison pour laquelle je vous ai demand, ici pour la deuxiŠme fois aujourd'hui.

Q. The forgery, I mean this letter which was allegedly found on the victim.

-Q. Il s'agit de cette lettre qui a ,t, suppos,ment trouv,e entre les mains de la victime, sur la victime.

Q. Do I recall correct that you mentioned that you arrived at the place about seven p.m. (7:00) August twenty-fourth (24th)?

-Q. Est-ce que je me rappelle bien que vous soyez arriv, vers les dix-neuf heures (19 h) ou sept heures (7 h) le soir...

Q. August twenty-fourth (24th).

-Q. ...le vingt-quatre (24) ao-t mil neuf cent quatre-vingt-douze (1992)?

A. Non, c'est incorrect, je suis arriv, ... dix-sept heures (17 h) sur les lieux du crime.

-A. No, that is incorrect, I arrived at seventeen hundred hours (17:00) on the scene of the crime.

Q. At seventeen (17:00). Okay. Are your rules that you have to make pictures without touching anything or changing anything at the scene?

-Q. Est-ce que la rŠgle de prendre des photos sans ne rien d,placer ou toucher quoi que ce soit sur le lieu du crime?

A. Oui, c'est la rŠgle g,n,rale.

-A. Yes, that is the general rule.

Q. Okay. Now, also you mentioned that this letter was clenched so hard by the victim...

-Q. Vous avez ,galemment mentionn, que cette lettre ,tait retenue entre les mains de la victime de faon trŠs serr,e...

Q. ...that you had difficulty to release it...

-Q. .... un point tel que vous avez ,prouv, de la difficult, ... la retirer...

Q. ...correct?

-Q. ...exact?

A. Oui. A un certain point, oui.

-A. Yes. To a certain extent, yes.

Q. Okay. And I also asked you that if it was clenched so hard, then there must be a lot of wrinkles on the letter.

-Q. Et j'ai ,galemment mentionn, que puisqu'elle ,tait retenue de faon si serr,e, qu'il devrait y avoir beaucoup de froissement dans le papier.

Q. And you agreed that, yes...

A. Oui, je me souviens des commentaires. Oui.

-A. Yes, I do recall the comments.

Q. And you agreed that, yes, there were many wrinkles, correct?

-Q. Et vous ,tiez d'accord que le document ,tait bien froiss,, exact?

A. Oui, je me souviens d'avoir t,moign, ... l'effet que le

document ,tait encore froiss, mais qu'avec le temps, et avec le pressement contre les documents, il avait pu se repasser, si vous voulez.

-A. I recall testifying that it was... I said it was very crinkled at the time, and that with time the document being placed in files and pressed against other documents, the wrinkles or the crinkles could... the creases could have been ironed out.

Q. Okay. Could you please take this document and show with your hand how the victim held it?

-Q. Pouvez-vous, s'il vous pla&#223;t, prendre ce document...

Q. Would you please take this document and show with your hand how the victim handled it?

-Q. ...et d,montrer, avec vos propres mains, la fa&#223;on dont la victime tenait le document?

THE COURT :

Excuse me, just so that we're perfectly clear, I think you handed to the witness your copy of P-13...

VALERY FABRIKANT :

Yes.

THE COURT :

...is that right?

VALERY FABRIKANT :

Yes. I handed him copy which I was given, and I want him to demonstrate exactly how victim held it.

A. O.K. Alors de fa&#223;on, du mieux que je me souviens, l.....

-A. To the best of my recollection...

A. ...c',tait environ de cette fa&#223;on ici, la lettre ,tait un peu repli,e de cette fa&#223;on...

-A. ...it was somewhat folded over, something of this manner...

A. ...et la victime la tenait environ de cette fa&#223;on ici sur son corps.

Q. Okay.

-A. ...and the victim was holding it in this way, against his body.

A. Mais c'est au meilleur de ma connaissance.

-A. But that is to the best of my recollection.

Q. Hold it, hold it. Keep it.

-Q. Ne bougez pas.

Q. Was it in right hand?

-Q. C',tait dans la main droite?

A. Oui, c',tait dans la main droite.

-A. Yes, it was in the right hand.

Q. Okay. The way you hold it it's not wrinkled at all.

-Q. Et de la fa&#223;on que vous la d,tenez elle n'est pas du tout froiss,e.

A. Non.

-A. No.

Q. But you said it was wrinkled and very much so, so you are lying.

-Q. Mais vous avez dit qu'elle ,tait froiss,e et tr&#223;s froiss,e, alors donc vous mentez.

A. Non, bien, je mens pas, ,coutez...

Q. Okay. So hold it...

A. ...si vous voulez que je la froisse, l..., bon, il la tenait...

Q. Okay. Hold it the way it was.

THE COURT :

Just a second now. Listen... Listen, this sort of way

of questioning isn't going to work.

VALERY FABRIKANT :

Because he is lying.

THE COURT :

No, just a second. You must not make statements such as "he is lying". If you wish to demonstrate through what the witness has said that it's improbable that the document was crinkled, then that's a conclusion, I suppose, that the ladies and gentlemen of the jury will have to come to themselves if they wish to, but it's not going to advance us very far if you shout out that the witness is lying. And quite frankly, what demonstrations he performs on a letter in front of him are not worth an awful lot here, what we're talking about was what was the piece of paper that he was and in what condition was it.

VALERY FABRIKANT :

I would appreciate if you allow me to decide what is or isn't important.

THE COURT :

Well, no, I'm not going to permit you to have the witness indulge in experiments here, I'm just not.

VALERY FABRIKANT :

Okay.

Q. So would you please keep it again the way it was so it will be consistent with your contention that it was wrinkled and very much so, please?

-Q. Voulez-vous la tenir de la façon que vous croyez, au meilleur de votre connaissance, qu'elle ,tait d,tendue au moment o— elle ,tait froiss,e, ou pouvait ^tre froiss,e?

A. Comme j'ai dit alors, ... mon arriv,e la victime tenait la lettre environ de cette façon.

-A. As I stated, upon my arrival the victim was holding the letter and somewhat in this manner.

Q. Well, it is not wrinkled the way you're holding it.

-Q. De la façon que vous la d,tenez elle n'est pas froiss,e.

A. coutez, avant mon arriv,e, ce qui a pu arriver avec cette lettre et avec la victime, c'est hors de ma compr,hension.

-A. Listen, prior to my arrival what could have happened with that letter, and once the victim had it in his hands, I don't know, it's not within my reach of understanding, not within my understanding.

Q. This is not my question, my question is...

-Q. Ce n'est pas ma question...

Q. ...demonstrate how it was when you arrived.

-Q. ...ma question... ou enfin veuillez nous montrer comment la lettre ,tait situ,e ... votre arriv,e.

A. Bon, bien, je peux pas aller plus loin que ça, c'est de cette façon que je trouve la lettre.

-A. I cannot go behind this, this is the manner in which I found the letter.

Q. Okay. So now you do not insist anymore that it was wrinkled?

-Q. Alors, vous n'insistez plus sur le fait qu'elle ,tait froiss,e?

A. C'est pas ce que j'ai dit.

-A. That's not what I stated.

A. J'ai dit que c'est la façon que je la trouve.

-A. This is the way I found it, that's what I said.

Q. Well, the way you demonstrate it now it is not wrinkled.

-Q. La façon que vous la démontrez actuellement, elle n'est pas froissée.

A. Comme j'ai dit ... monsieur Fabrikant, ce qui a pu arriver entre le moment où je suis arrivé, et le moment où la victime tenait la lettre, au moment du crime, là, c'est impossible de déterminer.

-A. As I told Mr. Fabrikant, between the time of my arrival and the time where the victim was holding the letter, I cannot say, that's how it took place, that's how it happened.

Q. You're not answering my question.

-Q. Vous ne répondez pas ... ma question.

A. Je comprends pas son sens, là.

-A. I don't understand the meaning...

Q. Keep it exactly as victim hold it.

-Q. Détenez-la exactement de la façon que la victime...

A. De cette façon.

Q. This is how it was.

-Q. ...la détenait.

Q. So I want just to demonstrate that if this is how it was, it is not wrinkled at all.

-Q. Je veux simplement démontrer que si c'était de cette façon, alors donc la lettre n'est pas du tout froissée.

Q. Now, I would like now the jury to have this booklet themselves...

-Q. Maintenant, j'aimerais que le jury...

Q. ...because I want to demonstrate something else and I want the jury to see it too.

THE COURT :

What booklet are you talking about?

VALERY FABRIKANT :

I'm talking about the booklet which witness has presented.

THE COURT :

You mean the photographs?

VALERY FABRIKANT :

I'd like them to open it on picture 8.

THE COURT :

Which photograph are you referring to?

VALERY FABRIKANT :

8.

THE COURT :

8. Okay.

-Q. Photo numéro 8.

VALERY FABRIKANT :

Q. Now, if you look at this picture...

-Q. Maintenant, si vous prenez la photo...

Q. ...please look at it yourself too...

-Q. ...veuillez la regarder vous-même, s'il vous plaît...

Q. ...you will see that this finger...

-Q. ...vous verrez que ce doigt...

Q. ...is not holding the letter...

-Q. ...ne tient pas la lettre...

Q. ...correct?

-Q. ...exact?

A. Oui, d'après la photo il semble que c'est le cas.

-A. Yes, that seems to be the case according to the photograph.

Q. So you demonstrated it wrong.

-Q. Alors donc, vous n'avez pas fait la démonstration correctement.

Q. You demonstrated it wrong. Please demonstrate it correctly.

-Q. Veuillez faire la démonstration correcte, s'il vous plaît.

A. Bon. O.K. Si vous voulez, l...

Q. All right.

A. Bon, c'est comme ça.

-A. Let's say it would be in this fashion.

Q. Let us go to picture 10.

-Q. Alors donc, passons ... la photo numéro 10.

Q. And you will see that the thumb...

-Q. Vous verrez que le pouce...

Q. ...the finger, is not holding the letter either...

-Q. ...ne tient pas la lettre non plus...

Q. ...correct?

-Q. ...exact?

A. Oui, c'est possible, l...

-A. It is possible, yes.

Q. So, again your testimony doesn't hold. So the...

-Q. Alors donc, encore une fois votre témoignage ne tient pas.

THE COURT :

Excuse me. Now that kind of question you can't ask. You can't say to the witness: "Again your testimony doesn't hold". You may make the argument that...

VALERY FABRIKANT :

I ask him, I ask him how his testimony holds.

THE COURT :

Well, no, but you can't ask him... you can't ask him to judge whether his testimony holds or not, his testimony is his testimony.

VALERY FABRIKANT :

Okay.

Q. Now... so we have, according to picture, that the letter was held by these three fingers, correct?

-Q. Alors donc, selon la photo, nous savons que la lettre, était tenue avec ces trois doigts, exact?

A. C'est ce qui semble bien démontrer... c'est ce que semble bien démontrer la photo, l...

-A. That's what seems to be the case on the photograph.

A. Que ce serait dans...

-A. It would be...

Q. Okay. So now please show it to the jury exactly now how the letter was held, by three fingers, and it was held against the body.

-Q. Alors donc, veuillez démontrer aux membres du jury comment la lettre, était tenue selon la photo, c'est-à-dire avec les trois doigts et contre le corps.

A. Bon. Si je me reporte ... la photo, ça semble être dans cette position ici.

-A. If I refer to the photograph it would be in this position here.

Q. Yes. You cannot hold... can you hold something with these three fingers...

-Q. Alors, on ne peut pas tenir quelque chose... est-ce qu'on peut tenir quelque chose avec ces trois doigts...

Q. ...if it is not pressed against the body?

-Q. ...si ce n'est pas pressé, contre le corps?

Q. Can you hold it?

-Q. Pouvez-vous la tenir?

A. Bien voilà..., l..., je la tiens, l...

-A. Well, I'm holding it now.

Q. Well, well against the body, but if you don't hold it against the body, just leave these two fingers, it will fall.

-Q. Contre le corps, oui, mais si elle n'est pas contre le corps et simplement retenue par ces trois doigts elle va tomber.

A. coutez, la seule façon que je peux expliquer c'est qu'au moment de la chute il peut s'avoir produit, norm,ment de circonstances qui fait que...

-A. Upon the fall, a lot of circumstances could have taken place when the body fell, for example...

A. ...qui fait que la position finale se retrouve comme ceci.

-A. ...the final position would be as such.

A. Mais avant la chute, de la façon que la victime tenait la lettre dans ses mains, #a, je peux pas t,moigner l...-dessus.

-A. But prior to the fall, the manner in which the victim was holding the letter, I cannot testify on.

Q. But this is not my question.

-Q. Ce n'est pas ma question.

Q. My question was that there is no way one can hold a letter, just release your two fingers please...

-Q. Ma question ,tait ... l'effet que personne ne peut d,tenir une lettre, laissez aller vos deux doigts...

Q. ...okay, and now lift your hand please?

-Q. ...et maintenant soulevez votre main, je vous prie?

A. Bon. O.K.

Q. This is what happens.

-Q. Alors donc, c'est ce qui se produit.

Q. You cannot hold letter with these three fingers.

-Q. On ne peut pas tenir une lettre avec ces trois doigts.

Q. Especially if you are being shot and you fall to the ground.

-Q. Surtout si on vous tire et vous tombez au sol.

Q. Correct?

-Q. Exact.

A. Non.

-A. No.

A. Tout ce que je peux dire c'est qu'entre le moment o- la victime s'est fait tirer et le moment o- elle tombe ... terre, on peut pas expliquer ce qui est arriv,.

-A. All I can say is between the time when the victim was shot at and then fell to the floor, we cannot explain what took place.

Q. But it is obvious that you mislead the Court, did you, when you said that it was wrinkled, because the way you hold it now it is not wrinkled, correct?

-Q. De la façon que vous la d,tenez actuellement elle n'est pas froiss,e, exact?

A. De la façon actuelle, non.

Q. No.

-A. The current manner, no.

Q. Now, do you really need, the way it is holding now, you said you used a lot of force to release your letter.

-Q. La façon qu'il la d,tient actuellement, vous dites que vous avez exerc, suffisamment de force pour retirer la lettre.

Q. Now the way it is holding now, you don't need to press a lot of effort to release the letter, do you?

-Q. De la façon qu'il la détient actuellement, vous n'avez pas besoin d'exercer trop d'effort pour la retirer, c'est exact?

A. Bon. Ceci s'explique de la façon suivante...

-A. This could be explained in the following manner...

A. ...c'est qu'un document de... un document quelconque, lorsque je fais la récupération de documents, ou de tout autre exhibit...

-A. ...when I retrieve documents or any other exhibit...

A. ...je dois procéder d'une façon très minutieuse pour ne pas contaminer le document...

-A. ...I have to proceed very carefully in order not to contaminate the document...

A. ...et normalement je procède avec des petites pinces...

-A. ...and ordinarily I would proceed with small, some type of tweezers, I would say...

A. ...pour retirer le document très doucement pour pas, comme j'ai dit, le contaminer.

-A. ...in order to remove the document very slowly, as I stated, in order not to contaminate it.

A. Maintenant, ici vous avez le poids de la main de la victime...

-A. Now here you have the weight of the victim's hand...

A. ...peu importe si le pouce et l'index ne tient pas la lettre, je devais quand même y aller prudemment pour la retirer. Ce qui fait que dans ma situation...

-A. ...although the thumb and the index were not holding the letter very firmly, I had to proceed very slowly to remove the letter...

A. ...ce qui fait que dans cette situation-là... c'était difficile pour moi d'immiscer la lettre pour la sortir.

-A. ...so consequently, it was difficult for me to remove the letter and slide it out very slowly.

Q. You managed again not to answer my question.

-Q. Encore une fois vous...

Q. The question was, you said that you had to exert a lot of effort to release the letter from his grip...

-Q. Vous avez mentionné, qu'il fallait exercer beaucoup d'effort pour retirer la lettre de sa prise...

Q. ...and now we see that there was no grip at all...

-Q. ...et maintenant nous voyons qu'il n'y avait pas d'emprise du tout...

Q. ...how would you explain this contradiction?

-Q. ...comment pourriez-vous expliquer cette contradiction?

A. Ce n'est pas une contradiction, c'était, dans mes termes... moi, c'était une force plus que la normale.

-A. It was not a contradiction, in my own terms it was an effort that was more than ordinary or normal.

Q. Well, what could be easier... now, let me have this copy please.

-Q. Donnez-moi cette copie, je vous prie.

Q. I am holding it...

-Q. Alors (inaudible)...

Q. ...the way victim held it here...

-Q. ...de la façon que la victime la détenait...

Q. ...correct?

-Q. ...exact?

A. Ça se rapproche, oui.

-A. It would be close to it, yes.

Q. Now, would it be correct to say that if this can be called significant effort...

-Q. Est-ce que ce serait exact de dire que si on appelle cela un effort important...

Q. ...then how would you call this kind of grip?

-Q. ...alors comment est-ce qu'on pourrait appeler ce genre d'emprise?

Q. Mountain kind of effort? How would you call that kind of "prison" you need to release the letter? What would you call it?

-Q. Ça c'est tout un effort monumental, comment est-ce qu'on pourrait appeler cet effort monumental?

A. Comme il dit, les mêmes termes, un effort monumental.

-A. As he states, the same terms that he used, a mountain of an effort.

Q. Okay. But in this case, and it is wrinkled...

-Q. Mais dans ce cas-ci elle l'est froissée...

Q. ...isn't it? Now it is wrinkled?

A. Oui.

-A. Yes.

-Q. Maintenant elle est froissée.

Q. Now, the way it is now, and on the picture, it's clear it is not wrinkled at all...

-Q. Alors de la façon qu'elle est maintenant et sur la photo elle n'était pas froissée du tout...

Q. ...now here I'm holding it...

-Q. ...maintenant je la tiens...

Q. ...would you please come over and demonstrate exactly how you released it and what kind of significant, what you call effort was required, because to me it looks like that simple.

-Q. ...pouvez-vous maintenant venir la retirer, parce que pour moi ça n'exige pas un effort important.

A. Ça démontrera pas l'aspect réel de ce soir-là..., parce que comme je vous dis, la circonstance n'est pas la même ici comme ce soir-là...

-A. It won't display the real effect as that of that evening because, as I stated, here the circumstances are not the same as those of that evening.

Q. You said many words, they don't make any sense.

-Q. Vous avez utilisé, beaucoup de mots qui n'ont aucun sens.

Q. Could you repeat them again, because...

-Q. Pourriez-vous les répéter encore une fois...

Q. ...either they make no sense, or I didn't get it. Please repeat.

-Q. ...parce que soit qu'ils n'ont aucun sens du tout ou je n'ai pas compris. Veuillez répéter, je vous prie.

A. Dans d'autres termes...

-A. In other words...

A. ...on ne peut pas recréer le moment réel de ce soir-là... ici.

-A. ...one cannot recreate the actual moment of that evening here in court.

Q. What is the problem? I'm holding it exactly the way victim holds it, correct?

-Q. Où est le problème? Je la détiens de la même façon que la victime la tenait, exact?

A. C'est pas tout ... fait la même façon, puis la circonstance n'est pas pareille.

-A. Not exactly the same way, and the circumstances are not the same.

Q. Okay. Correct me so it would be the same way.

-Q. Alors corrigez-moi pour que ce soit de la même façon.

Q. Let us demonstrate it.  
-Q. Faisons une démonstration.  
Q. What is wrong in the way I hold it now?  
-Q. Qu'est-ce qui n'est pas correct dans la façon que je la tiens actuellement?  
A. Bon, la façon est correcte, mettons.  
-A. Let's say the way or the manner is correct.  
Q. So I'm demonstrating correct?  
-Q. Alors, je la démontre de la bonne façon?  
A. Oui.  
-A. Yes.  
Q. Okay. Now, would you please come over...  
A. Relativement.  
-A. Relatively speaking, yes.  
Q. Yes. And take it away from me.  
-Q. Alors venez...

THE COURT :

No, just a second. Just a second. Just a second. No, we don't need to go through this sort of histrionics, I have no way of knowing, and you have no way of knowing whether the amount of weight against your body and the position you're in is the same as the situation where Mr. Desjardins removed the letter. So these sort of courtroom experiments don't advance us very far and we're not going to indulge in them. You have his testimony as to what he noted, as to what he saw, and as to what he experienced. You have free latitude to cross-examine him on that.

VALERY FABRIKANT :

Isn't it obvious that his whole testimony is total lie because to release it is just as simple as that.

THE COURT :

Well, just a second.

VALERY FABRIKANT :

And nothing is wrinkled.

THE COURT :

If you wish to say that his testimony is a total lie because there are no wrinkles, you make a note and you can make that argument to the jury, and...

VALERY FABRIKANT :

I wanted to show it to the jury that...

THE COURT :

But there's no point making your argument as we go along, you might as well...

VALERY FABRIKANT :

You just want to save a liar, and this is too bad.

THE COURT :

You might as well put your questions to the witness and have the witness answer your questions, the jury will judge for themselves whether they believe the witness is telling the truth or whether he's not.

VALERY FABRIKANT :

Well, where is it said...

THE COURT :

That's the way it works.

VALERY FABRIKANT :

...where does it say that something very innocent, experiments cannot be performed in front of the jury?

THE COURT :

Some experiments can, but this experiment you're not going to perform.

VALERY FABRIKANT :

Because you just don't allow that. You would be kind enough to explain why you don't allow it?

THE COURT :

I already explained why I'm not allowing that argument and I'm not going to repeat it.

VALERY FABRIKANT :

Okay.

THE COURT :

So could you pass on to the next question?

VALERY FABRIKANT :

It is just because you're biased judge, this is the only explanation I might have.

Q. Now, let us see yet another picture. You said that body should not be moved, correct?

-Q. Vous avez dit que le corps ne doit pas être déplacé, exact?

A. Oui, jusqu'... une certaine limite.

-A. Yes, to a certain extent.

Q. Okay. Oh, oh, what does it mean to a certain extent? You mean it can be moved?

-Q. Qu'est-ce que ça veut dire avec une certaine limite? Est-ce qu'il peut être déplacé, ou il aurait pu être déplacé?

A. Si je me réfère au cas présent, c'est que la victime est complètement couchée devant la porte...

-A. If I refer to the present case, the victim is down totally, exactly in front of the doorway...

A. ...et que pour me permettre de rentrer c'est possible qu'en poussant la porte j'aie déplacé un peu les jambes de la victime.

-A. ...and in order for me to go in, upon opening the door, I would have possibly moved the victim's legs, slightly or somewhat.

A. C'est ce que j'entendais par dans la mesure du possible.

-A. That's what I meant by as much as possible.

Q. Well, but in this case you did or you didn't?

-Q. Mais dans ce cas-ci vous les avez déplacés ou non?

A. Oui, il a fallu que je pousse la porte de façon ... pousser un peu la victime, mais très légèrement, peut-être un pouce, peut-être deux pouces.

-A. Yes, I had to push the door in order to push the victim's legs very, very slightly, maybe an inch, an inch and a half, two inches.

Q. Okay. Then how would you explain that I was able to get out of the office...

-Q. Alors, comment pouvez-vous expliquer que j'étais en mesure de sortir du bureau...

Q. ...without moving the victim?

-Q. ...sans déplacer la victime?

A. Je peux pas expliquer ce fait-là...

-A. I cannot explain that fact.

Q. But you agree that if someone could exit the room...

-Q. Mais vous convenez que si quelqu'un peut sortir de la pièce...

Q. ...then there is enough space after that to enter the room, correct?

-Q. ...alors donc, il reste suffisamment d'espace pour pouvoir rentrer dans la pièce, n'est-ce pas?

A. En principe, oui.

-A. In principle, yes.

A. Mais en tant que technicien de scène de crime je ne peux pas me permettre de me glisser ... l'intérieur d'un espace restreint...

-A. But as a crime scene technician I cannot allow myself to slip within a very restricted area or space...

A. ...en risquant de pouvoir détruire des preuves qui pourraient être sur le bord du cadrage ou sur le bord de la porte.

-A. ...and risk destroying evidence that could be on the door frame or on the edge of the door.

A. Alors, je devais m'assurer de me laisser un espace suffisant pour pouvoir pénétrer sans frotter, si vous voulez, sur la porte ou sur le cadrage.

-A. Therefore, I had to allow myself a sufficient amount of space to go through without rubbing either the door frame or the door, or the edge of the door.

Q. Well, I didn't rub any of those.

-Q. Mais moi, je n'ai pas frotté, ni l'un ni l'autre des côtés.

THE COURT :

Well just a second, now you're arguing with the witness.

VALERY FABRIKANT :

Yes. All right.

THE COURT :

You're not testifying, you know, you're putting questions.

VALERY FABRIKANT :

Okay.

Q. Now, let us see the picture...

-Q. Passons donc ... la photo...

Q. ...the picture number 10.

-Q. ...numéro 10.

Q. And you see the leg of the victim...

-Q. Vous voyez la jambe de la victime...

Q. ...the right leg of the victim somewhere in the middle of the door...

-Q. ...la jambe droite, qui semble être au centre de l'entrée, de la porte...

Q. ...correct?

-Q. ...exact?

A. Oui.

-Q. Au milieu de la porte.

Q. Now turn to picture 11...

-A. Yes, that's correct.

-Q. Maintenant, photo numéro 11...

Q. ...and you see the same leg very close to the end of the door...

-Q. ...on voit la même jambe qui est très près du bout de la porte, là....

A. Hum-hum.

Q. ...did you move the body?

-Q. ...avez-vous déplacé le corps?

A. Non.

-A. No.

A. Absolument pas.

-A. Absolutely not.

A. Ce qui explique ça ici c'est la prise de vue qui est différente...

-A. The angle here is different...

Q. Body moved by itself?

A. ...et sur la photo numéro 11 la porte est fermée.

-A. ...and on photo number 11 the door is closed.  
A. ...ce qui fait que l'angle ou le rapport angulaire, si vous voulez, entre la jambe, entre la première photo...  
-A. ...which means the angular ratio of the leg in relation to the first photograph...  
A. ...and the second, c'est différent.  
-A. ...totally different.  
Q. The difference cannot account for such a distance...  
-Q. La différence ne peut compter une telle différence...  
Q. ...half of the door, the distance.  
-Q. ...c'est-...-dire la demi-porte, la demi-largeur de la porte.  
A. Non, si...  
Q. Does it look like something was fabricated there?  
A. ...on regarde...  
-Q. Est-ce qu'on voit, ou on pourrait dire qu'il y a quelque chose qui a été fabriqué, là?  
A. Non. Regardez attentivement les deux photos...  
-A. No. Carefully look at both photographs...  
A. ...et vous verrez que les plis dans le pantalon de la jambe droite...  
-A. ...and you shall see that the creases in the leg pant, in the right leg pant...  
A. ...et même que la jambe gauche aussi...  
-A. ...and that of the left leg also...  
A. ...ils sont identiques.  
-A. ...are identical.  
A. Et je maintiens mon témoignage que le corps n'a pas été déplacé...  
-A. I maintain my testimony that the body was not moved...  
A. ...au moment où moi j'examinais la scène.  
-A. ...at the time where I examined the scene.  
Q. Okay. Now, one more thing...  
-Q. Une autre chose...  
Q. ...near the right heel on picture 11 there seems to be a piece of paper, something white.  
-Q. ...près du talon droit sur la photo numéro 11 il semble y avoir un bout de papier, quelque chose de blanc.  
A. Je ne vois pas.  
-A. I do not see that.  
Q. On picture 11, near the right heel.  
-Q. Photo numéro 11, près du talon droit.  
A. Est-ce que monsieur peut me montrer plus clairement?  
-A. Can Mr. Fabrikant show me more clearly?  
A. J'ai pas ça sur ma photo.  
-A. I do not have that on my photograph.  
Q. This is interesting.  
A. C'est probablement juste une poussière qui s'est apposée sur le négatif lors de l'impression.  
-A. Maybe it was just some dust that was superposed on the negative during the printing.  
A. Est-ce que je peux vérifier avec un autre document?  
-A. Might I verify with another document?  
THE COURT :  
You can certainly verify with mine, it shows a white object by the heel.  
-Q. Moi, j'ai (inaudible)...  
A. Oui, effectivement, la plupart...  
VALERY FABRIKANT :  
Q. So everyone has it, right?  
-A. Yes, that's correct.

Q. Now look at picture 10, there is no...  
THE COURT :  
Excuse me, just a second, I think some of your... do  
some pictures show a white object, some do not. Some  
do, some do not.

A. C'est simplement une poussière qui a pu se déposer sur  
les négatifs lors de la réimpression de toutes les  
séries de photos.

-A. Maybe some dust just fell on the negatives as we were  
printing all the negatives and the series of  
photographs.

A. La façon de pouvoir...  
VALERY FABRIKANT :

Q. May I see your copy, please?

-Q. Puis-je voir votre copie, je vous prie?

A. Certainement.

Q. You don't make copy of the same negative the same way,  
the same number of copies?

-Q. Vous n'effectuez pas des... vous n'utilisez pas les  
négatifs de la même façon lorsque vous effectuez  
plusieurs photos?

A. O.K. Ma série personnelle a été faite immédiatement  
après la scène de crime...

-A. My personal series was made and printed immediately  
after the crime scene...

A. ...et les séries additionnelles que les membres du jury  
ont, et tous les autres membres ici, ont été faites  
plusieurs mois après.

-A. ...and the additional series, that of the jury and all  
the people here in court were conducted and made several  
months later.

Q. Okay.

-Q. D'accord.

Q. Now let us turn to next point. Picture number 10.

-Q. Alors, passons donc au point suivant. Photo numéro 10.

Q. It is common knowledge that every liquid, including  
blood, flows to the lower point, not up, correct?

-Q. Alors donc, il est de connaissance générale que le sang  
se dépose plutôt que de remonter lorsqu'il s'écoule?

A. Oui, j'admets ce...

-A. Yes, I admit, I believe that.

Q. Okay. Now if you look at the blood stain on the  
victim...

-Q. Si vous regardez les taches de sang sur la victime...

Q. ...you will see that the place where the bullet  
entered...

-Q. ...vous verrez l'endroit où est rentré le projectile...

Q. ...is not centered.

-Q. ...il n'est pas centré..

Q. The greater part of blood stain...

-Q. La majeure partie de la tache de sang...

Q. ...is up...

-Q. ...se concentre vers le haut...

Q. ...where the higher place, at his stomach.

-Q. ...c'est-à-dire près de son estomac, l'endroit le plus  
élevé..

Q. Here is the greater part...

-Q. Voilà... l'endroit le plus important...

Q. ...and closer to his neck, which is down...

-Q. ...et plus près de son cou, qui est vers le bas...

Q. ...there is less blood.

-Q. ...il y a moins de sang.

Q. Now, isn't it an indication that the real position of the body was not as it is here because blood cannot flow up?

-Q. N'est-ce pas une indication que la position réelle du corps n'est pas telle qu'elle est représentée ici parce que le sang ne peut pas s'écouler vers le haut?

Q. Correct?

-Q. Exact?

A. Une blessure provoque incontestablement un écoulement de sang.

-A. Of course, an injury will provoke some blood flow.

A. Ce que monsieur Fabrikant disait tantôt, que les liquides, après qu'une personne soit décédée...

-A. What Mr. Fabrikant was saying earlier, the fluids or liquids, once a person has died...

A. ...que ce liquide-là se dépose dans la partie inférieure du corps.

-A. ...will deposit at the bottom or the lower portion of the body.

A. C'est normal, mais une blessure, au moment d'une blessure il y a un écoulement de sang...

-A. It's normal, but at the time of the injury there is some blood flow...

A. ...ce qui explique ici que la victime est ensanglantée sur sa surface supérieure.

-A. ...which explains that the victim there is, the stain, the blood is on the top portion of the victim.

A. D'ailleurs, on remarque sous la tête de la victime qu'il y a un cercle, un norme cercle de sang, on présume, qui prouve que le corps n'a pas été déplacé.

-A. Moreover, under the victim's head there is a circle allegedly of blood, which proves that the victim was not moved.

Q. I'm not asking about this, we'll talk about it later on. You didn't answer my question.

-Q. (Inaudible), vous n'avez pas répondu ... ma question, ce n'est pas (inaudible).

Q. Now this is the entrance of a bullet...

-Q. Voici l'entrée d'une balle...

Q. ...and the plane is like this, this is the lower part...

-Q. ...et le plan est comme ça, c'est la partie inférieure...

Q. ...and this is the upper part...

-Q. ...et ça c'est la partie supérieure...

Q. ...and the stain is here greater than it is here.

-Q. ...et la tache ici est plus importante que celle-là ici.

Q. How on earth could it happen that blood which goes from the wound...

-Q. Comment est-ce qu'on pourrait expliquer que le sang...

Q. ...stains more where it is higher...

-Q. ... partir de cette blessure ça tacherait...

Q. ...and stains less where it is lower, blood flows from the wound...

-Q. ...de façon plus importante la partie supérieure que la partie inférieure...

Q. ...and it should go where it is down more than when it is up...

-Q. ...le sang qui s'écoule d'une blessure devrait se diriger vers le bas plutôt que vers le haut...

Q. ...and this is not the case here, do you agree?

-Q. ...ici ce n'est pas le cas, vous ^tes d'accord?

A. coutez, monsieur Fabrikant parle de plan ,lev, par rapport au corps...

-A. Listen, Mr. Fabrikant speaks of a higher plane in relation to the body...

A. ...le corps est couch, sur une surface plane...

-A. ...the body is laying down on a flat surface...

A. ...alors le sang qui s',coule de la blessure va couvrir la r,gion imm,diate de la blessure, il n'y a pas de plan plus ,lev, ou plus bas, on ne peut pas expliquer que le sang coule plus vers le cou ou plus vers la ceinture.

-A. ...therefore when there's a wound, the blood flowing from the wound will just cover the immediate area of that wound, we can't explain why it would go down instead of up, or it would be near the belt, it just surrounds the immediate area of the wound.

Q. But it surrounds it very unsymmetrically, do you see it?

-Q. Mais disons que #a encercle de fa#on pas du tout sym,trique, vous la voyez?

A. Oui.

-A. Yes.

Q. The less stain is where the body has the lower part, because the body is lying in such a way that "this place" is lower, and stomach is up.

-Q. La tache moindre se trouve vers le bas du corps, parce que de la fa#on qu'il est situ,...

Q. The victim had a stomach...

-Q. ...cette partie-l... est vers le bas, et l'estomac...

Q. ...so there is no way, if the body were in such position as it is now, that the more blood be on the upper part of the body and less blood on the lower.

-Q. La fa#on que le corps est situ, actuellement, il n'y a aucune fa#on qu'on pourrait expliquer pourquoi il y a plus de sang vers le haut plut"t que vers le bas, tel qu'on voit sur la photo.

A. J'ai deux explications que je pourrais amener, mais sans ^tre un expert.

-A. I have two explanations to provide, without being an expert.

A. Premiřrement, cette blessure n'a peut-^tre pas ,t, la blessure mortelle...

-A. Firstly, this wound possibly was not the fatal wound...

A. ...alors la victime n',tait peut-^tre pas tomb,e ... ce moment-l.....

-A. ...so maybe the victim had not fallen at that point...

A. ...et deuxiřmement, les v^tements aussi vont absorber de fa#on diff,rente les liquides.

-A. ...and secondly, clothes will also absorb liquids in different ways.

A. C'est la seule explication que je peux amener.

-A. It's the only explanation I can provide.

Q. So what you are implying, that three shots which were fired in very fast succession...

-Q. Alors, ce que vous all,geez c'est que les trois tirs qui ont ,t, tir,s trřs rapidement...

Q. ...what could influence be on this particular wound whether it was mortal or not? Because three shots were fired almost, you know, simultaneously.

-Q. ...comment est-ce que #a pourrait affecter la blessure qu'on voit ici sur la photo? Parce que les trois coups de feu ont ,t, tir,s presque de fa#on simultan,ment.

A. C'est une affirmation, ce n'est pas des faits. Moi, je ne suis pas sur la scène de crime au moment où la victime se fait attaquer.

-A. That is a statement and not a fact. I was not on the scene when the victim was attacked, or was hit.

Q. Well, isn't it the only explanation that the body was not in this position?

-Q. N'est-ce pas la seule explication que le corps n'était pas dans cette position?

A. Je reviens toujours ... mon affirmation qu'au moment où j'arrive sur la scène, c'est la façon que je découvre le corps, et c'est la façon qu'il est resté, jusqu'à mon départ.

-A. I will reiterate what I've stated, that the body was positioned in this manner upon my arrival and was also upon my departure.

Q. Okay. Who else has access to the body before you?

-Q. Qui d'autre a accès au corps avant que vous arriviez?

A. Je suppose qu'avant mon arrivée Urgences Santé, a peut-être vérifié, les signes vitaux de la victime.

-A. I presume that prior to my arrival Urgences Santé, would have checked for the vital signs of the victim.

Q. Who knows exactly who was there and at what time?

-Q. Qui sait exactement qui était là et à quelle heure?

A. Je ne peux pas répondre ... cette question-là, je le sais pas.

-A. I cannot answer that question, I do not know.

Q. Do you know who can answer this question?

-Q. Savez-vous qui peut répondre ... cette question?

A. C'est probablement mentionné, dans tout le dossier ... un point quelconque mais...

-A. It's probably mentioned in the entire file at one point or other.

Q. So effectively, the body could be tampered with before you arrived there, correct?

-Q. En fait, on aurait pu toucher au corps avant votre arrivée, exact?

A. Touché, oui, c'est exact.

-A. Tampered, yes, that's correct.

Q. So someone else could tamper with the body and someone else could put just... it's so easy...

-Q. Alors, quelqu'un d'autre aurait pu toucher le corps et quelqu'un d'autre... il est tellement facile...

Q. ...to take a piece of paper...

-Q. ...de prendre un bout de papier...

Q. ...put it on someone's chest...

-Q. ...le placer sur la poitrine d'une personne...

Q. ...and put the dead hand over this just to hold it...

-Q. ...et placer cette main par-dessus afin de le retenir...

Q. ...is it easy to do?

-Q. ...est-ce que c'est facile ... faire?

A. Si monsieur Fabrikant le dit de cette façon, c'est une possibilité.

-A. If Mr. Fabrikant states it in this manner, it is a possibility.

Q. It is a possibility. All right.

-Q. C'est une possibilité.

Q. Now, may we have the original, please?

-Q. Est-ce qu'on peut avoir l'original, je vous prie.

A. Des photos ou du...

-A. Of the photographs or...

Q. No, no, original of the letter.  
-Q. Non, de la lettre.  
Q. Now, one small question preliminary.  
-Q. Une petite question pr,liminaire.  
Q. The original doesn't have this.  
-Q. L'original n'est pas de cette fa#on.  
Q. How to explain this? Did you make copies...  
-Q. Comment expliquer...  
Q. ...of the original or it was copy of copy?  
-Q. Avez-vous fait des photocopies de l'original...  
THE COURT :  
You say the original doesn't have this, I wonder if you could be more precise so...  
VALERY FABRIKANT :  
Well, this black line as if it was stapped.  
THE COURT :  
I see. Okay.  
VALERY FABRIKANT :  
The staple mark.  
THE COURT :  
The staple mark. Okay.  
-Q. C'est-...-dire la marque pos,e par...  
  
VALERY FABRIKANT :  
Q. So it is not a copy of the original?  
-Q. Alors donc, ce n'est pas une copie de l'original?  
A. Je peux pas expliquer le fait que l'original n'ait pas de broche...  
-A. I cannot explain the fact that the original would not have a staple...  
A. ...mais dans la pr,paration du dossier, #a prend des dizaines de copies pour tout le monde.  
-A. ...but in the preparation of the file it requires tens or dozens of copies for everyone.  
A. Et c'est parfaitement normal qu'... partir d'une premi#re photocopie, qui a ,t, broch,e dans un dossier quelconque, qu'on ait pu refaire d'autres copies ... partir de cette copie.  
-A. And from a photocopy in a file, it would be totally normal to make photocopies and that the staple would appear on the subsequent copies made.  
Q. All right. Now, do I understand correct...  
-Q. Maintenant, est-ce que je comprends bien...  
Q. ...that the letter was hold not text outside, text was inside?  
-Q. ...que la lettre ,tait retenue de fa#on ... ce que le texte soit ... l'int,rieur et non pas ... l'ext,rieur?  
A. Il semble bien que oui.  
-A. It appears to be so.  
Q. Okay. But your recollection, without looking at the picture...  
-Q. Sans regarder la photo...  
A. Oui.  
-Q. ...selon votre souvenir.  
A. Selon mon souvenir c',tait ,galement la fa#on que monsieur Fabrikant l'explique.  
-A. From my recollection it's also in the manner explained by Mr. Fabrikant.  
Q. Okay. Now you took the letter...  
-Q. Vous avez pris la lettre...  
Q. ...I guess you didn't touch it, did you?

-Q. ...je suppose que vous ne l'avez pas touché, exact?  
A. Non.

-A. No.

Q. No. Okay. Was this letter checked against fingerprints?  
-Q. Est-ce qu'on l'a vérifiée pour des empreintes digitales?  
A. Moi, personnellement, non.

-A. Personally, myself, no.  
A. Je l'ai remis ... l'enquêteur en charge au dossier...  
-A. I submitted it to the investigator in charge of the file...  
A. ...et c'est lui qui en a eu la charge, si vous voulez, qui a soit pris la décision de le faire faire ou de ne pas le faire faire.

-A. ...and since he was in charge he took the decision to do it or not to do it.  
Q. Uh, huh. But you don't know that?  
-Q. Mais vous ne savez pas?  
A. Non.

-A. No.  
Q. Okay. Now, how would you explain if the letter was folded like this...  
-Q. Comment pouvez-vous expliquer que si la lettre était pliée de cette façon...  
Q. ...how could blood be on the face part of the letter?  
-Q. ...comment est-ce qu'on pourrait expliquer que le sang se retrouvait au recto du document?  
Q. This part of the letter didn't touch the body...  
-Q. Cette partie du document n'a pas touché, au corps...  
Q. ...how blood appeared here, on the face of the letter? It is not on the back. I would like to pass it to the jury.  
A. Can you show me the blood?  
-A. Est-ce que vous pouvez me montrer...  
Q. Yes.  
A. On the face.  
Q. This is blood... well, what imitates probably blood, because the whole thing is a fraud.

THE COURT :  
Mr. Fabrikant...  
VALERY FABRIKANT :  
That is imitating blood here.  
THE COURT :  
Mr. Fabrikant, what you're referring to is a stain on the letter that has a certain color, that's the way you should proceed.  
VALERY FABRIKANT :  
Okay.  
THE COURT :  
Q. Mr. Desjardins, I really would prefer if you'd stay in the box.  
-Q. Je préfère que vous restiez dans la boîte.  
A. O.K.  
VALERY FABRIKANT :  
Now I would like to show it to the jury, the Jury would see...  
THE COURT :  
What we'll do is we'll circulate the letter first, wait quietly, and then we'll come back to your question.  
VALERY FABRIKANT :  
...that the blood is what is supposed to be blood.

THE COURT :

There's a stain on the letter.

VALERY FABRIKANT :

Yes, stain on the letter is on the face. Please don't touch it.

THE COURT :

You don't want it out?

VALERY FABRIKANT :

No, I want them to look at it without taking it out from the envelope.

THE COURT :

You don't want it out of the pack. Fine.

VALERY FABRIKANT :

No, no, no, no, please don't, because I want it to be exact for fingerprints too. It was planted.

THE COURT :

Would you please desist from making those statements, it doesn't advance anything.

VALERY FABRIKANT :

I'm explaining to you why I don't want you to touch it.

THE COURT :

Fine, it's in the package.

VALERY FABRIKANT :

Now, I want the jury to see that the...

THE COURT :

Well, just let the jury look at it first, and then we'll come to your question. I don't wish your argument made in front of the jury.

VALERY FABRIKANT :

No, I am not arguing, I just... it was, and the jury should pay attention that the stains are on the face part of the letter.

THE COURT :

I told the jury to look at both sides of the letter.

VALERY FABRIKANT :

Yes.

THE COURT :

Just place that in front of the witness, I think.

VALERY FABRIKANT :

Okay.

Q. Now my question...

-Q. Maintenant ma question...

Q. ...give any reasonable explanation how blood stain could go into the internal part of a letter.

-Q. ...maintenant, y aurait-il une explication raisonnable pour expliquer comment ou pourquoi le sang serait apparu au recto du document?

A. C'est... il y a... il peut avoir une explication, il peut y en avoir dix explications.

-A. There could be one explanation, there could be ten explanations.

Q. Give one.

-Q. Donnez-en une.

A. O.K. C'est qu'au moment o- la victime se fait tirer...

-A. Okay. When the victim was shot at...

A. ...on pr,sume qu'il a n,cessairement la lettre dans les mains...

-A. ...we suppose that necessarily the letter would have been in his hand...

A. ...puis avec les projections de sang, c'est normal que

des projections de sang se retrouvent sur la face interne, externe, ou partout.

-A. ...and with the blood spattering there could have been spattering all over on the front or on the back of the document, or all over.

Q. Do I understand correct that your explanation is that when victim was shot...

-Q. Dois-je bien comprendre, selon votre t,moignage, lorsque la personne a ,t, tir,e...

Q. ...what happened you say, he...

-Q. ...que s'est-il produit vous avez dit...

Q. ...he still held it like this?

-Q. ...il la d,tenait toujours de cette faon?

Q. Or give just something which would look truthlike so that it could be explained.

-Q. Donnez simplement quelque chose qui semblerait ^tre vrai pour que ta puisse expliquer ce ph,nomŠne.

Q. Just the whole process, give any idea in the whole procedure...

-Q. Donnez-nous simplement une id,e de tout le proc,d,...

Q. ...how this would happen.

-Q. ...comment cela aurait pu se produire.

A. C'est parfaitement logique que des projections de sang puissent se retrouver, d'ailleurs on voit que les projections de sang sont sur la bordure du document.

-A. It's perfectly logical that the blood spattering, for example the spattering you see on the border or on the edge, along the edge of the document here.

A. Si le document est repli, de la faon que monsieur Fabrikant le montrait, et comme on voit sur les photos...

-A. If the document was folded the way Mr. Fabrikant is displaying it, and as we see it on the photographs...

A. ...qu'au moment o- la victime se fait blesser, les projections de sang peuvent avoir atteint la bordure du document, que ce soit du c"t, int,rieur ou ext,rieur.

-A. ...when the victim was injured, it's very possible for the blood spattering or projections could have gone on the interior or the outside of the document, as we see here along the border, the stains of blood.

Q. This is not "bordure", this is well inside, inside I must insist...

-Q. Ces taches ne sont pas sur la bordure mais tout ... fait ... l'int,rieur...

Q. ...a folded document.

-Q. ...et ... l'int,rieur d'un document repli, je dois souligner.

A. Si on regarde sur la photo, le document n'est pas pli,, press, si vous voulez, face contre face...

-A. If one looks at the photograph, the document is not folded face to face for example...

A. ...il y a une ouverture, et puis m^me au moment o- la victime tient la lettre, et qu'elle est encore debout...

-A. ...there is an opening, and even when the victim was standing or still standing in the way that the victim was holding the letter...

A. ...alors ... ce moment-l... tout est possible.

-A. ...anything could be possible.

Q. Give a demonstration.

-Q. Pouvez-vous nous faire une d,monstration?

Q. Just any kind of demonstration which would make this

stuff hold. Any explanation.

A. Je peux pas...

-Q. N'importe quel genre de démonstration qui pourrait expliquer ou faire tenir cette explication.

A. D'accord, je vais vous montrer.

-A. Very well, I will show you.

A. Alors, si le document est de cette façon...

-A. So if the document is in this manner...

A. ...c'est fort possible que des gouttelettes puissent avoir abouti ... l'intérieur.

-A. ...it is fairly possible for drops to have ended up inside.

Q. Please demonstrate. You are being shot.

-Q. Alors, veuillez démontrer que...

A. Non, je peux pas démontrer ça.

-Q. ...si on vous tire...

-A. No, I cannot show this.

Q. Just the idea how on earth...

A. Juste mon explication...

Q. If victim could hold this letter, being shot...

-Q. Une personne qui est tirée, et de la façon qu'elle détient cette lettre...

Q. ...three times...

-Q. ...c'est-à-dire tirée trois fois...

Q. ...and blood could come inside this letter the way it did?

-Q. ...comment le sang pourrait-il s'introduire ... l'intérieur de la façon que ça s'est produit?

A. Je peux pas le démontrer parce que j'étais pas sur les lieux au moment du crime.

-A. I cannot demonstrate that because I was not on the scene at the time of the crime.

A. Comme j'ai expliqué, il y a plein de facteurs qui peuvent en venir ... ce résultat.

-A. And as I explained, several factors could explain these results.

Q. Okay.

-Q. D'accord.

Q. May I have it again?

-Q. Puis-je le revoir?

Q. Now, is the paper material which could be analyzed for fingerprints?

-Q. Maintenant, ce document est du genre de papier qu'on peut analyser pour des empreintes digitales?

A. Oui.

-A. Yes.

Q. Okay. Now, would there be, just assuming someone wants to commit a fraud here...

-Q. Si l'on suppose que quelqu'un veut (inaudible)...

Q. ...that those blood stains were put here just to impress the jury rather than...

-Q. ...que ces taches de sang...

Q. ...for any other purpose...

-Q. ...auraient été placées ... simplement pour impressionner le jury plutôt que tout autre (inaudible)...

Q. ...would this be a logical explanation to appearance of those stains?

-Q. ...est-ce que ça pourrait être une explication logique selon l'apparence de ces taches?

A. Je peux pas répondre ... cette question-là, c'est pas de ... c'est ... comment je pourrais dire donc...

-A. I cannot answer that question, how could I say...

Q. But you agree that it looks impressive?

-Q. Mais vous convenez que c'est impressionnant?

A. Pas du tout.

-A. Not at all.

Q. Well, if we take into consideration that this letter warns me for my bad behavior...

-Q. Si l'on tient compte que cette lettre m'avertit ou m'informe de mon mauvais comportement...

Q. ...and allegedly victim brings to me that letter...

-Q. ...et que la victime all,gu,e m'apporte cette lettre...

Q. ...and he's being shot...

-Q. ...et qu'il est tir,...

Q. ...and still holds the letter...

-Q. ...d,tenant toujours la lettre...

Q. ...then blood stains are just crying for revenge?

-Q. ...alors donc, les taches de sang demandent une vengeance?

Q. Does it make sense?

-Q. Est-ce que ça a du sens, ça a de l'allure?

A. Je comprends pas le sens de la question, l..., je m'excuse, l...

-A. I don't understand the question, I'm sorry.

Q. Okay. I explain once again.

-Q. Je vais expliquer encore une fois.

Q. Since my contention is that this letter was just planted, it has never been there, I've never seen the letter, therefore...

-Q. Puisque ma pr,tention est que quelqu'un aurait plac, cette lettre ... cet endroit, parce qu'elle n',tait pas l... au d,part, alors donc...

Q. ...so the only explanation for these blood stains here...

-Q. ...la seule explication pour ces taches de sang qui sont pr,sentes...

Q. ...to impress the jury and the public...

-Q. ...tait simplement pour impressionner le jury et le public...

Q. ...of kind of savage person I probably am.

-Q. ...du genre de personne sauvage que je pourrais repr,senter, ou que je pourrais être.

Q. That someone comes to me, bringing letter of warning...

-Q. Que quelqu'un s'avance vers moi pour me donner ou me remettre une lettre d'avertissement...

Q. ...and instead he's being shot.

-Q. ...et ... la place cette personne est tir,e.

Q. It produces good image of a savage person, isn't it?

-Q. Ça produit une très bonne image d'un sauvage, ou d'une personne qui n'est pas du tout civile, exact?

A. C'est une affirmation, je peux pas... moi, je t,moigne sur des faits.

-A. That is an affirmation, a statement, I testify on facts.

Q. Well, but you do not give any facts to explain the blood stain inside a folder letter.

-Q. Mais vous ne donnez aucun fait...

Q. Dead person couldn't change folding this to this.

-Q. ...pour expliquer la provenance des taches de sang qui se retrouvent ... l'int,rieur du document.

A. J'ai donn, une explication raisonnable tant"t...

-A. I provided a reasonable explanation earlier...

A. ...et je m'en tiens ... cette explication. Je peux pas

donner le fait exact, c'est une explication très raisonnable.

-A. ...and I maintain what I stated earlier, it is a very reasonable explanation to what the document contains.

Q. Okay. Now, let us look at something else.

-Q. Maintenant, passons ... autre chose.

Q. At picture 10 again I address you.

-Q. Encore une fois je vous adresse ... la photo num,ro 10.

Q. You have isolated stains...

-Q. On a des taches isol,es...

Q. ...near the letter...

-Q. ...près de la lettre...

Q. ...you have isolated stains of blood.

-Q. ...vous avez des taches isol,es, l..., des taches de sang.

Q. Well, of allegedly blood.

-Q. Suppos,ment de sang.

Q. How on earth isolated stains could appear on a shirt...

-Q. Comment est-ce que des taches de sang pourraient apparaître sur un chemisier ou sur une chemise...

Q. ...unless person, shirt, everything is moved?

-Q. .... moins que la personne, la chemise ait ,t, d,plac,e?

A. C'est encore un ph,nomšne inexplicable.

-A. There again, this phenomenon, it cannot be explained.

A. C'est comme j'ai dit, bon, monsieur affirme que la victime a reęu trois coups de feu.

-A. As I stated, Mr. Fabrikant states that the victim would have received three gunshots.

A. Entre le premier puis le troisišme, la victime n'a peut-  
être pas n,cessairement tomb, imm,diatement, puis les projections de sang peuvent ,tendre du sang de n'importe quelle faon.

-A. Between the first and the third gunshots, we don't know how the victim reacted and the blood stains could have reacted or spread differently.

Q. Well person who is shot three times, and one in the head, collapses immediately.

-Q. Une personne qui est tir,e trois fois, une fois dans la t^te, tombe imm,diatement.

Q. And doesn't move.

-Q. Et ne bouge pas.

Q. This is what pathologist said.

-Q. C'est ce que le pathologiste a exprim,.

Q. So, is it possible... but let us put it this way. Is it possible, without additional motions of...

-Q. Serait-il possible, sans autre d,placement...

Q. ...of body, shirt...

-Q. ...soit du corps, de la chemise...

Q. ...or both...

-Q. ...ou les deux...

Q. ...that isolated stain of blood appears?

-Q. ...qu'on aurait des taches de sang isol,es?

Q. Would you agree that isolated stain of blood cannot possibly appear?

-Q. Seriez-vous d'accord que des taches de sang isol,es ne pourraient pas apparaître?

A. Non, je suis pas d'accord.

-A. No, I do not agree.

Q. Okay. Give an idea how, and this is the source of blood, blood is coming from here.

-Q. Alors voil... la source de sang, le sang provient de cet endroit.

Q. Blood is coming from wound.

-Q. De la blessure.

Q. And there is a big stain here...

-Q. Et il y a une grande tache de sang ici...

Q. ...how is it possible to have additional stain which is not connected with the main stain?

-Q. ...comment pourrait-on trouver des taches additionnelles sans que ce soit reli, avec la tache principale?

Q. Just give an idea.

-Q. Veuillez simplement nous donner une id,e.

A. Ce que je peux dire...

-A. What I can say...

A. ...c'est qu'avec l'exp,rience que j'ai...

-A. ...with my experience...

A. ...sur des douzaines et des douzaines de scšnes de crime violentes...

-A. ...over dozens and dozens of violent crime scenes...

A. ...que j'ai couvertes dans ma carrišre...

-A. ...that I have covered throughout my career...

A. ...on retrouve des projections de sang sur des scšnes de crime que souvent sur le moment m^me c'est inexplicable...

-A. ...we'll find blood spatterings or projections on crime scenes which very often cannot be explained...

A. ...et c'est pour #a qu'il y a un sp,cialiste qui va nous assister sur certaines scšnes de crime pour d,terminer la provenance de ces projections de sang-l...

-A. ...that's why we have a specialist to assist us to determine the origin of these projections or spattering.

A. Sur certaines scšnes de crime.

-A. On some crime scenes.

A. Alors, et puis c'est comme je disais, selon mon exp,rience, des projections de sang se manifestent de fa#on tršs ,trange des fois.

-A. And, as I stated, blood spatterings can occur very oddly and very strangely at times.

A. Et dans ce cas ici c'est tout ce que je peux dire, c'est qu'il y a eu un crime, il y a eu des circonstances...

-A. And in this case that's all I can say, there was a crime, there were circumstances...

A. ...puis c'est ce qui explique qu'il peut y avoir des projections de sang de n'importe quelle fa#on.

-A. ...and that's what explains the spatterings that can take place in just about any manner.

Q. So effectively, you cannot explain how isolated stain of blood can appear on a shirt, correct?

-Q. Alors en fait, vous ne pouvez pas expliquer comment des taches de sang isol,es pourraient appara#tre sur une chemise, exact?

A. Expliquer de fa#on pr,cise, selon cette scšne de crime-l..., ou selon n'importe quelle scšne de crime, non.

-A. To explain specifically according to this crime scene or any other crime scene, no.

Q. Okay. How about not believing miracles but try ordinary signs...

-Q. Alors donc, si on regarde des signes tout ... fait r,guliers, ... l'exception faite des miracles...

Q. ...is it possible...

-Q. ...serait-ce possible...

Q. ...that body was not in this position in the first place...

-Q. ...que le corps n'eut pas ,t, dans cette position ...  
l'origine...

Q. ...that the body was in such position where the greater part of the stain was the lower part of the body, this is why stain is greater here, because body was not in this position originally.

-Q. ...qu'il fut dans une autre position, autre que celle-ci, puisque la partie inf,rieure o- s'est ,coul, le sang est son estomac qui repr,sente la partie plus basse.

Q. That there was tampering with the body...

-Q. Et que le corps aurait ,t, manipul,...

Q. ...someone just simply moved the shirt...

-Q. ...quelqu'un aurait simplement d,plac, la chemise...

Q. ...on the place where there was blood...

-Q. .... l'endroit o- il y avait du sang...

Q. ...and here you have an isolated stain of blood...

-Q. ...et ici on retrouve une tache de sang isol,e...

Q. ...and there is no miracle, and everything is explained...

-Q. ...et il n'y a aucun miracle l...-dedans, et tout s'explique...

Q. ...does this sound logical?

-Q. ...est-ce que #a vous semble logique?

A. Ce que je peux dire...

-A. What I can state...

A. ...c'est qu'... mon arriv,e il y avait des policiers qui surveillaient chaque endroit de la scŠne de crime...

-A. ...upon my arrival there were police officers examining different areas of the crime scene...

A. ...prot,geant les diff,rentes parties de la scŠne...

-A. ...protecting the different areas and sectors of the crime scene...

A. ...et les policiers sont tpšs conscients de mon travail...

-A. ...policemen are very conscious of my work...

A. ...et sont tršs bien form,s ... l'effet de prot,ger une scŠne de crime.

-A. ...and are very well trained in protecting a crime scene.

A. Maintenant, comme j'ai expliqu, tant"t, il est possible qu'un membre de Urgences Sant,...

-A. As I explained earlier, it is possible for a member of Urgences Sant,...

A. ...d'^tre rentr, et d'avoir ,t, juste v,rifier les signes vitaux de la victime...

-A. ...to have gone in to only check out the vital signs of the victim...

A. ...mais je suis s-r que les policiers ont fait de sorte que le corps ne soit pas d,plac,.

-A. ...but I'm certain that the police officers acted in such a way as to not to move the body.

A. Et si je me fie ... mes constatations, on peut voir tršs bien que la victime n'a pas ,t, d,plac,e outre mesure...

-A. And if I rely on my observations, we can see that the victim was not moved in any particular way...

A. ...parce que si on prend juste la tache sous la t^te, si la victime avait ,t, d,plac,e de fa#on majeure...

-A. ...we can see this upon examining the blood stain under the victim's head, because if the victim had been moved in an important way...

A. ...il y aurait une autre tache ... c"t,.

-A. ...there would be another stain right next to it.

Q. Well, I agree with you that if we are talking about honest police, but when we are talking...

-Q. Je suis d'accord avec vous si on parle de policiers honnêtes...

Q. ...about introduction of fraud, fraudulent document...

-Q. ...mais si on parle d'introduction de présentation de document de faux...

Q. ...then what seems to be the problem to pour some water near victim's head and say this was blood?

-Q. ...qu'en est-il de verser simplement de l'eau près de la tête de la victime et dire que c'est du sang.

Q. Is it so difficult to do?

-Q. Est-ce que ce serait très difficile ... effectuer?

A. coutez, moi en ce qui me concerne, je suis un professionnel...

-A. As far as I'm concerned, I'm a professional...

A. ...et je suis, d'après mon métier et d'après mes serments envers mon service, je n'ai jamais touché, ... une scène ou manipulé, une scène de quelque façon que ce soit.

-A. ...and according to my oath of office, and the work that I perform, I never tampered with a scene in any way that would risk or put it in jeopardy in any way whatsoever.

Q. Do I understand that every policemen have this kind of oath as you have?

-Q. Dois-je comprendre que tous les policiers ont un serment d'office de la même façon que vous?

A. Tous les policiers.

-A. All policemen.

Q. And they never lie?

-Q. Et ils ne mentent jamais?

A. Bien sûr, coutez, c'est une affirmation.

-A. Well, listen, that's a statement.

A. Moi, en ce qui me concerne, je ne mens pas.

-A. As far as I'm concerned I do not lie.

Q. That's correct.

-Q. C'est exact.

Q. But the fact that you have oath doesn't mean that certain particular officer does not commit fraud, correct?

-Q. Mais le fait que vous soyez sous serment ne veut pas dire qu'un policier ne peut pas commettre de fraude, exact?

Q. We know about such cases, don't we?

-Q. Nous connaissons de tels cas, n'est-ce pas?

A. C'est possible.

-A. It's possible.

Q. Okay. Now, let us look once again at the original and at the picture.

-Q. Prenons encore une fois la photo...

Q. The way... I would like the jury to look at picture 10. According to the picture, the way the letter is folded...

-Q. Sur la photo, la façon dont était pliée la lettre...

Q. ...the blood stain on the reverse side, on this side...

-Q. ...la tache de sang au verso...

Q. ...should be very close to the edge, because if you look at the picture...

-Q. ...devrait être très près du bord, parce que si on prend la photo...

Q. ...it is obvious...

-Q. ...il est trřs ,vident...

Q. ...that letter, the bottom part of the letter touches the stain.

-Q. ...le bas de la lettre touche la tache.

Q. Correct?

-Q. Exact?

A. Oui.

-A. Yes.

Q. If we look here, bottom part is stain free...

-Q. Si on regarde ici, la partie du bas n'a pas de tache...

Q. ...stain is somewhere in the middle.

-Q. ...et la tache se trouve quelque part au centre.

A. Par contre, on remarque que sur le coin sup,rieur droit ici il y a une tache ,galement.

-A. However, we can note that on the upper right-hand corner, from here we can see that there's a stain there also.

Q. There is, yes, but not here...

-Q. Mais pas ici...

Q. ...because stain on the shirt is large.

-Q. ...parce que la tache sur la chemise est trřs grande.

A. Mais on ne voit pas... sur cette photo on ne voit pas sous la feuille, sous le document, s'il y a des taches ou des projections de sang.

-A. But on this photo we cannot see under the document if there is blood spattering or blood stains.

Q. Well, isn't it obvious from the picture that blood stain...

-Q. N'est-ce pas ,vident qu'... partir de la photo que la tache de sang...

Q. ...is exactly where the bottom part of the letter is?

-Q. ...se trouve exactement ... l'emplacement du bas de la lettre, l...?

A. Ces taches peuvent s'expliquer, peut-^tre qu'au moment o- je retire la lettre...

-A. These stains could be explained, maybe when I removed the letter...

A. ...in,vitabement il y a eu un frottement du document contre la chemise de la victime.

-A. ...unavoidably there would have been some rubbing of the document against the victim's shirt.

Q. Exactly.

A. C'est #a, oui.

-Q. Exactement.

-A. Yes.

Q. Exactly. Now, you claim...

-Q. Exactement. Maintenant vous maintenez...

Q. Okay. Now I want to reproduce it exactly as it is.

-Q. Je voudrais reproduire le tout de fa#on identique.

Q. Okay. Please show me how you took it. Did you take it like this?

-Q. Veuillez me montrer s'il vous pla#t de la fa#on que vous l'avez tir,e. De cette fa#on?

A. C'est trop loin, l..., pour mes souvenirs si je l'ai tir,e par le bas, par le haut, par le c"t,, #a, je peux pas m'en souvenir de fa#on pr,cise.

-A. I cannot recall specifically if I pulled it from the front or the side or the bottom, it's too far away, it was quite a while back.

Q. So what do you usually do? I believe there are some

professional...

-Q. Alors, qu'est-ce que vous faites habituellement?

Q. ...ways to do it?

-Q. ...j'imagine qu'il y a une façon professionnelle de...

A. Chaque cas est individuel, on ne procède jamais de la même façon.

-A. Each case is different, we never proceed in the same manner.

Q. Okay. But did you proceed? In what manner did you proceed?

-Q. De quelle façon avez-vous procédé,?

A. Comme j'ai expliqué, tantôt, avec une paire de petites pinces j'ai retiré, le document.

Q. Okay, and you pulled it what? Like this?

-A. As I explained earlier, with a small pair of tweezers I removed the document slowly and carefully.

Q. Like this?

A. Je peux pas m'en souvenir.

-A. I cannot recollect.

Q. Okay. Like this?

-Q. Comme ça?

A. Je vous l'ai dit, je peux pas m'en souvenir.

-A. I told you, I cannot recall.

Q. Okay. Now, if we look here...

-Q. Maintenant, si nous regardons ici...

Q. ...we see a smudge goes this way...

-Q. ...nous voyons un essuyage dans cette direction...

Q. ...and if we look at the picture...

-Q. ...et si vous regardez la photo...

Q. ...there would have been...

-Q. ...il y aurait eu...

Q. ...much more blood...

-Q. ...beaucoup plus de sang...

Q. ...on the edge, no matter how you remove it...

-Q. ...en bordure, peu importe la façon qu'on l'aurait retiré, e...

Q. ...no matter how you remove it...

-Q. ...peu importe la façon qu'on l'aurait retiré, e...

Q. ...because it is pressed against the part of a shirt which is bloody.

-Q. ...parce qu'elle est pressée contre une partie de la chemise qui est ensanglantée.

Q. So, no matter how you remove it...

-Q. Alors, peu importe la façon qu'on la retire...

Q. ...there would be blood right here, streak of blood, not here.

-Q. ...il y aurait du sang juste ici, une traînée de sang et non pas ici.

Q. Correct?

-Q. Exact?

A. On peut pas expliquer ce phénomène.

-A. We cannot explain that phenomenon.

Q. Okay. Maybe we can explain this phenomenon by saying that this letter wasn't ready at that time, you put some other just piece of paper there...

-Q. Peut-être qu'on peut expliquer ce phénomène (inaudible)...

Q. ...and this letter appears later and was painted later, this is why it doesn't confirm to anything. Could this be an explanation?

-Q. ...est-ce que ça pourrait être une explication?

A. Non, pas dans mon cas.  
-A. No, not in my case.  
Q. Not in your case. Okay. Now, you extracted a very important letter...  
-Q. Maintenant, vous avez extrait une lettre très importante...  
Q. ...why didn't you make picture of it?  
-Q. ...pourquoi est-ce que vous n'en avez pas pris une photo?  
A. C'est que la photo représente le document comme il est trouvé, ...  
-A. The photo represents the document as it was found...  
A. ...et après ça on peut en faire des photocopies, c'est pas nécessaire de photographier chaque exhibit de façon...  
-A. ...and then we can make photocopies, it's not necessary to take photographs of every piece of exhibit.  
Q. Well, why was it so important to photograph every little shells?  
-Q. Alors, pourquoi est-ce que c'était important de photographier (inaudible)?  
Q. You also could just demonstrate the shell, why it is not necessary such an important document which allegedly was there...  
-Q. ...et un document si important qui...  
Q. ...not to photograph it?  
-Q. ...,tait l..., alors pourquoi ne pas le photographier?  
A. Peut-être qu'au moment où je le récupère, moi je ne le considère pas si important que ça au moment de la scène.  
-A. Maybe when I retrieved it I didn't consider it to be all that important at the time at the scene.  
A. Parce que je ne suis pas au courant des faits au moment où j'arrive, je ne connais ni les victimes, ni l'accusé.  
-A. Because I was not aware of the facts upon my arrival, I don't know the victims nor the accused.  
Q. Did you at least see that letter is allegedly addressed to me?  
-Q. Est-ce que vous aviez au moins vu cette lettre qui supposément m'était adressée?  
A. Oui, lorsque je l'ai récupérée.  
Q. Okay.  
-A. Yes, when I retrieved it.  
Q. Did you know that I am alleged criminal?  
-Q. Est-ce que vous saviez que j'étais supposément un criminel?  
A. Non, pas ... ce moment-là...  
-A. No, not at that time.  
Q. You arrived at the scene, you entered office...  
-Q. Vous êtes entré dans le bureau, vous êtes arrivé sur la scène...  
VALERY FABRIKANT :  
I refer jury to picture 7.  
Q. You made the picture with my name there?  
-Q. Vous avez pris la photo avec mon nom?  
A. Oui, c'est exact.  
-A. Yes, that's correct.  
Q. And you didn't know that it was I who was accused of this crime?  
-Q. Et vous ne saviez pas que c'était moi qui étais accusé de ce crime?  
A. Non, parce que...

-A. No.  
A. ...j'ai ,gatement pris...  
Q. This is incredible.  
A. ...si vous allez ... la photo 19...  
-A. If you go to photograph number 19...  
A. ...et ensuite...  
-A. ...and then...  
A. ...la photo num,ro 35...  
-A. ...photograph number 35...  
Q. Yes.  
A. ...et plus loin ... la photo number 41...  
-A. ...further on photograph number 41...  
A. ...ce sont toutes des pišces dans lesquelles il y a eu des crimes, ou des faits reli,s aux crimes...  
-A. ...those are all rooms where there were crimes or facts related to crimes...  
A. ...et ces portes-l... ne portent pas toutes votre nom.  
-A. ...and those doors do not all bear your name.  
Q. So you never even... when you arrived at the scene, you never asked: Who did that?  
-Q. Alors donc, ... votre arriv,e sur la scšne vous n'avez pas demand, : Qui a fait cela?  
A. Non.  
-A. No.  
Q. No?  
A. C'est pas... Je suis l... pour effectuer un travail, pas pour ,mettre des opinions ou...  
-A. I'm there to carry out my work, not to issue opinions or...  
A. ...ou demander une question similaire, mettons.  
-A. ...or ask such a question, for example.  
Q. Well, you were never told who is alleged criminal?  
-Q. On ne vous a jamais dit qui ,tait la personne suppos,ment accus,e ou impliqu,e?  
A. Si je l'ai su c'est s-rement, bon, je l'ai su ... un certain point de mon enqu^te...  
-A. If I found out...  
A. ...mais pas ... mon arriv,e, j'avais aucune id,e, l...  
-A. ...I certainly found out at a certain point in my investigation, my inquiry, but it was not upon my arrival.  
Q. So at five o'clock (5:00) you still didn't know who was arrested and you were not even curious to find out the name?  
-Q. Alors ... cinq heures (5 h) vous ne saviez toujours pas qui ,tait accus, et vous n',tiez m^me pas int,ress, ... conna@tre le nom, ... savoir qui ,tait impliqu, dans la cause?  
A. Non. Bien, int,ress,, non, je dirais pas que j',tais pas int,ress,, mais je n',tais pas au courant ... cinq heures (5 h).  
-A. No, interested, I wouldn't say that I wasn't interested but I was not aware at five o'clock (5:00).  
Q. And there was nobody to ask there?  
-Q. Il n'y avait personne ... qui demander l...?  
A. S-rement qu'il y avait des personnes au courant, oui.  
-A. Certainly some people were aware, yes.  
Q. Why didn't you ask them, who did this?  
-Q. Pourquoi ne leur avez-vous pas demand,, qui a fait cela?  
A. Comment voulez-vous que je vous explique?  
-A. How could I explain to you?

A. C'est pas ,crit dans ma directive que en rentrant sur une scēne de crime je dois imm,diatement m'informer qui est le coupable.

-A. It's not written in my job description or in my instructions, upon arrival on a crime scene, who is guilty, my work...

Q. All right. I leave it to the jury to decide how credible it is. So when you read this letter, you just didn't know that I am the accused and this is why you didn't pay much attention to the document, correct?

-Q. Alors donc, lorsque vous avez lu cette lettre, vous ne saviez pas que c'est moi qui ,tais accus, et c'est pour ça que vous n'avez pas pr^t, trop attention ... cette lettre, est-ce exact?

A. C'est exact. Au moment o- je r,cupšre la lettre j'ai pas les informations pertinentes.

-A. That's correct, at the moment where I retrieved the letter, I did not have the relevant information.

Q. Okay. You didn't know it was I. All right.

-Q. Alors vous ne saviez pas que c',tait moi.

Q. Did you read the letter at all?

-Q. Est-ce que vous avez lu la lettre?

A. Sommairement.

-A. Briefly.

Q. Okay. Does the letter give you some impression that you should pay more attention to it?

-Q. Est-ce que la lettre vous donnait l'impression que vous deviez pr^ter beaucoup plus attention?

A. C'est effectivement pour la raison que je l'ai r,cup,r,e et prot,g,e.

-A. That's the reason specifically why I retrieved it and secured it.

Q. So why didn't you make a picture of it then?

-Q. Alors donc, pourquoi ne l'avez-vous pas prise en photo?

A. Bon, supposons que j'aurais d- et que j'ai oubli,.

-A. Well, let's suppose that I should have and that I would have forgotten.

</pre></body></html>

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

Well, maybe it just didn't exist at that time, could it be?

-Q. Peut-être qu'elle n'existait simplement pas ... l',poque, est-ce que c'est possible?

A. Non, c'est inexact.

-A. No, that's not correct.

Q. All right. All right.

-Q. D'accord. D'accord.

Q. Okay. Let's continue.

-Q. Alors donc, poursuivons.

THE COURT :

Well before we continue, I think we'll adjourn for fifteen (15) minutes.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

MEMBERS OF THE JURY ARE PRESENT

WITNESS: ROBERT DESJARDINS -- UNDER THE SAME OATH

CROSS-EXAMINATION BY VALERY FABRIKANT (CONT'D) :

Q. Now, try to recall as far as the wrinkle goes...

-Q. (Inaudible) au sujet du froissement...

Q. ...would this be more or less correct picture of the wrinkles on the letter which you extracted from the victim?

-Q. ...est-ce que ça repr,senterait le froissement ou enfin l',tat du froissement de la lettre que vous avez r,cup,r,e de la victime?

A. Non.

-A. No.

Q. No. What is wrong in this picture?

-Q. Qu'est-ce qui ne va pas ici?

A. Elle est beaucoup trop froiss,e par rapport ... l'original.

-A. It is far too creased in relation to the original.

Q. Well, but in your original statement previous day you said that it was very wrinkled.

-Q. Mais plus t"t, au cours de votre t,moignage, une autre journ,e, vous avez mentionn, que la lettre ,tait tršs froiss,e.

A. Il y avait une partie de la lettre qui ,tait plus froiss,e que le reste de la lettre.

-A. One part of the letter was more crinkled than the rest of the letter.

A. Mais pas au point o- celle-l... l'est.

-A. But not to this extent.

Q. Okay. Which part was that?

-Q. Alors donc, quelle ,tait la partie de la lettre qui ,tait comme ça?

A. Si je me souviens, si on tient la lettre face ... nous, l..., c'est la partie du bas.

-A. If I recollect correctly, if the letter is held facing one, it would be the bottom portion of the letter.

Q. Well... but according to the picture, bottom portion is not being even held by fingers.

-Q. Mais selon la photo la partie du bas n'est m^me pas retenue par les doigts.

Q. How can it be wrinkled?

-Q. Alors comment peut-elle ^tre froiss,e?

A. Selon la photo on peut pas d,terminer si la victime tient la partie du haut ou la partie du bas...

-A. From the photograph we cannot tell if the victim is holding the top portion or the bottom one.

Q. Let's see if we can or we cannot.

-Q. Alors donc essayons de voir si nous pouvons.  
A. Parce que la lettre est pli, e dans ce sens ici, ou ... peu pršs, approximativement...  
-A. Because the letter is folded in thie manner more or less, or approximately...  
A. ...alors, on peut pas savoir si la lettre est ... l'endroit, ... l'envers, la faon...  
-A. ...therefore, we can't tell if the letter is from top to bottom or bottom to top, which is upside down or not...  
A. ...alors tout ce que je peux dire c'est que c'est la partie du bas ici qui est tršs fripp, e.  
-A. ...all I can say is that it's the bottom portion here that is very crinkled.  
Q. No, this is not the point I am trying to make.  
-Q. Ce n'est pas le point de ma question.  
Q. Whether it is bottom or top...  
-Q. Que ce soit le bas ou le haut...  
Q. ...fingers are holding middle part...  
-Q. ...les doigts tiennent la partie du centre...  
Q. ...of the letter, not top, not bottom.  
-Q. ...ni le haut, ni le bas.  
Q. How come bottom was wrinkled?  
-Q. Alors, pourquoi donc est-ce que la partie du bas ,tait froiss, e?  
A. Je peux pas l'expliquer.  
-A. I cannot explain that.  
Q. Again something unexplained.  
-Q. Encore une fois...  
A. Je peux pas, la lettre est r, cup, r, e par moi-m^me...  
-A. I cannot, the letter was retrieved by myself...  
A. ...de cette faon...  
-A. ...in this manner...  
A. ...alors entre le moment o- la victime se fait tirer et au moment o- je la r, cupšre...  
-A. ...between the time when the victim was shot at and the time that I retrieved it...  
A. ...je suis pas l... pour expliquer ce qui a provoqu, le froissement.  
Q. Okay.  
-A. ...I am not here to explain what provoked the crinkling.  
Q. Would it be clean experiment if I put this sheet of paper somewhere under pressure...  
-Q. Si je plaais ce bout de papier sous un autre lot de documents, c'est-...-dire pour cr, er une certaine pression...  
Q. ...and you said that pressure eliminates wrinkles...  
-Q. ...puisque vous avez dit qu'une pression pourrait ,liminer le froissement...  
Q. ...and we look at this sheet at the end of trial...  
-Q. ...et ... la fin du procšs nous regardions ce bout de papier...  
Q. ...do you think we'll have no wrinkles the same way the original has now?  
-Q. ...pensez-vous que le document n'aurait plus de froissement tel que l'original d, tient actuellement?  
A. La probabilit, voudrait que les plis ne dispara@tront pas...  
-A. Probability would state for example that the crinkles would not disappear...  
A. ...mais qu'ils seraient press, s d'une certaine faon.  
-A. ...but the crinkles would be, or the creases would be pressed in a certain way.  
Q. Okay. Let me have the original once again.  
-Q. D'accord. Laissez-moi voir l'original encore une fois.

Q. It looks like it has been through so many wrinkling now that now it has a lot of wrinkles, therefore this experiment no longer holds, it now has a lot of wrinkles already. So we cannot do anything about it.

THE COURT :

We are not here, in any event, to do experiments, Mr. Fabrikant.

VALERY FABRIKANT :

Well, we are. Because when we...

THE COURT :

I'll decide what we are going to do, and we are not going to do experiments.

VALERY FABRIKANT :

When we need to prove that there is a fraud somewhere, then the only way to prove it is to make experiments.

THE COURT :

We are not making an experiment on the wrinkles of the letter, now if you have another...

VALERY FABRIKANT :

Well, you are not making, I am making.

THE COURT :

Well, I am not permitting you to make, let's put it that way.

VALERY FABRIKANT :

Okay.

THE COURT :

If you want me to put it bluntly.

VALERY FABRIKANT :

You forbid me to put my sheet of paper somewhere? I just wonder.

THE COURT :

If you have another question to put to Mr. Desjardins, would you put it?

VALERY FABRIKANT :

No, I'm just trying to make the point that there is no way you can forbid me to do that.

THE COURT :

Yes, I can, but I'm not going to argue with you.

VALERY FABRIKANT :

All right. Okay.

Q. Now, could you turn again to picture 10?

-Q. Pourriez-vous encore une fois reprendre la photo num,ro 10?

Q. As you see, we have here under the head of the victim...

-Q. Sous la t<sup>^</sup>te de la victime nous voyons encore une fois...

Q. ...a stain and there is some stream...

-Q. ...une tache et un genre d',panchement ou de lisiŠre...

Q. ...correct?

-Q. ...exact?

A. Oui.

-A. Yes.

Q. Now, when blood is pouring from a wound...

-Q. Lorsque le sang s',coule d'une blessure...

Q. ...blood is not pouring like extremely.

-Q. ...le sang ne s',coule pas abondamment.

Q. Looking at the face of the victim...

-Q. Nous regardons le visage de la victime...

Q. ...it's obvious that even face is not blood stained...

-Q. ...il est ,vident que m<sup>^</sup>me le visage n'est pas ensanglant,...

Q. ...it means that the blood flow, if it was, was very moderate...

-Q. ...alors donc, l',coulement de sang, s'il y en avait un, ,tait trŠs mod,r,...

Q. ...correct?

-Q. ...exact?

A. La constatation veut que oui, le visage n'est pas ensanglant, mais la blessure semble être sous la tête.

Q. Okay.

-A. The observation dictates that the face is not bloody or blood stained, but the rest of the body or under the head, yes.

Q. No, my point is that there was no, not very much blood lost?

-Q. Non, le point que j'essaie de faire c'est qu'il n'y avait pas une perte de sang abondante?

Q. Taking even into consideration the size of the stain, it's not very much blood loss, correct?

-Q. Tenant compte de l',panchement, de la grandeur, l..., de la tache, alors donc il n'y avait pas une grande perte de sang, exact?

A. On peut pas d,terminer la valeur r,elle ici de la perte de sang...

-A. One cannot determine the real loss of blood here...

A. ...premièrement parce que le tapis absorbe, le tapis sous la victime absorbe, et si on remarque...

-A. ...firstly carpet absorbs, under the head of the victim, if one notes...

A. ...c'est... non, ce que je veux dire c'est... parmi toutes les scènes de crime que j'ai eu ... voir dans ma carrière...

-A. What I mean to say is throughout all the crime scenes that I covered through my career...

A. ...certaines victimes n'auront presque aucune perte de sang...

-A. ...some victims will have no loss of blood...

A. ...malgré, une blessure mortelle...

-A. ...in spite of a fatal wound...

A. ...puis par contre d'autres victimes vont perdre ,norm,ment de sang par rapport ... une même blessure peut-être.

-A. ...whereas other victims will have a considerable amount of loss of blood for the same kind of injury, for example.

A. Puis ça on peut peut-être d,terminer ce fait ... ce que la victime n'est peut-être pas d,c,d,e instantan,ment.

-A. Maybe we can determine this from the fact that the person or the victim would not have died instantly.

Q. This is not the point I'm trying to make.

-Q. Ce n'est pas le point de ma question.

Q. What I'm trying to... the point I'm trying to make is the following.

-Q. Ce que j'essaie de savoir est ce qui suit.

Q. This stream might occur only when the intensity of something liquid, let's call it liquid...

-Q. Cet ,panchement, selon l'intensité, du liquide, si nous pouvons l'appeler ainsi...

Q. ...when intensity of liquid which is being poured...

-Q. ...lorsque l'intensité, du liquide qui est vers,...

Q. ...is too great for the carpet to absorb...

-Q. ...est trop grande pour que le tapis puisse l'absorber...

Q. ...then we have a stream here...

-Q. ...alors donc nous avons un ,panchement l.....

Q. ...that's correct?

-Q. ...exact?

A. Oui.

-A. Yes.

Q. Now, my point is that the blood flow from the head...

-Q. Alors donc, mon point est le suivant, c'est---dire l',coulement du sang ... partir de la tête...

Q. ...could not possibly be...

-Q. ...ne pouvait pas être possiblement...

Q. ...that great that the carpet be unable to absorb it.

-Q. ...dans une si grande mesure que le tapis ne pouvait l'absorber.

Q. So what I'm suggesting...

-Q. Alors ce que je vous suggère...

Q. ...that it was not blood but really some liquid poured around victim's head...

-Q. ...que ce n'était pas du sang mais plutôt du liquide qu'on a versé, autour de la tête...

Q. ...and people who did it...

-Q. ...et les gens qui l'auraient fait...

Q. ...knew little of science...

-Q. ...ne connaissaient pas grand-chose ... la science...

Q. ...and didn't understand...

-Q. ...et ne comprenaient pas...

Q. ...when you pour a lot of liquid immediately...

-Q. ...que lorsqu'on verse beaucoup de liquide immédiatement...

Q. ...then it does not absorb, the carpet...

-Q. ...le tapis ne l'absorbera pas...

Q. ...and you have this flow.

-Q. ...et ça produirait donc cet épanchement.

Q. Isn't it obviously that it was a fraud?

-Q. Alors, n'est-il pas évident que c'était une question de fraude?

A. Pour répondre ... sa question, non.

-A. To answer to his question, no.

Q. Well, I don't expect you to admit that it was fraud. Okay. But is the idea, at least, correct that...

-Q. Mais est-ce que cette idée est quand même correcte...

Q. ...that flow here can occur only...

-Q. ...que l'écoulement (inaudible)...

Q. ...when carpet is unable...

-Q. ...ne peut se produire que lorsque le tapis n'est pas en mesure d'absorber...

Q. ...to absorb the liquid which is coming?

-Q. ...le liquide qui est versé?

Q. Correct?

-Q. Exact.

A. Oui, effectivement, un écoulement...

-A. Yes, correct, a pour of liquid...

Q. So we have to assume...

-Q. Alors donc, nous devons présumer...

Q. ...we have to assume that either the flow of blood was so huge...

-Q. ...nous devons présumer que l'écoulement de sang était si grand, si abondant...

Q. ...that the whole stream, that the carpet could not absorb it and the stream occurred...

-Q. ...que le tapis ne pouvait l'absorber, et ensuite l'épanchement se serait produit...

Q. ...or it is just the whole picture is false.

-Q. ...ou l'image, la photo en entier serait fausse.

Q. The body was placed there...

-Q. Le corps a été placé ... cet endroit...

Q. ...you didn't have much time...

-Q. ...vous n'aviez pas beaucoup de temps...

Q. ...to pour the liquid carefully...

-Q. ...pour verser le liquide de façon minutieuse...

Q. ...you splashed it too much...

-Q. ...vous l'avez éclaboussé,...

Q. ...and then you have this flow.  
-Q. ...ensuite cet ,panchement se serait produit.  
Q. Blood just doesn't go like this, does it?  
-Q. Un ,coulement de sang ne se produit pas de telle fa+on, oui ou non?  
A. L',coulement de sang peut se produire de n'importe quelle fa+on.  
-A. Blood flow can occur in any way.  
Q. Okay. Blood flow, if it occurs, it would have been from the right hand...  
-Q. Un ,coulement de sang, s'il se serait produit...  
Q. ...of the head.  
-Q. ...(inaudible) c"t, droit de la t^te.  
A. Tout d,pendant de la blessure.  
-A. Depending on the wound.  
Q. Blessure was at right hand?  
A. Je le sais pas, j'ai pas constat, la blessure.  
-Q. La blessure ,tait du c"t, droit de la t^te?  
-A. I don't know, I did not observe the wound.  
Q. Well, you don't know...  
-Q. Mais vous ne savez pas...  
Q. ...but we have an autopsy report.  
-Q. ...mais nous avons un rapport d'autopsie.  
A. D'accord.  
-A. Very well.  
Q. Anyway, so what I'm trying to say here is you agree at least with one thing, that we have either to assume...  
-Q. Alors donc, vous ^tes d'accord avec moi...  
Q. ...that the blood flow was so huge...  
-Q. ...d'une chose, que l',coulement de sang ,tait si abondant...  
Q. ...that carpet could not absorb it...  
-Q. ...que le tapis ne pouvait l'absorber...  
Q. ...and there is a flow over the carpet...  
-Q. ...et qu'il y aurait eu un ,coulement sur le tapis...  
A. C'est la seule explication (inaudible)...  
Q. ...or it was just...  
-A. That is the only explanation that I (inaudible).  
Q. ...a pure and obvious fraud.  
THE COURT :  
Sorry, just a second.  
-A. That is the only explanation that I retain.

VALERY FABRIKANT :

Q. All right. Now... and again, of course here what is required is to make a simple experiment, go to the carpet...  
-Q. Ici, tout ce que je dis c'est d'effectuer une simple exp,rience...  
Q. ...and try to pour on it some liquid, what usually comes out of wounded head...  
-Q. ...de prendre un tapis et d'essayer du verser un liquide, c'est-...-dire du genre de l',coulement qui serait provenu de la blessure (inaudible)...  
Q. ...and see whether it is possible in this case...  
-Q. ...pour voir si ce serait possible dans ce cas-ci...  
Q. ...that flow would occur.  
-Q. ...qu'un ,coulement pourrait se produire.

VALERY FABRIKANT :

And of course our unbiased Judge would not allow such experiment, right?

THE COURT :

There will be no experiments.

VALERY FABRIKANT :

Oh yes.

THE COURT :

And would you be kind enough to please temper your comments, because if you don't temper your comments you're going to run the risk of finding yourself in contempt of Court.

VALERY FABRIKANT :

I already found myself, I am thirty (30) days in jail right now.

THE COURT :

Now, if you have another question to put to the witness, would you put the other question to the witness?

VALERY FABRIKANT :

Oh yes.

Q. Now, let's go to picture 11.

-Q. Passons ... la photo num,ro 11.

Q. I refer to figure number 1...

-Q. Alors donc le num,ro 1...

Q. ...where allegedly a shot was made.

-Q. ...o- suppos,ment un tir avait ,t, effectu,.

Q. And if you look at...

-Q. Si vous regardez...

Q. ...the picture number 14...

-Q. ...num,ro 14...

Q. ...you will see that exit...

-Q. ...vous avez la sortie...

Q. ...of the bullet is approximately on the same height as the entrance, correct?

-Q. ...de la balle se trouve approximativement ... la m^me hauteur que l'entr,e de la balle, exact?

A. Oui, la constatation permet d'en arriver ... #a. Oui.

Q. Okay.

-A. Yes, the observation allows one to arrive at that conclusion. Yes.

Q. Now, to produce such a shot...

-Q. Alors donc, pour produire...

Q. ...one cannot shoot from standing position?

-Q. ...un tel tir, une personne ne peut effectuer ce tir ... partir de la position debout?

A. Non, pas selon mon exp,rience, non, il faudrait que...

Q. One should go like this...

-A. Non, not from my experience. No.

Q. ...and shoot, correct?

-Q. Une personne devrait...

Q. One should lower the pistol to the level against the wall and shoot so it go part into the wall?

-Q. Une personne devrait se pencher et baisser l'arme de fa#on ... tirer direction dans le mur tout droit...

Q. Correct?

-Q. .... cette hauteur, d'accord?

A. Oui, c'est effectivement correct, il faut que le coup provienne d'une position basse.

-A. Yes, in fact that would be correct, the shot would have to have been fired from a low position (inaudible).

Q. Uh, huh. Okay. Now, would there be any point for a normal person to make that kind of a shot?

-Q. Y aurait-il une raison pour qu'une personne normale puisse effectuer ce tir de telle fa#on?

A. Comment le coup a ,t, tir,, je peux pas l'expliquer celui-l...

-A. How the shot was fired, I cannot explain this one.

Q. Well, but you agree that this is pointless shot, correct?  
-Q. Vous êtes d'accord que c'est un tir inutile, exact?  
A. C'est un coup de feu qui a été tiré, de façon plus basse, comme monsieur Fabrikant l'explique, oui.  
-A. It's a shot that was fired from a lower position, as Mr. Fabrikant explained it, yes.  
Q. Well let me change my question.  
-Q. Laissez-moi changer ma question.  
A. If someone wants and plans to kill somebody...  
-A. Si quelqu'un veut et planifie de tuer quelqu'un...  
Q. ...this shot doesn't serve that purpose, does it?  
-Q. ...ce tir n'a pas pour but de faire cela, exact?  
A. Dans le sens que monsieur Fabrikant exprime sa question, non.  
-A. In the view that Mr. Fabrikant explained in his question, no.  
Q. Okay. Now let us go... Okay. Perry Mason (inaudible).  
Let's go to picture further down. When someone shoots from a pistol...  
-Q. Lorsque quelqu'un effectue un tir ... partir d'un pistolet...  
Q. ...the shells are usually flying in what direction?  
-Q. ...les douilles habituellement vont s'envoler dans quelle direction?  
A. La plupart des pistolets, jectent du côté, droit.  
-A. Most pistols will eject on the right-hand side.  
Q. Correct. So for me to shoot, I should have stood just in the wall, correct?  
-Q. Alors donc, pour que je puisse tirer, il aurait fallu que je me tienne près du mur ou dans le mur, exact?  
A. Pas nécessairement.  
-A. Not necessarily.  
Q. Where could I possibly stand...  
-Q. Alors où - possiblement est-ce que j'aurais été, situé, ...  
Q. ...so that shooting in this direction...  
-Q. ...pour tirer dans cette direction...  
Q. ...my shell fall where they are?  
-Q. ...et que mes douilles tombent ... l'endroit où elles sont tombées?  
A. La personne aurait pu se tenir n'importe où ... l'intérieur de ce corridor...  
-A. The person could have been standing anywhere within that hallway...  
A. ...parce que la force d'éjection d'un pistolet...  
-A. ...because the ejection force or pressure from the pistol...  
A. ...est très forte...  
-A. ...is very hard...  
A. ...et c'est parfaitement naturel ici qu'... l'intérieur d'un petit corridor serré, ...  
-A. ...and it's perfectly natural here that within a very tight hallway...  
A. ...que les douilles ont été jectées sur le mur et ont pu rebondir et revenir dans n'importe quelle position, dont celle-ci.  
-A. ...the casings could have hit the wall and bounced back and landed on the floor in any position such as these here appearing on the photograph.  
Q. So you think that, for example look at number 5.  
-Q. Par exemple regardez numéro 5.  
Q. The force of hitting the wall...  
-Q. La force...  
Q. ...would be so strong...  
-Q. ...de tir contre le mur serait si puissante que...  
Q. ...that shell would go all the way back almost to the opposite

wall?

-Q. ...que la douille serait venue presque tout ... fait...

Q. Is it possible?

-Q. ...jusqu'au mur oppos,? Est-ce que ce serait possible?

A. Certainement que c'est possible.

-A. Certainly it's possible.

Q. It again demands for experiment, because it's absolutely not possible. The force of ejection of a shell...

-Q. La force d',jection d'une douille...

THE COURT :

Are you testifying as a ballistics expert or are you putting questions to the witness?

VALERY FABRIKANT :

I'm putting questions.

THE COURT :

Well then put your questions to the witness.

VALERY FABRIKANT :

I'm trying, at the same time, to show how biased you are.

THE COURT :

Well, the problem of your trying at the same time to show how biased I am is causing the difficulty. If you just put your questions to the witness, the witness will answer the questions and the jury will appreciate the witness' answers.

VALERY FABRIKANT :

Well, I think it creates difficulty only for you.

THE COURT :

Pardon?

VALERY FABRIKANT :

Q. So what you...

THE COURT :

What did you say?

VALERY FABRIKANT :

I believe the difficulty is experienced only by you, I don't see any other difficulty to anyone.

THE COURT :

Well, you put your question to the witness.

VALERY FABRIKANT :

All right.

Q. So what you assume is that I could be standing...

-Q. Alors, vous supposez que je pourrais ^tre situ,...

Q. ...to the right...

-Q. ...ici, debout, ... droite...

Q. ...shooting in this direction...

-Q. ...tirant en cette direction...

Q. ...each shell being bounced against the wall...

-Q. ...chaque douille rebondissant contre le mur...

Q. ...and fall this way, this is your theory?

-Q. ...et chutant de cette faon, c'est l... votre th,orie?

A. Je n'ai jamais dit que monsieur Fabrikant pouvait se tenir contre le mur de droite.

-A. I never said that Mr. Fabrikant could be standing against the right-hand wall.

A. J'ai dit qu'il pouvait ^tre positionn, n'importe o- ... l'int,rieur de ce petit corridor-l...

-A. I said that he could be positioned anywhere within that small hallway.

Q. Well... but in this particular case...

-Q. Mais dans ce cas-ci trs pr,cis,ment...

Q. ...it is important where I was?

-Q. ...ma position ,tait importante?

A. C'est un corridor de quatre pieds, cinq pieds, un pied ...

gauche, un pied ... droite, c'est pas la différence, l..., dans le cas ici, l...

Q. It does make difference.

-A. It's a four, five foot hallway, one foot to the right, one foot to the left, that won't make all the difference in this particular case.

Q. Well, let me explain what the difference is then.

-Q. Laissez-moi vous expliquer la différence alors.

Q. Let's go to picture 35.

-Q. Passons ... la photo 35.

Q. In order to produce the shot which you claim I produced...

-Q. Afin d'effectuer le tir que vous dites que j'ai effectué,...

Q. ...and the shot looks like this, the bullet grazed the door...

-Q. ...et le tir est le suivant, la balle aurait effleuré, la porte...

Q. ...and after entered the wall near the door.

-Q. ...pour ensuite pénétrer le mur près de la porte.

Q. One has to be very close to the right...

-Q. Il faudrait être très près du côté, droit...

Q. ...the corridor, correct?

-Q. ...du passage, du corridor, exact?

A. Très, très près, non, pas nécessairement.

-A. Very, very close, no, not necessarily.

A. Ce que je veux dire c'est qu'il pourrait pas être collé, contre le mur, l..., de droite.

-A. What I mean to say, he couldn't be stuck to the right wall for example.

A. Mais le ricochet qu'on voit ici peut avoir été produit, même si la personne était au centre.

-A. But the ricochet we see here could have been produced even if the person was standing in the middle.

A. Si on suppose, et si... je ne le sais vraiment pas, mais si on suppose que la personne qui tire est droitier, donc l'arme est plus ... droite et le bras, de quelle position est le bras au moment du tir, ça peut influencer grandement sur un ricochet.

-A. If we presume that the person was right handed, and I do not know if that was the case, but if the pistol was on the right-hand side, more to the right-hand side, it would be normal to obtain this kind of ricochet.

Q. Well, but the hand should be close to the wall?

-Q. Mais la main serait près du mur?

A. Si on colle l'individu près du mur avec la main encore près du mur, c'est quasiment impossible qu'on aurait pu obtenir un ricochet sur cette porte-l..., c'est physiquement impossible.

-A. If we place the individual immediately against the wall with the pistol or the weapon against the wall, it would be physically impossible to obtain this type of ricochet here.

Q. No, I'm not talking absolutely just shouldering the wall...

-Q. Je ne parle pas immédiatement contre le mur...

Q. ...but at a close distance to the wall.

-Q. ...mais ... une distance près du mur.

Q. Say one foot.

-Q. Disons un pied.

A. Oui, c'est possible. Oui.

-A. Yes, it's possible.

Q. All right. And since this shot could be made, then we have to assume that all those shells...

-Q. Et parce que ces tirs (inaudible) nous devons présumer que toutes ces douilles...

Q. ...were at the left...

-Q. ...taient du c"t, gauche...

Q. ...of me, therefore all of them...

-Q. ...de mon c"t, gauche...

Q. ...must have bounced from the wall?

-Q. ...alors donc la plupart auraient bondi sur le mur?

Q. According to your theory.

-Q. Selon votre th,orie.

Q. Correct?

-Q. Exact?

A. C',tait une th,orie, oui. J'ai expliqu, que pour avoir les trois douilles dans cette position...

-A. It was a theory, yes. I explained that in order to have the three shells, or casings in that position...

A. ...sans connaÊtre la position du tireur...

-A. ...without knowing the position of the person firing the shot...

A. ...que la force d',jection peut avoir provoqu, un rebondissement quelconque, qu'on ne peut pas d,terminer.

-A. ...that the ejection force would have created such bouncing which we cannot determine the position of.

Q. Well we can determine, this is the position, and this is the shot.

-Q. Nous pouvons d,terminer, voil... la position et voil... le tir.

A. Oui, mais comme j'explique, je suis s-r qu'un expert en balistique va pouvoir confirmer...

-A. As I'm explaining, I'm sure a ballistics expert will be able to confirm this...

A. ...un pistolet ,jecte trřs puissamment une douille...

-A. ...a pistol will eject very strongly a casing or shell...

A. ...parce qu'on peut retrouver des douilles ... plusieurs pieds d'un point de tir.

-A. ...because casings can be found several feet from a firing position.

A. Et mÊme ici, il n'y a rien qui nous dit qu'ils n'ont pas rebondi encore sur le mur de gauche avant de revenir au centre.

-A. And even here again, we can't tell if they didn't bounce off the left wall prior to landing on the floor in the center.

Q. Well, if shells were ejected the way you described it, there would be many people killed by shells.

-Q. Si les douilles ,taient ,ject,es de la faon que vous avez d,crite bien des gens seraient morts de douilles.

Q. This is not the case, believe me.

-Q. Ce n'est pas le cas, croyez-moi.

Q. Now, what is the height of this bullet from the floor?

-Q. Quelle est la hauteur de cette balle ... partir du plancher?

A. Je dois r,f,rer ... mes notes.

-A. I must refer to my notes.

A. Cinquante et un (51) pouces et trois quarts du sol.

-A. Fifty-one (51) and three-quarter inches from the floor.

Q. Fifty-one (51) and three-quarter. Could you tell it to me in metric?

-Q. En dimension m,trique ce serait?

A. Excusez. Cent trente et un point quarante-quatre (131.44) centimĖtres.

-A. A hundred and thirty-one point forty-four (131.44) centimeters.

Q. Okay. One thirty-one forty-four (131.44). Do I understand correct that this bullet entered the wall...

-Q. Dois-je bien comprendre que cette balle a p,n,tr, le mur...

Q. ...travelled all the way down...

-Q. ...et a voyag, jusqu'au bas...

Q. ...and stopped somewhere at the floor level?

-Q. ...et s'est arr^t,e quelque part au niveau du plancher?

A. Oui, c'est ma constatation.

-A. Yes, that is my observation.

Q. Okay. How did you discover it? When you came to the wall you saw the hole here...

-Q. Comment l'avez-vous d,couvert? C'est---dire ... votre arriv,e vous avez vu le trou, ici l....

Q. ...but there was nothing at the bottom to suggest the bullet is there, was it?

-Q. ...mais il n'y avait rien au sol, au bas, laissant croire qu'il y avait quelque chose l... sur le sol?

A. C'est exact, oui.

-A. That is correct, yes.

Q. So what did you do?

-Q. Alors donc, qu'avez-vous fait?

A. Bon. Alors premiřrement, comme j'avais expliqu,, j'ai ouvert la porte pour regarder ... l'int,rieur si le projectile avait travers, le mur...

-A. Firstly, as I explained, I opened the door to see if the projectile had gone through the wall...

A. ...et suite ... ma constatation que le projectile n'avait pas travers, le mur...

-A. ...and following my conclusion that the projectile had not gone through the wall...

A. ...c'est tout simplement, comment on pourrait dire, une d,duction qui m'a permis de commencer par faire le trou au bas de la porte.

-A. ...it was some kind of deduction that allowed me to perform a hole at the bottom of the door.

A. Dans ce cas ici la chance m'a souri parce que le projectile aurait bel et bien pu se retrouver ... son point d'entr,e...

-A. In this case I was very fortunate because the projectile could have been at its entry point...

A. ...et ... ce moment-l..., si je ne l'avais pas d,couvert en bas, j'aurais continu, ... faire mes trous, j'aurais fait mon trou au niveau du point d'entr,e pour ensuite descendre, ou fouiller de plus en plus.

-A. ...and if I hadn't found it at the bottom, then I would have performed holes at the entry point and I would have continued my research all along.

Q. Wouldn't it be logical to start opening where the bullet entered?

-Q. Ne serait-il pas logique de faire une ouverture au point d'entr,e de la balle?

A. Ça aurait ,t, logique, oui.

-A. It would have been logical, yes.

Q. Why did you do it from the bottom?

-Q. Alors donc, pourquoi l'avez-vous fait ... partir du bas?

A. Parce que mon exp,rience, mon instinct, si vous voulez, m'a fait supposer que la force d'impact aurait lanc, le projectile...

-A. Because my instinct or experience dictated that the force of the point of impact of the projectile...

A. ...impact, a ralenti le projectile au point o- il n'aurait peut-^tre pas continu, sa trajectoire ... l'int,rieur...

-A. ...or the impact would have slowed down the projectile so that it wouldn't have continued its travel within inside...

A. ...et ... ce moment-l... j'ai pr,sum, que le plus logique serait de commencer ma recherche au bas, en supposant que le plomb,

s'il n'a pas frappé, le deux par quatre...

- A. ...and I assumed that it would be more logical to conduct my research at the bottom if the lead or the pellet, the projectile, wouldn't have hit the two by four...
- A. ...qu'il a glissé, entre les deux parois.
- A. ...that it would have slipped between those walls.
- Q. Well, is the wall empty there?
- Q. Est-ce que le mur est vide ... cet endroit-là...?
- A. coutez, j'ai pas effectué, une recherche pour savoir si le mur est vide...
- A. I did not conduct an experiment to find out whether or not the wall is hollow...
- A. ...mais on sait souvent, et on sait très bien qu'entre un cadrage de porte et le cadrage intérieur qu'il y a des espaces vides souvent.
- A. ...but one knows very well that within the door frame and... within the doorframe very often there are hollow areas in the wall.
- Q. Well, logically the bullet hit horizontally, and elementary logic says that the bullet in this case...
- Q. Logiquement la balle aurait frappé, de façon horizontale...
- Q. ...would just hit further...
- Q. ...et la logique dicte que dans ce cas-ci le projectile aurait frappé, (inaudible)...
- Q. ...into the wall.
- Q. ...plus loin dans le mur.
- Q. There is no logic to assume that it would go down.
- Q. Aucune logique peut nous permettre d'assumer, de présumer que le projectile se serait rendu en bas.
- A. Il n'y a pas un cas qui est pareil.
- A. Not one case is similar.
- A. Et si je me reporte ... une photo plus loin...
- A. And if I refer to a further photograph...
- A. ...qui serait la photo numéro 54...
- A. ...which would be photograph number 54...
- A. ...le projectile numéro 12...
- A. ...projectile number 12...
- A. ...qui a été récupéré, dans ce mur...
- A. ...which was retrieved from this wall...
- A. ...dans ce cas ici le projectile a été récupéré, ... peu après au même niveau que son point d'entrée.
- Q. Exactly.
- A. ...in this case the projectile was retrieved almost at the same level as its point of entry.
- Q. This is exactly my point, that bullet is usually at the entry level, not somewhere at the bottom.
- Q. (Inaudible), les projectiles se trouvent habituellement au même niveau que le point d'entrée et non pas au bas.
- A. Mais dans ce cas ici le projectile a dû suffisamment ralentir sa course pour pas poursuivre sa trajectoire...
- A. But in this case the projectile must have been slowed down in order to prevent its trajectory in such a manner.
- Q. Well, let us see if it was.
- Q. Alors donc, voyons si tel est le cas.
- Q. It would be logical, I refer to picture 40...
- Q. Je vous réfère ... la photo numéro 40, ce serait donc logique...
- Q. ...it would have been logical if there were just empty space there, then...
- Q. ...s'il y avait un espace vide ... cet endroit...
- Q. ...then one might assume that bullet entered empty space...
- Q. ...alors on pourrait présumer que le projectile a

(inaudible)...

Q. ...hit something which it cannot penetrate...

-Q. ...un espace vide, ou a frapp, quelque chose qu'il ne pouvait p,n,trer...

Q. ...and just fall down.

-Q. ...pour ensuite retomber vers le bas.

Q. This is not the case.

-Q. Mais ceci n'est pas le cas.

Q. The bullet is clearly...

-Q. Le projectile...

Q. ...with force passing through the stone here.

-Q. ...est clairement visible qu'il a p,n,tr, la pierre.

Q. There is a stone here, it's not empty wall.

-Q. Ce n'est pas un mur vide, il y a une pierre l...

A. Non, c'est un mur vide.

-A. No, it is a hollow wall.

Q. Well, the bullet has clearly penetrated the stone, look, picture 40.

-Q. Mais le projectile a frapp, la pierre trřs clairement ici l... selon la photo 40.

A. C'est pas de la pierre, ce sont des d,bris de gyproc.

-A. It's not stone, those are gyproc debris.

Q. No, no, the bullet is imbedded in stone.

-Q. Non, non, le projectile l... est rentr, dans la pierre.

A. Non, il n'y a pas de pierre l...

-A. No, there's no stone there.

Q. Okay. I would invite everyone to look at picture 40. Here is the bullet...

-Q. Voil... le projectile...

Q. ...and if it was planted, the bullet, from here...

-Q. ...et si le projectile avait ,t,...

Q. ...well it would be understandable.

-Q. ...de ce c"t,, alors donc ce serait compr,hensible.

Q. But if it came from top, all the way down...

-Q. Mais s'il venait du haut, tout ... fait jusqu'au bas...

Q. ...then definitely it penetrated through this stone, because this is a stone.

-Q. ...alors il aurait d,finitivement p,n,tr, la pierre parce que c'est de la pierre.

Q. And it just doesn't sum up the whole picture.

A. C'est pas de la pierre.

-Q. Alors donc, #a ne r,capitule pas, ou #a ne nous donne pas ce que la photo d,montre finalement.

A. Est-ce qu'il y a une question, l...? C'est quoi la question?

-A. Is there a question? What's the question?

Q. Well the question is...

-Q. La question est la suivante...

Q. ...that the bullet here somehow managed to go through the wall all the way down to appear here, and you...

-Q. ...le projectile a p,n,tr, le mur et est descendu jusqu'en bas (inaudible)...

Q. ...assuming genius that you decided to search it exactly where it was, isn't it incredible?

-Q. ...et ici (inaudible) et vous ^tes en fait un g,nie pour d,terminer qu'il s'est retrouv, l..., n'est-ce pas incroyable?

A. Oui, c'est incroyable.

-A. Yes, it is incredible.

Q. Okay, that's all I wanted to point out.

-Q. C'est tout ce que je voulais souligner.

Q. That this is incredible indeed.

-Q. Que c'est incroyable, n'est-ce pas.

Q. Now, let us look at picture 41.  
-Q. Maintenant, prenons la photo 41.  
Q. We have here two bullets...  
-Q. Nous avons ici deux projectiles...  
Q. ...what is the height of those bullets?  
-Q. ...quelle est la hauteur de ces balles?  
A. O.K. Alors, en se r,f,rant toujours ... la photo 41...  
-A. In referring to photograph 41...  
A. ...le projectile au-dessus de la poign,e de porte...  
-A. ...the projectile above the door knob...  
A. ...quarante-deux (42) pouces et trois quarts du sol.  
-A. ...forty-two (42) and three quarter inches from the floor.  
Q. In metric?  
-Q. En m,trique?  
A. Cent huit point cinquante-huit (108.58) millimŠtres.  
-A. A hundred and eight point fifty-eight (108.58) millimeters.  
A. CentimŠtres, excusez.  
-A. Centimeters, I'm sorry.  
Q. One hundred and eight (108) centimeters.  
-Q. Cent huit (108) centimŠtres.  
Q. Okay. And the upper bullet?  
-Q. Et le projectile plus ,lev,?  
A. Le projectile plus ,lev,, cinq pieds exactement du sol.  
-A. Exactly five feet from the floor.  
Q. That's about a meter fifty (1.50).  
-Q. Environ un mŠtre cinquante (1.50).  
A. Un mŠtre soixante-neuf (1.69).  
-A. One meter sixty-nine (1.69).  
Q. Sixty-nine (69)?  
-Q. Soixante-neuf (69)?  
A. Bon, ,coutez, ma calculatrice...  
-A. Listen...  
Q. So then it is not five feet, it's more than five feet.  
-Q. C'est plus de cinq pieds, #a c'est plus de cinq pieds.  
A. I point cinquante-deux (1.52), excusez. Un mŠtre cinquante-deux (1.52).  
-A. One point fifty-two (1.52). One meter fifty-two (1.52), excuse me.  
Q. Did you give me the previous calculations correct?  
-Q. Est-ce que vous m'avez donn, les dimensions pr,c,dentes correctement?  
THE COURT :  
One hundred and eight point five eight (108.58).  
A. Je v,rifie.  
VALERY FABRIKANT :  
Q. You made a mistake here you could make mistake there too.  
-Q. Vu que vous avez fait une erreur ici, vous auriez pu en commettre une (inaudible) ,galement.  
A. Cent huit (108) centimŠtres.  
-A. A hundred and eight (108) centimeters.  
Q. Okay. Now, I understand that you recovered bullet number 10, correct?  
-Q. Maintenant, je comprends que vous avez r,cup,r, le projectile num,ro 10, exact?  
A. Oui.  
-A. Yes.  
Q. Okay. How about bullet number 9?  
-Q. Qu'en est-il du projectile num,ro 9?  
A. Oui, r,cup,r, ,galement.  
-A. I also retrieved it, yes.  
Q. Well, on what picture is it and where is it?

-Q. Alors il appara t sur quelle photo?  
Q. Because I see here picture 10, and bullet 10...  
-Q. Parce que je vois ici sur la photo 10 le projectile num,ro 10...  
Q. ...and bullet 9 doesn't seem to appear anywhere.  
-Q. ...et le projectile num,ro 9 ne semble appara tre nulle part.  
A. Non, effectivement, sur la photo 43...  
-A. Indeed, on photo 43...  
A. ...on peut apercevoir ce qui est une parcelle, l..., du projectile...  
-A. ...one can see a portion of a projectile...  
A. ...et effectivement, celui-ci, app s r,cup,ration, je l'ai peut- tre pas photographi, en gros plan.  
-A. ...and indeed, after retrieving this projectile, maybe I didn't photograph it up close.  
Q. Uh, huh. Okay. So the bullet was just stuck in the door?  
-Q. Alors donc, le projectile ,tait simplement dans la porte?  
A. Oui, c'est  a, c'est exact.  
-A. Yes, that's correct.  
Q. Indeed it is incredible. One bullet cannot penetrate the door, another bullet somehow manages to penetrate the whole wall, go all the way down, and appear from the other side.  
-Q. C'est incroyable, un projectile qui ne r,ussit pas ... p,n,trer la porte, un autre oui, et va du haut jusqu'en bas et se retrouve au bas.  
A. Il y a une explication.  
-A. There is an explanation.  
A. On peut remarquer que le trou d'entr,e, le trou provoqu, par l'entr,e du projectile...  
-A. We can note that the hole made by the entrance of the projectile...  
A. ...que le projectile n'arrivait pas directement dans la porte...  
-A. ...that the projectile did not penetrate directly into the door...  
A. ...parce que si c',tait le cas il aurait fait un petit trou, comme le trou num,ro 10.  
-A. ...because if that had been the case it would have made a small hole such as that of number 10.  
A. Alors ici on voit que le projectile rentre de c"t,...  
-A. So we can see here that the projectile went in sideways...  
A. ...et avec une trajectoire montante...  
-A. ...with a trajectory going upwards...  
A. ...et  a s'explique par la photo num,ro...  
-A. ...that can be explained by photograph number...  
A. ...32...  
-A. ...32...  
A. ...et 34...  
-A. ...and 34...  
A. ...qui nous montrent, au centre du corridor...  
-A. ...which shows us, in the middle of the hallway...  
A. ...sur la photo 32 c'est un bout de papier pour situer ce qu'on voulait d,montrer...  
-A. ...on photo 32 it is a piece of paper to show what we wanted to display...  
A. ...et sur la photo 34 c'est une ,corchure dans le tapis...  
-A. ...and on photo 34 it is a nick in the carpet, we can see that the thread is pulled...  
A. ...ce qui m'a laiss, pr,sumer ... ce moment-l... que le projectile aurait ricoch, sur le plancher, sur le tapis...  
-A. ...which allowed me to suppose that the projectile would have

ricocheted against the carpet...

A. ...et ... ce moment-l... a eu une trajectoire montante et nous donne le resultat qu'on voit sur la photo num,ro 40 quelques.

-A. ...to then travel upwards, and yield the results that appear on photograph...

A. ...43.

-A. ...43.

Q. So what you are saying, that the bullet which is there in the door is the one...

-Q. Alors ce que vous dites c'est que...

Q. ...which, for some reason, ricocheted from the floor?

-Q. ...(inaudible) qui aurait, pour une raison ou une autre, fait un ricochet ... partir du plancher?

A. C'est l'explication la plus logique.

-A. That is the most logical explanation.

Q. Well, there is another logical explanation.

-Q. Il y a une autre explication logique.

Q. Someone was in this corridor...

-Q. Quelqu'un se trouvait dans ce passage...

Q. ...shooting...

-Q. ...afin...

Q. ...because I've never been to this corridor.

-Q. ...parce que je ne me suis jamais trouv, ... l'int,rieur de ce corridor.

Q. This is essence of my questions.

-Q. Alors c'est l... le but de mes questions.

A. Non, le but de sa question ,tait simplement...

Q. Could it be... Okay, let me ask you something else.

-A. No, the purpose of his question is very simply...

-Q. Laissez-moi vous poser une autre question.

Q. In the clip there were eight bullets you said once I was arrested?

-Q. A votre arriv,e il y avait huit balles vous dites lors de mon arrestation?

Q. Correct?

A. Excusez...

-A. I'm sorry, in the...

Q. In the clip, extra clip, when I was arrested there was eight...

-Q. Lors de mon arrestation, dans le chargeur, il y avait huit projectiles?

A. Oui, effectivement, dans un chargeur r,cup,r, il y avait huit projectiles.

-A. In one magazine that was retrieved, in fact, yes, there were eight projectiles.

Q. When you deposited the clip, how many bullets were there?

-Q. Lorsque vous avez produit le chargeur, combien de projectiles y avait-il?

A. Au moment de la... je me souviens pas par coeur, je crois qu'il en restait cinq, si ma m,moire est bonne.

-A. I don't recall by heart, but if my memory serves me right I believe there were five.

Q. Okay. So three bullets are missing, correct?

-Q. Alors donc, il manque trois projectiles, exact?

A. Oui, si je me trompe pas dans les chiffres il en manquerait trois.

-A. If the figures are correct, if I'm not mistaken, I think there would be three, yes.

Q. Okay. Now, do you know where these three bullets went?

-Q. Maintenant, est-ce que vous savez o- sont pass,s ces trois projectiles?

A. Je pr,sume que c'est la section balistique qui a fait les expertises avec ces projectiles.

- A. I presume the ballistic section would have conducted experimental testing with those projectiles.
- Q. How about assumption that someone came to this corridor and used these three bullets to shoot these three shots? Could this happen too?
- Q. Qu'en est-il de la pr,tention que quelqu'un aurait p,n,tr, ce couloir pour tirer ces trois tirs, est-ce que cela aurait pu se produire ,galement?
- A. Non, parce que...
- A. No...
- Q. No. Why not?
- Q. Pourquoi?
- A. Parce qu'il y avait plein de policiers qui surveillaient et prot,geaient la scŠne.
- A. Because there were several policemen who were on the scene, securing the scene.
- Q. This is exactly what I am saying, one of those policemen made those shots.
- Q. C'est exactement ce que je dis, un de ces policiers aurait effectu, ces tirs.
- Q. It's not (inaudible) at all. It's fraud all over.
- A. Comment est-ce qu'un policier aurait pu effectuer ces tirs sans avoir les armes en leur possession?
- A. How could some police officers carry out or conduct these firings if they didn't have the weapons in their possession?
- Q. Well, they did have the weapon. Where was the pistol at that time?
- Q. (Inaudible) les armes. O- ,tait le pistolet ... ce moment-l...?
- A. Euh...
- Q. They did have it.
- Q. Ils l'avaient.
- A. coutez, je peux pas vous d,terminer quel projectile, quel calibre a ,t,... oui, un instant.
- A. Listen... one moment.
- A. Le calibre qui a ,t, tir, ici c'est du 7.65.
- A. The caliber fired here was point .765.
- Q. Yes, exactly.
- A. 7.65.
- Q. So it is exactly the three bullets which are missing in the clip.
- Q. Alors c',tait pr,cis,ment les trois projectiles qui manquent du chargeur.
- Q. And these are the three bullets which were shot there in the corridor which I never entered in person.
- Q. Et c',tait les trois projectiles qui ont ,t, tir,s ... l'int,rieur de ce couloir dans lequel je ne me suis jamais trouv,.
- A. coutez...

THE COURT :

This witness went, at a certain time, and did certain things, and he's told you what he did. Now, if you want to put questions to him, that's fine, but in putting your questions, for about the tenth time this morning, you've made statements from where you are in the dock that relate to what you say you did. Now, that's not how you put a question.

VALERY FABRIKANT :

Well, there is no way...

THE COURT :

This is not the way to question the witness.

VALERY FABRIKANT :

But there is no other way to explain why I put questions like this, because if I do not explain why I put questions like

this, the questions might look strange, and people might laugh at the questions while my questions are very, very reasonable because I have never been to this corridor, I never shooting there.

THE COURT :

You are not allowed to editorialize on your questions.

VALERY FABRIKANT :

No, I'm explaining to you...

THE COURT :

Yes, I know, but you're not... you may explain to me why you ask a certain question, and you may be permitted to ask that question, quite frankly I've given you a lot of latitude in the questions you want to put, but what I'm pointing out is that what you cannot do is testify from where you are now as to the fact that you were or were not ever in that corridor that day, that is what you can't do.

VALERY FABRIKANT :

Whatever it is, if it is a testimony, I'm sorry about that, but still, there is no way...

THE COURT :

Well try to avoid that.

VALERY FABRIKANT :

...for me to explain why certain question is put without inadvertently to testify. There is no way.

THE COURT :

Well, you can't testify, you simply have to put your questions, but remember what this witness says (inaudible).

VALERY FABRIKANT :

Well then (inaudible) should be explained why...

THE COURT :

Well, that's not... I'm sorry, no. That's not the way you proceed.

VALERY FABRIKANT :

Anyway. Okay.

Q. So three clips are missing, and it is not missing because there was sufficient ammunition...

-Q. Alors trois chargeurs sont manquants, et ils ne sont pas manquants parce qu'il n'y avait pas assez de munitions...

THE COURT :

Did you mean to say three clips or three bullets are missing?

VALERY FABRIKANT :

Three bullets, yes.

Q. Three bullets are missing from the clip...

-Q. (Inaudible)...

Q. ...there was sufficient ammunition in my briefcase if...

-Q. ...il y avait des munitions suffisantes dans ma mallette...

Q. ...if, as you said, identification people wanted to try it...

-Q. ...et vous dites que si les gens de l'identit, judiciaire auraient voulu (inaudible)...

Q. ...they could first have their own bullets...

-Q. ...ils auraient pu d'abord utiliser leurs propres projectiles...

Q. ...or they could have taken the bullets from the briefcase.

-Q. ...ou ils auraient pu utiliser les projectiles se trouvant ... l'int,rieur de la mallette.

A. La proc,dure de la section balistique...

-A. The procedure in ballistics...

A. ...est toujours d'effectuer des tests...

-A. ...is always to carry out tests...

A. .... partir des balles qui sont r,cup,r,es ... m^me l'arme ou ... m^me un chargeur.

-A. ...from the projectiles that are retrieved from the weapon or the magazine...

A. ...pour prouver si effectivement cette arme ou ce chargeur contenait des balles ad,quates ou...

-A. ...in order to prove whether that magazine or that weapon did contain the proper projectiles...

A. ...ou que l'arme pouvait tirer ce certain calibre.

-A. ...or that the weapon could, in fact, fire that kind of projectile, or caliber.

Q. Well, how then it is possible to explain that ballistic expert used even wrong caliber in the test firing?

-Q. Alors donc, comment peut-on expliquer que des experts en balistique peuvent m^me utiliser le mauvais calibre lors des tirs exp,rimentaux?

Q. Was he wrong then?

-Q. Est-ce que c',tait une mauvaise pratique donc?

A. coutez, je suis pas de la section balistique, l..., je vous donne ce que mes connaissances me permettent de vous donner.

Q. No, I'm asking your opinion.

-A. Listen, I'm not from ballistics, all I'm telling you is what my experience dictates.

Q. So he was wrong by using different bullets, not mine.

-Q. Il n'avait pas raison d'utiliser des projectiles diff,rents plut"t que les miens.

A. Ça c'est son t,moignage, c'est lui qui va pouvoir vous expliquer #a tant"t.

-A. That's his testimony, he will be able to explain that to you later on.

Q. Okay. But if suppose someone wants, again, to create a false picture...

-Q. (Inaudible) que l... encore si quelqu'un voulait falsifier la situation...

Q. ...then he could, took the clip...

-Q. ...il aurait pu prendre le chargeur...

Q. ...put it in the pistol...

-Q. ...et l'ins,rer dans le pistolet...

Q. ...and make those shots in the corridor?

-Q. ...pour ensuite effectuer ces tirs ... l'int,rieur du couloir?

A. coutez, le calibre 7.65...

-A. Listen, 7.65 caliber...

A. ...a ,t, r,cup,r, dans une autre pišce...

-A. ...projectiles, or weapon, was retrieved in another room...

A. ...au moment de... attendez un peu, l..., laissez-moi rephaser ma r,ponse, l...

-A. ...one moment, let me rephrase please.

A. Bon. Le calibre 7.65... l'arme, excusez.

-A. The 7.65 caliber weapon, the weapon...

A. ...a ,t, r,cup,r,e dans une autre pišce...

-A. ...was retrieved in another room...

A. ...et au moment de mon arriv,e il y avait un policier qui le gardait...

-A. ...and upon my arrival there was a policer officer securing it...

A. ...et il n'a pas pu ^tre utilis, par apršs, c'est tout ce que je peux dire.

-A. ...it could not have been used afterwards, that's all I can state.

Q. Uh, huh. So for example, if no witness has never heard the fourth shot...

-Q. Alors donc, si aucun t,moin n'aurait entendu le quatrišme tir...

Q. ...from the revolver...

-Q. .... partir du revolver...

Q. ...which I referred to, the one which horizontally, you remember...

-Q. ...auquel je me r,f,rais, vous vous rappelez, le tir horizontal...

Q. ...you would also say that there was no way policeman would come there...

-Q. ...vous diriez ,galement qu'il n'y avait aucune façon pour qu'un policier puisse se rendre l.....

Q. ...and make this shot, no way?

-Q. ...pour effectuer ce tir, aucune façon?

A. Non, parce que je sais pertinemment bien que le calibre .38 qui aurait tir, ce coup...

-A. No, because I know in fact that the .38 caliber weapon that would have fired that shot...

A. ...m'a ,t, remis en main propre par le sergent d,tective Henri...

-A. ...was given to me personally by Detective Sergeant Henri...

A. ...apršs qu'il a ,t, saisi en votre possession.

-A. ...after it was seized in your possession.

Q. Well, could he make this shot before you arrived there?

-Q. Est-ce qu'il aurait pu effectuer ce tir avant votre arriv,e?

Q. He did have enough time to do so?

-Q. Avait-il suffisamment le temps pour le faire?

A. Je peux pas r,pondre ... cette question-l..., c'est...

-A. I cannot answer that question.

Q. Did he have enough time to do this?

A. Je le sais pas.

-Q. Avait-il suffisamment de temps pour effectuer cel...?

A. Je ne suis pas au courant, d'accord, alors je ne suis pas au courant de l'heure o- il en prend possession sur vous.

-A. All right, then I'm not aware of the time he took possession of the weapon on you.

Q. Okay. Assuming that possession was taken from me at four thirty (4:30), and you arrived at five (5:00)...

-Q. Alors donc, si on en avait pris possession sur ma personne ... quatre heures trente (4 h 30) (inaudible)...

Q. ...so was it enough time to make those false shots?

-Q. ...y avait-il suffisamment de temps pour effectuer ces tirs falsifi,s?

A. S-rement qu'il aurait eu le temps dans ce cas-l...

-A. Well, in that case certainly he would have had the time.

Q. And the fact that three bullets exactly are missing from the clip...

-Q. Et le fait qu'exactly trois balles manquent du chargeur...

Q. ...it is just a coincidence?

-Q. ...c'est simplement un hasard?

Q. That three bullets missing from the clip...

-Q. Que trois projectiles manquent au chargeur...

Q. ...and three false shots in this corridor...

-Q. ...et trois coups en blanc dans ce corridor...

Q. ...it is just a coincidence?

-Q. ...c'est simplement un hasard?

A. Non, ce n'est s-rement pas une co'ncidence...

-A. No, it's certainly not a coincidence...

A. ...parce que je suis s-r que le t,moin en balistique va t,moigner ... l'effet qu'il a utilis, trois cartouches pour faire son test, ou en tout cas qu'il va expliquer le manque de ces trois cartouches-l...

-A. Because I'm certain that the ballistics expert or witness who will come to testify will explain that he used those three

projectiles for experimental testing, or the lack of these, the reason for the lack of these three projectiles from the magazine.

Q. Yes. Okay. Thank you.

-Q. D'accord. Merci.

Me JEAN LECOURES :

I would suggest we go to lunch now.

THE COURT :

Okay. We'll adjourn now, you can let me know whether you have any counter-proof at two fifteen (2:15).

Me JEAN LECOURES :

No counter-proof.

THE COURT :

No counter-proof. Fine. We'll adjourn until...

Me BELLEAU :

Is the witness excused, or does he have to come back at two fifteen (2:15)?

THE COURT :

You're finished, are you, Mr. Fabrikant?

VALERY FABRIKANT :

Well, let me think about it, I think there's nothing wrong if he comes back, if I have no questions, then...

THE COURT :

All right, nothing wrong if the witness comes back at two fifteen (2:15). So we'll adjourn until two fifteen (2:15).

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

WITHOUT JURY

Me BELLEAU :

I few words, if I may.

THE COURT :

Certainly, Mr. Belleau.

Me BELLEAU :

Regarding the tape recorder that we attempted to provide Mr. Fabrikant with, I got a call from Mr. Laplante, who is an officer in charge at Parthenais, and who told me that this particular machine has an extension cord or power, a supply wire that is connected to it, and that would have to be cut in order that the machine be given to Professor Fabrikant, and... well, is he authorized to authorize the authorities to cut the wire, that's another question, but he doesn't want the wire cut. The headphones that he was provided with are not...

THE COURT :

Sorry, the...?

Me BELLEAU :

The headphone, headset, are not in line with the regulations, there are pieces of metal and apparently plastic ones would do fine. So (inaudible) that for example a walkman, a standard walkman with plastic headphones would be perfectly allowable but the machine that the Crown has provided the professor with does not conform to the regulations. And on another subject, I have here seven envelopes containing cassettes that Professor Fabrikant asked me to retrieve for him, and should I hand them to him here? Is that possible or...

THE COURT :

Certainly. Certainly. You have... have you made a log of what these various cassettes are, Mr. Belleau?

Me BELLEAU :

No, as a matter of fact I didn't...

THE COURT :

Okay. Perhaps we might...

Me BELLEAU :

Okay. I can keep one of the copies of the... because I've matched them with the...

THE COURT :

If you can keep one of the copies so that you've got a running log of what he has been provided with.

Me BELLEAU :

I'll do that.

VALERY FABRIKANT :

Well, while he's doing that...

THE COURT :

No, while he's doing that, he'll do that and then we'll see where we go from there.

VALERY FABRIKANT :

Well, because it is important.

THE COURT :

Would you just sit down for a minute, please?

VALERY FABRIKANT :

You don't even know what I want to say.

THE COURT :

I know, I'd just like you to sit down for the minute until this is completed.

Me BELLEAU :

I got those from the centre de transcription and left them unopened.

THE COURT :

Okay. So these are the sheets, and you'll keep a running...

Me BELLEAU :

I matched them with the...

THE COURT :

...file of the sheets. Okay. Yes, Mr. Fabrikant, you wish to speak?

VALERY FABRIKANT :

Well, I think I ordered more than six.

Me BELLEAU :

There are seven there, indeed there were more that were ordered but they were not ready, and I've been assured that they will be on a regular basis, because this will take us at, I think, to the beginning of the actual trial, there may be one missing.

VALERY FABRIKANT :

Well, I wasn't given any lunch, and probably they wanted to provoke yet another sit-in, and instead, as you advised me previous time, I should come to you and tell you about it, which I am doing. Are you interested to intervene?

THE COURT :

You didn't receive anything at all to eat?

VALERY FABRIKANT :

Well, they didn't give me the lunch I usually have.

THE COURT :

Did they give you a lunch, anything?

VALERY FABRIKANT :

Well... anything is not what I'm supposed to get.

THE COURT :

Were you furnished...

VALERY FABRIKANT :

They offered me sandwiches and I asked where is the regular lunch, and instead of answering me they just locked the door

and off they go. This is what happened.

THE COURT :

No, I'm not interested in intervening. You've answered my question. I had a sandwich for lunch too.

VALERY FABRIKANT :

Well... but according to the rules...

THE COURT :

Sit down.

VALERY FABRIKANT :

So that's fine with you?

THE COURT :

Sit down. Mr. Lecours, have you anything to say about the question of the machine? I really would like to see this solved so that...

Me JEAN LECOURES :

Yes, I provided Mr. Fabrikant with the best machine I could find, with the best headphones I could find.

THE COURT :

Which doesn't meet the regulations apparently.

Me JEAN LECOURES :

I was following your order the best I could do.

THE COURT :

I appreciate it. I appreciate it. Well, if it takes the director of Parthenais down here to get this sorted out, it will be the director of Parthenais down here, but I'm beginning to lose my patience with this particular problem. The machine was provided, he surely should be able to use the machine, and if he's not able to use the machine, then of course, quite simply, the object of what I tried to accomplish has been defeated.

Me BELLEAU :

I think the problem is with the electrical cord that's attached to the machine, it could be removed and given to Mr. Fabrikant, and he could use it then.

THE COURT :

Then if that's what it takes, if they require me to remove it, it hardly seems to be my domain.

Me JEAN LECOURES :

I understand why they want to remove the cord, and it's, as I said in the procès-verbal, it's still the property of the Attorney General, but I definitely consent to the cutting...

THE COURT :

I am sure you consent to the cutting of the cord, I didn't even think you would refuse. So...

Me BELLEAU :

Well, in that case I will...

THE COURT :

If you would tell them that they may neutralize the cord and...

Me BELLEAU :

...advise that the Crown has agreed to have the cord cut.

THE COURT :

And give him the machine, and if there is still a problem with the earphones, then again, if that's what it takes, if the director insists that he have a trip down here, then a trip down here he'll have.

Me BELLEAU :

I know for a fact that the headphones will not be given to Mr. Fabrikant as they are, and perhaps the prosecutor could provide him with headphones that meet the regulations, but with the metal parts that are an integral part of these

headphones, they will not allow them into the center for security purposes, security reasons, because apparently keys can be made that will open the "menottes" with such metal parts.

THE COURT :

Oh, I'm sure ingenuity knows no bounds.

Me JEAN LECOURS :

One doesn't need earphones with this machine.

THE COURT :

It works without it.

Me JEAN LECOURS :

It works without it.

THE COURT :

It works without it.

Me JEAN LECOURS :

Actually, I was not sure I would provide him with...

THE COURT :

With the earphones.

Me JEAN LECOURS :

...it was not really in your order.

THE COURT :

So once the cord is neutralized the problem is solved.

Me JEAN LECOURS :

Yes, he can just sit down and put it near his ear and listen to it.

THE COURT :

Fine.

VALERY FABRIKANT :

The problem is not solved, because, as you know, of course you don't care, but when I come to Parthenais it's after seven (7:00), it's sometimes even more than that, and without headphones the machine cannot be used after eleven (11:00), with the phones I can use it later.

THE COURT :

Well, you were complaining to me last week that you weren't getting your sleep, so perhaps you can get your hearing in before eleven (11:00). Could we have the Jury please Mr. Serra? Thank you.

VALERY FABRIKANT :

Well, I have something else.

THE COURT :

I have a trial to get on with, and I propose to get on with the trial right now.

VALERY FABRIKANT :

Well, you may propose.

MEMBERS OF THE JURY ARE PRESENT

THE COURT :

Have you any further questions to put to Mr. Desjardins?

VALERY FABRIKANT :

Well, I have already informed you that administration here at detention has not...

THE COURT :

Have you...

VALERY FABRIKANT :

...given me lunch, and as everybody here is entitled to have his lunch.

THE COURT :

What you have informed me...

VALERY FABRIKANT :

They did it intentionally to provoke me into some kind of

reaction so that they could say: "You see, we always said he is a violent person". Now, they didn't provoke me into any reaction, here I am without having lunch, and this is abuse of procedure. According to procedure, when person is on trial, he receives hot meals here at Palais de justice and hot meal when the person comes to Parthenais. Those are the rules, and the rules should be respected.

THE COURT :

You have told me that you refused sandwiches.

VALERY FABRIKANT :

I did not refuse sandwiches...

THE COURT :

I am not going to get into an argument, you obviously waited until the jury could...

VALERY FABRIKANT :

Okay. How on earth could you know that I refused sandwiches?

THE COURT :

You just told me.

VALERY FABRIKANT :

No, I didn't say that I refused, I just asked them where is the regular food.

THE COURT :

I see. I see. Have you any further questions to put to Mr. Desjardins?

VALERY FABRIKANT :

Well, I repeat once again, every prisoner is entitled to his rights, so would you kindly see that those rights are respected?

THE COURT :

Have you any further questions to put to Mr. Desjardins? This is the last time of asking.

VALERY FABRIKANT :

Well, if you find it normal to...

THE COURT :

Mr. Desjardins, you're excused. Thank you very much. Mr. Lecours, would you call your next witness?

VALERY FABRIKANT :

Well this is abuse of procedure.

Me JEAN LECOURE :

Mr. Guy Gravel please.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twenty-second (22nd) day of the month of March, personally came and appeared:

GUY GRAVEL, born on July nineteenth (19th), nineteen hundred and fifty (1950), police officer at the Montreal Urban Community;

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

Me JEAN LECOURE :

At this point, My Lord, I would like to open a voir-dire in order that the witness will be declared expert in the scene of crime, field of scene of crime.

EXAMINED BY Me JEAN LECOURE

ATTORNEY FOR THE CROWN (VOIR-DIRE) :

Q. Mr. Gravel, how long have you been working for the police of Montreal?

-Q. Monsieur Gravel, vous travaillez depuis combien de temps pour la Communit , Urbaine de Montr al, services policiers?

A. Vingt-trois (23) ans.

-A. Twenty-three (23) years.

Q. What are your actual functions?

-Q. Quelles sont vos fonctions actuelles?

A. Je suis technicien en sc ne de crime.

-A. I am a crime scene technician.

Q. What were your functions on August the twenty-fourth (24th), nineteen ninety-two (1992)?

-Q. Quelles ,taient vos fonctions le vingt-quatre (24) ao t mil neuf cent quatre-vingt-douze (1992)?

A. Pouvez-vous pr ciser votre question?

-A. Could you specify your question?

Q. Were they the same?

-Q. Est-ce qu'elles ,taient les m mes?

A. Oui, monsieur.

-A. Yes, sir.

Q. Okay. Could you briefly explain, for the benefit of the jury, what is your training and experience in the field of technician of scene of crime?

-Q. Pouvez-vous bri vement expliquer aux membres du jury quelle est votre exp rience et vos fonctions en tant que technicien de sc ne de crime, et votre formation ,galement?

A. Alors,  a fait six ans et demi que je travaille au bureau de l'identi ti, judiciaire...

-A. I've been with forensic identification for six and a half years...

A. ...j'ai ,t, suivre un cours en empreintes digitales, les photographies ... Ottawa.

-A. ...and I went to Ottawa for fingerprinting and photography course.

A. Alors, j'ai couvert plusieurs sc nes de crime sur le territoire de la C.U.M.

-A. I covered several crime scenes on the territory of the M.U.C.

Q. Approximately how many?

-Q. Approximativement combien vous diriez?

A. Environ deux cent cinquante (250), trois cents (300) par ann e.

-A. Approximately two hundred and fifty (250) to three hundred (300) per year.

Q. Were you ever declared an expert before?

-Q. Est-ce qu'on vous a d clar , expert en la mati re?

A. A plusieurs occasions.

-A. On several occasions.

Me JEAN LECOURE :  
Your witness on voir-dire.  
- Votre t moin sur voir-dire.

THE COURT :  
Have you any questions on voir-dire?

VALERY FABRIKANT :  
Well, I haven't finished with Mr. Desjardins yet.

THE COURT :  
I asked you, and I told you it was the last time of asking, you persisted, so I excused Mr. Desjardins and we're now with Mr. Gravel. Have you any questions on voir-dire for Mr. Gravel?

VALERY FABRIKANT :  
Well, I repeat once again, you have no right to keep prisoner hungry, this is cruel (inaudible).

THE COURT :

Have you any questions on voir-dire for Mr. Gravel?

VALERY FABRIKANT :

You don't seem to hear what I'm telling you.

THE COURT :

I asked you, I'm proceeding with the trial, now have you any questions on voir-dire for Mr. Gravel?

VALERY FABRIKANT :

Well, should I repeat once again what I said, or you heard what I said?

THE COURT :

I will take it that you have no questions for Mr. Gravel.

VALERY FABRIKANT :

Well, continue with your lynching, you are doing nice job.

THE COURT :

You have no questions for Mr. Gravel. Fine. Thank you. The Court declares Mr. Gravel an expert, technician of crime scenes.

EXAMINED BY Me JEAN LECOIRS

ATTORNEY FOR THE CROWN :

Q. Constable Gravel, did you get a special assignment on August the twenty-fourth (24th), nineteen ninety-two (1992)?

-Q. Est-ce qu'on vous a assign, ... une fonction sp,ciale le vingt-quatre (24) ao-t mil neuf cent quatre-vingt-douze (1992), constable Gravel?

A. Oui, monsieur.

-A. Yes, sir.

Q. What was it?

-Q. Quelle ,tait-elle?

A. Je me suis pr,sent, sur la rue de Maisonneuve, ... l'Universit, Concordia...

-A. I showed up on de Maisonneuve at Concordia University...

A. ...pour couvrir une scŠne de crime.

-A. ...to cover a crime scene.

Q. Okay. What was the number of the street again?

-Q. Quel ,tait le num,ro civique encore une fois?

A. 1460, de Maisonneuve.

-A. 1460, de Maisonneuve.

Q. On which floor was it?

-Q. A quel ,tage est-ce que c',tait?

A. Au neuviŠme ,tage.

-A. Ninth floor.

Q. Okay. What did you do performing this assignment?

-Q. Qu'avez-vous fait dans l'exercice de ces fonctions?

A. J'ai proc,d, ... l'examen d'une piŠce...

-A. I proceeded to examine a room...

A. ...en la photographiant...

-A. ...in taking pictures...

A. ...et pr,levant des douilles et des projectiles.

-A. ...and recovering samples of casings and projectiles.

Q. Okay. I'm showing you...

-Q. Je vous montre maintenant...

Q. ...an outline which has been filed as P-1...

-Q. ...un plan produit sous P-1...

Q. ...do you recognize that?

-Q. ...est-ce que vous le reconnaissez?

A. Oui, monsieur le juge.

-A. Yes, Your Honor.

Q. Okay. The address is indicated here, does it remind you...

-Q. L'adresse est indiqu,e ci-bas, est-ce que #a vous indique, #a vous rappelle quelque chose?

A. J'ai fait une erreur tantôt, c'est 1455, boulevard de  
Maisonneuve.

-A. I committed an error earlier, it is 1455 de Maisonneuve.

Q. And were you assigned a very specific portion of this area,  
the ninth floor?

-Q. Est-ce qu'on vous a assigné, ... une section très précise sur le  
neuvième étage?

A. Ici ... la scène numéro 4.

-A. Here, scene number 4.

Q. Okay. I'm showing you an outline as being filed as P-2...

-Q. Je vous montre un croquis produit sous P-2...

Q. ...P-5, I'm sorry...

-Q. ...pardon, P-5...

Q. ...it's written P-5 in that. What does it represent?

-Q. ...qu'est-ce qu'il représente?

A. Alors, ici vous avez la scène numéro 4.

-A. Here we have scene number 4.

Q. Did you, yourself, prepare a working sketch of this scene  
number 4?

-Q. Avez-vous, vous-même, préparé un croquis ou un plan d'ébauche  
pour cette scène numéro 4?

A. Oui, monsieur le juge.

-A. Yes, Your Honor.

Q. Okay. I would like you to file it as P-14.

-Q. J'aimerais que vous la produisiez sous P-14.

Q. And did you as well take photographs of this area, this scene?

-Q. Est-ce que vous avez également pris des photographies de cet  
endroit?

A. Oui, monsieur le juge.

-A. Yes, Your Honor.

Q. Okay. I would like you to file a booklet of photographs...

-Q. J'aimerais que vous produisiez un album de photos...

Q. ...as P-15.

-Q. ...sous P-15.

THE COURT :  
May I see these before they're filed?  
Me BELLEAU :  
Could the accused have a copy?  
THE COURT :  
In a second. Yes. Just a second.  
Me JEAN LECOURES :  
Mr. Fabrikant already has a copy.  
THE COURT :  
He already has a copy, but... Do I understand that you indeed  
have a copy of these photographs, Mr. Fabrikant?  
VALERY FABRIKANT :  
You try to not let me sleep, you try to keep me hungry, and  
after that you'll say that I had all the opportunity to defend  
myself. You don't have any shame, do you? Do you have any  
shame at all?  
THE COURT :  
Would you show Mr. Fabrikant, please, a copy of those  
photographs?  
VALERY FABRIKANT :  
You don't hear me what I said?  
THE COURT :  
I choose not to.  
VALERY FABRIKANT :  
You choose not. Where is your conscience? You seem to be  
very, very upset that the witness today clearly lied, lied  
through his teeth.

THE COURT :

Would you please...

VALERY FABRIKANT :

And you decided just not to give me lunch, hoping that hungry I will be much weaker, my gosh, such an indecent thing to do.

THE COURT :

Would you please look at the photographs and tell me whether you have a copy...

VALERY FABRIKANT :

I'm not going to look into anything.

THE COURT :

You're not going to look at the photographs. Fine. Would you hand the photographs back, please? Thank you very much.

VALERY FABRIKANT :

I just hope there will be time when you realize that this is very low behavior of you.

Me JEAN LECOURES :

Okay. At this point, madam, I would like to file...

THE COURT :

Yes, you can go ahead and file these, I can't see any reason why you can't file those photographs. P-15.

Me JEAN LECOURES :

Q. Okay, use your own to testify...

-Q. Vous pouvez utiliser votre copie pour t,moigner...

Q. ...or use the original to testify and Mr. Belleau, give your copy to Mr. Belleau.

-Q. ...ou donnez votre copie ... ma@tre Belleau.

Q. That's fine like that?

-Q. Ça va comme ça?

A. Oui, monsieur.

-A. Yes, sir.

Q. Okay. Mr. Gravel, I would like you to give a brief description, in a chronological order, or numerical order of each and every photograph...

-Q. J'aimerais que vous ,num,riez les photos en ordre chronologique brišvement.

Q. ...in this booklet.

-Q. ...contenues dans cet album.

A. Alors la photo num,ro 1 c'est ma carte d'identification.

-A. Photo number 1 is my I.D. card.

A. Photo num,ro 2, dans le corridor du 923.

-A. Photo number 2 is the hallway of 923.

A. Je m'excuse...

Q. Referring to P-14, right?

-Q. Vous vous r,f,rez ... P-14, c'est ça?

A. C'est bien ça. C'est pas le 923 c'est le 099-60.

-A. I'm sorry, it's not 923 but rather 999-60.

THE COURT :

Sorry, 999...

-A. 999-60.

Me JEAN LECOURES :

Q. Okay. It's looking towards south, right, on the picture?

-Q. En direction sud?

A. En direction sud, c'est bien ça.

-A. That's correct, southbound upon looking at the picture.

THE COURT :

Q. Excuse me.

-Q. Un moment, je vous prie.

Q. In relation to your diagram...

-Q. En fonction de votre croquis...

Q. ...it's 999-60, is that right?

-Q. ...c'est le 999-60, exact?  
A. C'est bien ça, monsieur le juge.  
-A. That's correct, Your Honor.  
Me JEAN LECOURS :  
Q. Okay. Please go on.  
-Q. D'accord. Alors poursuivez.  
A. La photo suivante, num,ro 3...  
-A. Next photo, photo number 3...  
A. ...alors c'est la porte d'entr,e du local 923.  
-A. ...entrance door to office 923.  
A. La photo num,ro 4...  
-A. Photo number 4...  
A. ...j'ai ouvert la porte 923...  
-A. ...I opened the door to office 923...  
A. ...nous voyons la porte 915-8.  
-A. ...and we see the door bearing number 915-8.  
A. La photo num,ro 5...  
-A. Photo number 5...  
A. ...c'est le local 915-6.  
-A. ...that is office number 915-6.  
Q. Okay. And we could see the door of 915-8?  
-Q. Et nous voyons la porte du 915-8?  
A. A la gauche.  
-A. On the left-hand side.  
Q. And on the right-hand side?  
-Q. Et ... droite?  
A. C'est la porte du 915-7.  
-A. It is the door to 915-7.  
A. La photo num,ro 6, un gros plan de la porte 915-7.  
-A. And photo number 6 is an enlargement of 915-7.  
Q. What do we read on this door?

</pre></body></html>

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

Qu'apparaît sur cette porte?

A. Les inscriptions "P.D. Ziogas, chairperson", et puis c'est marqué, "by appointment only".

-A. We see the inscription "P.D. Ziogas, chairperson. By appointment only".

A. La photo num,ro 7, de la porte d'entr,e du local 915-7...

-A. Photo number 7, from entrance of door or office number 915-7.

A. Alors une vue g,n,rale du bureau.

-A. General view of the office.

A. La photo num,ro 8...

-A. Photo number 8...

A. ...alors encore une vue g,n,rale du bureau, montrant le mur ouest.

-A. ...there again a general view of the office, showing the west wall.

Q. Okay. What you call the west wall is what is in white or beige, right?

-Q. Alors le mur ouest se trouve en blanc ou en beige?

A. C'est ça, ce sont les stores verticaux.

-A. That's correct, where you have the vertical louvers or blinds.

Q. And the bookshelf is the north side?

-Q. Et les ,tagšres sont du c"t, nord?

A. C'est bien ça, monsieur le juge.

-A. That's correct, Your Honor.

A. La photo num,ro 9 c'est le mur nord.

-A. Photo number 9 that's the north wall.

A. La photo num,ro 10...

-A. Photo number 10...

A. ...le mur est.

-A. ...the east wall.

A. La photo num,ro 11...

-A. Photo number 11...

A. ...alors la table au milieu du bureau...

-A. ...table in the middle of the office...

A. ...ainsi qu'une boîte de carton au pied.

-A. ...as well as a cardboard box at the bottom.

A. La photo num,ro 12...

-A. Photo number 12...

A. ...alors une vue rapproch,e, l..., du contenu de la boîte...

-A. ...a close-up of the content of the box...

A. .... savoir un pistolet et un chargeur.

-A. ...that is to say a pistol and a magazine.

A. Et sous la table une paire de lunettes.

-A. Under the table a pair of glasses.

A. La photo num,ro 13...

-A. Photo number 13...

A. ...une photo rapproch,e du pistolet...

-A. ...a close-up of the pistol...

A. ...ainsi que du chargeur.

-A. ...and magazine.

A. La photo 14...

-A. Photo 14...

A. ...alors une photo du pistolet.

-A. ...photo of pistol.

Q. Okay. We can see a difference between 13 and 14?

-Q. Vous voyez une diff,rence entre la 13 et la quatorzišme photo?

A. Oui, j'ai déplac, le pistolet pour avoir une meilleure d, finition de la photo.

-A. Yes, I moved the pistol in order to have a better definition,

clarity of the picture.

Q. And also, to look at the barrel and...

-Q. Et aussi si on regarde le canon?

A. Oui, la photo 14, le pistolet, tait d, barr, .

-A. Yes, photo 14, the pistol was unlocked.

Q. What do you mean?

-Q. Que voulez-vous dire?

A. Alors disons, si vous r, f, rez ... la photo num, ro 13...

-A. If you refer to photo 13...

A. ...le canon est tir, vers l'arrišre pour ouvrir la chambre, pour v, rifier ... l'int, rieur de la chambre.

-A. ...the barrel is pulled back in order to open up the chamber, to be able to look into the chamber.

THE COURT :

Q. Excuse me, the barrel is pulled back or the slide is pulled back?

-Q. Pardon, c'est le canon qui est tir, vers l'arrišre ou...

THE INTERPRETER :

The slide, I'm sorry, My Lord. Slide, I don't have the term right off hand right now.

A. Alors, c'est pas un baril qui est tir,, monsieur le juge, c'est la culasse qui est tir,e vers l'arrišre.

-A. It's not the barrel but rather the slide that is pulled back, Your Honor.

Me JEAN LECOURES :

Q. Okay. Please go on.

-Q. Alors donc, poursuivez s'il vous plaEt.

A. La photo num, ro 15...

-A. Photo number 15...

A. ...le chargeur.

-A. ...the magazine.

A. La photo num, ro 16...

-A. Photo 16...

A. ...une vue rapproch,e de la marque du pistolet.

-A. ...a close-up view of the make of the pistol.

A. On voit Bersa, B-e-r-s-a...

-A. We can see Bersa, B-e-r-s-a...

A. ...Lusber, L-u-s-b-e-r...

-A. ...Lusber, L-u-s-b-e-r...

A. ...quatre-vingt-quatre (84)...

-A. ...eighty-four (84)...

A. ...calibre 7,65.

-A. ...7.65 caliber.

Q. Okay. And the next photograph?

-Q. La prochaine photo.

A. La photo 17...

-A. Photo 17...

A. ...le num, ro de s, rie 51228.

-A. ...the serial number of the weapon 51228.

A. La photo 18...

-A. Photo 18...

A. ...montre deux crayons sur le plancher.

-A. ...shows two pencils or pens on the floor.

A. La photo 19...

-A. Photo 19...

A. ...deux douilles sur la table.

-A. ...shows two casings on the table.

A. La photo 20...

-A. Photo 20...

A. ...une vue rapproch,e de ces deux douilles.

-A. ...a close-up view of those two casings.

A. La photo 21...

-A. Photo 21...

A. ...alors sur le bureau nous voyons deux cartes, l..., deux traces identifi,es par les cartes 3 et 6.

-A. ...on the desk we can see two small cards identified by numbers 3 and 6.

A. Dans les ,tagšres un peu plus haut...

-A. A little higher up in the bookshelves...

A. ...alors deux endroits identifi,s avec les cartons 4 et 7.

-A. ...two areas identified by numbers 4 and 7.

A. La photo 22...

-A. Photo 22...

A. ...montre deux cordes tir,es, l..., pour indiquer, l..., la direction des projectiles.

-A. ...shows two drawn strings to indicate the direction and trajectory of the projectiles.

A. Le num,ro 23...

-A. Number 23...

A. ...alors la marque sur le bureau identifi,e avec le chiffre 3.

-A. ...the marking or gauge in the desk identified by number 3.

Q. Who put these numbers, 1, 2, 3, 4?

-Q. Qui a indiqu, ces chiffres ou a plac, ces chiffres, 1, 2, 3 et ainsi de suite?

A. C'est moi, monsieur le juge.

-A. Myself, Your Honor.

A. Pour tenter d'expliquer, d'identifier les marques vraiment, pour ne pas se m,langier, pour montrer exactement toujours la m^me marque.

-A. To attempt to indicate and identify the gauges or markings, always the same marking.

A. La photo num,ro 24...

-A. Photo 24...

A. ...dans l'unit, murale, ou la bibliothšque...

-A. ...in the wall unit, or on bookshelves...

A. ...le num,ro 4 indique une marque, l..., sur la tablette...

-A. ...number 4 indicates once again on the shelf the type of gauge or marking...

A. ...et dans le fond de l'armoire.

-A. ...at the back of the cabinet.

A. La photo num,ro 25...

-A. Photo 25...

A. ...un projectile identifi, avec le num,ro 5 sur le plancher.

-A. ...a projectile identified by number 5 on the floor.

A. La photo num,ro 26...

-A. Photo 26...

A. ...une vue rapproch,e du projectile.

-A. ...close-up view of the projectile.

A. Le num,ro 27...

-A. Number 27...

A. ...alors la deuxiŠme marque sur le bureau, identifi,e avec le chiffre num,ro 6.

-A. ...second gauge on the desk identified by number 6.

A. La photo 28...

-A. Photo 28...

A. ...alors les dommages, l..., caus,s aux livres, identifi,s avec le chiffre num,ro 7.

-A. ...damages caused to the books identified by number 7.

A. 29, c'est un autre angle du livre.

-A. Photo 29 is another angle of the book.

A. La photo 30 montre le titre du livre...

-A. Photo 30 shows the title of the book...

A. ..."Electronic circuits and devices"  
-A. ..."Electronic circuits and devices".  
A. La photo 31...  
-A. Photo 31...  
A. ...montre le projective ... l'int,rieur du livre.  
-A. ...shows the projectile inside the book.  
A. La photo 32...  
-A. Photo 32...  
A. ...le projectile, une vue rapproch,e du projectile.  
-A. ...a close-up view of the projectile.  
A. La photo 33...  
-A. Photo 33...  
A. ...montre une douille par terre, pršs du classeur.  
-A. ...shows a casing on the floor, near the filing cabinet.  
A. La photo 34...  
-A. Photo 34...  
A. ...une vue rapproch,e de la douille.  
-A. ...a close-up view of the casing.  
A. La photo 35...  
-A. Photo 35...  
A. ...montre un cadre avec les photos de finissants, la classe mil neuf cent quatre-vingt-douze (1992).  
-A. ...shows a picture of the graduates for nineteen ninety-two (1992).  
Q. When you speak about graduates, does it include also professors?  
-Q. Quand vous parlez des dEplom,s, est-ce que #a inclut ,galement les professeurs?  
A. C'est bien #a, monsieur le juge.  
-A. That's correct, Your Honor.  
A. La photo num,ro 36...  
-A. Photo 36...  
A. ...montre le professeur Valery Fabrikant...  
-A. ...shows Professor Valery Fabrikant...  
A. .... partir de cette photographie.  
-A. ...taken from that previous photograph.  
Q. Okay. Where was located the framed picture in photos 35 and 36?  
-Q. Et o- ,tait situ, ce cadre que l'on retrouve aux photos 35 et 36?  
A. Juste ... l'entr,e du local 929.  
-A. In the entrance of office number 929.  
Q. And did you as well, in this fourth scene, seize various items?  
-Q. Et sur cette scšne num,ro 4, est-ce que vous avez saisi divers objets ,galement?  
A. Oui, monsieur le juge.  
-A. Yes, Your Honor.  
Q. Did you also write on the side of your working sketch...  
-Q. Est-ce que vous avez ,galement plac, des inscriptions ... la droite de votre croquis ou plan d',bauche?  
Q. The various items you seized.  
-Q. C'est-...-dire les diverses pišces que vous avez saisies.  
A. C'est bien #a, monsieur le juge.  
-A. That's correct, Your Honor.  
Q. Okay. So in the numerical order, could you describe what you seized in this scene?  
-Q. Alors donc, pourriez-vous d,crire par ordre num,rique ce que vous avez saisi sur la scšne num,ro 4?  
A. Le num,ro 1 indique une paire de lunettes.  
-A. Number 1 indicates the pair of glasses.

Q. Okay. And when we say number 1, paire de lunettes, is there a correspondence with the small number inside 915-7?

-Q. Lorsque nous indiquons num,ro 1, paire de lunettes, y a-t-il une correspondance avec le 915-7?

A. C'est bien ça, monsieur le juge.

-A. That's correct, Your Honor.

Q. What do you mean "c'est bien ça", is it the same number or what?

-Q. Que voulez-vous dire "c'est bien ça", est-ce que c'est le même num,ro ou quoi?

A. C'est le même num,ro. C'est le num,ro correspondant ... la l,gende, l..., sur le croquis.

-A. It's the same number, it's the number corresponding to the legend on the sketch.

Q. And is there any information about where the number is located in 915-7?

-Q. Y a-t-il des renseignements ... l'int,rieur du 915-7 o- se trouvent les items par ordre num,rique?

A. Je ne saisis pas votre question.

-A. I don't understand the question.

Q. The exact location of the number on your sketch, does it mean anything?

-Q. L'emplacement exact sur votre croquis, est-ce que ça signifie quoi que ce soit?

A. C'est les endroits o- les articles, les projectiles, et tous ces articles ont ,t, pris.

-A. Those are the locations where all these items were seized.

Q. Okay. So when you speak about the first one "paire de lunettes", it was seized in the location where number 1 is written on your sketch, right?

-Q. Alors lorsque vous nous r,f,rez au num,ro 1, paire de lunettes, il a ,t, saisi exactement ... l'endroit o- c'est inscrit num,ro 1 sur votre croquis?

A. C'est bien ça, monsieur le juge.

-A. That's correct, Your Honor.

Q. Okay. Does it correspond to the pair of glasses we could see in your booklet of photographs?

-Q. Est-ce que ça correspond avec la paire de lunettes que nous pouvons apercevoir dans votre livret de photos?

A. Oui, la paire de lunettes qui ,tait sous la table.

Q. Okay.

-A. Yes, the pair of glasses that was under the table.

Q. And what happened to these glasses?

-Q. Que s'est-il pass, avec ces lunettes?

A. Je les ai apport,es au bureau pour v,rifier, voir s'il y avait des empreintes digitales.

-A. I brought them to the office to see if there were fingerprints on them.

Q. Were there any?

-Q. Est-ce qu'il y en avait?

A. Aucune.

-A. No.

Q. In the end, what happened to these glasses?

-Q. Que s'est-il produit avec cette paire de lunettes ... la toute fin?

A. Elle fut remise ... l'enqu^teur.

-A. They were handed over to the investigator.

Q. And what did he do with it?

-Q. Qu'a-t-il fait avec?

A. Il l'a remise ... monsieur Fabrikant.

-A. He gave them to Mr. Fabrikant.

Q. Okay. Please go on with the next number.

-Q. Veuillez poursuivre avec le prochain num,ro.

A. Le num,ro 2, sur le croquis indique un chargeur...

-A. Number 2, on the plan or the schematic, indicates a magazine.

Q. Okay. There is also another number, C-64035...

-Q. Il y a aussi un autre num,ro, c'est-...-dire le C-64035...

Q. ...what does it mean?

-Q. ...qu'est-ce que ça veut dire exactement?

A. Alors c'est les num,ros des ,tiquettes appos,es sur les exhibits ou sur le sac.

-A. The bag numbers placed on the exhibits, or the bag.

Q. Okay. And I'm showing you right now a small bag bearing the number C-64034, and being also labelled ",tiquette pour pišce ... conviction, scšne de crime et saisie", did you file that label?

-Q. Je vous montre maintenant cette ,tiquette, portant le num,ro C-64034, ainsi que l'autre ,tiquette avec le contenu, est-ce que c'est vous qui avez produit cette ,tiquette?

A. Oui, monsieur le juge.

-A. Yes, Your Honor.

Q. Okay. And you seized that magazine at the second location on your sketch, right?

-Q. Et vous avez saisi ce chargeur au deuxiėme emplacement sur votre croquis?

A. Oui, monsieur le juge.

-A. Yes, Your Honor.

Q. Okay. I'm showing you also a small plastic bag containing a shell...

-Q. Je vous montre ,galemment un sac de plastique...

Q. ...bearing number C-64036, could you have a look at it and describe it please?

-Q. ...contenant une douille portant le num,ro C-64036, pouvez-vous la d,crire, je vous prie?

A. Alors c'est un projectile...

-A. A projectile...

A. ...de calibre 7,65...

-A. ...7.65 caliber...

A. ...en correspondance sur le croquis au num,ro 3.

-A. ...on the schematic (inaudible) number 3.

A. Je m'excuse, le num,ro 4.

-A. I'm sorry, number 4 rather.

THE COURT :

Q. Number 4 says a "douille".

-Q. Num,ro 4 dit "douille".

Me JEAN LECOURS :

Q. Yes, it's a "douille", right?

-Q. C'est une douille, c'est exact?

Q. Is it a projectile or a shell?

THE COURT :

Shell casing.

-Q. C'est un projectile ou une douille?

A. C'est une douille.

-A. It is a casing.

Me JEAN LECOURS :

Q. Okay. I'm showing you another exhibit labelled C-64037, could you describe it?

-Q. Je vous montre maintenant une autre pišce portant le num,ro C-64037, pourriez-vous la d,crire?

A. Alors c'est une douille, calibre 7,65...

-A. 7.65 caliber casing...

A. ...correspondant au num,ro 5 sur le croquis.

-A. ...corresponding to number 5 on the schematic.  
Q. Okay. I'm showing you another exhibit...  
-Q. Je vous montre une autre pišce...  
Q. ...bearing number C-64038.  
-Q. ...portant le num,ro C-64038.  
A. C'est une douille...  
-A. Casing...  
A. ...calibre 7,65...  
-A. ...7.65 caliber...  
A. ...correspondant au chiffre num,ro 6 sur le croquis.  
-A. ...corresponding to number 6 on the schematic.  
Q. Okay. I'm showing you now an exhibit bearing the number C-64039, could you describe it?  
-Q. Je vous montre maintenant une pišce portant le num,ro C-64039, pourriez-vous la d,crire?  
A. Alors c'est un projectile...  
-A. Projectile...  
A. ...correspondant au chiffre num,ro 7 sur le croquis.  
-A. ...corresponding to number 7 on the schematic.  
Q. And finally another exhibit bearing the number C-64040.  
-Q. Finalement une autre pišce portant le num,ro C-64040.  
A. Alors un projectile...  
-A. Projectile...  
A. ...correspondant au chiffre num,ro 8 sur le croquis.  
-A. ...corresponding to number 8 on the schematic.  
Q. And as well...  
-Q. galement...  
Q. ...inside a plastic bag, a pistol bearing the number C-64035.  
-Q. .... l'int,rieur d'un sac de plastique, un pistolet portant le num,ro C-64035.  
A. Alors c'est un pistolet Bersa...  
-A. It is a Bersa pistol...  
A. ...correspondant au chiffre num,ro 3 sur le croquis.  
-A. ...corresponding to number 3 on the schematic.  
Q. Okay. What is the serial number and the model?  
-Q. Quel est le num,ro de s,rie et le modšle?  
A. Le num,ro de s,rie 51228...  
-A. Serial number 51228...  
A. ...alors la marque Bersa...  
-A. ...make Bersa...  
A. ...Lusber, quatre-vingt-quatre (84)...  
-A. ...Lusber, eighty-four (84)...  
A. ...calibre 7,65.  
-A. ...7.65 caliber.  
Q. Okay. And these various exhibits that correspond to numbers on your sketch...  
-Q. Ces diverses pišces qui correspondent aux num,ros sur votre plan...  
Q. ...do they also correspond to the numbers in the photographs?  
-Q. ...est-ce qu'elles correspondent ,galement aux num,ros dans les photos?  
A. Ce n'est pas des num,ros identiques.  
-A. The numbers are not identical.  
Q. Okay. I'm not talking about the number of the photograph but the numbers, your own numbers in plastic inside the photographs.  
-Q. Je ne r,fšre pas aux num,ros de photographies mais plut"t aux num,ros sur les petits cartons blancs qui se trouvent dans les photos.  
A. Non, monsieur le juge.  
-A. No, Your Honor.

A. Non, monsieur.  
-A. No, sir.  
Q. Okay, there's not necessarily a correspondence?  
-Q. Alors ça ne correspond pas nécessairement ... ces numéros?  
A. Non, monsieur.  
-A. No, sir.  
Q. Okay. But the real correspondence is between the location in the room indicated by your numbers and the description you just gave?  
-Q. La correspondance, elle existe dans les numéros qui apparaissent sur votre croquis, qui correspondent aux numéros qui apparaissent dans la légende de votre croquis?  
A. C'est bien ça.  
-A. That's correct.  
Me JEAN LECOURE :  
No further questions.  
- Plus d'autre question.  
LA COUR :  
Is it your intention to produce these things?  
Me JEAN LECOURE :  
Pardon, My Lord? Yes, we would like to file the gun... the pistol as P-15. They were all filed. Okay. So let's file them sequentially, chronologically, number by number. Okay. So C-64035 is P-16.  
THE COURT :  
And that is? Just a second. That is the pistol, right?  
Me JEAN LECOURE :  
No, no, it's in the same order, but we can just follow on the sketch.  
THE COURT :  
You said 35.  
Me JEAN LECOURE :  
Oh, it's 34, I'm sorry.  
  
THE COURT :  
It's 34. All right.  
Me JEAN LECOURE :  
I'm sorry, My Lord. 34, which is the magazine. If we go sequentially then... this is C-64035, which is the Bersa pistol.  
THE COURT :  
That's P-17.  
Me JEAN LECOURE :  
P-17. C-64036, a shell, P-18. C-64037, another shell, P-19. C-64038, shell, P-20. C-64039, a projectile, P-21. And C-64040, a projectile, P-22.  
THE COURT :  
Would you pass each of these exhibits to Mr. Fabrikant please, so that he may see them.  
Me JEAN LECOURE :  
My Lord, I'd rather Mr. Fabrikant not to have at the same time the guns and the bullets.  
THE COURT :  
Fine, keep the gun until the last and pass the... Do you wish to inspect them or do you not? Do you hear me? Do you wish to inspect these exhibits or do you not?  
VALERY FABRIKANT :  
I think it is too much, Your Honor, to respond to a person like you who uses anger so that person could not defend himself. How could one go lower than that?  
THE COURT :

Do I take it that you don't wish to inspect these exhibits?

VALERY FABRIKANT :

Well, I think you got it right.

THE COURT :

Fine. Pass me the exhibits back please.

VALERY FABRIKANT :

Your conscience seems to be never there.

THE COURT :

Have you finished with the witness?

Me JEAN LECOURE :

Well, we might ask Mr. Fabrikant if he has...

THE COURT :

No, I'm just wondering if you've finished with the witness.

Me JEAN LECOURE :

Yes, My Lord.

THE COURT :

I will ask Mr. Fabrikant in a second. Have you any cross-examination to put to the witness?

VALERY FABRIKANT :

Okay.

CROSS-EXAMINED BY VALERY FABRIKANT :

Q. What time have you arrived there?

-Q. A quelle heure ^tes-vous arriv, ... cet endroit?

A. Dix-huit heures trente-cinq (18 h 35).

-A. Eighteen thirty-five (18:35).

Q. Eighteen thirty-five (18:35). Could you tell me why so late?

-Q. Pourquoi si tard?

A. A cette date-l... je travaillais sur le quart de minuit (12 h), de nuit, alors je d, butais mon travail ... minuit (12 h).

-A. I was working the night shift that day and I was starting my shift at midnight (12:00).

Q. Okay. By the time of the arrival, did you know that I'm the suspect?

-Q. A votre heure d'arriv,e, est-ce que vous saviez que j'en ,tais le suspect?

A. Non, monsieur.

-A. No, sir.

Q. Why did you make the big picture of me...

-Q. Alors donc, pourquoi est-ce que vous avez pris (inaudible)...

Q. ...if you didn't know that I am the suspect? Why did you make a big picture of me?

-Q. ...pourquoi est-ce que vous avez pris un grand plan de ma photo si vous ne saviez pas que j',tais suspect?

A. A la fin de la soir,e...

-A. At the end of the evening...

A. ...j'ai pris cette photo-l...

-A. ...I took that photograph.

Q. Okay. Why me?

-Q. Pourquoi moi?

A. Parce que monsieur Latulippe, le sergent d,tective Latulippe m'accompagnait en tout temps sur la scēne.

-A. Because Detective Sergeant Latulippe accompanied me at all times on the scene.

Q. And?

-Q. Et?

A. A ce moment-l... il m'a donn, le nom du suspect.

-A. And at that point he gave me the name of the suspect.

Q. So what was that point? When?

-Q. Alors c',tait quand? A quelle heure?

A. Je n'ai pas not, l'heure.

-A. I did not take down the time.

Q. Okay. And you never wondered yourself who did all that?

-Q. Et vous ne vous ^tes jamais demand, qui avait fait tout cela, qui avait effectu, tout #a?

A. Non, monsieur le juge.

-A. No, Your Honor.

VALERY FABRIKANT :

I've never seen comedy like this.

Q. So when finally you're told that I'm the suspect, then you decided to make a picture of me, correct?

-Q. Alors finalement, lorsqu'on vous a dit que j',tais le suspect, vous avez d,cid, de prendre ma photo, c'est exact?

A. C'est bien #a.

-A. That's correct.

Q. So what time was it approximately? How long did it take you, your work?

-Q. Alors quelle heure ,tait-il approximativement? Combien de temps #a vous a pris pour faire votre travail?

A. Il ,tait environ... est-ce que je peux r,f,rer ... mes notes?

-A. Might I refer to my notes?

Q. Well, you don't have to say exactly. What is it, one hour, two hours?

-Q. Vous n'avez pas besoin de donner la date exacte, une heure, deux heures, approximativement?

A. Vers vingt-trois heures trente (23 h 30).

-A. Around twenty-three thirty (23:30).

Q. So you were there for about five hours. Five hours, your superior accompanied you there, and he never mentioned my name, only at about twenty-three hours (23:00) he finally told you that I'm the suspect, is that how it happened?

-Q. Votre sup,rieur vous a accompagn, et vers les vingt-trois heures trente (23 h 30) il a finalement mentionn, mon nom, vous avez d,cid, de prendre ma photo, c'est comme #a que #a s'est d,roul,?

A. C'est dans le courant de la soir,e.

-A. In the course of the evening.

Q. Well when, close to the end?

-Q. Quand, vers la fin?

A. Je ne comprends pas la question.

-A. I don't understand the question.

Q. Close to the end of your work?

-Q. Vers la fin de votre tfche, de vos fonctions?

THE COURT :

Q. What Mr. Fabrikant would like to know is when, in the course of the evening, was his name first mentioned.

-Q. Monsieur Fabrikant voudrait savoir quand au cours de la soir,e...

THE COURT :

Is that correct? Have I properly interpreted your question?

VALERY FABRIKANT :

Well, I think my question was even better than your interpretation.

THE COURT :

Oh, I'm sure it was, Mr. Fabrikant...

VALERY FABRIKANT :

Yes.

THE COURT :

...but the witness appeared to be unclear.

VALERY FABRIKANT :

My English is not that bad, no.

A. Dans le courant de la soir,e.

-A. In the course of the evening.

- Q. But you don't remember whether it was ten o'clock (10:00), nine o'clock (9:00), eight o'clock (8:00)?
- Q. Mais vous ne vous rappelez pas si c',tait ... dix heures (10 h), neuf heures (9 h) ou huit heures (8 h)?
- A. Non, monsieur le juge.
- A. No, Your Honor.
- VALERY FABRIKANT :
- There is no such low thing which you consider to be too low.

THE COURT :

Are you speaking to me or are you putting a question to the witness? Have you finished? I take it from your silence you've finished.

- Q. Thank you very much, Mr. Gravel.
- Q. Merci beaucoup, monsieur Gravel.
- A. Merci, monsieur.
- A. Thank you, sir.

THE COURT :

Well, I think we'll pause for ten minutes at this juncture and then we'll get back after.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

MEMBERS OF THE JURY ARE PRESENT

Me JEAN LECOIRS :

Could we excuse Mr. Gravel, Your Honor?

THE COURT :

Certainly.

- A. Merci, monsieur le juge.
- A. Thank you, Your Honor.

AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOIRS :

Mr. Serge Proulx.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twenty-second (22nd) day of the month of March, personally came and appeared:

SERGE PROULX, born on September seventeenth (17th), nineteen hundred and forty-nine (1949), police officer at the Montreal Urban Community;

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

Me JEAN LECOIRS :

At this point, Your Lordship, I would like to open a voir-dire in order to establish that Mr. Proulx is an expert in the field of technicien en scēne de crime.

THE COURT :

Go right ahead.

EXAMINED BY Me JEAN LECOIRS

ATTORNEY FOR THE CROWN (VOIR-DIRE) :

- Q. Okay. Mr. Proulx, how long have you been working for the Montreal police?
- Q. Monsieur Proulx, vous travaillez depuis combien de temps pour le service policier de la municipalit, de Montr,al?
- A. Ça fait vingt-trois (23) ans.
- A. Twenty-three (23) years.
- Q. What are your actual functions?
- Q. Quelles sont vos fonctions actuelles?
- A. Technicien en scēne de crime.

-A. Crime scene technician.  
Q. What were your functions on August the twenty-fourth (24th), nineteen ninety-two (1992)?  
-Q. Quelles ,taient vos fonctions le vingt-quatre (24) août mil neuf cent quatre-vingt-douze (1992)?  
A. J',tais en devoir comme technicien en scène de crime.  
-A. I was on duty as a crime scene technician.  
Q. Could you summarize your training and your experience as a technician in scene of crime?  
-Q. Pouvez-vous r,sumer votre formation et votre exp,rience ... titre de technicien de scène de crime?  
A. Oui. Ça fait cinq ans, depuis mil neuf cent quatre-vingt-sept (1987) que je suis ... l'identit, judiciaire.  
-A. I've been at forensic identification for five years, since nineteen eighty-seven (1987).  
A. J'ai suivi le cours de la Gendarmerie Royale du Canada...  
-A. I underwent RCMP training...  
A. ...en mil neuf cent quatre-vingt-huit (1988)...  
-A. ...in nineteen eighty-eight (1988)...  
A. ...et depuis ce temps-l... que je fais des scènes de crime.  
-A. ...and I've been doing crime scenes ever since.  
Q. And how many scenes of crime did you cover over the last years?  
-Q. Et vous avez couvert combien de scènes de crime au cours des années?  
A. Ah, trois cents (300) environ.  
-A. Approximately three hundred (300).  
Q. And were you declared an expert before?  
-Q. Est-ce qu'on vous a d,j... d,clar, expert en la matiŠre?  
A. Oui.  
-A. Yes.  
Q. How many times, approximately?  
-Q. A combien de reprises, approximativement?  
A. A six reprises ... peu prŠs.  
-A. About six times.  
Q. Okay.  
Me JEAN LECOURS :  
Your witness on voir-dire.  
THE COURT :  
Have you any questions to put to Mr. Proulx?  
CROSS-EXAMINED BY VALERY FABRIKANT (VOIR-DIRE) :  
Q. How many times did you forge a scene of crime, sir?  
A. Jamais.  
Q. Jamais. So that was your first time you did it?  
BY THE INTERPRETER :  
Must I translate, My Lord?  
THE COURT :  
Yes, certainly.  
-Q. Combien de fois avez-vous forg, de scènes de crime, monsieur?  
A. Jamais.  
-A. Never.

VALERY FABRIKANT :  
Q. So this time was your first time, what you did the forgery?  
-Q. Alors c',tait votre premiŠre fois que vous avez effectu, une... que vous avez fauss, une scène de crime, ou falsifi, une scène de crime?  
A. Non, c'est jamais.  
-A. No, my answer is never.  
Q. Well, this is incorrect. I understand that you made the pictures in 907, correct?

-Q. Je comprends que vous avez pris les photos au 907, exact?

A. C'est exact.

-A. That's correct.

Q. Well, there is definite falsification there.

-Q. Alors, on a définitivement falsifié, quelque chose ... cet endroit.

THE COURT :

Are you making a statement or are you asking a question?

Because you're supposed to be asking questions.

VALERY FABRIKANT :

Yes.

Q. So, is there falsification there?

-Q. Est-ce qu'on a falsifié, cet endroit?

A. Non.

-A. No.

Q. Do you know if somebody else did it before you came?

-Q. Est-ce que vous savez si quelqu'un d'autre l'a fait avant votre arrivée?

A. Non.

-A. No.

Q. Did you ever splash blood somewhere just to make it look more gory?

-Q. Est-ce que vous avez déposé, par exemple, du sang pour que ça paraisse plus horrible?

A. Non, jamais.

-A. No, never.

THE COURT :

We're in the process of doing a voir-dire to establish whether or not Mr. Proulx can be recognized as a technician in crime scenes, we're not into the merits of what happened here.

VALERY FABRIKANT :

Well, so far what I have seen, and I believe that it is sufficient evidence that not a single person appearing here did present an honest testimony. Only complete idiot might assume that this previous one didn't know until about ten (10:00) or eleven p.m. (11:00) that I was the suspect, are (inaudible) children here or everybody... it's obvious that witness is lying.

THE COURT :

What we're doing at the moment is establishing purely and simply the qualifications of the witness.

VALERY FABRIKANT :

Well, there is no qualification if person comes here and lies through his teeth, this means that this person is not qualified to do the testimony.

THE COURT :

Well, there is a question of qualification, the question of qualification has for its purpose to establish whether the witness has the training and the experience to be an expert in crime scenes, which is a trade, if you like, which encompasses some forty (40) or forty-five (45) aspects to it, depending upon what the witness has been asked to do. Now, for the minute the Crown prosecutor has asked his questions aimed at having me recognize that he has the training and experience to testify as to what he did at the crime scene as far as recording it and collecting evidence. What you're asked to do at this point is not get into the merits of the case but rather limit yourself to the questions of his experience, as to whether or not he might testify as an expert in that area. That's all.

VALERY FABRIKANT :

Well, in order to testify...

THE COURT :

Now if you see it a different way, I can't help it.

VALERY FABRIKANT :

Well, that's too bad. That's too bad that you cannot see the way that the witness has to be first of all an honest person, besides his qualifications, because qualifications, qualifications, but it is obvious today that all three were lying, you intentionally didn't give me food, hoping that I explode and you will have an excuse, or you want to probably see that hungry I would not be able to continue, this is low tricks to do.

THE COURT :

Mr. Fabrikant...

VALERY FABRIKANT :

I wish you abandon this topic.!!

THE COURT :

You are talking utter nonsense, and I don't hesitate to say that with the jury present.

VALERY FABRIKANT :

(Inaudible) I'm lying that I was left without lunch today? What do you mean nonsense? And it was done intentionally, it was a spectacle. They just want to provoke me.

THE COURT :

Have you any questions to put to Mr. Proulx on his qualifications?

VALERY FABRIKANT :

I will ask him. If you think that you will break me without food and sleep, don't, don't even think about it. I will ask him questions, let him testify.

THE COURT :

Fine.

VALERY FABRIKANT :

And you will see how pale he will look.

THE COURT :

The Court recognizes Mr. Proulx as a technician in crime scenes.

EXAMINED BY Me JEAN LECOIRS

ATTORNEY FOR THE CROWN :

- Q. Mr. Proulx, did you get a special assignment on August the twenty-fourth (24th), nineteen ninety-two (1992)?
- Q. Monsieur Proulx, est-ce qu'on vous a assign, une fonction particulièrement le vingt-quatre (24) août mil neuf cent quatre-vingt-douze (1992)?
- A. Oui.
- A. Yes.
- Q. What was it?
- Q. Qu',tait-elle?
- A. On a ,t, appel, ... se rendre au 1455, de Maisonneuve...
- A. We were asked to go to 1455 de Maisonneuve...
- A. ...pour couvrir une scène de crime au neuvième ,tage.
- A. ...to cover a crime scene on the ninth floor.
- Q. Okay. I'm showing you plan P-1...
- Q. Je vous montre P-1...
- Q. ...do you recognize what it represents?
- Q. ...est-ce que vous le reconnaissez, ce que ça représente?
- A. C'est le plan du neuvième ,tage.
- A. That is the ninth floor.
- Q. Okay. And which specific area was assigned to you as a technician?

- Q. Quel secteur particulier vous ,tait assign, ... titre de technicien?
- A. L'appartement 907, (inaudible).
- A. Office 907, right here.
- A. Alors le 907-4 puis le 907-5.
- A. 907-4, 907-5 also.
- Q. Okay. And I'm showing you P-5...
- Q. Je vous montre maintenant le P-5...
- Q. ...specially on the right-hand side, P-5, with all...
- Q. ...surtout du c"t, droit...
- Q. ...the details of south section, do you recognize what it represents?
- Q. ...ce qu'on indique comme ,tant le d,tail de la section sud.
- A. Oui, c'est ici que j'ai couvert la scšne de crime.
- A. Yes, I covered that crime scene.
- Q. And did you, yourself, make a working sketch of this area for the purpose of your work?
- Q. Est-ce que vous avez pr,par, un croquis de ce secteur pour fins de travail, pour votre travail?
- A. Oui, votre Honneur.
- A. Yes, My Lord.
- Q. I would like you to file that sketch as P...
- Q. J'aimerais que vous le produisiez...
- Q. ...23.
- Q. ...sous P-23.
- Q. Mr. Proulx, could you summarily describe what represents this sketch?
- Q. Pourriez-vous d,crire brišvement ce que repr,sente ce croquis?
- A. Oui, c'est un croquis de l'appartement 907, 907-4 et 907-5.
- A. Yes, it is a sketch of 907, 907-4 and -5.
- A. Et les points rouges, avec un num,ro qui se trouve ^tre ... c"t,, #a indique des pr,lšvements que j'ai pris qui ,taient par terre.
- A. And the red markings on the sketch refer to samples that I retrieved from the floor.
- Q. Okay. And this corresponds to the scene number 5, right?
- Q. Et #a correspond ... la scšne num,ro 5, exact?
- A. C'est exact.
- A. That's correct.
- Q. Did you also take photographs in this area?
- Q. Avez-vous ,galemment pris des photos de ce secteur, ou cet endroit?
- A. Oui, j'ai pris des photos.
- A. Yes, I did.
- Q. I would like you to first quote a booklet of photographs P...
- Q. J'aimerais que vous le produisiez sous P...
- Q. ...24.
- Q. ...24.

THE COURT :

I'd like to see them first.

Me JEAN LECOURS :

I understand Mr. Fabrikant already has a copy of this booklet of photographs.

THE COURT :

I think, ladies and gentlemen, I'll ask you to withdraw for a few minutes until I am satisfied that we can proceed without any difficulty.

MEMBERS OF THE JURY LEAVE THE COURTROOM

WITHOUT JURY

VALERY FABRIKANT :

You are afraid to show them false pictures?

THE COURT :

Now, have you got the pictures?

VALERY FABRIKANT :

I've got them, they're false.

THE COURT :

Have you got the pictures in front of you?

VALERY FABRIKANT :

No.

THE COURT :

Would you lend him a copy please of the booklet? Okay. Now, the Crown proposes to introduce these pictures that I have to assume were taken by Mr. Proulx. P-7, P-8, P-9, P-10, P-11, P-12, show pictures of a body lying on the floor. When the first series of photographs, which is P-8, was introduced, you made a number of objections because of the nature of photographs, the nature of two of the photographs, particularly P-10 and P-12, I just want to know if there's any objection coming now, and that's why I asked the jury to go out.

VALERY FABRIKANT :

You don't get any objections from me.

THE COURT :

I don't care for your remark, I just wish to know whether there is any objection coming from you and on what you base it. If there isn't we'll proceed.

VALERY FABRIKANT :

I want jury to see them.

THE COURT :

Fine. Jury please.

VALERY FABRIKANT :

You know that these pictures are false.

THE COURT :

So you've been telling me, Mr. Fabrikant, so you've been telling me.

VALERY FABRIKANT :

You are afraid to make experiment, because you know that every experiment (inaudible).

THE COURT :

Quiet. We'll let the trial proceed.

VALERY FABRIKANT :

This is not trial, this is monkey trial.

THE COURT :

Would you note please, fifteen fifty-five (15:55): "This is not a trial, this is monkey trial".

MEMBERS OF THE JURY ARE PRESENT

WITNESS: SERGE PROULX -- UNDER THE SAME OATH

EXAMINATION BY Me JEAN LECOURES (CONT'D) :

We just quoted it, madame Desrosiers, as P-24, I would like you to distribute to the members of the jury.

THE COURT :

Now Mr. Fabrikant was given a second copy, you said he already had one copy?

Me JEAN LECOURES :

Yes.

Q. So Mr. Proulx, I will ask you to describe sequentially, summarily, each and every photograph in the booklet.

-Q. Je vous demanderais de d,crire brišvement, et par ordre num,rique, chacune des photographies se trouvant ... l'int,rieur du livret.

A. La photo num,ro 1...

-A. Photo number 1...  
A. ...repr,sente la porte d'entr,e...  
-A. ...the entrance door...  
A. ...de l'appartement 907.  
-A. ...of 907.  
A. Le bureau.  
-A. Office.  
A. La photo 2...  
-A. Photo number 2...  
A. ...repr,sente l'entr,e de l'office.  
-A. ...the entrance of the office.  
Q. From which position?  
-Q. A partir de quelle position?  
A. De l'int,rieur de... .. l'int,rieur du bureau.  
-A. From inside the office.  
Q. Okay. Still talking about 907, right?  
-Q. On parle toujours du 907, exact?  
A. Exactement.  
-A. That's correct.  
A. Ensuite la photo 3 montre face ... la porte de l'appartement 907, c'est le fond du bureau.  
-A. Photo number 3 shows the back of the office taken from front of the office.  
A. La photo num,ro 4...  
-A. Photo number 4...  
A. ...c'est la suite de la photo num,ro 3.  
-A. ...is a follow-up of photo number 3.  
A. Ça montre l'int,rieur du bureau, une vue g,n,rale.  
-A. Showing a general view of the inside of the office.  
A. La photo 5 aussi, c'est la m^me chose.  
-A. Same thing for photo number 5.  
Q. Okay.  
-Q. Poursuivez.  
A. La photo 6 aussi.  
-A. Also for photo number 6.  
Q. Okay. You're looking towards which direction?  
-Q. Vous regardez en quelle direction?  
A. Celle-ci est prise... je suis en face de la porte du bureau 907.  
-A. I was in front of office number 907 when I took this picture.  
Q. Okay. It's facing towards south, isn't it?  
-Q. Alors donc, en direction sud, exact?  
A. C'est exact.  
-A. That's correct.  
A. La photo 7...  
-A. Photo number 7...  
A. ...montre une partie de la chambre 907-4...  
-A. ...shows us part of office number 907-4...  
A. ...ainsi que la victime qui est ,tendue par terre.  
-A. ...as well as the victim on the floor.  
Q. Which victim?  
-Q. Laquelle des victimes?  
A. C'est monsieur... est-ce que je peux...  
-A. May I refer to my notes?  
Q. No. Please go on.  
-Q. Non. Veuillez poursuivre.  
A. La photo 8...  
-A. Photo number 8...  
A. ...c'est une vue du passage ainsi que de la victime, prise d'un autre angle.  
-A. ...view of the hallway as well as the victim, taken from

another angle.

Q. Yes.

-Q. Oui.

A. La photo 9...

-A. Photo number 9...

A. ...une vue rapproch,e de la victime.

-A. ...a close-up of the victim.

A. La photo 10 aussi.

-A. Same thing for photo number 10.

A. La photo 11 aussi c'est une vue rapproch,e.

-A. Photo number 11 is a close-up also.

A. Pour montrer aussi le sang qu'il y a sous la victime.

-A. To also show the blood under the victim.

A. La photo 12...

-A. Photo number 12...

A. ...montrer le sang qui est sur la porte du 907-4.

-A. ...to show the blood on the door of 907-4.

A. La photo 13...

-A. Photo 13...

A. ...montrer l'entr,e du 907-4.

-A. ...shows the entrance to 907-4.

A. Et on voit aussi des taches de sang, des gouttes de sang sur des enveloppes.

-A. We also see drops of blood on some envelopes.

A. La photo 14...

-A. Photo 14...

A. ...est prise de l'int,rieur du 907-4.

-A. ...taken inside 907-4.

A. Pour montrer aussi les gouttes de sang sur l'enveloppe encore.

-A. To show the drops of blood on the envelope there again.

A. La photo 15...

-A. Photo 15...

A. ...montrer la position du corps ... l'int,rieur du 907-4.

-A. ...to show the position of the body inside 907-4.

A. La photo 16...

-A. Photo 16...

A. ...montre des taches de sang sur un pied d'une table.

-A. ...shows blood stains on the leg of a table.

A. La photo 17 aussi.

-A. Same thing for photo 17.

A. Photo 18 montre le mur du fond...

-A. Photo 18 shows the back wall...

A. ...du 907-4.

-A. ...of office 907-4.

Q. Okay. On which cardinal point is it, north, south? What you call the "fond".

-Q. Quel point cardinal? Qu'est-ce que vous indiquez par le fond, or the back?

A. Ça ici.

-A. It would be right here.

Q. So it would be the east side?

-Q. Alors ce serait du c"t, est?

Q. That's what you call the "fond"?

-Q. C'est ce que vous appelez le "fond"?

A. C'est ça, oui.

-A. That's correct, yes.

A. Photo 19 c'est la m^me chose, c'est encore pour montrer le mur du c"t, est, et le tableau.

-A. Photo 19, same thing, the east wall and the board.

A. Photo 20...

-A. Photo 20...

A. ...au centre de la photo il y a... sur le tableau il y a eu une trace de projectile qui a ,t, faite sur le tableau.

-A. ...on the board, in the middle of the picture, there is a projectile marking made on the board.

A. La photo 21...

-A. Photo 21...

A. ...sur le bord de la fen^tre et le rebord du calorifŠre...

-A. ...on the window sill and that of the radiator...

A. ...il y a une trace de projectile aussi ... cet endroit.

-A. ...there's also a projectile marking at this location.

A. Photo 22 c'est une vue rapproch,e.

-A. Photo 22 is a close-up.

A. Photo 23...

-A. Photo 23...

A. ...c'est pour montrer une tache de sang sur la porte du 907.

-A. ...to show a blood stain on the door of office number 907.

Q. This is 907 or 907-4?

-Q. C'est 907 ou 907-4?

A. Non, #a c'est 907.

-A. No, this is 907.

A. La photo 24...

-A. Photo number 24...

A. ...c'est pour montrer le 907-5.

-A. ...to show 907-5.

A. La photo 25 c'est la suite du bureau 907-5.

-A. Photo 25 would be the follow-up to 907-5.

Q. In which direction are you looking with your camera?

-Q. Vous regardez dans quelle direction avec votre cam,ra, votre appareil photo?

A. A ce moment-l..., moi, je suis install, au sud, puis je photographie vers le nord.

-A. I am to the south, taking a picture towards the north.

Q. In your plan we agree that the north is conventional north, is it at the south of the sketch?

-Q. Sur votre croquis, nous sommes d'accord, nous convenons que le nord conventionnel se trouve au haut de votre sch,ma?

A. C'est exact.

-A. That's correct.

Q. Okay. So which side are you photographing?

-Q. Alors donc, vous prenez les photos de quel c"t,?

A. Je photographie le nord du 907-5.

-A. The north side of 907-5.

Q. It means at the right-hand side there would be a door?

-Q. Alors donc, du c"t, droit il y aurait une porte sur cette photo?

A. C'est exact, c'est la photo 24.

-A. That's correct, that would be photo 24.

Q. Okay.

-Q. D'accord.

A. La photo 26 c'est toujours la suite du bureau 907-5.

-A. Photo 26 is a follow-up to office number 907-5.

Q. Okay. Which side are you looking at?

-Q. Et vous regardez quel c"t, maintenant?

Q. Which side is the library, the bookshelf?

-Q. Les ,tagŠres sont de quel c"t,?

A. Elle est ... l'ouest.

-A. On the west side.

Q. Okay.

A. Et la photo 27 aussi c'est la suite de la bibliothŠque et du mur du c"t, ouest.

-A. And photo 27 is the rest of the bookshelves and also a view of

the west side, the west wall.

A. La photo 28...

-A. Photo 28...

A. ...c'est une vue d'une balle qui a ,t, r,cup,r,e sur le tapis.

-A. ...a view of a projectile recovered on the floor, on the carpet.

Q. We're talking about a "balle", not a projectile, right?

A. Une balle, je m'excuse, c'est #a.

Q. No, you were right.

-A. A bullet. On parle d'une balle.

A. Une cartouche.

-A. Or a cartridge.

Q. Okay, full cartridge right?

A. C'est #a.

THE COURT :

Q. So which is it?

-A. Une cartouche.

Q. Okay, it's...

Me JEAN LECOURS :

Q. It includes the shell and the projectile?

-Q. Alors donc, #a inclut ... la fois la douille et le projectile?

A. C'est exact.

-A. That's correct.

Q. Okay.

A. La photo 2 c'est un morceau de dent...

-A. Photo number 2 is a tooth fragment, or photo number 29, I'm sorry, number 2 is a tooth fragment.

A. La photo 30...

-A. Photo 30...

A. ...montrer que les r,cup,rations de 3, 4, 5, qui est un morceau de dent...

-A. ...to show that fragments 3, 4 and 5 are tooth fragments...

A. Non, le num,ro 3 c'est un morceau de dent...

-A. No, number 3 is a tooth fragment...

A. ...le num,ro 4 c'est une douille...

-A. ...4 is a casing...

A. ...et 5 aussi c'est une douille.

-A. ...and number 5 is also a casing.

A. La photo 31...

-A. Photo 31...

A. ...c'est pour montrer la r,cup,ration num,ro 6, qui est une douille.

-A. ...to show number 6, which is a casing.

A. Et 9, qui est un fragment de projectile.

-A. And number 9 which is a projectile fragment.

A. La photo 32...

-A. Photo 32...

A. ...c'est une r,cup,ration d'un projectile.

-A. ...a projectile was recovered there.

A. La photo 33...

-A. Photo 33...

A. ...c'est la r,cup,ration num,ro 8, c'est un fragment de projectile.

-A. ...number 8 represents a projectile fragment.

A. La photo 34...

-A. Photo 34...

A. ...c'est la r,cup,ration num,ro 10, une douille.

-A. ...number 10 represents a casing.

A. La photo 35...

-A. Photo 35...

A. ...c'est une vue rapproch,e du pr,lšvement num,ro 3, soit un

morceau de dent.

-A. ...a close-up of number 3, which is a tooth fragment.

A. Photo num,ro 36...

-A. Photo number 36...

A. ...c'est le projectile num,ro 4...

-A. ...which is projectile number 4...

A. ...a ,t, r,cup,r, sur le plancher.

-A. ...recovered on the floor.

A. La photo num,ro 37...

-A. Photo number 37...

A. ...c'est le pr,lšvement num,ro 5, une douille.

-A. ...represents number 5, which is a casing.

A. La photo 38...

-A. Photo 38...

A. ...c'est le pr,lšvement num,ro 7, un projectile.

-A. ...represents a projectile, number 7.

A. Et la photo 39...

-A. Photo 39...

A. ...c'est le pr,lšvement num,ro 10, une douille.

-A. ...sample number 10, which is a casing.

Q. Do I understand that the numbers on the photographs are the same that your sample numbers on your sketch?

-Q. Dois-je comprendre que les num,ros dans les photographies sont les m^mes que les num,ros (inaudible) votre croquis?

A. C'est exact.

-A. That's correct.

Q. I'm showing you an envelope containing a cartridge...

-Q. Je vous montre un sac contenant une cartouche...

Q. ...bearing the number C-64033, could you describe that for the members of the jury?

-Q. ...portant le num,ro C-64033, pourriez-vous d,crire cette pišce pour le b,n,fice des membres du jury?

A. Oui, c'est une cartouche.

-A. Yes, it is a cartridge.

Q. Which sample is it in your sketch?

-Q. Ça correspond ... quel pr,lšvement sur votre croquis?

A. Le num,ro 1.

-A. Number 1.

Q. Okay. I'm showing you P-25, showing you another bag containing another exhibit labelled C-64030, could you describe it?

-Q. Je vous montre un autre sac portant le num,ro C-64030, pourriez-vous la d,crire, s'il vous plaEt?

A. Oui. C'est une douille.

-A. Yes. It is a casing.

Q. Okay. And it corresponds to which sample number on your sketch?

-Q. Qui correspond ... quel num,ro de pr,lšvement sur votre croquis?

A. Au num,ro 4.

-A. Number 4.

Q. Okay. P-26. I'm showing you then another exhibit labelled C-64029, could you describe it?

-Q. Je vous montre une autre pišce, C-64029, pourriez-vous d,crire cette pišce?

A. Oui, c'est une douille encore.

-A. There again it is a casing.

A. Qui ,quivaut au pr,lšvement num,ro 5.

-A. Corresponds to sample number 5.

Q. Which corresponds to number 5 in your sketch also?

-Q. Qui correspond ,galement au num,ro 5 sur votre croquis?

A. C'est exact, oui.

-A. Correct.  
Q. For the location, eh?  
-Q. C'est-...-dire pour l'emplacement?  
A. Oui, c'est ça.  
-A. Yes, that's correct.  
Q. So P-28.  
-Q. P-28.  
Q. Another exhibit labelled C-640...  
THE COURT :  
Excuse me, is it 28 or 27?  
Me JEAN LECOURES :  
27, I'm sorry. Thank you.  
-Q. P-27.  
Q. Okay. I'm showing you another exhibit labelled C-64028, could you describe it?  
-Q. Je vous montre une autre pišce portant le num,ro C-64028, pourriez-vous la d,crire?  
A. Oui. C'est une douille...  
-A. Yes. It is a casing...  
A. ...qui ,quivaut au num,ro 6.  
-A. ...corresponding to number 6.  
Q. Your sample number 6, right?  
-Q. C'est-...-dire votre pr,lšvement num,ro 6?  
A. Pr,lšvement num,ro 6.  
-A. Sample number 6.  
Q. P-28.  
-Q. P-28.  
Q. And another exhibit labelled C-64027.  
-Q. Je vous montre une autre pišce portant le num,ro C-64027.  
A. Oui, ça ,quivaut au pr,lšvement num,ro 7.  
-A. Corresponds to sample number 7.  
A. Un projectile.  
-A. A projectile.  
Q. Which was found at the location 7 on your outline?  
-Q. Qui a ,t, r,cup,r, ... l'emplacement num,ro 7 sur votre croquis?  
A. C'est exact.  
-A. Correct.  
Q. P-29.  
-Q. P-29.  
Q. And then another exhibit labelled C-64026.  
-Q. Une autre pišce identifi,e au num,ro C-64026.  
A. Oui, c'est un fragment de projectile.  
-A. It is a projectile fragment.  
A. C'est le num,ro 8, pr,lšvement num,ro 8.  
-A. Corresponds to sample number 8.  
Q. Which is? Fragment of projectile, thank you.  
-Q. Qui est? Un fragment de projectile.  
Q. P-30.  
-Q. P-30.  
Q. Another exhibit labelled C-64025.  
-Q. Une autre pišce identifi,e au num,ro C-64025.  
A. C'est le pr,lšvement num,ro 9, c'est un fragment de projectile.  
-A. Sample number 9, a projectile fragment.  
Q. Okay. P-31. And then...  
-Q. P-31.  
Q. ...an exhibit labelled C-64022.  
-Q. Maintenant une autre pišce portant le num,ro C-64022.  
A. C'est le pr,lšvement num,ro 10.  
-A. Sample number 10.  
A. C'est une douille.

-A. Which is a casing.  
Q. P-32.  
-Q. P-32.  
Q. And what happened to the various items after you seized them?  
-Q. Et qu'en est-il de ces pišces diverses que vous avez saisies, une fois que vous les avez saisies?  
A. Elles ont ,t, envoy,es au laboratoire de police scientifique pour expertise.  
-A. They were sent to the forensic lab for expert analysis.  
Q. Thank you.  
Me JEAN LECOURE :  
No further questions.  
- Merci, plus de question.  
THE COURT :  
Have you any questions to put to the witness?  
VALERY FABRIKANT :  
As usually.  
CROSS-EXAMINED BY VALERY FABRIKANT :  
Q. Did you know that I was a suspect?  
-Q. Est-ce que vous saviez que j',tais suspect?  
A. Oui.  
-A. Yes.  
Q. On arrival?  
-Q. A votre arriv,e?  
A. Non.  
-A. No.  
Q. No. When did you know that I was a suspect?  
-Q. Quand avez-vous appris que j',tais suspect?  
A. Dans la soir,e.  
-A. In the evening.  
Q. Well, what time have you arrived?  
-Q. A quelle heure ^tes-vous arriv,?  
A. A dix-huit heures (18 h).  
-A. At eighteen hundred hours (18:00).  
Q. And when approximately did you learn that I was the suspect?  
-Q. Quand avez-vous appris que j',tais le suspect approximativement, vers les quelle heure?  
A. Aucune id,e.  
-A. I have no idea.  
VALERY FABRIKANT :  
Consistent with previous, isn't it.  
Q. Now, do I understand correct that you are not supposed to change the body or anything, you have to make the picture exactly as they are, correct?  
-Q. Dois-je bien comprendre que vous ne devez d,placer le corps, vous devez prendre les photos tel que les choses sont dans la pišce, c'est exact?  
A. C'est exact.  
-A. That's correct.  
Q. Okay. Now, let us see at the picture 13.  
-Q. Photo num,ro 13.  
Q. Did victim himself put eyeglasses there or you did it?  
-Q. C'est la victime lui-m^me qui a plac, ces lunettes ... cet endroit ou c'est vous qui l'avez fait?  
A. Elles ,taient l...  
-A. They were there.  
Q. So somebody else put it there.  
-Q. Alors quelqu'un d'autre les a plac,es ... cet endroit.  
Q. So definitely it was tampered with.  
-Q. Alors on manipul, cet objet...  
THE COURT :

Look, would you please put questions to the witness, don't...

VALERY FABRIKANT :

This is question...

THE COURT :

This isn't a question, this...

VALERY FABRIKANT :

...so if it was tampered (inaudible).

THE COURT :

Mr. Fabrikant, this is a conclusion that you're drawing.

VALERY FABRIKANT :

No, I'm asking, was the picture tampered?

THE COURT :

No, if you're asking: "Was the scene tampered with?", ask that, but don't make a statement that the scene was tampered.

VALERY FABRIKANT :

Well, you have bad hearing probably.

THE COURT :

I think I heard very well.

VALERY FABRIKANT :

Well, let us play the tape then, what I asked.

THE COURT :

Put your question.

VALERY FABRIKANT :

Well, I put already.

Q. Was the scene tampered?

-Q. Est-ce qu'on a d,plac, quoi que ce soit sur la scšne?

A. Non.

-A. No.

Q. Okay. How the glasses were put there, so neatly and so accurately, and so symmetrically, by itself?

-Q. Alors comment se fait-il que les lunettes ont ,t, plac,es de fa#on tršs sym,trique et elles sont plac,es correctement, d'elles-m^mes?

A. Je le sais pas, elles ont tomb, par terre l... j' imagine, j'ai aucune id,e comment les lunettes sont si bien plac,es, je le sais pas.

-A. I have no idea why the glasses are so correctly placed, they fell there and I don't know.

Q. They fell? Do they look like they fell?

-Q. Est-ce qu'elles ont l'air...

Q. They are too beautiful to fell like this?

-Q. ...on dirait qu'elles sont (inaudible), elles sont trop belles pour ^tre tomb,es de telle fa#on.

THE COURT :

Again, would you stop testifying.

VALERY FABRIKANT :

I am not testifying, I am saying that...

Q. Is it any probability that eyeglasses would fall from a victim in the position in which they are now?

-Q. Est-ce que c'est probable que les lunettes soient tomb,es dans une telle position ... partir de la figure de la victime, de la fa#on qu'elles sont reproduites actuellement sur la photo?

A. Oui.

-A. Yes.

Q. Oui. What is the probability of such beautiful position?

-Q. Quelle est la probabilit, d'une telle situation id,ale?

A. J'ai aucune id,e, l..., mais je sais que des lunettes...

Q. Would you like me to throw you my glasses and see what happens?

-A. I have no idea, but when glasses fall down...

-Q. Voulez-vous que je jette mes lunettes par terre pour voir ce

qui se passe lorsque je les jette par terre?

Q. How they fall from... this is how they fall.

-Q. Elles tombent de cette façon.

Q. You see?

-Q. Vous voyez?

THE COURT :

Now would you...

VALERY FABRIKANT :

Do you want me to demonstrate it again?

THE COURT :

Mr. Fabrikant, would you please spare us the histrionics and ask questions.

VALERY FABRIKANT :

It is not histrionics, I'm trying to make the point that police tried to make the picture as gory as possible, and I think this is "unconscionable" to exploit the tragedy which happened at Concordia for only one purpose. This is unconscionable. A serious tragedy happened at Concordia, and instead of Crown to find out what happened (inaudible)...

THE COURT :

No, sorry, if you have questions to put...

VALERY FABRIKANT :

...what we see here is...

THE COURT :

Would you be quiet when I'm speaking? If you have questions to put to the witness, put your questions to the witness. This is not the time for you to make speeches.

VALERY FABRIKANT :

I am not making speeches, you asked me why I'm asking this question...

THE COURT :

I told you...

VALERY FABRIKANT :

...and I'm explaining why I'm asking this question.

THE COURT :

...I'm taking things one at a time, I told you that it will not advance us one whit to go through demonstrations.

VALERY FABRIKANT :

Then don't interfere.

THE COURT :

No, I'm sorry, I will interfere because I have the duty, and I have the responsibility of controlling this. So don't tell me...

VALERY FABRIKANT :

Well, you're just too afraid the jury will understand that this is a fraudulent picture. There is no way eyeglasses can fall like this.

THE COURT :

Mr. Fabrikant, nobody has interfered with the questions you've asked when you've asked a valid question.

VALERY FABRIKANT :

I always ask him valid questions.

Q. Okay. So...

THE COURT :

So when you've made statements, I've interfered.

VALERY FABRIKANT :

All right.

Q. So you think that it is very probable that eyeglasses falling from the victim into the position as they are.

-Q. Alors vous croyez qu'il est probable que les lunettes soient

tomb,es de cette fa#on-l... .. partir du visage de la victime.

Q. Now, could you explain how could blood stains...

-Q. Maintenant, pourriez-vous expliquer les taches de sang...

Q. Okay. P-12.

-Q. P-12.

Q. Just let us look...

-Q. Regardons...

Q. ...the first for example, the top blood stain...

-Q. ...d'abord la tache sup,rieure...

Q. ...there is a blood drop and this blood drop moved a little bit down, it is...

-Q. ...il y a une gouttelette de sang...

Q. ...it is an isolated blood drop...

-Q. ...qui s'est ,coul,e vers l'avant, elle est tout ... fait isol,e...

Q. ...correct? It's isolated blood drop.

-Q. ...elle est isol,e, c'est une gouttelette isol,e.

Q. Correct? It's not connected with any other blood drops.

-Q. C'est exact? Elle n'est reli,e ... aucune autre gouttelette.

Q. Correct?

A. C'est un ensemble.

-A. It's a whole.

Q. I'm looking at the top...

-Q. Je regarde celle de la partie du haut...

Q. ...blood drop.

-Q. ...la gouttelette du haut.

A. Oui.

-A. Yes.

Q. It is an isolated blood drop, correct?

-Q. C'est une gouttelette isol,e, c'est exact?

Q. It is not connected to any other blood drops.

-Q. Elle n'est reli,e ... aucune autre gouttelette.

A. Non.

-A. No.

Q. No. Do you have any idea how this blood drop could appear at this place and in this particular isolated way?

-Q. Avez-vous la moindre id,e comment cette gouttelette de sang s'est retrouv,e ... cet endroit et de cette fa#on?

A. J'ai une id,e mais...

-A. I have an idea but...

A. ...c'est une supposition, l..., c'est pas...

-A. ...it's an hypothesis...

Q. Well, make a supposition, because I have supposition of my own how it appeared there.

A. #a prendrait un expert.

THE COURT :

You might bear in mind...

VALERY FABRIKANT :

Look, I asked him to make the supposition.

THE COURT :

Fine, but the witness is an expert in crime scenes.

VALERY FABRIKANT :

Exactly.

THE COURT :

The witness, as far as I understand it, is not an expert in a science that's called blood dispersion patterns or whatever.

VALERY FABRIKANT :

Gosh, one doesn't have to be a specialist to understand that the only way...

THE COURT :

Well all right, if you want the witness to advance his

hypothesis, but he said: "Look, I'm not an expert in that field", and that puts the jury in a difficult position. That puts the jury in an extremely difficult position because if the witness has no expertise in how blood would be projected...

VALERY FABRIKANT :

Well, blood is as any other liquid, it behaves exactly the same way.

THE COURT :

How blood...

VALERY FABRIKANT :

And all the laws of physics are applicable to blood as to anything else, and if you have an isolated drop of blood which is on the door, and which only made there just to produce horror, which it does produce very well, so my question is, was it put there artificially or it came there naturally?

THE COURT :

Fine.

VALERY FABRIKANT :

And if it is naturally...

THE COURT :

Put your question.

VALERY FABRIKANT :

...advance just slightest idea, we are all reasonable people here.

THE COURT :

Put your question.

VALERY FABRIKANT :

Yes.

Q. So, was it put there artificially, and if not, just raise any idea how it could be there.

-Q. Est-ce que cette gouttelette a ,t, pos,e ... cet endroit de fa#on artificielle, et si non, pouvez-vous nous expliquer comment elle est apparue ... cet endroit?

A. Cette gouttelette-l..., elle n'a pas ,t, appos,e.

-A. It was not placed there.

Q. All right. So give an idea how it could. You have no idea? Could you advance any idea how it could be there?

-Q. Est-ce que vous pourriez avancer une id,e de comment elle est apparue ... cet endroit?

A. C'est possible que la victime ,tait pr#s de la porte lorsqu'elle a ,t, tir,e.

-A. It's possible that the victim was near the door when it was shot at.

Q. All right. Yes. And?

-Q. D'accord. Oui. Et?

A. Et les projections de sang ont revol,, fait qu'il y a trois, quatre gouttes qui se sont s,par,es, ensuite de #a #a a gliss,, la victime a gliss, sur la porte.

-A. And the blood patterings were against the door, and the victim would have slid against the door, or would have slid downwards against the door.

Q. So with victim, as you say, was sliding against the door.

-Q. Alors donc, la victime...

Q. Let me slide against the door.

THE COURT :

Would you put Mr. Fabrikant back where he goes. Ladies, please... Thank you ladies.

VALERY FABRIKANT :

Why cannot I demonstrate that this is no way, sliding along the door, would not put person in the position he's in.

THE COURT :

Because we're not putting on a play, that's why.

VALERY FABRIKANT :

Well, this is not a play, but I'm entitled to full defense, and I'm entitled to show the jury...

THE COURT :

You are certainly entitled to a full defense, and you're entitled... you've told us on numerous occasions this afternoon that you...

VALERY FABRIKANT :

Yes, on numerous occasions...

THE COURT :

...that your command of English is very good indeed, and I agree, therefore you're perfectly capable of putting together the words necessary to put before the witness the image that you wish to put, without demonstrations by the door.

VALERY FABRIKANT :

Well English in words is much less efficient than the demonstration.

THE COURT :

Well, let's try nevertheless.

VALERY FABRIKANT :

Well, you don't let me to show how absurd the idea is.

Q. So, assume for a second that the victim is sliding, well how is he sliding? Let us see how he is sliding.

-Q. Supposons pour un instant que la victime ait glissé,...

Q. You have one blood stain here...

-Q. ...voyons comment elle s'est glissée. On a une tache de sang ... cet endroit...

Q. ...which didn't come from... I don't know where, because...

-Q. ...qui venait de je ne sais où...

Q. ...it is... is it first of all consistent with the wounds the victim received?

-Q. ...d'abord est-ce que c'est compatible avec les blessures qu'a reçues la victime?

Q. Now, I wish...

A. Les taches de sang? Est-ce que c'est compatible?

-A. The blood stains, if they are consistent with...

Q. Well, sliding along the door, now look, we have one blood stain here...

-Q. Regardez, nous avons une tache de sang ... cet endroit...

Q. ...we have another blood stain to the left, and another to the right.

-Q. ...une autre ... gauche et une autre ... droite.

Q. Now, suppose someone, before you came, because you came at eighteen hours (18:00)...

-Q. Avant votre arrivée, parce que vous êtes arrivés, ... dix-huit heures (18 h)...

Q. ...is it possible that someone just came over...

-Q. ...est-ce que ce serait possible pour quelqu'un...

Q. ...and splashed it like this?

-Q. ...d'apposer des taches de sang, de projeter des taches de sang de cette façon?

Q. Would then picture be consistent with such an action? Because look how it goes...

-Q. Est-ce que c'est compatible avec un tel geste? Parce que regardez la direction...

Q. ...it creates kind of a semi-circle.

-Q. ...ça crée un genre de semi-cercle, ou demi-cercle.

Q. This is what happens if someone comes and makes motion like this, and blood goes in a circle.

-Q. C'est ce qui se produit lorsque quelqu'un fait un tel geste, ensuite le sang se diffuse en forme de cercle.

Q. Is this hypothesis consistent with the picture you presented?

-Q. Est-ce que cette hypothèse est compatible avec cette photo que vous présentez?

A. Je ne peux pas répondre ... cette question-là...

-A. I cannot answer that question.

A. Ça prendrait un expert.

-A. An expert would be required here.

Q. An expert, an expert in what?

-Q. Un expert, un expert en quoi?

A. Un expert en...

Q. Just common sense is not sufficient to realize that no victim... let us have in mind the victim has a bullet wound in his right hand...

-Q. La victime a une blessure dans sa main droite...

Q. ...therefore it is natural for any victim, first of all, to cling with hands to something.

-Q. ...alors donc, il est naturel pour toute victime de s'agripper ... quelque chose.

Q. Now, assuming that he slid along the door, there would be trace of his hand on the door?

-Q. Alors supposons qu'il aurait glissé, le long de la porte, il y aurait une trace de sa main le long de sa porte?

Q. Correct?

A. Pas nécessairement, non.

-Q. Exact?

-A. Not necessarily, no.

Q. No. How then?

-Q. Alors donc, de quelle façon?

A. S'il est de dos ... la porte...

-A. If his back is turned to the door...

Q. Oh, his back was to the door, okay. Now, let us investigate this possibility that the back is to the door, because all his wounds are in front, how on earth, if his back was to the door...

-Q. Si son dos était ... la porte...

Q. ...he would leave any traces of blood on the door?

-Q. ...comment pourrait-il laisser des traces de sang sur la porte?

Q. Besides, he would fall in a different manner.

-Q. Il tomberait d'une façon différente.

Q. Correct?

-Q. Exact?

A. Non.

-A. No.

Q. Okay. Explain.

-Q. Alors veuillez expliquer.

A. Si vous voyez sur le bas de la porte ici, là...

-A. You see at the bottom of the door here...

Q. Yes.

-Q. Oui.

A. ...c'est probablement la tête de la victime...

-A. ...that's probably the victim's head...

Q. Where?

A. ...qui a frappé, là avant de tomber.

-A. ...against this location prior to falling.

Q. Okay. Where? Where?

-Q. Où? Où? A quel endroit?

A. Dans le bas de la porte.

-A. At the bottom of the door.

Q. At the bottom of the door...  
-Q. Au bas de la porte...  
Q. ...what are you referring to now?  
-Q. ...vous r,f,rez ... quoi?  
A. Ici l...  
-A. Here. Right here.  
Q. Okay. This. This is victim's head.  
-Q. Alors ce serait la t^te de la victime.  
Q. How, from here...  
-Q. Comment, ... partir de cet endroit...  
Q. ...victim's head got to there?  
-Q. ...la t^te de la victime se serait rendue jusque l...?  
Q. To where they are?  
A. Il a gliss,..  
-A. He slid down.  
Q. He slid down.  
-Q. Il a gliss,..  
Q. The traces of blood, first of all...  
-Q. Les traces de sang, d'abord...  
Q. ...are, it starts one blood stain, let us just examine those blood stains.  
-Q. Examinons ces taches de sang.  
Q. One is... had sufficient blood to make it all the length along the door...  
-Q. Vu qu'il comportait assez de sang pour s',crouler le long de la porte...  
Q. ...of about maybe forty (40) centimeters...  
-Q. ...environ une distance de quarante (40) centimŠtres...  
Q. ...now is it possible that sliding person, have in mind that he was shot in the head twice...  
-Q. ...est-ce possible pour une personne, une victime qui a ,t, tir,e dans la t^te ... deux reprises...  
Q. ...and has to slide for quite a while...  
-Q. ...et doit glisser pendant un bon bout de temps...  
Q. ...even in this case it would not look like this because he didn't have...  
-Q. ...m^me (inaudible) #a ne ressemblerait pas (inaudible)...  
Q. ...any wounds in the back.  
-Q. ...il n'avait aucune blessure dans le dos.

THE COURT :

Are you putting a question or what?

VALERY FABRIKANT :

Yes.

Q. So how this is consistent with what you are trying to describe?  
-Q. Alors comment est-ce que #a peut ^tre compatible avec ce que vous d,crivez?  
A. Vous m'avez demand, une possibilit,, je vous ai donn, une possibilit,..  
-A. You asked me for a possibility, I provided you with a possibility.  
Q. Well it doesn't fit... well, it doesn't fit here either.  
-Q. Bien, elle ne tient pas ici non plus.  
Q. Let's move to...

THE COURT :

No, we won't, we'll adjourn until tomorrow morning and we'll resume tomorrow morning. Thank you, ladies and gentlemen, tomorrow morning at nine thirty (9:30).

TRIAL CONTINUED TO MARCH 23RD, 1993

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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

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PROVINCE DE QUBEC

DISTRICT : MONTRAL

DOSSIER NO : 500-01-017372-928

TAPE : PROCES

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

NOM DES PARTIES :

LA REINE,  
                  plaignante

c.

VALERY FABRIKANT,  
                  accus,

---

COMPARUTION :

Me JEAN LECOURS,  
Procureur de la Couronne;

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DATE D'AUDITION : 24 MARS 1993.

FICHER : 2530

## PAGE

T,moin :	
RICHARD CHAMPAGNE	
- Interrog, par Me Lecours :	3
- Contre-interrog, par M. Fabrikant :	21
Hors jury :	44
T,moin :	
YVES HENRY	
- Interrog, par Me Lecours :	49
- Contre-interrog, par M. Fabrikant :	57
Hors jury :	115
T,moin :	
YVES HENRY	
- Contre-interrog, par M. Fabrikant :	126
T,moin :	
NORMAND HBERT	
- Interrog, par Me Lecours :	130
- Contre-interrog, par M. Fabrikant :	136

\*\*\*\*\* SANDRA TRAINER - INTERPRETE OFFICIELLE

## ASSERMENTE

L'AN MIL NEUF CENT QUATRE-VINGT-QUATORZE (1994), le vingt-quatri me (24e) jour du mois de mars, a comparu :

RICHARD CHAMPAGNE, policier ... la CUM, n, en date du deuxi me (2e) jour du mois de septembre mil neuf cent cinquante (1950);

LEQUEL, apr s avoir pr t, serment sur les Saints vangiles, d,pose et dit ce qui suit :

## INTERROG PAR Me JEAN LECOURE :

- Q. Mr. Champagne, are you member of a special squad for the MUC police?
- Q Monsieur Champagne, est-ce que vous faites partie d'une escouade sp,ciale pour la CUM?
- R. C'est exact.
- R It's correct.
- Q. Which one?
- Q Laquelle?
- R. On appelle  a la section technique.
- R The technical squad.
- Q. Could you summarily describe it?
- Q Est-ce que vous pouvez la d,crire sommairement?
- R. Alors on est... on fait trois genres d'occupations, on est agents d'intervention en situations ... haut risque, situations arm,es.

-R We have three types of operations, we have high risk armed interventions.

R. Je suis ,galement technicien en explosifs.

-R I'm also a technician in explosives.

R. Je suis ,galement plongeur et tireur d',lite.

-R And also a diver, scuba diver and a sharpshooter.

Q. Alors, Mr. Champagne on August the twenty-fourth (24th), nineteen ninety-two (1992), were you performing your duties?

-Q Le vingt-quatre (24) ao-t mil neuf cent quatre-vingt-douze (1992), monsieur Champagne, est-ce que vous ,tiez dans l'exercice vos fonctions?

R. Oui, c'est exact.

-R Yes, that's correct.

Q. Were you given a special assignment on that day?

-Q Est-ce qu'on vous a assign, une fonction sp,ciale cette journ,e-l...?

R. Alors on a ,t,... oui, j'ai compl,t, une ,quipe de travail concernant une fusillade.

-R Yes, I ended a work shift with a shoot-out.

Q. Where was it?

-Q A quel endroit est-ce que #a se situait?

R. C',tait ... l'Universit, Concordia.

-R At Concordia.

R. Au 1455, rue Maisonneuve.

-R Concordia University, 1455 de Maisonneuve.

Q. At what time did you go there?

-Q A quelle heure vous ^tes-vous rendu sur les lieux?

R. On a eu l'appel ... quinze heures trente-cinq (15 h 35).

-R We received the call at fifteen thirty-five (15:35).

R. Nous sommes arriv,s l...-bas ... seize heures (16 h).

-R We arrived there at sixteen hundred hours (16:00).

R. Nous nous sommes habill,s.

-R We got dressed.

R. Est-ce que vous voulez que je poursuive?

-R Would you like me to continue?

Q. Please go on.

-Q Oui, poursuivez.

R. O.K. Nous avons rencontr, le lieutenant Germain.

-R We met Lieutenant Germain.

R. Il nous a donn, des informations concernant la prise d'otages, fusillade, avec possiblement des morts et des bless,s.

-R He gave us the information on a hostage taking and shoot-out, and possibly injured and dead victims.

R. Et j'ai ,t, d,sign, pour aller au neuvišme ,tage.

-R And I was assigned to go to the ninth floor.

R. Et mon assignation ,tait de v,rifier le corridor qui ,tait le 929-90.

-R My assignment was to check out hallway 929-90.

Q. Okay, I will stop you one second.

-Q Un moment, s'il vous plaEt, je vous arr^te.

Q. Just behind you...

-Q Derrišre vous...

Q. ... there are two plans, P-1 and P-3...

-Q ... nous avons deux plans, P-1 et P-3...

Q. ... do you recognize the corridor you were talking about?

-Q ... pouvez-vous reconnaEtre le couloir dont vous parlez?

R. (Inaudible) ici, alors, il ,tait tout simplement positionn, sur le coin...

-R (Inaudible) here, I was simply positioned on the corner here.

Q. Okay, you're pointing 929-2?

-Q Vous indiquez le 929-2?

R. Non, non, le corridor 929-90.

-R No, hallway 929-90.

Q. Which was leading towards 929-8?

-Q Qui menait au 929-8?

R. C'est exact.

-R Correct.

R. Et c',tait l'adresse qui ,tait adjacente au local o- les ,taient cens, ^tre le suspect et les otages.

-R And it was the room adjacent to that office where the suspect and the hostages were apparently (inaudible).

Q. What was the number of that local?

-Q Quel ,tait le num,ro de ce bureau?

R. Le local ... c"t, c',tait le 929-8.

-R The office next door was 929-8.

Q. And where you suspected to be the author of the hostage taking?

-Q Et l'auteur de la prise d'otages vous doutiez qu'il ,tait ... quel endroit?

R. Selon les informations obtenues il ,tait au 929-9.

-R According to the information received, he was in 929-9.

Q. Okay. And if you look at P-3, do you recognize the corridor and the same thing (inaudible) bigger scale?

-Q Si vous regardez P-3, est-ce que vous reconnaissez en plus gros plan le couloir?

R. Oui, certainement.

-R Yes, that's correct.

Q. Okay, and then what did you do, what happened?

-Q Par la suite, qu'avez-vous fait et que s'est-il produit?

R. Alors moi, mon assignation #a a ,t, de relever les policiers qui ,taient dans le corridor...

-R My assignment was to relieve police officers located in the hallway...

R. ... qui surveillaient la porte du bureau 929-8.

-R ... who were watching the door to office number 929-8.

R. tant donn, qu'il y avait une porte qui communiquait avec le local o- ,tait le suspect et les "tages qui ,taient dans la salle...

-R Considering there was a door giving access to that office where the suspect and the hostages were...

R. ... alors j'ai tout simplement relev, les policiers qui ,taient l... pour ,viter, pour s,curiser au cas qu'il y aurait quelqu'un qui sortirait de (inaudible).

-R ... I simply relieved the police officers who were located here in order to secure the area in case someone would step out.

Q. Okay. And at a certain point, what specific event or incident occurred?

-Q Et ... un certain moment donn,, quel ,v,nement ou incident pr,cis se serait produit?

R. Alors ... seize heures vingt (16 h 20)...

-R At sixteen twenty (16:20)...

R. ... j'ai entendu du bruit qui venait de la direction du local o- j'observais.

-R ... I heard some noise coming from the office that I was observing.

R. Alors #a pouvait ^tre aussi bien le 929-8 ou le 929-9.

-R It could have been 929-8 or 929-9.

R. Et quelques secondes apr s le bruit que j'ai entendu, j'ai entendu le constable Nantel donner des directives...

-R After I heard that noise, I heard Constable Nantel give some instructions...

R. ... concernant de la sortie des personnes qui ,taient dans le local.

-R ... concerning the exit of the people inside the office.

Q. From your position, could you actually see what was going on?

-Q A partir de votre position, est-ce que vous pouviez en fait voir ce qui se passait?

R. Non, du tout, du tout. Ma concentration ,tait toujours sur la porte du 929-8.

-R No, not at all. My attention was constantly drawn to the door of office number 929-8.

Q. Okay. And after Constable Nantel gave the instructions?

-Q Et apr s les directives ,mises par le constable Nantel?

R. Alors, c'est #a, l... j'ai entendu parler, #a parlait en arri re mais moi, j'ai jamais quitt, ma position, ,tant donn, que nos tfches sont bien d,finies lorsque, lorsqu'on est assign, ... une tfche dans un cas comme #a.

-R I heard people talking in the back but I didn't pay any attention to it, considering that I have a very specific assignment and I was concentrating on that assignment which was very important.

R. C'est #a. Alors, on ne doit pas se laisser distraire par la curiosit, et de continuer notre tfche jusqu'au bout.

-R And we must not be distracted by curiosity and we must carry out our duties to the very end.

Q. Okay, please go on, after, what did you notice?

-Q Alors poursuivez, que s'est-il produit, qu'avez-vous observ,?

R. O.K. Alors aussit t que tout #a s'est... alors j'ai jamais eu ni contact visuel, ni contact physique avec le suspect dans cette affaire-l...

-R I never had any physical or visual contact with the suspect in this case.

R. Et lorsque tout a ,t, contr l, concernant les personnes...

-R When everything was under control with the people involved...

R. ... le sergent Farmer m'a donn, l'ordre d'aller les accompagner pour s,curiser les locaux.

-R ... Sergeant Farmer gave me the order to accompany them in order to secure the offices.

R. C'est ce qu'on a fait d'ailleurs, c'est qu'on a v,rifi, les locaux principaux d'o- ,taient sortis le suspect et les otages.

-R Which is what we did, we checked out the main offices from out, from the area from which the hostages and the suspect came out.

R. Ainsi que les locaux qui ,taient plus adjacents ... #a.

-R As well as the other offices adjacent to that office.

Q. Okay. And did you at any point seize anything from this scene of crime?

-Q Et ... un certain moment donn, est-ce que vous avez saisi quoi que ce soit sur cette sc ne de crime?

R. Par la suite, apr s la s,curisation des locaux, j'ai re u l'ordre de s,curiser les armes qui ,taient

impliqués dans la fusillade.

-R Afterwards, after securing the offices, I received the order of securing the weapons that were involved in the shooting.

Q. Okay, I understand that the weapons were in the possession of another or other officers and your duty was to what you call secure, it means to make safe, something like that?

-Q Je comprends que certains officiers ou autre officier auraient pu être en possession des armes et vous, votre fonction, était de sécuriser les armes, vous assurer que les armes, étaient sécuritaires?

R. C'est ça, s'assurer que les armes, étaient sécuritaires dans le but d'un maniement, soit par les enquêteurs ou soit par les personnes de l'Identité, judiciaire.

-R Yes, to make sure that the weapons were safe for handling either by the investigators or people from the Forensic Identification Section.

Q. Okay, and what did you do in performing this assignment?

-Q Et qu'avez-vous fait au cours de cette tâche?

R. Alors, en premier lieu j'ai sécurisé, un pistolet...

-R Firstly I secured a pistol...

R. ... de marque MEB.

-R ... a MEB, M-E-B- make.

Q. De calibre 6.35 millimètres

R. 6.35 caliber, millimeter caliber.

Q. Qui, était par terre dans le corridor juste en avant de la porte principale d'où, étaient sortis le suspect et les otages.

-Q Which was on the floor, in the hallway, right in front of the door where... the door to the office from where all the hostages stepped out.

Q. Okay. And what was your findings when you secured this item?

-Q Et qu'avez-vous trouvé, ... la suite d'avoir sécurisé, cet item, (inaudible)?

R. Alors, en premier lieu j'ai enlevé, le magasin, le chargeur qui, était inséré, ... l'intérieur de l'arme.

-R Firstly I removed the magazine that was inside the weapon.

R. Et le chargeur, était vide.

-R The magazine was empty.

R. Ensuite j'ai glissé, la culasse vers l'arrière et je me suis rendu compte qu'il y avait une balle dans la chambre qui, était prête ... faire feu.

-R Then, I pulled back the breech (inaudible) and I noticed that there was a bullet in the chamber, in the cylinder, therefore it was ready to fire.

Q. Okay, and what did you do when you noticed that?

-Q Et qu'avez-vous fait lorsque vous avez remarqué, cela?

R. Alors, j'ai tout simplement enlevé, la balle qui, était dans la chambre, justement pour sécuriser l'arme.

-R I simply removed the bullet that was in the chamber to make the weapon safe.

R. Et ensuite je l'ai laissé, au constable Desjardins de l'Identité, judiciaire pour des photos en présence du sergent détective Henry.

-R And then, I gave it to Mr. Desjardins from Forensic Identification Section for him to take photographs and then to Mr. Henry.

Q. I'm showing you here Exhibit P-10.

-Q Je vous montre ici la pišce P-10.  
Q. Could you examine it...  
-Q Pouvez-vous l'examiner...  
Q. ... and tell the members of the jury whether these are the items that you gave to Mr. Desjardins?  
-Q ... et dire aux membres du jury si c'est les items que vous avez remis au d,etective Desjardins?  
R. C'est exact.  
-R Correct.  
Q. Could you just give a short description?  
-Q Est-ce que vous pouvez nous les d,crire sommairement?  
R. Oui, est-ce que je peux le prendre dans mes mains?  
-R Can I handle it?  
Q. Yes.  
-Q Oui.  
R. Alors de toute fa#on c'est un pistolet, le principe...  
-R At any rate...  
R. ... le principe du pistolet c'est d'ins,erer le chargeur ... l'int,rieur de l'arme.  
-R ... it's a pistol and the principle of a pistol is to insert the magazine inside the weapon.  
R. Et ... chaque fois que le feu part la culasse va vers l'arrišre, et ramasse une balle qui est dans le chargeur.  
-R Each time it is fired, the breech (inaudible) pulls or goes towards the back and automatically a bullet goes up into, from the charger goes up into the weapon.  
R. Qui le rend pr^t ... tirer, ... faire feu.  
-R Which makes it ready to fire.  
Q. And in the same plastic bag, could you have a look at the other item?  
-Q A l'int,rieur du m^me sac de plastique, est-ce que vous pourriez regarder l'autre pišce?  
R. Oui, c',tait le mail qui ,tait ... l'int,rieur, c'est un mail qui va pour un calibre 6.35.  
-R Yes, it is the magazine that goes inside a 6.35 caliber.  
Q. Okay. Did you have the occasion to secure or make safe any other weapons?  
-Q Est-ce que vous avez eu l'occasion de s,curiser toute autre arme?  
R. Oui, en deuxišme lieu j'ai s,curis, un revolver de marque Smith & Wesson.  
-R Yes, I also secured a Smith & Wesson revolver.  
R. De marque... c'est #a, calibre 38.  
-R 38 caliber.  
R. Un canon de deux pouces avec une possibilit, de tirer cinq projectiles.  
-R With a two inch barrel being capable of firing five projectiles.  
Q. And what were your findings when you secured this weapon?  
-Q Et quels ,taient vos r,sultats lorsque vous avez s,curis, cette arme?  
R. Alors, en ouvrant l'arme, je me suis rendu compte qu'il y avait encore une balle qui ,tait pr^te ... tirer, qui ,tait la suivante, donc il y avait quatre qui avaient ,t, tir,es.  
-R Upon opening the weapon, I noticed that there was a bullet ready to be fired and I noticed that four had already been fired.  
Q. So, and what did you do then?

-Q Et qu'avez-vous donc fait?

R. J'ai tout simplement fait la manoeuvre de glisser le barillet vers la... avec le petit m,canisme pour justement faire sortir les balles qui ,taient ... l'int,rieur.

-R I simply slipped out the cylinder in order to eject the bullets that were inside the cylinder.

Q. And when you secured this weapon, who was in possession of it?

-Q Lorsque vous avez s,curis, cette arme, qui l'avait en sa possession?

R. Il ,tait dans une enveloppe qu'avait monsieur, le sergent d,tective Henry.

-R It was in a bag or an envelope that Sergeant or Detective Sergeant Henry had in his possession.

Q. I'm showing you here Exhibit P-12, could you examine it and tell the members of the jury and the Court whether you recognize it?

-Q Je vous montre ici la pišce P-12, est-ce que vous pourriez l'examiner et dire aux membres du jury si vous la reconnaissez?

R. Oui, c'est exact.

-R Yes, correct.

Q. What is it?

-Q Qu'est-ce que c'est?

R. Alors, c'est un calibre 38 de marque Smith & Wesson...

-R It's a 38 caliber Smith & Wesson...

R. ... avec possibilit, de cinq...

Q. That's the weapon you gave to Sergeant Detective Henry?

-R ... with a capacity of five projectiles.

-Q C'est l'arme que vous avez remise au sergent d,tective Henry?

R. Oui.

-R Yes.

Q. And what did you do with the bullets you removed?

-Q Qu'avez-vous fait avec les balles que vous avez retir,es?

R. Concernant cette arme-l... je les ai remises au sergent d,tective Henry.

-R Concerning this weapon, I handed them over to Detective Sergeant Henry.

Q. And did you secure another weapon?

-Q Et est-ce que vous avez s,curis, une autre arme?

R. Oui, en troisišme lieu je me suis rendu au local 915-7...

-R Yes, thirdly I went to office number 915-7...

R. ... concernant une troisišme arme qui avait ,t, trouv,e.

-R ... concerning a third weapon that was found.

Q. Okay, could you show it on P-1, please?

-Q Pourriez-vous nous le montrer sur P-1, s'il vous plaEt?

R. Oui. Le 915-7 c'est le local qui est ici.

-R 915-7 is the office here.

Q. Okay. What did you see and find in this local?

-Q Qu'avez-vous vu et trouv, ... l'int,rieur de ce bureau?

R. Alors, en rentrant dans le local j'ai vu une boEte de carton vide.

-R Upon entering the office, I noticed an empty cardboard box.

R. Et l'arme ,tait d,pos,e ... l'int,rieur de la boEte avec son chargeur ... c"t,.

-R And the weapon was placed inside the box with its

magazine next to it.

R. Les deux ,taient vides de leur contenu.

-R Both were empty.

Q. So securising it was very easy, it was already secured, was it?

-Q Alors donc, pour s,curiser cette arme c',tait trřs facile, řa avait d,j... ,t, fait, c'est exact?

R. C'est exact.

-R That is correct.

Q. Did you touch anything else in this office?

-Q Est-ce que vous avez touch, ou manipul, quoi que ce soit ... l'int,rieur du bureau?

R. Oui, j'ai touch,, j'ai ramass, deux douilles qui ,taient par terre...

-R Yes, I picked up two casings that were on the floor...

R. ... en prenant soin d'installer deux crayons dans la m^me position o- ,taient les douilles...

-R ... and being very careful I placed two pens or pencils at the position of the casings...

R. ... dans le but de m'assurer que les deux douilles que j'ai trouv,es par terre provenaient de l'arme qui ,tait dans la bořte de carton.

-R ... to make sure that the two casings that I found on the floor came from the weapon that was placed in the cardboard box.

R. Dans le cas o- ces deux projectiles auraient ,t, d'un calibre diff,rent pour...

-R In case these two would have been of a different caliber...

R. ... dans le cas o- on aurait pu ^tre en pr,sence d'une quatriřme arme possible.

-R ... in case we would have been in the presence of a fourth possible weapon.

Q. After you secured this weapon, what did you do with it?

-Q Aprřs avoir s,curis, cette arme, qu'en avez-vous fait?

R. Alors, je l'ai remise au constable Desjardins pour...

-R I handed it over for...

R. ... et j'ai quitt, les lieux imm,diatement.

R. ... to officer Desjardins and I left the scene immediately.

Q. I'm talking about the one in 915-7.

-Q Je parle de l'arme dans le 915-7.

R. C'est exact, je l'ai fait prendre en charge par monsieur Desjardins et j'ai quitt, les lieux, alors...

-R That's correct, I handed it over to Constable Desjardins, I left the scene.

Q. But was Mr. Desjardins in charge of the scene or Mr. Gravel?

-Q Mais est-ce que monsieur Desjardins ou monsieur Gravel ,tait responsable de cette scřne?

R. řa je l'ignore entre eux autres comment ils se sont organis,s mais moi, j'ai tout simplement dit ... monsieur Desjardins que cette arme-l... ,tait s,curis,e...

-R I don't know how they settled it between themselves, but all I know is that I gave it to Mr. Desjardins and telling him that it was secured.

R. Et je l'ai laiss,e sur place l'arme, je n'ai pas...

-R And I left the weapon on site, I did not...

Q. Okay, because we're not talking about the two weapons that you, that were seized in the corridor, we're talking about the weapon that was in the carton box.

You just said you left it there, right?

R. Yes.

-Q Parce que nous ne parlons pas deux armes qui ont ,t, trouv,es ... l'int,rieur du couloir, nous parlons de l'arme qui a ,t, trouv,e ... l'int,rieur du 915-7 dans la bo€te de carton, vous l'avez laiss,e l... c'est #a?

R. Exact.

-R That's correct.

Q. No further questions.

-Q Plus de question.

VALERY FABRIKANT :

May I have the booklet of Desjardins?

Me JEAN LECOURES :

You already have two copies of it.

VALERY FABRIKANT :

Well, they are being taken back, I think they have a friend of Court who is doing nothing, maybe they could...

THE COURT :

You have made a copy of Mr. Desjardins' photographs.

VALERY FABRIKANT :

(Inaudible) a good job, a thousand dollars (\$1,000) per day just to...

THE COURT :

Mr. Fabrikant, just address yourself to the photographs. And I would suggest that you take steps to bring your photographs with you.

VALERY FABRIKANT :

Well, you know very well that scene of crime are not allowed to be entered or exited Parthenais unless you make a special order after this, and I cannot take them out. Would you like to make special order?

THE COURT :

Would you like to refer to the photograph and ask your questions.

VALERY FABRIKANT :

Well, you told me I have to bring it, I explain why I cannot bring it.

THE COURT :

You were handed...

VALERY FABRIKANT :

Am I right?

THE COURT :

You were handed the photographs, you have the photographs.

VALERY FABRIKANT :

I was handed photographs, since we are talking about it, maybe you will make an order that I am allowed (inaudible). Is it too much?

THE COURT :

You ask your questions.

CROSS-EXAMINED BY VALERY FABRIKANT :

All right.

Q. I'm looking into booklet of Desjardins...

-Q Je regarde dans le livre de monsieur Desjardins...

Q. ... and I don't see any picture of revolver here.

-Q ... et je ne vois aucune photo du revolver ici.

Q. Are you sure that you gave it to Mr. Desjardins to make a picture?

-Q Etes-vous certain que vous l'avez remis ... monsieur

Desjardins pour qu'il puisse en prendre photo?

R. Je l'ai avis, que cette arme-l... elle est s,curis,e, tout simplement. Je n'ai pas rest, pour le...

THE COURT :

Excuse me, you might address yourself to photograph P-4 in that booklet, excuse me, photograph 4-P-8.

VALERY FABRIKANT :

Photograph what?

Me JEAN LECOURE :

This is not a revolver.

THE COURT :

No, it's not a revolver, I agree, you're talking about the Smith & Wesson, is that right?

VALERY FABRIKANT :

Yes.

Q. Number 4 is revolver, sorry, pistol, pistol I meant, revolver I do not see, and frankly if my recollection is correct, I didn't see a revolver in any of the booklets, if my recollection is correct. But you know that you gave it to Mr. Desjardins to make pictures.

-Q Et vous savez que vous l'avez remis ... monsieur Desjardins pour qu'il puisse le prendre en photo.

R. De quelle arme parle-t-on?

-R Which weapon are we talking about?

Q. Now I'm talking about revolver.

-Q Je parle maintenant du revolver.

R. Le revolver a ,t, remis au sergent d,tective Henry.

-R The revolver was handed over to Detective Sergeant Henry.

Q. Not to Mr. Desjardins?

-Q Pas ... monsieur Desjardins?

R. Monsieur Desjardins ,tait pas loin de l..., l..., il ,tait directement dans les mains de monsieur Henry.

-R Mr. Desjardins was not far away, but it was directly in the hands of Mr. Henry, Detective Sergeant Henry.

Q. Just recently, you said that you gave it to Mr. Desjardins, now it looks like you didn't give it to Mr. Desjardins, that you rather gave it to Mr. Henry.

-Q Vous avez mentionn, que vous l'aviez remis ... monsieur Desjardins et maintenant vous dites que ce n',tait pas monsieur Desjardins mais plut"t monsieur Henry ... qui vous l'avez remis.

R. Concernant le revolver j'ai bien dit que je l'avais remis au sergent d,tective Henry qui l'avait dans une enveloppe.

-R Concerning the revolver, I did state that it was handed over to Detective Sergeant Henry who placed it in an envelope.

R. Ainsi que les projectiles ,gatement.

-R As well as the projectiles.

Q. If you recall testimony of Mr. Nantel, he said that he gave revolver to Mr. Henry, now it looks like you somehow managed to give it to Mr. Henry. Who gave it to Mr. Henry after all?

-Q Monsieur Nantel a mentionn, lors de son t,moignage qu'il l'avait remis au d,tective, au sergent d,tective Henry, et maintenant vous vous mentionnez l'avoir remis au sergent d,tective Henry. Alors donc, lequel des deux l'a vraiment remis au sergent d,tective Henry?

R. Alors c'est le sergent d,tective Henry qui me l'a donn, pour le faire, pour le s,curiser, et je l'ai remis tout

de suite aprs...

-R Detective Sergeant Henry gave it to me so that I could secure it, to make the weapon safe, and then I gave it back to him right away.

Q. So you didn't give it to Mr. Desjardins, my recollection is just wrong. You just recently said that you gave it to Mr. Desjardins for making pictures.

-Q Alors vous ne l'avez pas remis ... monsieur Desjardins. Mon souvenir me fait d,faut...

Q. Is my recollection totally wrong?

-Q ... vous ne l'avez pas remis ... monsieur Desjardins pour qu'il puisse le prendre en photo?

R. Pas le revolver.

-R Not the revolver.

VALERY FABRIKANT :  
Can we play back his testimony? Can we play back his testimony?

THE COURT :  
Yes, we can play back his testimony.

VALERY FABRIKANT :  
Well, let us hear.

THE COURT :  
Where from, where would you like to hear it from?

VALERY FABRIKANT :  
Well, I don't know how we can find the place where he said that he gave revolver to Mr. Desjardins to make pictures.

THE COURT :  
Just a second. Perhaps, I can help you.

VALERY FABRIKANT :  
Well, maybe you just use your recollection, if my recollection coincides with yours, then we don't have to play it back.

THE COURT :  
Why don't we try the tape from nine fifty (9:50) on, nine fifty (9:50), neuf heures cinquante (9 h 50), nine fifty (9:50).

SUSPENSION

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REPRISE

VALERY FABRIKANT :

Q. Okay, now I read from your report...

-Q Maintenant je lis de votre rapport...

Q. ... "j'ai s,curis, un revolver Smith et Wesson...

-Q ... "I secured a Smith & Wesson revolver...

Q. ... de calibre 38...

-Q ... of 38 caliber...

Q. ... avec deux pouces de canon...

-Q ... with a two inch barrel...

Q. ... pouvant tirer cinq projectiles...

-Q ... capable of firing five projectiles...

Q. ... le num,ro de s,rie est 327361...

-Q ... serial number 327361...

Q. ... quatre des cinq balles avaient ,t, tir,es...

-Q ... four of the five bullets had been fired...

Q. ... et la cinquiŕme ,tait pr^te ... faire feu.

-Q ... and the fifth one was ready to be fired.

Q. L'arme fut prise en charge par l'agent Desjardins."

-Q The weapon was taken by Mr. Desjardins."

Q. So, did you write the truth when you wrote this report?

-Q Est-ce que c',tait la v,rit, lorsque vous avez r,dig, ce

rapport?

Q. Or when you twice, I intentionally made it playing, twice that you gave it to Sergeant Desjardins, where is the truth?

-Q Est-ce que vous n'avez pas dit ... deux reprises que vous l'aviez remis au sergent Desjardins, est-ce que c'est vrai ou pas? Lorsque j'ai fait jouer l'enregistrement.

R. Alors, lorsque j'ai sécurisé, ce revolver-l....

-R When I secured that revolver...

R. ... c'est le sergent détective Henry qui me l'a remis...

-R ... Detective Sergeant Henry gave it to me...

R. ... alors qu'il était dans l'enveloppe...

-R ... while it was in the envelope...

R. ... et c'était dans le but de le sécuriser pour le remettre immédiatement par la suite ... l'Identité, judiciaire...

-R ... with the purpose of making it safe to give it immediately afterwards to the Forensic Identification Section...

R. ... pour la prise d'empreintes alors qu'il était sécurisé, naturellement.

-R ... for fingerprinting and it was safe at that point of course.

R. Maintenant, c'est ça, c'est le monsieur Henry qui l'a eu, s'il a donné, tout de suite ou non ... monsieur Desjardins, monsieur Desjardins, était sur les lieux ... ce moment-l..., c'est pour ça que j'ai écrit ça dans le rapport.

-R Now, Mr. Henry received it and whether or not he immediately handed it over to officer Desjardins, I do not know, but that's the reason why I put that in my report.

Q. You didn't know and this is why you put it in your report. How could you put in your report what you didn't know?

-Q Vous ne saviez pas et par contre vous l'avez inscrit, dans votre rapport. Comment pouvez-vous l'inclure dans votre rapport alors que vous ne le savez pas?

Q. Aren't you supposed to put in your report what you do know?

-Q Est-ce que vous n'êtes pas censé, écrire dans votre rapport ce qui est de votre connaissance personnelle?

R. Oui, parce qu'... chaque fois qu'on termine de sécuriser une arme, c'est dans le but des prises d'empreintes.

-R Yes, because when we conclude making a weapon safe, it's for the purpose of taking fingerprints afterwards.

Q. You didn't answer my question.

-Q Vous n'avez pas répondu ... ma question.

Q. In your report, is it written black on white...

-Q Dans votre rapport, est-ce que c'est écrit noir sur blanc...

Q. ... that the arm was given to Constable Desjardins?

-Q ... que l'arme a été remise au constable Desjardins?

Q. Here you twice repeated that you gave it to Henry.

-Q Ici ... deux reprises vous avez mentionné, l'avoir remis ... monsieur Henry.

Q. Your report is written on August twenty-fourth (24th)...

-Q Votre rapport a été rédigé, le vingt-quatre (24) août...

Q. ... immediately after event...

-Q ... immédiatement suite aux événements...

Q. ... and one might assume that your recollection then was

better than it is now.

-Q ... et on pourrait pr,sumer que votre souvenir ... ce moment-l... ,tait meilleur que maintenant.

Q. So, did you or didn't you give it to Desjardins as it is written in the report?

-Q Alors, l'avez-vous donn, ou non...

Me JEAN LECOURE :

It is not written in the report that he gave it to Mr. Desjardins, My Lord, he is leading the witness.

VALERY FABRIKANT :

Okay, let me read it once again.

THE COURT :

Q. One second, does the witness has his report?

-Q Est-ce que le t,moin a son rapport?

R. Oui.

-R Yes.

Me JEAN LECOURE :

It's written that Mr. Desjardins took charge eventually.

VALERY FABRIKANT :

Well, it doesn't say eventually.

THE COURT :

Let the witness have his report in front of him. Now would you put your question again?

VALERY FABRIKANT :

Q. "L'arme fut prise en charge par l'agent Desjardins".

-Q "The weapon was taken over by Constable Desjardins".

R. Oui, la seule chose que...

Q. Without intermediary, if there was intermediary, it should be mentioned.

-Q Alors, il n'y avait pas d'interm,diaire et s'il y en avait un, il aurait fallu l'indiquer.

R. C'est #a.

-R That's correct.

Me JEAN LECOURE :

My Lord, it's not mentioned that he gave it to Mr. Desjardins.

VALERY FABRIKANT :

Well, I think that witness should be able to answer himself, he doesn't need Crown to help.

THE COURT :

I think you are perfectly within your rights to put the questions you're putting, continue.

VALERY FABRIKANT :

Yes, well and the Crown should not intervene.

THE COURT :

You don't need to say anything. Just continue with your questions.

VALERY FABRIKANT :

Yes.

Q. So, here there is no intermediary mentioned...

-Q Alors donc ici, aucun interm,diaire n'est mentionn,...

Q. ... so there was intermediary or there wasn't?

-Q ... alors est-ce qu'il y avait un interm,diaire ou non?

R. Exact, il y avait le sergent d,tective Henry qui ,tait...

-R There was Detective Sergeant Henry, that's correct...

R. ... et c'est l... la petite erreur que j'ai faite dans le fond, #a aurait ,t, de rajouter monsieur Henry concernant la remise de l'arme. Il me l'a remise, je l'ai s,curis,e et je lui ai remise tout de suite...

-R ... and that's my error, that I should have included in

my report, he, Detective Sergeant Henry...

R. ... en pr,sence de monsieur Desjardins.

-R ... was there, he gave, handed me the weapon so that I would make it safe and then I gave it back to him.

R. Sachant qu',ventuellement c',tait pour ^tre l'Identit, qui ,tait pour en prendre charge pour les prises d'empreintes, tout simplement.

-R Knowing that eventually Forensic Identification Section would have it for fingerprinting.

Q. But you don't see with your own eyes the revolver being remitted to Constable Desjardins, did you?

-Q Mais vous n'avez pas vu de vos propres yeux remettre le revolver, ,tant remis au constable Desjardins?

R. Non, parce que je me suis dirig, au local pour s,curiser la troisiŠme arme imm,diatement aprŠs.

-R No, because I went to the office in order to secure the third weapon immediately thereafter.

Q. So how could you write in the report that it was given to Desjardins if you didn't even see it?

-Q Alors comment pouvez-vous r,diger dans votre rapport que vous l'avez remis, qu'il a ,t, remis au constable Desjardins alors que vous ne l'avez pas vu ^tre remis?

R. Parce que j'ai bien marqu, dans mon rapport que l'arme fut prise en charge, dans le sens que je l'ai remise ... monsieur Desjardins et elle ,tait pour ^tre prise en charge par l'Identit,, comme j'ai expliqu, tant"t.

-R I wrote that it was handed over to Mr. Desjardins in view of handing it over to Forensic Identification Section.

Q. Well, but you didn't and you didn't see it and you yourself gave it to Henry.

-Q Mais vous ne l'avez pas fait et vous ne l'avez m^me pas vu vous-m^me, vous l'avez remis ... monsieur Henry.

Q. Why didn't you write the truth, that I gave it to Henry...

-Q Pourquoi n'avez-vous pas ,crit la v,rit,, c'est-...-dire que vous l'aviez remis ... monsieur Henry...

Q. ... and that's all?

-Q ... et c'est tout?

Q. This is what testimony is all about.

-Q C'est en quoi consiste un t,moignage.

Q. You have to write only what you saw or did.

-Q Il faut ,crire uniquement ce qu'on voit ou on fait.

Q. So this time it looks like what you've written was false, you didn't see it.

-Q Alors ... ce point-ci, il semblerait que ce que vous avez ,crit ,tait faux, alors que vous ne l'avez pas vu.

R. C'est bien marqu, sur le rapport que j'ai pas, ce n'est pas marqu, j'ai remis directement l'arme, j'ai marqu, que je l'ai... l'arme a ,t, prise en charge par un membre de l'Identit, mais...

-R It's written in the report that I did not directly hand it over but it was taken over by a member of the Forensic Identification...

R. ... aprŠs l'avoir remise ... monsieur Henry.

-R ... after handing it over to Mr. Henry.

Q. Well, this is not what's written, and since you didn't see Mr. Henry giving it to Desjardins...

-Q Ce n'est pas ce qui est ,crit, puisque vous n'avez pas vu monsieur Henry le remettre ... monsieur Desjardins...

Q. ... you couldn't possibly write it.

-Q ... vous ne pourriez l'avoir ,crit.  
Q. You agree with me?  
-Q C'est exact?  
R. Est-ce que c'est possible de r,p,ter la question?  
-R Could the question be repeated?  
Q. Okay. Since you personally didn't give it to Desjardins...  
-Q Puisque vous ne l'avez pas remis personnellement ... monsieur Desjardins...  
Q. ... and you didn't see anybody else giving it to Desjardins...  
-Q ... et vous n'avez vu personne d'autre le remettre ... monsieur Desjardins...  
Q. ... then you couldn't write in your report that it was given to Desjardins.  
-Q ... alors vous ne pouviez ,crire dans votre rapport que c',tait remis ... Desjardins.  
Q. This is unprofessional, is it?  
-Q C'est non professionnel, n'est-ce pas?  
R. Alors je reviens encore concernant la prise en charge et non le remettre en main propre, c'est bien ,crit.  
-R I will get back to the taking over and not handing it over personally, it is written in the report.  
Q. You didn't respond to my question.  
-Q Vous n'avez pas r,pondu ... ma question.  
Q. You didn't see it, you handed the revolver to another person...  
-Q Vous ne l'avez pas vu, vous avez remis le revolver ... une autre personne...  
Q. ... so how could you write that it was given to Desjardins if you didn't see it and you didn't give it to him personally?  
-Q ... comment pouvez-vous ,crire que vous l'avez remis, qu'il a ,t, remis ... monsieur Desjardins si vous n'avez pas t,moign, ou ne l'avez pas vu personnellement?  
R. C'est bien simple, logiquement c'est monsieur Desjardins qui a pris les photos du premier pistolet qui a ,t, s,curis,.  
-R It's very simple, Mr. Desjardins... and logical, Mr. Desjardins was the one who took the pictures of the first weapon after it was made safe.  
R. Alors logiquement, il aurait ,t, logique justement que cette arme-l... ,tait pour ^tre reprise en charge imm,diatement aprs l'avoir remise ... monsieur Henry par la m^me personne.  
-R So logically it would have made sense that he would have taken the weapon after Mr. Henry would have received it and the same person would have had the second weapon.  
Q. Do you understand that you are policeman and your report is testimony?  
-Q Est-ce que vous comprenez que vous ^tes un policier et que votre rapport constitue un t,moignage?  
R. Eh oui.  
-R Yes.  
Q. Do you know that witness can only write about what he personally did see or heard, do you know that?  
-Q Est-ce que vous savez qu'un t,moin doit ,crire seulement ce qu'il a v,cu, ce qu'il a vu personnellement, est-ce que vous savez #a?  
R. Oui.  
-R Yes.

Q. But you did something opposite, didn't you?  
-Q Mais vous avez fait le contraire, n'est-ce pas?  
R. Non, je suis pas pr<sup>^</sup>t ... dire #a du tout.  
-R No, I'm not ready to say that at all.  
Q. All right. Could it be that this mix-up in who did what, when with revolver...  
-Q Est-ce que c'est possible que cette confusion, c'est-...-dire qui a fait quoi, ... quel moment donn, avec le revolver...  
Q. ... the reason for it being...  
-Q ... la raison ,tant...  
Q. ... that someone tampered with the revolver...  
-Q ... que quelqu'un aurait touch, le revolver...  
Q. ... got to room 924...  
-Q ... se serait rendu au bureau 924...  
Q. ... sorry, 929-24...  
-Q ... excusez-moi, 929-24...  
Q. ... and shot through the wall.  
-Q ... et aurait tir, vers le mur.  
Q. And this is why there is such a confusion...  
-Q Et c'est la raison pour laquelle il existe une telle confusion...  
Q. ... who has the revolver, and when, and where it was handed?  
-Q ... en ce qui touche le revolver, c'est-...-dire qui l'avait et qui l'a remis ... qui?  
Q. Would that be correct explanation to all this confusion?  
-Q Est-ce que #a pourrait ^tre une explication logique ... cette confusion?  
R. Dans mon cas absolument pas, j'ai pris l'arme directement de l'enqu<sup>^</sup>teur.  
-R In my case absolutely not, I took the weapon directly from the investigator.  
R. Je l'ai s,curis,e et je l'ai remise imm,diatement.  
-R I made it safe and I handed it over immediately.  
Q. Did you know by that time that I was arrested suspect.  
-Q Est-ce que vous saviez ... ce moment-l... que j',tais le suspect arr<sup>^</sup>t,?  
R. Absolument pas.  
-R Absolutely not.  
R. J'ai jamais eu un contact visuel ou physique, j'ai jamais m<sup>^</sup>me vu monsieur... l'accus, en aucune circonstance cette journ,e-l...  
-R I never had any visual or physical contact, actually I never even saw the accused that day.  
Q. No, but the name, the name, I'm asking about the name.  
-Q Le nom, le nom, je vous demande au sujet du nom?  
R. Qu'est-ce que vous voulez savoir?  
-R What would you like to know?  
Q. Did you know by that time my name?  
-Q Connaissiez-vous mon nom ... ce moment-l...?  
R. Selon les informations qu'on avait re#ues ... notre arriv,e...  
-R According to the information we had received upon our arrival...  
R. ... le nom de monsieur Fabrikant m'avait ,t, mentionn,.  
-R ... Mr. Fabrikant's name had been mentioned to me.  
Q. So you are the only person among those who testified who admits that you knew my name since what, fifteen thirty-five (15:35)?  
-Q Vous ^tes la seule personne qui a t,moign, que vous

connaissiez mon nom depuis quinze heures trente-cinq  
(15 h 35)?

R. Depuis seize heures (16 h).

-R Sixteen hundred hours (16:00).

Q. Okay, at least from sixteen hours (16:00).

-Q Au moins ... partir de seize heures (16 h).

Q. Okay. Did Mr. Henry know my name too, to your  
recollection?

-Q Est-ce que monsieur Henry connaissait mon nom...

THE COURT :

How can the witness...

VALERY FABRIKANT :

Q. No, I mean, if they communicated in any way mentioning  
my name.

-Q Non, s'ils ont communiqué, d'une façon ou d'une autre en  
mentionnant mon nom?

R. Non, je peux pas vous dire.

-R No, I cannot say.

Q. No, okay. But you heard it, what, from the radio?

-Q Mais vous l'avez appris ... partir de quel moyen, c'est-...-  
dire ... partir de la radio?

R. Non, ... partir de la radio... laquelle radio vous parlez?

-R What radio are you talking about then?

Q. Well, I'm just asking from any... what was the source,  
let me put different question, what was the source that  
you knew my name?

-Q Mais je demande tout simplement... laissez-moi  
reformuler. Quelle ,tait la source pour vous, c'est-...-  
dire de connaître mon nom?

R. Lorsqu'on a rencontr, la personne en charge, par la  
suite les informations qu'on a reçues dans nos walkie-  
talkie comme quoi que... je me souviens, entre autres,  
de ce nom-l...

-R When we... by the person in charge, when we received the  
information over the walkie-talkie that this was the  
name in question.

Q. Uh, huh. Is this what...

R. Du moins quelque chose qui ressemblait ... ça, l...

-R Or at least something that resembled that.

Q. Okay. Is this walkie-talkie which every policeman has?

-Q Est-ce que c'est le type de walkie-talkie que chaque  
policier apporte avec lui?

R. Non, les bandes qu'on utilise c'est seulement utilis,  
par notre section.

-R No, the frequencies we use are used only by our  
department.

Q. Uh, huh, okay. Did you mention to Mr. Desjardins my  
name?

-Q Est-ce que vous avez mentionn, nom nom ... monsieur  
Desjardins?

R. Non.

-R No.

Q. Did you give the pistol to Mr. Desjardins personally?

-Q Est-ce que vous avez remis personnellement le pistolet  
... monsieur Desjardins?

R. Si on parle le pistolet MEB, le premier, le 6.35...

-R If we're talking about the MEB, the first one, the 6.35  
caliber...

Q. Yes.

R. ... il avait pris des photos avant.

-R ... he had taken photographs prior.

R. Je l'ai sécurisé, et après ça il en a pris charge pour les empreintes.

-R I made it safe and then he took it over for fingerprinting.

Q. Uh, huh, okay. When you were walking through the corridor 929-90...

-Q Lorsque vous vous déplaciez dans le couloir 929-90...

Q. ... did you see any shells anywhere?

-Q ... est-ce que vous avez vu des douilles quelque part?

R. Non, c'était des X qui étaient par terre et l'enquêteur, monsieur Henry, m'a indiqué, qu'il y avait des douilles ... ces places-là...

-R No, but there were Xs placed on the floor and Mr. Henry told me that casings had been found at these locations.

Q. Uh, huh. Okay. Did you see or recall any marks or bullets anywhere?

-Q Vous rappelez-vous avoir vu des traces de projectiles?

R. On parle du corridor 929-90?

-R Are we talking about hallway 929-90?

Q. Well, anywhere in 929.

-Q N'importe où ... l'intérieur du 929.

R. J'ai remarqué, qu'il y avait des... oui, dans certains cadrages, dans certains il y avait des trous mais j'ai pas porté, plus attention, notre intérêt...

-R Yes, I noticed there were, in some frames there were holes, but I didn't really pay any attention.

R. ... notre intérêt est sur les personnes suspectes qui pourraient rester ... l'intérieur.

-R Our interest was drawn to the suspects, possible suspects that could have still been within the offices.

Q. So you cannot describe where, for example, you saw those bullet holes.

-Q Alors donc, par exemple, vous ne pourriez décrire les endroits où vous avez remarqué, les trous de projectiles?

R. Absolument pas.

-R No, absolutely not.

Q. At least with accuracy, did you see it on the floor, did you see it on the door, did you see it on the wall?

-Q Pourriez-vous au moins nous dire si vous les avez vus par terre, sur le plancher, dans la porte, sur le mur?

R. J'ai remarqué, entre autres, un dans un mur, là...

-R Among others...

R. Mais c'est vague, puis c'était pas, mon intérêt, c'était pas ... ça du tout.

-R ... I noticed one on the wall but it's vague, my interest was not drawn on these at all.

Q. Could you indicate on the map on what wall?

-Q Pouvez-vous indiquer sur le croquis sur quel mur?

R. Non, je me souviens pas assez pour ça.

-R No, I do not sufficiently recall.

Q. Okay. Now you said you went to 915...

-Q Maintenant, vous dites vous être rendu ... 915...

Q. ... and secured pistol there and gave it to Desjardins.

-Q ... vous avez pris le pistolet pour le remettre ... monsieur Desjardins.

Q. Did he just follow you or you took the weapon to 929 and gave it to Desjardins there?

-Q Est-ce qu'il vous a simplement suivi ou vous avez pris l'arme ... partir du 929 et vous l'avez remis ... cet endroit-là... entre les mains de monsieur Desjardins?

R. Dans mon cas, l'arme n'a jamais quitté, les lieux, dans

la boîte, l...

-R In my case, the weapon never left the scene, it remained in the box.

R. J'ai tout simplement avis, monsieur Desjardins que cette arme-l... ,tait s,curis,e.

-R I simply told Mr. Desjardins that that weapon was secure.

R. Et j'ai quitt, les lieux.

-R And I left the scene.

Q. So Mr. Desjardins was with you there?

-Q Alors donc, monsieur Desjardins ,tait en votre pr,sence ... cet endroit?

R. Non, il ,tait... c'est parce qu'on s'est crois,s ... un moment donn,, l..., ... la sortie du local.

-R We met at one point at the exit of the office.

Q. So he was entering the office and you were exiting the office?

-Q Alors donc, il entra dans le bureau alors que vous sortiez du bureau?

R. C'est vague un peu, l..., mais c'est ... peu prřs řa.

-R It's a little vague but that's what it is, more or less.

Q. And you told him: "Hey, I left the weapon there for you", something like that?

-Q Et vous lui avez dit : "J'ai laiss, une arme l... pour vous", quelque chose du style?

R. Que cette arme-l... elle est s,curis,e, tout simplement. Lui sait qu'est-ce qu'il a ... faire maintenant, c'est ... lui ..... je sais pas si c'est ... lui qui a ... prendre les photos ou ... donner řa ... quelqu'un d'autre, l..., mais...

-R Very simply that...

R. Simplement mon message ,tait clair, c'est je peux quitter les lieux en disant que l'arme est s,curis,e.

-R I told him that the weapon there in that box was safe.

R. Mon mandat se comporte l...-dessus.

-R He knows what to do after that, I didn't have to say anymore, and my task was to inform him that the weapon was safe. Whether he had to take photographs or whatever afterwards, that was his job.

Q. So why would he go entering that office if he was not even in charge of the scene?

-Q Alors pourquoi est-ce qu'il serait rentr, dans le bureau alors qu'il n',tait m^me pas responsable de cette scēne?

R. Qu'il soit responsable de la scēne ou non, řa c'est pas, c'est pas ... moi de justifier řa.

-R Whether he'd be in charge of the scene or not, that is not up to me to justify.

Q. Yes. Is there any way, maybe it is not the right question to you, but still...

-Q Peut-^tre que ce n'est pas une question appropri,e...

Q. ... since you are so sure that revolver was given to Mr. Desjardins...

-Q ... puisque vous ^tes si certain que le revolver a ,t, remis ... monsieur Desjardins...

Q. ... why its picture did not appear, and to the best of my knowledge, in none of the booklets?

-Q ... pourquoi est-ce qu'on n'en a aucune photo, et au meilleur de mon souvenir, au meilleur de ma connaissance, dans aucun des albums?

R. řa ne me concerne absolument en rien.

-R That does not touch me in any way.

Q. Yes, it doesn't touch, I agree with you.

-Q Je suis d'accord avec vous.

Q. Could that be again some kind of indication of tampering with the revolver?

-Q L... encore, est-ce que ça pourrait être une indication qu'on avait touché, ou manipulé, l'arme?

R. coutez, on est plus... on est plus professionnel que ça tout de même, l...

-R Listen, we are still somewhat more professional than that.

Q. Well, how more professional, I just read it, and if you wish, I can read it once again...

-Q A un point tel je viens de le lire et je peux le lire encore une autre fois...

Q. ... that you said here that...

-Q ... vous avez dit ici que...

Q. ... the revolver was remitted to Desjardins and...

THE COURT :  
Well I think, I think you've made your point there, there is no need to come back to it.

VALERY FABRIKANT :

Q. That you didn't remit it, you didn't see it, and after that you proudly say we are professionals.

-Q Vous n'avez pas remis, vous n'avez pas vu, et ensuite avec fierté, vous affirmez que vous êtes professionnels.

Q. So with all the due respect, I wish to express my sincerest doubts about professionalism.

-Q Alors, avec tout le respect que je vous dois, je dois vous exprimer que j'ai beaucoup de doutes dans ce que vous dites.

Q. Thank you.

THE COURT :  
Well, that is something you should better refer...

VALERY FABRIKANT :  
Yes, that's not a question really, yes.

THE COURT :  
No.

VALERY FABRIKANT :

Q. It's just remarks which, I think, is in order. Thank you.

-Q Ce n'est pas vraiment une question (inaudible).

Me JEAN LECOURES :  
Can we take a break now or after the next witness?

THE COURT :  
Yes, I think we'll take a break now because I have one or two things to straighten out.

SUSPENSION

REPRISE

WITHOUT JURY

THE COURT :  
You raised some questions, Mr. Fabrikant, about a machine this morning when I came in with the jury, what are you leading to?

VALERY FABRIKANT :  
Well, I didn't receive the machine, that's simple.

THE COURT :  
Pardon?

VALERY FABRIKANT :  
I still haven't received the machine, it's that simple.

THE COURT :  
This is the machine that the Crown provided at one point which was delivered to Parthenais by Mr. Belleau, if I

properly understand?

VALERY FABRIKANT :

Yes, yes.

THE COURT :

Is anybody in a position to tell me about this machine? Because I thought yesterday the question of the removal of the cord was all that was stopping the machine from being given to Mr. Fabrikant.

Mr. BELLEAU :

I phoned yesterday to speak to Mr. Laplante who is in charge of this, what has become a problem, and I couldn't speak to him directly, it was during an adjournment. I left a message with his secretary to cut the cord and give it to Mr. Fabrikant, and with the instructions to call me if that would cause any difficulty. I haven't received a phone call, I presumed that it had been delivered to the accused. If you give me a chance to call Mr. Laplante right now...

THE COURT :

During the adjournment I would appreciate if this could be, if this could be dealt with. And furthermore, I would like to know whether there is any substance to what I have heard that he is not... that Mr. Fabrikant is not allowed to have varied tools such as the exhibits for the preparation of this case. I'd like to know that because somewhere along the way, public security and the office of the Attorney General are going to have to get their acts synchronized and in gear.

VALERY FABRIKANT :

Well, there is one more little question. Some documents were brought to me to Parthenais, they were lost, and they claim that they have given it to me. And this smells bad, because when someone just lies right into your eye that you were given the document, I say I wasn't given the document, can we make some kind of Court order that if some documents are to be remitted to me, they should be remitted to me in my hands. Someone may be present there if they want to be, but the documents...

THE COURT :

I'm not going to mix in to how documents are going to be handed to you.

VALERY FABRIKANT :

Okay, the documents were lost, documents...

THE COURT :

What I am attempting to do is make sure that you have at your disposal the exhibits that are produced in this case and the tapes of the recordings that are made during the hearings. I'm not going on a witch hunt over who gave documents to who or whatever on what day.

VALERY FABRIKANT :

Well this is not a witch hunt...

THE COURT :

I'm dealing with the question you raised this morning and I'm not dealing with any question of documents at the moment.

VALERY FABRIKANT :

Well, why don't you deal with this? This is important documents for my defense.

THE COURT :

What documents are you talking about?

VALERY FABRIKANT :

Well, I don't want to tell you what those documents were, but they were important documents for the Court, and they are lost and they are lying that they gave it to me. And this is outrage because it looks like I cannot receive any documents there, because if important documents are brought, they next time again, they'll say they gave it to you, I say that they didn't...

THE COURT :

Mr. Belleau, would you make your phone call and if we have to get the director of Parthenais down here, we'll get the director of Parthenais down here.

SUSPENSION

REPRISE

LE JURY EST PRSENT DANS LA SALLE. L'AN MIL NEUF CENT QUATRE-VINGT-TREIZE (1993), le vingt-

quatriŕme (24e) jour du mois de mars, a comparu :

YVES HENRY, sergent d,tective ... la CUM, n, en date du dixiŕme (10e) jour du mois d'ao-t mil neuf cent soixante (1960);

LEQUEL, aprŕs avoir pr^t, serment sur les Saints vangiles, d,pose et dit ce qui suit :

INTERROG PAR Me JEAN LECOURS :

Q. Sergeant Detective Henry, on August the twenty-fourth (24th), nineteen ninety-two (1992), were you carrying out your duties?

-Q Sergeant d,tective Henry, le vingt-quatre (24) ao-t mil neuf cent quatre-vingt-douze (1992), est-ce que vous ,tiez dans l'exercice de vos fonctions?

R. C'est exact, votre Honneur.

-R Correct, Your Honour.

Q. Did you have to work on a specific incident on that day?

-Q Est-ce que vous avez eu ... travailler pour un incident en particulier cette journ,-l...?

R. Oui, votre Honneur, je me suis rendu ... l'Universit, Concordia...

-R Yes, Your Honour, I went to Concordia University...

R. ... au 1455 de Maisonneuve Ouest.

-R ... 1455 De Maisonneuve West.

Q. At what time?

-Q A quelle heure?

R. Vers quinze heures trente (15 h 30), votre Honneur.

-R Around fifteen thirty (15:30), Your Honour.

Q. For what purpose?

-Q Pour quelle raison?

R. Concernant un individu qui a tir, des coups de feu et bless, des personnes et...

-R Concerning an individu who would have fired gunshots and injured some people.

Q. Did you reach a specific floor in this building?

-Q Vous ^tes-vous rendu ... un plancher, ... un niveau particulier dans cet immeuble?

R. Oui, au neuviŕme ,tage, votre Honneur.

-R Yes, on the ninth (9th) floor, Your Honour.

Q. And from your personal knowledge, what happened there?

-Q Et selon vos connaissances personnelles, que s'est-il produit ... cet endroit?

R. Au neuvième étage j'ai fait des vérifications pour tenter de localiser un individu armé.

-R On the ninth (9th) floor I made some verifications in an attempt to locate an armed individual.

Q. Please go on.

-Q Veuillez poursuivre, je vous prie.

R. O.K. Vers... vers quinze heures cinquante-cinq (15 h 55) j'ai eu une information ... l'effet que l'individu est localisé, dans un local en particulier, soit le local 929-9.

-R Around fifteen fifty-five (15:55) I received the information to the effect that a suspect had been located inside a specific office, that is 929-9.

Q. And then?

-Q Ensuite?

R. Vers seize heures (16 h), votre Honneur, j'ai trouvé, trois douilles par terre.

-R Around sixteen hundred hours (16:00), Your Honour, I found three casings on the floor.

R. J'ai saisi ces douilles.

-R I seized these casings.

Q. Where were they?

-Q A quel endroit, étaient-elles précisément?

R. Est-ce que je peux me référer au tableau, votre Honneur?

Q. Oui. Please.

-R May I refer to the board, Your Honour?

THE COURT :  
Certainly.

- S'il vous plaît.

Me JEAN LECOURES :

Q. First you can look at P-1.

-Q Vous pouvez d'abord regarder P-1.

R. O.K. Sur P-1 les douilles, étaient par terre ici, face, près du local 929-4.

-R On the plan the casings were found on the floor here in front of office 929-4.

Q. In the corridor 929-90?

-Q Dans le couloir 929-90?

R. C'est exact, votre Honneur.

-R That's correct, Your Honour.

Q. What did you do then when you saw these shells?

-Q Qu'avez-vous fait par la suite lorsque vous avez vu ces douilles?

R. Je les ai ramassées pour vérifier qu'elles soient malencontreusement déplacées ou crasées sur place.

-R I picked them up to make sure that no one would crush them by accident or mishandle them.

Q. Did you put any mark to indicate the locations of these shells?

-Q Est-ce que vous avez indiqué, les endroits où ces douilles se trouvaient?

R. C'est exact, votre Honneur.

-R That's correct, Your Honour.

Q. And what did you do with the shells?

-Q Qu'avez-vous fait avec les douilles?

R. Je les ai gardées en ma possession, je les ai mises dans une de mes poches de veston.

-R I kept them in my possession and placed them in one of my jacket pockets.

Q. And later?

-Q Et par la suite?

R. Par la suite, je les ai remises personnellement au constable Desjardins de l'Identit, judiciaire.

-R Afterwards I handed them over personally to Constable Desjardins of Forensic Identification.

R. A dix-huit heures (18 h).

-R At eighteen hundred hours (18:00).

R. Et je lui ai indiqu, l'endroit o- je les ai saisies.

-R And I indicated the area where I seized them.

Q. And what else did you do on the scene?

-Q Qu'avez-vous fait d'autre sur cette scēne?

R. Vers seize heures vingt (16 h 20) un suspect a ,t, contr"l,, le suspect a ,t, contr"l, par le constable Nantel du groupe tactique.

-R Around sixteen twenty (16:20) the suspect was controlled and taken... was controlled by officer Nantel of the technical squad.

R. C'est le suspect qui est assis dans la boēte des accus,s ici.

-R The suspect seated in the box of the accused.

Q. Indicating the accused.

-Q Indiquant l'accus,.

Q. Okay.

-Q D'accord.

Q. And what happened then?

-Q Que s'est-t-il pass, par la suite?

R. Le constable Nantel l'a fait coucher par terre.

-R Constable Nantel made him lie down on the floor.

R. Et pendant que le constable Nantel procēde ... une fouille de l'accus,...

-R While Constable Nantel searched the accused...

R. ... je dis ... l'accus, qu'il est en ,tat d'arrestation pour meurtre.

-R ... I told the accused he was being placed under arrest for murder.

R. Il a le droit d'appeler un avocat.

-R And his right to counsel.

R. Et qu'il a le droit de garder le silence.

-R And that he has a right to silence.

R. Je lui dis la m^me chose en anglais.

-R I reiterated the same thing in English.

R. Le constable Nantel, lors de la fouille, en ma pr,sence, saisit un revolver...

-R During my presence, Constable Nantel seized and found a revolver...

R. ... dans la poche, dans une poche de pantalon de l'accus,, la poche avant gauche de pantalon.

-R ... in the front pocket of the accused, that is the front left-hand pocket.

Q. Was there anything else?

-Q Y avait-il autre chose?

R. Oui, votre Honneur, il y avait aussi un chargeur, un chargeur noir contenant des balles.

-R Yes, Your Honour, there was also a black magazine containing bullets.

Q. Okay. What did you do with these two items?

-Q Qu'avez-vous fait avec ces deux piēces?

Q. Or what happened to these two items?

-Q Ou que s'est-il pass, avec ces deux piēces?

R. A ce moment-l... c'est le constable Nantel qui les a gard,es en sa possession.

-R Constable Nantel kept them in his possession.

R. Le suspect ensuite a ,t,... lorsque ma@tris, et menott,...

-R When the suspect was handcuffed and under control...

R. ... a ,t, remis ... deux autres enqu^teurs sur les lieux.

-R ... was handed over to two other investigators who were on the scene.

R. Suite ... #a, j'ai demand, au constable Nantel de me remettre le revolver ainsi que le chargeur.

-R Following that, I asked Constable Nantel to hand me over the revolver as well as the magazine.

Q. I'm showing you P-12.

-Q Je vous montre P-12.

Q. And as well as P-11, could you examine these exhibits and tell them whether they are the revolver and the cartridge you received from Mr. Nantel?

-Q Pouvez-vous examiner ces pišces et dire aux membres du jury si c'est bien les pišces que vous avez re#ues du constable Nantel, c'est-...-dire l'arme et le chargeur?

R. Est-ce que je peux les sortir des enveloppes?

-R Can I take them out of the bags?

THE COURT :

Q. Yes, certainly.

-Q Oui, certainement.

R. C'est bien le revolver qui a ,t,... que le constable Nantel m'a remis en main propre portant le num,ro de s,rie 327361.

-R That is the revolver that Constable Nantel handed me over personally, bearing serial number 327361.

R. C'est un modšle de marque Smith & Wesson.

-R It's a Smith & Wesson.

R. Le modšle 38.

-R 38 caliber.

R. De calibre 38, c'est-...-dire.

Me JEAN LECOURES :

Q. Okay, and this?

-Q Et qu'en est-il pour cette pišce?

Q. Is it the cartridge that you received?

R. Oui, c'est exact, votre Honneur.

-Q Est-ce que c'est le chargeur que vous avez re#u?

R. Oui, c'est exact, votre Honneur.

-R That's correct, Your Honour.

Q. Thank you.

-Q. Merci.

Q. Referring to P-11.

R. J'ai pos, mes initiales sur cette enveloppe lorsque je l'ai remise au constable Desjardins, sur les deux enveloppes.

-Q Nous r,f,rant ... P-11.

-R So I placed my initials on the labels, on the tags when I handed them over to Constable Desjardins.

Q. Okay. You handed over both of them to Constable Desjardins at approximately what time?

-Q Vous les avez remis tous deux au constable Desjardins, environ vers quelle heure?

R. Vers dix-huit heures (18 h).

-R Around eighteen hundred hours (18:00).

Q. Thank you. No further questions.

-Q Merci. Pas d'autre question.

CROSS-EXAMINED BY VALERY FABRIKANT :

Q. You were not planned to testify, were you, initially?

-Q Vous n',tiez pas c,dul, pour t,moigner ... l'origine,

n'est-ce pas?

R. Je n'ai pas t,moign, ... l'enqu<sup>^</sup>te pr,liminaire, c'est exact, votre Honneur.

-R That's correct, Your Honour, I did not testify at the preliminary inquiry, that's correct.

Q. No, I said you were not planned by the Crown to testify at the trial.

-Q La couronne n'avait pas pr,vu de vous faire t,moigner au proc<sup>^</sup>s, c'est ce que je veux dire.

Q. Correct?

-Q Exact?

R. Je l'ignore.

-R I do not know.

Q. Well, Crown doesn't inform which people are going to testify and which people are not going to testify in advance?

-Q La couronne n'informe pas ... l'avance qui va t,moigner et qui ne va pas t,moigner?

R. J'ignore cette r,ponse-ci, votre Honneur.

-R I do not know that answer, Your Honour.

Q. Well, is this the first trial you are testifying at?

-Q Est-ce que c'est le premier proc<sup>^</sup>s dans lequel vous t,moignez?

R. Non, votre Honneur.

-R No, Your Honour.

Q. Okay. So, when you are usually informed that you are to testify?

-Q Alors, quand est-ce qu'on vous informe habituellement que vous allez t,moigner?

R. Normalement on re<sup>^</sup>oit un avis de cour au poste pour, comme de quoi qu'on re<sup>^</sup>oit une convocation ... la cour.

-R Usually we receive a Court's summons that we're going to be convened to appear in Court.

Q. Well, how much advance before the real appearance do you get this summons?

-Q Mais combien de temps ... l'avance avant votre parution en cour est-ce que vous allez recevoir cet avis-l...?

R. C'est toujours relatif, votre Honneur, <sup>^</sup>ta peut <sup>^</sup>tre un mois avant un proc<sup>^</sup>s, <sup>^</sup>ta peut <sup>^</sup>tre trois jours, une journ,e avant.

-R It's always very relative, it could be a month before, three days before or one day before, Your Honour.

Q. Okay, and you received your summons when?

-Q Alors, vous avez re<sup>^</sup>u votre convocation ... quel moment?

R. Est-ce que je peux avoir la date que le proc<sup>^</sup>s a commenc,?

-R May I have the date that the trial started?

THE COURT :

No, unless...

VALERY FABRIKANT :

Q. You means that you received it at the start of the trial, you received it March eighth (8th)?

-Q Alors vous l'avez re<sup>^</sup>ue au d,but du proc<sup>^</sup>s, c'est-...-dire le huit (8) mars?

R. J'ai re<sup>^</sup>u une convocation avant le... au d,but de mars ou ... la fin d'avril, votre Honneur.

-R I received a summons at the beginning of March or at the end of April, Your Honour.

THE COURT :

Q. When you say the end of April, what do you mean by... you mean the end of February?

-Q Lorsque vous dites la fin avril, vous voulez dire la fin  
f,vrier?

R. Fin f,vrier, c'est ça, c'est exact?

-R Yes, that's correct.

VALERY FABRIKANT :

Q. So you received summons to appear at what, at certain  
date?

-Q Alors, vous avez reçu une convocation pour comparaître  
... une certaine date?

Q. At the end of February, they already knew the date of  
your appearance?

-Q Alors donc, ... la fin de f,vrier ils savaient d,j... la  
date ... laquelle vous devez vous pr,senter ... la cour?

Q. It's absurd.

-Q C'est absurde.

Q. They couldn't possibly know at the end of February how  
trial will proceed and when you are to appear. Could  
you show the summons to us please?

-Q A la fin f,vrier ils ne pouvaient possiblement pas </pre></body></html>

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">savoir ... quelle date vous devriez vous pr,senter. Est-ce que vous pourriez nous montrer cet avis de convocation je vous prie?

Q. Do you have it here?

-Q Est-ce que vous l'avez avec vous?

R. Non, votre Honneur.

-R No, Your Honour.

Q. Can we ask to produce it?

-Q Est-ce qu'on peut demander de le produire?

VALERY FABRIKANT :

It's obvious witness is not telling the truth.

THE COURT :

Q. Do you have the summons?

-Q Est-ce que vous avez la convocation?

R. Non, votre Honneur.

-R No, Your Honour.

VALERY FABRIKANT :

Q. Well, you still insist that you received your summons at the end of February to appear...

-Q Vous maintenez toujours que vous avez re u votre avis de convocation ... la fin de f,vrier...

Q. ... March twenty-four (24) for testimony, correct?

-Q ... de vous pr,senter ici le vingt-quatre (24) mars pour t,moigner, c'est exact?

R. Votre Honneur, je me suis pr,sent, ici aux ,tapes du proc s, lorsque le proc s a commenc,, la premi re journ,e, j',tais pr,sent ici.

-R Your Honour, I was here since the very beginning, the first few days when the trial started, and I was here at every phase of the proceedings.

Q. You're answering like a bad student who didn't done the lesson. I'll repeat my question.

-Q Vous r,pondez comme un ,l ve...

THE COURT :

Would you just ask your questions and please, please, spare us your comments.

VALERY FABRIKANT :

Well, it did look like this, you cannot disagree, can you?

THE COURT :

Just put your questions to the witness.

VALERY FABRIKANT :

All right.

THE COURT :

That's what you're supposed to be doing.

VALERY FABRIKANT :

Yes, yes, yes. But I didn't see any law or by-law which says that one cannot make any comments whatsoever. If there is...

THE COURT :

You cannot make any comments whatsoever at this point, you'll get your chance to argue in due course. For the minute...

VALERY FABRIKANT :

I'm not arguing.

THE COURT :

... for the minute, you put your questions to the witness.

VALERY FABRIKANT :

All right.

Q. So would you please answer once again?

-Q Pouvez-vous r,pondre encore une fois?

Q. At the end of February you received summons in which it was

written to appear March twenty-fourth (24th) for testimony, correct?

-Q Vous avez re u vers la fin de f,vrier un avis de convocation vous demandant de vous pr,senter ... la cour pour fins de t,moignage le vingt-quatre (24) mars, c'est exact?

R. Je me souviens pas de... j'ai re u un avis de cour, effectivement, votre Honneur, j'ai sign, un avis de cour concernant que j'ai re u un avis de cour...

-R I received a Court's summons and I signed it to indicate that I had received it, Your Honour, yes.

R. Et je me suis pr,sent, lorsqu'a ,t, requis ... la demande du procureur de la couronne.

-R And I showed up as requested by the Crown attorney as necessary.

Q. You are not answering my question. What was the date of your appearance on summons? We all know how summons look, summons...

-Q Nous savons tous (inaudible) les avis de convocation, vous ne r,pondez pas ... ma question. Quelle ,tait la date sur l'avis de convocation pour vous pr,senter ... la cour?

Q. Summons look that you, such and such, are requested to appear... just translate.

-Q Un avis de convocation appara t comme suit : Votre pr,sence sera requise ... la cour ... telle et telle date pour tel et tel motif.

Q. Exactly. So...

R. Si ma m,moire est exacte, votre Honneur, je crois que c',tait pour le huit (8) mars.

-R If my memory serves me right, Your Honour, I believe that my presence was required for March eighth (8th).

Q. So you have never received then summons for today?

-Q Alors donc, vous n'avez re u aucun avis de cour ou aucun avis de convocation pour la date d'aujourd'hui?

R. C'est le seul avis de cour que j'ai re u, mais la pr,sence ,tait requise par le procureur de la couronne ... tous les jours qu'il me l'a ,t, demand,.

-R That's the only Court notice that I received, and my presence was required here by the Crown attorney for every day that was requested of me to be here.

Q. I would like this kind of summons to be shown to the Court. Okay, why I ask this question, because in the list presented by the Crown, you are not listed as a witness.

-Q Je pose cette question parce que dans la liste fournie par le procureur de la couronne, votre nom ne figure pas sur cette liste.

Q. So you were not supposed to testify at all.

-Q Alors, vous n',tiez pas du tout cens, de t,moigner.

Q. Are you aware of that?

-Q Est-ce que vous ^tes au courant de cela?

R. Votre Honneur, j'ai ,t, demand, par le procureur de la couronne ... t,moigner. Si j'ai ,t, demand, par le procureur de la couronne ... t,moigner, c'est que mon t,moignage doit ^tre entendu parce que je suis intervenu dans la cause.

-R Your Honour, the Crown prosecutor requested for my presence and asked me to be here, and if he did so that's because my testimony must be required, I did intervene in the case.

Q. You are again not answering the question. All right.

-Q. Encore une fois vous ne r,pondez pas ... la question.

Q. So I understand that you are here to control the damage because you are probably aware that previous policeman did...

-Q Alors je comprends que vous ^tes ici pour contr"ler les dommages parce que vous ^tes probablement au courant qu'un

autre policier avant vous...

Q. ... testimony so controversial and so inconsistent with common sense...

-Q ... dans son t,moignage ,tait si controverse et...

THE COURT :

Are you asking a question or are you making a comment?

VALERY FABRIKANT :

Yes, yes, I'm asking the question.

Q. So the question is, are you here...

-Q La question est la suivante...

Q. ... to control the damage?

-Q ... ^tes-vous ici pour contr"ler les dommages?

Q. It's a perfect question, isn't it?

R. Non.

-R No.

R. Non, votre Honneur.

-R No, Your Honour.

Q. No, of course not. Now, do I understand correct that you read me my rights when I was lying on the floor?

-Q Est-ce que vous m'avez lu mes droits lorsque j',tais ,tendu par terre?

R. C'est exact, votre Honneur.

-R That's correct, Your Honour.

Q. Why didn't you wait when I was in standing position?

-Q Pourquoi n'avez-vous pas attendu que je sois debout?

R. Parce que j'ai jug, opportun de le faire au moment o- ce que vous ,tiez couch, par terre lors de la fouille, selon la Charte canadienne des droits et libert,s.

-R I judged opportune to do it while you were down on the floor, during the search, according to the Charter of Rights and Freedoms.

Q. Well, could it be that you just never read them to me...

-Q Est-ce qu'il serait possible que vous ne me les auriez jamais lus...

Q. ... and this is why you put in your report...

-Q ... c'est la raison pour laquelle vous mettez dans votre rapport...

Q. ... the moment of time...

-Q ... l'heure...

Q. ... the most inappropriate...

-Q ... qui est tout ... fait inappropri,e...

Q. ... that in fact you never read me my rights?

-Q ... o- le moment ,tait tout ... fait inappropri, et qu'en fait vous ne m'avez jamais lu mes droits?

R. Votre Honneur, je suis positif ... dire que j'ai donn, le motif d'arrestation et les droits, ainsi que les mises en garde ... l'accus,.

-R Your Honour, I am positive and I am confirming that I have read the accused his rights and the police caution and...

L'INTERPRETE :

Lu les droits, la mise en garde et...?

VALERY FABRIKANT :

Q. Are you aware that you should...

R. ... le droit au silence.

-R Right to silence.

Q. Are you aware that you should be sure that I have heard you and understood you, and in the position of lying on the floor face down and being searched...

-Q Etes-vous certain que je vous ai entendu, que je vous ai compris, et dans la position par terre, ,tendu et...

Q. ... it's very difficult for you to realize whether I have

heard...

-Q ... ,tant fouill,...

Q. ... you and whether I understood you.

-Q ... c'est trřs difficile pour vous de constater que oui, je vous ai entendu et je vous ai compris.

Q. And you have to be sure that I did, correct?

-Q Et vous devez vous assurer que j'ai bien compris et entendu, c'est exact?

R. C'est exact.

-R That is correct.

Q. So how could you be sure that I heard you?

-Q Alors, comment pouvez-vous vous assurer que je vous ai bien entendu?

R. Parce que lorsque vous avez ,t, debout et que je vous ai remis entre les mains de deux autres enqu^teurs...

-R Because when you stood up and I handed you over to two investigators...

R. ... je vous ai personnellement demand, si vous comprenez franais ou anglais...

-R ... I personally asked you if you understood English or French...

R. ... vous m'avez r,pondu ... cette question.

-R ... you answered that question.

Q. I did?

-Q J'ai r,pondu?

R. Oui, vous avez r,pondu : "En anglais, s'il vous plaEt".

-R Yes, you answered: "In English please".

R. Ensuite, lorsque les deux autres enqu^teurs ont pris charge de vous, j'ai personnellement demand, ... ces enqu^teurs de vous redonner les motifs d'arrestation, le droit ... l'avocat et la mise en garde.

-R Then, when I handed you over to those two investigators, there again I asked the two investigators to read you your rights, the police caution and the motives for the arrest.

Q. Well, and you are sure they did do it?

-Q Et vous ^tes certain qu'ils l'ont fait?

R. Oui, votre Honneur.

-R Yes, Your Honour.

Q. Okay, so my memory serves me too bad if I say that I never saw your face...

-Q Alors donc, ma m,moire n'est pas fidŠle si je vous dis que je n'ai jamais vu votre visage...

Q. ... that I never heard what you alledgly read me...

-Q ... que je n'ai jamais entendu ce que suppos,ment vous m'avez lu...

Q. ... while I was lying on the floor...

-Q ... alors que j',tais ,tendu par terre...

Q. ... and that the other detectives read me my rights either.

-Q ... et que les autres d,tectives ne m'auraient pas lu mes droits non plus.

Q. It is just my bad memory?

-Q C'est simplement que ma m,moire ne m'est pas fidŠle?

R. Ce que j'ai dit, votre Honneur, a ,t, fait en rŠgle, selon ce que je viens de dire.

-R What I stated, Your Honour, was done according to the rules, as I just said or stated.

Q. Well, it is written in your report that it is done according to the rules.

-Q Ça apparaEt ... votre rapport que #a a ,t, fait selon les rŠgles.

Q. Let us see just one part of there to see that indeed what

you've written is just to claim that everything was done according to the rule.

-Q Alors donc, voyons une partie de ce rapport...

Q. I refer to your report that immediately you say...

-Q ... l'effet que le tout a été fait selon les règles. Je vous rappelle ... votre rapport et vous dites :

Q. "Immediately after Nantel took the revolver...

-Q "Immédiatement après que Nantel ait pris le revolver...

Q. ... and the clip...

-Q ... et le magazine, le chargeur...

Q. ... you immediately took it from him".

-Q ... vous l'avez pris immédiatement de lui".

Q. This is what is in your report.

-Q C'est ce qui apparaît ... votre rapport.

Q. Correct?

-Q C'est exact?

R. C'est exact.

-R That's correct.

Q. And this is what it should have been.

-Q Et c'est ce qui aurait dû être le cas.

Q. But we have heard yesterday...

-Q Mais hier nous avons entendu...

Q. ... the testimony of Nantel...

-Q ... le témoignage de monsieur Nantel...

Q. ... that he took the revolver, he put it on the floor first...

-Q ... a pris le revolver et l'a placé, d'abord sur le sol...

Q. ... then he put it in his left pocket...

-Q ... ensuite il l'a placé, dans sa poche gauche...

Q. ... and later on, if my recollection is correct, about five, ten minutes later...

-Q ... et uniquement plus tard, si je me souviens bien, cinq ou dix minutes plus tard...

Q. ... he gave it to you.

-Q ... il vous l'aurait remis.

Q. So where is the truth?

-Q Alors donc, où est la vérité?

R. C'est ce que le constable Nantel a fait, c'est exact, votre Honneur.

-R That's correct, Your Honour, that's exactly what Constable Nantel did do.

Q. So he gave it ten minutes later, not immediately?

-Q Alors il vous l'a remis dix minutes plus tard et non pas immédiatement?

R. Non, votre Honneur.

-R No, Your Honour.

Q. So how do I reconcile it? On the one hand you confirm that...

-Q Alors comment réconcilier...

Q. ... yes, what Nantel says is true, that he put...

-Q ... d'une part vous confirmez que oui, ce que monsieur Nantel a dit est exact...

Q. ... on the floor, then he decided that on the floor it is too dangerous and he put it in his left pocket.

-Q ... il l'a placé, par terre, ensuite il a décidé que c'était trop dangereux, il l'a placé, dans sa poche gauche.

Q. Then, quite some time after that, he gave it to you?

-Q Et par la suite, ... un certain moment donné, il vous l'a remis.

Q. Now, if this is true, then what you have written in your report is not true.

-Q Si cela est vrai, alors ce que vous avez rédigé, dans votre rapport est inexact.

Q. They cannot both be true, correct?

-Q Tous les deux ne peuvent pas être exacts ou vrais, c'est exact?

R. La situation a été, contrôlée, votre Honneur, l'accusé, a été, remis sous garde...

-R The situation was controlled, Your Honour, and the accused was handed over under guard...

R. ... et les exhibits m'ont été, remis immédiatement.

-R ... and the weapon and the exhibits were handed over to me immediately.

Q. So it means that Nantel was lying.

-Q Alors ça veut dire donc que monsieur Nantel ment?

Q. Correct?

-Q Exact?

R. Non, Votre Honneur.

-R No, Your Honour.

THE COURT :

The witness isn't here to come to any conclusion as far as Constable Nantel's testimony is concerned, that's a matter for the jury.

VALERY FABRIKANT :

Well, I understand that but what he says on the one hand that what Nantel said was true. On the other hand, the firearm was remitted to him immediately, immediately means immediately. And he even writes here sixteen twenty (16:20) is the search, sixteen twenty-one (16:21) he got the weapon. Just to do the search takes one minute and place after that (inaudible) on the floor, think about it, then decides no, on the floor it is dangerous, take, put it in your pocket...

THE COURT :

Why do you insist in getting the kart before the horse? You have a witness here and you're asking questions to this witness. You ask questions of Nantel yesterday.

VALERY FABRIKANT :

Yes.

THE COURT :

Eventually will come the time for you to make your arguments before the members of the jury, and presumably at that point you will refer to these things if you see there are contradictions. But this isn't the time to make that argument, now is the time to put questions to the witness as to what the witness knows.

VALERY FABRIKANT :

Yes, well this is what I...

THE COURT :

If you feel that you are demonstrating that there are contradictions, then you will note the contradictions, and you'll argue that for whatever significance you wish to claim should be attached to it later. But there is no need to argue that now, and now is not the time to argue that.

VALERY FABRIKANT :

I'm not arguing, I'm just showing that at least one witness was lying.

Q. Now, you also say here that you gave revolver to Constable Desjardins.

-Q Vous mentionnez, galement ici que vous avez remis le revolver au constable Desjardins.

R. C'est exact, votre Honneur.

-R Correct, Your Honour.

Q. Now, do... are you supervising his work in any way?

-Q Est-ce que vous surveillez son travail d'aucune façon?

R. Ma fonction n'est pas de superviser le travail de monsieur

Desjardins, votre Honneur.

-R My duty is not to supervise Mr. Desjardins' work.

Q. But you gave it to him for making picture of the revolver, correct?

-Q Mais vous lui avez remis pour qu'il puisse prendre des photos du revolver, c'est exact?

R. J'ai remis le 38 qui est ici, votre Honneur, au constable Desjardins pour la pr,servation des exhibits et faire les v,rifications n,cessaires qui sont faites normalement par la section Identit, judiciaire.

-R I handed over the 38, the exhibit that is here, Your Honour, to Mr. Desjardins, so that he could keep the exhibit, and then handed it over to the Forensic Identification Section for the proper tests and analyses (inaudible).

Q. Anyway, but you cannot explain why he didn't do the picture, can you?

-Q Mais vous ne pouvez pas expliquer la raison pour laquelle il n'a pas pris les photos, c'est exact?

Q. Can you explain it now?

-Q Est-ce que vous pouvez l'expliquer?

R. Non, votre Honneur.

-R No, Your Honour.

Q. All right. Okay. When you did identification of the revolver...

-Q Lorsque vous avez proc,d, ... l'identification du revolver...

Q. ... you identified it by the serial number.

-Q ... vous l'avez identifi, au moyen de son num,ro de s,rie.

Q. Do you really have such a remarkable memory...

-Q Est-ce que votre m,moire est...

Q. ... that you can identify the serial number? If yes, could you repeat it again without looking at the revolver?

-Q ... si votre m,moire peut vous ^tre si fidŠle, ... un point tel o- vous pouvez vous rappeler le num,ro de s,rie de cette arme, si oui, est-ce que vous pouvez r,p,ter le num,ro de s,rie de ce revolver?

R. Le num,ro de s,rie du Smith & Wesson, calibre 38, cinq coups, votre Honneur, est 327361.

Q. Remarkable.

-R The Smith & Wesson 38 caliber revolver with... containing or capacity of five projectiles, bears serial number 327361, Your Honour.

Q. Remarkable, so...

-Q Remarquable.

Q. ... having such a remarkable memory...

-Q ... ayant une m,moire aussi remarquable...

Q. ... for numbers...

-Q ... pour les chiffres, c'est-...-dire...

Q. ... you cannot recall when you have received the summons, how to explain it?

-Q ... vous ne pouvez pas vous rappeler la date...

Q. And what was the date of your appearance?

-Q ... que vous avez re#u l'avis de convocation et la date, c'est-...-dire...

Q. You have a phenomenal memory, it couldn't possibly be that you cannot recall when you received your summons then.

-Q Vous avez une m,moire si remarquable que vous ne pouvez vous rappeler la date de l'avis de convocation que vous avez re#u?

R. L'avis de convocation, votre Honneur, j'en re#ois r,guliŠrement au poste et je prends pas la peine de prendre les jours et les heures ... toutes les fois que je signe un avis de cour au poste, votre Honneur.

-R I regularly receive Court summons at the station, Your Honour, and I don't jot down the time and date that I sign these Court's summons.

Q. Well, I don't think that you receive summons that many in terms of number of summons and number of revolvers, I think that you receive quite a number of revolvers too, do you?

-Q Je pense, je ne crois pas que vous recevez autant d'avis de convocation que ceux pour... impliquant un revolver, vous ne recevez pas tant de revolvers au poste, n'est-ce pas?

Q. Do you receive revolvers, too?

-Q Est-ce que vous recevez des revolvers ,galement?

R. Ça m'arrive mais pas autant que des avis de cour, votre Honneur.

-R Sometimes but not as many as Court summons.

Q. Okay. Do you remember all their serial numbers or just mine?

-Q Est-ce que vous vous rappelez de tous leurs num,ros de s,rie ou uniquement le mien?

R. Non.

-R No.

Q. What no, you remember only mine?

-Q Non ça veut dire quoi? Vous vous rappelez uniquement du mien?

R. Je me souviens du num,ro de s,rie du revolver concernant cette journ,e-l... parce que c'est important.

-R I recall the serial number of the revolver involved that day because it is important.

Q. Okay. How about serial number of MEB pistol, could you say it too?

-Q Qu'en est-il du num,ro de s,rie du pistolet MEB, est-ce que vous vous en rappelez ,galement?

R. Oui, votre Honneur.

-R Yes, Your Honour.

Q. Okay, what is it?

-Q Quel est-il?

R. 162823.

-R 162823.

Q. Remarkable.

-Q Remarquable.

Q. So you remember so many numbers but you still cannot remember date of when you received the summons for also important trial, the trial is as important as the pistols, aren't they?

-Q Donc vous vous rappelez (inaudible) des num,ros de s,rie alors que vous ne pouvez pas vous rappeler la date de l'avis de convocation pour une cause aussi importante, mais vous vous rappelez les num,ros de pistolets.

Q. All right.

-Q D'accord.

Q. Tell me please how many other policemen were with you on the ninth floor?

-Q Dites-moi, combien de policiers ,taient en votre compagnie au neuvième ,tage?

R. Je pourrais dire... je ne pourrais dire le nombre exact, votre Honneur.

-R I couldn't say the exact number, Your Honour.

Q. Again, remarkable contradiction.

-Q Encore une fois, contradiction.

Q. You remember the number of a pistol seized seven months ago...

-Q Vous vous rappelez du num,ro d'un pistolet d'un incident il y a sept...

Q. ... you remember the number of revolver since seven months ago which is six digit...

-Q ... et vous vous rappelez des num,ros d'il y a sept mois...

Q. ... number...

-Q ... comprenant six chiffres...

Q. ... and you cannot remember just approximately how many policemen were with you there?

-Q ... et vous ne pouvez même pas vous rappeler du nombre exact ou approximatif de policiers qui ,taient l... sur les lieux?

Q. This is double digit number at worse.

-Q Et au pis aller c'est en fait un chiffre... deux chiffres au maximum.

Q. So, can you?

-Q Alors, pouvez-vous vous rappeler?

Q. How many people were with you on the ninth floor?

-Q Combien de personnes ,taient pr,sentes avec vous au neuvième ,tage?

R. J'ignore le nombre de policiers sur les lieux, votre Honneur.

-R I do not know the number of police officers, Your Honour.

Q. All right.

-Q D'accord.

Q. Could you at least recall whether there were five, ten, fifteen (15), at least with this accuracy?

-Q Pouvez-vous au moins vous rappeler s'ils ,taient au chiffre de cinq, dix ou quinze (15)?

R. Entre dix et quinze (15) policiers, ça pourrait être possible, votre Honneur.

-R Between ten and fifteen (15) policemen would be possible, Your Honour.

Q. So at least ten?

-Q Au moins dix.

Q. Okay. Were they given any assignments...

-Q Est-ce qu'on leur avait affect, des taches particulières...

Q. ... or they just stayed there?

-Q ... ou s'ils sont demeur,s l... tout simplement?

R. Certains policiers ont eu des taches particulières, c'est exact, votre Honneur.

-R Some police officers were assigned to specific duty or task, yes, that's correct, Your Honour.

Q. Okay. For 929, how many people were in 929 total?

-Q Pour le bureau 929, combien de personnes ,taient affect,es ... ce bureau au total?

R. Est-ce qu'on parle du 929, l'endroit où ce que vous avez ,t, arrêté,?

-R Are we talking about the 929 area...

Q. Yes.

-R ... were you were arrested?

Q. Well, you have remarkable memory, so of course you know where 929 is, don't you?

-Q Vous avez une m,moire remarquable, alors bien sûr vous savez où se trouve le local 929.

Q. You remember where I was arrested?

-Q Vous vous rappelez où on m'a plac, en ,tat d'arrestation?

R. Oui, votre Honneur.

-R Yes, Your Honour.

Q. So, what number was it?

-Q Alors, quel ,tait le num,ro?

R. Est-ce que je peux me rapporter au diagramme, votre Honneur?

-R Can I refer to the plan, Your Honour?

Q. So this you don't remember.

-Q Alors ceci vous ne vous en rappelez pas.

Q. You have remarkably strange memory, that's all right.

R. C'est ici, l..., dans le local 929, ici, l...

-R Here in office number 929.

Q. This number you didn't remember, eh?  
-Q Et vous ne vous rappelez pas... vous ne vous ^tes pas rappel, de ce num,ro?  
R. C'est l... (inaudible).  
-R That's where it took place.  
Q. So how many people were assigned there?  
-Q Alors combien de personnes ,taient affect,es ... cet endroit?  
R. Ça d,pend ... quel moment, votre Honneur.  
-R It depends at what point, Your Honour.  
Q. Well, let us put it this way. From the moment you arrived there which is, what, when you arrived there?  
-Q Disons ... partir de votre arriv,e sur les lieux, disons... ... quelle heure vous ^tes arriv, sur les lieux?  
R. Vers quinze heures trente-cinq (15 h 35) approximativement, votre Honneur.  
-R Around fifteen thirty-five (15:35) approximately, Your Honour.  
Q. Okay. So you arrived at fifteen thirty-five (15:35) there.  
-Q Alors, vous ^tes arriv, vers trois heures trente-cinq (15 h 35).  
Q. Then it's clear that since you were... at fifteen thirty-five (15:35) you already were in 929, correct?  
-Q Alors il est clair qu'... quinze heures trente-cinq (15 h 35) vous ,tiez d,j... ... l'int,rieur du 929, c'est exact?  
R. Non, ce n'est pas exact, votre Honneur.  
-R No, that's not correct, Your Honour.  
Q. Okay, when did you arrive at 929?  
-Q Quand et ... quelle heure ^tes-vous arriv, au 929?  
R. Approximativement vers quinze heures cinquante-cinq (15 h 55), votre Honneur, quinze heures cinquante (15 h 50).  
-R Approximately around fifteen fifty-five (15:55), fifteen fifty (15:50), Your Honour.  
Q. Okay. How to explain then the phrase...  
-Q Alors comment pouvez-vous expliquer...  
Q. ... "S.D. Henry prend o-p sur une sortie du local 929-9."  
L'INTERPRETE :  
Sorry, I didn't get the beginning of the sentence, Your Honour.  
THE COURT :  
Would you read that again?  
VALERY FABRIKANT :  
Q. "Sergent detective Henry prend o-p", what is o-p?  
L'INTERPRETE :  
Prend poste d'observation, O.K...  
VALERY FABRIKANT :  
Q. Observation au poste? O-p?  
-Q. Qu'est-ce que le o-p, p-o?  
Q. O-p, qu'est-ce que c'est?  
-Q O-p?  
R. O-p c'est un terme policier qui veut dire observation, votre Honneur.  
Q. Okay.  
-R Police term meaning observation, your Honour.  
Q. So according to your report, you were at 929-9 at fifteen thirty-five (15:35).  
-Q Alors, selon votre rapport, vous ,tiez ... l'int,rieur du 929-9 ... quinze heures trente-cinq (15 h 35).  
Q. Not at fifteen fifty-five (15:55) as you say, or your report is wrong?  
-Q Et non pas ... quinze heures cinquante-cinq (15 h 55) tel que vous avez mentionn,, ... moins que votre rapoprt soit erron,?  
R. Je ne comprends pas la question, votre Honneur.

-R I do not understand the question, Your Honour.  
Q. Look at your report, please.  
-Q Alors donc, regardez votre rapport, je vous prie.  
THE COURT :  
Q. Do you have your report in front of you?  
-Q Est-ce que vous avez votre rapport avec vous?  
R. Oui, votre Honneur.  
-R Yes, Your Honour.  
VALERY FABRIKANT :  
Q. The last phrase at fifteen thirty-five (15:35).  
-Q La dernière ligne ... quinze heures trente-cinq (15 h 35)...  
quinze heures quarante-cinq (15 h 45).  
R. Quinze heures trente-cinq (15 h 35)?  
-R You mean fifteen thirty-five (15:35)?  
Q. Yes.  
-Q Oui.  
R. O.K. C'est qu'... quinze heures trente-cinq (15 h 35), selon  
mon rapport, je suis ... l'Université, Concordia, j'arrive sur  
les lieux.  
-R At fifteen thirty-five (15:35), according to my report, I  
arrived at Concordia University, on the scene.  
Q. Yes, and the same goes for taking observation post at 929-9,  
it is the same time.  
-Q Et il en va de même pour le poste d'observation au 929-9,  
c'était ... la même heure?  
R. Non, non, c'est indiqué, quinze heures trente-cinq (15 h 35) que je  
suis sur les lieux mais ça ne veut pas dire nécessairement que  
je suis au local 929 ... quinze heures trente-cinq (15 h 35).  
-R No, no, it's indicated that at fifteen thirty-five (15:35) I  
was on the scene, it doesn't necessarily mean that at fifteen  
thirty-five (15:35) I was at the 929 office.  
Q. Well, why didn't you then indicate it?  
-Q Alors donc, pourquoi ne l'avez-vous pas indiqué,?  
R. C'est un point de référence que je me fais pour me situer dans le  
temps.  
-R It's a reference point to situate me in time.  
Q. Well, this is important reference point, this is not something  
unimportant. You, for example, write here...  
-Q Mais c'est un point de référence important, par exemple, vous-  
même ici...  
Q. ... at sixteen twenty (16:20)...  
-Q ... seize heures vingt (16 h 20)...  
Q. ... I was arrested and after you write sixteen point twenty-  
one (16:21).  
-Q ... on m'a arrêté, et ensuite vous avez indiqué, seize heures  
vingt et un (16 h 21).  
Q. So you make it very important reference point just in one  
minute difference.  
-Q Alors donc, voilà... un point de référence très important dans  
l'intervalle, dans l'espace d'une minute.  
Q. And here you do not find it necessary to mark twenty (20)  
minutes difference in time...  
-Q Ici vous ne jugez pas important de placer un intervalle ou  
d'indiquer un intervalle de vingt (20) minutes...  
Q. ... how to explain it?  
-Q ... qui se serait, comment l'expliquer?  
R. Ce que je peux dire, votre Honneur, c'est qu'... quinze heures  
trente-cinq (15 h 35) je suis sur les lieux...  
-R What I can say, Your Honour, is that at fifteen thirty-five  
(15:35) I was on the scene...  
R. ... que je me dirige au neuvième étage par les escaliers...

-R ... I went to the ninth floor using the stairway...

R. ... que j'ai fait certaines recherches pour tenter de localiser l'accusé,

-R ... and I did some... I conducted some research in order to locate the accused.

R. Et qu'... seize heures (16 h), vers seize heures (16 h) l'accusé, tant localisé,, j'ai saisi des douilles par terre près du local 929-4.

-R And around sixteen hundred hours (16:00) when the accused was located, I found some casings on the floor near 929-4.

Q. Could you explain me what kind of research you did to find me?

-Q Pouvez-vous indiquer le type de recherche que vous avez effectuée afin de me retrouver?

R. Il y avait plusieurs locaux sur les lieux, votre Honneur.

-R There were several offices on the scene, Your Honour.

R. Il y avait des gens qui étaient cachés ... l'intérieur, des gens apeurés qui étaient cachés ... l'intérieur de certains locaux.

-R And people who were afraid and scared were hidden inside some of the offices.

R. A ce moment-là... nous n'avions pas l'endroit précis que vous étiez... dans quel local précis vous étiez ... ce moment-là...

-R At the time we didn't have the specific office where you were.

Q. You didn't have any connection with 911...

-Q Vous n'aviez aucune communication avec le 911...

Q. ... and you haven't heard that I was there and talking to 911 by...

-Q ... et on ne vous avait pas dit que j'étais là... en train de parler avec le 911...

Q. ... even 935, I believe.

L'INTERPRETE :

Excuse me?

VALERY FABRIKANT :

Q. That by the time of his arrival...

-Q Au moment de son arrivée...

Q. ... at the University...

-Q ... à l'Université...

Q. ... I was already located by 911.

-Q ... le 911 m'avait déjà situé.

Q. So how come you need some research to do to find me?

-Q Alors donc, pourquoi avez-vous effectué des recherches pour me localiser?

Q. I was already found, just listen to walkie-talkie.

-Q On m'avait déjà localisé,, vous n'aviez qu'... écouter sur les ondes des walkie-talkie.

R. Votre Honneur, ... mon arrivée ... quinze heures trente-cinq (15 h 35) l'accusé, n'était pas localisé, dans les locaux, je n'ai pas eu cette information-là...

-R Your Honour, upon my arrival the accused had not been located in the offices, I had not received that information.

Q. So you also had your radio malfunction, did you?

-Q Alors donc, votre radio ne fonctionnait pas comme il faut aussi, c'est ça?

R. Votre Honneur, je suis un enquêteur en civil, je ne suis pas en uniforme, puis je traîne pas de walkie-talkie sur moi.

-R Your Honour, I am an investigator, I am dressed in plain clothing and I don't wear a uniform and I did not have a walkie-talkie with me.

Q. Well, do other policemen had walkie-talkie?

-Q Est-ce que les autres policiers avaient des walkie-talkie?

R. C'est exact, votre Honneur.

-R That's correct, Your Honour.

Q. So they must have received information and inform you?  
-Q Alors donc, ils auraient dû recevoir l'information pour ensuite vous la communiquer?  
Q. Didn't they have such a duty?  
-Q Est-ce que ça ne faisait pas partie de leurs fonctions?  
R. Les policiers qui étaient, qui participaient aux recherches n'étaient pas informés que vous étiez localisés, en communication avec le 911.  
-R The police officers that were conducting the search had not been informed that you were localised or located and communicating with 911.  
Q. Well, all right, let's assume that all their radios got dead at that time.  
-Q Alors présumons que toutes les radios ont (inaudible).  
Q. All right. So you arrived, assume, there at fifteen fifty-five (15:55)?  
-Q Alors donc, vous êtes arrivés, l..., supposément, vers les quinze heures cinquante-cinq (15 h 55).  
Q. After that, let us say after my exit at sixteen twenty-one (16:21)...  
-Q Par la suite, disons après mon départ ou ma sortie ... seize heures vingt et un (16 h 21)...  
Q. ... how many policemen were in 929?  
-Q ... combien de policiers se trouvaient ... l'intérieur du 929?  
R. Possiblement une dizaine approximativement, c'est un chiffre approximatif, votre Honneur.  
-R Possibly ten or so, approximately, but it is a rough figure, Your Honour.  
Q. Okay. What were they all doing there twelve (12) people? Were they given specific assignments?  
-Q Qu'est-ce qu'ils faisaient les douze (12) personnes, est-ce qu'ils avaient des tâches précises?  
R. Il y avait les policiers de la section tactique... technique c'est-à-dire, votre Honneur, qui étaient l...  
-R There were the policemen from the technical squad, Your Honour, who were present.  
Q. Okay.  
-Q D'accord.  
Q. Then?  
-Q Ensuite?  
R. Au moment de votre sortie c'est ces policiers qui avaient comme fonction de sécuriser la place et de contrôler l'endroit ... ce moment-là...  
-R When you came out, these police officers were in charge of securing the area at that time.  
Q. No, I'm asking after my exit.  
-Q Non, je parle après ma sortie.  
Q. After my exit and departure with SWAT team.  
-Q Après ma sortie et mon départ en compagnie de l'équipe, le groupe d'intervention.  
Q. So how many people were there, still a dozen?  
-Q Alors combien de personnes étaient sur les lieux, encore une douzaine?  
R. Non, votre Honneur.  
-R No, Your Honour.  
R. Moins que ça.  
-R Less than that.  
Q. How many?  
-Q Combien?  
R. Cinq ou six policiers, approximativement.  
-R Approximately five or six officers.

Q. Okay. Could you give me the names?  
-Q Pourriez-vous me donner leurs noms?  
R. Je me souviens que la policière Nathalie Vachon ,tait sur les lieux, votre Honneur.  
-R I recall a police woman by the name of Nathalie Vachon was on the scene, Your Honour.  
Q. Okay.  
-Q D'accord.  
Q. One.  
-Q Une.  
R. Le nom des autres policiers ... ce moment-l... sur les lieux, je pourrais pas vous dire qui est rest, sur les lieux ... ce moment-l...  
-R The names of the police officers on the scene then, I could not give you their names, the officers that were there then.  
Q. Do you know your own officers?  
-Q Est-ce que vous connaissez vos propres policiers?  
R. Votre Honneur, je vous ferai remarquer que lors des ,v,nements ce n',tait pas des policiers de mon groupe et je ne connais pas...  
-R Your Honour, I must note that during that operation they weren't officers from my group and...  
Q. So you were not in charge there, were you, in 929?  
-Q Alors vous n',tiez pas le responsable ... l'int,rieur du 929, c'est exact?  
R. Je suis un sergent d,tective, j',tais pas le responsable des lieux, votre Honneur.  
-R I am a detective sergeant and I was not in charge of the scene, Your Honour.  
Q. Well who was in charge of 929 at that time?  
-Q Qui ,tait la personne responsable du 929 ... ce moment-l...?  
R. AprŠs votre d,part?  
-R After your departure?  
Q. Yes, sir, yes.  
-Q Oui, monsieur, oui.  
R. Bien, le sergent d,tective H,bert qui a pris charge de l',v,nement par la suite.  
-R Detective Sergeant H,bert took over the incident afterwards.  
Q. So he was personally there.  
-Q Alors donc, il ,tait l... personnellement?  
R. Il est venu sur les lieux, c'est exact, votre Honneur.  
-R He came on the scene, that's correct, Your Honour.  
Q. And he was there all the time that you were there?  
-Q Et il ,tait l... pendant tout le temps o- vous ,tiez l...?  
R. Non, votre Honneur.  
-R No, Your Honour.  
Q. Well, how long was he there?  
-Q Alors, il ,tait l... pendant combien de temps?  
R. Il est venu quelques minutes sur les lieux, votre Honneur, et...  
-R He came on the scene for a few minutes, Your Honour.  
Q. And that's all?  
-Q C'est tout?  
R. Au moment o- est-ce que j',tais l..., oui, c'est exact.  
-R When I was there, yes, that's correct.  
Q. Okay. So who then was left in charge there? Anyone was left in charge?  
-Q Alors donc, est-ce qu'on a laiss, quelqu'un responsable de cet endroit, est-ce qu'il y avait quelqu'un de responsable pour cet endroit?  
R. A l'entr,e du local 929 il y a des, il y a un accŠs qui est

limit,, l..., votre Honneur, ici.

-R At the entrance to office 929 there is a restricted access here.

R. Il y a deux policiers que je pourrais nommer qui ont pris, qui ont pris charge de cet endroit-l..., qui ont...

-R Two police officers who I can name, took over that area...

R. ... pour restreindre l'accès aux personnes qui auraient pu rentrer l..., #a fait qu'il y a deux policiers qui ,taient l... et...

-R ... to restrict the access to anyone attempting to go in, so there were two police officers who remained there.

Q. Well, they were, I understand, outside, not letting anybody inside, correct?

-Q Si je comprends bien, ils ,taient ... l'ext,rieur, emp^chant toute personne d'entrer ... l'int,rieur, c'est exact?

R. C'est ce qui a ,t, fait, oui.

-R That's what was done, yes.

Q. Okay. I'm talking about those who were inside 929, who were they, what they were doing, who was in charge of what they were doing?

-Q Je parle de ceux qui ,taient ... l'int,rieur du 929, qui ,taient-ils, qu'est-ce qu'ils faisaient et qui est-ce qui ,tait responsable de ce qu'ils faisaient?

R. C'est qu'... un certain moment donn,, votre Honneur, les individus qui ,taient au 929, l'endroit o— est-ce que monsieur Fabrikant a ,t, arr^t,...

-R At one point, the individuals inside 929, the location where Mr. Fabrikant was placed under arrest...

R. ... c'est que les gens qui ,taient l... ce moment-l..., lorsque tout a ,t, termin,, il y a des gens qui sont sortis, les gens qui ,taient l... sont sortis de cet endroit.

-R ... when everything was ended, the people who were inside that office came out.

Q. So there was nobody inside then?

-Q Alors donc, il n'y avait personne ... l'int,rieur?

R. Non, votre Honneur.

-R No, Your Honour.

Q. Just now you said there were five people inside.

-Q Vous venez tout juste de dire qu'il y avait cinq personnes ... l'int,rieur.

Q. And now you are telling me there was nobody inside.

-Q Et maintenant vous me dites qu'il n'y avait personne ... l'int,rieur.

Q. How to reconcile all that?

-Q Comment concilier tout #a?

R. C'est relatif aux heures, votre Honneur, que monsieur Fabrikant veut se situer dans le temps.

-R It's relative to the hours that Mr. Fabrikant wants to situate in time.

Q. Well please, be then specific that when you said there were five people there...

-Q Alors donc, soyez plus sp,cifique...

Q. ... of which you could name only one person...

-Q ... lorsque vous dites qu'il y avait cinq personnes ... l'int,rieur parmi lesquelles vous pouviez en nommer rien qu'une...

Q. ... please tell me until what time those five people were there...

-Q ... veuillez me dire jusqu'... quelle heure ces cinq personnes ,taient l.....

Q. ... and what they were doing?

-Q ... et ce qu'elles faisaient?

R. Votre Honneur, dans les heures précises, je pourrais pas vous dire.

-R Your Honour, for specific times, I could not give them to you.

R. Les policiers de la section technique ont fait des recherches dans les locaux pour voir si, pour faire des vérifications, pour voir s'il n'y avait pas d'autres personnes de blessées.

-R The police officers from the technical squad were going through the other offices to make sure nobody was injured.

R. Et lorsque tout a été sécurisé, sur les lieux, les policiers ont quitté.

-R When everything was secured and safe on the scene, the police officers left.

Q. Okay, what time was it when all the police officers left?

-Q Alors quelle heure était-il lorsque tous les policiers ont quitté?

R. Une heure approximative, votre Honneur, entre seize heures quarante-cinq (16 h 45) et dix-sept heures (17 h) votre Honneur.

-R Between sixteen forty-five (16:45) and seventeen hundred hours (17:00), Your Honour, to be approximate.

Q. But you stayed there, did you?

-Q Mais vous êtes demeuré, sur les lieux, c'est ça?

R. Je suis effectivement demeuré, sur les lieux, c'est exact.

-R Indeed, I remained on the scene, that's correct

Q. So you cannot say that nobody was inside, you were inside?

-Q Alors on ne peut pas dire qu'il n'y avait personne ... l'intérieur, vous, vous étiez vous-même ... l'intérieur?

Q. So at least one person was inside, correct?

-Q Alors au moins une personne se trouvait ... l'intérieur, c'est exact?

R. J'ai effectivement montré, certains, certains éléments au constable Desjardins de la section Identité, qui était, qui était sur les lieux.

-R Indeed, I showed some elements to Constable Desjardins from Forensic Identification who was on the scene.

Q. Okay, now we are talking already two people are inside, so you cannot say that nobody was inside, at seventeen hours (17:00) at least two people were inside, correct?

-Q Donc, deux personnes se trouvaient ... l'intérieur, on ne peut pas dire qu'il n'y avait personne ... l'intérieur vers les dix-sept heures (17 h), il y avait deux personnes ... l'intérieur, c'est exact?

R. Il y avait effectivement moi, le constable Desjardins...

-R Indeed, there was myself, Constable Desjardins...

R. ... le constable Champagne.

-R ... Constable Champagne.

Q. Okay, three people then.

-Q D'accord, trois personnes donc.

Q. That's all? Three people were inside at that time?

-Q C'est tout? Trois personnes étaient ... l'intérieur ... ce moment-là?

R. C'est exact.

-R That's correct.

Q. Okay.

-Q D'accord.

Q. Now, three people were inside and you were in charge of this, were you?

-Q Maintenant, trois personnes se trouvaient ... l'intérieur et vous en étiez responsable, c'est exact?

R. A ce moment-là j'étais... c'est une forme de responsabilité, de la scène de crime, c'est exact, votre Honneur.

-R It's a type of responsibility for the crime scene, that's correct, Your Honour.

Q. Okay. And for how long those three people were inside 929?

-Q Et ces trois personnes sont demeur,es ... l'int,rieur du 929 pendant combien de temps?

R. Approximativement trente (30) minutes, quarante-cinq (45) minutes.

-R Approximately thirty (30), forty-five (45) minutes.

Q. Okay, what happened after that?

-Q Que s'est-il pass, par la suite?

Q. So at seventeen thirty-five (17:35)...

-Q Alors donc, ... dix-sept heures trente-cinq (17 h 35) ...

Q. ... what happened?

-Q ... que s'est-il produit?

R. Votre Honneur, je pourrais dire jusqu'... dix-huit heures (18 h), les heures c'est jusqu'... dix-huit heures (18 h), moi, j'ai remis l'arme au constable... le 38 au constable Desjardins ... dix-huit heures (18 h).

-R Your Honour, I would say that for the times it would be up to eighteen hundred hours (18:00), that at eighteen hundred hours (18:00), I handed over the weapon, the 38 caliber weapon to Constable Desjardins.

R. Ainsi que trois douilles que j'avais ramass,es par terre.

-R As well as three casings that I had picked up off the floor.

R. Que j'ai indiqu, l'endroit o- j'avais trouv, ces douilles.

-R I had indicated the location where I had found those casings.

R. Ces endroits ,taient marqu,s par terre.

-R And those locations were marked on the floor.

R. Je lui ai indiqu, cet endroit.

-R I showed him those locations.

Q. Well please, don't repeat your testimony, that was not my question.

-Q S'il vous plaEt, ne pas r,p,ter votre t,moignage, ce n',tait pas ma question.

Q. So at seventeen thirty-five (17:35) what happened?

-Q Donc ... dix-sept heures trente-cinq (17 h 35) que s'est-il produit?

Q. Someone left or what?

-Q Quelqu'un a quitt, ou quoi?

R. Moi, je suis sur les lieux jusqu'... dix-huit heures (18 h), dix-huit heures quinze (18 h 15) approximativement.

-R I remained on the scene around eighteen fifteen (18:15) approximately.

Q. Okay. And all this time both Champagne and Desjardins were there?

-Q Pendant tout ce temps monsieur Champagne et monsieur Desjardins ,taient l...?

R. Le constable Champagne avait une fonction sp,cifique que je lui ai demand,e, c',tait de s,curiser les armes ... feu.

-R Constable Champagne had a very specific assignment that I had given him, that was to make the weapons safe.

Q. Uh, huh, all right.

-Q D'accord.

Q. So after eighteen fifteen (18:15) you left.

-Q Alors aprs dix-huit heures quinze (18 h 15) vous avez quitt,.

Q. Who was still in 929?

-Q Qui est demeur, dans le 929?

R. Le constable Desjardins avait charge de s'occuper de la scēne de crime, prendre les photos et toutes les...

Q. So he was the one who was...

-R Constable Desjardins was in charge of the crime scene, to take

photographs and everything else.

Q. So he was the only person at 929 after eighteen fifteen (18:15), right?

-Q Alors il ,tait la seule personne dans le 929 aprŠs dix-huit heures quinze (18 h 15), c'est exact?

R. Le sergent d,tective H,bert ,tait en charge de cette partie-l... au moment de mon d,part.

-R Detective Sergeant H,bert was in charge of that part after my departure.

Q. Well, did he arrive at 929 at that time?

-Q Est-ce qu'il est arriv, au 929 ... ce moment-l...?

R. Oui, votre Honneur.

-R Yes, Your Honour.

Q. So you saw him?

-Q Alors, vous l'avez vu?

R. J'ai effectivement vu le sergent d,tective H,bert, votre Honneur.

-R Indeed, I did see Detective Sergeant H,bert, Your Honour.

Q. Okay.

-Q D'accord.

Q. Previously you said that he arrived for just couple of minutes and left.

-Q Plus t"t vous avez mentionn, qu'il est arriv,...

Q. That was his second arrival?

-Q ... est demeur, pendant quelques minutes pour ensuite quitter, alors donc c',tait sa deuxiŠme entr,e ou arriv,e?

R. Il est effectivement revenu sur les lieux, votre Honneur.

-R Indeed, he did return on the scene, Your Honour.

Q. So it was his second arrival?

-Q Alors donc, c',tait sa deuxiŠme arriv,e sur les lieux?

Q. His first arrival was approximately at what time?

-Q Sa premiŠre arriv,e ,tait donc quelle heure?

R. Je dirais, votre Honneur, autour de dix-sept heures... dix-sept heures trente (17 h 30).

-R I would say around seventeen thirty (17:30), Your Honour.

Q. And he was there for a couple of minutes and left and he returned then again at eighteen fifteen (18:15)?

-Q Et il est demeur, l... quelques minutes et ensuite il a quitt, pour revenir plus tard ... dix-huit heures quinze (18 h 15)?

Q. Correct?

-Q C'est exact?

R. C'est exact.

-R That's correct.

Q. Okay. Now, you left and he stayed in 929.

-Q Vous avez quitt, et il est demeur, ... l'int,rieur du 929.

Q. Correct?

-Q C'est exact?

R. Je pourrais pas vous dire, votre Honneur.

-R I could not say, Your Honour.

Q. Well, at the time when you were leaving...

-Q Sur votre d,part...

Q. ... Sergeant Detective H,bert was inside 929?

-Q ... le sergent H,bert se trouvait ... l'int,rieur du 929?

Q. Correct?

-Q C'est exact?

R. C'est exact, votre Honneur.

-R That's correct, Your Honour.

Q. Okay. Did you personally enter room 929-24?

-Q Est-ce que vous vous ^tes pr,sent, personnellement au 929-24?

R. Je n'ai pas rentr, au local 929-24.

-R I did not go into office number 929-24.

Q. Okay. Did you look into the office?  
-Q Avez-vous regard, ... l'int,rieur?  
R. Oui, votre Honneur.  
-R Yes, Your Honour.  
Q. Did you call Urgences Sant, to that office?  
-Q Avez-vous appel, Urgences Sant, ... partir de ce bureau?  
Q. To come to that office?  
-Q Pour qu'ils viennent ... ce bureau plut"t?  
R. Non, votre Honneur.  
-R No, Your Honour.  
Q. So Urgences Sant, never came to that office.  
-Q Alors donc, Urgences Sant, ne s'est jamais pr,sent,e ... ce bureau.  
Q. Could you describe what you have seen if you look into the office?  
-Q Si vous avez regard, ... l'int,rieur de ce bureau, pouvez-vous d,crire ce que vous avez vu?  
R. J'ai vu effectivement une personne qui ,tait sur le dos, votre Honneur.  
-R Indeed, I saw a person who was lying on his back, Your Honour.  
R. Il ,tait inanim,.  
-R And he was not moving.  
R. Il y avait du sang.  
-R There was blood.  
R. Et je ne suis pas rentr, ... l'int,rieur.  
-R And I did not go inside.  
Q. Well, how could you possibly know, maybe the person needed help?  
-Q Alors comment pouviez-vous possiblement savoir, peut-^tre que la personne avait pas besoin d'assistance?  
R. Votre Honneur, j'ai pas vu Urgences Sant, dans ce local.  
-R Your Honour, I did not see Urgences Sant, in that office.  
Q. Well, Urgences Sant, doesn't come by itself.  
-Q Urgences Sant, ne vient pas...  
Q. It comes when it is called, I'm asking how come...  
-Q Ils se rendent sur les lieux quand on les appelle.  
Q. ... you looked into the office...  
-Q Je demande comment se fait-il que vous avez regard, ... l'int,rieur du bureau...  
Q. ... saw a person in blood on the floor...  
-Q ... vous avez vu une personne ensanglant,e par terre...  
Q. ... and didn't even check, maybe person is still alive.  
-Q ... vous n'avez m^me pas v,rifi, si oui ou non, la personne ,tait toujours en vie.  
Q. How is it possible to explain that?  
-Q Comment pouvez-vous expliquer cela?  
R. Je sais qu'Urgences Sant, est all,e dans ce local.  
-R I know that Urgences Sant, went into that office.  
Q. Just second ago you said that Urgences Sant, never entered the office.  
-Q Il y a quelques secondes vous avec mentionn, que Urgences Sant, ne s',tait pas rendue ... l'int,rieur de ce local.  
R. J'ai dit, votre Honneur, que je n'ai pas vu Urgences Sant, dans le local.  
-R I stated, Your Honour, that I did not see Urgences Sant, inside the office.  
R. Je n'ai pas dit qu'Urgences Sant, n'a pas ,t, dans le local.  
-R I did not say that Urgences Sant, had not gone inside the office.  
Q. Well, if you were there...  
-Q Si vous ,tiez l.....

Q. ... and you didn't see Urgences Sant, enter the office...  
-Q ... et que vous n'avez pas vu Urgences Sant, entrer dans le bureau...  
Q. ... so how could you know that they didn't enter the office after all?  
-Q ... comment pouvez-vous savoir qu'ils ,taient entr,s dans le bureau par la suite ou ... n'importe quel moment donn,?  
R. Votre Honneur, j'ai ,t, inform, qu'Urgences Sant, est all,e dans le local le 929-4.  
-R Your Honour, I was informed that Urgences Sant, had gone into office 929-4.  
Q. 24.  
-Q 24.  
R. 24.  
-R 24.  
Q. When were you informed about it?  
-Q Quand vous a-t-on inform, de ce fait?  
R. J'ai personnellement vu ... un certain moment donn, un m,decin d'Urgences Sant,...  
-R At one point in time I did personally see a doctor, a physician from Urgences Sant,...  
R. ... qui portait assistance ... une personne bless,e...  
-R ... who was lending assistance to a wounded person...  
R. ... et ce m,decin d'Urgences Sant, ,tait dans le local, votre Honneur, dans le local 929-17, votre Honneur, ou 929-19 plut"t.  
-R ... and that Urgences Sant, doctor was inside office number either 29-17 or -19 Your Honour.  
Q. Okay. You know the name of the doctor?  
-Q Connaissez-vous le nom du m,decin?  
R. Non, votre Honneur.  
-R No, Your Honour.  
Q. Okay, what time was it?  
-Q Quelle heure ,tait-il?  
R. Entre... entre seize heures et cinq (16 h 05) approximativement et seize heures... seize heures quinze (16 h 15).  
-R Between sixteen zero five (16:05) and sixteen fifteen (16:15) approximately.  
Q. So, you know that at that time there was doctor attending the wounded person.  
-Q Alors vous saviez qu'... ce moment-l... le m,decin pr^tait assistance ... la personne bless,e.  
Q. And you know that doctor entered 929-24, too?  
-Q Et vous saviez que le m,decin avait p,n,tr, ,galemment le 929-24?  
R. J'ai ,t, inform, que des membres d'Urgences Sant, sont all,s v,rifier au 929-24.  
-R I was informed that members of Urgences Sant, went inside the office to verify 929-24.  
Q. Uh, huh. Because before you said that they never entered, now you say that they did enter.  
-Q Parce que plus t"t vous avez mentionn, qu'ils n',taient jamais entr,s, maintenant vous dites qu'ils sont entr,s.  
Q. All right.  
-Q D'accord.  
R. C'est faux, votre Honneur.  
-R That's false, Your Honour.  
Q. Can you find the name of the doctor?  
-Q Pouvez-vous trouver le nom du m,decin?  
R. Je n'ai pas le nom du m,decin dans mes notes, votre Honneur,

je n'ai pas ce détail.

-R I do not have the name of the doctor in my notes, Your Honour, I do not have that detail.

Q. Okay. Now, describe what you saw, anything in particular what you saw?

-Q Maintenant dites-nous ce que vous avez vu en détail?

Q. There was... at least could you make it this way. This is the room, if...

-Q Enfin pouvez-vous procéder de cette façon, c'est-à-dire voici la pièce...

Q. ... we draw some kind of a square...

-Q ... si nous dessinons un genre de carré...

Q. ... indicating room...

-Q ... et une case qui indiquerait la pièce...

Q. ... would it be possible for you to place door and approximate location of the person inside the office, could you that?

-Q ... seriez-vous en mesure de dessiner l'emplacement de la porte ainsi que l'emplacement de la victime qui était blessée, est-ce que vous seriez en mesure de faire cela?

R. La victime de quel local, votre Honneur?

-R What office, Your Honour?

Q. 929-24.

-Q Le 929-24.

Q. Would you please take this piece of paper and...

-Q Pourriez-vous, s'il vous plaît, prendre ce bout de papier...

Q. ... draw the...

THE COURT :

Just a second, there's a technical problem. That's one of the pieces of paper that you were furnished with.

VALERY FABRIKANT :

Yes.

THE COURT :

If you would like the witness to take a blank sheet of paper and make a drawing...

VALERY FABRIKANT :

All right, I'll give him a blank sheet of paper, maybe someone will supply...

THE COURT :

Someone will supply.

VALERY FABRIKANT :

All right.

Q. So could you please draw, to the best of your recollection, the office...

-Q Au meilleur de votre souvenir, pourriez-vous, s'il vous plaît, dessiner le bureau...

Q. ... well the door...

-Q ... la porte...

Q. ... draw a kind of a square indicating inside of the office and what you have seen, the position of the body, whatever you noticed there?

-Q ... dessiner le bureau en forme de case ou de carré, avec l'emplacement et la position de la victime que vous avez vue ... l'intérieur de cet endroit?

R. Est-ce que je dois exécuter cette demande, votre Honneur?

-R Do I have to carry that out, Your Honour?

THE COURT :

Q. If you are capable of doing so, yes.

-Q Si vous êtes en mesure de le faire, certainement.

R. Si ma mémoire est exacte, votre Honneur, j'ai seulement jeté,

un coup d'oeil ... l'intérieur du loca...

-R If my memory serves me right, Your Honour, because I only glanced inside the office...

Q. Well, what the most appropriate thing would be, would be to draw in silence what you have been asked to draw.

VALERY FABRIKANT :

That's exact.

THE COURT :

Q. And then we'll see afterwards.

VALERY FABRIKANT :

Exactly.

-Q La chose la plus appropriée serait pour vous de dessiner en silence ce que vous avez aperçu.

VALERY FABRIKANT :

Q. Indicate the door.

-Q Indiquez la porte.

Q. And whether it opens inside or outside.

-Q Si elle ouvre ... l'intérieur ou ... l'extérieur.

THE COURT :

Q. Okay, now would you furnish that to Mr. Fabrikant so that he can see it and make his own copy of it if he wishes to.

-Q Pourriez-vous donner ... monsieur Fabrikant pour qu'il puisse le voir et peut-être faire des copies s'il le désire.

VALERY FABRIKANT :

Well, why cannot just I keep it?

THE COURT :

No, because you've asked the witness to testify on that and you've asked the witness to draw it, so it will become an exhibit.

VALERY FABRIKANT :

Oh, all right.

THE COURT :

Now, the witness has drawn it, I'm asking you to either look at it and draw it for yourself there so that you know what he has drawn, and then to hand back to him and then put your questions.

VALERY FABRIKANT :

Yes, all right, I will just make a schematic of what he did. Okay.

Q. And the door is like this. So, you saw, you saw him completely because the way you have drawn it...

-Q Alors vous l'avez vu en entier parce que de la façon que vous l'avez dessiné...

Q. ... the way you've drawn it, the whole body is visible.

-Q ... tout le corps est visible.

Q. This is how it was?

-Q Il était de cette façon?

R. C'est ce que je me souviens au meilleur de ma connaissance, votre Honneur.

-R That's what I recall to the best of my knowledge, Your Honour.

Q. So you saw the whole body?

-Q Alors vous avez vu le corps en entier?

Q. All right. Did you see...

R. C'est exact.

-R That's correct.

Q. ... let us say, legs, were they straight, were they bended, any details on this subject?

-Q ... est-ce que vous vous rappelez de détails ... ce sujet, est-ce que les jambes étaient tendues...

Q. Since you saw the whole body.

-Q ... ou si elles étaient repliées puisque vous avez vu le corps

en entier?

R. Au meilleur de ma connaissance, votre Honneur, je crois qu'il ,tait ,tendu, les jambes ,taient allong,es, il ,tait couch, sur le dos. Je vous dis #a, c'est au meilleur de ma connaissance mais j'ai pas regard, trřs longtemps la scēne, votre Honneur.

-R To the best of my knowledge, his legs were stretched out and he was on his back and I didn't stay very long on the scene, that's all I can say.

Q. Okay. And his hands were like this, you drawn this, something like this? His hands.

-Q Et ses mains ,taient plac,es dans cette position, c'est ce que vous avez dessin,?

R. Ce que je me souviens c'est que les bras ,taient prřs du corps, le long du corps ou prřs du corps.

-R From what I recall, the arms were along the body and near the body.

Q. So his hands were along the body like this?

-Q Alors de cette faon?

Q. Like this, like this, like this?

-Q Comme #a?

Q. Give approximate idea.

-Q Donnez-nous une id,e approximative.

R. Plus bas encore, votre Honneur.

-R No, lower still, Your Honour.

Q. So his hands were like this?

-Q Alors ses mains ,taient comme #a?

THE COURT :

He said lower still.

VALERY FABRIKANT :

Sorry?

THE COURT :

He said lower still.

VALERY FABRIKANT :

Q. Ah, lower, like this?

-Q Plus bas, bon, comme #a?

R. C'est ce que je me souviens ... peu prřs, votre Honneur.

-R That's approximately what I recall, Your Honour.

Q. Okay. So his hands were approximately like this.

-Q Alors ses mains ,taient de cette faon.

Q. Did you see any blood anywhere, do you recall?

-Q Vous rappelez-vous avoir vu du sang ... un endroit particulier?

R. Je me souviens qu'il y avait du sang, votre Honneur.

-R I recall there was blood, Your Honour.

Q. Could you indicate on what part of the body?

-Q Pouvez-vous indiquer sur quelle partie du corps?

R. Je crois qu'il y avait du sang sur ses v^tements.

-R I believe there was blood on his clothes.

Q. But do you remember approximately what part of the body, here, here, here?

-Q Vous rappelez-vous approximativement quelle partie du corps, ici, l..., ici?

Q. On hands, some blood on hands, and legs?

-Q Sur les mains, du sang sur les mains, les jambes?

R. Il y avait du sang autour de la t^te.

-R Around the head area there was blood.

Q. Okay, yes.

-Q Oui.

R. Et sur la chemise ... l'avant.

-R And on the shirt, on the front of the shirt.

Q. Okay, what part, right, left?

-Q Quelle partie, gauche, droite?  
R. Je ne pourrais dire, votre Honneur.  
-R I could not say, Your Honour.  
Q. Close to the center?  
-Q Près du centre?  
R. Sur le devant de la chemise, ça pourrait être possible, votre Honneur.  
-R On the front of the shirt, it could be possible, Your Honour.  
Q. But about hands, you are sure that hands were approximately like that?  
-Q Mais pour ce qui est des mains, vous êtes certain qu'elles ,taient plus ou moins dans cette position?  
R. Plus ou moins, votre Honneur.  
-R More or less, Your Honour.  
Q. Any briefcase in his hands, in one of the hands, no?  
-Q Y avait-il une mallette dans l'une de ses deux mains?  
Q. Or nearby the body?  
-Q Ou simplement près du corps?  
R. Je pourrais pas vous dire, votre Honneur.  
-R I could not say, Your Honour.  
Q. Anything at all in hands?  
-Q Quelque chose dans les mains?  
R. A ma connaissance, non, votre Honneur.  
-R To my knowledge, no, Your Honour.  
Q. Okay, thank you.  
THE COURT :  
Do you wish to produce that document?  
VALERY FABRIKANT :  
Oh, yes.  
THE COURT :  
All right.  
VALERY FABRIKANT :  
Oh, yes.  
THE COURT :  
D-1.  
VALERY FABRIKANT :  
And I would like to get testimony of the doctor. And I want this picture to be shown to the jury too, if possible, just to pass to the jury.  
THE COURT :  
I will do that right now. Mr. Belleau, would you advise Mr. Fabrikant with regard to question of the steps that he might eventually take if he, if he wishes to have heard the doctor in question?  
VALERY FABRIKANT :  
Well, I wish to hear the doctor in question.  
THE COURT :  
Ladies and gentlemen, would you just look quickly at that diagram? Okay. That's fine.  
VALERY FABRIKANT :  
And you might wish to compare it with the picture that you have.  
THE COURT :  
And Mr. Fabrikant asks you to compare that sketch with certain pictures in Exhibit P-8, notably what? 8, 10...  
VALERY FABRIKANT :  
Mainly position of hands.  
THE COURT :  
... 11. So I think at this point we will adjourn until two fifteen (14:15).  
SUSPENSION

REPRISE

WITHOUT JURY

THE COURT :

Yes, Mr. Belleau.

M. BELLEAU :

May it please the Court. I spoke during the recess with Mr. Laplante, Andr, Laplante who is one of the officers in charge at Parthenais, and I touched on a couple of things with him. The first one was the question of the tape player and I was told that he wanted to provide the accused with a functioning, a machine that was in order and was capable of reproducing tapes. So he tried to find an adaptor for the headphones and couldn't do that, so he went through stocks that they have of unclaimed Walkmans and found one that is suitable. And Mr. Fabrikant will be provided with it on his arrival to the detention center this evening with headphones and he has told me also batteries included.

And regarding the photographs of the scene of crime, what I was told was that there is a directive at the detention center that these documents are put in with the personal effects of the detainee and he may, upon request, examine them. And Mr. Laplante has told me that the responsible for his sector, Mr. Demers, who is responsible for Mr. Fabrikant's sector, will be alerted to the situation, and that Mr. Fabrikant will be allowed to examine these photographs if necessary in an isolated office so that he can examine them and work on them if that is necessary.

I spoke with him of two other subjects, the question of the documents that were left for Mr. Fabrikant on Monday, March the fifteenth (15th), and I was told that there are conflicting versions on this issue. The employees of the detention center have reported that they have delivered the documents to Mr. Fabrikant's cell, not in hand though, and apparently Mr. Fabrikant has reported that he hadn't received them. And I was told that the cell doors are not full closed doors, they are bars, and that it has happened on occasion that things were removed from cells by fellow prisoners or otherwise, and it is possible that they would have been delivered but not received by Mr. Fabrikant. A formal complaint was filed by Mr. Fabrikant and it is being dealt with at this time.

I touched on another subject which was not brought up directly by Mr. Fabrikant but which I was aware, is that he has hired a private investigator in the case and...

VALERY FABRIKANT :

Ah, ah, ah.

MR. BELLEAU :

I beg your pardon, is that a problem?

VALERY FABRIKANT :

Absolutely.

MR. BELLEAU :

Well then I won't discuss it, I'm sorry.

VALERY FABRIKANT :

You are not... There is nothing about it.

THE COURT :

Thank you very much, Mr. Belleau, for your efforts. I'm happy that the question of the player has apparently been resolved. If there is a directive concerning photographs, quite frankly in the course, in the middle of this trial, I can't see why he shouldn't have these things with him, but it's not for me to second guess Parthenais without hearing from them. So perhaps

the better plan would be to invite Mr. Laplante or Mr. Fauteux, I don't know which, to come down here at the end of the afternoon, and we'll see what's what. But you know, I find, I find this extremely frustrating that I have to be continually doing this sort of thing and that I'm running into nothing but opposition based on directives when it comes to dealing with Parthenais, and it makes me very annoyed.

Me BELLEAU :

I share your feelings, My Lord. And the director is Mr. Fortier, by the way.

VALERY FABRIKANT :

I would like to make...

THE COURT :

Mr. Fortier.

VALERY FABRIKANT :

I would like to make some addition. First of all, the employees at Parthenais in my face they told me that they have given it to me, and usually they deliver mail between five (17:00) and six (18:00)...

THE COURT :

Second point... are you talking about the documents or what are you talking about?

VALERY FABRIKANT :

About documents, detained is in the cell. So they couldn't possibly deliver it between five (17:00) and six (18:00) that I be not in the cell, this is total lie. And also is a lie that any private investigator anywhere has been hired and I cannot understand why on earth Mr. Belleau spreading rumors which absolutely unfounded. It's outrage.

THE COURT :

Mr. Fabrikant...

VALERY FABRIKANT :

I called him a saboteur but this is some kind of suppression, not just a saboteur. I can only express my regret that Mr. Belleau, it is not coincidental, it's probably public relation exercise again to show that I'm being provided not with everything but even if private investigator of some kind who is doing some kind of work, so that newspapers tomorrow would start crying: "Fabrikant has private investigator doing his work for me". Nothing could be further from the truth, and I can only express my indignation towards Mr. Belleau's behavior. Not given lawyer, you know, but to create some kind of stunt just so that these crook reporters, tomorrow would be able to write: "You see how Fabrikant is treated like a prince, he has private investigator who is doing a lot of work for him." This is total lie. And I appreciate if Mr. Belleau never again do any tricks like this. And I think you should be

<html><head></head><body><pre style="word-wrap: break-word; white-space: pre-wrap;">reprimanded, and I think that if any newspaper dares to publish it, they should be Court ordered not to publish what I said.

THE COURT :

Mr. Fabrikant, first of all...

VALERY FABRIKANT :

Because usually they publish only part.

THE COURT :

Mr. Fabrikant, first of all, the reporters who are here are working under a Court order that doesn't permit them to report what transpires in the absence of the jury, as far as the trial is concerned.

VALERY FABRIKANT :

But usually they do, I wish I can give example.

THE COURT :

And I'm going to take it that that is being respected. Now...

VALERY FABRIKANT :

It is not respected.

THE COURT :

Now, I'm not...

VALERY FABRIKANT :

If you remember, we discussed bloody pictures in the absence of jury and newspapers reported it. Would you like to take them for contempt of Court? Would you like to take them for contempt of Court?

THE COURT :

Mr. Fabrikant you also insisted on discussing bloody pictures in the presence of the jury, and you are the one that insisted that the question of the admissibility of these photographs be canvassed in the presence of the jury, notwithstanding that I...

VALERY FABRIKANT :

The discussion was outside.

THE COURT :

... notwithstanding that I gave you the chance to exclude the jury. And if my memory serves me correctly, and I think it does, it was not until Mr. Lecours insisted that he, for his part, wished to treat this as a matter of law, that the jury was excluded.

VALERY FABRIKANT :

Okay, so the jury was excluded, then from that moment on it should not be reported.

THE COURT :

I'm not, I'm not going to spend the rest of my day splitting hairs as to what happened during one period of five minutes and what happened during the next period of five minutes.

VALERY FABRIKANT :

I have also prepared the list of documents which I received from the Crown and I would like to give it to Mr. Lecours, and I would appreciate if he confirms that this is indeed the list of the documents he gave to me and gave me a copy of the list. Can I give it to him?

THE COURT :

Certainly, Mr. Serra would you get that document please. We may save this for later in the afternoon. Now...

VALERY FABRIKANT :

So I would appreciate if he makes a copy and sign it that yes, indeed, this is the list of documents.

Me JEAN LECOURES :

I'll make a copy, My Lord.

VALERY FABRIKANT :

And after that, I will reveal what documents were are not provided.

THE COURT :

Now, coming to the points raised by Mr. Belleau, if we were to continue here until a year from now or two, I doubt very much whether you and I would ever agree on very many things. But I certainly think that you are entitled to have your player so that you can listen to the tapes. And I feel that... and you can call it a public relations display if you like, I feel that I should inform myself here in Court as to why you are not allowed your pictures, if you need the pictures for the purposes of preparing your cross-examination, and I'm prepared to concede where I'm sitting that you do.

So, on the strength of that, I'm going to adjourn for a couple of minutes while the Court clerk takes the step she has to take to have either... I think Mr. Fortier might be the proper one, he's the director of Parthenais, come down here at four o'clock (16:00) this afternoon and we'll see if this can be sorted out.

As far as the investigation of your documents is concerned, it is totally useless for me to get involved in that. I understand that you have made a complaint and that the complaint is following whatever route that it follows. I have neither the facilities nor the means to become involved in that investigation, and it's not my role. I have no idea of what your documents are, I have no idea of what bearing they have.

VALERY FABRIKANT :

I don't ask you to get involved, you're missing the point. I'm asking you prevent it from future occurrence. I don't ask you to investigate anything. To prevent it from future occurrence, I ask for a Court order that if I need to receive some kind of document, tapes, whatever, that they be given to me by the person coming directly, hand to hand, this is what I want. And since this is the matter of confidentiality of my documents for my defense, I see nothing wrong if this being done. Guards may be present, if they want to, but the document should be handed from the person who brought it to me directly, the same way like, for example, if bailiff comes and...

THE COURT :

There may be a question of security regulations involved there.

VALERY FABRIKANT :

Well, what kind of security regulations?

THE COURT :

Well, I don't know what kind of security regulations, but there may be a question of regulations involved there, that these things have to be checked.

VALERY FABRIKANT :

Well, let us resolve the situation because this is important stuff, documents have been lost and I don't want this to be repeated. So this is what I'm asking you to do.

THE COURT :

Okay, well I'm going to adjourn for five minutes while madame Desrosiers makes the appropriate call to Mr. Fortier and asks Mr. Fortier if he would be kind enough to come down here at four o'clock (16:00) this afternoon and...

VALERY FABRIKANT :

(inaudible) everything you said, though, why would he need to

come here?

THE COURT :

Because I am the one who you are making the complaint to, and before I go through any steps to settle it, I want to hear what his side of the story is, that's all.

VALERY FABRIKANT :

About the documents?

THE COURT :

About the documents.

VALERY FABRIKANT :

Okay.

THE COURT :

Well about the documents, about...

VALERY FABRIKANT :

If you are so kind, maybe you will (inaudible).

THE COURT :

About primarily the photographs and...

VALERY FABRIKANT :

Photographs I have it here and I leave it here and everything is found, so there is no problem...

THE COURT :

So there is no problem for photographs?

VALERY FABRIKANT :

No problem for photographs.

THE COURT :

I see. So there is no problem with the photographs.

VALERY FABRIKANT :

Photographs are here, I leave it here, when I come they are here, everything is fine.

THE COURT :

Then I don't think there is any need to bring Mr. Fortier down.

VALERY FABRIKANT :

And there is no need to bring him down, unless you want, for example, to realize at what moment in time that from six a.m. (6:00) until about seven (7:00) or even more, p.m., to keep me in the cells and not allowed to work on my defense.

THE COURT :

Now you're changing, now you're asking for something else, you see.

VALERY FABRIKANT :

Well, I'm asking for what Mr. "Germa" had all the time.

THE COURT :

Forget it.

VALERY FABRIKANT :

Forget it, okay.

THE COURT :

There is a short answer to the Germa case.

VALERY FABRIKANT :

If you think that you can break me by not giving me lunch or not letting me sleep or just making me exhausted, you're wrong, you're dead wrong.

THE COURT :

The thought never entered my mind, Mr. Fabrikant.

VALERY FABRIKANT :

But you are trying definitely.

THE COURT :

The jury please.

MEMBERS OF THE JURY ARE PRESENT

Me JEAN LECOURES :

Mr. Henry was still in the box.

THE COURT :

Yes, yes, I know, I called for the jury.

The witness, YVES HENRY, doth depose under the same oath :

VALERY FABRIKANT :

Q. No, I think we effectively finished, if I recall correct that Mr. Henry has confirmed that victim, doctor Hogben didn't have anything in his hands when you saw him, correct?

-Q Je crois que le t,moin a confirm, que la victime, le docteur Hogben, ne tenait rien dans ses mains, c'est exact?

R. Au meilleur de ma connaissance, votre Honneur, c'est exact, je me souviens pas s'il avait quelque chose dans les mains.

-R To the best of my knowledge, that is correct, Your Honour, I don't recall that he had anything in his hands.

Q. And if he had something in his hands, you would have remembered that?

-Q Et s'il avait eu quelque chose dans ses mains, vous vous en seriez rappel,, c'est exact?

R. J'aurais pu oublier ce fait, votre Honneur.

-R I could have forgotten that fact, Your Honour.

Q. You could have forgotten?

-Q Vous auriez pu l'oublier?

R. Comme je l'ai mentionn, ce matin dans mon t,moignage, votre Honneur, j'ai regard, ... l'int,rieur du local partiellement...

-R As I've stated earlier on this morning, Your Honour, I looked inside the office partially.

Q. Partially, but you just stated that the door could be opened completely and the full body was visible.

-Q Vous avez mentionn, que la porte pouvait ^tre entrouverte complġtement et que le corps ,tait visible.

Q. Correct?

-Q C'est exact?

R. J'ai effectivement vu un corps ... l'int,rieur, c'est exact.

-R I did see a body inside, that is correct.

Q. Full body.

-Q Le corps en entier?

R. A ma connaissance, j'ai vu le corps au complet, c'est exact.

-R To my knowledge, I did see the full body, that is correct.

Q. You saw both hands?

-Q Vous avez vu les deux mains?

R. J'ai une id,e d'ensemble de la scġne, je crois avoir vu les deux bras le long du corps.

-R I have an overall idea of the scene, I believe I saw both arms along side the body.

Q. And you see nothing in those hands?

-Q Et vous n'avez rien vu dans les mains?

R. Je me souviens pas, votre Honneur.

-R I do not recall, Your Honour.

Q. You do not recall what?

-Q Vous ne vous rappelez pas de quoi?

R. Avoir vu quelque chose dans ses mains.

-R Having seen something in his hands.

Q. But you recall for sure that the hands were straight?

-Q Mais vous vous rappelez d,finitivement avoir vu les mains droites ou les bras droits?

R. C'est ce qui me semble, votre Honneur.

-R That's what it seems to me, Your Honour.

Q. Thank you.

-Q Merci.

THE COURT :

Q. Thank you very much.

-Q Merci beaucoup.

AND FURTHER DEPONENT SAITH NOT.

\*\*\*\*\*

Me JEAN LECOURE :

Sergeant d, tective H, bert.

\*\*\*\*\*

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE

(1993), on this

twenty-fourth (24th) day of March, PERSONALLY CAME AND

APPEARED :

NORMAND HBERT, Sergeant Detective, MUC police, born on the ninth (9th) day of July, nineteen hundred and forty-three (1943);

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

EXAMINED BY Me JEAN LECOURE :

Q. Sergeant Detective H, bert, are you a member of a specific squad for the MUC police?

A. I'm an investigator in Homicide squad.

Q. Were you given a specific assignment on August the twenty-fourth (24th), nineteen ninety-two (1992)?

A. I started working at fifteen thirty (15:30) and we had a call to go to Concordia University on 1455 de Maisonneuve West. So I arrived there at about sixteen hours (16:00). For about half an hour I was in the main entrance. We tried to find a place to work, so we went to the security office and we had a small office which was number 113 and we started directing witnesses and wounded people to different places. We had Mrs. Horwood that was wounded and who had already left to a hospital. We had several people in shock that were sent to different other hospitals and witnesses that were waiting for transport to go to either station 25 or to our office. The problem we had was that station 25 was full and we had to direct some other witnesses to our offices as well.

So I worked at the office 113 for about an hour and a half or so, and then as we had more and more information of what was going on on the ninth floor, and that the detainee had been transported to our offices, and then I went upstairs on the ninth floor to look at, for the first time, what was the scenes because I had different informations that weren't all the same.

So, I went upstairs. When I went upstairs, the people, the constables from Identification squad were already on the scene, they had a better idea of what happened and I just went around. I met Mr. Proulx to start with he was in 907-4 with a body, Mr. Douglass, and then I went to Mr. Ziogas' office to look around. And afterwards I went to Mr. Fabrikant's office where I couldn't enter because the door was just about one feet or so opened, I could see part of a body there but I didn't bother go right in at that time. And I had a look in 929-19, and that's Mr. Saber's office, and then the corridor of 929-90 where there were some shots fired, and after the 929-9 which was the office of Mr. Osman.

So I've been there about, to go around about fifteen (15), twenty (20) minutes. There was Mr. Gravel in 915-7, there was Mr. Desjardins who was starting to gather all the section, starting by 929, which is the whole top section that was on the scene here.

Q. Indicating P-2 or P-1?

A. Yes, and yet the whole sector 929, all the numbers starting by

929 that were involved in crime scenes.

Q. That is the section that we will produce in P-3, correct?

A. Yes. So I went back downstairs for about maybe half an hour, and as things were settling down upstairs, and the Identification people were gathering evidence, we found another office on the ninth floor so we would be closer to the crime scenes and have more information as what kind of proof that was available from the crime scenes.

Then at about eighteen twenty (18:20) or eighteen thirty (18:30), I went around again to talk to the, to each member on each crime scene, and they confirmed me that they had guns, they had casings, they had projectiles and they were in the process of recuperating.

Then, I made a few phone calls to the office and station 25 to try to have an idea of some version of the witnesses. By that time, I knew that we had a few eyewitnesses, and at the same time we were proceeding to verify with families, make sure that they had been informed, or had been given the right indication that we had at least at that time.

Around twenty-one thirty (21:30), the three constables from Identification squad were still there, were still working. I was ready to leave and went around the bodies where had left. I went around to see, have a better view of the scenes.

I spent about five, ten minutes on each place, just to have a look around, waiting for the next day or two days after with the photographs to have a better idea of what happened. But I didn't really need to inspect all the places very carefully at the time. The last place I did was the office of Mr. Fabrikant, and when I got there there was a briefcase on a table that was opened. I went inside and I saw that there were ammunitions in the briefcase.

So I picked up the briefcase and I took it with me. Usually I would have left the briefcase there for Mr. Desjardins to proceed with the other exhibits that he had, but there were some papers, documents in it and I wanted to later have a look at these documents. So I brought the briefcase with me to my office where I have a... une case...

Q. A locker.

A. ... a locker to protect the exhibits. So it stayed there and I verified the briefcase in the middle of the night, around one o'clock (1:00), o-fifty (00:50) or one o'clock (1:00), something like that, to see what kind of ammunitions and the documents that were there. So that's about on the crime scenes.

Q. I'm showing you four boxes of ammunition, first I'm showing you a first item in a plastic bag, can you describe it?

A. That's a box of 38 special blazer with initials CC1.

Q. Would you look inside?

A. Yes.

Q. From the inscriptions on the box, what is the capacity, the total capacity of this box?

A. Fifty (50). The elastic I put myself on it, because it has a tendency to open. There are five missing and there were five missing when I checked them. That was on the twenty-fifth (25th) of August, not the twenty-fourth (24th), at about zero zero fifty minutes (00:50).

Me JEAN LECOURS :

Okay, I would like to file this box, madame Desrosiers, as P...

THE CLERK :

33.

Me JEAN LECOIRS :

Q. ... 33. I am showing you another item in a plastic bag, could you take it out and describe it?

A. This is, the make is Federal, the 6.35 millimeters and it has capacity of twenty-five (25), missing eight cartridges. Seven, sorry, I'm not very good in maths.

THE COURT :

Q. Pardon? What did you say?

A. Seven.

Q. Seven were missing?

A. Missing.

Me JEAN LECOIRS :

Q. So I would like to file it as P-34. And then two other items in a plastic bag, could you open the bag and describe the content?

A. The make is Cellier and Belleau, it's 7.65 millimeters, missing sixteen (16)...

THE COURT :

Q. So you said before in the other boxes the capacity, how many are on... it's a block...

A. Twenty-five (25).

Q. ... a block of twenty-five (25), okay.

Me JEAN LECOIRS :

Q. With sixteen (16) missing, right?

A. Sixteen (16) missing.

Q. And was it as well as the two other exhibits inside the briefcase you see?

A. Yes.

Q. So I would like to file it as P-35.

A. I wish to add that boxes were not apart like that. That is after I had left it with... by Mr.... later on around the sixth (6th) of October, I met Mr. Desjardins and I asked him to do fingerprints on boxes. So that's why the ends are cut, they weren't cut originally.

Q. Okay. And finally, another item inside the plastic bag?

A. It's the same as the first, as the last one, it's Cellier and Belleau, 7.65 millimeters, its capacity of twenty-five (25) in the box and there is none missing. They are all there.

Me JEAN LECOIRS :

Okay, let's file it as P-36. He is your witness.

VALERY FABRIKANT :

I would like first to see those exhibits.

THE COURT :

Certainly. Would you like some time?

VALERY FABRIKANT :

Well, it will take just a couple of minutes.

THE COURT :

Fine.

CROSS-EXAMINED BY VALERY FABRIKANT :

And I don't think it's going to be necessary to...

Q. Okay, Mr. H, bert. You have been on the scene for quite a while on August twenty-four (24). Could you describe, you said you were sitting in the office and you probably were doing some work. This work which you described was on the... that you visited this place, this place, this place, I understand this is just minor part of the work you did at that day. Could you share with the Court what was the other part of your work, and what were the results of this work? Is question clear?

A. Yes, it's okay. Upon my arrival, the hallway... or about two

(200), three hundred (300) people there, and first consideration was to try to find out how many people were injured or dead.

Q. Yes.

A. Communication wasn't very accurate at that time, we found out later that there were eighteen (18) calls at 911, so with different information. So witnesses were sent to station 25. As policemen came back from station 25, we had part of information, what was happening. At the same time, we had a bit of information from 911 and we proceeded to get as much, as witnesses as possible and find enough personnel to interview these people. So station 25 at a moment was full, some of them were transferred to Homicide squad where we don't have so much place either but that took about, coordinating their witnesses took at least three quarters of an hour just try to figure out people that were in the hallway and try to send them somewhere, they could be seen as quick as possible. Written information and having at least part of the information back to us, so try to know where we're going because main concern at that moment is with the people themselves, either the wounded or people in shock, but we like to have witnesses, too.

Afterwards, we want to evaluate the proof that we can gather. So it took about three quarters of an hour just to clear what kind of information we could get from the hallway. Then, after the ninth floor was clear, I wanted to have a look at the crime scenes, but then again constables were there, they were starting or they had, they were... at least had a good idea of what was in the room of the crime scene, so I let them work. I don't have to stay with them, I don't have to tell them what to do, they know what they have to do. What I want to know is what kind of information, what kind of proof I can gather from each crime scene.

Then, that's why I went back downstairs.

Upon my first visit of the ninth floor, in the middle near the computer room which is about the center of all the crime scenes which is this big 920 here, there were still some people around and I went back downstairs. I had to wait until the ninth floor was completely closed off.

Q. So what time was your first visit?

A. That's seventeen forty (17:40).

Q. Okay.

A. There were some remaining people in different offices, coming from the other side, so they were with policemen, they took... right then and there, policemen took some versions, but these people were on the other part, so they weren't witnesses. They had heard people crying and running, that's it. But I couldn't work there, not at that time.

Q. So at seventeen forty (17:40) still, people still were running?

A. No, no, they weren't still, they weren't running, there was left a few persons in the center, not in the center but in the middle section of the ninth floor, in the hallway around there.

Q. Well, you couldn't evacuate people?

A. I beg your pardon?

Q. What was the problem, you couldn't evacuate, they refused to leave or what?

A. No, no, there were still some people who kept hiding, I think, for hours or so. So the policemen at the first part they evacuated is where were the crime scenes and this part, but

some people were on the extreme side. So I went back downstairs and came back to have a place to work around eighteen fifty (18:50), eighteen twenty (18:20) at that time.

Q. What did you do downstairs when you went again downstairs? What kind of work did you do then?

A. There were still people in the hallway and that were waiting to be interviewed or give their names to policemen or investigators. But all of these people that were still left at that time, weren't witnesses.

Q. Excuse me for interrupting you, I asked you what did you do and you are telling me there were some people waiting, and so on and so forth. This is not part of your work, people were waiting, I understand there were policemen who were taking their statement. So would you please stick to the question, my question, what you did, not what people was there or policemen were taking, I am asking precisely what you did.

A. Okay, I understand. They were waiting to talk to me to know if they were going somewhere else, that's why they were waiting and that's what I did. Afterwards...

Q. Hold on. You mean the people of just members of Concordia, not were waiting with the policemen to give their names and so on so forth, they waited especially for you personally to what?

A. They waited for an investigator to know if they would take them to either station 25 or to our offices.

Q. Well, with all the due respect, I wish to tell you that for example, Mr. Soucy here testified that he took three witnesses to station 25, he wasn't even consulting you, you didn't coordinate it in any way, he just took it and brought it to station 25 and had them interviewed. So effectively his testimony indicates that you did not participate in any way in kind of directing this witness here, this witness there. My understanding was from previous testimony that eah sergeant did his job independently of you, so what did you do?

A. I just told you.

Q. Well...

A. These remaining people that weren't eyewitnesses or weren't on the ninth floor, (inaudible) to policemen were there and the policemen would ask them to wait to see if these people would have been required.

Q. Okay, but this is not your work again.

A. It was my work then because I was there.

Q. So people were waiting to give their names to the policeman. That policeman did the work, he took the name of people, people were not witnesses, people were waiting. What you were doing? You are telling me what other people were doing, you are not telling me what you were doing. So you still didn't answer. What exactly you did all this time?

A. As I got back and met these policemen that gave me the versions of these people and I told them that we didn't need them.

Q. Well, isn't it obvious that these people are not witnesses, they didn't see anything, it's obvious that they are not necessary.

A. That's right.

Q. Well, it takes three seconds to decide. You are there for hours...

A. No.

Q. ... and so far you didn't describe any work you have done so far there.

A. I wasn't there for hours, the second... when I went back

downstairs, I went there for about half an hour a second time, and then...

Q. While you were there, describe what you did.

A. I went back to the first office I had, which was 113, and I was there to clear whatever paper or instrument that we had and try to find a place upstairs.

Q. This is not work.

A. That's work for me.

Q. This is trying to find place to work. Did you do any work from the moment of your arrival or all the time was spent to find a place to work?

A. It took half an hour to do what I've just described.

Q. Oh, all right.

A. And then I went back upstairs.

Q. But let's go back to the moment of your arrival. You still haven't heard anything of all real investigative work. You said you came, you tried to find place to work, you find room 113, I guess it was available very quickly to you, so you found a place to work, and what kind of work you did, you didn't describe anything. So could you please stick to the question and describe what work you did?

You found the place 113, what did you do there please?

A. I didn't do investigating in there, I did coordinating.

Q. Okay, what kind of coordinating? Again, I respectively submit that sergeants on the ninth floor did their work themselves, they testified here that they took witnesses themselves on their own without contacting you, brought them to their respective station and had them interviewed. So it doesn't look like you did any coordination at all, with all the due respect. So what did you do?

A. Because I wasn't there yet.

Q. No, you were there, what time did you arrive?

A. Not before sixteen hours (16:00).

Q. So you arrived...

A. And the witnesses that were transported, were transported before sixteen hours (16:00).

Q. Well, when did you arrive at Concordia?

A. Sixteen hours (16:00).

Q. At sixteen hours (16:00). So this was the time at approximately where... no, I think it was a little bit later that the witnesses are escorted from the ninth floor.

A. Maybe some of them.

Q. So the major witnesses were escorted at about that time, sixteen hours (16:00), and there was really not much left. So could you indicate which of those witnesses you directed somewhere, you personally?

A. I didn't direct witnesses, I directed officers.

Q. Okay. How... which officers did you direct and how you directed them? Please describe it.

A. I didn't direct any officers in particular, I had called to station 25 to know if they had personnel in their office to meet people. They already had about ten witnesses there. So I had to get in touch with the detective there to know if they had, if I sent them more witnesses, when are they going to see them? And they couldn't handle it anymore.

So I had to call to our office, with a subdivision of detective who do investigation on hold-up on banks, and I had to tell them to wait, that they would have to interview some witnesses that I will send to our office.

Q. Well, with all the due respect, it takes about five minutes for those two calls.

A. No, no, no.

Q. Okay, let me change then the question, because my impression is that... you please correct me if I'm wrong, that investigator when he comes to the scene of crime, first of all has to try to find out what happened there, in what consequence... this is effected, I think, what investigator should be concerned with. Is this correct impression?

A. Not at all.

Q. Not at all?

A. Not in this...

Q. So investigator is not interested in what really happened there.

A. I'm interested.

Q. Okay, what were you interested in then? If you were not interested in what happened and in what sequence, what were you interested in?

A. When I get there, there are two (200), three hundred (300) people...

Q. Again, you're repeating yourself.

A. Well...

Q. Three hundred (300) people there has nothing to do with what I'm asking you. There might be thousand (1,000) people there, I'm asking you what work did you do?

A. I'm telling you. I coordinated the witnesses to have their version, I tried to find information on wounded people, shock, people who were in shock, and then I went upstairs.

Q. So could you please specify? You try to find information on wounded people. It seems to me again, it is so easy, you know that Urgences Sant, took one victim to this hospital, another to that hospital and all what it was required. I don't know why it was this major concern of you, you are not a doctor, but still if that was your concern, you called the hospital and asked how such and such is doing, correct?

A. No, I don't call the hospitals.

Q. No, okay. So what exactly did you do to find the state of wounded?

A. I had to find somebody to do it and give me the information.

Q. So it looks like to find somebody to do it takes longer than actually doing it, because what was required just to call hospital and ask how such and such is doing, but instead you were looking to find someone to do it for you, correct, and it took much longer?

A. No, it didn't take longer.

Q. Okay, how long did it take? So each, on the staff you needed to find someone to do it for you. So you assigned officer X to find out what was the victim, number 1.

A. Right.

Q. You assigned officer number 2 to know what happened with such victim, you assigned another officer... how long did it take to assign all that?

A. That's why I needed the police to work, I needed two phones.

Q. Yes.

A. One to get information in and one that I can use to transmit information, and with that many people, a lot of them still in panic or shock, we don't do that in minutes.

Q. Well you were not in panic, you were not in shock?

A. No.

Q. So the people were shocked, it has nothing to do with your work. So what did you manage to do until, let us say, from sixteen (16:00) to eighteen hours (18:00), in two hours, was it... at that time it was clear to you what happened in what

sequence, who were the victims, all this stuff, was it clear to you by that time?

A. What was clear?

Q. Well all these questions, what happened, in what sequence?

A. I don't really get all the parts of your questions.

Q. Okay. Well, what happened on the ninth floor? Did you have an idea as to what happened there?

A. I had a vague idea...

Q. Okay.

A. ... of what happened at around... when I went upstairs at eighteen twenty (18:20) or so, I had a vague idea. I didn't know where it started, where it ended, or what happened by sequence, I had a good idea of the proof that I needed at that time, and I had more time to think about evidence.

Q. Well, you didn't know by that time that there were a number of people who saw me shooting, so actually you have so many of eyewitnesses and such a tremendous evidence that this shouldn't be kind of problem to you, correct?

A. At eighteen twenty (18:20) I knew that there were a few eyewitnesses and I knew that I had guns, I had casings, I had projectiles, I had dead people with projectiles that most likely would be recuperated and I knew that I had some hostage taking with admissions in front of these witnesses. So at eighteen thirty (18:30), that I knew.

Q. Uh, huh. Okay. Did you know at least... okay, let me make it simpler for you. At the end of the day, you said you worked as late as one a.m. (1:00).

A. I worked later than this.

Q. Yes, well even that. So at the end of your work... until what time did you work?

A. About two thirty (2:30), something like that.

Q. Two thirty (2:30)?

A. Yes.

Q. Did you have at least original statements of the victims by that time in front of you?

A. Yes, I had some.

Q. Had you read them?

A. No.

Q. Why not?

A. I didn't have time.

Q. So what did you do? You said that...

A. I checked... at o-fifty (00:50) I checked the bullets.

Q. Why checking bullets?

A. I wanted to see what was in the briefcase.

Q. Why was it more important than reading reports of the eyewitnesses? Those bullets wouldn't run away, and to check those bullets it took exactly the same amount of time as it was here, about three minutes maybe. How long time do you need to open a case and to see how bullets are inside, and if you wish to count them, well you can count them, again to count until fifty (50) it takes about one minute, even if you are not very good at counting, why didn't you read the reports of witnesses?

A. I didn't have to read them because...

Q. You didn't have to read them.

A. ... the... the investigator in our office have made a run down the r,sum, of what people have said.

Q. Okay, so you have the r,sum, of the testimony or eyewitnesses, correct?

A. Partly, yes.

Q. Well, how partly?

A. A few of them.

Q. Okay. Did you read this at least?

A. I read a part but they told me just that you had... for example, Peter Long, Otto Schwelb, and... I try to remember the other one, but it was given to me by Mr... Sergeant Detective Boisvert who works in the Hold-up squad. So he gave me a few informations regarding these witnesses.

Q. But you didn't bother to read it yourself?

A. I didn't have time to do that.

Q. But you're not describing what you did. You are saying that you didn't have time to read what I think is the most important part is eyewitness testimony and this, you didn't have time to read. And what I'm asking you, what did you do? All what you're saying is there were number of people, all of them were (inaudible) and this is not the answer to my question.

A. That's the only answer I can give you.

Q. All right. So... okay, let's put it differently. You entered scenes of crime, you entered room 907, correct, one of those?

A. Yes.

Q. All right. Did you see blood on the handle?

A. When I got there, the door was open.

Q. Well, what do you mean open? Whatever it is open, it never opens completely, it opens like this, you can enter it unless you were...

A. I know the place.

Q. Uh?

A. I know the place, but it was open when I arrived.

Q. Yes, this is how it is open, you can answer it, right?

A. Yes, it was open.

Q. Yes, open like this?

A. Yes.

Q. But at the same time, when you come, approach, there is no way you could miss blood right here, if there was blood at the time when you arrived. Was there any blood on this handle?

A. I don't know, I didn't check that.

Q. No.

A. I went inside to see Mr... Proulx.

Q. I understand but still you are policeman and you cannot possibly miss such visible... it's so visible, it's the most visible part. I would like jury to look at P-1 of the booklet of Mr. Proulx.

THE COURT :

P-24, photo 1.

VALERY FABRIKANT :

Q. And have in mind that you approached 907 directly, like this, you approached it directly.

A. Yes.

Q. So for a policeman, experienced investigator, is it possible that there blood stains there and you just didn't notice it?

A. Yes.

Q. It is possible?

A. It is.

Q. But you didn't notice it?

A. I didn't want to notice it, I wanted to talk to Mr. Proulx.

Q. Well...

A. I knew I'm going to have pictures later on.

Q. What do you mean, "we didn't want to know this". When you just go, your eyes see something and you don't choose to see something or not to see something, you just see. So was... you didn't notice any blood stains?

A. No.

Q. All right. So you entered 907 and you saw the victim near 907-4.

A. Yes.

Q. Did you see the door full of blood? Without looking at the picture, just for your recollection?

A. I didn't pay attention to that.

Q. Would you please not look at the pictures?

A. I didn't pay attention to blood or no blood, that wasn't my concern.

Q. Well, you don't remember, was there blood on the door or there was no blood on the door?

A. I didn't look at that.

Q. Did you see the victim?

A. I saw Mr. Mathew Douglass lying down...

Q. You saw him?

A. I saw...

Q. Yes.

A. ... and I was talking to Mr. Proulx, I wanted...

Q. You saw the victim, did you?

A. I saw him lying there.

Q. Yes, so you couldn't miss the door looking at the victim, there is no way you could miss it. The door is right there, you cannot miss the door if you look at the victim, but you don't recall. Was there any blood or there was no blood? You just don't recall it, correct?

A. That's it, because I'd like to answer.

Q. Well I understand.

A. Okay.

Q. Could it be that there was no blood on the door at that time?

A. I won't answer to that question because that's not the explanation.

Q. I just don't know. Yes, you just don't know.

A. The purpose of my visit was to see Mr. Proulx and just to see how...

Q. But you saw...

A. ... things were placed in general.

Q. One second. Mr. Proulx was not there yet, you came, you said, at fifteen forty (15:40), Mr. Proulx arrived at nineteen hours (19:00) there, he just wasn't there at that time.

A. No.

Q. What no?

A. I went there at seventeen forty (17:40) and Mr. Proulx was there.

Q. Well, Mr. Proulx testified, if I recall correct, that he arrived there at... I have it somewhere but, okay, we'll get to it. You are sure it was seventeen forty (17:40)?

A. The first time I went upstairs?

Q. Yes, and Mr. Proulx was already there.

A. He was there when I went there and I went up two times.

Q. And it was seventeen forty (17:40). Okay, we'll verify what Mr. Proulx said about the time of his arrival there. So, but you saw the victim?

A. Yes.

Q. Did he have eye glasses on him?

A. I couldn't tell.

Q. You couldn't tell. But did you look at the victim at all?

A. I just saw the man lying down there.

Q. Okay. Was he face up or face down?

A. I couldn't tell you that.

Q. It means that you didn't see, because if you look at the

victim, at least one thing, is it face up or face down, I think...

- A. He's face up on the picture, I won't tell you that I remember what I saw at seventeen forty (17:40) when I don't.
- Q. Well, you shouldn't be working as an investigator if you cannot remember whether the victim you saw was face up or face down.
- A. I wasn't there to inspect the crime scene.
- Q. Well, why wouldn't you? You are investigator, you should inspect crime scene, this is your job. And you kind of come in there, my impression is that you are coming there and trying not to look what happened, something like this, not to see here and not to see there, isn't it strange?
- A. That's the end of your question?
- Q. Well, yes, isn't it strange for investigator to come and try not really to see the scene of crime?
- A. It's not strange in this particular case.
- Q. Okay. Could there be an explanation of your such remarkably weak memory is that on the one hand you do not want to commit a perjury and on the other hand you know very well that there was no blood on the door when you arrived there, probably it appeared later on, could that be the explanation? Because this is not the explanation. All right.
- A. I didn't answer yet.
- Q. Okay, please answer.
- A. There is no such thing as a hypothetical statement that you made. It could have been done a lot before. Take Mr. Douglass, as it is now, this means with the shirt open that Urgences Sant, went there.
- Q. Well, it's difficult...
- A. Lots of people went through that office...
- Q. Yes.
- A. ... we're talking about the 907 which is a registration center, 907 here is where the place students go, that week was inscription week for the courses.
- Q. What it has to do with my question? After shooting nobody came for inscription, believe me, there was not a single person coming for inscription that day.
- THE COURT :
- Would you let the witness finish his answer?
- VALERY FABRIKANT :
- Sorry?
- THE COURT :
- Would you let the witness finish his answer, he is professing his answer with a number of reasons and...
- VALERY FABRIKANT :
- Well, he is just avoiding answering, he's talking about something else. He's telling me that this was registration center, so what, there was nobody there by that time.
- THE COURT :
- Q. Mr. H,bert, would you like to complete your answer please?
- A. If I can.
- Q. Yes, you go ahead.
- A. If you... you are familiar with the place, I guess.
- VALERY FABRIKANT :
- Q. Oh yes.
- A. You have a wide corridor here at the end, going through 907, right?
- Q. Yes.
- A. And the main door is near the corridor 999-10, and you got two

other doors there. In this office, you have at that time three or four, three women working there, you have a small adjacent office here, normal personnel, just in this section is about eight or nine persons. Inscripton week, here is a counter just in front, you have about ten people there too. So when shooting arise, as I gathered later on by the version, at least ten or fifteen (15) people passed by there, civilian people passed and on both ways. I think this scene could have been tampered easily.

And the shirt top was taking off by Urgences Sant,.

Q. Hold it, this is... you're finished?

A. They always do that.

Q. You're finished with the answer?

A. Yes.

Q. This is an interesting answer. According to the testimony, what we have, the 907 room was evacuated from the students and almost everybody else before I came there. So there was no ten people passing by. At least this is the testimony of Mr. Soucy who was there first. The room was empty, he found just one person in 907 who indicated to him, here is the victim and that was it, there was nobody else there. He went through the corridor, there were some people there and he evacuated them. So all these people were evacuated and policemen, they testified yesterday, entered 907 and secured it. So if someone tampered with the evidence, it was the police.

Okay, let me put it differently then. Are you suggesting that someone or members of Concordia were passing past the victim and took something kind of red paint and splashed on the door? Is this what you're implying?

A. I'm not talking about the blood on the door, I'm talking about the victim, I'm talking about whatever position of Mr. Douglass could have been when shooting happened.

Q. Okay.

A. Could of changed.

Q. So they changed the position of the body, that's what you're implying? Members of Concordia could do that?

A. Could have.

Q. Absolutely. This I would never believe that they could do some tampering of this kind, especially take into consideration the testimony that police was there. So if anyone even tried to do that, police would have noticed that.

THE COURT :

Are you putting questions or are you...

VALERY FABRIKANT :

Sorry, yes, it looks like I got into a discussion.

THE COURT :

Yes.

VALERY FABRIKANT :

I'm sorry, yes, I...

THE COURT :

So I think we will stop here for ten minutes.

VALERY FABRIKANT :

All right.

SUSPENSION

REPRISE

The witness, NORMAND HBERT, doth depose under the same oath

:

VALERY FABRIKANT :

May I continue?

THE COURT :

Certainly.

VALERY FABRIKANT :

- Q. You mentioned that you put much attention to the bullets in my briefcase, you even took it with yourself and I expect that you handled it very carefully, you didn't touch with hands, did you?
- A. With gloves.
- Q. Oh, great. And you send it for fingerprinting, correct?
- A. Yes.
- Q. Okay. Was the fingerprinting positive?
- A. No.
- Q. What, there was no fingerprints of mine there?
- A. No identifiable prints.
- Q. Okay, but still you send it for fingerprinting and I think this is very commendable of you to do. Now, you see the blood stain on the handle of 907, did you analyze this for fingerprints? Because blood stain usually leaves very good fingerprints, correct?
- A. Sometimes.
- Q. Well, did you try to analyze it on the handle of 907?
- A. No.
- Q. No. Why not?
- A. Because I didn't.
- Q. Well this is not the answer. Why not? You said you didn't notice it in the first place, so you realize that in order to make picture of it, someone has to notice it first, correct?
- A. Mr. Proulx did.
- Q. Okay. So Mr. Proulx did notice it, how come you didn't notice when you entered? Why, Mr. Proulx is much more attentive than you? Could you explain how it happened that Mr. Proulx found it, you didn't?
- A. Because that was his job.
- Q. That was his job, all right. So he found the blood stains but isn't it normal and kind of imperative, especially on the handle of the door, to check for fingerprints?
- A. No.
- Q. No. Why not?
- A. It's not imperative, as you say.
- Q. Well, why isn't it important who has left the blood marks on the handle?
- A. Mr. Proulx checked it, and if you're talking about prints, he knows what he's doing.
- Q. Well, I have no doubt that he knows what he's doing, but I think it is not his job to send something for fingerprinting, it's your job, isn't it?
- A. That's his job.
- Q. It is his job. So he has to make the decision whether to ask for fingerprints or not, correct?
- A. That's his job to decide if he is going to try to... not take but... pr,lever... to lift a sample of fingerprints.
- Q. Uh, huh. And he didn't do it?
- A. Obviously not.
- Q. Okay. Now, how would you describe from the professional point of view, you have twenty (20) feet from, even more than twenty (20) feet from the victim of blood stains of origin which cannot possibly be explained, because victim never touched there of... Isn't it a stain which has to be investigated where this blood comes from, whose blood it is and for possible fingerprinting? Maybe there was some accomplice to the crime. It never entered your mind?
- A. That's your question?
- Q. Yes. So total is question, you saw bloody print on the handle

which not reachable by the victim in no way. Somebody else left it, who was this somebody else? What blood is there? Why wasn't it investigated?

A. Mr. Proulx did what he had to do on his part and he's quite aware of relationship between blood stain at one place or another place. And he did what he had to do.

Q. Well, this is not the answer.

A. I am not the one who is going to tell him what to do.

Q. Well, this is not the answer. We are here just thinking people and the point of view or just common sense and from your professional point of view, do you find it a great omission not to investigate the blood stain which has no reasonable explanation of appearing? Should it be investigated or not?

A. Not necessarily.

Q. Not necessarily.

A. No.

Q. Well, explain why not necessarily?

A. It depends on the circumstances.

Q. Okay, why was it not important in the circumstances, if you admitted yourself that still the whole day picture was absolutely unclear to you? So you are supposed to get as much information as possible including this blood stain especially should be each analyzed, shouldn't it?

A. This particular place at least fifteen (15) or twenty (20) people including civilians before police arrival and Urgences Sant,, that's why I mentioned before, that blood could have been taken or dealt with by some other people. Maybe Urgences Sant, as they tried to manipulate Mr. Douglass could have blood on their shirt, on their gloves. All the crime scenes that we do, never we can explain everything on the crime scene.

Q. But we should try, shouldn't we?

You didn't even try, this is the point.

A. You cannot explain things when you weren't there. You try to figure out but you never can figure out everything on the crime scene.

Q. You are missing the point. You didn't try.

A. Mr. Proulx tried.

Q. No, he didn't, he didn't analyze it at all and this is my question, why?

A. He is not analyzing, he is lifting prints, it's not the same thing.

Q. Well, he didn't lift this print.

A. Because in his mind he didn't have to do it, probably.

Q. May I respectfully submit that the blood stain, suppose someone touched the victims, had his hands bloody and after that exited and left his print on the door, but I must respectfully submit that the blood stain is on that entrance handle not on the exiting handle. Nobody can do this, have his hand bloody then go on the other side of the door to open it? Do you agree with me?

A. Not at all...

Q. No. Okay, explain then how someone get his hand bloody, I don't know why, but let us for the sake of argument assume that someone did, then he has first to exit 907, therefore the blood he handled would be on internal handle, not on the external, correct?

A. This is hypothetical.

Q. Oh yes, it is, because when you exit, you take the exiting handle, you cannot take entrance handle, can you?

A. Who says people were exiting or not coming in?  
Q. Well...  
A. Do you know?  
THE COURT :  
No, this is not any longer a cross-examination, this is simply an exchange of arguments on one side and the other.  
VALERY FABRIKANT :  
Well I'm asking questions.  
THE COURT :  
Yes, but you will have to ask a valid question if you don't wish me to disallow it. Ask a valid question.  
VALERY FABRIKANT :  
Well, isn't it a valid question to ask that his hypothesis that someone...  
THE COURT :  
We're not interested in hypotheses, we're interested in facts.

VALERY FABRIKANT :  
Well...  
THE COURT :  
He wasn't qualified as an expert as far as I know.  
VALERY FABRIKANT :

Q. All right, anyway, could you explain to me then such thing, when your policeman has found a blood stain on my shirt, they took my shirt away for testing, though there seems to be no need for that, and left me without shirt at all, but when you see blood on the handle, you find it unnecessary to investigate whose blood it is, who left the stain. Explain the difference between those two, taking into consideration that I never, never denied what I did. So why was it necessary to take my shirt way for blood testing?  
A. It wasn't tested, it was taken away...  
Q. So they just took my shirt away so that I would go without shirt around, that's what they did?  
A. The officers who took your shirt away at that moment thought that it would need testing, but I didn't send it for testing.  
Q. Well, because it's absolutely absurd to test my shirt, but it is not absurd at all to test the blood stain which has no reasonable explanation for its appearance.  
A. I didn't...  
Q. Anyway, you find it is all right that they didn't do any testing, fine, finish with that. Now, how is it possible for you to look at the victim and not to notice the door which looks like this? Would you please look at the picture? Now, is it possible to look at the victim and not to notice the door? P-12.  
A. I didn't go that far.  
Q. What do you mean you didn't go that...  
A. I stayed on the other side of the office, I didn't go around. Well Mr. Douglass...  
Q. But if you enter 907, this door is visible from the entrance. You couldn't possibly go right away to the opposite side. If you look at 907, there is no way you can miss the door.  
A. I came in by the main entrance, 907.  
Q. Yes. Yes, and 907-4 when you enter it, it is to your right, so you couldn't be on the left side right away, you enter 907 and you are on the left of it. So to become on the right, you have to pass all this and there is no way you could miss it, correct?  
A. That's where I was about, when I was...  
Q. What picture you are referring to?

A. P-7.  
THE COURT :  
Okay, now would you just turn that and show it to the jury,  
Mr. H, bert, so that everybody can see what you mean?

A. That's the end of the counter, to the main entrance.  
VALERY FABRIKANT :

Q. Well, to get to this point, you have to turn right to get to  
this point. And even from here, it is very well visible, even  
from here it is visible. But when you enter 907 you are to  
the left of it, correct? When you enter 907, you are to the  
left of it?

A. When you enter 907...

Q. Yes.

A. ... you come just on front, you have a few feet and you have  
the counter...

Q. Yes, and you are to the left of it?

A. ... you have to turn right to go...

Q. So you have to turn right first, so if you just enter you see  
the door, there is no way you can miss it, correct?

A. No.

Q. No. Well look at the map here.

A. I know, I know the place, I went there a few times.

Q. Here, this is the door, I want the jury to look at...

THE COURT :

Q. You are referring to what?

A. Well, I don't know how you call this stuff. This 907 only.  
Me JEAN LECOURES :

P-23.  
THE COURT :  
P-23?  
Me JEAN LECOURES :  
I think so.  
VALERY FABRIKANT :

Q. Well, the entrance to 907 is at the left extreme, if you enter  
907 it is at the left extreme of the room, at extreme left.  
907-4 is to the right, almost at the right edge, therefore  
when you enter the room you immediately see the door, even if  
it is completely open, you see it from here like this, so  
there is no way you can miss it. It goes across. But you  
managed to miss it, correct? So that we can proceed. You  
didn't see the door, right?

A. You are finished?

Q. Yes.

A. Okay. When I came in, I noticed that there was a door, I'm  
not looking for blood, I'm looking to talk to Mr. Proulx,  
period.

Q. Okay, you didn't see the blood, fine.

A. I didn't look for blood.

Q. You didn't look for blood. You come into the crime scene, you  
are not looking for blood, interesting point. Anyway, it's  
all right. So you come to see Mr. Proulx, what did you tell  
him?

A. I asked him... which moment are you referring?

Q. Well, you came there two times to 907?

A. Yes.

Q. Okay, so let us refer to both. You came first time, you  
first time came to see Mr. Proulx, correct?

A. Right.

Q. Okay, what did you tell him?

A. First time I just wanted to be familiar with the general  
disposition of the place.

Q. Uh, huh.

A. And verify if victim, Mr. Douglass, was there, and if Mr. Proulx had started his work or was about to start his work.

Q. Uh, huh. But you didn't look at the victim, did you?

A. I saw from about this point the victim there and I went out.

Q. You never approached?

A. No.

Q. No. You said you want to look disposition, would it not be reasonable just to go through this way, this way, no? It was not necessary? You stayed at the entrance?

A. I didn't want to look at his position...

Q. You said you wanted to look at the disposition.

A. Disposition of the inside of the office.

Q. Yes.

A. Not the victim.

Q. Okay, disposition of the office, therefore you should maybe look into other rooms, I don't know, you didn't find it necessary, did you?

A. Not at that time.

Q. Not at that time.

A. Mr. Proulx...

Q. So you're just asking whether he is ready to do his job, that's all?

A. Yes.

Q. And you exited. What did you do when you came second time?

A. The second time, he had started picking up projectiles and exhibits, and I asked him briefly what he had as far as exhibits.

Q. What time was it the next time?

A. Around eighteen twenty (18:20).

Q. Eighteen twenty (18:20), okay. So what did he tell you about results of his work?

A. He said that he had casings, he had projectiles, and that the victim was wounded by projectiles.

Q. Uh, huh.

A. And I left. I left him finish his work.

Q. And again you just stayed at the door, you never approached, you never looked into anything?

A. No, I went to the same place here, I talked to him for a few minutes and I went back.

Q. Okay. So you don't seem to be very investigating investigator, all right. Were there other policemen at 907 the first time you arrived, except Mr. Proulx?

A. There was one policeman at the door.

Q. Uh, huh.

A. Main entrance. There are a few chairs, I think, on the right hand side of the door, the entrance, on the outside of the office. And they were around there, he was around there.

Q. So inside 907 was just one person?

A. Mr. Proulx.

Q. That's all?

A. Yes.

Q. Okay. But before that, do you know how many policemen were inside, who was there?

A. I couldn't tell you.

Q. You don't know that. Okay. You said that you went downstairs to meet with other detectives you mentioned?

A. No.

Q. The first time.

A. I went downstairs to finish coordinating the witnesses, or possible witnesses with the officers that were downstairs and

mainly in the option to go back, to come back here and try to have some more informations on exhibit and evidence that would have been picked up by Mr. Proulx, Mr. Gravel or Mr. Desjardins.

- Q. Okay, how many times did you enter my office?
- A. Once.
- Q. Once, when was that?
- A. At the last time when I left, at nine thirty (9:30)... twenty-one thirty (21:30).
- Q. Okay, but you... did you enter 929 at all during the day?
- A. 929, the general area?
- Q. Yes.
- A. Yes, I went there two times.
- Q. A few times?
- A. Two times.
- Q. Two times. The first time was when?
- A. At seventeen forty (17:40) or fifty (17:50).
- Q. So at the same time you visited 907...
- A. Yes.
- Q. ... you made the circle?
- A. Yes.
- Q. Okay. Who did you see then there?
- A. Mr. Henry was there.
- Q. Okay.
- A. Mr. Desjardins was there.
- Q. Uh, huh.
- A. And there was a policeman at the main entrance. You've got a door somewhere around here and there was a policeman there.
- Q. Okay. But you didn't enter any deeper than just main entrance to 929?
- A. For the first time?
- Q. Yes.
- A. I went through 929, I went to your office which is...
- Q. Okay.
- A. ... 929-24.
- Q. Yes.
- A. And the door was about a feet or so open.
- Q. Yes.
- A. And Mr. Desjardins was doing his work, so I didn't go in.
- Q. Did you see anything through the opening?
- A. Yes, we could see a body there.
- Q. Okay. What did you see? Describe it.
- A. I mainly saw just the upper part of his body.
- Q. Okay. Did you see hands?
- A. Not completely.
- Q. Okay.
- A. And I didn't look, I didn't see, he could have got the letter or not, I didn't check.
- Q. It's remarkable. You didn't see the letter?
- A. Well, I didn't check for that but...
- Q. Maybe just it wasn't there yet.
- A. That is your...
- Q. Well, all right. First time when you saw, how partially... did you see the right hand or did you see the left hand or did you see both hands?
- A. What I saw is the upper part and I can't tell you if... in whatever position it was, so...
- Q. Okay, upper part usually contains hands, arms, upper part includes hands, arms, did you see arms? What part of the upper part was visible, the total upper part, the part of the upper part? What did you see?

A. I'd say about half way, from maybe shoulder high or something like that.

Q. Complete body but that much, that's what you're saying?

Me JEAN LECOURE :  
Elbow.

A. Elbow, okay, maybe from elbow up.

VALERY FABRIKANT :

Q. On both sides?

A. Well, I didn't pay attention to that, but the body was close to the door and Mr. Desjardins had work to do, so I didn't go in the office.

Q. Okay. So what did you see there, you do not recall any letter in hand of the victim, you do not recall this, no?

A. No.

Q. All right.

A. To say that I saw or not saw...

Q. All right.

A. ... it didn't draw my attention.

Q. When you entered second time, you entered completely into the office, right?

A. Yes, but the body wasn't there anymore.

Q. Oh, the body was not there anymore.

A. That's twenty-one thirty (21:30).

Q. That is nice, all right. So you don't seem to have any evidence at all, all right. Now, let us see how probable it is. Take a look at picture number 8 of Mr. Desjardins's booklet.

THE COURT :  
P-8, P-8, number 8, ladies and gentlemen.

VALERY FABRIKANT :

Q. You've got it?

A. Yes.

Q. All right. Now, if you look at this picture, it looks like either the body was moved or your recollection is completely wrong, because what we see on the picture is not body like this but rather body like this, do you agree with me?

A. Yes.

Q. That is totally not what you described.

A. That's perfectly right.

Q. And besides that, letter is so conspicuous that one cannot possibly miss it, unless he is totally... well, I don't want to say blind but just doesn't want to see it. Do you agree with me that the way it is on the picture, there is no way you can miss it, you agree with me?

A. I told you, it didn't draw my attention, I didn't look for that, I just turned around and went...

Q. Well, but the whole body is not the way you describe it, it's not like this, it's like this. Is there a difference when you see body like this or you see body like this? It's totally perpendicular. How could you possibly mix up those two positions?

A. I'm not mixing it up, I'm telling you what I recall.

Q. Okay, so it means that the body was moved from the moment you saw it first time until the picture is made, correct? Because this is not the way you saw the body, right?

A. I describe what I recall...

Q. All right, so the picture is false then.

A. ... it does not mean... I won't answer that.

Q. Well you have to answer that.

A. That's a statement.

Q. Okay, well... Okay, I'll rephrase the question, I'll rephrase

the question.

THE COURT :

It calls for a conclusion on the part of the witness.

Questions?

VALERY FABRIKANT :

Q. Yes. The picture's totally contradiction to your recollection, right?

A. Correct.

Q. Good.

VALERY FABRIKANT :

I will have some more but it looks like we have to make a break now, yes?

THE COURT :

Yes.

VALERY FABRIKANT :

Okay, so the rest... will continue tomorrow.

THE COURT :

Just a second. So we will adjourn at this point until nine thirty (9:30) tomorrow morning. Thank you very much.

AND FURTHER DEPONENT SAITH NOT.

\*\*\*\*\*

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>

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 25 MARS 1993

FICHER: 2629

TABLE DES MATIERES

PAGE

REPRESENTATIONS 3

WITHOUT JURY 5

WITNESS: NORMAND HEBERT

Cross-examined by Mr. Fabrikant 12

WITNESS: KEITH HOGBEN

Examined by Me Lecours 50

Cross-examined by Mr. Fabrikant 52

WITNESS: VICTORIA PERCIVAL HILTON

Examined by Me Lecours 54

WITNESS: VASILIOS AGELIDIS

Examined by Me Lecours 57

WITNESS: ROY DOUGLASS

Examined by Me Lecours 59

WITNESS: ANDR GAUTHIER

Examined by Me Lecours 62

WITHOUT JURY 70

THE JUDGE AND JURY ARE PRESENT IN THE COURTROOM  
 IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993),  
 this twenty-fifth (25th) day of the month of March,  
 personally came and appeared:

NORMAND HEBERT, born on July ninth (9th), nineteen  
 hundred and forty-three (1943), Sergeant-Detective at  
 the Montreal Urban Community;

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

VALERY FABRIKANT :

Well first of all I would like to inform this Court that today I was chained to one psychotic person who assaulted me in the bus, I asked the guards to de-chain me, they ignored it. At the arrival to here, Palais de justice, he assaulted me once again, he slammed me against the wall, in presence of guards, they did not intervene in any way. When we entered Palais de justice he smiled very friendly at the guards, and guards very understandingly smiled at him. So it was obvious either it is an agent who pretends to be psychotic, but there is no doubt that the incident is staged and the purpose is intimidation, and they definitely chose the wrong person for that. But I would like this Court to address this question first, because this is definitely not the first time I'm being chained to psychotic, but it is first time I'm being assaulted. Is it of any concern to you, Mr. Martin?

THE COURT :

What you tell me certainly is of concern to me.

VALERY FABRIKANT :

Okay. So are we going to deal with it?

THE COURT :

I would presume that you have made a report on what happened to you?

VALERY FABRIKANT :

No, I didn't make a report because it was intentionally done, and it has to be done on the outside of the system, not on the inside. Inside system definitely not only doesn't control itself but behave in a hooligan way.

THE COURT :

I seem to have heard that word before.

VALERY FABRIKANT :

And this is definitely response to my previous complaints, it is just a higher complaining, so we'll get back to you. And this guy who came there, he was put aside and given a very, very appreciative smile by the guards, and he smiled back at them. And I am pretty sure that he is not even a detainee, and even if he is, he was definitely programmed to do what he did. And this seems to be too low, or maybe it is not too low for this Court, but...

THE COURT :

What did you say?

VALERY FABRIKANT :

Well, I said that I do not believe that they could do such a thing...

THE COURT :

Excuse me. I wonder, ladies and gentlemen, if you would mind...

THE JURY LEAVES THE COURTROOM

WITHOUT JURY

VALERY FABRIKANT :

You want me to repeat what I said?

THE COURT :

Yes, would you please repeat what you said?

VALERY FABRIKANT :

I have no doubt that they would never dare do such a thing if they were not assured that this Court would not

intervene or do any reprimand to them, they could not possibly have done it, because this was done intentionally. They knew either the person psychotic, or he pretends to be psychotic, and this outrageous behavior, nobody would just dare to do that knowing that Judge, unbiased Judge, would definitely intervene and punish such behavior. And I'm pretty sure you are not going to do that, and this is what I think is the reason why they dared to do what they did. Now, I'd like to hear your objections.

THE COURT :

You would like to hear my objections? No, I have noted what you said, what you chose not to repeat, when I thought you were about to repeat it...

VALERY FABRIKANT :

Well, I can repeat it. Whatever phrase you want me to repeat, I'm prepared to repeat.

THE COURT :

Uh, huh.

VALERY FABRIKANT :

Just name the phrase and I'm prepared to repeat it.

THE COURT :

Oh, I have it in my book.

VALERY FABRIKANT :

Well I...

THE COURT :

First of all...

VALERY FABRIKANT :

...I do not regret a single word of what I said.

THE COURT :

I am not in charge of investigations. I am not a police investigator. I am not part of the police apparatus. But in any sense, you seem incapable of realizing that.

VALERY FABRIKANT :

Well, when you are...

THE COURT :

I'm not going to argue with you, I happen to be talking at the moment, now would you kindly listen to me, I listened to you.

VALERY FABRIKANT :

All right.

THE COURT :

It was detailed to you the procedure which is followed in Parthenais and in the bloc cellulaire here in the case of assaults. It's not the first time it's happened, it's happened before. The procedure that's followed is that you make a report and the matter will be investigated by the S-ret, du Qu, bec. I am not going to put on the mask of an enqu<sup>^</sup>teur and go down there and carry out something that I'm neither equipped to carry out, nor authorized to carry out, nor empowered to carry out. That is not my function. I understand that you know perfectly well that that is not my function, all you're attempting to do is dramatize this whole thing to the nth degree, to wring from it whatever publicity and whatever benefit you can. That's what you're trying to do. It raises a question that has concerned me for some time, and that question, quite frankly, is whether you, at this particular point in time, are capable of undergoing this trial. That's what it raises. Now I

find myself indirectly, by the back door, virtually accused of having orchestrated this sort of incident in order to make life more difficult for you. Another phase of a series of accusations that you have chosen to launch at me since the beginning of this trial. You may be a very clever person, I don't know, I'm not a doctor, but sooner or later I'm of view, and it's seems to me it's going to be sooner, that steps are going to have to be taken to find out. For the minute, I think we'll continue with the cross-examination of Mr. H,bert.

VALERY FABRIKANT :

Well, I would like to say to this that you were outraged of minor things, if you remember yesterday those documents, and we were prepared to get director of Parthenais here and question him and settle the matter. Now, question of intimidation of accused to make him off balance, to make him intimidated, definitely impedes his ability to perform normal intellectual duties, there is not doubt about it. And you are saying it's none of your business, you can get director or Parthenais here and question him, how did it happen that I was chained to a very well known psychotic person, or impersonator of a psychotic person? And despite my repeated requests to the guards who saw he abused me on the way to the bus, this guard saw it, and I asked him: "Would you please unchain me, it is dangerous" I told him, he ignored it. From the bus we were going, again it was in view of the guards the abuse, they saw it all, several of them were there, and I can pinpoint who was there, and they didn't intervene. And again I asked them: "Would you please unchain me, it is dangerous", they didn't react.

THE COURT :

Then I would suggest that you make a complaint concerning the incident.

VALERY FABRIKANT :

There is no point to make a complaint, I have been assaulted three times here, four times in Parthenais by guards, directly. I filed a complaint on all three levels, it didn't do any good, there was no reaction whatsoever. And the fact that this time I have been chained and assaulted, really assaulted, you see, this is blood, this is not paint. And you, again, say that this is none of your business to take... this is the time to get director of Parthenais here and ask him how this happened.

THE COURT :

It's certainly not for me to investigate.

VALERY FABRIKANT :

Well...

THE COURT :

It's certainly not for me to investigate.

VALERY FABRIKANT :

Well then I believe I was right saying that they did it because they were sure nothing bad will happen to them, maybe opposite, they will get praised.

THE COURT :

Mr. Fabrikant, you are perfectly free, you have told me that you have the identities of the guards in question, in your mind you know who they were, you are perfectly free to lodge a complaint.

VALERY FABRIKANT :

Well, you didn't hear what I said. It is not first assault, I lodged the complaint, it didn't do any good. Did you hear that?

THE COURT :

Are you purposely trying to provoke me or what?

VALERY FABRIKANT :

No, I'm just asking, did you hear that I already went through this path, it didn't do any good, they do not investigate the complaint, they do not undertake any measures. Since I even get it worst because now they want to punish me for those complaints. This is not an isolated incident, and this is not an accidental stuff. They, at the beginning when I came to Parthenais for a search, it was not my turn, there were at least fifteen (15) people before me, they called me before those fifteen (15) people, and I was wondering why. And then when they chained me to this person I understood why, because they wanted me to be on the same bus with him. Because if I waited in line, where I was, most probably I would have got to another bus, but they put me, without any waiting, I just arrived and they called me for the strip search. So it was all planned from the very beginning, from my arrival, it never happened like this, I am coming, there is fifteen (15), twenty (20) people before me for search, and they call me first, and the only reason was that. Well, later I realized the reason was that, to get me on the same bus with the designated person. So it is very well organized, mafia style intimidation inside a jail. And if Courts are not concerned with that...

THE COURT :

I told you in the very beginning...

VALERY FABRIKANT :

...that's too bad.

THE COURT :

... I was concerned about it. What I'm shocked about and what I'm outraged about is that you would accuse me of being a part of this whole thing.

VALERY FABRIKANT :

Well, if you do not intervene you are part of this, definitely, because normal Judge would definitely intervene because this impedes ability for defense. Whatever I am unintimidated, still this assault definitely would affect the quality of examination I'm going to do. And that was the purpose of it, because the witness is very, very, very, very... you saw him yesterday how pale he was, and today he would be even more pale with his testimony, and that was the only way to impede my ability to do the cross-examination. Now, the fact that you do not intervene in any way confirms my words, what I said, that the person who sees breaking of the law and is a Judge, and feels that this is none of his business to intervene is part of it, no matter what you say. And don't try to scare me with Pinel. This is only tacticts, I was not afraid of it in the Soviet Union, I'm not afraid of it here, you know very well that I am perfectly sane.

THE COURT :

Mr. Fabrikant, it's not for me to decide whether you're

fit to suffer your trial or not, it's simply for me to observe and see what I see. And then it's for me, and me alone, to decide whether there's a possibility, and white frankly that's about the point to which I have come.

VALERY FABRIKANT :

Oh yes. Your witnesses look so pale when they are lying that the best way to kind of neutralize me is to put me in institution, that way the witnesses will be safe.

Well, try it.

THE COURT :

I think for the minute we'll continue with the cross-examination of Mr. H,bert. Jury please.

THE JURY IS BACK INSIDE THE COURTROOM

WITNESS: NORMAND HEBERT -- UNDER THE SAME OATH

CROSS-EXAMINED BY VALERY FABRIKANT :

Q. Okay. At the end of yesterday, on the note that you entered briefly 907 and looked at the victim from the view of... I refer to Serge Proulx booklet, and you said that you don't remember whether he was face up or face down, correct? Is my recollection correct, you said that you don't remember whether the victim was face up or face down, correct? Correct?

A. Yes.

Q. Okay. Now look at the picture P-7 and tell me how is it possible, even just having the littlest glance at the picture, to be confused whether body is face up or face down, is it possible?

A. I don't testify with the pictures, I testify from my recollection.

Q. Exactly, but this is what you've seen, correct, or you saw something different? Was body not in this position?

A. I answered yesterday I don't remember. I don't remember...

Q. Well, if body had been in this position, then you would have remembered, correct? Maybe body was just not visible. Could that be?

A. The body was about that place.

Q. So then...

A. But I can't recall on the precise place.

Q. Well, this is such a detail that it's very difficult to miss face up or face down, is it?

A. Not on the picture.

Q. Well...

A. From memory it's not the same thing.

Q. So you managed to see this picture, you confirm that the picture was approximately this but you do not recall whether it was face up or face down, correct?

A. Correct.

Q. Okay. We also ended with, I refer to booklet of Robert Desjardins, you mentioned that you saw body of Dr. Hogben, the top part of the body, correct?

A. Yes.

Q. And when I showed you the picture number 8, you said that this is not your recollection, correct?

A. I testified from what I recall, not from those pictures.

Q. Yes, that's what I say, that your recollection of what you saw does not correspond to the picture here?

A. That's right.

Q. All right. Now, when approximately have you received those booklets from the people who did those booklets?

Do you remember the date when you received it?

A. A few days after.

Q. Well, all right. Did you look through the pictures?

A. Yes, I did.

Q. Okay. Did you compare the pictures with your own recollection?

A. I didn't have to, my recollection is today. I'm not trying to make up proof, I'm not trying to say things, I'm testifying from my recollection, that's all. I know that's not what's on the pictures but that's what I recall.

Q. No, this is not my question. I'm asking, when you received, several days later, a letter say August twenty-eighth (28th), those booklets, and you looked through them, did you or didn't you realize that those pictures do not correspond to your memory?

A. Yes.

Q. You did realize?

A. Yes.

Q. Okay. Did you call Mr. Desjardins and asked him: "How come I remember body like this and your picture is differently"?

A. I don't have to.

Q. You don't have to.

A. I've been there about... at this position I was there about two seconds, so...

Q. Well, even in two seconds, the way it is now, one cannot miss the letter which is so conspicuous on the picture, correct?

A. No.

Q. You say that looking for two seconds at the picture, or at the real scene, you could have totally confused like this board here, or like this, with letter, without letter, you have that bad vision or memory?

A. I don't confuse, I just recall what I testified to.

Q. Well, all right, but you... okay, you said that you noticed the discrepancy, correct?

A. Noticed what?

Q. Noticed the discrepancy between your recollection and the picture.

A. Dis... what was the word you said?

Q. You have noticed discrepancy, disagreement, discrepancy, disagreement between your recollection and what you saw in the picture but you didn't call Mr. Desjardins to explain it, right?

A. I don't have to explain anything with Mr. Desjardins.

Q. Yes, but anyway, you, at that time, noticed that there is disagreement?

A. Sure.

Q. All right. After that you received the letter itself, or you received it before that. When did you receive the letter in question?

A. I got the letter on the next day.

Q. Next day. Did you wonder where this letter come from?

A. It was written on it.

Q. No, I mean when you look at the picture... anyway, did you make connection between the letter you received you said next day and the picture, or you just thought that maybe Dr. Hogben is just holding some... any piece of paper? Did you have that connection, that this piece of paper which he... well, according to picture, holding,

is indeed the letter which you received? Did you know that?

A. I got the letter, it was in a plastic bag, it was written where it was seized, and when I got the pictures I could see that it was seized there.

Q. Ah, okay. And at the same time your recollection does not recall any letter, and it didn't look to you any troublesome at all that, since you didn't see the letter yourself, and all of a sudden it appeared that there might be some kind of fraud involved? It didn't cross your mind?

A. No.

Q. No. Okay. Did you try to explain to yourself this discrepancy?

A. I didn't have to, I told you before.

Q. You don't have to. Gosh, investigators we have. All right. So you didn't have to explain that. Fine. Let us go back a little bit to... say your work, because if you remember, you, all the way, avoided talking of what you really did. I do not want to repeat the previous stuff where you... all your responses were there was panic-stricken people here, panic-stricken people there, without response of what you were doing, so let's go further. About nine p.m. (9:00) there were probably no more panic-stricken people in the hall, were there?

A. No.

Q. No. So what was your job at that time? Could you describe what did you do?

A. I was on the ninth floor, in front of the computer room where we set up commanding post, in 921-1 and 2. And from this area we could have contact with the families and the remaining people, officers that were led off to their station.

Q. Okay. How long did it take?

A. We've been there about twenty (20) minutes.

Q. Okay, nine twenty (9:20).

A. And then I left.

Q. Nine twenty (9:20). Okay. What do you do after that?

A. I left around nine thirty (9:30), I left, I went around the places again...

Q. Uh, huh.

A. ...the bodies were gone, and that's when I left, around nine thirty (9:30).

Q. You left Concordia University?

A. Yes.

Q. Okay. So where did you go?

A. To the office.

Q. To your own office?

A. Yes.

Q. All right. When did you arrive to your own office?

A. At nine forty-five (9:45).

Q. Nine forty-five (9:45). Okay. What did you do then there?

A. I had files from Concordia, some mail, electronic mail, and files that were regarding the problems you had with the administration.

Q. You mean you had my electronic mail on your desk?

A. Yes.

Q. All right. Did you read it?

A. Yes, I started reading it.

Q. Uh, huh. How long did you read it?

A. About half an hour.  
Q. About half an hour.  
A. Yes.  
Q. All right. So we have about ten fifteen (10:15). Then what?  
A. Then I started... I met Mr. Boisvert who gave me an idea of how many eyewitnesses that we had...  
Q. Uh, huh.  
A. ...and what kind of proof, and what kind of evidence I could have on him.  
Q. Uh, huh. Okay. How long did this take?  
A. About an hour.  
Q. All right. So we have ten forty-five (10:45).  
A. And then there were phone calls and phone calls and phone calls...  
Q. Phone calls.  
A. ...that took about an hour.  
Q. What kind of phone calls? From who? To who? What about? Could you tell that?  
A. We had about seven or eight phone calls from... out of country, that people relating to the same e-mails that went around.  
Q. They were calling you...  
A. Yes.  
Q. ...people from out of country.  
A. Oh, yes.  
Q. How did they know to call you? They didn't know you?  
A. No, at the office.  
Q. I don't get it, could you be more specific? Who called, and how did he find you, and...  
A. Well, they called Montreal police...  
Q. Okay.  
A. ...which referred them to our section...  
Q. Uh, huh.  
A. ...and when the phone came to the section...  
Q. Yes.  
A. ...well, it was transferred to me.  
Q. Okay. Could you name people who called?  
A. That was related to the last mail, the last message that you sent.  
Q. Uh, huh. Yes. So what did they say these people?  
A. Most of them wanted to transmit copies of these e-mails...  
Q. Uh, huh.  
A. ...they were thinking that we were not aware of it.  
Q. Okay.  
A. That was sent on the twenty-first (21st) or something like that.  
Q. Uh, huh. Okay.  
A. And then I met with Mr. Fuller and Gamache...  
Q. Uh, huh.  
A. ...that you met afterwards, for a little briefing.  
Q. So you met with Mr. Fuller and Gamache approximately at what time?  
A. It was maybe around eleven (11:00) or so.  
Q. Eleven (11:00). Okay.  
A. You have their report.  
Q. Well, their report is inaccurate, again.  
A. Yes.  
Q. So I will address this separately, because at about eleven (11:00), I believe, they were with me.

A. Yes...

Q. Not with you. That's what I'm saying.

A. From memory. I could take the reports and read them if you want.

Q. Well, reports...

A. If you like to play with words...

Q. Report is wrong, report states that they left me about nine o'clock (9:00) but I know that at eleven (11:00) they were still with me, so I really... having difficulty to believe that...

THE COURT :

Would you kindly, both of you, cease the discussion and...

Q. You're here to answer questions, Mr. H, bert, just as he is there to put them.

A. Yes, okay.

VALERY FABRIKANT :

Yes.

Q. So, nevertheless, you managed to meet with them at eleven (11:00) and what did they tell you?

A. Around eleven (11:00).

Q. Yes. What did they tell you?

A. We discussed about what happened, how it happened...

Q. Uh, huh.

A. ...maybe why it happened.

Q. Yes. Did they tell you anything in particular?

A. Well, they asked for the electronic mail, because they (inaudible) about the electronic mail with you...

Q. Uh, huh.

A. ...so I gave them the mail.

Q. Uh, huh.

A. They showed it to you, I think.

Q. No, they didn't. All right. And?

A. And afterwards I kept on reading some more statements.

Q. Uh, huh.

A. And then we had paperwork to do for accusations.

Q. Okay.

A. We had research to make on the... we call it CRPQ, which is a reference of any kind of events, and by that time I had received a bit information about the guns, the permit, I had part of the information that I read, and I finished at about two thirty (2:30).

Q. All right. Now, when you finished at two thirty (2:30), you said that you read some statements, yesterday you said you didn't read them because you didn't need them, now which time you were telling the truth? Did you or didn't you read the statements?

A. I read a few statements around two o'clock (2:00) in the morning which were already in, I didn't have all the statements at that time, and I read a few to start to... the shorter ones, to make evaluation of which ones were most important.

Q. Well, yesterday you said that you didn't need to read any report because you were given a concise synopsis of those reports, do you recall that?

A. That was, I thought, with Mr. Boisvert, and that was earlier.

Q. But you never mentioned that you read any, you said that you don't need to read them, do you remember that?

A. That was before your interview with Mr. Fuller.

Q. Well, that's irrelevant. You said, when I asked you how

come you didn't read the statements, and you said: "I didn't need to read it".

A. Not before your interview.

Q. Well...

A. I read a few at the end of the day.

Q. This is not what you said yesterday. Anyway. All right. So today you are saying that you did read the statements, that's better.

A. A few of them.

Q. Yes. Do you remember which of those statements you read?

A. I couldn't tell you the names, I...

Q. Well, they were so unimportant those statements that you cannot recall which particular you read?

A. I don't recall the names and I won't dare (inaudible) the names.

Q. Okay. By that time, was it clear to you where the shooting started, where it continued, like for example it is presented here, scene number 1, scene number 2, scene number 3... was it by that time clear to you which was after which?

A. No, not at that time.

Q. No. Okay.

A. That was done on the... a part of it was done on the next day and the day after.

Q. You mean even on the next day, having all those statements, you were unable to decide where the shooting started, correct?

A. On the first day I could establish where it started, the linking that I was needing is the back and forth situation. The first theory was that it started here and went to 907 after, but it took a few more witnesses to realize that 915 was the fifth scene.

Q. Could you explain how on earth could you come to a conclusion that the shooting started at 915? What exactly information prompted you to decide it's this way?

A. No, not that it started in 915, 929, not 915.

Q. Okay. So you never thought that it has started at 915?

A. Not me.

Q. Not you. So you knew from the very beginning that shooting started at 929-24, correct?

A. The next day.

Q. Well, what do you mean next day?

A. When I talked with Mr. Desjardins, Mr. Gravel, Mr. Proulx, and from the caliber found, and position of... in which location they were found, and the gun that was dropped in 915-7, we could establish, to start with, that 929-24 was the place it started, but the linking part, the missing part was 915-7.

Q. Okay.

A. So from some testimonies... not testimonies but from statements, we had guessed that the second place was 907 but that was 915.

Q. Okay. What exactly evidence made you think that shooting started at 915, at the office of 915?

A. No, I never thought that it started at 915.

Q. Ah, okay. So you never thought that it had started at 915?

A. No.

Q. Okay. So what did you think about where it started

then? Because this is important question, where it started.

A. In your office, 929-24.

Q. Okay. So this you knew on August twenty-fifth (25th) early in the morning, at two a.m. (2:00)?

A. Not early in the morning, in the afternoon.

Q. In the afternoon. What did you know then... well, when you got to sleep, about where the shooting started?

A. I'm sorry?

Q. What did you know about place where the shooting started at the end of the day... well, early morning August twenty-fifth (25th)? You said you worked until two thirty (2:30), what did you know at that time about where the shooting started?

A. You mean when I ended my work?

Q. Yes, sir.

A. On the first day?

Q. Yes, sir.

A. I didn't know where it started, I didn't have no sequence, at that moment.

Q. Were you not interested to find it out?

A. I was meeting Mr. Gravel, Mr. Proulx and Mr. Desjardins on the next day.

Q. Okay. Without them, was it really so difficult to establish where the shooting started? Why was it so difficult?

A. They are the ones who went there. They're the ones who made their own crime scene, so they're the ones who know.

Q. How on earth those pictures could tell you where the shooting started?

A. Not the pictures.

Q. Not the pictures, then what?

A. From the casing from the guns, and some same caliber casings were found in different places.

Q. Okay. How, from the casings, you could decide where the shooting started? Give just the logic of your consideration, I see really no relation but you probably have, so share it please.

A. We compared casings and projectiles, and guns, where they were found with the statements of the eyewitnesses that we had, and then we were able to make out the first part.

Q. Well, how? Explain how were you able, from the casings, to say that the shooting started in 924? I see no logic, but you probably see, so let us know what is the logic.

A. For example, the 38 caliber, it was used only in your office.

Q. Yes. So what, it could be used third.

A. There was no casing there, but there were casings in 929-19, Mr. Saber's office, and we had an eyewitness there, who was Mr. Long. And we had the same casing in the 929-19, in the hallway, with an eyewitness there, in fact two eyewitnesses, which was Elizabeth Horwood and Susan Altimas, so that we could relate to the scene. And afterwards we had different, we had the gun was dropped here, in Mr. Ziogas' office, which related to the casing upstairs. Afterwards we had different...

THE COURT :

Q. Excuse me, you said the gun was dropped in whose office?

A. Mr. Ziogas' office, 915-7. And we had different calibers in 907-4.  
VALERY FABRIKANT :

Q. Different calibers?

A. In 907-4...

Q. Are you sure?

A. ...we had the same thing, and one in 929-9.

Q. Are you sure you had different calibers in 907? Could you name those different calibers?

A. We had 765 to start with.

Q. In 907?

A. No, no, upstairs, in 929-19 we had the same casings here, in the caliber -- in the corridor, and the gun is found in Mr. Ziogas' office. And then you got the smaller caliber, a 635, in 907, and you've got one 635 in Mr. Hogben's office, which is 929-9, and that firearm is recovered by Mr. Abdou with another witnesses. So that's how we were able to tell.

Q. You didn't respond to my question, you said you had different calibers in 907, you were wrong, correct?

A. 9...

Q. In 907 you didn't have different calibers.

A. No, no, I'm talking about 907-4.

Q. Yes. You didn't have any different calibers there, did you?

A. And 907, it's the same scene.

Q. Yes. What are those different calibers in 907, whatever it is?

A. 635.

Q. So it is one caliber, not several.

A. It's different from Mr. Ziogas' office.

Q. Well, it is different, but in 907 you just had one caliber, not several calibers you said.

A. Yes.

Q. Correct? So you were wrong.

A. The words were wrong, it's not the same thing, it's different.

Q. Oh, you wanted to say that in 907 you had caliber which was different from the caliber used in 915, that's what you wanted to say?

A. Yes.

Q. All right. So when did you know that pistol, without any bullets in it, was dropped in 915? Did you know on August twenty-fourth (24th) this?

A. I didn't know about... I knew about the gun, not how much... I knew it on the twenty-fifth (25th), when I met with Mr. Gravel.

Q. You said, you kind of inspected the area, first concern should be where the guns are, and you found, I believe, unless you again didn't pay attention to guns as well you didn't pay attention to blood, but were you aware, on August twenty-fourth (24th), that "Bersta" was found in 915? Were you aware of that?

A. I saw that it was there.

Q. All right.

A. Mr. Gravel was there to take care of it.

Q. Okay. So you saw it there without ammunition, correct?

A. No, I don't know if there's ammunition in it or...

Q. You never even asked elementary question, is the gun with ammunition or without?

A. I didn't have to because Mr. Gravel was doing his job

and he would report to me the next day.

Q. Well, wasn't it important for you to find out where the shooting started?

A. Not at that particular moment.

Q. Not at that particular moment. Okay. Now, could you explain how... I understand the logic that since revolver without ammunition was left in 915, then this indicates the end of some procedure rather than the beginning, this is the logic, correct?

A. No, not my logic.

Q. Not your logic. You have an empty gun left in one office and some of the bullets from the same gun in another office. Isn't it sufficient logic to say that those bullets in other offices were fired before?

A. You're talking about the 765?

Q. Yes.

A. Okay. I thought you were talking about the 38.

Q. This is good logic?

A. Yes, yes.

Q. It is a good logic. So finding of a pistol in 915 with no ammunition and knowing that there are several shots from the same caliber in 929 gives an indication that 915 was in time after 929, correct?

A. Yes, but I didn't know, on the first night, if there were still ammunition to the arm, and I didn't have, on the first night, I didn't have all the information, so that's why we met on the next day with Mr. Desjardins and Mr. Gravel and Proulx. And when I came back on the twenty-fifth (25th) I read more statements to try to figure out the chronology of what happened.

Q. Okay. You have three guns, is it really so much for, say work from six p.m. (6:00) until two a.m. (2:00), which is eight hours of work, to figure out if three guns, their state, where they were, and which casing was found where, you couldn't figure it out in eight hours of work with three guns?

A. That was not my part at that time.

Q. That was not your part at that time.

A. They were being treated by Mr. Gravel, Mr. Proulx and Mr. Desjardins, and it was already being... how do you say that, fixed, we would meet to put that together on the next day.

Q. Uh, huh. So how did you figure out that it started at 929-24 just by using the logic of revolver? What is the logic between the revolver and the fact that shooting started in 929-24?

A. You were arrested with the 38 caliber, four shots were fired, one was still... one was ready to... so that 38 caliber had served only once, and from the eyewitnesses, and the other casing, so it means that it's been used first. And knowing from the version that first noises heard were coming from your office, so it started there.

Q. Oh, this is different thing...

A. And the 38 was not used after.

Q. ...when you are talking that the first noise came from my office, this is proof that where it started, but revolver itself, in fact, that it was used in one room only is not an indication of anything, correct?

A. But afterwards at the autopsies, calibers that were found in the bodies confirmed that it was 38 and confirmed for other... the calibers confirmed the

casings that were found in each place, so...

Q. You're not responding. The fact that revolver was used in one room only is not an indication of anything, the timing of sound is indication.

THE COURT :

Are you asking a question or you're making a statement?

VALERY FABRIKANT :

I am asking, and I want the witness to confirm this logic. Is that correct?

A. I told you how we figured it out, and that's the only answer I can give you. I won't go by logics or hypothetical theories, that's the way we figured it out.

Q. You don't use logic, too bad. All right. So what time approximately it was clear to you that shooting started in 929-24?

A. The next day, the twenty-fifth (25th) in the afternoon.

Q. In the afternoon. Okay. What time Mr. Sangollo made his announcement? Because at that time I was unable neither to read newspapers, not to watch television, so I had really no idea. I just now received some and I must tell you I was amazed at what I read. So at what time Mr. Sangollo made the announcement that shooting started in 915?

A. I'm not sure, I think it's the following day, is it possible? You should... you know, you remember it.

Q. Well, I just don't know...

THE COURT :

I'm sorry...

A. I'm sorry, excuse me.

VALERY FABRIKANT :

Q. I was not in the position.

A. Okay, okay. Excuse me.

THE COURT :

Q. You know, it's not your first time.

A. Sorry. I know, it was after we knew, for sure.

VALERY FABRIKANT :

Q. After you knew...

A. That I knew.

Q. ...the shooting started in 924?

A. I know what you're coming to, and you're perfectly right.

Q. Oh yes, you know what I'm coming to, you do. You do know what I'm coming to. So at the time... let me rephrase the question. At the time Mr. Sangollo made his announcement, he knew that the announcement was false, correct?

A. No, he didn't know.

Q. He did not know.

A. That's not... We had... we were certain of our chronology.

Q. Okay.

A. He had, and other people had different views on that.

Q. Well, let us get to the bottom of it. So, who Mr. Sangollo get the information to announce it to public that shooting started in 915? Who was that person who gave him this information?

A. That I don't know. I know we talked about it, we had different views, and he made his conference, so...

Q. Okay. What time was this conference? In the evening?

A. I don't think it was in the evening.

Q. Well...

A. I don't recall what time it was.

Q. Is there any way to find it out?

A. Probably.

Q. Because this is important part, isn't it? But at the time of this conference, you already knew that was he was telling is, softly speaking, incorrect, and not softly speaking deliberate disinformation. You knew it at the time of the conference?

A. I knew we had different ideas about chronology, but he's the one who's making the conference.

Q. Well, you are not answering me. Did you know that shooting started in 929-24 and that Mr. Sangollo is making wrong announcement? Did you know that?

A. I told you I was aware of that...

Q. So you knew that.

A. ...to me it was clear that that was that chronology.

Q. Okay.

A. How he based his judgment, that's something else.

Q. Okay. I guess that we'll have to address him on the subject; but what is important for me to know, that you, at the time when Mr. Sangollo made his announcement, it was clear to you that his announcement was false?

A. Well, it was his idea.

Q. It was his idea.

A. Maybe he didn't have all the facts, all the information, I don't know.

Q. Well, whose fault was it that he didn't have all the information?

A. I can't tell you, me I gave him what information I had, what we found.

Q. Okay. So you had informed him before the press conference that your opinion was that the shooting started in my office?

A. Yes.

Q. So you informed him about it.

A. We talked about it.

Q. Well, you informed him about your opinion, correct?

A. Yes.

Q. Yes. So what did he respond? He said that your opinion is incorrect? What did he respond to that?

A. He didn't have to... we weren't arguing, we were discussing about it, he had his views, I had mine.

Q. Okay. Did he put forward any proof whatsoever that shooting might have started in 915, as far as your recollection of your conversation with him?

A. I've just told you, we had different views for different reasons. He don't have to explain anything to me, I told him that I was convinced that it started in your office and he said that from his point of view it started at 915-7.

Q. Okay. But he didn't give you an explanation to that end?

A. And he didn't tell me what version, or what he would say in the conference, I didn't ask him.

Q. And he did not explain to you on what he based his opinion? He did not. No?

A. No.

Q. All right. Did it ever cross your mind that sequence of events could be very easily followed by the timing of 911 calls? Did that cross your mind?

A. You mean precise timing or just chronology?  
Q. Oh yes. Oh yes. If you see that 911 was called at three twelve (3:12) by Mrs. Horwood, at about three sixteen (3:16) or seventeen (3:17) from the room 915-7, which means several minutes later, and no call came from 907, or if it came, it was significantly later, and just from timing of these calls, isn't it obvious the chronology?

A. When I got the 911 tapes and transcripts, I put that with that confirm where it started. Well, I did the same thing, but when I got it I didn't...

Q. The timing, the timing of the calls, couldn't it be verified just in a second, just ask 911: "When did you receive this call and when did you receive that call?" Without transcription, just the timing, I believe this is easy, is it?

A. No.

Q. No.

A. There were eighteen (18) calls, and if you don't know what they say, there were calls for wounded, for scared people, for... so you have to know what the call said.

Q. Well definitely, yes, but if you have 911 call, say originating from Mrs. Horwood at three eleven (3:11) or three twelve (3:12), and if you have second call originating from room 915-7 later, then you can kind of brush out all other calls because this is a clear indication that... And again, there was, I understand, call for Dr. Saber too at about timing... maybe even earlier than that.

A. Yes.

Q. So from this it's so easy to figure out what happened after what, correct?

A. We already had the chronology...

Q. All right.

A. ...as I explained before, and when we had all the tapes and the transcripts, it confirmed...

Q. No, I say that it could be done the same day. All right.

A. Yes, but (inaudible).

Q. Anyway. By the time Mr. Sangollo made his announcement he already knew your opinion on that?

A. Yes.

Q. Well, I hope we'll be able to talk to Mr. Sangollo in person, but do you think that mistake which Mr. Sangollo made was not an accidental mistake? Could that be?

THE COURT :

The witness isn't here to give you his opinion, the witness is here to answer...

VALERY FABRIKANT :

I will rephrase my question. All right. I will rephrase my question.

Q. Would you agree that pointing to the public that shooting started in 915 is a definite indication that the murder was planned and premeditated?

A. Please repeat your question.

Q. Okay, I repeat it again. Do you think that changing of chronology in such a way that the shooting allegedly started in 915, the way it was described that I was just waiting for professors to arrive, and when professor arrived I just went to 915 and shot Dr. Ziogas. If this was the chain of events, then this clearly indicates

premeditation, correct?

A. No.

Q. No. Explain why no?

A. It's no to me. It started in your office or somewhere else.

Q. I know that, but this is not my question.

A. It's not a question, sir.

Q. It is question, because this is how it was presented to the public, and what I'm trying to say, that it was malicious intent to imply completely wrong situation, was it a malicious operation?

THE COURT :

How can the witness possibly answer your question? The witness...

VALERY FABRIKANT :

Well very simply, because...

THE COURT :

The witness isn't here to give you his opinion on who did what, where, when and why. The witness has said: "I was convinced that it started in your office".

VALERY FABRIKANT :

Yes.

THE COURT :

Okay? He said: "That's what I said to Songolla..."

VALERY FABRIKANT :

Uh, huh.

THE COURT :

...I didn't discuss with Sangollo what he was going to tell the press or anybody else". That's the length and breadth of what the witness knows, what do you want him to say beyond that?

VALERY FABRIKANT :

Fine. I agree. You see, when you are right, I agree.

Q. All right. After Mr. Sangollo made his announcement, which you were, maybe at that time, not that sure it was wrong, or you were sure it was wrong, did you try to contact him again and to tell him that you made a wrong announcement? Did you?

A. I don't have to do that, I don't have to say anything to Mr. Sangollo, that's not...

Q. Well, how about elementary conscience. Does elementary conscience ever tell you that if deliberately malicious information was brought to public it should have been corrected? You don't feel that way?

A. ...

Q. Should I repeat? Okay. If you know that deliberately malicious information was brought to the public, and you know that information is wrong, do you feel obligated to make some steps to correct the situation?

A. Information wasn't wrong at that time, statement, I think, that he made said what it appears to be at that moment, not what it was. I think that's how he made his...

Q. Well, we'll discuss it with him, but...

A. Yes.

Q. ...I'm now not asking this, I'm asking different question. It was clear to you that information, whether it appeared or not at that time, was wrong, did you feel obligated to correct it?

A. I have already told him that my views were something else, his views were what he said in conference, so...

Q. Okay. Do you... Okay. As a professional, do you realize that this change of the timing of events changes the whole perception of the event? Do you realize that?

A. It doesn't change anything.

Q. It doesn't change anything. Okay. Let me give you an idea why it might change something. If I spoke with Dr. Hogben for about half an hour in my office, and whatever transpired there I will testify later on, but as a result shooting started, I got out of control and shot several more people, this is one picture. And very different picture is if I just waited in the corridor for victims to arrive and just got there and shot one after another, is it a different picture or it is the same to you?

A. When conference and evaluation is done, we don't know what relation you had with each victim or each people, and the personnel at Concordia, we don't know all your implication, so we can't figure out if you had...

Q. You didn't answer my question.

A. ...trouble with one or the other, so...

Q. You didn't answer my question. My question was...

A. That's why we can't relate if it's... you say, from your point of view, because you're talking about personal involvements that we were not aware of at that time.

Q. You didn't answer my question, I repeat it again. The two versions which I gave you, they, from your point of view, are they very different in terms of my criminal responsibility for what happened, or they are not different? Just answer this. Do you feel that those two versions created two different perspectives of criminal responsibility of myself what happened or it doesn't make any difference to you?

A. At that time we couldn't make the difference of the involvement you had, so...

Q. Okay.

A. At that moment that it started in 915 or 929, for us it was the same thing, we weren't aware of all the implication that... with each people.

Q. Okay. After you were aware of all, right now, if I ask what...

A. Now I'd say yes.

Q. You would say yes, that definitely those two versions...

A. Right.

Q. ...are very different from the position of... degree of my criminal responsibility for what happened?

A. Yes, possibility, hypothetical.

Q. Okay. So it is different.

A. It could be different, let's say that knowing responsibilities and involvement...

Q. Yes.

A. ...with each person, it could be a difference.

Q. It could be different. And would it be too much to suggest that this is the main reason why Mr. Sangollo went with his version rather than with two versions because he wanted public to think that I'm just heartless murdered who just planned to kill certain people and did what I planned?

A. No, I already told you.

Q. No, it was not. It was not. All right. Okay. Now did you think, or maybe you think now, that this kind of error, since it definitely affects public perception of

what happened, an error made by police should be publically corrected?

A. I don't have no opinion to express on that.

Q. Well...

A. You'd have to be sure of what was said, and how it was said in the conference first.

Q. Well, all right. How it was said, if we believe the newspaper, I have managed to get one, this is what they describe how it happened. First, number 1, is:

"Massacre begins when gunman opened fire on (Inaudible) Ziogas, who later undergoes five hours of abdominal surgery."

This is how it was presented to public. Then, second:

"Gunman enters administrative office of Engineering Faculty apparently hunting dean Swamy, kills Mathew Douglass outside office, the dean has locked himself."

Second part. Third part:

"Michael Hogben killed in Fabrikant's office."

Any common sense person should have asked at this stage if Fabrikant went and killed two people, what Dr. Hogben was doing in his office without Fabrikant being there? Does this look like an absurd position?

THE COURT :

How can all of this possibly relate to a question to the witness? What you've done is you've drawn his attention to a newspaper article.

VALERY FABRIKANT :

Yes.

THE COURT :

I don't know who the author of the newspaper article is, I don't know where the information came from that was in the newspaper article as such.

VALERY FABRIKANT :

Well, I can give it to you...

THE COURT :

No, just a second. What could you possibly expect the witness to say about that?

VALERY FABRIKANT :

Very simple, let me repeat my question, it will be clear to you what...

THE COURT :

Well ask your question then, because you're far, far away from a question as far as I can see.

VALERY FABRIKANT :

I'm not far away from the question, because the situation... I'm asking if the situation of someone killing two people outside his office, and then coming to his own office and finding somebody else there to kill, is this situation in itself an absurd? What is your opinion?

THE COURT :

He's not here to give opinions, and that's not a question that can be admitted. I'm sorry.

VALERY FABRIKANT :

Well, he's a professional, right?

THE COURT :

That makes no difference whatever, he is here testifying

as to facts.

VALERY FABRIKANT :

Uh, huh. All right. Let me put it then as a fact.

Q. When you read this in the newspaper...

A. I didn't read it.

Q. You didn't read it. I guess I have to surrender here. Did you watch it on T.V.?

A. ...

Q. No. Probably you didn't even know that Mr. Sangollo advanced this theory after all?

A. I know that was his theory and I know...

Q. But you are not sure even if he advanced this theory?

A. Well, I heard that he did in public.

Q. How did you... How have you heard it, from where? You didn't read the newspaper, you said you didn't watch T.V., so how did you learn that he did advance this theory?

A. From other people who talked about it in the office.

Q. Uh, huh. Okay.

A. It's his decision.

Q. Uh, huh, it's his decision. All right. Now, would it be possible, if it is your responsibility of course, to let me know at what time which particular officers were assigned or were present in 907 after your arrival there after sixteen hours (16:00)? Also, I believe you must have that information, who, if any, was the doctor, or doctors... I know only one name of the doctor, arriving to the victims?

A. It's the only one.

Q. There was only...

A. For both victims that you have, Dr. Bonneau.

Q. Okay. Dr. Bonneau has examined both victims, you mean who both? Because there were more than two victims in..

</pre></body></html>

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

A. And Mr. Ziogas too, and I think she went...

Q. Okay, she examined Dr. Ziogas, she examined who, Dr. Douglass?

A. Douglass, Dr. Hogben, I'm not sure, but I think she might have treated Mr. Saber, too.

Q. Oh, okay. So it's not two, it's all four?

A. But there could be another doctor. For Mr. Saber I'm not quite sure, but I know that she treated...

Q. Three at least?

A. ...three out of four, for sure.

Q. Okay. She is from what hospital?

A. She's with Urgences Sant,.

Q. Ah, Urgences Sant,.

A. Uh, huh.

Q. All right. Is it possible to know which doctor attended to Dr. Saber?

A. Yes, we could find out.

Q. Okay. You will be able to convey it to me in...

A. Yes.

Q. ...in due time?

A. Sure.

Q. Right. And the names of the policemen in 907 also, you would be able to provide that to me?

A. I couldn't tell you, from the reports I could figure out what... some policemen could have gone through, but I can't tell you that there weren't more than that. There was quite a lot assigned there that... there was (inaudible).

Q. If you give me five names, that would be enough I think.

Also, you mentioned that you have my electronic mail complete.

A. Not complete. I don't think it's complete, I have a part of electronic mail.

Q. Okay. Could you describe, you said you read it, therefore describe what you have, a hundred (100) pages, two hundred (200) pages? Approximately what is it?

A. It's a blue book, a large blue book.

Q. Uh, huh. How thick?

A. It's about that thick.

Q. Well that thick it's practically complete.

A. Yes.

VALERY FABRIKANT :

So I would like to bring to your attention that this is one example of Crown did not provide me with information which I definitely need to be deposited in Court.

Me JEAN LECOURE :

This is false, My Lord.

VALERY FABRIKANT :

What do you mean false? You didn't provide me with my...

Me JEAN LECOURE :

Yes, I did.

THE COURT :

We're in the middle of an examination of Mr. H,bert, if you have some question to raise, if you have any questions to put with regard to the electronic mail, put the questions, if you have any objections to raise regarding the electronic mail, raise them later.

VALERY FABRIKANT :

Okay.

Q. Did you receive any written submissions from people calling outside the country and informing you about my electronic

mail? Do you have any written submissions or did you make any notes of those calls, and content of those calls?

A. I have a few faxes that were sent...

Q. Uh, huh.

A. ...from copies of electronic mail...

Q. Okay.

A. ...that they received, part of it, and there are names from who it was sent from.

Q. Okay. Are any comments there too on this? Just copy of electronic mail or those people who sended them to you made some comments?

A. No, it was merely for information that...

Q. Okay.

A. ...you know, thinking that we didn't have it.

Q. Okay. When you received those phone calls from, you said at least seven people outside the country, did you make any notes concerning these phone conversations?

A. I think I took one or two down, not all of them.

Q. Okay.

VALERY FABRIKANT :

They were also not provided to me, I would like to receive them.

Q. You also mentioned that you were provided with summary of statement of the witnesses, I understand this is document in writing, correct?

A. There was just... un brouillon...

THE COURT :

A draft.

A. ...a draft from Mr. Boisvert...

VALERY FABRIKANT :

Q. Yes.

A. ...when we arrived there, but I didn't keep it because I had the statement.

Q. What do you mean...

A. It was just to give me an idea.

Q. You just thrown it out?

A. I beg your pardon?

Q. You thrown it out?

A. I didn't keep it because I had the statement, so in the following days I read the statement, so I...

Q. Well, I don't think this is what you should do.

A. Well, I didn't need it anymore.

Q. Yes. All right. Okay. Thank you.

THE COURT :

Thank you Mr. H,bert.

AND FURTHER DEPONENT SAITH NOT

THE COURT :

So we'll adjourn at this point for fifteen (15) minutes.

SUSPENSION OF THE HEARING

RE-OPENING OF THE HEARING

THE JUDGE AND THE JURY ARE PRESENT

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twenty-fifth (25th) day of the month of March, personally came and appeared:

KEITH HOGBEN, born on May sixth (6th), 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 LECOURE

ATTORNEY FOR THE CROWN :

Q. Mr. Hogben, on August the twenty-fifth (25th), nineteen ninety-two (1992) did you get the occasion to go to the morgue located at 1701 Parthenais?

A. Yes, August twenty-fifth (25th).

Q. Did you go alone or with somebody?

A. I went with my mother and Denis O'Connor.

Q. Okay. And what happened there?

A. We went and identified my father's body.

Q. Okay. Who did it specifically?

A. Both my mother and myself.

Q. Okay. And you recognized your father?

A. Yes, I did.

Q. Okay. Did you sign a statement or sheet... a standard form for that?

A. Yes.

Q. I won't ask you to file it now because I have another witness, but do you recognize your handwriting on this?

A. Yes, I do.

Q. I will ask you to examine the photograph P-8, number 10, and tell the Court whether you recognize that person?

A. Yes, it's my father.

Q. What is the name of your father?

A. Michael Hogben.

Q. What was Mr. Hogben doing in life?

A. He was a professor at Concordia University who had many administrative duties.

Q. How long was he professor at Concordia University?

A. I believe twenty (20) years, to my knowledge.

Q. Okay. I will show you also a photograph, could you please tell if you recognize the person?

A. Yes, that's Michael Hogben.

Q. Your father?

A. Yes.

Me JEAN LECOURE :

I would like to file that photograph as P-37.

Q. And after the incidents at Concordia, did you get the occasion to go to the funeral of your father?

A. Yes, that would be Saturday, August twenty-ninth (29th).

Q. Okay. And I'm showing you finally P-13, could you have a look at the signature?

A. Yes, that's my father's signature.

Q. Okay. Are you able to recognize your father's signature usually?

A. Yes, I've seen it many times, report cards, cheques, whatever.

Q. Okay. So that's your father's signature?

A. Yes, it is.

Q. Thank you.

Me JEAN LECOURE :

No further questions.

THE COURT :

Have you any questions?

VALERY FABRIKANT :

Well, I am in extremely difficult situation, and both morally and emotionally. On the one hand...

THE COURT :

I asked you if you had any questions of Mr. Hogben.

VALERY FABRIKANT :

Well, it is important.

THE COURT :

I don't wish you to make a speech, I wish you to put any questions you have to Mr. Hogben.

VALERY FABRIKANT :

Well, before I put question I wish to... well, you forbid me to say anything?

THE COURT :

The time is to put questions to Mr. Hogben, if you have any questions to put.

CROSS-EXAMINED BY VALERY FABRIKANT :

Q. Well, did your father mention my name in your presence?

A. No, I had never heard of you until after the shooting. But I was not with him for the last three months, from late May until August twenty-fourth (24th), I had seen him once.

Q. Uh, huh. So effectively you did not live with him?

A. No, I was up North.

VALERY FABRIKANT :

No questions.

THE COURT :

Thank you very much, Mr. Hogben.

AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOURES :

Mrs. Victoria Percival Hilton.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twenty-fifth (25th) day of the month of March, personally came and appeared:

VICTORIA PERCIVAL HILTON, born on May thirteenth (13th), nineteen hundred and fifty-one (1951), attorney, 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. Percival Hilton, did you get the occasion to go at the morgue located at 1701 Parthenais on August the twenty-sixth (26th), nineteen ninety-two (1992)?

A. I did.

Q. Were you there alone or with somebody?

A. No, I was there with Mrs. Saber, her father, and another friend of Mrs. Saber's.

Q. Okay. What is your relationship with Mrs. Saber and the family?

A. We are close family friends of the Sabers.

Q. Okay. And what did you do there?

A. I attended with Mrs. Saber with the initial administrative formalities required at the Coroner's office, and then I identified John's body.

Q. Could you give the complete name?

A. Aaron Jaan Saber.

Q. Okay. Did you sign an administrative form? Do you recognize your writing?

A. I do.

Q. Okay. I'm showing you here a photograph, would you please have a look and identify the person?

A. Yes, that's Aaron Jaan Saber.

Me JEAN LECOURES :

P-38 please.

Q. And what was the occupation in life of Mr. Saber?

A. Dr. Saber was assistant professor in mechanical engineering at

Concordia University.

Q. And for how long was he there?

A. He'd been employed there since nineteen seventy-five (1975), I believe.

Q. And did you go to assist to his funerals?

A. Yes, I attended at his funeral which was held at Paperman at one o'clock (1:00) on August twenty-seventh (27th), nineteen ninety-three (1992).

Me JEAN LECOURE :

No further questions.

THE COURT :

Thank you very much. Excuse me, have you any questions to put?

VALERY FABRIKANT :

No questions.

THE COURT :

Thank you, Mrs. Hilton.

AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOURE :

Mr. Vasilios Agelidis.

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twenty-fifth (25th) day of the month of March, personally came and appeared:

VASILIOS AGELIDIS, born on October seventeenth (17th), nineteen hundred and sixty-five (1965), student, confidential address;

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

EXAMINED BY Me JEAN LECOURE

ATTORNEY FOR THE CROWN :

Q. Did you go at 1701 Parthenais, at the morgue in Montreal, on August the twenty-fourth (24th), nineteen ninety-two (1992)?

A. Not in August, September.

Q. Okay, I'm sorry. Yes, you're right. September the twenty-fourth (24th), nineteen ninety-two (1992).

A. Yes.

Q. Were you there alone or with somebody?

A. No, we went with Mrs. Ziogas and two other people.

Q. And what occurred there?

A. Well, we had to just fill out some forms first, and then someone was supposed to go downstairs and identify his body.

Q. You, was there anybody else or just yourself?

A. Yes, just myself.

Q. Okay. I'm showing you a form, do you recognize your name on that?

A. Yes. It's my signature.

Q. Okay. What was Mr. Ziogas' occupation?

A. He was a professor at the Department of Electrical Engineering, Concordia, as well as a chairman.

Q. Okay. Who directed your Ph.D. thesis?

A. Mr. Ziogas since May nineteen eighty-nine (1989), when I started my Master's theses, and since January ninety-two (92) my Ph.D. thesis.

Q. Okay. Did you assist to his funerals?

A. Yes.

Q. On which date?

A. It was Tuesday the twenty-ninth (29th), September twenty-ninth (29th).  
Q. Nineteen ninety-two (1992)?  
A. Yes.  
Q. Okay. I'm showing you here a photograph, could you please examine it?  
A. Yes, that's my supervisor, (Inaudible) Ziogas.  
Me JEAN LECOURS :  
Okay. I would like to file this photograph as P-39.  
Thank you.  
THE COURT :  
Have you any questions?  
VALERY FABRIKANT :  
No questions.  
AND FURTHER DEPONENT SAITH NOT

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twenty-fifth (25th) day of the month of March, personally came and appeared:

ROY DOUGLASS, born on April thirtieth (30th), nineteen hundred and fifty-eight (1958), 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. Douglass, did you get the occasion to go at the morgue located at 1701 Parthenais on August the twenty-fifth (25th), nineteen ninety-two (1992)?  
A. Yes, I did.  
Q. Did you go there alone or with somebody?  
A. I went with a friend of the family who drove us down, Mr. Paul "Landry".  
Q. And what occurred?  
A. I went there to identify my father's body.  
Q. Okay. Did you indeed identify your father's body?  
A. Yes, I did.  
Q. Okay. And did you fill an administrative form as well?  
A. Yes, I did.  
Q. Okay. I'm showing you here a form, do you recognize your signature?  
A. Yes, that's my signature.  
Q. I am showing you here Exhibit P-24, photograph number 9, examine it and tell whether you recognize?  
A. That's my father.  
Q. Mr. Mathew Douglass?  
A. Yes, Mathew Douglass.  
Q. I'm showing you also a photograph, could you have a look at it and tell whether you recognize it?  
A. It's my father.  
Q. Mr. Mathew Douglass?  
A. Mathew Douglass.  
Me JEAN LECOURS :  
I would like to file the photograph.  
THE COURT :  
Before you do, just pass it, please.  
Me JEAN LECOURS :  
P-40.  
Q. What was the function of your father?  
A. He was a professor of civil engineering at Concordia

University.

Q. For how long?

A. He's been there for twenty-six (26) years, in nineteen sixty-six (1966).

Q. And were you present at his funerals?

A. Yes, I was.

Q. What date was it?

A. It was on the twenty-eighth (28th) of August.

Q. Nineteen ninety-two (1992)?

A. Nineteen ninety-two (1992).

Q. Thank you.

Me JEAN LECOURES :

No further questions.

THE COURT :

Have you any questions?

VALERY FABRIKANT :

No questions.

THE COURT :

Thank you.

AND FURTHER DEPONENT SAITH NOT

Me JEAN LECOURES :

Mr. Andr, Gauthier.

SANDRA TRAINER - INTERPRETER

DULY SWORN

IN THE YEAR NINETEEN HUNDRED AND NINETY-THREE (1993), this twenty-fifth (25th) day of the month of March, personally came and appeared:

ANDR GAUTHIER, born on March eighth (8th), nineteen hundred and thirty-eight (1938), head of coroner's office at Parthenais, 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. Gauthier, you're here in order to file four documents...

-Q. Monsieur Gauthier, vous ^tes ici pr,sent afin de produire quatre documents...

Q. ...I'm showing you first this one, related to Mr. Michael Hogben...

-Q. ...je vous montre avant celui-ci, pour Michael Hogben...

Q. ...could you give a short description of what is this document?

-Q. ...pouvez-vous donner un court r,cit de quoi il s'agit?

THE COURT :

Juste un instant. Before you do, I understand that Mr. Fabrikant has copies of these documents?

Me JEAN LECOURES :

Yes, My Lord.

VALERY FABRIKANT :

Well, I think so.

THE COURT :

That is so?

VALERY FABRIKANT :

You're referring to what document?

THE COURT :

Would you show the document to Mr. Fabrikant before we go any further?

Me JEAN LECOURES :

Well, I understand he received them by bailiff even.

VALERY FABRIKANT :

Yes.

Me JEAN LECOURE :

Okay.

THE COURT :

Excuse me, Mr. Gauthier.

A. Alors, c'est un document qui parle par lui-même, c'est la prise de possession et d'identification d'un cadavre.

-A. Okay. It's a document that speaks for itself, it's entitled body identification and custody for the body in question.

Me JEAN LECOURE :

Q. Okay. And if we look at it, could you describe what is the title number at the top right-hand part of the document?

-Q. Pourriez-vous d,crire le type de document et ce qui apparaEt au c"t, sup,rieur droit?

A. Oui, c'est ce qu'on appelle le num,ro d'avis...

-A. Yes...

A. ...A qui est l'abbr,viation pour "avis" et 60388 correspond ... l'avis que le coroner Michaud a retu dans ce dossier-l..., et qui s'adresse ... monsieur Michael Hogben.

-A. Yes. This is the notice number A-60388, which is the notice number for the file which mister... coroner Michaud received for this particular individual, in this case Mr. Michael Hogben.

Q. I understand that you have today the original of the document as well as a certified copy, could you explain why it would be more convenient to file a certified copy instead of the original?

-Q. Je comprends que vous avez ici avec vous le document original ainsi qu'une copie conforme, et veuillez expliquer pourquoi on doit produire la copie conforme plut"t que l'original, je vous prie.

A. Bien, je pense que ça fait partie de la loi qu'on applique au bureau, l'original doit rester au dossier.

-A. I think it's a law that governs our offices, the original has to remain within the file at the office.

Q. Okay. I'm showing you an affidavit signed by the coroner Michaud...

-Q. Je vous montre un affidavit sign, par le coroner Michaud...

Q. ...does it really explain what you just told the members of the jury?

-Q. ...est-ce que ça explique ce que vous venez de dire aux membres du jury?

A. Exactement.

-A. That is precisely it.

Me JEAN LECOURE :

I would like to file the form...

THE COURT :

Excuse me, would you show that affidavit to...

Me JEAN LECOURE :

Mr. Fabrikant received a copy.

THE COURT :

Received it. Fine. As long as he acknowledges that he received a copy.

Me JEAN LECOURE :

Okay. And speaking about... yes, let's file it first, P-41, the form, and P-42 for the affidavit. And I have translation performed by Mrs. Trainer that I would like to file as P-43, and here are copies. So this is P-43.

THE COURT :

P-43 is a translation.

Me JEAN LECOURE :

P-42 is the affidavit.

THE COURT :

According to my notes, P-41 is the form, P-42 is the affidavit of the coroner, and P-43 is the translation.

Me JEAN LECOURE :

Q. And I understand, Mr. Gauthier, that at the morgue the working identification is rather the coroner number than the name of the person, isn't it?

-Q. Je comprends qu'... la morgue, monsieur Gauthier, on fonctionne plut"t par le num,ro de dossier du coroner plut"t que... du bureau du coroner plut"t que le nom de la victime, est-ce exact?

A. Oui, toujours par le num,ro d'avis.

-A. Yes, always with the notice number.

Q. Okay.

Me JEAN LECOURE :

No further questions.

-Q. D'accord. Plus de question.

Q. Well, I have to do the same with the others, I'm sorry.

-Q. Je dois faire la m"me chose avec les autres. Je m'excuse.

Q. Okay. I'm showing you also form related to Mr. Jaan Aaron Saber...

-Q. Je vous montre ,galemment un formulaire rattach, ... monsieur Jaan Aaron Saber...

Q. ...is it the same type of record?

-Q. ...est-ce que c'est le m"me genre de formulaire?

A. C'est la m"me chose que celui que j'ai expliqu, pr,c,demment, except, que celui-l... s'applique ... monsieur Saber.

-A. It's the same thing as I previously explained except that this one applies to Mr. Saber.

Me JEAN LECOURE :

So I would like to file it as P-44. I will file as P-45 the translation... well, I put the affidavit before, okay...

THE COURT :

You put the affidavit of the coroner, P-42 I presume is a general...

Me JEAN LECOURE :

No, it's one for each.

THE COURT :

There's one for each. All right.

Me JEAN LECOURE :

So did I put the affidavit before the translation?

THE COURT :

Yes, you did.

Me JEAN LECOURE :

Okay. So I would like to file as P-45...

THE COURT :

The affidavit.

Me JEAN LECOURE :

...the original of the affidavit, and then P-46 may be the translation.

THE COURT :

Do you require to see the affidavit? No.

Me JEAN LECOURE :

Can I just see the form for Mr. Saber?

Q. And then, I would like to show you another record concerning Mr. Mathew... Mr. (Inaudible) Ziogas, is it the same thing?

-Q. Un autre formulaire pour monsieur (Inaudible) Ziogas, est-ce

que c'est le m<sup>^</sup>me formulaire?

A. C'est toujours le m<sup>^</sup>me formulaire, celui-l... s'applique ... monsieur Ziogas.

-A. Still the same form which applies this time to Mr. Ziogas.

Me JEAN LECOURE :

P-47 please.

Q. I'd like you to look at the affidavit and file it as P-48.

-Q. J'aimerais que vous regardiez l'affidavit et le produire sous P-48.

A. C'est exact.

-A. Correct.

Me JEAN LECOURE :

And I'd like to file the translation as P-49.

Q. And finally I'm showing you the form concerning Mr. Mathew Douglass...

-Q. Finalement je vous montre un document, le formulaire concernant pour monsieur Mathew Douglass...

Q. ...is it the same record?

-Q. ...est-ce que c'est le m<sup>^</sup>me genre de document?

A. Oui, monsieur.

-A. Yes, sir.

Q. I would like you to file it as P-50.

-Q. J'aimerais que vous le produisiez sous P-50.

Q. And as well file the affidavit...

-Q. Ainsi que l'affidavit...

Q. ...pertaining to that form as P-51.

-Q. ...rattach, ... ce document sous P-51.

A. C'est #a.

-A. Correct.

Me JEAN LECOURE :

And I'd like to file the translation as P-52. I have no further questions.

THE COURT :

Cross-examination.

VALERY FABRIKANT :

I didn't realize that victims' families are present here, I express my greatest sorrow and this tragedy should never happened. And I hope that at the end of this trial it will be clear for them who is really responsible for this tragedy and how easy it was to prevent it.

THE COURT :

Have you any questions to put to the witness?

VALERY FABRIKANT :

No.

THE COURT :

Thank you very much, Mr. Gauthier.

- Merci beaucoup, monsieur Gauthier.

AND FURTHER DEPONENT SAITH NOT

THE COURT :

Call your next witness.

Me JEAN LECOURE :

Well, My Lord, I requested six witnesses this morning, the next witness will be the pathologist and he's expected to come this afternoon. We can try to reach him, he could be here within fifteen (15) or twenty (20) minutes.

THE COURT :

No, we'll adjourn...

VALERY FABRIKANT :

Maybe we could do something in terms of questions which I have without jury.

THE COURT :

Without the jury. Yes. Surely. So we'll resume with the pathologist at two fifteen (2:15) this afternoon.

THE JURY LEAVES THE COURTROOM

WITHOUT JURY

VALERY FABRIKANT :

It's extremely difficult to speak for me now, but the questions I raise are important I feel, because they are directed towards the truth to come out, and this to me is the main purpose of this process. I'm not concerned at all as to what the judgment will be, my purpose is that the whole truth come out. And for this purpose it is important to have some opportunity to prove certain points. Now one of those points is the letter which even policemen yesterday admitted that they have seen body of Dr. Hogben with his hand straight, no letter was in view. To have it more convincing that indeed the letter was planted, I need to get some additional expertise. And the letter was planted because someone, I have a very good idea who, tried to divert the attention from real reason for the tragedy. The letter was never there, I've never seen it until it was produced by the Crown, so I ask for certain experts. Now, what Mr. Belleau suggests, he gave one expert from Ottawa, and as you know I have no way to make any long distance call, I want to talk to expert first. Mr. Belleau puts it as an ultimatum that either I say yes to this expert without talking to him or I then be without expert. I think this is wrong approach. Now, I would like to have your judgment in this regard because I think it is important for me to talk to the expert first, to know what his experience is, what he can and cannot do, and whether the whole expertise is advisable in the first place, how convincing the expertise will be. Because what I'm asking him to check on the document will include, for example, Dr. Hogben's fingerprints, if they're there, mine, which definitely are not there, maybe expertise of blood, whether it is blood which belonged to Dr. Hogben. Well, when you talk to expert, expert sometimes suggest what kind of tests could be made. I think that one should not tamper with tragedy, tragedy requires the truth to come out, and all false stuff should be eliminated. This should be the purpose of this Court, too.

THE COURT :

Well, you've said a number of things, and I'm not exactly sure where to start. You...

VALERY FABRIKANT :

Maybe you could start as...

THE COURT :

So I want to make sure I understood what you're saying. You say that you wish to proceed to an expertise of the original of Dr. Hogben's letter. Now, without asking you who the expert is or whatever, have you an expert in mind? You have mentioned the possibility of someone from Ottawa, the question was discussed the other day as to whether or not you could find the competence within the Medical Legal Institute at Parthenais.

VALERY FABRIKANT :

I can report to you that I have contacted Laboratory of Legal Medicine which you mentioned...

THE COURT :

Yes.

VALERY FABRIKANT :

...and they told me that they do not serve anyone but police and coroners. They do not serve any defense lawyers or anybody else, they are mandated only to serve police and coroners, period. So...

THE COURT :

Who gave you that information?

VALERY FABRIKANT :

I called them directly and I spoke to... well, I didn't get the name of the gentleman I spoke to but it was one of the... it was not the answering service, definitely, it was one of the specialists there. And he told me that Laboratory of Legal Medicine is solely devoted to these two kinds of services, it does not provide any services outside this mandate. And when I asked who else, effectively, I didn't get any particular answer to this.

THE COURT :

Is that, Mr. Belleau, your understanding of the situation obtained at Parthenais today?

Me BELLEAU :

Absolutely not, My Lord, as a matter of fact I had a conversation myself with a scientist from the department of biology at the Laboratoire de... which was finally called de police scientifique, but it changed name now, d'expertise l,gale, and what I was told was that if there were a Court order, they would gladly proceed with whatever expertise or experiment they were equipped or competent to perform. Now, I enquired to their ability to do such work as a fingerprint research, and I was told that this was something that they would have performed by the Service de l'identit, judiciaire, I was referred to that section, and they told me that they wouldn't do that for the defense. But that's one aspect of the expert work that Mr. Fabrikant seemed to want performed. But as to the biology... blood analysis and things of that nature, they will perform to Court order, and it's my past experience that they did in fact, and do perform work for the defense as cases justify it.

VALERY FABRIKANT :

Was it number 873-3300 you called?

Me BELLEAU :

I don't think so, I can give you the number I called, I have it right here. 2704. 873-2704.

VALERY FABRIKANT :

So it's something else, how is it called?

Me BELLEAU :

La Direction des expertises judiciaires.

VALERY FABRIKANT :

Direction I suspect, doesn't do any work, what I called was the place where they do the work, Laboratoire de m,cedine l,gale, and I understand that Direction is some administration above these people, and they told me... So I spoke to the people who actually do the bureaucratic and administration, and they told me that they do not do the work. But still, the question is, and I believe it needs to be resolved, not only this expertise, any other expertise, right now I'm barred from doing any long distance calls, and I find no justification to it. I have Legal Aid mandate, if Legal Aid can pay a thousand dollars (\$1,000) for Mr. Belleau doing nothing, why can't they pay ten dollars for the long distance call?

THE COURT :

We're talking about two different things. The fingerprints ostensibly pose a problem as I understand it in that there are

not facilities at the Legal Aid Laboratory... at the Medical Legal Lab to do these fingerprint analyses, and obviously it's not satisfactory for anybody, Crown, Defense or me, that these be performed by the police on behalf of the Defense.

Me BELLEAU :

Of course.

THE COURT :

So what is the alternative? There is an RCMP laboratory in Ottawa, I suppose. I don't know whether there's a similar arrangement there as exists here in Quebec as far as independence is concerned.

Me BELLEAU :

I don't know about that, I know that... well, I was asked to do certain work on that aspect of the question, and I have looked for experts in this area who would be as independent as possible from the police department. And I know there is one of them who would be perhaps available, but I thought that it would be preferable to look for someone with perhaps more modern techniques available to him. And I've called Ottawa, first of all, an ex-director of the MUC identification service who's retired, and he referred me to a gentleman who's retired from the RCMP in Ottawa, and Mr. Teller, who is not available because he's leaving the country next month. He referred me to Mr. "Dan Levy", who is also an ex- RCMP officer who would be available as an expert to do this kind of work, and he's in Ottawa, and under certain conditions he would, I suppose, gladly perform this work. Now, there are some administrative steps that have to be taken, I've given to Mr. Fabrikant a letter in which I state my position on that subject, if he wants to disclose it, it's up to him.

THE COURT :

Now, there is perhaps a bit of water that's flowed under the bridge since the month of January, but in the month of January I seem to recall that Me Deslongchamps testified here that long distance telephone calls would be underwritten by the Legal Aid Corporation. Are you, Mr. Belleau, aware of any change there?

Me BELLEAU :

My recollection is that we discussed this problem with... j'ai eu une conférence préparatoire and I talked with Me Deslongchamps about it, that if Mr. Fabrikant could justify the necessity for the phone calls, that Legal Aid Community Center would give Parthenais a voucher for so many minutes of long distance calls, that was the position of Legal Aid, I think it remains the same.

THE COURT :

It remains the same.

VALERY FABRIKANT :

Well, I respectfully submit that I have justified on many occasions at least ten phone calls and nothing has been done, and the worst thing is that the way it is now, I am from six a.m. (6:00) to seven p.m. (7:00) away from Parthenais, and on Saturday and Sunday I am not allowed to use phone there at all. I believe some changes need to be made in this because physically this position is not possible, maybe we can... I mean the Court can oblige Parthenais at least to allow me using the phone Saturdays and Sundays when I'm there without supervision, the way it is done here. I must respectfully submit that Mr. Belleau cannot be trusted, especially after yesterday's very strange announcement. It's inconceivable to have a person, a friend of Court, with that kind of behavior.

Besides, I requested many times, it's regretful that I cannot get a lawyer really to assist me in defense. I mean that a lawyer who would assist me in terms of doing what is necessary. We are having very, very wrong structure which is very expensive, which maybe creates impression of legality, but in reality what we have here is total obstruction of any efforts on my part either to contact witnesses or to get documents, or to contact experts, or to get to the jurisprudence, effectively all the necessary components which are supposed to be for defense are not there. On the other hand, these huge expenses like friend of Court allows the press to cry out that Fabrikant is stretching resources to the extreme while in fact Fabrikant does not benefit from these expenses at all, it is just Mr. Belleau who is benefitting, and I believe that the Court should address all this.

THE COURT :

I have addressed all of these questions on numerous occasions.

VALERY FABRIKANT :

Well...

THE COURT :

It obviously flows from the fact that my interpretation of the situation and your interpretation of the situation are entirely different.

VALERY FABRIKANT :

Yes.

THE COURT :

I have said to you that I'm not the person who's directing your defense, and as you've been at pains to point out on numerous occasions, you, and you alone, is the person who's directing your defense, and that, as I understand it, has been the bone of contention between you and the lawyers who have previously acted for you. I can do nothing more in that regard, I cannot marry you to a lawyer and oblige that lawyer to follow your each and every instruction if that lawyer feels that in all conscience he can't do that. Now, I'm not a miracle worker, I can't do that. Yes, if you are able to convince me, and I underline those words, that you are being prevented from obtaining the opinion of an expert, I am able to intervene. I have informed myself of what steps you must go through, in the circumstances they're not at all unreasonable. If there is a problem of phone calls, then surely you should be able to make the phone calls that you have to make to discuss with the expert in Ottawa, that if that's what you elect to do. I have no idea whether that's the expert you elect to choose. For the first time I'm told that, as far as fingerprinting is concerned, that can't be done here. I'm within my own mind satisfied, you see, that at the lab at Parthenais there is expertise and independence. I'm not just satisfied about that from Martin's point of view, I'm satisfied that any objective and informed member of the public would consider that what has been set up there is an independent organization that is not in the pocket of the police, scientists who will come and testify on the strength of their observations and who will give their opinion. You may not see it that way, if you don't see it that way I can't help it, but in my way of thinking, if you have put at your disposal the sort of expertise, for example the blood analysis that you wish to do on Dr. Hogben's letter, I'm satisfied that that can be done at Parthenais. Of course, if you wish to retain some other expert to do that analysis, presuming that you can get the agreement of the Legal Aid Corporation, that's

perfectly within your right. And I understand the policy that the Legal Aid Corporation has adopted right through has been... if on the surface we are satisfied, because we are the custodians of public funds to the extent that we order them disbursed. If we are satisfied that it's a bona fide request that relates to the case, we're prepared to authorize that sort of expertise. The structures are there. Now whether you trust Mr. Belleau or not, I don't know. Since you had no lawyer, and since I can't be your lawyer, and since I have no desire to be your lawyer, and since it's not my function to be your lawyer, I put in place the friend of the Court with the specific instructions and with the elastic mandate to assist you as we go along, should you request assistance. From where I'm sitting, and from what I've seen, that's what he's done. He's been accused of sabotage on many occasions, and quite frankly I'm dumbfounded, because I haven't seen any evidence of that. Now that may be that I see things in a color different from you. The detail that he's furnished to me has rarely matched what you've said, and quite frankly what he tells me now as to the question of what is available at Parthenais and to whom it is available, this is in accord generally with my understanding, without my ever having studied the structure of the Medical Legal Lab at Parthenais, believe me I haven't. Nor for example am I familiar with each and everyone of the multiplicity of regulations that are in force at the detention center. Now, by and large you have possibilities opened to you, if you're telling me that you can't make a telephone call to Ottawa, and that within the context of the examination of Dr. Hogben's letter, then I'm prepared to, first of all have Mr. Belleau broach this question with Me Deslongchamps, and if it can't be solved at that level I'm prepared to solve it as far as this is concerned. Because without passing on the importance of what you wish to draw from the letter, I'm prepared to say that on its face it seems as if it might be pertinent. But I don't wish to be called upon, and I can't be called upon to decide in advance what elements of your defense are relevant to your defense and what are not, because that's not my function and I don't wish to trespass into that area.

VALERY FABRIKANT :

Well, I must respectfully submit that you're missing the main point, it is not even Me Deslongchamps, it is the situation in which I am now, I repeat once again, from six a.m. (6:00) to about seven p.m. (7:00) I'm outside of Parthenais, I cannot make any long distance calls from here. I'm at Parthenais Saturdays and Sundays and I'm not allowed to use telephone on these days. So what I am asking you is for a Court order which would allow me access to the telephone at Parthenais Saturdays and Sundays and evenings of regular days, this is what I am asking you to do. Because this is not just one expertise, I need several, so this is now the major obstacle that I'm physically precluded from making any long distance calls.

THE COURT :

Okay. Then perhaps the time has come for us to do what I suggested doing yesterday, I will have the director of Parthenais down here, and we will see in detail what the limits are that are placed on you, and why. And if there's any need to make any orders, and after hearing him that will be the appropriate time to make the orders.

VALERY FABRIKANT :

Well, this time I couldn't support it more, because there are several other questions which might look to you minor but they are, again, of major importance to me, like some minor stuff like having myself opened rather than closed all the time, and if I forget to take something from the cell, then I have to wait for an hour until the cell is opened again. This looks like minor stuff but in terms of the little time I have for preparation of my defense, even this little time is being stolen. Today, for example, I tried to take the machine, because I just didn't have enough time to listen to the tape, and I tried to take it here so that I could maybe listen on the way to Palais de justice and in the cell, and they told me that I cannot take the machine with me. You see, there are a number of questions which I believe very easily to solve, and nevertheless they are not solved, and they, as minor as they are, they create huge difficulties. So if you could call him here and settle all of them, that would be a very good beginning.

THE COURT :

There's another question that you're going to find very distasteful, but you chose to call it a threat on my part this morning and it's not a threat at all. But I will tell you quite frankly that the time has come, in my view, to order that a special issue be held in order to determine whether you are, in view of what I've heard and what I've seen, and the way you have behaved, whether you are in a position either to instruct counsel or to conduct your defense. I'm prepared to be more precise about that this afternoon, but that's the point to which I have come. And that is something that... that is a duty the law imposes on me, and on me alone. I see you're smiling, I am in no way the one who makes that determination, and it may well be that any fears I have in that regard are totally groundless. That's your position, I know, and if that's the way it turns out, then that's the way it will turn out. But the law requires that if I have any question in my mind, if I have any doubt, then that is what I should do. And I tell you now that that is what I intend to do.

VALERY FABRIKANT :

I only can say that it looks like the witnesses who are testifying here perform so badly that you are afraid what will happen to the next witnesses.

THE COURT :

You see, in the answer you just gave me there is... in the answer you just gave me is the basis for my fear.

VALERY FABRIKANT :

Oh yes. What is your basis?

THE COURT :

Because you seem to think, you seem to be convinced, and this is the most difficult part of it for me. You have been in this country for some fifteen (15) years, I think, you seem to think that I am some sort of extension today of the police department. You accused me this morning of orchestrating, or at the very least closing a blind eye to a situation which had been orchestrated by the authorities to further weaken you, or further put you in an impossible position as far as presenting your defense is concerned. You accused me the other day of giving orders to prevent you being given lunch so that you would be weak at the end of the afternoon, you have accused me of falsifying documents, all manner of things which indicate

to me that you have a very, very false or warped conception about what the purpose of this trial is, and what is relevant to it. You have performed pretty well as a cross-examiner, no question about it.

VALERY FABRIKANT :

Thank you.

THE COURT :

If the test is whether you can put a question to a witness and whether you can bring out inconsistencies in what the witness has said, what of course remains to be determined and remains to be considered is how important are these inconsistencies, and do they bear on the relevant questions which are before this Court. And on that latter one, I have, I must say, some considerable doubt, but that's an observation that I'm making, and that's an observation that I, not only have a right to make, but that I have a duty to make. So, while you... I don't know whether you're receiving your advice from a lawyer or a student of the law who happens to be in prison, a jail house lawyer or whoever, but I must say that you have made along the way a number of notices of motion, or whatever, that have fallen in the right place, generally speaking, that have shown me that you're perfectly aware of what this trial is about, that you're perfectly aware of what you should challenge. I have no fear in that regard as far as your conduct of your defense is concerned, but where I have been forced to have a fear is when you see, today and this week it's the police and the authorities, but where you see me as an extension of Concordia University, where you see the police as the servants of Concordia University, and where you see Concordia University as some sort of great Satan that is directing a vendetta against you. And that I, as a Judge of the Superior Court, am a willing part of this because the former Chief Justice of this Court happened to be the chancellor of Concordia University. When I hear all of that, I have to say to myself, are you really aware of what this proceeding is about?

VALERY FABRIKANT :

Well, why don't you wait for the evidence which I will produce, and then we will see just whether what I am saying is founded or not.

THE COURT :

You may be right, but that's going one step too far, you see. I could be wrong. I could be very wrong, and I tell you, you looked at me before and said that I would do this and I would do that, I will do nothing, but I will make that order, and evidence will be led afterwards, and the jury will be asked to determine whether you are fit to stand trial. And if they decide that you are, on the basis of the evidence that's given, then we will go on. But if the medical opinion is the contrary, and if the jury decides otherwise, then it isn't in the public interest that this continue and weeks and weeks on end if you are not in a position to undergo it.

VALERY FABRIKANT :

This is interesting.

THE COURT :

Well, it may be interesting but it's a fact. It's simply neither in the public interest, nor is it right.

VALERY FABRIKANT :

Oh yes. So you're just afraid of the testimony which will come after that.

THE COURT :

I am afraid of nothing, Mr. Fabrikant.

VALERY FABRIKANT :

You want to neutralize me Soviet style.

THE COURT :

I'm afraid of nothing, I have no idea what the outcome of that will be. Madame Desrosiers, I wonder if you would attempt to... or would see whether the assistant director of Parthenais, Dr. Laplante, Paul-Andr, Laplante could be here this afternoon at four o'clock (4:00). I would also like Me Johane Deslongchamps here at the same time because for these proceedings the Code obliges me to name a lawyer to represent you. It is a provision of the Criminal Code in regard to which I have no choice, and that nomination is for the length and breadth of the hearing on fitness, nothing more. I am not and I will not consider attempting to have Mr. Belleau fill that role, he should not. He remains in the position in which he is, as amicus curiae. So, it's twelve thirty (12:30).

THE COURT CLERK :

(Inaudible).

THE COURT :

Yes, that might be a good idea at the same time. Obviously, if they're available before three o'clock (3:00)... if they're available before three o'clock (3:00), fine, but I'll settle for four (4:00) if I have to.

Me JEAN LECOURE :

And of course, My Lord, the proceedings are suspended?

THE COURT :

The proceedings are suspended. The proceedings are surely suspended at this point, and I will decide over the... I had effectively thought that I would put together what I had to say, but in view of an observation Mr. Fabrikant made, I said what I had to say at this point, and I don't think I have much more to add to it. We will also need, madame Desrosiers, one set of the cassettes from the beginning of the trial on, which will have to be made available to go to Institut Philippe Pinel. And for the minute, as far as the determination of the doctors is concerned, I will occupy myself with that during the lunch hour and in the early course of the afternoon. I will be back, I think we will resume at two fifteen (2:15) for no other reason than to let me release the jury for the day, while I bring these arrangements to a conclusion. Any suggestions that you or Mr. Belleau may have would be appreciated.

Me BELLEAU :

Maybe I misunderstood but if we're going to reconvene the jury just to release them at two fifteen (2:15), could it be done right away? I'm not sure...

THE COURT :

I'm sure they've gone to lunch, that's the problem.

Me BELLEAU :

Oh, I'm sorry.

THE COURT :

That's all. At two fifteen (2:15) for a very, very short period of time, and then we'll adjourn until three (3:00) or four (4:00), depending on when these various people can be available. And Mr. Fabrikant, you will be perfectly free to retain whatever doctor you may wish to examine you, if that's your choice.

VALERY FABRIKANT :

There will be absolutely no examination.

THE COURT :

Pardon?

VALERY FABRIKANT :

There will be absolutely no examination.

THE COURT :

It's not a contested proceeding, it's a proceeding that is simply undertaken and that's that.

VALERY FABRIKANT :

Well, you can undertake whatever you want, it will be very, very shameful thing to do.

THE COURT :

Well, you see, you see it that way, I don't see it that way. So we'll adjourn until two fifteen (2:15).

TRIAL CONTINUED TO MARCH 26TH, 1993

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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

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